



RHONDDA CYNON TAF

**RECORD OF DELEGATED OFFICER DECISION**


SUBJECT: WELSH GOVERNMENT CONSULTATION ON THE USE OF PLANNING CONDITIONS FOR DEVELOPMENT MANAGEMENT

**PURPOSE OF ATTACHED REPORT:**

The purpose of the report is to highlight the contents of the Welsh Government consultation on the use of planning conditions for development management and then agree to the submission of the attached consultation response form to Welsh Government.

**DELEGATED DECISION (Date):**

The consultation response form is agreed prior to the Service Director Planning submitting the document to the Welsh Government

|  |                             |                 |
|--|-----------------------------|-----------------|
| <br>Chief Officer Signature | STEVE MERRITT<br>Print Name | 25/4/14<br>Date |
|--|-----------------------------|-----------------|

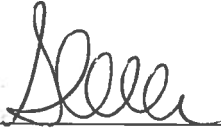
The decision is taken in accordance with Section 15 of the Local Government Act, 2000 (Executive Functions) and in the terms set out in Section 5 of Part 3 of the Council's Constitution



CONSULTEE CABINET MEMBER SIGNATURE

24.4.14

DATE



OFFICER CONSULTEE SIGNATURE

24/4/14

DATE

|               |                           |
|---------------|---------------------------|
| Directorate:  | Regeneration and Planning |
| Contact Name: | Simon Gale                |
| Designation:  | Service Director Planning |
| Tel.No.       | 01443 494716              |

# RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

## MUNICIPAL YEAR 2013 - 2014 REPORT TO ACCOMPANY DECISION OF CHIEF EXECUTIVE

|   |
|---|
| <b>Part 1</b><br><b>(Non Confidential)</b>  |
| WELSH GOVERNMENT<br>CONSULTATION ON THE USE OF<br>PLANNING CONDITIONS FOR<br>DEVELOPMENT MANAGEMENT |

### 1. PURPOSE OF THE REPORT

The purpose of the report is a) to highlight the contents of the Welsh Government consultation on the use of planning conditions for development management and then b) agree to the submission of the attached consultation response form to Welsh Government.

### 2. RECOMMENDATIONS

It is recommended that:

- (1) The consultation response form is agreed prior to the Service Director Planning submitting the document to the Welsh Government.

### 3. BACKGROUND

The Welsh Government is currently inviting views on a new Circular relating to conditions attached to planning permission. The consultation was issued on 29 January 2014 and responses are required to be submitted by 25 April 2014.

The new Circular would replace Welsh Office Circular 35/95 (issued as Department of the Environment Circular 11/95 in England) The Use of Conditions in Planning Permissions. That Circular is now over 18 years old and contains references to legislation which has been revised or replaced. In some cases, the advice contained has been superseded by later guidance in Technical Advice Notes (TANs) and circulars.

The draft Circular provides up-to-date guidance about the effective use of planning conditions, as well as an updated list of model conditions to promote best practice in Wales, whilst retaining elements of the 1995 Circular that remain relevant.

The consultation is part of Welsh Government's response to recent recommendations made in the Study to Examine the Planning Application Process in Wales (2010) and the report (Towards a Welsh Planning Act: Ensuring the Planning System Delivers) by the Independent Advisory Group.

The 2010 Study identified the sometimes conflicting views between local planning authorities (LPAs) and practitioners in respect of conditions. The commonly held view expressed by practitioners was that too many onerous conditions are imposed on planning permissions; whilst, LPAs maintain that some conditions don't go far enough and are often imposed as a result of a poor quality submission lacking in enough information.

On a general point it is considered that Welsh Government need to acknowledge that the work involved in the discharge of conditions can in some cases involve a significant LPA resource. Accordingly, it is considered that a fee should be payable to LPAs for submissions seeking the discharge of conditions. This is not currently the case.

