

Number: WG23184



Llywodraeth Cymru
Welsh Government

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Welsh Government

Consultation Responses – Part 1

The Use of Planning Conditions for Development Management

October 2014

| The Use of Planning Conditions for Development Management | | |
|---|---|-------------------------------------|
| Date of consultation period: 29/01/2014 – 25/04/2014 | | |
| Name | Bob Dewey | |
| Organisation | Bob Dewey Planning | |
| Address | The Gables, Llanfynydd Wrexham | |
| E-mail address | bobdeweyplanning@gmail.com | |
| Type (please select one from the following) | Businesses/Planning Consultants | <input checked="" type="checkbox"/> |
| | Local Planning Authority | <input type="checkbox"/> |
| | Government Agency/Other Public Sector | <input type="checkbox"/> |
| | Professional Bodies/Interest Groups | <input type="checkbox"/> |
| | Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations) | <input type="checkbox"/> |
| | Other (other groups not listed above) or individual | <input type="checkbox"/> |

| Q1 | Do you think an updated circular on conditions is required? | Yes | Yes (subject to further comment) | No |
|---|---|--------------------------|-------------------------------------|--------------------------|
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: not a high priority | | | | |

| Q2 | Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular? | Yes | Yes (subject to further comment) | No |
|-----------|---|-------------------------------------|-------------------------------------|--------------------------|
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

Consultation reference: WG19178

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|-----------|--|-------------------------------------|-------------------------------------|--------------------------|
| Q3 | Do you consider: | | | |
| | (i) that all six tests are still relevant today and should be retained? | Yes | Yes (subject to further comment) | No |
| | (ii) that there are additional tests that could be used (demonstrate with case law if possible)? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

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|-----------|--|--------------------------|-------------------------------------|-------------------------------------|
| 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? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: | | | | |

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|-----------|--|--------------------------|-------------------------------------|-------------------------------------|
| 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? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: | | | | |

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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. | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: It is confusing not to have them organised by subject. Follow Denbighshire's lead in heading each condition as "PRE COMMENCEMENT" or "pre occupation" etc so that there is a clear warning | | | | |

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|-----------|---|-------------------------------------|-------------------------------------|--------------------------|
| Q7 | Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition? | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

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|---|--|--------------------------|-------------------------------------|-------------------------------------|
| Q8 | 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? If not, please suggest your preferred approach. | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: It should say "unless otherwise APPROVED IN WRITING" - 'agreed' is far too vague. | | | | |

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| Q9 | 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 (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: delays decisions | | | | |

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|------------|--|--------------------------|-------------------------------------|-------------------------------------|
| Q10 | Should guidance be provided in the circular with regards to any other conditions related matter? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: | | | | |

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|------------|--|-------------------------------------|-------------------------------------|--------------------------|
| Q11 | Does Appendix A of the draft circular contain sufficient examples of model conditions? | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

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|---|---|--------------------------|-------------------------------------|--------------------------|
| 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. | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: see above re 'in writing' | | | | |

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|------------|--|--------------------------|-------------------------------------|-------------------------------------|
| Q13 | Do you believe any of the conditions fail any of the six tests identified in the circular? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: | | | | |

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|------------|---|--------------------------|-------------------------------------|-------------------------------------|
| Q14 | Should any conditions be totally removed from Appendix A of the draft circular? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: | | | | |

General

Q15

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:

the biggest problem is that case officers write conditions first then reasons. They should be made to write the reasons first so they know what they are trying to control and why. They must be advised to avoid "in the interests of amenity" etc far too vague.

I do not want my name/or address published with my response (please tick) ☐

| The Use of Planning Conditions for Development Management | | |
|---|---|-------------------------------------|
| Date of consultation period: 29/01/2014 – 25/04/2014 | | |
| Name | Wynne Jones | |
| Organisation | Planning Consultant | |
| Address | Min yr Afon Abercych Boncath Pembrokeshire SA37 0EX | |
| E-mail address | minyrafon@btinternet.com | |
| Type (please select one from the following) | Businesses/Planning Consultants | <input checked="" type="checkbox"/> |
| | Local Planning Authority | <input type="checkbox"/> |
| | Government Agency/Other Public Sector | <input type="checkbox"/> |
| | Professional Bodies/Interest Groups | <input type="checkbox"/> |
| | Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations) | <input type="checkbox"/> |
| | Other (other groups not listed above) or individual | <input type="checkbox"/> |

| Q1 | Do you think an updated circular on conditions is required? | Yes | Yes (subject to further comment) | No |
|---|---|-------------------------------------|-------------------------------------|--------------------------|
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: To take into consideration recent new planning legislation and TAN's | | | | |

| Q2 | Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular? | Yes | Yes (subject to further comment) | No |
|--|---|--------------------------|-------------------------------------|--------------------------|
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: A summary of the information contained in Circular 35/95 should be carried forward into the new circular. | | | | |

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|-----------|--|-------------------------------------|-------------------------------------|--------------------------|
| Q3 | Do you consider: | | | |
| | (i) that all six tests are still relevant today and should be retained? | Yes | Yes (subject to further comment) | No |
| | (ii) that there are additional tests that could be used (demonstrate with case law if possible)? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Comments:

The 6 tests {as listed below} are still relevant today

- 1. necessary**
- 2. relevant to planning**
- 3. relevant to the development to be permitted.**
- 4. enforceable.**
- 5. precise, and**
- 6. reasonable in all other respects.**

| | | | | |
|-----------|--|--------------------------|-------------------------------------|-------------------------------------|
| 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? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Comments:

| | | | | |
|-----------|--|--------------------------|-------------------------------------|--------------------------|
| 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? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Comments:

A "national" list of model conditions from which local authorities can prepare a "local" list is sensible. Listing conditions in the decision notice in a logical sequence of events is also sensible. E.G. Timeframe, Detail Drawings, Pre-Commencement, Construction, Landscaping, Post-Construction Monitoring etc. In my view it should be a statutory requirement to display, on site, a copy of the decision notice {listing planning conditions} and approved drawings from project start to project completion. This will enable the general public to monitor progress and assist planning officers by drawing their attention to any potential breach of planning control at an early date.

Consultation reference: WG19178

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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. | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: My response to Q5 above refers. | | | | |

| | | | | |
|---|---|-------------------------------------|-------------------------------------|--------------------------|
| Q7 | Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition? | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: This is of paramount importance as work should only be undertaken in accordance with the approved plans. These plans should be displayed on site for the duration of the project. | | | | |

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|---|--|--------------------------|-------------------------------------|--------------------------|
| Q8 | 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? If not, please suggest your preferred approach. | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: Conditions need to be precise and enforceable. Vague statements as listed below should be avoided. "to an acceptable level" - acceptable to who? "if it is desirable" - desirable to who? "to the satisfaction of the Local Planning Authority" - difficult to enforce as the condition would be based on the subjective judgement of a planning officer or engineer. | | | | |

Consultation reference: WG19178

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|-----------|---|--------------------------|-------------------------------------|-------------------------------------|
| Q9 | 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 (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Comments:

These matters can be adequately considered informally during pre-application discussion or while the application is being processed. The applicant should not be in a position to dictate to a Planning Officer what condition he / she is prepared to accept. That is a decision for the Planning Officer following consultation with statutory and non-statutory consultees.

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|------------|--|--------------------------|-------------------------------------|--------------------------|
| Q10 | Should guidance be provided in the circular with regards to any other conditions related matter? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Comments:

I take the view that the section relating to drainage needs to be strengthened to take into consideration transfer of powers from Natural Resources Wales to Local Authorities under the provisions of "Flood & Water Management Act 2010". Under the Act Local Authorities are now responsible for managing "local" flood risk. Additional information is provided in a schedule attached hereto.

| | | | | |
|------------|--|--------------------------|-------------------------------------|--------------------------|
| Q11 | Does Appendix A of the draft circular contain sufficient examples of model conditions? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Comments:

I take the view that an additional {and universal} planning condition should be included for every development site. Please refer to the schedule attached hereto which includes a draft version of the condition and justification.

| | | | | |
|------------|--|-----|--------------------|----|
| Q12 | Do you consider that any of the conditions used should be reworded? If so, which | Yes | Yes (subject to | No |
| | | | | |

Consultation reference: WG19178

| | | | | |
|-----------|--|--------------------------|--------------------------|-------------------------------------|
| | conditions and why? Please suggest alternatives if you are able. | | further comment) | |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|------------|--|--------------------------|----------------------------------|-------------------------------------|
| Q13 | Do you believe any of the conditions fail any of the six tests identified in the circular? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|------------|---|--------------------------|----------------------------------|-------------------------------------|
| Q14 | Should any conditions be totally removed from Appendix A of the draft circular? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: | | | | |

General

| | |
|--|--|
| Q15 | 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: |
| Additional information is provided in a schedule attached hereto. | |

| |
|--|
| I do not want my name/or address published with my response (please tick) <input type="checkbox"/> |
|--|

Development Control Issues

To be read in conjunction with completed “Planning Conditions for Development Management response form”.

| Issue | Recommendation for Action | Response from Welsh Government |
|--|--|--|
| <p style="text-align: center;">VALIDATION</p> <p>Applicants / developers are currently submitting planning applications to local authorities in West Wales where work is proposed outside the curtilage of the development site {as depicted by red line on location plan} on land not under the ownership or control of the applicant. Certificates under Article 11 of the Town & Country Planning {Development Management Procedure} {Wales} Order 2012 are not being presented to the local authority confirming that notice under Article 10 of the order has been served on the affected landowners off-site. When the validity of the application is questioned, during the public consultation period, the local authority argue that they are not under any obligation to make enquiries regarding land ownership and process the application on the assumption that all details presented on application forms are correct. This invariably leads to some planning applications being determined that are clearly invalid, with the planning decision quashed in the High Court should a member of the public choose to challenge the decision at judicial review. Planning is a legal process and failure to serve the correct notice on off-site landowners affected by the development invalidates the application. Currently, Planning Case Officers are not in direct control of the validation process and receive planning case files post-validation.</p> | <p style="text-align: center;">VALIDATION</p> <p>Standard guidance on validation requirements published in April 2012 by Welsh Government is considered to be an excellent document. I take the view that a minor amendment to clause 28 would reduce the risk of invalid applications being processed. My recommended amendment is inserted {in red text} below.</p> <p style="text-align: center;">Clause 28</p> <p><i>“Validation of applications for planning permission should essentially be an administrative process, undertaken by a Planning Officer, to check that the right documents and fee (where applicable) have been submitted. If an applicant submits an application which does not provide all the information required in the Standard Application Form such as supporting assessments, the necessary plans, fee and local validation requirements, the authority will be entitled to conclude the application is invalid, and so decline to determine it.”</i></p> <p style="text-align: center;">End of clause</p> <p>This minor amendment should ensure that Planning Officers {not administrative assistants} are in overall control of the validation process: an important process as failure to comply can lead to legal challenge.</p> | <p style="text-align: center;">VALIDATION</p> |

| | | |
|--|--|--|
| <p style="text-align: center;">DRAINAGE</p> <p>Existing and proposed drainage layout plans are not provided by applicants / developers {or requested by Planning Officers} when detailed planning applications are processed. Consequently, statutory and non-statutory consultees {Natural Resources Wales, Dwr Cymru Welsh Water and Council drainage departments} and private drainage consultants are unable to provide informed comment during the consultation period. Drainage is often regarded by Planning Officers as an after thought where the detail can be resolved after applications have been determined. I take the view that it is imperative that the <u>principle of drainage</u> is established while applications are being processed to inform the planning decision. Drainage and flooding are material considerations in development planning and development control and drainage and / or flood risk assessments should inform planning decisions not be undertaken post determination. Under current arrangements development projects, with detailed planning approval, are often delayed or sometimes abandoned when it is subsequently established that the site can not be effectively drained or protected from flooding.</p> | <p style="text-align: center;">DRAINAGE</p> <p>With regard to the standard guidance on validation requirements, I recommend the following minor amendment to Annex A {1} List 1 {2} Plans & relevant information. My recommended amendment is inserted {in red text} below.</p> <ul style="list-style-type: none"> • Location Plan • Existing & Proposed elevations • Existing & Proposed floor plans • Existing & Proposed site sections & finished floor and site levels. • Existing & Proposed roof plans. • Existing & Proposed drainage plans. <p>This should ensure that drainage and flooding issues are considered during the processing of an application, not post-determination.</p> | <p style="text-align: center;">DRAINAGE</p> |
|--|--|--|

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|--|---|---|
| <p style="text-align: center;">STATUTORY CONSULTEE</p> <p>Local authority drainage departments are reluctant to comment on flooding issues during planning consultation in view of the overlapping role with Natural Resources Wales {NRW}. The role of NRW and local authorities is clearly defined in the Flood & Water Management Act 2010. NRW have a general overview on all flooding matters and specific responsibility for managing flood risk from main river and tidal estuaries. Local authorities are responsible for managing local flood risk from; surface water, groundwater and ordinary watercourse. Local authority drainage departments are currently not statutory consultees in the development control process, although they are often {but not always} consulted on planning applications.</p> | <p style="text-align: center;">STATUTORY CONSULTEE</p> <p>I recommend that Local authority drainage departments be designated statutory consultees in the development control process to reflect their new enhanced role as the designated “<i>Lead Local Flood Risk Management Authority</i>” responsible for managing local flood risk from surface water, ground water and ordinary watercourse.</p> <p>I take the view that failure to do so will result in “grey areas” and blurred lines of communication and inevitably the “blame game” following a flood event. The purpose of the new legislation is to ensure there is no confusion between the role of Natural Resources Wales in managing flood risk at a more strategic level and the role of local authorities in managing local flood risk. In my view it is therefore essential that both are statutory consultees in the development control process.</p> | <p style="text-align: center;">STATUTORY CONSULTEE</p> |
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| <p style="text-align: center;">PLANNING CONDITIONS</p> <p>Planning conditions are imposed to ensure a high standard of development is achieved in accordance with policies outlined in a local authority's adopted development plan and national guidance from Welsh Government in the form of Technical Advice Notes {TAN}. Local authorities argue that they do not have the necessary resources to monitor compliance with planning conditions and therefore rely on members of the public reporting, to them, any breach of planning control. Often, the general public are not aware of what conditions have been imposed and are not therefore in a position to monitor compliance. Enforcement action, relating to a breach of planning control, is a discretionary power {not a statutory duty} and local authorities often conclude {when requested to investigate} that it is not expedient to take enforcement action relating to a breach. The overall result is the delivery of sub-standard development not in accordance with the policies outlined in the local authority's adopted development plan or Planning Policy Wales published by Welsh Government.</p> | <p style="text-align: center;">PLANNING CONDITIONS</p> <p>To address this issue I recommend that a universal {and additional} planning condition be included for every development site. My recommended draft is outlined below for your consideration.</p> <p style="text-align: center;"><i>“The above planning conditions are issued to ensure a high standard of development is achieved in accordance with adopted local and national planning policies. The applicant must inform the local planning authority when compliance with each planning condition has been achieved so that planning records can be updated accordingly. The local planning authority reserves the right to carry out site inspections at any time to verify compliance with planning conditions.”</i></p> <p>Should this universal planning condition be included for every development site I take the view that the following benefits would follow. A high standard of development would be achieved in accordance with local and national policy as the onus would be on the applicant to confirm compliance to the local authority. Additionally it should result in a reduced number of complaints to local planning authorities, or requests for investigations into alleged breach of planning control.</p> | <p style="text-align: center;">PLANNING CONDITIONS</p> |
|---|---|---|

Further to the WG consultation regarding the above Anwyl Construction Co Ltd – a well established regional housebuilder- would like to respond - see below.

I hope you do not mind responding directly to yourself.

I have had a look through the consultation documents and have little to criticize and much to commend.

Unless indicated otherwise Anwyl say YES to the various questions listed in the document.

Only 4 points

- WG need to sort out the process for discharging planning conditions by making it either an application with a form and fee and stipulating that after 6 or 8 weeks the condition has been discharged unless the Council refuse within the period. At present there is no form – unlike in England – and any letter should refer to Article 23 of the T&CP (DMP) Wales Order 2012 which states the time period etc .
- Para 5.41 states that a condition on affordable housing should not specify tenure (or price?) – but model condition No 20 states type/tenure – so that needs clarifying
- Model condition No 37 on density should state whether it is net or gross density
- Model condition No 38 should delete.. “in perpetuity” .. as the system will be either adopted by WW or become a private drain owned by the purchaser who is responsible for it and can effectively do as they please if they want .

| The Use of Planning Conditions for Development Management | | |
|---|---|-------------------------------------|
| Date of consultation period: 29/01/2014 – 25/04/2014 | | |
| Name | Stephen Waldron | |
| Organisation | Stephen Waldron Architects Ltd | |
| Address | 18 High St, Pontneddfechan, SA11 5NP | |
| E-mail address | enquiries@stephenwaldronarchitects.com | |
| Type (please select one from the following) | Businesses/Planning Consultants | <input checked="" type="checkbox"/> |
| | Local Planning Authority | <input type="checkbox"/> |
| | Government Agency/Other Public Sector | <input type="checkbox"/> |
| | Professional Bodies/Interest Groups | <input type="checkbox"/> |
| | Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations) | <input type="checkbox"/> |
| | Other (other groups not listed above) or individual | <input type="checkbox"/> |

| Q1 | Do you think an updated circular on conditions is required? | Yes | Yes (subject to further comment) | No |
|----|---|-------------------------------------|-------------------------------------|--------------------------|
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Comments:

Local Authorities are in some cases dodging any duty to consult or exercise any discussion or negotiation with applicants or their agents by simply listing many conditions. In many cases these require significant consultancy costs even when the impact of the conditions will only be clear when the project goes forward. It is effectively a tax on development and prevents people without access to capital applying for planning consent. At the same time planners are reluctant to discuss conditions before simply placing them in droves.

| Q2 | Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular? | Yes | Yes (subject to further comment) | No |
|----|---|--------------------------|-------------------------------------|-------------------------------------|
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Consultation reference: WG19178

Comments:

Start again. It has failed as is evidenced on very simple sites having over 25 planning conditions for example.

| | | | | |
|-----------|--|-------------------------------------|-------------------------------------|--------------------------|
| Q3 | Do you consider: | | | |
| | (i) that all six tests are still relevant today and should be retained? | Yes | Yes (subject to further comment) | No |
| | (ii) that there are additional tests that could be used (demonstrate with case law if possible)? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Comments:

I am not sure on item (ii).

| | | | | |
|-----------|--|--------------------------|-------------------------------------|--------------------------|
| 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? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Comments:

Not an expert on this.

| | | | | |
|-----------|--|--------------------------|-------------------------------------|-------------------------------------|
| 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? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Comments:

| | | | | |
|-----------|---|-------------------------------------|-------------------------------------|--------------------------|
| Q6 | Do you agree that decision notices should be structured in the manner proposed? If you do not, please suggest an alternative. | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Consultation reference: WG19178

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| Comments: |
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| | | | | |
|---|---|-------------------------------------|-------------------------------------|--------------------------|
| Q7 | Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition? | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: It is easy for mistakes to be made. This will require all revisions to original plans to be clearly shown as a dated revisions. | | | | |

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|-----------|--|-------------------------------------|-------------------------------------|--------------------------|
| Q8 | 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? If not, please suggest your preferred approach. | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|--|---|-------------------------------------|-------------------------------------|--------------------------|
| Q9 | 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 (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: Yes, but standard conditions need drastic reduction and common sense and greater dialogue should take place, | | | | |

| | | | | |
|------------|--|-----|----------------------------|----|
| Q10 | Should guidance be provided in the circular with regards to any other conditions related matter? | Yes | | No |
| | | | Yes (subject to further | |

Consultation reference: WG19178

| | | | | |
|--|--|-------------------------------------|--------------------------|--------------------------|
| | | | comment) | |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: The whole area of mining risk and assessments is unclear in my mind. The assessment shouldn't be required until works actually are about to start on site. Similarly a percolation test should not be required until works are planned to start on site. | | | | |

| | | | | |
|---------------|--|-------------------------------------|-------------------------------------|--------------------------|
| Q11 | Does Appendix A of the draft circular contain sufficient examples of model conditions? | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|--------------------------------|---|--------------------------|-------------------------------------|--------------------------|
| 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. | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: No comment | | | | |

| | | | | |
|---------------|--|--------------------------|-------------------------------------|-------------------------------------|
| Q13 | Do you believe any of the conditions fail any of the six tests identified in the circular? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|------------|---|-----|-------------------------------------|----|
| Q14 | Should any conditions be totally removed from Appendix A of the draft circular? | Yes | Yes (subject to further comment) | No |
| | | | | |

Consultation reference: WG19178

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|-------------------|--|--------------------------|--------------------------|-------------------------------------|
| | | | comment) | |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: | | | | |

General

| | |
|---|--|
| Q15 | 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: |
| Planning officers should have to sign off each scheme on the question: "Are you sure that you have tried to resolve all matters with the applicant [or their agent] directly before imposing any condition?" | |

| |
|--|
| I do not want my name/or address published with my response (please tick) <input type="checkbox"/> |
|--|

| The Use of Planning Conditions for Development Management | | |
|---|---|-------------------------------------|
| Date of consultation period: 29/01/2014 – 25/04/2014 | | |
| Name | Huw Roberts | |
| Organisation | Merthyr Tydfil County Borough Council | |
| Address | Unit 5 Triangle Business Park, Pentrebach, Merthyr Tydfil CF48 4TQ | |
| E-mail address | Huw.Roberts@merthyr.gov.uk | |
| Type (please select one from the following) | Businesses/Planning Consultants | <input type="checkbox"/> |
| | Local Planning Authority | <input checked="" type="checkbox"/> |
| | Government Agency/Other Public Sector | <input type="checkbox"/> |
| | Professional Bodies/Interest Groups | <input type="checkbox"/> |
| | Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations) | <input type="checkbox"/> |
| | Other (other groups not listed above) or individual | <input type="checkbox"/> |

| Q1 | Do you think an updated circular on conditions is required? | Yes | Yes (subject to further comment) | No |
|-----------|---|-------------------------------------|-------------------------------------|--------------------------|
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

| Q2 | Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular? | Yes | Yes (subject to further comment) | No |
|-----------|---|-------------------------------------|-------------------------------------|--------------------------|
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

Consultation reference: WG19178

| | | | | |
|-----------|--|-------------------------------------|-------------------------------------|--------------------------|
| Q3 | Do you consider: | | | |
| | (i) that all six tests are still relevant today and should be retained? | Yes | Yes (subject to further comment) | No |
| | (ii) that there are additional tests that could be used (demonstrate with case law if possible)? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|---|--|--------------------------|-------------------------------------|--------------------------|
| 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? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: Case law relating to the implementation or otherwise of pre-commencement conditions (see para 3.30) has advanced since Hart Aggregates (Greyfort Properties Ltd v Secretary of State for Communities And Local Government & Anor [2011] EWCA Civ 908 (28 July 2011)). | | | | |

| | | | | |
|-----------|--|--------------------------|-------------------------------------|-------------------------------------|
| 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? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: | | | | |

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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. | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: In principle, the proposed structure of a decision notice is acceptable. However, there is a concern over the listing of the approved plans. Firstly not all plans/drawings are clearly referenced with a drawing number (which can be added to the condition) by the applicant/agent. It becomes a little confusing and | | | | |

Consultation reference: WG19178

a bit messy if the condition relates to a series of 'received plan' dates. Secondly, as a development progresses, past the decision stage, amendments are often made and therefore plan/drawings are revised (i.e. they become revision B, C, D etc). If this happens, in order for development to be carried out in accordance with the approved plan condition, a variation of condition application will be required simply to change the drawing reference (even if it is only a minor change). Finally, if the intention of such a condition is to encourage the submission of minor amendments by means of varying such a condition, then clarity is required over the definition of a minor amendment. If the 1APP 'discharge of condition' application is the only option to discharge conditions (and a fee paid), this could help.

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|---|---|--------------------------|-------------------------------------|--------------------------|
| Q7 | Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: See comments to question 6. | | | | |

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|---|--|--------------------------|-------------------------------------|--------------------------|
| Q8 | 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? If not, please suggest your preferred approach. | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: The removal of such a phrase is less flexible but it would provide consistency between all Local Planning Authority's. It also makes conditions more precise. | | | | |

| | | | | |
|-----------|---|--------------------------|-------------------------------------|--------------------------|
| Q9 | 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 (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Consultation reference: WG19178

Comments:
But only for more/complex major applications and on a case by case basis on other applications where specific condition should be agreed before they are imposed.

| | | | | |
|------------|--|--------------------------|-------------------------------------|-------------------------------------|
| Q10 | Should guidance be provided in the circular with regards to any other conditions related matter? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|------------|--|-------------------------------------|-------------------------------------|--------------------------|
| Q11 | Does Appendix A of the draft circular contain sufficient examples of model conditions? | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|---|---|-------------------------------------|-------------------------------------|--------------------------|
| 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. | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: Condition 65 offers no flexibility. There are often occasions where 'one off' works are required outside of the hours of this condition (e.g. to prevent congestion on a certain day or to complete an essential development on time etc). The pre-commencement conditions should be, as far as possible, consistent in their wording and all start with 'No development shall begin until. . .'. | | | | |

Consultation reference: WG19178

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|------------|--|-------------------------------------|-------------------------------------|--------------------------|
| Q13 | Do you believe any of the conditions fail any of the six tests identified in the circular? | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Comments:

Does model condition 07 meet the tests. If access is an important consideration at the outline stage then it should be considered then (i.e. Article 3(2) of The Town and Country Planning (Development Management Procedure) (Wales) Order 2012 should be utilised. If an inadequate access is proposed at the reserved matters stage then the application is refused on these ground or more likely altered during the pre-application consultation stage.

Condition 38 requires details of foul and surface water to be submitted and agreed. This appear to conflict with paragraph 3.6. Further clarification is required realting to such a condition and when it would be used.

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|------------|---|--------------------------|-------------------------------------|-------------------------------------|
| Q14 | Should any conditions be totally removed from Appendix A of the draft circular? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Comments:

Although condition 20 is really helpful and necessary to prevent any unnecessary s106 delays, it appears to conflict with paragraph 5.4.1. It is assumed that this paragraph refers to 'controlling' the tenure etc whereas the condition asks for a scheme - it would be helpful for some clarification in the text.

General

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|--|--|
| Q15 | 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: |
| <p>Why are reasons for conditions not attached to appeal decisions?</p> | |

I do not want my name/or address published with my response (please tick) ☐

T: (01495) 355510

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Our Ref./Ein Cyf.

SS

Your Ref./Eich Cyf.

Contact:/Cysylltwch â: Mr. Steve Smith



Cyngor Bwrdeisdref Sirol

Blaenau Gwent

County Borough Council

8th April 2014

FAO: Owain Williams

Conditions Consultation

Development Management Branch

Planning Division

Welsh Assembly Government

Cathays Park

Cardiff

CF10 3NQ

Dear Owain,

Re: Conditions Consultation WG - 19178

I refer to the above consultation and have pleasure in attaching the formal response of Blaenau Gwent County Borough Council. The response was considered and endorsed at the Planning Committee meeting on 3rd April 2014.

The Planning Committee welcomed the continued efforts to simplify and streamline the Welsh planning system and the new Act is eagerly anticipated. They recognised the need to take into account the views of all stakeholders from householders and large developers alike and request that WG do so in this consultation.

They also instructed me to convey concern that a "one size fits all" model for the planning system is in danger of replacing local accountability and the local context that each LPA might wish to adopt within the broad parameters of the law.

I would be grateful if you would have regard to this response in your consideration of the issues.

Yours sincerely,

Steve Smith

Development Services Manager



BUDDSODDWR NEWN FODR
INVESTOR IS PEOPLE

We welcome correspondence in the medium of Welsh or English. / Croesawn oherbiaith trwy gyfrwng y Gymraeg neu'r Saesneg.

Planning Control Section,
Council Offices,
High Street,
Blaina,
NP13 3XD

Adran Rheoli Cynllunio,
Swyddfeydd y Cyngor,
Stryd Fawr,
Blaina,
NP13 3XD

*a better place to live and work
lle gwell i fyw a gweithio*

| The Use of Planning Conditions for Development Management | | |
|---|---|-------------------------------------|
| Date of consultation period: 29/01/2014 – 25/04/2014 | | |
| Name | Steve Smith Development Services Manager | |
| Organisation | Blaenau Gwent CBC | |
| Address | High Street Blaina NP13 3XD | |
| E-mail address | steve.smith@blaenau-gwent.gov.uk | |
| Type (please select one from the following) | Businesses/Planning Consultants | <input type="checkbox"/> |
| | Local Planning Authority | <input checked="" type="checkbox"/> |
| | Government Agency/Other Public Sector | <input type="checkbox"/> |
| | Professional Bodies/Interest Groups | <input type="checkbox"/> |
| | Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations) | <input type="checkbox"/> |
| | Other (other groups not listed above) or individual | <input type="checkbox"/> |

| Q1 | Do you think an updated circular on conditions is required? | Yes | Yes (subject to further comment) | No |
|--|---|-------------------------------------|-------------------------------------|--------------------------|
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: Yes. As stated in the consultation, the old circular is now dated and needs to reflect current practice and guidance. It also needs to take into account the Welsh context. | | | | |

| Q2 | Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular? | Yes | Yes (subject to further comment) | No |
|--------------------------------|---|-------------------------------------|-------------------------------------|--------------------------|
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: Yes | | | | |

| | | | | |
|---|--|-------------------------------------|-------------------------------------|--------------------------|
| Q3 | Do you consider: | | | |
| | (i) that all six tests are still relevant today and should be retained? | Yes | Yes (subject to further comment) | No |
| | (ii) that there are additional tests that could be used (demonstrate with case law if possible)? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: The tests are well established and are still relevant | | | | |

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|---|--|--------------------------|-------------------------------------|--------------------------|
| 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? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: Whilst there is some discussion around the difference between condition precedent and "Grampian" conditions, this requires further clarification. Hart Aggregates, Henry Boot and other cases are relevant. Some guidance on the difference between the two particularly in terms of interpretation and enforcement and what is meant by "heart of the permission" would assist everyone involved in the process. Some practical examples in the circular would illustrate the point. | | | | |

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|---|--|--------------------------|-------------------------------------|-------------------------------------|
| 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? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: There appears to be a conflict of approach in this consultation to that in Positive Planning. In that previous consultation it was suggested that mineral guidance and PPW should be consolidated into one. Yet in this document, it is stated that further guidance on mineral conditions should be found in MTANs. If the new condition circular is to be all encompassing then minerals and waste should be included in this document - even if it is separated into another appendix. | | | | |

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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. | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <p>Comments:</p> <p>It is not clear what is meant in para 1.6 of the consultation document "better standardisation". There is no evidence that a continual strive to standardise custom and practise amongst LPA's is time well spent in terms of cost/benefit.</p> <p>It is however acknowledged that structuring of conditions on a decision notice can aid the applicant/developer as well as the LPA. It is not agreed that ordering by type is the most convenient and practicable method.</p> <p>It is agreed that the first conditions should be the time limit condition(s) followed by the list of approved documents and plans.</p> <p>On major schemes, it is the experience of this LPA that grouping conditions by subject (as per the Appendix to the Circular itself) is a better approach. In instances where conditions on a given subject e.g. noise are scattered amongst a decision notice sometimes containing 50+ conditions, there is a danger that conditions are missed. It may well be the case that where the development is major and there are numerous conditions, a hybrid approach would work where conditions are sorted by subject but ordered by type within that category. In the case of householder and minor development where there are only a handful of conditions the point is redundant anyway. It is respectfully suggested that it should be for each LPA to order the conditions and it is not an issue for WG as policy maker to determine.</p> <p>It is suspected that the approach is being advocated partly because of the discussion around "live decision notices". In a scenario where the LPA is required to issue new decision notices, ordering the conditions will not obviate the need to re-number conditions and this LPAs concern around the practicalities of multiple decision notices in circulation is previously on record.</p> <p>Either way, it is not considered a priority and it is respectfully suggested that the benefits associated with introducing another administrative burden are not justified and the benefits drastically over stated in the consultation.</p> <p>Finally if standardisation of decision notices is deemed to be a priority, WG should issue guidance (in this circular?) on how to deal with the reasons for granting planning permission. There is inconsistency across LPA's in terms of how this statutory requirement should be met.</p> | | | | |

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|----------------------|---|-------------------------------------|-------------------------------------|--------------------------|
| Q7 | Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition? | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: Yes | | | | |

| | | | | |
|--|--|-------------------------------------|-------------------------------------|--------------------------|
| Q8 | 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? If not, please suggest your preferred approach. | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: It is agreed that this will remove uncertainty and unreasonable expectations from developers as to what can be achieved through this tailpiece. | | | | |

| | | | | |
|---|---|--------------------------|-------------------------------------|--------------------------|
| Q9 | 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 (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: It is good practice to agree conditions and this LPA follows that approach in cases of major development where there may be numerous conditions. However it is not always practicable or possible. The new "dashboard" of indicators and the PI's in the Positive Planning consultation are almost exclusively process driven. There will be increasing pressure to determine applications within 8 weeks in times of diminishing resources. To require LPA's to routinely agree conditions prior to a decision within 8 weeks fails to recognise the staffing/resource pressures faced by LPA's across Wales. "Advance notice" implies a process of negotiation and subsequent (dis)agreement. It is not discussed in the document how this can happen in a timely fashion and within the targets set by WG. It is the LPA in the first instance who determine whether a condition meets the relevant tests. If the condition is considered unnecessary by the recipient it can be the subject of a s73 or an appeal (with an award of costs) if the condition is attached unreasonably. | | | | |

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|------------|--|-------------------------------------|-------------------------------------|--------------------------|
| Q10 | Should guidance be provided in the circular with regards to any other conditions related matter? | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Comments:

On the whole the document is considered reasonable. However, its main failure is that it is written solely for an LPA audience and doesn't recognise the role of the applicant in the process. Whilst the circular rightly argues for "clean" permissions that contain the minimum number of conditions, it does not discuss the role of the applicant/private sector. If LPA's are required to meet targets, then the use of planning conditions is likely to increase as a legitimate means of issuing a speedy decision where the applicant has failed to provide the necessary information.