#### **4. KEY ISSUES IN THE PROPOSALS**

##### What the Proposed Circular Changes Seek to Achieve

The proposed circular aims to:

- update the information in Circular 35/95;
- standardise decision notices in Wales;
- encourage proportionate and flexible use of conditions;
- encourage cooperation and negotiation in the formulation of planning conditions;
- encourage consideration of the monitoring and enforcement implications of a condition; and,
- provide a list of contemporary model planning conditions.

##### Updates to Circular 35/95

The structure of the circular has been re-arranged to make it more logical and new sections 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

It is worth noting, however, that it is intended that the proposed circular will retain the 'six tests' as set down in Circular 35/95. Conditions should not be imposed unless they meet these tests and still what is considered to represent best practice.

The six tests are, that the condition should be:

- necessary;
- relevant to planning;
- relevant to the development to be permitted;
- enforceable;
- precise; and,
- reasonable in all other respects.

## Standard Decision Notices

In seeking a more consistent approach across the LPAs of Wales the circular advises that conditions on a decision notice should appear in the order they are to be discharged. So the time limiting condition would appear first, followed by a condition identifying the approved plans and then pre-commencement conditions, pre-occupation conditions and finally regulatory conditions.

An alternative approach could be that conditions are structured in terms of related subject. So for example, all the Highway related conditions would appear together, which could be followed by all the landscaping related conditions etc...

## Cooperation and Negotiation

The draft circular advises LPAs and external statutory bodies to encourage pre-application discussions in order that the applicant/developer can be made aware of the type and level of information that will be required, thus by front loading the process negating the need to impose conditions requiring the information post decision.

The draft circular is also encouraging a greater degree of interaction with an applicant/developer prior to a decision being made in that they would be given the opportunity to view and comment upon a draft schedule of proposed conditions.

## Model Planning Conditions

Appendix A of the draft circular sets out a list of model conditions which have been updated to reflect current case law and contemporary planning issues whilst applying the six tests. Many of these are familiar and have retained or adapted from Circular 35/95, various TANs or the Planning Inspectorate's list of suggested model conditions.

The consultation is still 'open' and as noted above comments can be submitted up until 25 April 2014. The link to the Welsh Government website is below

<http://wales.gov.uk/consultations/planning/review-of-planning-conditions-circular/?status=open&lang=en>

## **5. CONCLUSION**

It is recognised that there is a need to update Circular 35/95 and the proposed introduction of this 'new' circular is generally welcomed. There are however, some areas which it is considered require some further clarification and these issues are reflected in the draft response attached at appendix A.

The draft circular seeks to make the application of conditions more flexible. However, it indicates that LPAs should not use suffix terms such as "unless otherwise agreed by the Local Planning Authority". This term is often applied in order to give such flexibility. The power to agree, or not any variation still lies with the LPA. Potentially it could mean that an applicant/developer will have to submit a fresh planning application for the most minor of amendments. This does not appear to meet the aspirations of Welsh Government to make the planning system less of a barrier to development

It is considered that the draft circular does not fully consider the issue of phasing. This is quite often a progression of development that would undertaken on larger sites, such as the Council's Strategic Sites and it is considered that the circular should recognise the challenges of adequately and properly conditioning our bigger developments.

## Consultation Response Form

### The Use of Planning Conditions for Development Management

We want your views on our proposals for amendments to some non-domestic permitted development rights in Wales. Your views on the draft text for the subsequent Amendment Order and draft Technical Guidance document are also sought.

***Please submit your comments by: 25/04/2014***

If you have any queries on this consultation, please email: [planconsultations-b@wales.gsi.gov.uk](mailto:planconsultations-b@wales.gsi.gov.uk) or telephone Owain Williams on 029 2082 1715.

#### Data Protection

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

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

| The Use of Planning Conditions for Development Management    |   |                                     |
|--|---|-------------------------------------|
| Date of consultation period: 29/01/2014 – 25/04/2014         |   |                                     |
| <b>Name</b>  | Simon Gale  |                                     |
| <b>Organisation</b>  | Rhondda Cynon Taf CBC   |                                     |
| <b>Address</b>   | Sardis House<br>Sardis Road<br>Pontypridd<br>CF37 1DU   |                                     |
| <b>E-mail address</b>  | Simon.Gale@rctcbc.gov.uk  |                                     |
| <b>Type</b><br><i>(please select one from the following)</i> | 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<br>(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<br>(subject to further comment) | No                       |
|-----------|---|-------------------------------------|-------------------------------------|--------------------------|
|           |   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |
| Comments: |   |                                     |                                     |                          |



Consultation reference: WG19178

|  |  |                          |                                     |                          |
|--|--|--------------------------|-------------------------------------|--------------------------|
| <b>Q3</b>  | 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"/> |
| <p>Comments:</p> <p><b>The opportunity to strengthen the guidance to ensure that conditions meet the six established tests, thereby ensuring that conditions are only imposed when wholly warranted is welcomed.</b></p> |  |                          |                                     |                          |

|                  |  |                          |                                  |                                     |
|------------------|--|--------------------------|----------------------------------|-------------------------------------|
| <b>Q4</b>        | 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"/> |
| <p>Comments:</p> |  |                          |                                  |                                     |

|   |  |                          |                                     |                          |
|---|--|--------------------------|-------------------------------------|--------------------------|
| <b>Q5</b>   | 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><b>For larger schemes it would be useful to have model conditions and guidance which deal with the 'Phasing' of the development/scheme.</b></p> |  |                          |                                     |                          |

|   |   |                          |                                     |                          |
|---|---|--------------------------|-------------------------------------|--------------------------|
| <b>Q6</b>   | 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><b>It is agreed that decision notices should be logically structured, giving clarity to the applicant/developer. Whilst the approach suggested has obvious merit for perhaps the majority of permissions issued it is considered that for larger schemes, with a greater number of conditions, such a structure could result in a</b></p> |   |                          |                                     |                          |

Consultation reference: WG19178

**decision notice with a lack of coherence, with conditions darting back and forth between subject areas. In these cases the ability to group conditions (ie all the Highway, Ecological, Drainage conditions) together should be retained.**

|   |   |                          |                                     |                          |
|---|---|--------------------------|-------------------------------------|--------------------------|
| <b>Q7</b>   | Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition? | Yes                      | Yes<br>(subject to further comment) | No                       |
|   |   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <p>Comments:</p> <p><b>Whilst given clarity to all involved as to exactly what has been granted permission, it does mean that applicant's will have to make S.73 application for even the most minor of amendments, which may be perfectly acceptable. This would not appear to meet the aspirations of Welsh Government to make the planning system less of a preceived barrier to quick decisions (where appropriate) thereby aiding development and the economy.</b></p> |   |                          |                                     |                          |

|   |  |                          |                                     |                                     |
|---|--|--------------------------|-------------------------------------|-------------------------------------|
| <b>Q8</b>   | 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<br>(subject to further comment) | No                                  |
|   |  | <input type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| <p>Comments:</p> <p><b>It is considered that local planning authorities use the term (in respect of issues which do not go to the heart of the development permitted) to aid flexibility for applicants/developers in decisions. As with Q.7 above it enables the LPA to deal with minor matters quickly and without the need for applicants/developers having to make further formal submission.</b></p> |  |                          |                                     |                                     |

|  |   |                          |                                     |                                     |
|--|---|--------------------------|-------------------------------------|-------------------------------------|
| <b>Q9</b>  | 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<br>(subject to further comment) | No                                  |
|  |   | <input type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| <p>Comments:</p> <p><b>It is considered that discussions around conditions should occur at the pre-application stage in order to support certainty and the wider principles of front</b></p> |   |                          |                                     |                                     |

Consultation reference: WG19178

**loading the process. Such an approach should help reduce the number of conditions imposed on decision notices.**

**Whilst there is clear merit in working with an applicant in looking to prepare a set of draft conditions in respect of major applications it is considered that the sharing of a draft conditions before a decision is made in respect of the majority of applications could be onerous and confusing.**