A condition is often attached simply because the applicant has not provided information. The circular should acknowledge that the most effective means of avoiding planning conditions is to engage constructively in pre app discussions and subsequently to provide appropriate information to the LPA at validation stage. Conditions requiring further submissions are then rendered redundant and the LPA is only considering the use of regulatory or Grampian conditions. The circular is silent on the responsibility of the applicant to present a quality application.

The circular is published prior to other related issues referred to in Positive Planning but BGCBC requests that WG give urgent consideration to the issue of charging for the discharge of conditions. Work around compliance and discharge of conditions is a significant draw on staff time. Charging would assist in cost recovery and encourage applicants to improve the quality of submissions to avoid planning conditions.

The justification for not reproducing reasons for conditions in the appendix is understood. The circular reinforces the importance of precise and clear reasons for all conditions. This LPA advocates that the same requirement should be extended to PINs. Inspectors do not attach reasons for conditions in their decision letters. PINs position is that the reasoning for the conditions is in the text of the letter. However, this presents problems for LPA's when renewing permissions from previously allowed appeals. If reasons for conditions are reasonably required, it should be a requirement for all decision makers.

Finally, clarity is requested on whether WG considers it necessary for each and every reason to relate to LDP policies and other guidance or whether the substantive motive behind the condition is sufficient.

| | | | | |
|------------------|--|-------------------------------------|-------------------------------------|--------------------------|
| Q11 | Does Appendix A of the draft circular contain sufficient examples of model conditions? | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: Yes | | | | |

| | | | | |
|--|---|--------------------------|-------------------------------------|--------------------------|
| 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. | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <p>Comments:</p> <p>5. The use of the word "paraphernalia" is imprecise and open to interpretation. Also requiring the land to be restored to its "former condition" gives rise to the issue of requiring a condition survey if the historical condition of the land cannot be easily determined.</p> <p>6. The condition requiring the development to comply with specific plan nos needs a caveat along the lines of "unless otherwise required by conditions below". Often a plan will show a detail that needs to be omitted, revised or added to. Without the caveat, this condition will potentially conflict with other conditions on the same permission.</p> <p>20. Affordable housing - at 5.41 the circular states that conditions should not be used to "control matters such as tenure, price or ownership". It states planning obligations are the normal means of achieving affordable housing. However, model condition 20 in the appendix states that development shall not begin "until a scheme for the provision of affordable housing as part of the development...". This appears contradictory advice. It is suggested that conditions could avoid delays where applications are submitted by HA's but at the moment this LPA requires s106 obligations purely to secure affordability in perpetuity in the event that the site is sold to a private developer.</p> <p>108 & 109 - Condition should be amended to also require confirmation of "first export of electricity to grid" date to LPA.</p> <p>113. Wind - the condition is overly complex and wordy. Its needs simplification.</p> <p>This LPA often requires by condition that the applicant provide certification or validation from a suitably qualified professional. BGCBC has used these effectively in cases of retaining walls (especially when the app is for a retention) and for remediation of potentially contaminated sites. The letter of certification from a qualified professional gives the LPA comfort that matter has been</p> | | | | |

Consultation reference: WG19178

addressed and reduces bureaucracy and cost for the Council. This principle could be applied in the relevant conditions in the appendix.

General point - the advice in para 5.57 is to tie the design of a scheme to the DAS. Clarification is needed on the status (and future) of DAS.

General point - many of the conditions are very wordy and much of the text might be more appropriate to an informative note. Good examples of this are to be found in the section on contaminated land. The latter part of condition 27 is also overly precise requiring compliance with documents that may be superseded.

| | | | | |
|---|--|--------------------------|-------------------------------------|--------------------------|
| Q13 | Do you believe any of the conditions fail any of the six tests identified in the circular? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <p>Comments: There is discussion around the issue of planning conditions replicating controls of other regulatory regimes. One such issue is drainage. There is reference to control of drainage through building control but there is inconsistency across LPAs on the materiality of drainage generally. The delayed SUDS regime will further complicate the process as a separate regulatory system will be introduced. It is unclear when drainage related conditions are then necessary to the development management process. Some clearer guidance in the circular would assist and introduce a consistency of approach.</p> <p>The control of hours of A3 uses is another area where there is a separate licensing regime and one could question whether this issue is duplicated through the planning process.</p> | | | | |

| | | | | |
|--|---|--------------------------|-------------------------------------|-------------------------------------|
| Q14 | Should any conditions be totally removed from Appendix A of the draft circular? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <p>Comments: No</p> | | | | |

General

Q15

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:

1. Criticism of onerous or numerous conditions must be viewed in the context of the quality of the application received by the LPA. Many applicants submit speculative applications especially small scale minor resi apps. They choose not to go to the expense of detailed plans etc. Conditions are therefore the only means available to an LPA to issue a speedy decision. This is not recognised.
2. The sentiment of including third parties and consultees in the drafting of conditions is understood but it has to be acknowledged that non planning professionals do not always appreciate the legal requirements of planning conditions and the need for them to be in "planning speak". This can introduce further delay.
3. This LPA is concerned that the drive towards fewer conditions coupled with increased monitoring of time related targets will be counter productive in terms of encouraging private sector development. LPAs will be forced to frontload the validation process resulting in increased difficulty in submitting a valid application. It is already a complex process requiring reports such as CMRA, FCA, SI's, ecology studies inc bats, reptiles as well as D&A and so on. LPAs will become increasingly reluctant to register applications until more information is received. Whilst this in theory results in "quicker" decisions as reflected in league tables, the process becomes protracted as applications languish in drawers waiting to be registered adding to the frustration of developers.
4. Further guidance is required on s73 applications. The routine listing of approved plans introduced in this LPA has already prompted developers to attempt to make s73 applications to vary that condition to result in a materially different scheme to that originally approved. The circular should offer clear and explicit advice on the extent of s73 applications i.e. that it is a process for varying the conditions attached to a permission, not to materially change the permission itself. Some practical examples would assist particularly in terms of amending the approved plans condition.
5. Para 5.9 reiterates previous guidance that conditions attached to reserved matters applications are only those that specifically relate to those matters. They must not materially derogate the outline permission already granted. This raises questions over the approach advocated in Positive Planning of a fast track application process where sites are allocated in LDPs. It is unclear how this would operate.
6. In response to question 8 above, BG agrees with WG that the phrase "unless otherwise agreed with the LPA" is unhelpful and should be removed. However, it

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is suggested that WG have included a similar phrase in model condition 27 that states "unless the LPA agrees to any variation". That particular condition is very specific in its requirements but the tailpiece then introduces ambiguity in terms of how that condition might be complied with or varied. Could compliance with other documents be agreed by exchange of correspondence or would a s73 application be required?

7. The term "overloaded" is used but never explained. Presumably this means LPAs are attaching conditions that do not meet the tests. This LPA is concerned that too much emphasis is being placed on a crude number crunching exercise. LPAs often have to consider complex applications for major development especially where EIA is involved. This results in permissions containing 50+ conditions (often significantly more). Provided the conditions meet the relevant tests, the appropriate number of conditions attached to a planning permission is not a function of mathematics but one of planning necessity. This is not acknowledged in the circular.

I do not want my name/or address published with my response (please tick) ☐

| The Use of Planning Conditions for Development Management | | |
|---|---|-------------------------------------|
| Date of consultation period: 29/01/2014 – 25/04/2014 | | |
| Name | Tim Stephens | |
| Organisation | Caerphilly County Borough Council | |
| Address | Pontllanfraith House Pontllanfraith NP12 2YW | |
| E-mail address | stepht@caerphilly.gov.uk | |
| Type (please select one from the following) | Businesses/Planning Consultants | <input type="checkbox"/> |
| | Local Planning Authority | <input checked="" type="checkbox"/> |
| | Government Agency/Other Public Sector | <input type="checkbox"/> |
| | Professional Bodies/Interest Groups | <input type="checkbox"/> |
| | Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations) | <input type="checkbox"/> |
| | Other (other groups not listed above) or individual | <input type="checkbox"/> |

| Q1 | Do you think an updated circular on conditions is required? | Yes | Yes (subject to further comment) | No |
|-----------|---|-------------------------------------|-------------------------------------|--------------------------|
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

| Q2 | Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular? | Yes | Yes (subject to further comment) | No |
|-----------|---|-------------------------------------|-------------------------------------|--------------------------|
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

Consultation reference: WG19178

| | | | | |
|-----------|--|--------------------------|-------------------------------------|--------------------------|
| Q3 | Do you consider: | | | |
| | (i) that all six tests are still relevant today and should be retained? | Yes | Yes (subject to further comment) | No |
| | (ii) that there are additional tests that could be used (demonstrate with case law if possible)? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Comments:

(ii) The advice about duplication of controls under other legislation is long-established but there may be some benefit in making it more explicit by either changing the title of the first test, or making it a test in itself. There does appear to be a trend to try to control any development that is permitted by the planning system, through planning conditions.

The benefit of the planning system is that it allows potential problems to be anticipated and appropriate conditions applied. However, once a development is commenced, responsibility for ensuring compliance with those conditions should be based on other legislation where appropriate. For instance, where permission is given for a large housing development conditions will often rightly be imposed requiring measures to control dust; the agreed measures could include spraying the site to reduce dust, and wheel washes to prevent material being taken off site and onto the highway. Having agreed those measures, if dust problems do arise, or excessive material is carried on to the highway, those issues should then be addressed by statutory nuisance and highways legislation respectively.

| | | | | |
|-----------|--|--------------------------|-------------------------------------|-------------------------------------|
| 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? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Comments:

| | | | | |
|-----------|--|-------------------------------------|-------------------------------------|--------------------------|
| 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? | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Comments:

Para 5.21 - it would be helpful to clarify that an outline permission does not expire until the period for implementation has expired (usually five years) rather than the period for the submission of reserved matters.

Consultation reference: WG19178

Para 5.31 - a faster, more flexible means of allowing amendments must be considered if the intention is to change the culture of the planning system in Wales. The non-material/minor material procedure introduced in England goes some way to addressing this matter. Is there any scope for introducing a fast-track procedure by ministerial direction?

Paras 5.60-62 - it may be difficult to introduce SUDS after a development has been granted consent. By their nature they take up more space and have to be designed as part of the development rather than imposed upon it afterwards. The advice as it stands could be used to justify delaying the introduction of SUDS until after permission has been granted which by then may be too late.

Para 5.70 - in relation to the last sentence, wouldn't it be better to word the condition in such a way that it does apply even if changes of use allowed by the GPDO take place?

Para 5.73 - landscaping details do not need to be submitted prior to the commencement of development. If permission has been granted for e.g. a housing layout, then by reason the landscaping scheme can only be fitted into the approved layout. Those details could therefore be agreed prior to the occupation of the first house or another trigger depending on the nature of the development.

Para 5.82 - examples of where the LPA may contravene its duties under the Equality Act would be helpful.

Para 5.86 - similarly, examples of how an individual's human rights would be harmed would be helpful.

| | | | | |
|-----------|---|-------------------------------------|-------------------------------------|--------------------------|
| Q6 | Do you agree that decision notices should be structured in the manner proposed? If you do not, please suggest an alternative. | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|-----------|---|-------------------------------------|-------------------------------------|--------------------------|
| Q7 | Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition? | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Consultation reference: WG19178

| |
|-----------|
| Comments: |
|-----------|

| | | | | |
|---|--|--------------------------|-------------------------------------|-------------------------------------|
| Q8 | 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? If not, please suggest your preferred approach. | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: It is not always possible to anticipate all eventualities when a permission is granted and conditions imposed, and occasionally a condition, or part of a condition will appear redundant once development commences. Also, it is not always clear whether a condition is needed to resolve a matter at the point of granting permission. Such occasions are rare but it is useful for the LPA to have the ability to use the 'unless otherwise agreed' clause to build a certain amount of flexibility into the imposition of a condition, and it avoids the need for the developer to submit an application to vary the condition. It should be part of the planner's skills to identify those occasions where the term would be inappropriate. For instance, if a condition has been imposed in order to prevent harm to a neighbour's amenity it would be inappropriate to revise or remove that condition without going through the formal process, which would allow the neighbour an opportunity to comment. | | | | |

| | | | | |
|--|---|--------------------------|-------------------------------------|-------------------------------------|
| Q9 | 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 (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: This would be onerous as a general requirement, it would introduce delay, and it would be inappropriate because it would give the impression that the developer would have undue influence in the statutory process. | | | | |

| | | | | |
|------------|--|--------------------------|-------------------------------------|--------------------------|
| Q10 | Should guidance be provided in the circular with regards to any other conditions related matter? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Consultation reference: WG19178

| | | | | |
|--|--|-------------------------------------|--------------------------|--------------------------|
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <p>Comments:</p> <p>There is no advice about the provision of highways, and where the responsibilities of the LPA stop and the highway authority start. As commented above, it would appear that in many other areas, the LPA is becoming involved in matters covered by other legislation, and the same is true in respect of highways. It should be made clear that having agreed the layout of a development at the planning permission stage (which could include conditions about protecting visibility splays) the technical engineering design and specification of the roads, including lighting, should be matters for the highway authority. The LPA may impose a condition concerning the implementation of a highway to an adoptable standard by a certain point in the development to ensure that there is adequate access.</p> | | | | |

| Q11 | Does Appendix A of the draft circular contain sufficient examples of model conditions? | Yes | Yes (subject to further comment) | No |
|---|--|-------------------------------------|-------------------------------------|-------------------------------------|
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <p>Comments:</p> <p>As stated above, consideration needs to be given to highway conditions.</p> | | | | |

| 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. | Yes | Yes (subject to further comment) | No |
|---|---|-------------------------------------|-------------------------------------|--------------------------|
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <p>Comments:</p> <p>1. Triggers in conditions</p> <p>Many of the conditions start with the phrase: 'No development shall take place ...' The guidance should discourage the use of that wording because it jeopardises the planning permission if the developer commences a scheme without complying with the condition. It should be borne in mind that having granted permission, conditions should not be worded in a manner that suggests that they could undermine the consent. The rare occasions on which that phrase is used should be limited to Grampian matters e.g. the need to improve the local sewer network; and matters such as agreeing levels, or remediation schemes on highly polluted sites. In all other cases consideration should be given to using more flexible trigger points based on the specific details of each case. Such an approach would better reflect the change of culture that Welsh Government is</p> | | | | |

Consultation reference: WG19178

advocating through its consultation on the Planning Bill. Some suggestions are set out below.

Model condition (MC) 11 - Details of the agreed disabled access could be required before that element of the development is carried out

MC20 - Permission has been granted for the housing, so the details required by the condition do not need to be agreed until prior to the occupation of the development. In addition there is some concern that this condition does not comply with the comment at 5.41 that conditions should not control tenure price or ownership.

MC22 - This condition could commence with the words: 'The development and any excavations at the site shall be monitored at all times in accordance with ...'

MC26 - The commencement of development should not be held up by the need to agree boundary treatment; similarly landscaping (MC66 and 68)

MC33 - If permission has been granted for development, why would the quality of groundwater hold up its commencement?

MC34 - See MC22 above

MC83 - Materials can be agreed before their use - their agreement should not hold up the remainder of the development

MC102 - This could be worded: 'Parking shall be provided prior to the occupation of the development in accordance with a scheme ...'

MC113 - The details could be agreed prior to the commissioning of the turbine

MC115 - The details could be agreed prior to the erection of the turbine ...

MC125 and 126 - Could be worded: 'Trees shall be protected during the course of the development in accordance with a scheme ...'

MC129, 131 and 133 - Would be suitable for the wording: 'Prior to the commencement of work on site ...'

2. Contaminated land

MC27 is too prescriptive - everything after the first sentence could be contained in an informative. As it stands the condition is contrary to the advice in para 3.39. The judgement about whether the submission is satisfactory should be left to the planning officer supported by the environmental health officer, and this would provide the flexibility required by developers.

The following simpler suite of conditions has served this LPA adequately in most circumstances.

A. Prior to the commencement of any ground excavations associated with the development hereby approved a scheme shall be submitted to and agreed in

Consultation reference: WG19178

writing by the Local Planning Authority to deal with the contamination of the site. That scheme shall include a ground investigation and a risk assessment to identify the extent of the contamination and the measures to be taken to avoid risk to the occupants of the development when the site is developed. The development shall be carried out in accordance with the approved scheme.

B. Before any soils or hardcore that do not fall within the green category set out in Table 2 of the WLGA document 'Requirements for the Chemical Testing of Imported Materials for Various End Uses and Validation of Cover Systems 2013' are brought on to site, a scheme for their importation and testing for contamination shall be submitted to and agreed in writing with the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved scheme.

C. No building approved by this permission shall be occupied or approved uses commence until a report has been submitted to and approved in writing by the Local Planning Authority which verifies that the required works have been undertaken in accordance with the remediation strategy.

3. Drainage

MC38 need only cover land drainage - all other forms of drainage are controlled through the Building Regulations or by Dwr Cymru Welsh Water.

4. Drainage (SUDS)

MC39, 40 and 41 give the impression that SUDS can be retrofitted into a scheme like traditional drainage. That may not be the case, especially if it is intended to incorporate swales and ponds into a layout. These conditions should concentrate on the implementation of SUDS agreed prior to the granting of consent.

MC42 - The second sentence of the condition places an unacceptable burden on LPAs. In what other circumstances is the LPA responsible for ensuring that drainage is properly maintained? That is usually the responsibility of the owners of the drains, whether they are in private ownership or owned by a water authority.

5. Fume extraction

MC43 - The second part of the condition should be the responsibility of the Environmental Health department of the council, i.e. the LPA can ensure that at the point that e.g. a hot food takeaway opens, the appropriate fume extraction is in place, but the subsequent maintenance of that equipment should be secured through normal statutory nuisance legislation. Consideration should be given to amending all such conditions that appear to place an ongoing responsibility on the LPA where there is in fact other legislation to tackle odour, noise and other nuisance problems.

6. Hours of operation

MC62, 63 and 64 - Should these conditions include a reference to public holidays?

7. Occupancy

MC91 - 'Holiday accommodation' is vague - how is it defined?

8. Renewable Energy

MC112 - These matters are controlled through the advertisement regulations. Such controls have been discouraged in the past by central government guidance.

9. Trees

MC125 - Much of the content of this condition could also be included in an informative.

10. Wildlife protection

MC133 - Could the '(for example)' be construed as vague? The three points could also be contained in an informative.

| Q13 | Do you believe any of the conditions fail any of the six tests identified in the circular? | Yes | Yes (subject to further comment) | No |
|---|--|-------------------------------------|-------------------------------------|--------------------------|
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: See comments at question 13 | | | | |

| Q14 | Should any conditions be totally removed from Appendix A of the draft circular? | Yes | Yes (subject to further comment) | No |
|---|---|-------------------------------------|-------------------------------------|--------------------------|
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: Model condition 112 appears to contradict earlier advice about controlling advertisements. Otherwise, the conditions appear to address material planning considerations, but rewording should be considered as suggested. | | | | |

General

Q15

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:

Para 2.4 - Power to vary .. it would be helpful if this section was expanded to clarify the status of a permission granted under that section as a stand-alone consent, and that it would be good practice to reproduce all of the conditions of the original permission on the new one.

Para 3.10 - do the limitations placed on Section 106s by the CIL regulations, particularly that they are necessary to make the development acceptable in planning terms have a bearing on the advice in this paragraph?

Para 3.14 - the advice in this paragraph is very broad, and should be refined. The planning system should only be concerned about sewerage and water supply in limited circumstances. Developers have a right to connect to the local sewerage system and water supply, and the means of doing so is controlled through the Building Regulations and Dwr Cymru Welsh Water's regulations. Planning permission should only be refused or a Grampian condition used where it can be shown there is insufficient capacity in the existing system. Generally there is no need for conditions about the technical specifications of foul and surface water sewerage because they will be controlled through other legislation. Some isolated developments, usually single dwellings may not be close to infrastructure, but foul and surface water sewerage would be resolved through the Building Regulations leaving only the potable water supply for consideration by the LPA.

The case of Barratt Homes v Dwr Cymru Welsh Water should be considered. The Supreme Court concluded that under the Water Industry Act 1991 developers have the right to connect into the existing sewer at a point of their choice and without liability for any costs beyond the cost of the physical connection. It also ruled that LPAs, where appropriate, will impose Grampian conditions preventing development from starting until an acceptable drainage scheme has been submitted. However, guidance is required on where such conditions are appropriate, and that care should be taken to ensure that planning conditions are not used to subvert the developer's rights under the Water Industry Act.

This LPA's approach to drains and sewers is set out in the comments about model condition 38 in response to question 12 above. However, we would welcome a thorough assessment of what can be secured and controlled through the Building Regulations and water industry legislation as a basis for the advice about conditions. As with many other areas, LPAs are being drawn into controlling aspects of development that are adequately covered by other legislation.

Para 3.19 could be worded more clearly, along the lines of: an enforceable condition should state what is needed, when it should be submitted and the means of agreement with the LPA, and when it should be implemented.

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Para 3.30 - as stated above, as part of the change in the culture of planning in Wales, pre-commencement conditions should be discouraged. This should be made explicit in its own paragraph.

Para 3.44 - it would be reasonable to impose a condition that controlled parking on the highway where the vehicles are under the applicant's or the site occupier's control.

I do not want my name/or address published with my response (please tick) ☐

| The Use of Planning Conditions for Development Management | | |
|---|---|-------------------------------------|
| Date of consultation period: 29/01/2014 – 25/04/2014 | | |
| Name | Vicki Hirst | |
| Organisation | On behalf of all three National Parks in Wales - Brecon Beacons, Pembrokeshire Coast and Snowdonia | |
| Address | Llanion Park Pembroke Dock Pembrokeshire SA712 6DY | |
| E-mail address | vickih@pembrokeshirecoast.org.uk | |
| Type (please select one from the following) | Businesses/Planning Consultants | <input type="checkbox"/> |
| | Local Planning Authority | <input checked="" type="checkbox"/> |
| | Government Agency/Other Public Sector | <input type="checkbox"/> |
| | Professional Bodies/Interest Groups | <input type="checkbox"/> |
| | Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations) | <input type="checkbox"/> |
| | Other (other groups not listed above) or individual | <input type="checkbox"/> |

| Q1 | Do you think an updated circular on conditions is required? | Yes | Yes (subject to further comment) | No |
|----|---|-------------------------------------|----------------------------------|--------------------------|
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Comments:

Yes to take account of relevant and up to date legislation, processes and case law.

It is suggested that WG should give a commitment to review the model conditions on a five year rolling basis to ensure they remain up-to-date and consistent.

Alternatively the conditions could be made available on the WG website and updated as and when there is caselaw or other pertinent information eg Inspectors' decisions which demonstrate the need for the conditions to be amended, improved or added to. (Similarly to PPG Wales - online version only).

| Q2 | Do you agree that the information retained from Circular 35/95 should be carried forward | Yes | | No |
|----|--|-----|--|----|
| | | | | |

Yes

Consultation reference: WG19178

| | | | | |
|--|------------------------|-------------------------------------|------------------------------|--------------------------|
| | into the new circular? | | (subject to further comment) | |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Comments:
Circular 35/95 provides a good foundation for the imposition of planning conditions and it is not considered that there is any substantive evidence to suggest that its content is no longer valid except where updates as in Q1 are required.

| | | | | |
|-----------|--|--------------------------|-------------------------------------|--------------------------|
| Q3 | Do you consider: | | | |
| | (i) that all six tests are still relevant today and should be retained? | Yes | Yes (subject to further comment) | No |
| | (ii) that there are additional tests that could be used (demonstrate with case law if possible)? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Comments:
The reasonableness test can be open to interpretation and it is suggested that this could be more focussed in terms of definition in the Circular.

| | | | | |
|-----------|--|--------------------------|-------------------------------------|--------------------------|
| 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? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Comments:
Technoprint Plc & Anor, R (on the application of) v Leeds City Council & Anor [2010] EWHC 581 (Admin) (24 March 2010) is particularly helpful in relation to land contamination issues and clarifies that any reasonable authority must obtain sufficient information to understand the extent of contamination prior to the determination of applications.

In relation to conditioning matters which are subject to legislation outside the planning remit, the advice set out in a case known as the Halkyn case is beneficial in that it clarified that in some circumstances a condition that requires the developer to submit an European Protected Species Licence prior to the commencement of development can be imposed. (Duke of Westminster vs WAG (Case No: CO/1872/03)).

Telford and Wrekin BC v SSCLG [2013] EWHC 79 (Admin) sets out that conditions must be clearly expressed and plain for all to read. The case highlights nine principles for the interpretation of conditions based on case law and would be

usefully incorporated into the guidance.

| | | | | |
|--|--|--------------------------|-------------------------------------|--------------------------|
| 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? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <p>Comments:</p> <p>Paragraph 5.21 to clarify that planning permission can be renewed provided a valid renewal application is submitted before the expiry of the time limit. Recently many applicants have submitted applications on the day the permission expired when that application was not valid in accordance with the requirements of List 4 as set out in the WG guidance for the validation of applications.</p> | | | | |

| | | | | |
|---|---|-------------------------------------|-------------------------------------|--------------------------|
| Q6 | Do you agree that decision notices should be structured in the manner proposed? If you do not, please suggest an alternative. | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <p>Comments:</p> <p>This provides a logical sequence for all involved - it is also suggested that the conditions be broken down into sections for ease of reading and response. This would also assist authorities in discharging conditions.</p> <p>However, it is likely to necessitate associated non-time constrained conditions to cross refer to the associated time-constrained conditions, e.g. submission of a landscaping scheme prior to commencement (example condition 66) and the subsequent monitoring condition (example condition 67). It is suggested in this instance that the model conditions be adapted to have the submission condition combined with its implementation condition - this would also reduce confusion within the decision notice where these are split. Alternatively the submission condition could have a clear linkage to an implementation one through a phrase such as "the implementation of the scheme hereby approved must be carried out in accordance with condition * of this permission".</p> <p>It is also unclear how this structure would sit with regard to the proposals in the Positive Planning consultation on having "live" decision notices which are updated as conditions are discharged. This will need careful attention and should be considered at this stage rather than be "bolted on" to any changes to the structure of the decision notice arising from this consultation.</p> | | | | |

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| Q7 | Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition? | Yes | Yes (subject to further comment) | No |
|----|---|-------------------------------------|-------------------------------------|--------------------------|
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Comments:

As Q6 with regard to the "live" decision notice.

This is essential for monitoring/enforcement purposes and for developers to be clear on which plans are to be implemented. The use of the condition also allows for Section 73 to be used for varying permissions on matters of detail.

However it is noted that at Appeal, conflicting decisions have been issued from Inspectors with some stating that the condition is unnecessary with others including the condition. The Circular's stance on this condition is therefore welcomed and will hopefully result in better consistency. (Please also see our response to Q8).

We would therefore welcome this consistency to also be applied to Inspectors' decisions with a clear statement of what plans (referenced) are part of their consideration and exactly what plans have been approved. This should be clearly stated at the beginning of the decision notice and not lost in lengthy paragraphs at the end.

| Q8 | 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? If not, please suggest your preferred approach. | Yes | Yes (subject to further comment) | No |
|----|--|--------------------------|-------------------------------------|--------------------------|
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Comments:

Whilst this is agreed to in principle, there are occasions on very minor matters that would be unduly onerous to require the submission of a Section 73 application (for example the substitution of a different type of material for a roof covering, or an amendment to species in a landscaping plan). The ability for authorities to allow these small changes without further application enables a more flexible and positive approach to be adopted. It is suggested that this could be covered however through the Welsh Government's proposals for allowing non material and material minor amendments.

| | | | | |
|--|---|--------------------------|-------------------------------------|-------------------------------------|
| Q9 | 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 (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <p>Comments:</p> <p>There is concern that this would introduce further delay and discussion which would potentially provide difficulties for issuing timely decisions and result in delays in the determination of applications</p> <p>Given that the emerging Planning Bill and general advice from Welsh Government encourages pre-application discussions with developers, this would provide the opportunity for applicants to be made aware of the types of conditions likely to be imposed and give an opportunity for information to be provided with the application thus reducing the number of conditions. It is therefore considered that in the majority of cases giving advance notice of conditions would not be necessary.</p> <p>We have experience of providing conditions to applicants who then feel it necessary to obtain legal advice on these, there can then be delay when solicitors not well versed in planning matters question every word and attempt to rewrite conditions. What planners should be able to discuss and consider with applicants is substantive conditions which would effect the development such as timing of work, hours of operation, opening hours, restriction on retail sales, limitation to floorspace uses.</p> | | | | |

| | | | | |
|--|--|--------------------------|-------------------------------------|--------------------------|
| Q10 | Should guidance be provided in the circular with regards to any other conditions related matter? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <p>Comments:</p> <p>It is considered that consideration should be given towards guidance on the following topics within the Circular:</p> <p>Reason(s) for refusal - it would be beneficial to include a short section on best practice on wording reason(s) for refusal.</p> <p>Breach of Planning Conditions - whilst guidance on Breach of Planning Conditions is included in the Enforcement Circular, it would be prudent in our opinion to include the breach of conditions procedure within the conditions circular.</p> <p>Reasons for Conditions - whilst it is accepted that the reasons for imposing Conditions will vary for each case, it is considered that examples of best practice would be of benefit.</p> | | | | |

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|--|--|--------------------------|-------------------------------------|--------------------------|
| Q11 | Does Appendix A of the draft circular contain sufficient examples of model conditions? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <p>Comments:</p> <p>The Circular provides an opportunity to consolidate advice on conditions found in a plethora of guidance such as TANs, Circulars, PINS and British Standard Documents (particularly trees and biodiversity) in one comprehensive document. Further conditions on the following topics would be beneficial:</p> <p>Retrospective planning permissions</p> <p>Biodiversity</p> <p>Lighting</p> <p>General condition requiring a decommissioning plan to be submitted to and approved in writing by the LPA in respect of renewable energy projects (similar to the requirement under the wind category)</p> <p>Condition requiring details of the grid connection for renewable energy projects to be in place prior to the renewable energy project being brought into use. This could also require the connection to be via a certain means (ie underground)</p> | | | | |

| | | | | |
|--|---|--------------------------|-------------------------------------|--------------------------|
| 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. | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <p>Comments:</p> <p>In general, to provide consistency, all "pre-commencement conditions" should be worded in the same way, i.e. either "No development shall take place..." or "Prior to the commencement of development". At present the list of model conditions vary significantly and need to be more consistent. Furthermore, all conditions with a requirement to submit a scheme or details should be worded consistently i.e. "submitted to and approved in writing by the Local Planning Authority", at present there is inconsistency in the model conditions. It is also considered that clarification on the definition of "development" for the purposes of implementation should be provided as this can be open to interpretation. It is also suggested that links between submission and implementation conditions be provided (refer to answer to Q6)</p> <p>Condition 06 Plan Specification - further to the response to question 7, it is</p> | | | | |

Consultation reference: WG19178

considered that to facilitate minor amendments without recourse to a formal application, the words "unless otherwise agreed in writing..." (or anything similar to that) should be included. It is also suggested that the date of the plan be included.