**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 may conflict with aspirations for speedy decision making**

|  |  |                          |                                     |                          |
|--|--|--------------------------|-------------------------------------|--------------------------|
| <b>Q10</b>   | Should guidance be provided in the circular with regards to any other conditions related matter? | Yes                      | Yes<br>(subject to further comment) | No                       |
|  |  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <p>Comments:</p> <p><b>Whilst the Draft circular does refer to conditions that should not be imposed it would be useful if the circular were to give specific examples of conditions which should not be imposed so as to avoid duplication with other statutory controls - for example highway and drainage legislation.</b></p> <p><b>It is not evident that the circular acknowledges the important roles of consultees in the use of conditions which comply (or not, in their suggested form) with the six tests. In the context of the planning officer not being likely to have a detailed understanding of all specialist knowledge areas that a development may require input from he/she is often reliant on the consultee request for condition imposition. Circular guidance for consultees would be useful.</b></p> |  |                          |                                     |                          |

|   |  |                          |                                     |                          |
|---|--|--------------------------|-------------------------------------|--------------------------|
| <b>Q11</b>  | Does Appendix A of the draft circular contain sufficient examples of model conditions? | Yes                      | Yes<br>(subject to further comment) | No                       |
|   |  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <p>Comments:</p> <p><b>It is appreciated that it is difficult to include a draft condition to suit every possible situation. However, in the main the draft circular does appear to cover the main areas (noting Q.5 response regarding Phasing).</b></p> |  |                          |                                     |                          |

Consultation reference: WG19178

|  |
|--|
|  |
|--|

|  |   |                          |                                     |                                     |
|--|---|--------------------------|-------------------------------------|-------------------------------------|
| <b>Q12</b>   | 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<br>(subject to further comment) | No                                  |
|  |   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| <p>Comments:</p> <p><b>Condition 113 (wind turbine noise) as this does appear to replicate the way Inspectors on Appeal Decision Notices draft noise conditions.</b></p> <p><b>It may be more practical to use a noise level setting condition / compliance condition and a complaint condition.</b></p> <p><b>The example tries to tie it all up in one condition which is a bit wordy and maybe over simplistic, in that it appears to be trying to tie the noise level down to a single figure.</b></p> |   |                          |                                     |                                     |

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

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

Guidance on which issues should be dealt with under a S.106 Agreement and which can be dealt with by an appropriately worded condition would ensure a consistent and clear approach. For example the requirement that a site be developed for AH (if the application is a RSL) - we have used a condition, but generally tend to use a S.106.

The guidance could offer further emphasis on the inappropriateness of dual controls of conditions on both planning permissions and planning obligations.

4.20 of the draft circular deals with 'Reasons for Conditions'. Inspectors do not give reasons for each condition imposed in their Appeal decisions. A consistent approach should be adopted across the board.

The discharge of conditions on a major scheme permission requires a significant resource input to process. A fee should be payable to the LPA for each condition discharge submission sought. This may have the added benefit that the applicant will be 'encouraged' to front load their submission with a greater degree of information, thereby alleviating the need to impose the condition/s.

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

## **How to Respond**

**Please submit your comments in any of the following ways:**

|   |
|---|
| <b>Email</b>  |
| Please complete the consultation form and send it to :<br><a href="mailto:planconsultations-b@wales.gsi.gov.uk">planconsultations-b@wales.gsi.gov.uk</a><br>[Please include 'Conditions Consultation – WG-19178' in the subject line] |
| <b>Post</b>   |
| Please complete the consultation form and send it to:<br><br><b>Conditions Consultation<br/>Development Management Branch<br/>Planning Division<br/>Welsh Assembly Government<br/>Cathays Park<br/>Cardiff<br/>CF10 3 NQ</b>          |
| <b>Additional information</b>   |
| If you have any queries on this consultation, please<br>Email: <a href="mailto:planconsultations-b@wales.gsi.gov.uk">planconsultations-b@wales.gsi.gov.uk</a><br><br>Telephone: Owain Williams on 029 2082 1715                       |