Condition 24 - the words "submitted to and" need to be inserted before "approved in writing by".

Condition 26 - suggest the inclusion of "height" in the list of matters to submitted and approved.

Condition 27 - this condition needs to specify the area to which the condition relates, i.e. suggest inserting the words "affecting the application site area" after "extent of contamination".

Condition 28 - there is concern that this condition would not meet the six test, in that the words, "If contamination is found" is not precise and renders the condition unenforceable.

Condition 35 - suggest the inclusion of the hours of working in the items to be submitted and approved

Condition 36 - should define "decentralised", "renewable" and "low carbon" through reference to national policy advice

Conditions 41 and 42 should refer to sustainable drainage systems not sustainable urban drainage systems

Condition 41 should specify the reference of the submitted details to be sufficiently precise e.g. "in accordance with the submitted details on Plan XX/Drawing XX received on XX". This is essential to ensure that the LPA has the correct plans for the purposes of monitoring and enforcement - some agents would forget to update referencing of plans and this would ensure that there is a check.

Condition 50 - this condition in its current wording appears incomplete.

Condition 60 - this needs an implementation clause to secure compliance

Conditions 66/67 and 68/69 - suggest combining these as one

Condition 69 - should include a clause to replace where plants die

Condition 77 - "steps shall be taken to secure" is open to interpretation and is not considered sufficiently precise to meet the relevant test. This condition should also require those steps to be submitted to and approved by the LPA.

Condition 91/92 - it is not considered that condition 91 is precise and should include an occupancy period for each holiday (ie no more than four weeks per letting with no return to the same person(s) within a period of four weeks following their occupation). This will ensure that the accommodation is only used for short term holiday purposes and not for longer letting tantamount to a

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full residential use. Whilst the register does assist, this is not in itself sufficient to define the holiday use sufficiently for an applicant to understand the meaning under condition 91.

Condition 105 - to be sufficiently precise the condition should refer to Schedule 2 as well as the relevant Part and Class of the GPDO. It is also suggested that the model condition does not refer to the particular Part or Class but leaves this blank [X].

Condition 106 - it is suggested that this condition should refer to the notion of a Principal Elevation as introduced in the new Householder permitted development rights to be more precise and accurate.

Condition 118 - could also include sand schools/maneges

Condition 128 - include with 66,67,68 and 69

| | | | | |
|---|--|-------------------------------------|-------------------------------------|--------------------------|
| Q13 | Do you believe any of the conditions fail any of the six tests identified in the circular? | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: See response to Q12 | | | | |

| | | | | |
|---|---|--------------------------|-------------------------------------|--------------------------|
| Q14 | Should any conditions be totally removed from Appendix A of the draft circular? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: Concerns are raised in relation to the land contamination conditions which seem to suggest that contamination surveys can be condition despite case law such as Technoprint Plc & Anor, R (on the application of) v Leeds City Council & Anor [2010] EWHC 581 (Admin) (24 March 2010) that considers that any reasonable Authority should request as much information as possible at the outset to ensure that the true extent of contamination is known prior to the determination of the planning permission. There is also concern at the wildlife protection condition which gives a message that matters concerning protected species can be dealt with under condition. Legislation (and TAN 5) clearly advise that the precautionary principle should apply where there may be damage to protected species/habitats and conditions | | | | |

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should not be used in this instance. The use of this condition needs to be clearly stated (or removed totally).

General

Q15

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:

It is suggested that the model conditions be structured in the Circular in the sequence suggested for the decision notice rather than alphabetically. This will enable LPAs to clearly identify those that are pre-commencement conditions and those that are not. This will reduce time in structuring decision notices. The topics concerned could be listed alphabetically within the categories listed in Box 2 of the consultation to further assist.

There is also reference in the Circular with regard to the role of statutory consultees in the formulation and discharge of conditions. It is essential that statutory consultees are required to work to the model conditions as many that are suggested by such consultees at present do not meet the 6 tests. Furthermore, the role of statutory consultees in discharging conditions needs to be clear, and that specified time periods for responses be monitored by Welsh Government to avoid undue delay at this stage of the process.

I do not want my name/or address published with my response (please tick) ☐

| The Use of Planning Conditions for Development Management | | |
|---|---|-------------------------------------|
| Date of consultation period: 29/01/2014 – 25/04/2014 | | |
| Name | Rhian Jardine | |
| Organisation | Natural Resources Wales | |
| Address | Glan Teifi Barley Mow Lampeter Ceredigion SA48 7BY | |
| E-mail address | rhian.jardine@cyfoethnaturiolcymru.gov.uk | |
| Type (please select one from the following) | Businesses/Planning Consultants | <input type="checkbox"/> |
| | Local Planning Authority | <input type="checkbox"/> |
| | Government Agency/Other Public Sector | <input checked="" type="checkbox"/> |
| | Professional Bodies/Interest Groups | <input type="checkbox"/> |
| | Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations) | <input type="checkbox"/> |
| | Other (other groups not listed above) or individual | <input type="checkbox"/> |

| Q1 | Do you think an updated circular on conditions is required? | Yes | Yes (subject to further comment) | No |
|--|---|-------------------------------------|----------------------------------|--------------------------|
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: Yes, we welcome the proposal to update the Circular to reflect; legislative changes introduced since the publication of Circular 35/95, and recognised best practice. | | | | |

| Q2 | Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular? | Yes | Yes (subject to further comment) | No |
|---|---|-------------------------------------|----------------------------------|--------------------------|
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: Yes. The retained information remains relevant and should be carried forward | | | | |

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into the new Circular.

| | | | | |
|--|--|-------------------------------------|-------------------------------------|--------------------------|
| Q3 | Do you consider: | | | |
| | (i) that all six tests are still relevant today and should be retained? | Yes | Yes (subject to further comment) | No |
| | (ii) that there are additional tests that could be used (demonstrate with case law if possible)? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: We consider that the six tests can help improve the quality of development, whilst ensuring that conditions attached to a planning permission are reasonable and practicable. We therefore consider that the tests remain relevant and should be retained in the Circular. | | | | |

| | | | | |
|---------------------------------|--|--------------------------|-------------------------------------|--------------------------|
| 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? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: No comment. | | | | |

| | | | | |
|---|--|-------------------------------------|-------------------------------------|--------------------------|
| 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? | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: Nature Conservation We welcome the inclusion of a section on nature conservation in Section 5 of the Draft Circular. However, as currently drafted the guidance relates only to wildlife habitats and 'special' sites. No definition is provided of 'special' sites and we assume they refer to designated sites. So that the Circular is consistent with Planning Policy Wales (PPW) and Technical Advice Note 5 (TAN5): Nature Conservation and Planning, we recommend that the word 'special' is replaced with 'designated and notified'. Further, this section should be expanded to also make reference to protected | | | | |

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species, and species of principal importance for biodiversity in Wales.

Additionally, there seems to be a typographical error at the end of paragraph 5.80. The reference to "paragraph 4.29" should be deleted.

Renewable Energy

For improved clarity as to which renewable energy schemes the model conditions are likely to be applied to, paragraph 5.106 should provide a definition of a 'larger renewable energy scheme'. For example, it may be useful to clarify how the definition used here relates to that used in the 'Positive Planning' consultation document.

Other

It may be useful for the Circular to include guidance on the types of conditions that will be pertinent to hybrid applications for planning permission, for example, applications that seek full permission on schemes such as the restoration of a waste site, and outline permission for the principle of residential or mixed use development following the site's restoration. The Circular should set out that the conditions for the outline part of the site should be clearly separate from other parts of the decision notice.

| | | | | |
|--|---|-------------------------------------|-------------------------------------|--------------------------|
| Q6 | Do you agree that decision notices should be structured in the manner proposed? If you do not, please suggest an alternative. | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: NRW welcomes the intention to structure conditions as suggested in the consultation document. This should improve clarity on the timeline for discharging conditions. | | | | |

| | | | | |
|---|---|-------------------------------------|-------------------------------------|--------------------------|
| Q7 | Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition? | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: NRW welcomes the proposal that approved plans and drawings relevant to a decision should be clearly identified in a condition. This approach will provide greater clarity and certainty on the approved works to be undertaken in accordance with a planning permission. | | | | |

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| Q8 | 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? If not, please suggest your preferred approach. | Yes | Yes (subject to further comment) | No |
|----|--|--------------------------|-------------------------------------|--------------------------|
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Comments:

NRW agrees that conditions should avoid ambiguity. However, there are instances where it may be appropriate to include the term 'unless otherwise agreed by the local planning authority' to ensure there is flexibility in the condition to reflect changing circumstances identified through monitoring regimes, without the applicant having to formally apply to vary the condition under Section 73 of the 1990 Act.

For example, where habitat management plans (HMP) are secured through a planning condition, there is generally a requirement to monitor the effectiveness of agreed measures that have been identified to avoid or mitigate potential harm to acknowledged interests. The measures required to secure the agreed objectives of a HMP can change over time based on the evidence obtained in the monitoring process, and there will often be instances where it will be appropriate to amend the initially agreed measures. Such amendments will require the agreement of the local planning authority. Flexibility is therefore required in such conditions to allow for the necessary amendments to be made to the initially agreed management and monitoring regime, without the applicant having to apply to vary the condition.

In such instances, we therefore consider that there is benefit to the continued use of the term 'unless otherwise agreed by the local planning authority'.

We note the concern regarding the lawfulness and uncertainty that may stem from the use of such tailpiece phrases in poorly drafted conditions. However, the case in *R(Midcounties Co-Operative Ltd)v Wyre Forest District Council & Tesco Stores Ltd and Others (2010)* referred to retail floorspace, where we accept that the amount of floorspace agreed should be clear to all and not something that should normally be something to be determined at the discretion of the LPA. That case, and the certainty required regarding floorspace however, is very different to amending management regimes following an assessment of monitoring results. The purpose of monitoring is to ensure that the measures being implemented are producing the results predicted. Where the monitoring results demonstrate that is not the case, different measures are sometimes required, and these will be required to be agreed with the LPA.

We consider that further guidance is required to ensure that conditions, where appropriate, reflect the potential for changing circumstances. Further guidance on this matter should be provided in the new Circular.

Additionally, should the Planning Advisory and Improvement Service (PAIS) as proposed in the Positive Planning consultation document be implemented, that

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body could offer training and best practice guidance on how to draft planning conditions to address such matters.

| | | | | |
|-----------|---|--------------------------|-------------------------------------|--------------------------|
| Q9 | 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 (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Comments:

We generally agree with the guidance set out in paragraph 4.3 of the Draft Circular which encourages local planning authorities to discuss potential conditions with applicants. As highlighted in our response to Question 15, early discussions on potential conditions should also involve relevant statutory consultees to ensure that conditions meet the tests of the Circular, and satisfactorily address the identified potential harm, or provide appropriate mitigation. Where statutory consultees recommend a condition, a draft of the condition/s should be discussed with the relevant statutory consultee prior to it being attached to a grant of planning permission to ensure it achieves the measures intended.

Any timescale set out in the Draft Circular for when potential conditions should be provided to applicants or statutory consultees should be appropriate to ensure draft conditions can be amended in time for the release of reports/ papers to planning committees.

| | | | | |
|------------|--|-------------------------------------|-------------------------------------|--------------------------|
| Q10 | Should guidance be provided in the circular with regards to any other conditions related matter? | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Comments:

Paragraph 4.27: Conditions that Should not be Imposed

We welcome the recognition that surveys should be undertaken to inform a decision and should not generally form a condition attached to a planning permission.

However, where a planning permission is not implemented for a number of years it may sometimes be necessary to update surveys in advance of the works being implemented. For example, pre-commencement surveys will often be necessary on larger schemes where surveys have been undertaken to inform an EIA prepared in support of an application for planning permission. Given that a number of years may have elapsed from when the original surveys were undertaken to when the planning permission is granted, to when development is

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implemented, the protected species interest at a site may have changed considerably. To ensure there is no breach of European legislation, no likely detriment to the favourable conservation status of European Protected Species, and that developers are not required to implement mitigation measures when a species is no longer present at the site, it will often be prudent to require pre-commencement surveys as a condition on planning permissions for EIA schemes that are likely to take a number of years to come to fruition. We therefore recommend that paragraph 4.27 is amended to clarify the exceptional circumstances when surveys may be required through a condition to a planning permission.

Paragraph 5.54: Contaminated Land

We have concerns in relation to the guidance provided in this paragraph. Where there is a suspicion that the site might be contaminated, we would expect that a Preliminary Risk Assessment is undertaken and provided in support of an application for planning permission.

Only, where the proposed site is located within an area of low sensitivity would we consider it appropriate to allow a planning permission to be granted prior to a site investigation/ assessment being undertaken. Further, such a permission should be subject to conditions which require:

- the investigation/ assessment to be undertaken prior to the commencement of works; and
- the development to incorporate any remedial measures shown to be necessary.

Paragraph 5.59 to 5.62: Drainage

Subject to the timescale for the publication of the new Circular, the Circular should also include a reference to the proposed SuDS approval body, and its potential role in the planning process.

Other

It may be useful to include a model condition on the notification of commencement of development. For example: "The developer shall give the local planning authority [x] days advance notice of the commencement of development".

| | | | | |
|---|--|-------------------------------------|-------------------------------------|--------------------------|
| Q11 | Does Appendix A of the draft circular contain sufficient examples of model conditions? | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: For operational reasons, and as many wind farm developments are sited in environmentally sensitive areas, there is usually a need to microsite turbines at the construction stage of development. To ensure micro-siting does not damage | | | | |

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recognised interests of acknowledged importance, there is generally a requirement for a micro-siting condition. We therefore suggest that the Circular includes a model condition on micro-siting, and suggest the following text as an example:

'No development shall commence until a micro-siting protocol has been submitted to and approved by the local planning authority. It shall set out a methodology for a detailed peat depth assessment and a protocol for deciding on micro-siting of all development to minimise the developments impact on, but not limited to, peat, curlew, black grouse, protected species, watercourses, and any other identified environmental constraints.'

Similarly because of the open, upland areas where windfarm developments are generally located, there will often be a number of public rights of way (PROWs) crossing the site, or it will comprise areas of open access land. To ensure there is limited disruption to users of PROWs and Access Land, a Rights of Way Management Plan is often required. We suggest that a model condition on PROW management plans are included in the Circular, and suggest the following text as an example:

'No development shall commence until a Rights of Way Management Plan (RWMP) has been submitted to and approved by the local planning authority. The RWMP shall be implemented as approved and shall include:

- a) details of the temporary re-routing of public rights of way during construction of the authorised development;**
- b) details of the provision of signage and other information alerting the public to construction works;**
- c) details of any fencing or barriers to be provided during the construction period;**
- d) details as to how public rights of way, paths and roads will be inspected prior to and monitored during the construction period;**
- e) details of alternative routes for any public rights of way that need to be diverted; details of permissive routes to be provided within the site.'**

In addition to examples of model conditions, it may also be useful for the Appendix to include the reason in support of each model condition.

Natural Resources Wales is currently reviewing the advice we give to local planning authorities when responding to planning application consultations. This includes a review of the 'standard conditions' that NRW has inherited from one of its legacy bodies. We would welcome the opportunity to share the results of this review with the Welsh Government, and local planning authorities in due course.

| 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. | Yes | Yes (subject to further comment) | No |
|-----|---|-------------------------------------|-------------------------------------|--------------------------|
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

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Comments:

Model Condition 27, Criterion (iii):

Clarification is required on the definition of 'ecological systems'. It is not clear whether it is intended to include reference to protected species. If it does not include protected species, specific reference is required to them in the condition.

Contaminated Land (Investigation)

The reference to BS10175 should be amended to refer to the 2011 version.

Further, the reference to the WLGA/ WAG/ EA guidance: 'Land Contamination: A Guide for Developers (July 2006)', should be replaced with the a reference to the guidance document: 'Development of Land Affected by Contamination: A Guide for Developers' (WLGA/ Environment Agency Wales, 2012).

Model Condition 28: Contaminated Land (Investigation)

Certain forms of remediation may be appropriately undertaken alongside development. For example, a part of the site may be developed whilst remediation measures are undertaken at another part of the site. We therefore recommend that Condition 28 should be amended by replacing the sentence: "The site shall be remediated in accordance with the approved measures before development begins" with "The site shall be remediated in accordance with the approved measures before occupation".

Further, for improved clarity we recommend that the penultimate and final sentence of Condition 28 should be removed, and included in the Circular as a separate model condition.

Model Condition 35: The suggested model condition for a construction method statement (CMS) in the Draft Circular, provides a suitable example for development in urban areas. However in rural areas and sensitive natural environments where development is proposed to take place, there will generally be a requirement for more details to be included in a CMS. We therefore suggest that an additional model condition is included for CMS in the Circular to demonstrate the variation of requirements that may be required depending on the scheme and its location. We have included the following as an example:

No development or site clearance shall commence until a Construction Method Statement (CMS) has been submitted to, and approved in writing by, the local planning authority. The CMS shall be implemented as approved. The CMS shall include (for example):

- (a) detailed contractor arrangements, monitoring and contingency proposals, including a pollution prevention plan, and the identification of an ecological clerk of works;
- (b) management arrangements setting out how the developer, contractors and regulators will work together to ensure that the provisions of the CMS are carried out;
- (c) a site construction environmental management plan (CEMP), based on up to date ecological and hydrological surveys, that provides for the use of best practice working methods, and for a monitoring scheme to ensure that construction works avoid damage to the environment and that any necessary licences have been obtained;

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- (d) a scheme for the protection of watercourses, drainage systems, wetlands and the water environment from impact from the Development including:
1. measures to prevent pollution and methods for the containment of spillages, and
 2. detailed measures for stream crossings to allow surface water flows to pass beneath or through tracks, and to prevent any polluting discharge from haul roads from entering the water environment;
- (e) measures to be taken to protect the rights, interests and safety of users of public rights of way crossing the Site, and open access land within the Site during the construction of the Development;
- (f) Measures for the demarcation and protection of Sites of Special Scientific Interest, Biodiversity Action Plan and Local Biodiversity Action Plan habitats and Scheduled Ancient Monuments within or adjoining the Site;
- (g) measures for the management and disposal of contaminated soils;
- (h) measures for the storage of all fuels, oils, cement, concrete and chemicals on impervious bases away from watercourses or water features;
- (i) details, including the volume and source, of any material to be imported to site for backfilling trenches, or constructing access tracks;
- (j) measures for the management of foul water, including concrete wash-out;
- (k) details of track design and construction, including the excavation and make up of internal access roads and hard standings, including measures to address silt laden run off from any working, temporary and permanent access roads, soil storage and other engineering operations;
- (l) detailed measures to minimise disturbance to and the impacts on breeding birds;
- (m) details of all handling, storage and re-use on site of soil and peat, including details of receptor areas and methods of translocation where it is proposed to translocate peat from the site;

Model condition 40:

Criterion (ii) needs to be amended to clarify what should be included.

Criterion (iii): The word 'of ' needs to be deleted from the first line of the criterion.

Model Condition 110: As drafted the condition includes no reference to the requirement to implement the mitigation measures in the report. There is also ambiguity between the terms 'survey' and 'report'.

To provide greater precision in the Model Condition, we recommend that the third sentence of the condition should be amended to include the word 'survey' before 'report', Further, we suggest that the following sentence should be added to the end of the condition:

'The survey report shall be implemented as agreed.'

Model condition 114: To provide a more rounded example of what is likely to be required in decommissioning a windfarm, we recommend that a further criterion is added to the model condition as follows:

(iii) A habitat restoration and management plan.

Model Condition 120: To avoid a site being cleared and then the remainder of the permission not able to be implemented as a pre-commencement 'interim

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certificate' is not able to be achieved, we recommend that the condition should be amended to read: 'Prior to the commencement of development and site clearance an 'interim certificate' shall be submitted to the LPA etc...'.

Model Condition 123: See comments for Model Condition 120 above.

Model Condition 133: Although we welcome the inclusion of this condition in the Draft Circular, as currently drafted it appears to refer only to species. To ensure that habitats are also afforded the necessary protection, we advise that the heading is amended to Wildlife and Habitat Protection, and that all references to wildlife protection plans and zones in the model condition are amended to read Wildlife and Habitat protection plans/zones.

| | | | | |
|---------------------------------|--|--------------------------|-------------------------------------|--------------------------|
| Q13 | Do you believe any of the conditions fail any of the six tests identified in the circular? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: No comment. | | | | |

| | | | | |
|--|---|--------------------------|-------------------------------------|--------------------------|
| Q14 | Should any conditions be totally removed from Appendix A of the draft circular? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: Model Conditions 33 and 34 We are unclear on the need to include Model Conditions 33 and 34 in the Circular given that the requirement to undertake an assesment of risk to groundwaters and surface waters prior to the commencement of development is already addressed in Model Condition 27. | | | | |

General

Consultation reference: WG19178

Q15

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:

We welcome and support the promotion of pre-application discussions in Section 4 of the Draft Circular. Natural Resources Wales would welcome the opportunity to participate, where appropriate, at this stage in the planning process so that environmental opportunities and constraints can be identified and addressed at the earliest opportunity to inform the location, layout and design of a development proposal. This approach should ensure that costly delays in later stages of the planning process are avoided.

We therefore consider that the Circular should recommend that applicants and local planning authorities should consult statutory consultees, where appropriate, as part of pre-application discussions.

We also welcome the statement that local planning authority officers should discuss potential conditions with statutory consultees. It is important that local planning authorities secure the necessary measures to minimise potential adverse environmental impacts. We welcome the guidance that local planning authorities should discuss potential conditions with relevant statutory consultees before attaching them to a planning permission. This should ensure that conditions attached to a planning permission address the particular harm it is intended to avoid or mitigate.

Please see also our response to Question 9 above.

I do not want my name/or address published with my response (please tick) ☐

Freshwater East Deeded Right Holders Association
c/o Thorntrees, Freshwater East,
Pembroke, Pems SA71 5LG
01646 672352

Owain Williams
Conditions Consultation
Development Management Branch
Planning Division, Welsh Assembly Government
Cathays Park, Cardiff CF10 3NQ

Dear Mr Williams

**RE: WG19178 Consultation Document – Annex 1 Draft Circular – The use of
Conditions in Development Management**

Deeded Rights of Way need to be a material consideration when granting planning permission. If they are held in common, deserve the same rights and protection as public rights of way.

In the 1920's, the estate owner, Ronald Mathias went to great lengths to keep the cultural heritage of the burrows in Freshwater East. He specifically designed deeded rights of way in common, so everyone could have access to the sea shore, springs, wells and public highway, which he set out in their title deeds.

Freshwater East is within the Pembrokeshire Coast National Parks Authority (PCNPA). The PCNPA state that deeded rights of way need not be considered as there is no statutory requirement when considering planning applications. The deed holders would like this rectified within this new planning consultation. This would alleviate the current requirement to pursue civil action to retain vehicular and pedestrian access to the deeded properties.

In 2003 MP Nick Ainger said that deeded rights of way should be a 'material consideration' in the planning process, because he did not think it was right that each time planning was granted the deed holders would have to go to court to fight a civil action. I believe this was discussed by the Welsh Assembly in 2006, with no conclusion. Recent assistance from Assembly Members, Angela Burns and Rebecca Evans and MP Simon Hart has been impeded because of the legal implications. This needs to be remedied.

This is causing the deed holders a great deal of concern. It is costly and time consuming for the deed holders to keep going back to court and we would like a resolution. I would like you give this serious consideration and I look forward to hearing your response.

My comments to the relevant sections of the Consultation Document are in red on the following pages.

Yours sincerely

Freshwater East Deeded Right Holders Association

Number: WG19178

Welsh Government

Consultation Document - Annex 1

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

Draft Circular - The Use of Conditions in Development Management

Powers for conditions on land outside the application site and temporary permissions

2.3 Section 72 of the Act enables local planning authorities to impose conditions regulating the development or use of land under the control of the applicant, even if such land is outside the site which is the subject of the application. The courts have held that the question of whether land is under control of the applicant is to be determined according to the facts of a particular case, and it is not dependent on the existence of a freehold or a leasehold interest: only such control over the land is needed as is required to enable the developer to comply with the condition.

Deeded Rights of Way should be afforded the same status as public rights of way as they are held in common and have affinity with public rights of way. Deeded Rights of Way become more complicated when there are held in common.

Other constraints

2.7 Planning conditions may have serious implications for the individual, so it is important to bear in mind the human rights implications when considering their use. The critically sensitive areas include the loss of one's home; discrimination, and a serious reduction in the value of one's property. Interference with human rights requires proper justification and the implications to be outweighed by other material considerations.

The same rights should be afforded to the owners and surrounding properties.

3.0 THE SIX TESTS

3.1 The courts have laid down general criteria for the validity of planning conditions. In addition to the courts, the Welsh Government considers that conditions should be necessary, precise and enforceable, ensuring that they are effective and do not make unjustifiable demands of applicants. Conditions should only be imposed where they satisfy all of the tests described in this chapter. In summary, conditions should be:

- (i) Necessary;
- (ii) Relevant to planning;
- (iii) Relevant to the development to be permitted;
- (iv) Enforceable;
- (v) Precise; and
- (vi) Reasonable in all other respects.

Deeded Rights of Way should be relevant to planning. Where Deeded Rights of Way in common are affected these should not be considered under delegated officer powers moreover should automatically be considered by committee as a matter of course.

Control Over land

- 3.43** It would be unreasonable to expect an applicant to comply with a condition which relates to an area of land or an element not in their control at the time when planning permission is granted. If the land is included in the site in respect of which the application is made, such conditions can be imposed, but the authority should have regard to the points discussed in 3.25 and 3.27.

Proof of ownership needs to be demonstrated.

- 3.46** Although it would be ultra vires to require work to land over which the developer has no control or which requires the consent of a third party, to carry out, it may be possible to achieve a similar result by a condition worded in a negative form, prohibiting development until a specified action has been taken. Such conditions are often called ‘Grampian’ conditions.

We strongly agree and this should be enforced at all times.

Planning Obligations and Community Infrastructure Levy (CIL)

- 4.22** LPA should seek to overcome planning objections, where appropriate, or secure mitigation by condition rather than by a planning obligation. Legal agreements can take considerable time to draw up and it is important to avoid burdening applicants with unnecessary costs and delay.

What about burdening defendants?

- 4.26** Planning conditions are not an appropriate means of controlling the right of passage over public highways and can be very difficult to enforce. Where it is essential to prevent traffic from using particular routes, the correct mechanism for doing so is an Order under the Traffic Management Act 2004.

Deeded Rights of Way, with vehicular access, should be incorporated in the Traffic Management Act.

Applications Made Under Planning Condition and Monitoring of Conditions

- 4.29** If the LPA considers that the details submitted are insufficient to discharge a condition or that it has not yet been complied with, the authority should explain to the applicant in writing what remains to be done and can refuse to determine the application until they are satisfied that the condition has been complied with.

This should be enforced.

- 4.31** If a condition is attached to a decision as the result of consultation with a specialist body or statutory consultee, a local planning authority may need to consult that same body with regards to the discharge of that condition.

This should be transparent.

- 4.32.1** Conditions which will remain in force after the development has been carried out need particular care as they can place onerous and permanent restrictions on what can be done with the premises affected.

Deeded Rights of Way with vehicular access need to be conditioned until a resolution can be agreed.

The List of Model Conditions

- 5.4** Model conditions need to be treated with caution. Such lists can be made available locally so that developers can take account of possible conditions at an early stage in the drawing up of their proposals, but should contain a warning that they are not comprehensive and that conditions will be devised or adapted where appropriate to suit the particular circumstances of a case.

Deeded Rights of Way with vehicular access need to be conditioned until a resolution can be agreed.

- 5.5** Amongst the conditions in the list at Appendix A there are some which will be used regularly, such as those in relation to materials, whilst others will be rarely used, for example, conditions in relation to aerodromes and conditions relating to personal permissions (condition 50). However, the less common conditions included in Appendix A provide a useful resource for officers drafting conditions for more rare development scenarios.

This should include Deeded Rights of Way.

Outline permissions

- 5.7** An applicant who proposes to carry out building operations may choose to apply for either full planning permission, or for outline permission with one or more of the following matters reserved by condition for the subsequent approval of the local planning authority:

- i) access;
- ii) appearance;
- iii) landscaping;
- iv) layout, and
- v) scale

This needs to be enforced.

Conditions relating to outline permissions

- 5.9** Once outline planning permission has been granted, it cannot be withdrawn except by a revocation order under section 97 of the Act, and any subsequent approval of reserved matters does not constitute the granting of a further planning permission. Any conditions relating to anything other than the reserved matters should be imposed when outline permission is granted. For example, it may be considered necessary to require a building to be constructed within a specified 'footprint' or to retain important landscape features which would affect the setting of the building and its neighbours.

Deeded Rights of Way are part of the cultural heritage of the area in which they relate.

Access (Conditions 07 to 11)

- 5.32.1** Conditions attached to planning applications for outline planning permission can control the location of an access serving a development, the details of which will subsequently be required for consideration as part of the reserved matters application for consideration. Without such a condition it may not be possible to secure its location at the reserved matters stage.

Deeded Rights of Way that are held in common would be a reserved matter.

Boundary Treatment (Condition 26)

5.50 Details of boundary treatment for a development can often be reserved for subsequent approval if they are not detailed in the application or unless they affect whether permission should be granted, in which case they should be considered as part of the planning application.

Where there are known disputes, planning should be refused until such disputes are remedied.

Design (Conditions 26, 61, 82)

5.58 Local planning authorities may wish to use conditions to ensure that important vistas are safeguarded by keeping them clear of obstruction or that landscape features are provided to improve the overall setting of a development.

Consultation and transparency should be part of this process.

Grampian Conditions

5.64 By their nature, Grampian conditions are drafted negatively and require that the development permitted should not be commenced, or occupied, until a specified obstacle to that development has been overcome on land that is not in control of the applicant. As with other conditions, Grampian conditions must be constructed having regard to the particular circumstances that exist and which affect or are affected by the development. Grampian Conditions are discussed in more detail above in paragraphs 3.25, 3.26, 3.42 -3.46 and Box 1.

Deeded Rights of Way are a Grampian Condition.

Nature Conservation (Conditions 125 and 133)

5.79 Nature conservation can be a significant material consideration in determining many planning applications. But local planning authorities should not refuse permission if development can be permitted subject to conditions that will prevent damaging impacts on wildlife habitats or important physical features.

Deeded Rights of Way are an important physical feature and are part of our Cultural Heritage.

Report

Cabinet Member for Regeneration and Development

Part 1

April 2014

Item No.

Subject WELSH GOVERNMENT CONSULTATION (WG19178)

THE USE OF PLANNING CONDITIONS FOR DEVELOPMENT MANAGEMENT

Purpose The purpose of the report is to seek the approval of the Cabinet Member for Place, on the Council's response to this consultation.

Author Development Services Manager

Ward ALL

Summary The Local Planning Authority has been asked by the Welsh Government to provide a response to them regarding the publication of a Draft Circular relating to Planning Conditions. Welsh Government considers that the existing Circular 35/95 is out of date and there is a need to create a more contemporary document.

Within this report it is outlined why this new document is required, the elements that are needed to be retained from Circular 35/95, the new elements that are agreed to help construct the new document and 15 questions that the Authority have been asked to answer in order to inform the preparation of the revised Circular.

Proposal To agree the Council's answers to the questions asked as our response to this consultation.

Action by Interim Head of Regeneration and Regulatory Services

Timetable Response to Welsh Government by 25th April 2014.

Signed:

1. Background

- 1.1 When planning permission is granted the consent is often subject to a number of conditions. Some of these are on-going conditions which simply require compliance by the developer/occupiers without any further approval being needed. Other conditions require submission of additional details by the applicant for the Local Planning Authority's approval (known as discharge of a planning condition).
- 1.2 Planning conditions must be in accordance with the Welsh Office Circular 35/95 titled "The Use of Conditions in Planning Permissions" and must meet the following six tests in order for them to be legally bona fide. These tests are that conditions must be:
 - Necessary;
 - Relevant to planning;
 - Relevant to the development being permitted;
 - Enforceable;
 - Precise and
 - Reasonable in all other respects.
- 1.3 The same document also sets out model conditions for most genre of development although it is accepted that these may have to be altered in order to suit a particular scheme as site specific needs require. In addition, the Circular also sets out when planning conditions should be used by the Authority and when conditions are not deemed to be the accepted solution to manage development.
- 1.4 Given changes to legislation, the adoption of new circulars, new case law and Technical Advice Notes (TANs) along with the length of time that has now passed since the Circular 35/95 was adopted, the Welsh Government is consulting on a new Draft Circular. This is also a response to recent recommendations made in the Study to Examine the Planning Application Process in Wales undertaken by GVA Grimley and the report by the Independent Advisory Group.
- 1.5 The Welsh Government notes that "the Study 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 LPAs maintained that some conditions don't go far enough or are not enforced appropriately." It is important to note that recommendations were also raised in the Study concerning conditions. These included:
 - The better categorisation of conditions;
 - A more proportionate approach to the pre-commencement stage and pre commencement of prior notification conditions;
 - The inclusion of conditions that allow more flexibility to planning permissions;
 - The involvement of statutory consultees and other groups in the drafting of conditions and approval of information submitted to discharge them;
 - 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;
 - The connection possible between conditions and obligations;
 - Guidance on the link between effective monitoring and enforcement and the content and scope of planning conditions;
 - The introduction of timescales on the discharge of conditions and
 - The scope to discuss conditions at the pre application and validation stages so that applicants are aware of the likely requirements.

- 1.6 Local Planning Authorities are being asked to provide a consultation response to the new Draft Circular.

2. Consultation

- 2.1 The Consultation Document as noted states that “much of the information contained in Circular 35/95 remains useful and relevant, although it 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 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. It is noted in the Consultation Document that “Chapters have been introduced with a chapter on drafting, agreeing and discharging conditions, logically following on from a chapter on the six tests. Next relates to the regulation of different types of development through conditions. 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.”
- 2.2 Local Planning Authorities and others as discussed overleaf are now being asked to provide comment on the Draft Circular produced by the Welsh Government by the 25th April 2014, which also involves examination of the Consultation Document. The aim is to:
- Update the information in Circular 35/95;
 - Standardise decision notices in Wales;
 - Encourage proportionate and flexible use of conditions;
 - Encourage co-operation 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.
- 2.3 Within the Consultation Document produced by Welsh Government there are fifteen questions that are required to be answered by each consultee which are noted below:

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| Q1 | Do you think an updated circular on conditions is required? |
| | An updated circular is required. Many changes have occurred within Development Management arising from case law; changes in legislation; changes in caseload to include more renewable energy submissions for example, changes in processing as Local Planning Authorities seek to refine their services to adapt to changing demands and priorities. The fundamental six text principles are sound. However, text and requirements linked to the six tests will benefit from updating. |
| Q2 | Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular? |
| | There are certain elements of Circular 35/95 that should be retained. These include a summary of the powers to impose conditions; powers for conditions on land outside the application site and temporary permissions; powers to vary or remove the effect of conditions; the six tests and vague conditions etc. It is agreed that these useful, retained elements of the current Circular should be incorporated into a new, comprehensive Circular rather than the latter include reference to the previously, largely superseded document: it would be unhelpful for practitioners to access multiple documents relating to this matter when a single updated document can be produced. |

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| Q3 | <p>Do you consider:</p> <p>i) that all six tests are still relevant today and should be retained?</p> <p>ii) that there are additional tests that could be used (demonstrate with case law if possible)?</p> |
| | <p>The six tests identified overleaf are still relevant today and should be retained; these have proved to be well tested in the formation of conditions and are widely recognised as best practice. No additional tests are recommended.</p> |
| Q4 | <p>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?</p> |
| | <p>No comments.</p> |
| Q5 | <p>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?</p> |
| | <p>The topic areas of Chapter 5.0 are satisfactory.</p> |
| Q6 | <p>Do you agree that decision notices should be structured in the manner proposed? If you do not, please suggest an alternative.</p> |
| | <p>The Draft Circular puts forward a suggested structure of the way all decision notices in Wales should be formatted (as per overleaf):</p> |
| Q7 | <p>Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition?</p> |
| | <p>Newport currently includes plan numbers as a note to applicants, not as conditions. If the draft Circular recommendations are confirmed, this will likely be the most noticeable change to the Council's Notices of Decision. At present, in Wales, there is no process to agree minor amendments to approved drawings. Whilst changes have already been introduced in England to allow for this to happen, we can only speculate on whether or not changes to such processes will be enacted in Wales. However, with approved drawings referred to in a stand-alone condition, applicants will be able to apply to vary that condition to introduce updated plan numbers as necessary. This process will result in a new Notice being issued and affords the Authority an ability to update other conditions if necessary and justifiable. This request will incur the normal variation of condition charge and will potentially simplify the process of agreeing amendments, particularly minor ones which are not regarded as de minimis. In reality, however, this could cause problems. We normally look at minor amendment requests in terms of whether the changes are de minimis (of no real consequence). If they are, we agree to them by letter. However, the changes proposed say that changes that are more than de minimis, i.e. are material, can be secured via a variation of condition. We would query the legality of this, and the extent to which a planning permission can be altered by simply amending the approved plan numbers. This proposal would be advantageous at times in providing a way of agreeing minor changes without requiring a new application for the entire development. However it could also be open to abuse and confusion amongst stakeholders, resulting in a democratic deficit. We understand that the Courts work on the basis that if the development is not in accordance with the approved plans, it is not the approved scheme. Notwithstanding de minimis changes, if a developer wishes to build a scheme that they do not have permission for, then a new, full application should be made and, under current fees regulations, may well be the cheapest (fee exempt) process in any event. However, where multiple house type amendments are sought to a larger scheme, for example, the Authority will very likely lose fee income.</p> <p>It is wrong to encourage the variation of development, minor or otherwise, via a</p> |

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| | <p>variation of condition. If it is not the scheme that has permission and the changes that they wish to make are material, a new full application should be required. By introducing the process as proposed, it introduces significant scope for argument and disagreement about what should or should not be considered via the section 73 process and introduces a potentially unsound basis for altering planning permissions by way of making material changes to approved development. It also raises financial issues that Local Planning Authorities will need to consider. If this is to be implemented, Authorities will require guidance from Welsh Government so LPAs know how to deal with it consistently and the public know what to expect from it.</p> <p>If conditions on plan numbers are encouraged, in the case of more significant changes, the Local Planning Authority will have to make a decision on whether or not a variation of condition submission is the appropriate method of seeking permission. For example, if an applicant obtains permission for a detached dwelling that is shown on the approved drawing as two storeys and then submits a request to vary the condition to refer to a plan showing a three storey house, the Authority should be able to refuse to deal with this as the change is a major one. The draft Circular refers to the process of varying the plan condition as benefitting those that seek to secure minor material changes to plans. However, what is or is not minor will ultimately be the judgement of the Local Planning Authority or courts and may be subject to disagreement. This will not provide the certainty and consistency sought under the emerging Planning Bill. It is not clear from the circular what the Welsh Government potentially consider "minor" and an example would be beneficial in this section. Certainly, fundamental changes to drawings should require a fresh submission with the appropriate consultation and consideration and a fee equivalent to the full application rather than the potentially much lower fee of £166 that a variation of condition application incurs.</p> |
| Q8 | <p>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? If not, please suggest your preferred approach.</p> |
| | <p>Paragraph 3.36 relates to Vague Conditions and notes that "The use of the terms '<i>unless otherwise agreed by the local planning authority</i>' or '<i>except with the prior approval of the local planning authority</i>' create ambiguity in conditions and suggest that the local planning authority may be willing to accept an alternative to that which has already been agreed or to which is referred to in the condition. The Court of Appeal has objected to the use of such 'tailpieces' as "wholly uncertain" and unlawful. What planning permissions are intended to permit should be clear from what has been granted and what the conditions say and so the above terms should not therefore be used."</p> <p>In reality, the use of the phrase "unless otherwise agreed" is very useful to both the developer and the Authority. It would not be advocated in circumstances where public interest may be prejudiced or in cases where the wording is so vague the development is prejudiced. However, used appropriately it affords flexibility and without such flexibility development would be encumbered. One example would be allowing an alternative timescale for the submission of details to discharge a condition. However, use of such a phrase to alter the content of the permission would be inappropriate and probably unlawful, e.g. "The dwelling shall be a maximum of two storeys unless otherwise agreed..." Such a condition would have the same impact as allowing approved plan numbers to be changed in such a way as the approved scheme is significantly altered.</p> <p>The Draft Circular states Section 73 "provides the proper mechanism for the</p> |

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| | <p>reconsideration of the conditions that are attached to a permission. Discretionary conditions seek to provide an unofficial way of circumventing section 73 and can deny third parties the opportunity to comment in respect of a change to the development." We suggest that this rarely, if ever, occurs in practice and in actual fact the ability of developers to seek changes via a variation of plan condition and the apparent effort to control minor changes to plans by this means, could have a much greater and more adverse effect in enforcement terms (see answer to qu7). If WG wish to confirm that the use of the phrase "unless otherwise agreed" is imprecise and unlawful by reason of case law then we understand this. However, we do not consider the change a helpful one and are of the view that developers would likely agree with our concern.</p> |
| Q9 | <p>Do you agree that local planning authorities should provide applicants with advance notice of conditions before an application is due to be determined?</p> |
| | <p>The Authority disagrees that this should be referred to as an expectation for developers. It should be at the Local Planning Authority's discretion whether or not it deems it appropriate and efficient to engage with the applicant about the wording of planning conditions on a Notice. In some cases, it is seen as beneficial to all parties and Authorities will undertake discussion in advance of a Notice being issued. However, this is not always possible or appropriate. Providing advance notice of the wording of conditions to applicants will also have the effect, in some cases, of delaying the decision making process to the detriment of all parties. In practice, officers work to tight deadlines and will rarely have reports and conditions fully prepared weeks in advance of a Committee for example. Consequently, a requirement to engage an applicant in the drafting of conditions will be time consuming and will delay decision making. Furthermore, such engagement may well be seen as inappropriate by third parties in particularly controversial cases. It should be for the Authority to decide, rather than for the applicant to expect, whether or not advance discussion of conditions is necessary and beneficial.</p> <p>The emphasis in the emerging Planning Bill on speed of decision-making and the threat of withdrawing powers for poorly performing LPAs mean that it is extremely unlikely that LPAs will have time to undertake such discussions with the applicant. If the Welsh Government considers this liaison would result in a better outcome, then it should revisit its emphasis on decision speed in the Planning Bill, or at least set realistic decision-making targets.</p> <p>Advance sight of conditions happens in any event in the case of reports published in advance of Planning Committee meetings for example. Officers themselves may recommend changes to published wording of conditions at a Committee meeting having considered it further or received further advice. Occasionally, an applicant may suggest changes to conditions that the Authority agrees with. However, advance sight of conditions will increase the expectation of applicants to engage in discussions on the wording of conditions and place undue pressure on case officers that will likely lead to delays in processing of submissions.</p> |
| Q10 | <p>Should guidance be provided in the circular in relation to any other conditions related matter?</p> |
| | <p>It is not clear at 3.42 that it is, in some cases, appropriate to impose onerous controls. For example, in accordance with TAN 6, dwellings related to rural enterprises and not subject to occupancy restrictions, could be made the subject of rural enterprise worker occupancy controls as part of an application for further rural enterprise worker's dwellings to serve a business. Onerous conditions are sometimes entirely necessary and justified. The guidance should make it clear that whilst the thrust of the draft Circular may be to streamline the conditioning regimes of Authorities, conditions are important and</p> |

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| | <p>sometime may need to be onerous in the public interest.</p> <p>The Circular should be consistent with up to date TANs.</p> |
| Q11 | <p>Does Appendix A of the draft circular contain sufficient examples of model conditions?</p> |
| | <p>The Local Planning Authority would agree that the level of example conditions put forward within the Draft Circular is sufficient relating to most forms of development. However there is an acceptance that model conditions cannot cover every eventuality or every scenario within Development Management practice. Where necessary, the Authority will impose conditions that are not part of the model list or include conditions on decisions that do not necessarily match model conditions. It may find this necessary to suit local circumstances or particular aspects of a development. It should not be expected to only rely on model conditions but to use these as a guidance tool where it finds it beneficial to do so.</p> |
| Q12 | <p>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.</p> |
| | <p>The holiday occupancy condition suggested under Appendix A does not limit the amount of weeks that the occupant can stay for. It is suggested that this be managed in the following example:</p> <p>The occupation of the building shall be restricted to genuine holidaymakers for individual periods not exceeding 4 weeks in total within any consecutive period of 13 weeks. A register of holidaymakers shall be kept and made available for inspection by an authorised officer of the Council at all reasonable times.</p> <p>The result is that there is no ambiguity in the condition that the accommodation can be used as a second home for example in an area where policy would restrict such.</p> |
| Q13 | <p>Do you believe any of the conditions fail any of the six tests identified in the circular?</p> |
| | <p>Refer to answer to question 7 above.</p> |
| Q14 | <p>Should any conditions be totally removed from Appendix A of the draft circular?</p> |
| | <p>There are no conditions that should be totally removed from the Draft Circular.</p> |
| Q15 | <p>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.</p> |
| | <p>Can the issue of reasons for conditions be clarified. Suggested model conditions do not include reasons and the Authority notes that Inspectorate decisions do not include reasons. Will the Circular advise on this as Newport currently includes reasons for all its conditions and considers this to be the clearest way forward. For example, in cases where a contamination remediation type condition is imposed, is it to safeguard human health or ground water or both? This affects consultees when discharge of condition requests are received. It is suggested that all conditions should be accompanied by a reason for their imposition, and that this should be extended to planning appeal decisions.</p> |

Time Limit Condition: Sections 91 and 92 of the 1990 Act stipulate that this condition must appear on all decision notices



Approved Plans: A condition listing all plans which are relevant to the decision should follow the time limit condition. This provides a reference for all other conditions and its inclusion provides a mechanism for minor material amendments to be made to the planning permission via Section 73 of the Town and Country Planning Act.



Pre-Commencement Conditions: Pre-commencement conditions must be dealt with before work starts on site and so should appear near to the top of the decision notice.



Pre-Occupation of Site/Stage Conditions: These conditions are likely to start with 'before the development hereby permitted is occupied' or something similar. They should follow pre-commencement conditions on a decision notice since they would logically be discharged after them.



Regulatory Conditions: These are conditions that affect the ongoing use of the development, spell out the restrictions which apply to the development and need monitoring after the development becomes operational. Some of these conditions will be discharged within a defined period following occupation or may not need to be discharged at all.



Notes or 'Informatives': These are not conditions but are appended to a planning permission to draw the applicant's attention to something. Notes can give guidance to the applicant, for example with regard to outstanding reserved matters in respect of an outline planning permission. Notes can also be used to inform the applicant of other statutory consents, such as listed building consent, which must be obtained before the development can commence. The six tests do not apply to these informative pieces of information and they cannot be enforced against.

Newport City Council's Notices of Decision for planning applications currently include all of this information but not necessarily in this format. However, the proposed structure above would encourage greater consistency in Notices by Newport and other Local Planning Authorities. It is welcomed. The Local Planning Authority also agree that setting out decision notices in this manner means that conditions will be displayed in a logical order, clearly identifying what steps should be carried out at what point. It does further encourage local planning authorities to think about the implementation period of the condition being applied by considering its appropriateness and makes the steps required by developers far clearer.

3. Risks:

| Risk | Impact of Risk if it occurs* (H/M/L) | Probability of risk occurring (H/M/L) | What is the Council doing or what has it done to avoid the risk or reduce its effect | Who is responsible for dealing with the risk? |
|---|--------------------------------------|---------------------------------------|--|---|
| The new guidance is contradictory or unclear, making decisions uncertain or unsound | H | L | Responding to the Welsh Government's consultation to help shape the final outcome. | Development Services Manager |

4. Links to Council Policies and Priorities

- 4.1. The Council's Corporate Plan 2012-2017 identifies five corporate aims: being a Caring City; a Fairer City; A Learning and Working City; A Greener and Healthier City; and a Safer City. Key priority outcomes include ensuring people live in sustainable communities; enabling people to lead independent lives; ensuring decisions are fair; improving the life-chances of children and young people; creating a strong and confident local economy; improving the attractiveness of the City; promoting environmental sustainability; ensuring people live in safe and inclusive communities; and making Newport a vibrant and welcoming place to visit and enjoy.
- 4.2 The Corporate Plan links to other strategies and plans, the main ones being:
- Single Integrated Plan;
 - Children and Young People's Plan;
 - Health, Social Care and Wellbeing Plan;
 - Unitary Development Plan 1996-2011 (Adopted May 2006);
 - Community Safety Plan.
- 4.3 The Newport Single Integrated Plan (SIP) is the defining statement of strategic planning intent for the next 3 years. It identifies key priorities for improving the City. Its vision is: *"Working together to create a proud and prosperous City with opportunities for all"*
- 4.4 The Single Integrated Plan has six priority themes, which are:
- Skills and Work
 - Economic Opportunity
 - Health and Wellbeing
 - Safe and Cohesive Communities
 - City Centre
 - Alcohol and Substance Misuse
- 4.5 Granting planning permission for good quality development in the right locations is essential to the economic growth and regeneration of Newport. A framework to impose and enforce robust and valid conditions on any planning permission is vital to provide certainty and clarity to developers and protect the interests of the wider community/environment.

5. Options available

- 5.1 To agree the attached suggested responses to the set questions to allow the Authority to inform Welsh Government's preparation of a revised Circular.
- 5.2 Not to approve the above or agree different replies.

6. Preferred Options and Why

- 6.1 Option 5.1 – To approve the attached responses to allow the Authority to inform the consultation process on the updated Circular.

7. Comments of Head of Law and Standards – Monitoring Officer

7.1

8. Comments of Head of Finance and Scrutiny – Chief Finance Officer

8.1

9. Staff Implications-: Comments of Head of People and Transformation

9.1

10. Background Papers

- 10.1. The Welsh Government Consultation web link.

| The Use of Planning Conditions for Development Management | | |
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| Date of consultation period: 29/01/2014 – 25/04/2014 | | |
| Name | Gillian Bullimore | |
| Organisation | Severn Trent Water Limited (STWL) | |
| Address | Severn Trent Water Severn Trent Centre PO Box 5309 Coventry CV3 9FH | |
| E-mail address | gillian.Bullimore@severntrent.co.uk | |
| Type (please select one from the following) | Businesses/Planning Consultants | <input type="checkbox"/> |
| | Local Planning Authority | <input type="checkbox"/> |
| | Government Agency/Other Public Sector | <input type="checkbox"/> |
| | Professional Bodies/Interest Groups | <input checked="" type="checkbox"/> |
| | Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations) | <input type="checkbox"/> |
| | Other (other groups not listed above) or individual | <input type="checkbox"/> |

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| Q1 | Do you think an updated circular on conditions is required? | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: STWL agrees that an updated circular should be produced to reflect case law and current practice. | | | | |

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| Q2 | Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular? | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

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| Q3 | Do you consider: | | | |
| | (i) that all six tests are still relevant today and should be retained? | Yes | Yes (subject to further comment) | No |
| | (ii) that there are additional tests that could be used (demonstrate with case law if possible)? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: No additional tests. | | | | |

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| 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? | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: Barratt Homes Limited v Dwr Cymru Cyfyngedig (Welsh Water) 2009. STWL considers that appropriate reference should be made to the 2009 ‘Welsh Water’ ruling in sections 3.14, 3.46 and in reference to Grampian Conditions, and in section 4.0 concerning pre application discussion. A summary of the ruling is set out below, as a consequence of this decision developers should be consulting with water companies at pre application stage to identify any capacity issues and making them aware of the likely scale of developments. In turn Local Planning authorities and water companies should be seeking to utilise the implementation of Grampian style planning conditions in order to safeguard supply. SUMMARY: Barratt Homes Limited v Dwr Cymru Cyfyngedig (Welsh Water) 2009 In respect of this key ruling, Barratt Homes proposed a development of approximately 100 homes and a new primary school at a site in Llanfoist, near Abergavenny. The site was promoted through the Unitary Development Plan and subsequently obtained planning permission. Barratt Homes exercised the right of a property owner to connect to a public sewer under Section 106 of the Water Industry Act 1991. WW objected to the chosen point of connection on the grounds of there being insufficient capacity and therefore a risk of flooding and suggested an alternative location 300m away. Barratt maintained their position with the impasse reaching the Supreme Court who decided that: •A property owner had an absolute right to connect to a public sewer under Section 106, and that right could not be denied on the basis that it might cause a nuisance; •A sewerage undertakers right to object to the ‘mode of construction’ contained | | | | |

Consultation reference: WG19178

in S106 did not extend to the point of connection;

- The 21 day time limit within which an undertaker had to respond to a S106 notice was an absolute time limit, after which the undertaker loses any right to object;

The Court considered that the real problem was not that the developer had an absolute right to connect, but that it had the right to do so whilst giving only 21 days notice.

It is however worth highlighting what the Supreme Court said

“....While this might create no problem in the case of an individual dwelling house, it is manifestly unsatisfactory in relation to a development that may, as in the present case, add 25% or more to the load on the public sewer. The public sewer may well not have surplus capacity capable of accommodating the increased load without the risk of flooding unless the undertaker has received sufficient advance notice of the increase and has been able to take the necessary measures to increase its capacity.”

And

“The Court of Appeal suggested that the practical answer to this problem lies in the fact that the building of a development requires planning permission under the Town and Country Planning Act 1990. The planning authority can make planning permission conditional upon there being in place adequate sewerage facilities to cater for the requirements of the development without ecological damage....Thus the planning authority has the power, which the sewerage undertaker lacks, of preventing a developer from overloading a sewerage system before the undertaker has taken steps to upgrade the system to cope with the additional load.”

“if conditions of planning permission are to provide the answer to the problem of the connection of private sewers to public sewers which are not adequate to bear the additional load, it would seem essential that there should be input to planning decisions from both the relevant sewerage undertaker and OFWAT...”

“...it would seem desirable that the sewerage undertaker and OFWAT should at least be consulted as part of the planning process. I would endorse the comment made by Carnwarth LJ, at para 48, that more thought may need to be given to the interaction of planning and water regulation systems under the modern law to ensure that the different interests are adequately protected.”

Lord Phillips

| 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? | Yes | Yes (subject to further comment) | No |
|----|--|--------------------------|-------------------------------------|-------------------------------------|
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Consultation reference: WG19178

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| Comments: |
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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. | Yes | Yes (subject to further comment) | No |
|----|---|--------------------------|-------------------------------------|-------------------------------------|
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Comments:

Decision notices are most commonly structured by grouping different topics together e.g transport, sewerage / drainage, contaminated land. These conditions will often relate to one another and grouping them in this way provides a benefit to the applicant as they are able to instruct the relevant project teams to deal with the relevant conditions. It is not considered at present that this method has created problems and AMEC has not encountered any in wider practice. To insist on conditions being grouped by order of type - precommencement, pre occupation etc is attempting to solve a problem which it is not considered exists. The ease of reference between conditions of the same subject matter would be lost and there is nothing to say that structuring conditions as proposed in box 2 of the proposed circular would not create confusion and a new set of problems in the condition discharge process.

STWL considers, from experience that grouping conditions by topic and then specifying the condition type is a straight forward and helpful means of setting out a decision notice.

| Q7 | Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition? | Yes | Yes (subject to further comment) | No |
|----|---|-------------------------------------|-------------------------------------|--------------------------|
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Comments:

Approved drawings and plans should be referenced in a condition as this removes any doubt and informs the compliance and enforcement process for all parties involved.

| Q8 | Do you agree with the approach taken towards the term 'unless otherwise agreed by the Local Planning Authority' discussed in paragraph 3.36 | Yes | | No |
|----|---|-----|--------------------|----|
| | | | Yes (subject to | |

Consultation reference: WG19178

| | | | | |
|---|--|--------------------------|--------------------------|--------------------------|
| | of the draft circular? If not, please suggest your preferred approach. | | further comment) | |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: No comments to make | | | | |

| | | | | |
|--|---|--------------------------|-------------------------------------|--------------------------|
| Q9 | 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 (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: With respect to the LPA providing applicants with advance notice of conditions; STWL would comment that this should not delay the decision making process. With respect to paragraph 4.2; STWL welcomes the intention in the guidance for planning officers to discuss potential conditions with the relevant statutory consultees, however it is considered that the circular could go further in this respect. Ultimately the LPA officer should agree the wording of relevant conditions with the consultee (if they are proposing a different course of action to that recommended- e.g. alternative wording, not using the condition) prior to a decision being made. | | | | |

| | | | | |
|--|--|--------------------------|-------------------------------------|--------------------------|
| Q10 | Should guidance be provided in the circular with regards to any other conditions related matter? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: Refer to additional conditions proposed in questions 11, if it is considered that additional guidance may be necessary to accompany these; STWL would be happy to provide further comments as necessary. | | | | |

| | | | | |
|------------|--|-----|-------------------------|----|
| Q11 | Does Appendix A of the draft circular contain sufficient examples of model conditions? | Yes | Yes (subject to further | No |
| | | | further | |

Consultation reference: WG19178

| | | | | |
|--|--|--------------------------|--------------------------|-------------------------------------|
| | | | comment) | |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Comments:

STWL considers that the following conditions presented below should be included in addition to those already proposed:

At present STWL and the other water companies in Wales are party to ongoing discussions with respect to becoming a statutory consultee on planning applications. As part of this, work is also underway to agree a co-ordinated approach with the other water companies in Wales on how to respond to planning application consultations. Once all the responses and feedback have been considered in relation to this consultation, STWL recommends that further discussions are held with the relevant water companies to try and agree a co-ordinated approach and standard conditions.

Suggested Conditions:

Drainage/Phasing Condition

1. Prior to commencement of the development hereby permitted, a phasing plan should be submitted to and approved in writing by the local planning authority. The phasing plan shall include details of the maximum number of dwellings to be implemented within each phase of the development. The development shall only be implemented in accordance with the approved phasing plan.

Reason: To ensure that the amount of development is delivered incrementally to ensure that the foul sewage infrastructure is able to accommodate the additional effluent discharged from the development. This condition is imposed in light of policies set out within PPW6 and INSERT LOCAL PLAN REF.

2. No development shall commence until further details of a scheme for the provision of mains foul water drainage, including any on and/or off site drainage infrastructure, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of the drainage works to be provided for each phase of the development set out in the Phasing Plan approved under Condition 1. No building shall be occupied until after the scheme for the relevant phase(s) of the development has been implemented in full.

Reason: To ensure that sufficient capacity is made available to cope with the effluent discharged from the development in order to ensure that the existing problems associated with foul sewage in the village are not exacerbated by the new development. This condition is imposed in light of policies set out within PPW6 and INSERT LOCAL PLAN REF.

Separation of Flows

Foul water and surface water discharges shall be drained separately from the site.

Reason: To protect the integrity of the public sewerage system

No Surface Water

No surface water shall be allowed to connect, either directly or indirectly, into

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the public sewerage system unless otherwise approved in writing by the Local Planning Authority in consultation with Severn Trent Water.

Reason: To prevent hydraulic overloading of the public sewerage system, to protect the health and safety of existing residents and ensure no detriment to the environment. In accordance with PPW6 and policies contained in ENTER LOCAL PLAN REF NO.

Surface Water to Surface Water Sewer

Surface water discharges shall only be permitted to discharge the public surface water sewerage system.

Reason: To prevent hydraulic overloading of the public foul/combined sewerage system, to protect the health and safety of existing residents and ensure no detriment to the environment. To ensure compliance with PPW6 and ENTER LOCAL PLAN REF NO.

Grease Trap

The developer shall provide a suitable grease trap to prevent entry into the public sewerage system of matter likely to interfere with the free flow of the sewer contents, or which would prejudicially affect the treatment and disposal of such contents.

Reason: To protect the integrity of the public sewerage system and sustain an essential and effective service to residents. In accordance with PPW6 and ENTER LOCAL PLAN REF NO.

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|--|---|--------------------------|-------------------------------------|-------------------------------------|
| 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. | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <p>Comments: STWL recommends that Condition 49 should be replaced with the following condition in mind. As a minimum this should be included in the list of model conditions. This condition provides greater detail and allows a strategy to be put forward and agreed as part of the discharge process.</p> <p>Grampian Condition The development shall not be commenced until a foul surface water drainage strategy is submitted and approved in writing by the local Planning Authority and insert water company. The drainage strategy shall include appropriate arrangements for the points of connection and capacity improvements required to serve the proposed development. The drainage strategy shall be completed in accordance with the approved details and to a timetable agreed with the local planning authority.</p> | | | | |

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Reason: To ensure that proper provision is made for sewerage of the site and that the development does not increase the risk of sewer flooding to downstream property in accordance with PPW6 and INSERT LOCAL PLAN REF.

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|------------|--|--------------------------|-------------------------------------|-------------------------------------|
| Q13 | Do you believe any of the conditions fail any of the six tests identified in the circular? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: | | | | |

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|------------|---|--------------------------|-------------------------------------|-------------------------------------|
| Q14 | Should any conditions be totally removed from Appendix A of the draft circular? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: | | | | |

General

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|------------|--|
| Q15 | 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: |
| | |

I do not want my name/or address published with my response (please tick) ☐

| The Use of Planning Conditions for Development Management | | |
|---|---|-------------------------------------|
| Date of consultation period: 29/01/2014 – 25/04/2014 | | |
| Name | Helen Hodgson | |
| Organisation | Network Rail (Property) | |
| Address | Network Rail, 5 th Floor, 5 Callaghan Square, Cardiff, CF10 5BT | |
| E-mail address | helen.hodgson@networkrail.co.uk | |
| Type (please select one from the following) | Businesses/Planning Consultants | <input type="checkbox"/> |
| | Local Planning Authority | <input type="checkbox"/> |
| | Government Agency/Other Public Sector | <input type="checkbox"/> |
| | Professional Bodies/Interest Groups | <input type="checkbox"/> |
| | Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations) | <input type="checkbox"/> |
| | Other (other groups not listed above) or individual | <input checked="" type="checkbox"/> |

| | | | | |
|---|---|-------------------------------------|-------------------------------------|--------------------------|
| Q1 | Do you think an updated circular on conditions is required? | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: A review of planning conditions is required to achieve a consistent approach by local planning authorities and the correct application of planning conditions. The number of planning conditions attached to planning permissions have increased in recent years which has, on occasions, delayed the delivery of development. | | | | |

| | | | | |
|---|---|-------------------------------------|-------------------------------------|--------------------------|
| Q2 | Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular? | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: The information within Circular 35/95 is still relevant, with the exception of | | | | |

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where case law in recent years has provided additional and clearer guidance on the application and wording of planning conditions.

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| Q3 | Do you consider: | | | |
| | (i) that all six tests are still relevant today and should be retained? | Yes | Yes (subject to further comment) | No |
| | (ii) that there are additional tests that could be used (demonstrate with case law if possible)? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: The six tests are still relevant and ensure that planning conditions are appropriately worded and enforceable. | | | | |

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|-----------|--|--------------------------|-------------------------------------|-------------------------------------|
| 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? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: | | | | |

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|--|--|--------------------------|-------------------------------------|-------------------------------------|
| 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? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: Planning conditions of particular relevance to Network Rail relate to landscaping, boundary treatments, and acoustic treatment of noise-sensitive development adjacent to rail lines and rail infrastructure. These have been adequately addressed within Chapter 5.0. | | | | |

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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. | Yes | Yes (subject to further comment) | No |
| | | | | |

Consultation reference: WG19178

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|---|--------------------------|-------------------------------------|--------------------------|
| | | comment) | |
| | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: Structuring decision notices will be beneficial to the applicant. | | | |

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|--|---|-------------------------------------|-------------------------------------|--------------------------|
| Q7 | Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition? | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: This is required particularly in cases where plans have been superseded and amended a number of times. | | | | |

| | | | | |
|---|--|--------------------------|-------------------------------------|-------------------------------------|
| Q8 | 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? If not, please suggest your preferred approach. | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: Whilst the term may be ambiguous it is also recognised that it does afford a degree of flexibility for the applicant should circumstances change during the course of implementing a planning permission. The term enables a minor alteration to be agreed with a local planning authority without the need to submit a formal amendment to the planning permission which often results in further delays to a project. | | | | |

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|--|---|-------------------------------------|-------------------------------------|--------------------------|
| Q9 | 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 (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: Furthermore, applicants should be advised of any conditions suggested by statutory consultees, such as Network Rail, at an early stage. Applicants should be encouraged to enter into discussion with Network Rail early on in the | | | | |

Consultation reference: WG19178

consideration of the planning application to ensure that any planning conditions which are required to protect rail infrastructure and railway operations are clearly identified to the applicant.

| | | | | |
|------------|--|--------------------------|-------------------------------------|-------------------------------------|
| Q10 | Should guidance be provided in the circular with regards to any other conditions related matter? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Comments:

There are no other conditions related matters recommended for inclusion in respect of protecting Network Rail infrastructure and rail operations.

| | | | | |
|------------|--|-------------------------------------|-------------------------------------|--------------------------|
| Q11 | Does Appendix A of the draft circular contain sufficient examples of model conditions? | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Comments:

The examples of model conditions are considered appropriate with regard to protecting Network Rail infrastructure and rail operations.

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|------------|---|--------------------------|-------------------------------------|-------------------------------------|
| 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. | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Comments:

Subject to there being flexibility in terms of amending the wording of the model conditions to respond to the individual circumstances of a development there are no suggestions for alternative wording.

| | | | | |
|------------|--|-----|-------------|----|
| Q13 | Do you believe any of the conditions fail any of the six tests identified in the circular? | Yes | Yes | No |
| | | | (subject to | |

Consultation reference: WG19178

| | | | | |
|-----------|--|--------------------------|--------------------------|-------------------------------------|
| | | | further comment) | |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: | | | | |

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|------------|---|--------------------------|----------------------------------|-------------------------------------|
| Q14 | Should any conditions be totally removed from Appendix A of the draft circular? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: | | | | |

General

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|---|--|
| Q15 | 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: |
| <p>Network Rail owns and operates Great Britain's railway network and has statutory and regulatory obligations in respect of it. Network Rail is a statutory undertaker in respect of its railway undertaking and has a statutory obligation to protect the rail infrastructure and procure the availability of safe train paths. As such we are required to take an active interest in any interest in our land or rights, and any activities on, under or near our property which may impact the network and / or which potentially could affect the safe operation of the railway.</p> <p>Therefore, Network Rail is keen to engage in a positive and constructive dialogue with applicants at an early stage to ensure that planning conditions protect Network Rail's land ownership interests and the railway network and that those conditions are appropriately worded.</p> | |

Consultation reference: WG19178

I do not want my name/or address published with my response (please tick) ☐

| The Use of Planning Conditions for Development Management | | |
|---|---|-------------------------------------|
| Date of consultation period: 29/01/2014 – 25/04/2014 | | |
| Name | cliff patten | |
| Organisation | cliff patten planning services | |
| Address | 36, southroad, porthcawl, bridgend, cf36 3dg | |
| E-mail address | c.patten@sky.com | |
| Type (please select one from the following) | Businesses/Planning Consultants | <input checked="" type="checkbox"/> |
| | Local Planning Authority | <input type="checkbox"/> |
| | Government Agency/Other Public Sector | <input type="checkbox"/> |
| | Professional Bodies/Interest Groups | <input type="checkbox"/> |
| | Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations) | <input type="checkbox"/> |
| | Other (other groups not listed above) or individual | <input type="checkbox"/> |

| Q1 | Do you think an updated circular on conditions is required? | Yes | Yes (subject to further comment) | No |
|-----------|---|-------------------------------------|-------------------------------------|--------------------------|
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

| Q2 | Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular? | Yes | Yes (subject to further comment) | No |
|-----------|---|-------------------------------------|-------------------------------------|--------------------------|
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

Consultation reference: WG19178

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|-----------|--|-------------------------------------|-------------------------------------|--------------------------|
| Q3 | Do you consider: | | | |
| | (i) that all six tests are still relevant today and should be retained? | Yes | Yes (subject to further comment) | No |
| | (ii) that there are additional tests that could be used (demonstrate with case law if possible)? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|-----------|--|--------------------------|-------------------------------------|-------------------------------------|
| 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? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|-----------|--|--------------------------|-------------------------------------|-------------------------------------|
| 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? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: | | | | |

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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. | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|-----------|---|-------------------------------------|-------------------------------------|--------------------------|
| Q7 | Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition? | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|---|--|--------------------------|-------------------------------------|-------------------------------------|
| Q8 | 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? If not, please suggest your preferred approach. | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: Major developments can be approved many years before construction commences. In the case of power stations for example, the details are designed with the best information at that time. By the time that funding has been arranged and developers chosen, technology and regulations have moved on which often requires amendment to the design, location and siting of the buildings. These can include making a building smaller or larger. Where these are minor or do not materially affect the nature of the development, it is imperative that there is a mechanism to agree these changes with the LPA, without the need for a new full application. This can be done by having such a condition as above. Any submission would still be registered and advertised and, if required, an addendum to the EIA submitted. Consultees and the public would still be able to comment. Otherwise, a new application would incur a major fee, could require a new EIA, take much longer to determine and would have to re-visit all issues. This is likely to deter major investors. This issue of changes to approvals is regarded as probably the most frustrating examples of "red tape". Providing it is transparent and the LPA have control over the changes and they do not go to the heart of the permission then an easier route should be provided | | | | |

| | | | | |
|-----------|---|-------------------------------------|-------------------------------------|--------------------------|
| Q9 | 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 (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|------------|--|-------------------------------------|-------------------------------------|--------------------------|
| Q10 | Should guidance be provided in the circular with regards to any other conditions related matter? | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|------------|--|-------------------------------------|-------------------------------------|--------------------------|
| Q11 | Does Appendix A of the draft circular contain sufficient examples of model conditions? | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|------------|---|--------------------------|-------------------------------------|-------------------------------------|
| 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. | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|------------|--|--------------------------|-------------------------------------|-------------------------------------|
| Q13 | Do you believe any of the conditions fail any of the six tests identified in the circular? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: | | | | |

Consultation reference: WG19178

| | | | | |
|------------|---|--------------------------|-------------------------------------|-------------------------------------|
| Q14 | Should any conditions be totally removed from Appendix A of the draft circular? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: | | | | |

General

| | |
|------------|--|
| Q15 | 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: |
| | |

| |
|--|
| I do not want my name/or address published with my response (please tick) <input type="checkbox"/> |
|--|

| The Use of Planning Conditions for Development Management | | |
|---|---|-------------------------------------|
| Date of consultation period: 29/01/2014 – 25/04/2014 | | |
| Name | Richard Duggan | |
| Organisation | Ceredigion County Council | |
| Address | Neuadd Cyngor Ceredigion Penmorfa Aberaeron SA46 0PA | |
| E-mail address | planning@ceredigion.gov.uk | |
| Type (please select one from the following) | Businesses/Planning Consultants | <input type="checkbox"/> |
| | Local Planning Authority | <input checked="" type="checkbox"/> |
| | Government Agency/Other Public Sector | <input type="checkbox"/> |
| | Professional Bodies/Interest Groups | <input type="checkbox"/> |
| | Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations) | <input type="checkbox"/> |
| | Other (other groups not listed above) or individual | <input type="checkbox"/> |

| Q1 | Do you think an updated circular on conditions is required? | Yes | Yes (subject to further comment) | No |
|--|---|--------------------------|-------------------------------------|--------------------------|
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: The publication of this Circular was required to take account of recent legislation, processes and case law. | | | | |

| Q2 | Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular? | Yes | Yes (subject to further comment) | No |
|----------------------------------|---|-------------------------------------|----------------------------------|--------------------------|
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: Yes we agree | | | | |

| | | | | |
|-----------|--|--------------------------|-------------------------------------|--------------------------|
| Q3 | Do you consider: | | | |
| | (i) that all six tests are still relevant today and should be retained? | Yes | Yes (subject to further comment) | No |
| | (ii) that there are additional tests that could be used (demonstrate with case law if possible)? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Comments:
Yes the six tests are well established and still relevant. The test of reasonableness can be an area of contention and argument. This test could be further clarified with advice and guidance.

| | | | | |
|-----------|--|--------------------------|-------------------------------------|--------------------------|
| 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? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Comments:
WG needs to be satisfied that all relevant recent case law has been assessed and incorporated within the new Circular as these cases will have a bearing on future decisions made at appeal.

| | | | | |
|-----------|--|--------------------------|-------------------------------------|--------------------------|
| 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? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Comments:
There seems to be a difference in approaches between this consultation and Positive Planning. Positive Planning refers to consolidating PPW and mineral guidance but this consultation states that further guidance on mineral conditions should be found in MTANs.

Clarity is sought on paragraph 5.21 regarding renewal of planning permission provided a valid renewal application is submitted before the expiry of the time limit. There have been instances recently from LPAs where applicants have submitted applications on the day the permission expires when the application was not valid in accordance with the requirements of List 4 as set out in WG guidance for the validation of applications.

Consultation reference: WG19178

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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. | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: There are benefits to a structured decision notice but consideration is given to a further breakdown of conditions into sections for ease of use and to aid LPAs with discharging conditions. With regard to major schemes a slightly different approach could be adopted where conditions are grouped by subject but ordered by type within that category. | | | | |

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|--|---|--------------------------|-------------------------------------|--------------------------|
| Q7 | Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: Yes this will provide clarity for applicants and developers. | | | | |

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|---|--|--------------------------|-------------------------------------|--------------------------|
| Q8 | 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? If not, please suggest your preferred approach. | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: We agree in principle, however there are occasions on very minor matters where it would be unduly onerous to require the submission of a Section 73 application. The ability to allow de minimus changes without further application enables a more flexible and positive approach to be adopted. | | | | |

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|-----------|---|--------------------|----|
| Q9 | Do you agree that Local Planning Authorities should provide applicants with advance notice of conditions before an application is due to be | Yes | No |
| | | Yes (subject to | |

Consultation reference: WG19178

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|---|-------------|--------------------------|--------------------------|-------------------------------------|
| | determined? | further comment) | | |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <p>Comments:</p> <p>In principle yes. However, there is concern that this would introduce further delays in the determination of decisions. The proposals in Positive Planning to offer a pre-application service would provide the opportunity for applicants to be made aware of the types of conditions likely to be imposed and this then gives the applicant the opportunity to provide information with the application thus reducing the number of conditions.</p> | | | | |

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|--|--|--------------------------|-------------------------------------|--------------------------|
| Q10 | Should guidance be provided in the circular with regards to any other conditions related matter? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <p>Comments:</p> <p>POSW would welcome the strengthening of guidance in the circular regarding the role of statutory consultees in the drafting and in the discharge of conditions so it is clear what co-operation LPAs can expect.</p> <p>POSW would offer the observation that the circular is very much written for a LPA audience with little to say on the role of the applicant in the process. There is also a need for applicants and developers to improve the application submissions. If LPA's are required to meet targets, then the use of planning conditions is likely to increase as a legitimate means of issuing a speedy decision where the applicant has failed to provide the necessary information.</p> | | | | |

| | | | | |
|--|--|--------------------------|-------------------------------------|--------------------------|
| Q11 | Does Appendix A of the draft circular contain sufficient examples of model conditions? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <p>Comments:</p> <p>The Circular provides an opportunity to consolidate advice on conditions found in a number of guidance documents into one document. Further conditions on retrospective planning conditions and biodiversity would be helpful.</p> | | | | |

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|------------|---|--------------------------|-------------------------------------|--------------------------|
| 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. | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Comments:

In general, to provide consistency, all "pre-commencement conditions" should be worded in the same way, i.e. either "No development shall take place..." or "Prior to the commencement of development". At present the list of model conditions vary significantly and need to be more consistent. Furthermore, all conditions with a requirement to submit a scheme or details should be worded consistently i.e. "submitted to and approved in writing by the Local Planning Authority", at present there is inconsistency in the model conditions. It is also considered that clarification on the definition of "development" for the purposes of implementation should be provided as this can be open to interpretation.

Ceredigion County Council endorses the comments made by POSW in relation to the specific model conditions.

| | | | | |
|------------|--|--------------------------|-------------------------------------|--------------------------|
| Q13 | Do you believe any of the conditions fail any of the six tests identified in the circular? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Comments:

There is discussion around the issue of planning conditions replicating controls of other regulatory regimes. One such issue is drainage. There is reference to control of drainage through building control but there is inconsistency across LPAs on the materiality of drainage generally. The delayed SUDS regime will further complicate the process as a separate regulatory system will be introduced. It is unclear when drainage related conditions are then necessary to the development management process. Some clearer guidance in the circular would assist and introduce a consistency of approach. The control of hours of A3 uses is another area where there is a separate licensing regime and one could question whether this issue is duplicated through the planning process.

| | | | | |
|------------|---|--------------------------|-------------------------------------|--------------------------|
| Q14 | Should any conditions be totally removed from Appendix A of the draft circular? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Consultation reference: WG19178

Comments:

General

Q15

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:

I do not want my name/or address published with my response (please tick) ☐

| The Use of Planning Conditions for Development Management | | |
|---|---|-------------------------------------|
| Date of consultation period: 29/01/2014 – 25/04/2014 | | |
| Name | | |
| Organisation | Sainsburys Supermarkets Ltd | |
| Address | c/o Peter Waldren WYG 5 th floor, Longcross Court, 47 Newport Road, Cardiff, CF24 0AD | |
| E-mail address | peter.waldren@wyg.com | |
| Type (please select one from the following) | Businesses/Planning Consultants | <input checked="" type="checkbox"/> |
| | Local Planning Authority | <input type="checkbox"/> |
| | Government Agency/Other Public Sector | <input type="checkbox"/> |
| | Professional Bodies/Interest Groups | <input type="checkbox"/> |
| | Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations) | <input type="checkbox"/> |
| | Other (other groups not listed above) or individual | <input type="checkbox"/> |

| Q1 | Do you think an updated circular on conditions is required? | Yes | Yes (subject to further comment) | No |
|-----------|---|-------------------------------------|----------------------------------|--------------------------|
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

| Q2 | Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular? | Yes | Yes (subject to further comment) | No |
|-----------|---|-------------------------------------|----------------------------------|--------------------------|
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

Consultation reference: WG19178

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|---|--|--------------------------|-------------------------------------|--------------------------|
| Q3 | Do you consider: | | | |
| | (i) that all six tests are still relevant today and should be retained? | Yes | Yes (subject to further comment) | No |
| | (ii) that there are additional tests that could be used (demonstrate with case law if possible)? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: All six tests are still relevant today. | | | | |

| | | | | |
|-----------|--|--------------------------|----------------------------------|--------------------------|
| 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? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|-----------|--|--------------------------|----------------------------------|--------------------------|
| 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? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|-----------|---|-------------------------------------|----------------------------------|--------------------------|
| Q6 | Do you agree that decision notices should be structured in the manner proposed? If you do not, please suggest an alternative. | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|---|---|--------------------------|-------------------------------------|--------------------------|
| Q7 | Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <p>Comments:</p> <p>Only the approved plans should be so identified. Illustrative plans, while "relevant to a decision" would not normally comprise an "approved plan" and should not be listed in a condition. In this regard we note that "Box 2" refers to "plans which are relevant" while paragraph 5.30 refers to "The approved plans". Model condition 06 also refers to "the following approved plans", which we consider to be the correct approach.</p> | | | | |

| | | | | |
|---|--|--------------------------|-------------------------------------|-------------------------------------|
| Q8 | 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? If not, please suggest your preferred approach. | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <p>Comments:</p> <p>We agree with the content of paragraph 3.36, however, it is paragraph 3.37 which provides advice on "tailpieces" such as that referred to in Q8.</p> <p>We accept that such tailpieces are not appropriate where they potentially allow a change to a part of the development which was consulted upon and approved as part of the permission. However, we consider that such tailpieces can add helpful flexibility to details submitted at the condition stage without undue detriment to the rights of interested third parties. For example, a condition requiring details of a fence and for that fence to then be "erected in accordance with the approved details unless otherwise agreed by the LPA" provides helpful flexibility if the detailed alignment or design of the fence needs to subsequently be changed (as is sometimes the case during the construction period). A further example would be a construction hours condition - including a tailpiece would allow the possibility of some flexibility (within the control of the LPA) should the construction programme require, for example, late night working for a specific element of highway works, while providing generally more restrictive control over the main element of development. A Construction Management Plan may require unanticipated amendment during the course of the construction period which would be better dealt with via a tailpiece and informal correspondence.</p> <p>We note that a similarly helpful approach is adopted at the end of model condition 27.</p> | | | | |

Consultation reference: WG19178

| | | | | |
|-----------|---|-------------------------------------|-------------------------------------|--------------------------|
| Q9 | 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 (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|------------|--|--------------------------|-------------------------------------|--------------------------|
| Q10 | Should guidance be provided in the circular with regards to any other conditions related matter? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|------------|--|--------------------------|-------------------------------------|--------------------------|
| Q11 | Does Appendix A of the draft circular contain sufficient examples of model conditions? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|--|---|--------------------------|-------------------------------------|--------------------------|
| 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. | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: One of the aims of the Circular is to reduce unnecessary burden on development and on LPAs. This is fully supported. While we understand that the model conditions are suggestions which will need to be tailored to the specific circumstances of a development we consider that the number of pre-commencement conditions in Appendix A runs counter to that aim and is likely to be used by LPAs as a reason to attach unnecessarily onerous conditions. We | | | | |

Consultation reference: WG19178

consider that as many of the model conditions should be phrased as non-pre-commencement conditions as is possible, allowing LPAs to 'tighten them' as necessary (i.e. the default wording should be the least onerous). We set out below how certain specific conditions could be re-phrased:

11 "Prior to finalising site levels or layout or the access, a scheme indicating..."

20 "Prior to the commencement of construction of any dwelling a scheme..."

26 "Prior to the erection of any boundary treatment a scheme indicating the position..."

38 "Prior to the construction of the drainage system to serve the development details of a scheme..." (or wording along the lines of condition 39)

42 "The SuDS shall not be implemented until details of its implementation..."

66 "Prior to the occupation of the development a landscaping scheme including details of..."

68 (as per 66, above)

83 "Prior to the construction of any building hereby approved..."

102 "Prior to the construction of the car park shown on drawing no [x], details including levels..."

We note that condition 121 requires the submission of the BREEAM final certificate prior to occupation of the building. Final certificates can only be applied for once the building is complete and services have been commissioned. The post-construction assessment required to achieve this certificate requires site visits to the completed building and collation of a variety of 'as built' documentation which cannot be completed until after practical completion (a full BREEAM assessment typically involves 200 - 300 separate evidence documents which must be collated from various members of the development team). These evidence documents need to be checked by the assessor against detailed criteria and often require amendments/ updates/ additional site visits to make them compliant. Once the report is submitted to the BRE, a quality assurance process is initiated which typically takes up to six weeks, following which there may be requests for additional clarifications. If all of this is required prior to occupation (as per the current wording of condition 121) it will result in otherwise occupiable buildings standing empty for a number of months awaiting this final certificate which would both slow the creation of employment and add significantly to the cost of development. In our experience many LPAs are willing to require the final certificate within six months of first occupation and we consider that the model conditions should be re-worded to reflect the good sense of this.

Model condition 119 is phrased to relate to each non-residential building. We note that PPW only requires BREEAM for 'Major Development' and consider the model condition should reflect this. We suggest "Each new non-residential building of 1000sqm or more shall be constructed..."

We do not consider it necessary to control both the deliveries to and those dispatched from a site in condition 62. If attached to a supermarket development this would unreasonably treat home deliveries in the same way as main store deliveries. We suggest "deliveries shall not be received at the store outside the following hours..."

We note that condition 27 does not actually require any remediation, which

Consultation reference: WG19178

presumably would have to be required by a separate condition. We consider it may be helpful to indicate where more than one of the model contamination conditions are likely to be required, as has been done with the landscaping conditions 66 and 67. We also note that condition 27 contains an '*' with no apparent purpose.

We note that condition 22 does not specify a scope of the watching brief, which could lead to confusion. It may be more appropriate to have a scope submitted and approved by the LPA.

Finally, we query whether condition 08 is appropriately worded. The condition requires an access to be completed (which, presumably, would be part of the approved development) prior to the development being commenced. This appears to be self defeating.

| Q13 | Do you believe any of the conditions fail any of the six tests identified in the circular? | Yes | Yes (subject to further comment) | No |
|-----|--|--------------------------|-------------------------------------|--------------------------|
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Comments:

The tests of necessity and precision, taken together, require the appropriate 'trigger point' to be used in the conditions. See answer to Q12 in respect of the avoidance of unnecessary pre-commencement conditions and in respect of condition 121.

| Q14 | Should any conditions be totally removed from Appendix A of the draft circular? | Yes | Yes (subject to further comment) | No |
|-----|---|--------------------------|-------------------------------------|--------------------------|
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Comments:

Condition 120 (BREEAM interim certificate) adds nothing to the requirement of condition 121 (BREEAM final certificate); both ultimately require the agreed BREEAM level to be achieved. Accordingly, we consider that this condition does not meet the test of necessity.

General

Q15


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:

While we recognise the advice contained in paragraph 3.39 is for general guidance, we consider the specific use of 30% to be inappropriate lest it give the impression to LPAs that 30% is an appropriate figure. Clearly, the appropriate per centage will vary from case to case and often exceeds 30%. We consider the final sentence should refer to "...to x% of the retail floorspace...".

We query whether it is appropriate to include reference to TAN 12 at paragraph 5.35, given the current consultation on the requirement for DASs as part of the Positive Planning consultation. The second and third sentences could be deleted without detriment to the general advice provided by this section and would help to avoid the Circular quickly becoming out of date.

We note that reference is made at paragraph 5.73 to landscaping scheme requirements being pre-commencement "so long as that requirement is reasonable". As set out under Q12 we do not consider that it will often be the case that development should be delayed awaiting receipt of a landscaping scheme and consider that this first sentence should be deleted. Furthermore, the final sentence refers to restricting occupation of a building until landscaping works have been completed. This appears to take no account of the potential conflict with planting seasons (which could lead to development standing vacant for many months if the landscaped areas were only completed, for example, in November, resulting in the planting not being able to be carried out until the following Spring). We note that model condition 67 takes a more pragmatic approach to this issue and suggest that paragraph 5.73 be re-worded accordingly.

I do not want my name/or address published with my response (please tick) ☐



Owain Williams
Conditions Consultation
Development Management Branch
Planning Division, Welsh Assembly Government
Cathays Park, Cardiff CF10 3NQ

Dear Mr Williams

RE: WG19178 Consultation Document – Annex 1 Draft Circular – The use of Conditions in Development Management

Deeded Rights of Way need to be a material consideration when granting planning permission. If they are held in common, deserve the same rights and protection as public rights of way.

In the 1920's, the estate owner, Ronald Mathias went to great lengths to keep the cultural heritage of the burrows in Freshwater East. He specifically designed deeded rights of way in common, so everyone could have access to the sea shore, springs, wells and public highway, which he set out in their title deeds.

Freshwater East is within the Pembrokeshire Coast National Parks Authority (PCNPA). The PCNPA state that deeded rights of way need not be considered as there is no statutory requirement when considering planning applications. The deed holders would like this rectified within this new planning consultation. This would alleviate the current requirement to pursue civil action to retain vehicular and pedestrian access to the deeded properties.

In 2003 MP Nick Ainger said that deeded rights of way should be a 'material consideration' in the planning process, because he did not think it was right that each time planning was granted the deed holders would have to go to court to fight a civil action. I believe this was discussed by the Welsh Assembly in 2006, with no conclusion. Recent assistance from Assembly Members, Angela Burns and Rebecca Evans and MP Simon Hart has been impeded because of the legal implications. This needs to be remedied.

This is causing the deed holders a great deal of concern. It is costly and time consuming for the deed holders to keep going back to court and we would like a resolution. I would like you give this serious consideration and I look forward to hearing your response.

My comments to the relevant sections of the Consultation Document are in red on the following pages.

Yours sincerely



Freshwater East Deeded Right Holders Association

Number: WG19178

Welsh Government

Consultation Document - Annex 1

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

Draft Circular - The Use of Conditions in Development Management

Powers for conditions on land outside the application site and temporary permissions

2.3 Section 72 of the Act enables local planning authorities to impose conditions regulating the development or use of land under the control of the applicant, even if such land is outside the site which is the subject of the application. The courts have held that the question of whether land is under control of the applicant is to be determined according to the facts of a particular case, and it is not dependent on the existence of a freehold or a leasehold interest: only such control over the land is needed as is required to enable the developer to comply with the condition.

Deeded Rights of Way should be afforded the same status as public rights of way as they are held in common and have affinity with public rights of way. Deeded Rights of Way become more complicated when there are held in common.

Other constraints

2.7 Planning conditions may have serious implications for the individual, so it is important to bear in mind the human rights implications when considering their use. The critically sensitive areas include the loss of one's home; discrimination, and a serious reduction in the value of one's property. Interference with human rights requires proper justification and the implications to be outweighed by other material considerations.

The same rights should be afforded to the owners and surrounding properties.

3.0 THE SIX TESTS

3.1 The courts have laid down general criteria for the validity of planning conditions. In addition to the courts, the Welsh Government considers that conditions should be necessary, precise and enforceable, ensuring that they are effective and do not make unjustifiable demands of applicants. Conditions should only be imposed where they satisfy all of the tests described in this chapter. In summary, conditions should be:

- (i) Necessary;
- (ii) Relevant to planning;
- (iii) Relevant to the development to be permitted;
- (iv) Enforceable;
- (v) Precise; and
- (vi) Reasonable in all other respects.

Deeded Rights of Way should be relevant to planning. Where Deeded Rights of Way in common are affected these should not be considered under delegated officer powers moreover should automatically be considered by committee as a matter of course.

Control Over land

- 3.43** It would be unreasonable to expect an applicant to comply with a condition which relates to an area of land or an element not in their control at the time when planning permission is granted. If the land is included in the site in respect of which the application is made, such conditions can be imposed, but the authority should have regard to the points discussed in 3.25 and 3.27.

Proof of ownership needs to be demonstrated.

- 3.46** Although it would be ultra vires to require work to land over which the developer has no control or which requires the consent of a third party, to carry out, it may be possible to achieve a similar result by a condition worded in a negative form, prohibiting development until a specified action has been taken. Such conditions are often called ‘Grampian’ conditions.

We strongly agree and this should be enforced at all times.

Planning Obligations and Community Infrastructure Levy (CIL)

- 4.22** LPA should seek to overcome planning objections, where appropriate, or secure mitigation by condition rather than by a planning obligation. Legal agreements can take considerable time to draw up and it is important to avoid burdening applicants with unnecessary costs and delay.

What about burdening defendants?

- 4.26** Planning conditions are not an appropriate means of controlling the right of passage over public highways and can be very difficult to enforce. Where it is essential to prevent traffic from using particular routes, the correct mechanism for doing so is an Order under the Traffic Management Act 2004.

Deeded Rights of Way, with vehicular access, should be incorporated in the Traffic Management Act.

Applications Made Under Planning Condition and Monitoring of Conditions

- 4.29** If the LPA considers that the details submitted are insufficient to discharge a condition or that it has not yet been complied with, the authority should explain to the applicant in writing what remains to be done and can refuse to determine the application until they are satisfied that the condition has been complied with.

This should be enforced.

- 4.31** If a condition is attached to a decision as the result of consultation with a specialist body or statutory consultee, a local planning authority may need to consult that same body with regards to the discharge of that condition.

This should be transparent.

- 4.32.1** Conditions which will remain in force after the development has been carried out need particular care as they can place onerous and permanent restrictions on what can be done with the premises affected.

Deeded Rights of Way with vehicular access need to be conditioned until a resolution can be agreed.

The List of Model Conditions

- 5.4** Model conditions need to be treated with caution. Such lists can be made available locally so that developers can take account of possible conditions at an early stage in the drawing up of their proposals, but should contain a

warning that they are not comprehensive and that conditions will be devised or adapted where appropriate to suit the particular circumstances of a case.

Deeded Rights of Way with vehicular access need to be conditioned until a resolution can be agreed.

5.5 Amongst the conditions in the list at Appendix A there are some which will be used regularly, such as those in relation to materials, whilst others will be rarely used, for example, conditions in relation to aerodromes and conditions relating to personal permissions (condition 50). However, the less common conditions included in Appendix A provide a useful resource for officers drafting conditions for more rare development scenarios.

This should include Deeded Rights of Way.

Outline permissions

5.7 An applicant who proposes to carry out building operations may choose to apply for either full planning permission, or for outline permission with one or more of the following matters reserved by condition for the subsequent approval of the local planning authority:

- i) access;
- ii) appearance;
- iii) landscaping;
- iv) layout, and
- v) scale

This needs to be enforced.

Conditions relating to outline permissions

5.9 Once outline planning permission has been granted, it cannot be withdrawn except by a revocation order under section 97 of the Act, and any subsequent approval of reserved matters does not constitute the granting of a further planning permission. Any conditions relating to anything other than the reserved matters should be imposed when outline permission is granted. For example, it may be considered necessary to require a building to be constructed within a specified 'footprint' or to retain important landscape features which would affect the setting of the building and its neighbours.

Deeded Rights of Way are part of the cultural heritage of the area in which they relate.

Access (Conditions 07 to 11)

5.32.1 Conditions attached to planning applications for outline planning permission can control the location of an access serving a development, the details of which will subsequently be required for consideration as part of the reserved matters application for consideration. Without such a condition it may not be possible to secure its location at the reserved matters stage.

Deeded Rights of Way that are held in common would be a reserved matter.

Boundary Treatment (Condition 26)

5.50 Details of boundary treatment for a development can often be reserved for subsequent approval if they are not detailed in the application or unless they affect whether permission should be granted, in which case they should be considered as part of the planning application.

Where there are known disputes, planning should be refused until such disputes are remedied.

Design (Conditions 26, 61, 82)

5.58 Local planning authorities may wish to use conditions to ensure that important vistas are safeguarded by keeping them clear of obstruction or that landscape features are provided to improve the overall setting of a development.

Consultation and transparency should be part of this process.

Grampian Conditions

5.64 By their nature, Grampian conditions are drafted negatively and require that the development permitted should not be commenced, or occupied, until a specified obstacle to that development has been overcome on land that is not in control of the applicant. As with other conditions, Grampian conditions must be constructed having regard to the particular circumstances that exist and which affect or are affected by the development. Grampian Conditions are discussed in more detail above in paragraphs 3.25, 3.26, 3.42 -3.46 and Box 1.

Deeded Rights of Way are a Grampian Condition.

Nature Conservation (Conditions 125 and 133)

5.79 Nature conservation can be a significant material consideration in determining many planning applications. But local planning authorities should not refuse permission if development can be permitted subject to conditions that will prevent damaging impacts on wildlife habitats or important physical features.

Deeded Rights of Way are an important physical feature and are part of our Cultural Heritage.

| The Use of Planning Conditions for Development Management | | |
|---|---|-------------------------------------|
| Date of consultation period: 29/01/2014 – 25/04/2014 | | |
| Name | Philip Holmes | |
| Organisation | City and County of Swansea | |
| Address | Economic Regenartion and Planning Civic Centre Oystermouth Road, Swansea. SA1 4PH | |
| E-mail address | ryan.thomas@swansea.gov.uk | |
| Type (please select one from the following) | Businesses/Planning Consultants | <input type="checkbox"/> |
| | Local Planning Authority | <input checked="" type="checkbox"/> |
| | Government Agency/Other Public Sector | <input type="checkbox"/> |
| | Professional Bodies/Interest Groups | <input type="checkbox"/> |
| | Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations) | <input type="checkbox"/> |
| | Other (other groups not listed above) or individual | <input type="checkbox"/> |

| Q1 | Do you think an updated circular on conditions is required? | Yes | Yes (subject to further comment) | No |
|--|---|--------------------------|-------------------------------------|--------------------------|
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: Yes, the last circular was published in 1995 and changes in legislation and new case law mean a new circular is required. | | | | |

| Q2 | Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular? | Yes | Yes (subject to further comment) | No |
|---|---|--------------------------|-------------------------------------|--------------------------|
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: The fundamentals of circular 35/95 still apply and should be carried forward where appropriate | | | | |

| | | | | |
|--|--|--------------------------|-------------------------------------|--------------------------|
| Q3 | Do you consider: | | | |
| | (i) that all six tests are still relevant today and should be retained? | Yes | Yes (subject to further comment) | No |
| | (ii) that there are additional tests that could be used (demonstrate with case law if possible)? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: (ii) the six tests are considered sufficient and cover necessary issues. | | | | |

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|-----------|--|--------------------------|-------------------------------------|-------------------------------------|
| 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? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|---|--|--------------------------|-------------------------------------|--------------------------|
| 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? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: Under the section on parking, where there is great pressure on on street parking and residents only parking zone exists, this Council has used conditions restricting the ability of occupiers of new developemntes from applying for a resident parking permit. This approach has been supported on appeal. An example of a condition used (also used in an appeal decision) is as follows: Before any of the apartments/flats/dwellings hereby approved are occupied, arrangements shall be agreed in writing with the local planning authority and shall be put in place to ensure that, with the exception of registered disabled persons, no occupant of any of the proposed apartments shall at any time obtain a resident's parking permit within any controlled parking zone which may be in force. | | | | |

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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. | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <p>Comments:</p> <p>A strcutured decision notice would benefit all parties, being clearer and easier to understand.</p> | | | | |

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|--|---|--------------------------|-------------------------------------|--------------------------|
| Q7 | Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <p>Comments:</p> <p>This Authority currently identfies plans via an informative. A condition would have legal standing.</p> | | | | |

| | | | | |
|---|--|--------------------------|-------------------------------------|--------------------------|
| Q8 | 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? If not, please suggest your preferred approach. | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <p>Comments:</p> <p>The use of the term 'unless otherwise agreed by the Local Planning Authority' is not appropriate where it would significantly change the nature of the scheme. However, it use where, for example, it would allow an alteration in the timesacle for submission of details, perhaps due to unforeseen circumstances, is considered reasonable.</p> | | | | |

Consultation reference: WG19178

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|--|---|--------------------------|-------------------------------------|--------------------------|
| Q9 | 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 (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <p>Comments:</p> <p>This should only apply to major developments due to the number and complexity of the conditions involved. A requirement for minor.householder schemes would only delay the process.</p> | | | | |

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|---|--|--------------------------|-------------------------------------|-------------------------------------|
| Q10 | Should guidance be provided in the circular with regards to any other conditions related matter? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <p>Comments:</p> <p>It is considered all issues have been addressed.</p> | | | | |

| | | | | |
|------------------|--|-------------------------------------|-------------------------------------|--------------------------|
| Q11 | Does Appendix A of the draft circular contain sufficient examples of model conditions? | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <p>Comments:</p> | | | | |

| | | | | |
|------------------|---|--------------------------|-------------------------------------|-------------------------------------|
| 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. | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <p>Comments:</p> | | | | |

| | | | | |
|------------|--|--------------------------|-------------------------------------|-------------------------------------|
| Q13 | Do you believe any of the conditions fail any of the six tests identified in the circular? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|---|---|--------------------------|-------------------------------------|-------------------------------------|
| Q14 | Should any conditions be totally removed from Appendix A of the draft circular? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: The examples cover all areas and it is open to local planning authorities to use alternative conditions if necessary. | | | | |

General

| | |
|---|--|
| Q15 | 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: |
| <p>The comments in para. 3.33 regarding the submission of as many details as possible prior to determination is generally welcomed. However, experience indicates developers are reluctant to go down this route and are unlikely to submit details where they can be requested by condition. In this regard, there will be little change to the current situation unless there is a clear requirement for such details to be submitted.</p> | |

| |
|--|
| I do not want my name/or address published with my response (please tick) <input type="checkbox"/> |
|--|

| The Use of Planning Conditions for Development Management | | |
|---|---|-------------------------------------|
| Date of consultation period: 29/01/2014 – 25/04/2014 | | |
| Name | Paul Mead | |
| Organisation | Denbighshire County Council | |
| Address | Caledfryn, Smithfield Road, Denbigh, Denbighshire, LL16 3RJ | |
| E-mail address | paul.mead@denbighshire.gov.uk | |
| Type (please select one from the following) | Businesses/Planning Consultants | <input type="checkbox"/> |
| | Local Planning Authority | <input checked="" type="checkbox"/> |
| | Government Agency/Other Public Sector | <input type="checkbox"/> |
| | Professional Bodies/Interest Groups | <input type="checkbox"/> |
| | Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations) | <input type="checkbox"/> |
| | Other (other groups not listed above) or individual | <input type="checkbox"/> |

| Q1 | Do you think an updated circular on conditions is required? | Yes | Yes (subject to further comment) | No |
|-----------|---|-------------------------------------|----------------------------------|--------------------------|
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

| Q2 | Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular? | Yes | Yes (subject to further comment) | No |
|-----------|---|-------------------------------------|----------------------------------|--------------------------|
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

Consultation reference: WG19178

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|-----------|--|-------------------------------------|-------------------------------------|--------------------------|
| Q3 | Do you consider: | | | |
| | (i) that all six tests are still relevant today and should be retained? | Yes | Yes (subject to further comment) | No |
| | (ii) that there are additional tests that could be used (demonstrate with case law if possible)? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|---|--|--------------------------|-------------------------------------|-------------------------------------|
| 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? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: We are not aware of any relevant case law | | | | |

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|---|--|-------------------------------------|-------------------------------------|--------------------------|
| 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? | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: New topic - CARAVANS: Could further requirements be placed on site owners and caravan owners to keep basic registers of lengths of stay; home address e.g In relation to the use of caravans: (i) None shall be used other than for holiday purposes only. (ii) None shall be occupied at any time as a person's sole or main place of residence. (iii) The site licence holder shall maintain an up to date register of the names and addresses of the occupiers of the touring caravans and the dates each caravan arrives on the site and leaves the site. The register shall be made available on request for inspection by officers of the local planning authority. Responsibility for the maintenance of the register shall be that of the caravan site licence holder or his/her nominated person. Expanded on - AFFORDABLE HOUSING: Could consideration be given to possible conditions for use on outline planning applications where the applicant is not likely to be the developer or aware of the number of dwellings at this stage eg No development shall be permitted to take place until the written approval of | | | | |

Consultation reference: WG19178

the Local Planning Authority has been obtained to the detailed mechanism for the provision of affordable housing as part of the development, in accordance with the Council's Policies and Supplementary Planning Guidance, has been submitted to and approved in writing by the Local Planning Authority.

New topic - OPEN SPACE. Could consideration be given to how LPA's should deal with requirements for open space within developments. eg Outline applications where the applicant is not likely to be the developer or aware of the number of units/amount of open space required eg

No development shall be permitted to take place until the written approval of the Local Planning Authority has been obtained to the detailed arrangements for the provision for amenity and open space within the site in accordance with the Council's policies and guidance.

| | | | | |
|--|---|-------------------------------------|-------------------------------------|--------------------------|
| Q6 | Do you agree that decision notices should be structured in the manner proposed? If you do not, please suggest an alternative. | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: Is there still an obligation for LPA's to list the relevant planning policies and guidance on the certificate? If so, should this be included in Box 2 | | | | |

| | | | | |
|---|---|--------------------------|-------------------------------------|--------------------------|
| Q7 | Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: Yes provided the Section 73 amendment procedure is introduced concurrently. | | | | |

| | | | | |
|-----------|--|-------------------------------------|-------------------------------------|--------------------------|
| Q8 | 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? If not, please suggest your preferred approach. | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Consultation reference: WG19178

Comments:

| Q9 | 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 (subject to further comment) | No |
|----|---|--------------------------|-------------------------------------|--------------------------|
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Comments:

It is not clear at what stage in the process this is envisaged. We understand the benefits that may be achieved however the obligation does pose potential procedural conflicts and threatens to add delay to the process. Often Officers can not draft conditions until late in the application process ie following consultation or referral to Planning Committee, discussing conditions with applicants may appear presumptuous on contentious applications prior to consideration by the Planning Committee.

| Q10 | Should guidance be provided in the circular with regards to any other conditions related matter? | Yes | Yes (subject to further comment) | No |
|-----|--|-------------------------------------|-------------------------------------|--------------------------|
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Comments:

| Q11 | Does Appendix A of the draft circular contain sufficient examples of model conditions? | Yes | Yes (subject to further comment) | No |
|-----|--|--------------------------|-------------------------------------|-------------------------------------|
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Comments:

Please refer back to response to Question 5.

Consultation reference: WG19178

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|------------|---|--------------------------|-------------------------------------|-------------------------------------|
| 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. | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|------------|--|--------------------------|-------------------------------------|-------------------------------------|
| Q13 | Do you believe any of the conditions fail any of the six tests identified in the circular? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|------------|---|--------------------------|-------------------------------------|-------------------------------------|
| Q14 | Should any conditions be totally removed from Appendix A of the draft circular? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: | | | | |

General

| | |
|------------|--|
| Q15 | 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: |
| | |

Consultation reference: WG19178

I do not want my name/or address published with my response (please tick) ☐



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

For the attention of Owain Williams

23 April 2014

Dear Sirs

The Use of Planning Conditions for Development Management

I enclose a completed comments form which provides Arqiva's response to the specific questions set out in the above consultation.

As you may know, Arqiva owns and operates the UK terrestrial television broadcast network as well as a substantial part of the radio broadcast network; we are the largest independent shared electronic communications site provider with management rights over a large number of properties, such as BT telephone exchanges and the T-Mobile tower portfolio; and we provide a range of end-to-end electronic communications network services, a major example being the work being undertaken for the Department for Culture, Media and Sport through the Mobile Infrastructure Project (MIP).

By volume of applications we are a significant user of the planning system in Wales. We are therefore familiar with the issues associated with the use of planning conditions in planning permissions.

You will see from our response that we are supportive of the Welsh Government's intention to refresh its guidance on the use of planning conditions through the revised Circular. We agree that this would assist in improving clarity and consistency in the use of planning conditions across Wales.

We have suggested that the Circular could usefully include an additional section highlighting the special technical and operational constraints affecting broadcast and other forms of electronic communications networks, and in particular include a model Grampian style planning condition to deal with the mitigation measures that are sometimes required as a result of new development proposals affecting these networks.

In our experience developers are not always aware of the interference to communications networks that can be caused by certain developments, for example tall buildings and wind

turbines, despite guidance on this issue being provided by Ofcom¹ and hence it is not always addressed at the pre-application consultation stage. This is understandable as the radio signals that might be adversely affected are not visible and sometimes stem from sites many kilometres from the development proposed. Furthermore, this specialist area is not always well-understood by local planning authorities who may not employ officers with the relevant knowledge or experience of dealing with these matters.

The inclusion of specific guidance on electronic communications networks would be beneficial and consistent with the advice in paragraph 5.5 of the draft Circular which highlights the value of model planning conditions for planning officers dealing with more rare or complex development scenarios. It would also be consistent with the advice at paragraph 12.13.11 of Planning Policy Wales, and paragraphs 89-91 and Annex 1 of Technical Advice Note 19: Telecommunications (TAN19), which recognises that planning conditions can be used to resolve problems associated with radio interference. We therefore set out overleaf a draft condition and justification for your consideration.

When considering this, we would highlight that the guidance in Annex 1 of TAN19 deals primarily with radio interference from a telecommunications mast or broadcast transmitter rather than the issue we wish to address which is concerned with the interference caused to existing broadcast and electronic communications networks by new development.

We are also conscious that the guidance in TAN19 was prepared in 2002 when mobile communications networks were not as mature as they are now, and therefore the occasions of interference by other developments such as tall buildings was not as frequent. Similarly, the growth in the development of onshore windfarms and individual wind turbines, which can affect communications networks, is a relatively recent trend. Additional advice in the Circular would therefore compliment national planning policy guidance.

If you accept that an additional section on electronic communications networks is beneficial, then the advice in the Circular could usefully cover three other matters related to their development. First, clarification that planning conditions cannot be attached to prior approval determination decisions made under Part 24 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995, as amended. This is often an area of conflict with operators and planning officers contesting the validity of imposing conditions for determinations made on siting and appearance grounds only where planning permission has already been granted by the Order.

Second, reinforcing the advice that local planning authorities should not impose time-limited or temporary planning permissions on electronic communications development that is intended to provide a permanent service. On this point we refer to the helpful assistance the Welsh Government recently provided in our discussions with a local authority that has adopted in its local development plan a policy requirement for 10 year temporary planning permissions for new telecommunications base stations. Without a commitment to relax this policy it would not be possible to deliver any MIP sites in that area as the DCMS will not

¹ Ofcom 'Tall Structures and their impact on broadcast and other wireless services', 26 August 2009

approve sites that cannot be maintained with certainty over the 20 year contract period. The policy therefore had the potential to frustrate entirely the investment that will be delivered by the MIP in that area and with it the many recognised benefits of providing mobile coverage to local communities and businesses.

However, the Authority's agreement to set aside its 10 year planning permission policy is specific to MIP applications only and it remains in place for other electronic communications development. This is potentially a major disincentive for developers and does not sit at all comfortably with the positive role that planning conditions can play in securing development proposals and the investment they bring.

Third, it should not be necessary to impose conditions that withdraw the permitted development rights granted by Part 24 of Schedule 2 to the GPDO when granting planning permission for new towers and masts, other than in exceptional circumstances. Such an imposition would be a major disincentive to share existing masts, as it would impose the same planning category as a whole new mast. By way of reference, this would be comparable to the position in designated areas such as National Parks and Areas of Outstanding Beauty where planning permission is required for the installation of minor apparatus such as antennas. Our records show that since 1997 we have submitted over 150 full planning applications in such areas and none were refused, highlighting that this is not an area that requires planning control even in designated landscapes. Again, we have suggested some text below to cover these matters.

Text on Broadcast and Other Electronic Communications Networks for Section 5

5.52 Technical Advice Note 19: Telecommunications provides advice on the potential for new development to cause physical and other interference with existing electronic communications sites and networks. Additional guidance is also provided in Ofcom's guidance note on 'Tall Structures and their impact on broadcast and other wireless services'. The impact of new development on existing communications sites and networks is a material planning consideration and these documents highlight the potential to use planning conditions to resolve problems if required.

5.53 This is particularly relevant where development proposals affect existing television and radio Re-Broadcast links, and the transmission links operated by the Mobile Network Operators and other organisations, which rely upon transmission dishes to receive and transmit electronic communications data. These dishes operate on a fixed 'line of sight' basis with other dishes elsewhere in operator's network, often over considerable distances. These dishes are installed at set orientations and at specific heights above ground level, typically on masts and buildings, deliberately chosen to meet the technical requirements of the transmission links. A major technical requirement is therefore to ensure they are sufficiently high

so as not to be affected by tall buildings, trees or other natural features that would otherwise cause interference or sever the communications service.

5.54 The development of tall buildings or tall structures such as wind turbines can therefore cause interference with, or block signals from, these established communications networks. In the majority of cases these issues can be identified and resolved through pre-application consultation discussions between the developer and the operator. In other cases, these issues may not be known until planning application stage when it may be necessary to amend some aspect of the design and layout of the development or, failing that, secure a scheme of mitigation at the operator's site in order to make the proposed development acceptable. The latter could involve, for example, the repositioning of a transmission dish to a different position on the mast or building to overcome the problem. In some cases a new relay site may have to be installed.

5.55 When a scheme of mitigation is required, officers should consider whether a suitably worded Grampian condition could be used to prevent the development from commencing until the mitigation work has been implemented. As this will involve works on land outside of the applicant's control, officers should first be satisfied that there is a reasonable prospect of the mitigation works being implemented within the time-limit imposed by the permission. This can only be established on a case-by-case basis, drawing upon advice from the operator and applicant, and discretion exercised in reaching a decision. Officers should ask themselves whether planning permission would have to be refused if the condition was not attached. A model planning condition is included in Appendix A.

5.56 Certain electronic communications apparatus benefits from the permitted development rights granted by Part 24 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (the GPDO), as amended, albeit some subject to the operator submitting a prior approval determination application to the local planning authority. These applications are neither a notification nor an application for planning permission, but are concerned solely with the authority's determination of the acceptability or otherwise of the siting and appearance of the development. As planning permission has already been granted by the Order, it is not lawful to attach planning conditions to a prior approval determination. If the application does not provide sufficient detail on matters that could be covered by a planning condition, for example the authority's approval of the external finishes of a mast or equipment cabinet, then officers should seek to agree these during the course of the determination of the application.

5.57 It should not be necessary to impose time-limited or temporary planning permissions on electronic communications development that is intended to be permanent, unless specifically requested by the operator. Such an approach places unnecessary burdens on applicants – a typical mobile base station will cost more than a house to build and a planning authority would never consider it appropriate to

impose a temporary condition on such development given the scale of investment. In areas where the economics are already in the balance, the threat of such conditions would be a major disincentive and so maintain the digital divide that already places large parts of Wales at a disadvantage.

5.58 Similarly, it should not be necessary to impose planning conditions withdrawing the permitted development rights granted by Part 24 of the GPDO when granting planning permission for electronic communications development other than in exceptional circumstances. Apart from introducing unnecessary regulatory hurdles this would also run counter to the Welsh Government's objectives of securing the shared use of masts and telecommunications sites by placing the installation of relatively minor apparatus such as an additional antenna system into the same category as the development of a new mast.

Grampian Condition (Electronic Communications Networks)

No development shall commence [on the site] until the mitigation works at [specify location] have been implemented in accordance with [document reference].

I hope this is a helpful contribution, but if you require any further information or clarification, please do not hesitate to contact me on [REDACTED]

Yours faithfully

Saleem Shamash BSc (Hons) FRICS MRTPI
Town Planning Manager – National
Arqiva Ltd

[REDACTED]

| The Use of Planning Conditions for Development Management | | |
|---|---|-------------------------------------|
| Date of consultation period: 29/01/2014 – 25/04/2014 | | |
| Name | Saleem Shamash BSc (Hons) FRICS MRTPI Town Planning Manager - National | |
| Organisation | Arqiva Ltd | |
| Address | Crawley Court, Winchester, Hampshire SO21 2QA | |
| E-mail address | saleem.shamash@arqiva.com | |
| Type (please select one from the following) | Businesses/Planning Consultants | <input checked="" type="checkbox"/> |
| | Local Planning Authority | <input type="checkbox"/> |
| | Government Agency/Other Public Sector | <input type="checkbox"/> |
| | Professional Bodies/Interest Groups | <input type="checkbox"/> |
| | Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations) | <input type="checkbox"/> |
| | Other (other groups not listed above) or individual | <input type="checkbox"/> |

| | | | | |
|-----------|---|-------------------------------------|-------------------------------------|--------------------------|
| Q1 | Do you think an updated circular on conditions is required? | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|--|---|--------------------------|-------------------------------------|--------------------------|
| Q2 | Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: Yes, but only those parts of the Circular 35/95 that remain relevant. | | | | |

Consultation reference: WG19178

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|-----------|--|-------------------------------------|-------------------------------------|--------------------------|
| Q3 | Do you consider: | | | |
| | (i) that all six tests are still relevant today and should be retained? | Yes | Yes (subject to further comment) | No |
| | (ii) that there are additional tests that could be used (demonstrate with case law if possible)? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|-----------|--|--------------------------|-------------------------------------|-------------------------------------|
| 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? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|---|--|-------------------------------------|-------------------------------------|--------------------------|
| 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? | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: Chapter 5 could usefully provide further guidance on the technical and operational factors affecting broadcast transmission and other forms of electronic communications development, as this is a specialist area not generally well-understood by planning authorities. The accompanying letter provides further details and justification. | | | | |

| | | | | |
|-----------|---|-------------------------------------|-------------------------------------|--------------------------|
| Q6 | Do you agree that decision notices should be structured in the manner proposed? If you do not, please suggest an alternative. | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|-----------|---|-------------------------------------|-------------------------------------|--------------------------|
| Q7 | Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition? | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

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|-----------|--|-------------------------------------|-------------------------------------|--------------------------|
| Q8 | 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? If not, please suggest your preferred approach. | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|---|---|--------------------------|-------------------------------------|--------------------------|
| Q9 | 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 (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: Yes, but this must offer sufficient time for a reasoned response by the applicant. The draft Circular does not provide any specific guidance on timescales, but we suggest that any conditions other than those that relate to the standard 'Time Limit' and 'Approved Plans' conditions referred to in Box 2, page 20, should be shared with the applicant at least two weeks before the decision report is finalised. | | | | |

| | | | | |
|------------|--|-----|-------------------------------------|----|
| Q10 | Should guidance be provided in the circular with regards to any other conditions related matter? | Yes | Yes (subject to further comment) | No |
|------------|--|-----|-------------------------------------|----|

Consultation reference: WG19178

| | | | | |
|---|--|-------------------------------------|--------------------------|--------------------------|
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <p>Comments:</p> <p>We have suggested an additional topic area dealing with electronic communications development in our response to Question 5. Should this be accepted, the topic could usefully cover three other matters associated with electronic communication development: 1) confirmation that planning conditions cannot be attached to prior approval determination applications submitted under Part 24 of Schedule to the GPDO; 2) it should not be necessary to impose time-limited or temporary planning conditions on electronic communications development unless requested by the operator; 3) it should not be necessary to withdraw the permitted development rights granted by Part 24 of Schedule 2 to the GPDO when granting planning permission for new masts and towers, other than in exceptional circumstances. The accompanying letter provides further details and justification.</p> | | | | |

| Q11 | Does Appendix A of the draft circular contain sufficient examples of model conditions? | Yes | Yes (subject to further comment) | No |
|--|--|--------------------------|-------------------------------------|-------------------------------------|
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <p>Comments:</p> <p>We consider that the Circular should include a model Grampian style planning condition to secure the mitigation works required when new development causes physical interference to existing electronic communications sites and networks</p> | | | | |

| 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. | Yes | Yes (subject to further comment) | No |
|------------------|---|--------------------------|-------------------------------------|-------------------------------------|
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <p>Comments:</p> | | | | |

| Q13 | Do you believe any of the conditions fail any of the six tests identified in the circular? | Yes | Yes (subject to further comment) | No |
|-----|--|-----|-------------------------------------|----|
| | | | | |

Consultation reference: WG19178

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|-----------|--|--------------------------|--------------------------|-------------------------------------|
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: | | | | |

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|------------|---|--------------------------|-------------------------------------|-------------------------------------|
| Q14 | Should any conditions be totally removed from Appendix A of the draft circular? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: | | | | |

General

| | |
|------------|--|
| Q15 | 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: |
| | |

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|--|
| I do not want my name/or address published with my response (please tick) <input type="checkbox"/> |
|--|

| The Use of Planning Conditions for Development Management | | |
|---|---|-------------------------------------|
| Date of consultation period: 29/01/2014 – 25/04/2014 | | |
| Name | Charles Hill B.A; M.I.F.A | |
| Organisation | Dyfed Archaeological Trust | |
| Address | The Shire Hall Carmarthen St Llandeilo SA19 6AF | |
| E-mail address | c.hill@dyfedarchaeology.org.uk | |
| Type (please select one from the following) | Businesses/Planning Consultants | <input checked="" type="checkbox"/> |
| | Local Planning Authority | <input type="checkbox"/> |
| | Government Agency/Other Public Sector | <input type="checkbox"/> |
| | Professional Bodies/Interest Groups | <input type="checkbox"/> |
| | Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations) | <input type="checkbox"/> |
| | Other (other groups not listed above) or individual | <input type="checkbox"/> |

| | | | | |
|---|---|--------------------------|-------------------------------------|--------------------------|
| Q1 | Do you think an updated circular on conditions is required? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: Yes, if anything this is overdue. | | | | |

| | | | | |
|---|---|--------------------------|-------------------------------------|--------------------------|
| Q2 | Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: But retain the relevant, functioning sections, and remove what is no longer valid or appropriate. | | | | |

| | | | | |
|-----------|--|-------------------------------------|-------------------------------------|--------------------------|
| Q3 | Do you consider: | | | |
| | (i) that all six tests are still relevant today and should be retained? | Yes | Yes (subject to further comment) | No |
| | (ii) that there are additional tests that could be used (demonstrate with case law if possible)? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|-----------|--|--------------------------|-------------------------------------|--------------------------|
| 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? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|-----------|--|--------------------------|-------------------------------------|--------------------------|
| 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? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|-----------|---|-------------------------------------|-------------------------------------|--------------------------|
| Q6 | Do you agree that decision notices should be structured in the manner proposed? If you do not, please suggest an alternative. | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|-----------|---|-------------------------------------|-------------------------------------|--------------------------|
| Q7 | Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition? | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|-----------|--|-------------------------------------|-------------------------------------|--------------------------|
| Q8 | 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? If not, please suggest your preferred approach. | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|-----------|---|-------------------------------------|-------------------------------------|--------------------------|
| Q9 | 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 (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|------------|--|--------------------------|-------------------------------------|--------------------------|
| Q10 | Should guidance be provided in the circular with regards to any other conditions related matter? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|------------|--|--------------------------|-------------------------------------|--------------------------|
| Q11 | Does Appendix A of the draft circular contain sufficient examples of model conditions? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|--|---|--------------------------|-------------------------------------|--------------------------|
| 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. | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <p>Comments:</p> <p>Condition 24. This condition is that recommended in Section 23 of Welsh Office Circular 60/96 and its practical application by LPAs has come under challenge from many developers, who are concerned that their developments cannot strictly commence until a programme of archaeological work has been implemented. As this programme must include off-site post excavation reporting and publication, it is not reasonable for an applicant to wait to commence site work until this has been carried out.</p> <p>There are normally three actions or stages that an applicant needs to undertake to meet this planning obligation</p> <ol style="list-style-type: none"> 1. Prepare and submit a written scheme of investigation for LPA written approval 2. Carry out the archaeological site work that has been approved by the LPA 3. Carry out the post excavation archaeological work (which can be as long as the site work), including archiving, archive deposition and publication, which has also been approved by the LPA. <p>Most developers wish and indeed planning officers allow for a discharge of this condition after action 1, leaving the enforcement of subsequent work difficult to monitor and achieve.</p> <p>The wording of the current condition is muddled, ambiguous and does not meet its objectives and is unenforceable.</p> <p>Indeed, precisely to get around this problem the Pembrokeshire Coast National Park Authority has in the past attached 3 conditions to a planning consent to meet the 3 actions above.</p> <p>This condition is very important but, in light of experience, now needs rewording for clarity for all parties concerned. We suggest the following wording, which retains much of the current form of Section 23:</p> | | | | |

Consultation reference: WG19178

"No development shall take place until the applicant, or their agents or successors in title, has secured agreement for a written scheme of historic environment mitigation which has been submitted by the applicant and approved in writing by the Local Planning Authority. Thereafter, the programme of work will be fully carried out in accordance with the requirements and standards of the written scheme. Discharge of the condition will be subject to successfully completing in full the requirements of the approved scheme".

This wording has the advantages of:

- 1. allowing the development to commence before implementing a programme of archaeological work.**
- 2. ensuring all the necessary archaeological work is carried out prior to discharging the condition**
- 3. making enforcement more practical as the condition cannot be discharged until all the archaeological work has been carried out.**
- 4. The use of the term 'mitigation' is better than 'investigation', which implies archaeological excavation, which is not always the requirement.**

Condition 22 is an improvement on previous watching brief conditions and is acceptable.

| Q13 | Do you believe any of the conditions fail any of the six tests identified in the circular? | Yes | Yes (subject to further comment) | No |
|---|--|--------------------------|-------------------------------------|--------------------------|
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: Conditions 23 and 24 | | | | |

| Q14 | Should any conditions be totally removed from Appendix A of the draft circular? | Yes | Yes (subject to further comment) | No |
|--|---|--------------------------|-------------------------------------|--------------------------|
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: Condition 23 should be removed altogether as it is no longer used by Local Planning Authorities. LPAs do not wish to get involved with 'nominating' archaeologists as it is the developers' funding and therefore their choice of archaeological contractor to carry out the work on their behalf. Such contractual work is normally carried out under competitive tendering procedures, which the LPAs do not get involved with. The condition is outdated and no longer appropriate or reasonable under modern planning procedures. | | | | |

Consultation reference: WG19178

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General

Q15

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:

Please note that this response has been made by the Senior Planning Archaeologist for the Dyfed Archaeological Trust and it is not appropriate to comment on matters outside of our remit. I have left these sections blank.

My experience of planning during the last 24 years is that archaeological conditions are not up to date and there is a general inconsistency of approach across Wales. This consultation document is an important and timely opportunity to update and amend conditions in light of the experiences gained by all those working with planning and the historic environment in Wales.

I do not want my name/or address published with my response (please tick) ☐

| The Use of Planning Conditions for Development Management | | |
|---|---|-------------------------------------|
| Date of consultation period: 29/01/2014 – 25/04/2014 | | |
| Name | GLYN P. JONES | |
| Organisation | Flintshire County Council | |
| Address | COUNTY HALL MOLD FLINTSHIRE CH7 6NF | |
| E-mail address | glyn.p.jones@flintshire.gov.uk | |
| Type (please select one from the following) | Businesses/Planning Consultants | <input type="checkbox"/> |
| | Local Planning Authority | <input checked="" type="checkbox"/> |
| | Government Agency/Other Public Sector | <input type="checkbox"/> |
| | Professional Bodies/Interest Groups | <input type="checkbox"/> |
| | Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations) | <input type="checkbox"/> |
| | Other (other groups not listed above) or individual | <input type="checkbox"/> |

| Q1 | Do you think an updated circular on conditions is required? | Yes | Yes (subject to further comment) | No |
|--|---|-------------------------------------|----------------------------------|--------------------------|
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: An updated Circular will be welcomed and as drafted it provides clearer guidance than that contained within Circ. 35/95. | | | | |

| Q2 | Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular? | Yes | Yes (subject to further comment) | No |
|--|---|-------------------------------------|----------------------------------|--------------------------|
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: Unless it has been rendered inaccurate or no longer relevant though recent court cases. Considering the role of planning conditions within the statutory | | | | |

Consultation reference: WG19178

process any guidance must take heed of legal interpretation and court rulings which have been issued since 1995.

| | | | | |
|-----------|--|-------------------------------------|----------------------------------|--------------------------|
| Q3 | Do you consider: | | | |
| | (i) that all six tests are still relevant today and should be retained? | Yes | Yes (subject to further comment) | No |
| | (ii) that there are additional tests that could be used (demonstrate with case law if possible)? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Comments:

The six tests remain relevant and provide a useful reference in the application and use of planning conditions. As conditions are frequently tested through the appeal process and the courts these six tests seem to have stood the test of time since 1995.

As they have not been challenged as general guidelines on the use of conditions it seems reasonable to leave them as they are.

| | | | | |
|-----------|--|--------------------------|----------------------------------|-------------------------------------|
| 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? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Comments:

Not as such but note our response to Q8 which points out that recent case law has been misinterpreted to promote a draft procedure which we comment upon.

| | | | | |
|-----------|--|--------------------------|-------------------------------------|--------------------------|
| 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? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Comments:

The notes relating to the 'topic areas' in Section 5 should set a context for, or at least refer to, all of the conditions in Appendix 1 in some way. As it stands some conditions aren't referred to (e.g. conditions 44-46) and the cross references between some of the notes and the related (?) conditions are obscure if not misplaced. (Do conditions 26, 61 and 82 directly refer to design, which should

Consultation reference: WG19178

surely be an overriding principle which covers most of the standard conditions in some form ?).

Following comments in relation to identified paragraphs :

5.25. It is considered that a temporary permission is appropriate where the development involves a change of use in a residential area. The classic example is the operation of a private hire vehicle from a residential property. This would provide a better example in para. 5.27 than the agricultural dwelling, which is not really a 'trial run', but rather an opportunity to fully establish an agricultural enterprise.

5.31. As stated below in response to Q8, it is not accepted that the use of S.73 applications "simplifies the process of amending existing planning permissions". What it potentially does in relation to very minor amendments is set up a series of separate planning permissions in relation to the same development, each capable of being implemented and making any subsequent enforcement action difficult if not virtually impossible.

5.40. The consultation document (para.2.21.) recognises that conditions relating to aerodromes will be rarely used but the need for their inclusion at all is questioned. This is on the basis that , by definition this would include airports (in Flintshire we have the Hawarden Airport which serves Airbus as well as commercial and private light aircraft), leading to some concern that multi million pound operations might be constrained through conditions which might restrict flights for months at a time because of bird nesting or winter feeding.

I am sure that this is not what is intended but some interest groups might, in the context of the decision making process, see the inclusion of such a condition in Welsh Government guidance as a means of elevating the significance of this factor above others, which include the economic importance of such facilities.

5.44. The advice in relation to 'annexes' differs to that in Circ. 35/95 and is perhaps less clear. The whole principle of annexes is that they are ancillary to the main dwelling so there should not be a need to "include a reversion clause".

5.52. Second word is presumably meant to be 'formerly', rather than 'formally', which bestows a different meaning to this guidance.

5.58 The point is made above regarding the cross reference between design and the matters covered by conditions 26, 61 and 82. It also seems strange to refer in isolation to "important vistas", which is only a part (in most cases a small part) of general design considerations. The reference to design is probably best left to TAN 12, rather than highlight an individual aspect here. What this paragraph suggests in reality is that there should be a design brief to address important design issues, but this would obviously be in place before any conditions are applied to a planning permission.

5.61 Seldom can a SUDS scheme be 'reverse engineered' as it is an integral part of the design principles (mentioned above). A condition requiring a SUDS assessment on a site layout which is in all other ways considered acceptable would either simply show what the drainage scheme was capable of or conclude that it was not SUDS compliant, neither of which could take away the planning

Consultation reference: WG19178

permission once granted. If a SUDS "has not already been proposed as part of the development and no assessment has taken place" then the application needs to be refused, unless there are other material considerations which prevail

5.97 - 5.99 As with 5.58 above, this is a very simplistic reference to what is a very complex issue (Max. vs. Min parking spaces, etc.). It is not clear what the significance of lay-bys is in this context, nor of the relationship between parking spaces and the development they serve (neither of which is mentioned in the conditions cross-referenced). There is no comment on the provision of cycle facilities (condition 104) which perhaps deserves some supporting text in the context of sustainability.

5.102 In the context (both Circ 35/95 and the current draft) of the need to avoid nebulous (meningless?) phrases it is perhaps unfortunate that a reason given for the removal of p.d. is given as "to preserve an exceptionally attractive open plan estate" (beauty is in the eye of the beholder !)

5.104 With regard to changes of use within UCO classes, the context is now different in England where it is recognised that the impact of each of the A3 uses can be significantly different and may need controlling by condition.

5.108 We are told not to use the word in the context of landscaping conditions but it is suggested here that householder renewable energy schemes should be conditioned to be "maintained" in accordance with manufacturer's guidelines. The reasoning is obviously to avoid undue noise and disturbance but, taken literally, it would mean a visit by enforcement officers to ensure that it had been properly assembled and was serviced every 12 months or whatever. This does not transfer into one of the standard conditions and such control is probably best left to noise limits etc.

5.109 - 5.111 Perhaps this section could also cover the creation of mezzanine floors which we in Flintshire have found through various legal opinions not to constitute development. This has significantly altered the character of one of our shopping parks, not least through virtually doubling the amount of retail floorspace.

The reference in 5.110 to "food and convenience goods" possibly conflicts with the advice given in para.3.39.

5.112 - 5.114. Conditions on sustainability clearly bring Circ. 35/95 up to date. It has however been documented previously that these conditions requiring minimum standards are there primarily as markers rather than genuine 'planning' conditions, compliance with which is capable of being enforced. It is really the same point as is made in relation to DAS, which WG is aware is seen by many as a 'box-ticking' exercise. The switch of emphasis onto Building Regulations addresses this issue to some degree.

5.115 - 5.116 Perhaps there is an opportunity here to recognise the fact that good design includes the incorporation of features like trees which are worthy of retention and add to the scheme. Protection then comes from their contribution to and their status within the overall scheme, thus removing any pressure for their removal once the development is complete. The conditions then can

Consultation reference: WG19178

concentrate on the mechanics of the actual protection rather than the principle.

5.117 - 5.120 The approach to 'Waste' set out in these paragraphs (i.e. no specific standard conditions) is agreed, as a significant waste development will involve many of the factors outlined above.

| | | | | |
|-----------|---|--------------------------|-------------------------------------|--------------------------|
| Q6 | Do you agree that decision notices should be structured in the manner proposed? If you do not, please suggest an alternative. | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Comments:

Agreed that a structured approach will be beneficial both to the local authority case officer in drafting the permission and to the recipient in its implementation.

The sequential approach given in Box 2 (para.4.19) is logical and preferable to the 'theme' based approach suggested as an alternative. The only difficulty is that some conditions do not fit neatly into a category. The solution to this suggested in para. 4.19 may cause further confusion and rather than find the closest fit it would be better to draft the actual condition differently (in two parts). Using the example given in para 4.18:

- 1. "No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to and has been approved in writing by the local planning authority"**
- 2. "The construction phase of the development shall be undertaken in accordance with the Construction Method Statement referred to in condition 1 above, unless otherwise agreed in writing by the local planning authority."**

This allows both conditions to be categorised and this approach would also address a similar issue which arises with applications seeking to discharge conditions on a planning permission. The first condition can be signed off before the development commences whilst the second would be monitored over a longer period and potentially could be open ended, never capable of being fully discharged.

| | | | | |
|-----------|---|--------------------------|-------------------------------------|--------------------------|
| Q7 | Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Consultation reference: WG19178

| | | | |
|--|--------------------------|-------------------------------------|--------------------------|
| | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
|--|--------------------------|-------------------------------------|--------------------------|

Comments:

This follows the proposal in Positive Planning (para 6.115) to introduce a new form of decision notice that identifies the plans and documents associated with the planning permission and records details agreed by future applications to discharge conditions and reserved matters associated with the permission.

There, the stated aim is to create a 'live' document and this proposal in the Circular doesn't really take things further than they are at present (considering that condition no. 6 in Annex A is used in some form by most authorities). In Flintshire we separate the two parts of this in that our standard condition reads as follows :

"The development hereby permitted shall be carried out in accordance with the plan(s) and specifications (which are listed in the 'Notes to Applicants' below) unless specified otherwise by the conditions of this permission, or otherwise agreed in writing by the local planning authority".

The 'Notes' section then includes a list of all relevant specifications, be they single plans, investigative reports, etc.

There has been some uncertainty over the status of applications to 'discharge' conditions, which, at the lower end of the scale may involve no more than the approval of a brick or tile type and para. 4.30 makes it clear that these are to be considered under Article 22 of the T&CPDMP(W)O 2012. There is a need to tie in all subsequent applications/approvals relating to a development to the 'parent' permission to allow the "clarity, transparency and certainty" mentioned in Positive Planning, but this proposal does not really achieve that.

| | | | | |
|-----------|--|--------------------------|-------------------------------------|-------------------------------------|
| Q8 | 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? If not, please suggest your preferred approach. | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Comments:

There is a general maxim relating to developers:

- Make sure you apply for what you want to build
- Make sure you build what you applied (and got permission) for.

Unfortunately this seldom converts into practice as invariably the need for changes arise before the development commences and/or as it progresses.

A recent case in Flintshire involved a volume housebuilder commencing a development of terraced houses in place of the approved detached dwellings to the dismay of Members who refused the subsequent Section 73A planning application. The 'as built' was considered to have unacceptable impacts in comparison to the scheme approved but in refusing the application Members also resented the fact that the developer had to their minds abused the process of public involvement and negotiation which had led to the grant of planning

permission in the first instance, leading to calls for enforcement action.

The above is an extreme case and the likelihood of the need for amendments is probably relative to the scale and complexity of the development. At the lower end of the scale it can amount to the need to move a doorway by a matter of less than a metre or a slightly larger or smaller window type within a small extension to a dwelling.

As a context to the above we have, where appropriate, applied the following condition to most planning permissions:

" The development hereby permitted shall be carried out in accordance with the plan(s) and specifications (which are listed in the 'Notes to Applicant' below), unless specified otherwise by the conditions of this permission, or otherwise agreed in writing by the local planning authority".

Flintshire is not unique in this respect and, crucially, it allows us to employ the professional judgement of officers in applying a common sense approach to the widely held and well established principle of the 'working amendment'. Provided that this is used responsibly and cautiously it is a tool which allows the planning officer to work with the developer in facilitating the development, which is the theme which runs through this consultation and all that has emanated from Welsh Government recently, under the broad heading of 'Positive Planning'.

This issue was raised in the WG consultation 12 months ago on 'Non-Material Amendments to Planning Permissions' and Flintshire's response to that document (which largely involved the possible adoption of S.96 A) is equally relevant to this question. It was pointed out that in considering whether a change can be accommodated under our current procedure in Flintshire we decide firstly whether the change amounts to development in its own right (e.g. the introduction of a dormer window on the front roof slope of a new dwelling, or the introduction of a chimney where the approved plans did not show one). In such cases the developer is advised that a new application is required. We also consider other factors, e.g., whether an extension comes closer to the boundary with a neighbouring property or is higher or on a higher ground level than that approved. Again, in such cases a new application would be required.

The key information requirement is the detail of the proposed amendment in relation to the corresponding detail of the original permission. When such changes are considered by officers as working amendments (within the terms of the existing permission) the response can be given by return and the amended plans are stamped up to supersede those permitted with the planning permission.

The draft circular states that the term "unless otherwise agreed by the local planning authority" gives the impression "that the local planning authority may be willing to accept an alternative to that which has already been agreed", well, precisely! Isn't that what it is about, except that the Circular suggests that, rather than let officers use their judgement and common sense to agree matters that in reality affect no-one, have no detrimental impact on (in fact may improve) the development, and which in isolation would not constitute development, this should be done through the S. 73 application process.

Consultation reference: WG19178

Para 5.31 of the circular refers to conditions which specify the plans relevant to a grant of planning permission, stating that the use of Section 73 applications to make minor material amendments "simplifies the process of amending existing planning permissions". This is clearly not the case if compared against the informal procedure set out above, which allows development to evolve and improve without the need for an over-bureaucratic approach which frustrates developers and the development process.

The case law presented in support of the proposed advice in relation to this condition is, in our view misapplied. Para. 3.37 contains what appears to be a direct quote ("wholly uncertain") from the Court of Appeal case of R (Midcounties Co-Operative Limited) v. Wyre Forest District Council & Tesco Stores Limited & Others [2010] EWCA Civ 841. That quote is not in the judgement, and that is not what the Court decided.

The condition (no. 6) in that case contained the words

"The food store hereby approved shall not exceed the following floor space allocations (maxima);

Gross external up to 4209 sq metres measured externally Nett retail sales up to 2919 sq metres, unless otherwise agreed with the Local Planning Authority.

Reason

In the interest of clarity, in order to define the permission and to ensure that it accords with Policies RT.1 and RT.4 of the Adopted Wyre Forest District Local Plan." .

The Court of Appeal found, contrary to the arguments of those seeking to challenge the permission, that the wording of the condition to which the planning permission was subject provided a sufficiently clear and certain form of control of the intended actual selling space of a supermarket so that the condition was intelligible. Therefore, the permission was lawful.

In the High Court, it appears to have been argued that the addition of the words "unless otherwise agreed with the Local Planning Authority" rendered condition 6 unlawful (as potentially allowing more than had been permitted under the planning permission) and the wording could not be severed from the rest of the permission. Consequently (so went the argument), the permission was unlawful. The Judge (Ouseley J.) found that the wording could be severed from the condition as the wording was not "an important part of the planning condition, let alone of the planning permission." (para. 72 of the judgement).

So, the issue of "tailpieces" on planning conditions was not expressly considered by the Court of Appeal. It is also worth bearing in the mind that, in the High Court, the judge said (at para. 70 of the judgement):-"I accept the existence of a very limited power to make immaterial variations informally.....".

| | | |
|-------------|---|---|
| Q9 | Do you agree that Local Planning Authorities should provide applicants with advance notice of conditions before an application is due to be | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> |
| (subject to | | |

Consultation reference: WG19178

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|--|-------------|--------------------------|-------------------------------------|--------------------------|
| | determined? | further comment) | | |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Comments:

It is not clear how far in advance conditions are to be provided to the applicant. Some standard conditions are capable of being shared at a pre-application meeting, giving the applicant time to address matters prior to submitting an application. However, if to be shared later in the process then there are concerns that this may result in applicants taking the view that the conditions are open for negotiation, which might be seen as prejudicing other/third parties. This would involve additional work for planning staff in having to draft perhaps a series of decision notices during the course of processing the application, each slightly different as matters progress and therefore the value of any advance version would be questionable.

In practice, planning officers will often discuss conditions with applicants informally during the course of negotiations and any attempt to formalise this process is likely to prolong the decision period.

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|-----|--|--------------------------|-------------------------------------|--------------------------|
| Q10 | Should guidance be provided in the circular with regards to any other conditions related matter? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Comments:

We would welcome the strengthening of guidance in the circular regarding the role of statutory consultees in the drafting and in the discharge of conditions so it is clear what co-operation LPAs can expect. Different approaches to this matter have been evident in the consultation responses of EAW and CCW before their union.

The underlying message (which is perhaps not prominent in the circular) should be that authorities seek to minimise the need for conditions through the quality of applications and supporting information, quality of development proposals and pre-application advice. It should also be recognised that the majority of planning permissions (in particular householder developments) will contain only one or two conditions.

Each authority will use standard conditions to some extent but there is always the danger of 'planning by numbers', where conditions are plucked from the list without sufficient regard to the six tests. Arguably, the list of conditions in Appendix A could be culled quite significantly to avoid this happening, without compromising the advice given in the remainder of the circular.

Consultation reference: WG19178

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| Q11 | Does Appendix A of the draft circular contain sufficient examples of model conditions? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: See responses above | | | | |

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|---|---|--------------------------|-------------------------------------|--------------------------|
| 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. | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: See responses above | | | | |

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|------------|--|--------------------------|-------------------------------------|-------------------------------------|
| Q13 | Do you believe any of the conditions fail any of the six tests identified in the circular? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: | | | | |

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|---|---|--------------------------|-------------------------------------|--------------------------|
| Q14 | Should any conditions be totally removed from Appendix A of the draft circular? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: See responses above | | | | |

General

Q15

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:

This is timely in anticipation of the release of the Planning Application Fees Consultation and the inclusion in that document of proposals for widening the scope of fees to include the discharge of conditions.

I do not want my name/or address published with my response (please tick) ☐

| The Use of Planning Conditions for Development Management | | |
|---|---|-------------------------------------|
| Date of consultation period: 29/01/2014 – 25/04/2014 | | |
| Name | Jane Lee | |
| Organisation | Welsh Local Government Association | |
| Address | Local Government House Drake Walk Cardiff | |
| E-mail address | jane.lee@wlga.gov.uk | |
| Type (please select one from the following) | Businesses/Planning Consultants | <input type="checkbox"/> |
| | Local Planning Authority | <input type="checkbox"/> |
| | Government Agency/Other Public Sector | <input type="checkbox"/> |
| | Professional Bodies/Interest Groups | <input type="checkbox"/> |
| | Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations) | <input type="checkbox"/> |
| | Other (other groups not listed above) or individual | <input checked="" type="checkbox"/> |

| Q1 | Do you think an updated circular on conditions is required? | Yes | Yes (subject to further comment) | No |
|--|---|-------------------------------------|-------------------------------------|--------------------------|
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: The WLGA welcomes the updating of this circular | | | | |

| Q2 | Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular? | Yes | Yes (subject to further comment) | No |
|---|---|-------------------------------------|-------------------------------------|--------------------------|
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: The WLGA agrees that information that is still relevant should be carried forward to the new Circular. | | | | |

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|---|--|-------------------------------------|-------------------------------------|--------------------------|
| Q3 | Do you consider: | | | |
| | (i) that all six tests are still relevant today and should be retained? | Yes | Yes (subject to further comment) | No |
| | (ii) that there are additional tests that could be used (demonstrate with case law if possible)? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: The WLGA agrees that the six tests are still relevant | | | | |

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| 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? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: No comment, individual LPAs are better placed to respond to this question | | | | |

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|---|--|--------------------------|-------------------------------------|--------------------------|
| 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? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: No comment, individual LPAs are better placed to respond to this question | | | | |

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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. | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: There is merit in the proposals to structure decision notices, however an approach that is too prescriptive and inflexible should be avoided as this could have adverse impacts on LPAs and applicants. | | | | |

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|---|---|--------------------------|-------------------------------------|--------------------------|
| Q7 | Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <p>Comments:</p> <p>Generally there is agreement with this proposal, however there is concern over what may constitute variation of development and the level of variation that could be dealt with via section 73 process. We would like to flag up our concern that this approach could have on LPA resources. Fundamental changes to drawings should require a fresh submission with the appropriate consultation and consideration and a fee equivalent to the full application rather than the potentially much lower fee of £166 that a variation of condition application incurs.</p> | | | | |

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|--|--|--------------------------|-------------------------------------|--------------------------|
| Q8 | 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? If not, please suggest your preferred approach. | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <p>Comments:</p> <p>The WLGA agrees in principle but requests that LPAs are allowed discretion to use wording to allow small changes without further application as this encourages a more flexible and positive approach to be adopted. The terms "unless otherwise agreed by the Local Planning Authority as a minor amendment" or "The development hereby permitted shall be carried out in accordance with the plan(s) and specifications (which are listed in the 'Notes to Applicant' below), unless specified otherwise by the conditions of this permission, or otherwise agreed in writing by the local planning authority" are suggested.</p> | | | | |

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|---|---|--------------------------|-------------------------------------|-------------------------------------|
| Q9 | 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 (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <p>Comments:</p> <p>The WLGA disagrees with this proposal. It should be at the Local Planning Authority's discretion whether or not it deems it appropriate and efficient to engage with the applicant about the wording of planning conditions on a Notice.</p> | | | | |

Consultation reference: WG19178

With the renewed focus on performance and process, it is likely that there will be increased focus to determine applications within 8 weeks in times of diminishing resources. To require LPA's to routinely agree conditions prior to a decision within 8 weeks fails to recognise the staffing/resource pressures faced by LPA's across Wales and the processes involved in drafting conditions.

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|---|--|--------------------------|-------------------------------------|--------------------------|
| Q10 | Should guidance be provided in the circular with regards to any other conditions related matter? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: The WLGA would welcome further clarification on the role of statutory consultees in the drafting and in the discharge of conditions so it is clear what co-operation LPAs can expect. | | | | |

| | | | | |
|---|--|--------------------------|-------------------------------------|--------------------------|
| Q11 | Does Appendix A of the draft circular contain sufficient examples of model conditions? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: No comment, individual LPAs are better placed to respond to this question | | | | |

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|---|---|--------------------------|-------------------------------------|--------------------------|
| 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. | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: No comment, individual LPAs are better placed to respond to this question | | | | |

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|------------|--|-----|--------------------|----|
| Q13 | Do you believe any of the conditions fail any of the six tests identified in the circular? | Yes | Yes (subject to | No |
| | | | | |

Consultation reference: WG19178

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|---|--|--------------------------|--------------------------|--------------------------|
| | | | further comment) | |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: No comment, individual LPAs are better placed to respond to this question | | | | |

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|---|---|--------------------------|----------------------------------|--------------------------|
| Q14 | Should any conditions be totally removed from Appendix A of the draft circular? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: No comment, individual LPAs are better placed to respond to this question | | | | |

General

| | |
|---|--|
| Q15 | 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: |
| The WLGA awaits the release of the Planning Application Fees Consultation and the inclusion in that document of proposals for widening the scope of fees to include the discharge of conditions. | |

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| I do not want my name/or address published with my response (please tick) <input type="checkbox"/> |
|--|

| The Use of Planning Conditions for Development Management | | |
|---|---|-------------------------------------|
| Date of consultation period: 29/01/2014 – 25/04/2014 | | |
| Name | Paula Jones | |
| Organisation | Conwy County Borough Council | |
| Address | Civic Offices, Colwyn Bay | |
| E-mail address | paula.jones@conwy.gov.uk | |
| Type (please select one from the following) | Businesses/Planning Consultants | <input type="checkbox"/> |
| | Local Planning Authority | <input checked="" type="checkbox"/> |
| | Government Agency/Other Public Sector | <input type="checkbox"/> |
| | Professional Bodies/Interest Groups | <input type="checkbox"/> |
| | Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations) | <input type="checkbox"/> |
| | Other (other groups not listed above) or individual | <input type="checkbox"/> |

| Q1 | Do you think an updated circular on conditions is required? | Yes | Yes (subject to further comment) | No |
|---|---|-------------------------------------|----------------------------------|--------------------------|
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: Conwy welcomes an updated Circular. Guidance in Circular 35/95 is outdated especially the wording of the model conditions. A new circular will provide greater clarity and will help provide additional guidance on the use of conditions. | | | | |

| Q2 | Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular? | Yes | Yes (subject to further comment) | No |
|---|---|-------------------------------------|----------------------------------|--------------------------|
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: Yes Circular 35/95 contains elements that are outdated but there are some relevant elements that should be | | | | |

Consultation reference: WG19178

incorporated into the new circular.

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|--|--|-------------------------------------|-------------------------------------|--------------------------|
| Q3 | Do you consider: | | | |
| | (i) that all six tests are still relevant today and should be retained? | Yes | Yes (subject to further comment) | No |
| | (ii) that there are additional tests that could be used (demonstrate with case law if possible)? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: (i) Yes the tests are relevant to ensure that the conditions are robust and worded appropriately (ii) No | | | | |

| | | | | |
|-----------|--|--------------------------|-------------------------------------|-------------------------------------|
| 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? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|---|--|--------------------------|-------------------------------------|-------------------------------------|
| 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? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: See answer to Q12 with regards to holiday occupancy conditions. | | | | |

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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. | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Consultation reference: WG19178

Comments:

In general the structure makes sense and is welcome to provide clarity but it is not clear how this would fit in with the proposals in the Positive Planning consultation on having "live" decision notices which are updated as conditions are discharged.

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|---|---|--------------------------|-------------------------------------|--------------------------|
| Q7 | Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: This is a condition always imposed by CCBC, it proves very useful in providing clarity and to allow minor material amendments via S73, though see below at Q8 | | | | |

| | | | | |
|---|--|--------------------------|-------------------------------------|-------------------------------------|
| Q8 | 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? If not, please suggest your preferred approach. | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: CCBC continue to use this tailpiece in respect of certain conditions. It is accepted that they can produce ambiguity but they also provide flexibility. Nonetheless, in conjunction with changes to clarify non material and minor material amendments via S73, as part of the Planning Bill consultation, the need for these tailpieces should cease to exist. It is noted that these tailpieces are still evident in some of the conditions in Appendix A of the draft circular, e.g. condition 27, this needs to be addressed. | | | | |

| | | | | |
|-----------|---|--------------------------|-------------------------------------|--------------------------|
| Q9 | 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 (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Consultation reference: WG19178

Comments:

This can prove very useful, especially for major applications. There should be no formal requirement for such advance notice as it will not always be appropriate and may cause delay. The consultation also needs to be brief to avoid any delays. Applicants will have to accept that this advance notice will not always be possible given tight deadlines and that they will always have the right of appeal if they disagree with the condition.

It would be useful if the applicants could themselves suggest draft conditions they think appropriate as part of the original submission, these should be self evident in many instances, especially where the application has been subject of pre application discussions.

There is an ever increasing emphasis in times of diminishing resources to meet performance targets and to require LPA's to enter into debate regarding conditions prior to a decision will inevitably lead to further delays in the system.

| Q10 | Should guidance be provided in the circular with regards to any other conditions related matter? | Yes | Yes (subject to further comment) | No |
|-----|--|--------------------------|-------------------------------------|-------------------------------------|
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Comments:

| Q11 | Does Appendix A of the draft circular contain sufficient examples of model conditions? | Yes | Yes (subject to further comment) | No |
|-----|--|--------------------------|-------------------------------------|--------------------------|
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Comments:

See answer to Q12

| Q12 | Do you consider that any of the conditions used should be reworded? If so, which | Yes | Yes (subject to | No |
|-----|--|-----|--------------------|----|
| | | | | |

Consultation reference: WG19178

| | conditions and why? Please suggest alternatives if you are able. | | further comment) | |
|--|--|--------------------------|-------------------------------------|--------------------------|
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Comments:

There are numerous instances of pre commencement type conditions used, but there is little consistency in how they are worded. Ideally they should state "No development shall commence" but there are many variations, including "development shall not begin", "before development begins", "No development shall take place", "prior to commencement of construction works", etc.

It is often the case that it is not just development but also site clearance that should not commence until the condition has been addressed, for example in the case of sites where trees and other vegetation are important, but also where Wildlife Protection, Archaeology, Contaminated land, etc are issues. Any relevant conditions should state "No development or site clearance should take place until...". This brings within the remit of the planning permission matters which are not development but could have significant impact. There are some conditions where this is addressed, but not all e.g. conditions 27, 32, 127, 133.

Condition 5 uses the word paraphernalia this is considered to be an imprecise term further clarity is needed.

Condition 11 uses the word 'indicating' which is a little ambiguous, 'detailing' would be more precise.

Condition 16 refers to a report which could be subject to change or may become obsolete. It is considered better to refer to a maximum candela output. It would be unreasonable for an owner to have to continually monitor this report to check if guidelines change then carry out the changes.

Condition 24 contains the words 'works including', which is not precise, this could simply be deleted in this context. Also there should be reference to a plan for clarity and enforceability i.e. the condition should read "No development or site clearance shall take place within the area cross hatched in black shown in drawing no[x] until...."

Condition 25 could be better worded to exclude any use but inspection/repair e.g.: "The roof area of the extension shall not be used for any purpose unless to gain access for general inspection and maintenance"

Condition 27 may have the words 'and/including' missing, the sentence ".. and shall assess any contamination on the site (and/including?), whether or not it originates on site.

Condition 29. For enforceability and precision perhaps this condition should state "Following completion of the measures identified in the monitoring and maintenance scheme...., reports shall be submitted to the LPA at the end of every subsequent three month period demonstrating the effectiveness of the monitoring and maintenance carried out" Even this amended condition does leave an open ended condition which requires monitoring in perpetuity.

Condition 40 contains some small typos, there are some apparently superfluous

Consultation reference: WG19178

words i.e "a" at ii) and "the of" at iii).

Conditions 91 and 92 are of some concern as to the enforceability and reasonableness of the conditions. Condition 91 is unlikely to be capable of being simply monitored except via invasive formal investigation. Given the often rural locations it is unlikely neighbours would note a breach. Condition 92 is enforceable but is onerous and some may argue possibly unreasonable. In addition it would be very simple for a register to lapse and in ten years the condition may not be enforceable. There is no simple solution, but where the accommodation is not suitable for year round use restriction to certain months makes sense. At other times, restricting the occupation by any one person to not more than 30 days in any calendar year, or similar, is also useful but still requires some invasive investigation. It would be interesting to see research on the effectiveness of these conditions and to explore possible alternative routes to exercise proper control.

Condition 98 refers to "...the plot edged in red". To avoid confusion with the site plan, a different colour may be appropriate, or if this is supposed to refer to the site plan, perhaps this should be explicitly stated and a drawing number stipulated for the avoidance of doubt.

Condition 99 refers to "...rural enterprise in the locality.." perhaps 'locality' should be changed to the 'local community council area of [...]' or similar for clarity.

Condition 112 refers to "Details of any logos, symbols or signs..." it might be more precise and cover other forms of similar displays to refer to "Details of any advertisements, including any logos, symbols or signs..."

| Q13 | Do you believe any of the conditions fail any of the six tests identified in the circular? | Yes | Yes (subject to further comment) | No |
|---|--|--------------------------|-------------------------------------|--------------------------|
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: See the response to Q12 | | | | |

| Q14 | Should any conditions be totally removed from Appendix A of the draft circular? | Yes | Yes (subject to further comment) | No |
|-----------|---|--------------------------|-------------------------------------|-------------------------------------|
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: | | | | |

Consultation reference: WG19178

See the response to Q12

General

Q15

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:

I do not want my name/or address published with my response (please tick) ☐

| The Use of Planning Conditions for Development Management | | |
|---|---|-------------------------------------|
| Date of consultation period: 29/01/2014 – 25/04/2014 | | |
| Name | Mike Simmons | |
| Organisation | Pembrokeshire County Council | |
| Address | County Hall Haverfordwest Pembrokeshire SA61 1TP | |
| E-mail address | mike.simmons@pembrokeshire.gov.uk | |
| Type (please select one from the following) | Businesses/Planning Consultants | <input type="checkbox"/> |
| | Local Planning Authority | <input checked="" type="checkbox"/> |
| | Government Agency/Other Public Sector | <input type="checkbox"/> |
| | Professional Bodies/Interest Groups | <input type="checkbox"/> |
| | Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations) | <input type="checkbox"/> |
| | Other (other groups not listed above) or individual | <input type="checkbox"/> |

| Q1 | Do you think an updated circular on conditions is required? | Yes | Yes (subject to further comment) | No |
|----|---|--------------------------|-------------------------------------|--------------------------|
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Comments:

An updated circular is certainly welcomed.

It is acknowledged that there can be too many and sometimes onerous conditions placed on planning permissions. The reasons for this are primarily those outlined at para.1.5. However, the relationship between the number of planning conditions and the quality & content of an application cannot be underestimated. There are still far too many "poor quality" planning applications that often contain insufficient information, thus sometimes the need for, what should be, unnecessary planning conditions. Thus, in the interests of determination expediency, conditions are often attached to deal with non in-principle "outstanding matters". "Front loading" of applications is essential.

Recommended planning conditions of statutory consultees can lack sufficient evidence to support their case. Nevertheless LPAs can be under pressure to apply such conditions despite such lack of evidence. Note reference at 4.2 confirming conditions are a matter for planning authority & this should be emphasised.

Consultation reference: WG19178

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|---|---|--------------------------|-------------------------------------|--------------------------|
| Q2 | Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: Yes, where still relevant and applicable. | | | | |

| | | | | |
|---|--|--------------------------|-------------------------------------|--------------------------|
| Q3 | Do you consider: | Yes | Yes (subject to further comment) | No |
| | (i) that all six tests are still relevant today and should be retained? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| | (ii) that there are additional tests that could be used (demonstrate with case law if possible)? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: Yes, but some are open to interpretation. Further clarification in terms of "relevance to planning" and "reasonable" tests would be beneficial. | | | | |

| | | | | |
|--|--|--------------------------|-------------------------------------|--------------------------|
| 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? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: Concur with comments made by Planning Officers Society for Wales | | | | |

| | | | | |
|-----------|--|--------------------------|-------------------------------------|--------------------------|
| 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? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

Consultation reference: WG19178

More clarity is sought on S.73 applications, particularly in relation to status of prospective consent, planning matters to be considered with such an application, validity of application depending on date of submission, whether defined as a major application (if it relates to a previous major application), relationship with Reg.122 CIL tests.

| | | | | |
|--|---|--------------------------|-------------------------------------|--------------------------|
| Q6 | Do you agree that decision notices should be structured in the manner proposed? If you do not, please suggest an alternative. | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: Concur with comments made by Planning Officers Society for Wales | | | | |

| | | | | |
|---|---|--------------------------|-------------------------------------|--------------------------|
| Q7 | Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: Welcomed. However, at 3.5 for example, it is stated that a condition might be necessary to ensure external materials are in accordance with the approved plans, but would this be necessary if the approved plans are to be identified (presumably to include a reference to the need to comply with such plans)? | | | | |

| | | | | |
|-----------|--|-------------------------------------|-------------------------------------|--------------------------|
| Q8 | 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? If not, please suggest your preferred approach. | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: | | | | |

Consultation reference: WG19178

| | | | | |
|---|---|--------------------------|-------------------------------------|--------------------------|
| Q9 | 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 (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: Concur with comments made by Planning Officers Society for Wales but acknowledge that, particularly for major applications, allowing the applicant to have sight of a draft set of planning conditions would be beneficial. | | | | |

| | | | | |
|--|--|--------------------------|-------------------------------------|--------------------------|
| Q10 | Should guidance be provided in the circular with regards to any other conditions related matter? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: Concur with comments made by Planning Officers Society Wales. Monitoring of planning conditions can result in significant workload burden, particularly for LPA enforcement teams. The proposed "living" decision notice will add clarity to the process but the difficulties in achieving satisfactory monitoring, under the current climate of financial constraints within which LPAs are operating, cannot be overestimated. | | | | |

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|---|--|--------------------------|-------------------------------------|--------------------------|
| Q11 | Does Appendix A of the draft circular contain sufficient examples of model conditions? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: Model conditions in relation to phasing of development, ecological mitigation, provision of play equipment/open space, updated Design and Access Statements at reserved matters, control of ancillary uses in large retail stores (eg. post offices) (in order to protect town centres in certain circumstances) and staff travel plan would be useful. | | | | |

Consultation reference: WG19178

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|------------|---|--------------------------|-------------------------------------|--------------------------|
| 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. | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Comments:

In addition to sharing some of the concerns set out in the response of the Planning Officers Society for Wales, would add:

Condition 21 - Annexes

There is a lack of advice on what constitutes "an annexe". Many annexes are granted PP with a condition such as that recommended to restrict use to ancillary purposes only. However, many such structures, usually extensions or outbuildings, are PD if ancillary in any case. Clarity is needed on what constitutes an annexe; if self-contained accommodation then surely not an annexe even if occupied by family member as it's the use that is the relevant factor, not the personal circumstances of those who will occupy it - thus a separate dwelling can be created. Would question whether the use of the word ancillary in this context is that precise bearing in mind the lack of definition of "annexe". Further clarity needed in a topic that continues to be challenging for LPAs.

Condition 25 - Balconies

Is the use of "similar" precise?

Condition 37 - Density

Need clarity on definition of density - net or gross, what is included / excluded in calculation - precision?

Condition 44 - Garage/Parking Spaces

Use of word "motor vehicles" could include motor cycles and any other motorised vehicle.

Condition 46 - Glazing

Definition of level of "obscured glazing". A low level of obscure glazing may not secure necessary privacy. Better to refer to an established scale of obscure glazing (such as that provided by Pilkington) rather than require details to be submitted to LPA (which also necessitates more LPA input) - this will then make the condition regulatory rather than pre-commencement.

Condition 83 - Materials

Option should be to provide details and/or samples as samples not needed in all cases. Samples also cumbersome and difficult to store.

Condition 93 - Occupancy

Too onerous to require residential not to precede business use as inevitable that occupation would occur first with delay until business use starts. Time period should be specified instead. Two limbs of the suggested wording seem to contain two different requirements.

Condition 99 - Occupancy

Does this need to cross reference with definition of "rural enterprise dwelling"?

Consultation reference: WG19178

Is "eligible for consideration" imprecise - delete "for consideration".

Condition 108 - Renewable Energy

Any cessation might only be temporary - condition needs to be amended to allow for this.

Condition 110 - Renewable Energy

"Within the year prior to decommissioning of the site, but no later than 2 months prior to decommissioning" - needed to ensure that survey work & any mitigation is undertaken in good time.

Condition 114 - Renewable Energy: Wind (decommissioning)

The recommended condition does not address circumstances where a turbine needs to be removed earlier than the planning permission expiry date because it is no longer operational - a decommissioning plan could instead be agreed within 12 months of first operation.

Condition 117 - Retail

There appears to be no established definition of how to calculate gross retail floorspace (not in PPW or TAN).

Standard condition needed to control extent of convenience and/or non-food/comparison.

Condition 123 - Sustainable buildings

Evidence to date suggests that there has been significant delay in obtaining design stage certificates from BREEAM / STROMA and many developments are begun without complying with this condition.

| | | | | |
|--|--|--------------------------|-------------------------------------|-------------------------------------|
| Q13 | Do you believe any of the conditions fail any of the six tests identified in the circular? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: Concur with comments made by Planning Officers Society for Wales. | | | | |

| | | | | |
|------------|---|--------------------------|-------------------------------------|--------------------------|
| Q14 | Should any conditions be totally removed from Appendix A of the draft circular? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Consultation reference: WG19178

| | | | | |
|---|--|--------------------------|--------------------------|--------------------------|
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: Concur with comments made by Planning Officers Society for Wales | | | | |

General

| | |
|---|--|
| Q15 | 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: |
| Concur with much of the comments made by Planning Officers Society for Wales It is essential that LPA approach to dealing with discharge of planning conditions is standardised as there currently exist significant differences of approach, ranging from formally registering as an "application to discharge" to informally dealing with matters by email. A recommended approach from WG would be very beneficial, as would WG position on potential charging for discharge of conditions. | |

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| I do not want my name/or address published with my response (please tick) <input type="checkbox"/> |
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| The Use of Planning Conditions for Development Management | | |
|---|---|-------------------------------------|
| Date of consultation period: 29/01/2014 – 25/04/2014 | | |
| Name | Richard Newton (Strategic Planning Manager North and North Wales (Rheolwr Cynllunio Strategol Gogledd a Gogledd Cymru)) | |
| Organisation | Canal & River Trust (Glandŵr Cymru) | |
| Address | Fearn's Wharf Neptune Street Leeds LS9 8PB | |
| E-mail address | richard.newton@canalrivertrust.org.uk | |
| Type (please select one from the following) | Businesses/Planning Consultants | <input type="checkbox"/> |
| | Local Planning Authority | <input type="checkbox"/> |
| | Government Agency/Other Public Sector | <input type="checkbox"/> |
| | Professional Bodies/Interest Groups | <input type="checkbox"/> |
| | Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations) | <input type="checkbox"/> |
| | Other (other groups not listed above) or individual | <input checked="" type="checkbox"/> |

| Q1 | Do you think an updated circular on conditions is required? | Yes | Yes (subject to further comment) | No |
|--|---|-------------------------------------|-------------------------------------|--------------------------|
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: 'We have no comment to make on this question.' | | | | |

| Q2 | Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular? | Yes | Yes (subject to further comment) | No |
|--|---|-------------------------------------|-------------------------------------|--------------------------|
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: 'We have no comment to make on this question.' | | | | |

| | | | | |
|-----------|--|--------------------------|-------------------------------------|--------------------------|
| Q3 | Do you consider: | | | |
| | (i) that all six tests are still relevant today and should be retained? | Yes | Yes (subject to further comment) | No |
| | (ii) that there are additional tests that could be used (demonstrate with case law if possible)? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Comments:

Glandŵr Cymru agrees that the six tests remain relevant and we consider that they should all be retained.

We do not have any suggestions for any additional tests that could be used.

| | | | | |
|-----------|--|--------------------------|----------------------------------|-------------------------------------|
| 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? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Comments:

'We have no comment to make on this question.

| | | | | |
|-----------|--|--------------------------|-------------------------------------|--------------------------|
| 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? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Comments:

A topic area covering land stability and structural integrity matters should be included. Glandŵr Cymru is a statutory consultee (Para. (w), Schedule 4, Town and Country Planning Development Management (Wales) Order 2012 (as amended)) on development likely to affect waterways, reservoirs or canal feeder channels owned or operated by us. A major reason for Glandŵr Cymru being a statutory consultee is to enable us to consider the potential impacts of development on the structure and integrity of our waterways and associated infrastructure. For example, developments which involve the digging of foundations or the imposition of a loading on the side of a waterway, developments which could create a breach in the waterway, such as by increasing surface water discharges, or any major change of land use.

The potential impact of development on the structural integrity of a waterway

Consultation reference: WG19178

can be significant, affecting the operation of the waterway, the safety of users of the waterway, and others in close proximity to it and its value as a heritage asset (whether designated or not). Conditions can be used to minimise the risk and effects of land instability on our waterways, reservoirs and other functional assets, whether through securing further ground investigation works to identify stand-off distances or otherwise inform the location of built development in relation to outline applications or agreeing construction methods (particularly foundation design and construction) in order to ensure that development is safely carried out in a manner which minimises these risks.

Land stability issues can overlap with other regimes and areas of legislation, dependent on the circumstances. Whilst we recognise that Building Regulations in particular seek to ensure that new development is structurally sound, the effect of new development on the stability and structural integrity of other land, buildings or structures is a material planning consideration.

A topic area covering lighting issues should be included. External lighting can have a significant impact on surrounding land and development. In relation to the interests of Glandŵr Cymru, lighting can affect the way waterways are perceived by users, and can affect the character of waterway corridors, either in terms of their status as heritage assets (whether designated or not) or the effect that it can have on the local wildlife which is supported by the waterway. This can apply particularly to bats, which often use waterway corridors as commuting or foraging routes, and can be disturbed by excessive and unnecessary lighting, or by light spill or glare from inconsiderately installed or located external lighting.

Lighting schemes which address these issues can be secured by planning conditions. As external lighting is often one of the last elements of a development to be undertaken, it is a matter which can be readily controlled on an appropriately phased basis through imposition of a condition requiring approval of a scheme, or the approval of fine details relating to the installation of an already submitted scheme.

The Nature Conservation topic area could be expanded to include consideration of the need to incorporate ecological enhancements into developments as well as protection measures to reduce potential impacts. In some circumstances, it would be reasonable to seek to secure such enhancements as a means of offsetting impacts on wildlife and/or habitats on a site or in the locality arising from a development.

| | | | | |
|--|---|-------------------------------------|-------------------------------------|--------------------------|
| Q6 | Do you agree that decision notices should be structured in the manner proposed? If you do not, please suggest an alternative. | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: 'We have no comment to make on this question.' | | | | |

Consultation reference: WG19178

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|--|---|-------------------------------------|-------------------------------------|--------------------------|
| Q7 | Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition? | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: 'We have no comment to make on this question.' | | | | |

| | | | | |
|--|--|-------------------------------------|-------------------------------------|--------------------------|
| Q8 | 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? If not, please suggest your preferred approach. | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments: 'We have no comment to make on this question.' | | | | |

| | | | | |
|---|---|--------------------------|-------------------------------------|--------------------------|
| Q9 | 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 (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Comments: Glandŵr Cymru agrees that for major or otherwise complex applications, this approach is likely to be helpful, and may serve to promote early discussion between applicants and statutory consultees on issues raised through the consultation process which are proposed to be the subject of conditions. We would ask whether this advance notice should be expanded to include statutory consultees where the consultee has requested conditions to be imposed? | | | | |

| | | | | |
|------------|--|-----|--|----|
| Q10 | Should guidance be provided in the circular with regards to any other conditions related | Yes | | No |
|------------|--|-----|--|----|

Yes

Consultation reference: WG19178

| | | | | |
|--|---------|--------------------------|------------------------------|-------------------------------------|
| | matter? | | (subject to further comment) | |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: 'We have no comment to make on this question.' | | | | |

| | | | | |
|--|--|--------------------------|----------------------------------|-------------------------------------|
| Q11 | Does Appendix A of the draft circular contain sufficient examples of model conditions? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: We note that Conditions 131 and 132 deal with undertaking site investigations to identify any land stability issues and to incorporate remediation measures into development where necessary. Condition 35 also covers construction method statements. However, we consider that conditions relating more specifically to the protection of the structural integrity of nearby infrastructure should also be included. In addition to covering matters such as undertaking ground investigations to identify land/slope stability issues (as at condition 131) and the agreement of an overall construction method statement (as at Condition 35), we consider there is a need for conditions which are designed to minimise the risk to nearby infrastructure. The canal network and associated reservoirs and other infrastructure managed by Glandŵr Cymru is often in excess of 200 years old, and was constructed according to the methods and knowledge available at that time. Consequently, it can be vulnerable to weakening or damage arising from new development in close proximity to it. Sometimes it is necessary to undertake investigations to identify the need for stand-off distances where built development or building operations need to be restricted, or to agree the construction methodology for carrying out certain operations, such as excavations and foundation construction, which have the potential to affect the infrastructure of the canal network. We consider that an example of a condition requiring details of external lighting should also be included to cover matters such as the location and level of luminance of lighting, and measures to minimise unnecessary lightspill and glare. External lighting (including security lighting) is often required as part of large-scale commercial, retail or employment developments and can significantly affect the character of a locality, particularly if not adequately controlled. Whilst Condition 125 protects trees, and thus helps mitigate the potential | | | | |

Consultation reference: WG19178

ecological impacts of development, and Condition 133 deals appropriately with the protection of wildlife on site and securing mitigation measures, a further condition could be considered which seeks to incorporate ecological enhancements within a development, whether as an integral part of a landscaping scheme which assists in habitat creation in order to encourage wildlife, or as specific works such as provision of bat boxes etc. Such measures can offer an appropriate form of mitigation to offset impacts on ecology and habitats (whether on site or in the locality) as a result of a development.

| | | | | |
|--|---|--------------------------|-------------------------------------|-------------------------------------|
| 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. | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: 'We have no comment to make on this question.' | | | | |

| | | | | |
|--|--|--------------------------|-------------------------------------|-------------------------------------|
| Q13 | Do you believe any of the conditions fail any of the six tests identified in the circular? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: 'We have no comment to make on this question.' | | | | |

| | | | | |
|--|---|--------------------------|-------------------------------------|-------------------------------------|
| Q14 | Should any conditions be totally removed from Appendix A of the draft circular? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: 'We have no comment to make on this question.' | | | | |

General

Q15

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:

At Paragraph 4.2 planning officers are advised to discuss potential conditions with the relevant statutory consultees before attaching them to a grant of planning permission. We would like this to be expanded to include discussion with statutory consultees regarding conditions suggested by them which the planning officer does not consider to be justified. In such circumstances, it is important that both the planning officer and the statutory consultee understand each others' concerns, and requests from statutory consultees should not be disregarded without discussion.

I do not want my name/or address published with my response (please tick) ☐

| The Use of Planning Conditions for Development Management | | |
|---|---|-------------------------------------|
| Date of consultation period: 29/01/2014 – 25/04/2014 | | |
| Name | | |
| Organisation | | |
| Address | | |
| E-mail address | | |
| Type (please select one from the following) | Businesses/Planning Consultants | <input checked="" type="checkbox"/> |
| | Local Planning Authority | <input type="checkbox"/> |
| | Government Agency/Other Public Sector | <input type="checkbox"/> |
| | Professional Bodies/Interest Groups | <input type="checkbox"/> |
| | Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations) | <input type="checkbox"/> |
| | Other (other groups not listed above) or individual | <input type="checkbox"/> |

| Q1 | Do you think an updated circular on conditions is required? | Yes | Yes (subject to further comment) | No |
|----|---|--------------------------|-------------------------------------|--------------------------|
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Comments:

A fit for purpose development management system is the underlying theme of current legislative planning reform in Wales.

Much time has passed since the publication of circular 35/95; including the devolution of power to the National Assembly for Wales and two overhauls to the development plan system.

The need for comprehensive, but not wholesale, change is set out in the body of evidence which underpins this consultation. It is also a theme that runs through current legislative reforms which run parallel to this consultation, towards a Planning Bill for Wales.

We therefore wholeheartedly agree in the need for an updated circular on conditions: making it consistent with broad current planning practices; wider legislative reforms and requirements (most notably the Community Infrastructure Levy); and the challenges facing the built environment in Wales.

Consultation reference: WG19178

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|--|---|-------------------------------------|-------------------------------------|--------------------------|
| | | | | |
| Q2 | Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular? | Yes | Yes (subject to further comment) | No |
| | | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <p>Comments:</p> <p>Redrow Homes agree that some information from Circular 35/95 should be retained, recognising that the proposed document itself amounts to a comprehensive revision.</p> <p>In particular we agree that the "tests" should be retained and are still relevant and applicable to contemporary issues, and compliment the thrust of Positive Planning (WG Consultation reference WG20088) which seeks to change entrenched and out-dated practice. Further comment on this matter is given below in Q3.</p> | | | | |

| | | | | |
|---|--|--------------------------|-------------------------------------|--------------------------|
| Q3 | Do you consider: | Yes | Yes (subject to further comment) | No |
| | (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)? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <p>Comments:</p> <p>Whilst Redrow Homes believes that the six tests are still relevant to today, we would like to see the CIL-compliance tests currently in use in England to be incorporated into the assessment of planning conditions in Wales in this Circular. This will help to reflect the gradual implementation of CIL in Wales and minimise the risk of 'double counting' on large strategic sites. Applicants may be liable for CIL in the later phases of such sites, but aren't liable for it now and could end up paying twice. Incorporating CIL-compliance into the tests would future-proof the circular and avoid unnecessary changes to it once it is in place.</p> | | | | |

| | | | | |
|-----------|--|--------------------------|-------------------------------------|-------------------------------------|
| 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? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Consultation reference: WG19178

Comments:

Whilst we have no case law to hand, would like to point out that from our general experience, permissions granted at appeal tend to have less conditions than those determined by a LPA.

| 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? | Yes | Yes (subject to further comment) | No |
|----|--|--------------------------|-------------------------------------|--------------------------|
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Comments:

With reference to Section 5 of the Draft Circular we have the following comments and suggestions:

Design (paragraph 5.57)

While reference to Technical Advice Note (TAN) 12 is useful, regard to conditions imposed in relation to a Design and Access Statement (DAS) is not, particularly in light of the Welsh Government's intention to remove the statutory requirement for Design and Access Statements as part of application submissions (see Welsh Government consultation reference WG20088). We consider that reference to a DAS should be removed, but whilst they are still in place, we would like them listed in conditions so applicants have the ability to vary details in the DAS at a later point, if necessary. This will resolve the problem of not being able to change matters of material importance that were set out in the DAS, as is currently the case.

Drainage (paragraph 5.59 - Conditions 39 - 42)

Paragraphs 5.59 to 5.62 should be updated to take account of the forthcoming implementation of Schedule 3 of the Flood and Water Management Act 2010 which will see Lead Local Flood Authorities (LLFAs) taking on the role of Sustainable Urban Drainage Systems (SuDS) and the Adopting and Approving Body (SAB) role in relation to SuDS.

In this role LLFAs will be responsible for both approving the original design of the SuDS and adopting and maintaining the finished system.

Failure to accurately reflect the new procedures may result in duplication of controls or unenforceable conditions.

It is therefore suggested that upon publication the new circular reflect this change and provide the necessary guidance and practice.

Consultation reference: WG19178

Renewable Energy (paragraph 5.108)

The application of conditions to enforce maintenance of renewable technologies and its removal for non-performance may be enforceable where the building or housing stock are under the control of a management organisation (i.e. RSLs, ESCO etc), but unenforceable for private households.

Sustainable Buildings (Paragraph 5.113; conditions 122 - 124 in Appendix A)

To avoid duplication of controls, conditioning must recognise the move to regulation through Part L, which will be equivalent to ENE1 of the Code for Sustainable Homes and the outcomes for the review of TAN 22 consequently made necessary. The review is currently in hand.

Redrow Homes would like to see the new Circular have further guidance to the phased discharge of conditions, we are involved in a number of large projects across Wales and being able to phase conditions is very important to allowing phased delivery. We are worried about the lack of regard paid to such large sites and mixed use sites which will required phased development and hence a phasing of conditions. The final circular must address this issue more closely when published.

| | | | | |
|-----------|---|--------------------------|-------------------------------------|--------------------------|
| Q6 | Do you agree that decision notices should be structured in the manner proposed? If you do not, please suggest an alternative. | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Comments:

We agree that decision notices should be structured in the manner set out in Box 2 (page 20) of the Draft Circular, with a few changes:

We recognise that it gives greater consideration to the whole development and planning process and remphasises the role of the LPA post determination; consistent with the move towards "development management" outlined in the draft Welsh planning Bill.

With reference to paragraphs 4.20 and 4.21 (Reasons for Conditions) of the Draft Circular we consider that there is also the opportunity to improve clarity and consistency further - at present there is a divergence in practice whereby some LPAs list reasons for conditions on a decision notice seperately to the condition itself. Like conditions, the reasons "also need to to be specifically tailored to the development type and context" (para 4.21).

We therefore suggest that reasons for conditions should be set aside from the condition to which they relate. This principle should be applied across all LPAs in Wales to ensure consistency of practice.

Consultation reference: WG19178

We would like a new section within this structure that gives greater reference to the phasing of more complex and larger schemes. This section would be situated between the 'Approved Plans' and 'Pre-Commencement Conditions' and make reference to a phasing plan, facilitate the ability to change the phasing plan and clarify how phased conditions can be implemented and organised. pre-commencement and pre-occupation conditions that follow should not be site-wide requirements and hence minimise the problems with implementation.

| | | | | |
|-----------|---|--------------------------|-------------------------------------|--------------------------|
| Q7 | Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Comments:

We agree that the approved plans and drawings relevant to a decision should be identified in a condition.

We consider that this will embed a significant element of flexibility in the system, aligned with proposals to standardise material and non-material amendment procedures. It will also provide an expedient route for changes to consents through existing legislative provisions such as Section 73 of the Town and Country Planning Act.

However, in the interests of clarity we consider that additionally, the full suite of documents and drawings should be listed, not just the plans/drawings associated with the development. As described at para 4.19 (Box 2, no. ii) of the consultation document, the listing of such documents will also provide a reference for all other conditions attached i.e. contamination and drainage.

Moreover, since it is the intention to make decision notices "live" documents (see WG Planning Bill consultation WG20088, para 6.116) this also makes the administration and reference of information all the more critical.

We therefore consider that all documents relevant to the determination of a planning application should be referenced in addition to the drawings and plans proposed by this consultation.

| | | | | |
|-----------|--|-----|----------------------------|----|
| Q8 | 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? If not, please suggest your | Yes | Yes (subject to further | No |
| | | | | |

Consultation reference: WG19178

| | | | | |
|--|---------------------|--------------------------|---|--------------------------|
| | preferred approach. | <input type="checkbox"/> | comment) <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <p>Comments:</p> <p>Redrow Homes agree that the use of language to create vague and ambiguous conditions presents a barrier to development and represents a breach of LPA power. Such conditions cause costly delays and should rightly be removed from decision notices. Such phrases however, do try to achieve flexibility in conditioning permissions and that principle should not be lost in the new Circular.</p> <p>Redrow Homes believe that advance notice to applicants of conditions prior to determination is crucial to delivering a more effective and certain planning system as prior conversation between LPA and applicant on the issue of conditions can save time.</p> <p>Moreover, Redrow Homes has suggested that the proposed Planning Advisory and Improvement Service (PAIS; see WG consultation reference WG20088) could mediate and advise both LPAs and applicants where disputes arise or where it is evident that a condition(s) need greater clarity/detail.</p> <p>With reference to paragraph 3.37 applicants should be left in no doubt as to why the condition is relevant and the action required for its discharge.</p> <p>Redrow Homes welcomes the acknowledgement that over-precise conditions can be unreasonable and that a balance must be struck to enable flexibility to increase the deliverable planning permissions. Achieving this balance correctly is crucial to increasing the deliverability of permissions.</p> | | | | |

| | | | | |
|---|---|---------------------------------|--|--------------------------------|
| Q9 | Do you agree that Local Planning Authorities should provide applicants with advance notice of conditions before an application is due to be determined? | Yes <input type="checkbox"/> | Yes (subject to further comment) <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| <p>Comments:</p> <p>We agree that LPAs should provide applicants with advance notice of conditions prior to an application's determination. Some LPAs already adopt this approach and we consider there is great merit in doing so, however, a consistent approach is required across all LPAs.</p> <p>We would like the Circular to go one step further in securing deliberative planning by allowing applicants to submit their own draft conditions.</p> <p>LPAs must also review the proposed conditions of statutory consultees to ensure that they pass not only the six tests of reasonableness but also for CIL compliance. LPAs should not be accepting these conditions as submitted, but</p> | | | | |

Consultation reference: WG19178

should work with the statutory consultees to producing reasonable conditions that enable deliverable, viable development.

The circular will by definition remain as a non-statutory reference guide used to amplify legislation. It would be useful to have a requirement for LPAs to consult with applicants on the use of conditions before their issue referenced in this Circular and elsewhere without the need for change to statutory instruments.

With reference to consultation WG20088 (Planning Bill) we suggest that this element should be emphasised and consolidated through the Planning Advisory Improvement Service (PAIS); its remit including disseminating and educating planning officials as to development management policies and procedures. This we consider will encourage the mainstream practice of this procedure more widely.

| | | | | |
|---|--|--------------------------|-------------------------------------|--------------------------|
| Q10 | Should guidance be provided in the circular with regards to any other conditions related matter? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <p>Comments:</p> <p>The Circular must reiterate the need to minimise the number of conditions as a matter of procedure, reducing the number of pre-development, commencement and occupation conditions. Furthermore it is important that the Circular ensures that there are sufficient procedures for the effective and efficient discharge of conditions.</p> <p>It would be beneficial to give a time limit for conditions to be discharged introducing a four week time limit for authorities to discharge conditions would aid. Should the authority fail to discharge the conditions within four weeks or fail to give reason why the conditions will not be discharged in that time, the applicant should be able to consider the conditions to be discharged.</p> | | | | |

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|------------------|--|--------------------------|-------------------------------------|--------------------------|
| Q11 | Does Appendix A of the draft circular contain sufficient examples of model conditions? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <p>Comments:</p> | | | | |

Consultation reference: WG19178

Redrow Homes agree that the model conditions set out at Appendix A of the Draft Consultation Document are relatively sufficient but could include additional references or applications for clarity:

With reference to Appendix A, conditions 108 - 111; the consultation draft makes reference only to electricity and ignores the prospect of renewable heat. Redrow Homes consider that the Draft Consultation Document would benefit from an example citing renewable heat systems.

With reference to conditions 119 - 121 (Sustainable Buildings) Redrow Homes consider that any conditioning for new non-residential buildings must recognise the requirements of new Building Regulation Part L2A, and therefore be drafted with this in mind.

As a general point, Redrow would like further model conditions regarding the phasing and phased discharges.

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|------------|---|--------------------------|-------------------------------------|-------------------------------------|
| 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. | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|------------|--|--------------------------|-------------------------------------|-------------------------------------|
| Q13 | Do you believe any of the conditions fail any of the six tests identified in the circular? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: | | | | |

| | | | | |
|------------|---|--------------------------|-------------------------------------|-------------------------------------|
| Q14 | Should any conditions be totally removed from Appendix A of the draft circular? | Yes | Yes (subject to further comment) | No |
| | | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: | | | | |

General

Q15

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:

With reference to Appendix A, Condition 36 (Decentralised Energy Supply) the upfront capital cost and logistical issues make it extremely unlikely in large or multi-phase district heating or CHP developments that the energy delivery system will be fully completed and operational ahead of the majority of completions.

For instance, early phases of a development may need to employ temporary, on-line gas boilers until the scheme has reached a sufficient scale for the installation of the permanent alternatively fuelled systems (i.e. biomass, biofuel etc.).

Conditions and guidance for them should recognise the practical limitations in these cases.

By their nature renewable energy systems may be subject to improvements through innovative advances during the life of the development. Conditioning should not obstruct the installation and operation of such modifications.

We would like to reiterate our belief that the Circular should ensure that LPAs consult with applicants on the the preparation of conditions in order to provide sufficient measures for their discharge.

We would like to suggest a change to the name of the Circular to "The Preparation of, Use of and Discharge of Planning Conditions for development Management." This wil place greater emphasis on the two-way LPA-applicant relationship and help to provide the culture change towards development management that the Welsh Planning Bill aims to deliver.

I do not want my name/or address published with my response (please tick) ☒