

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 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 If someone has asked for their name and address not to be published, that is an important fact we would take into account.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be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published.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.

Consultation reference: WG19178

The Use of Planning Conditions for Development Management		
Date of consultation period: 29/01/2014 – 25/04/2014		
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E-mail address	consultation@ihbc.org.uk	
Type <i>(please select one from the following)</i>	Businesses/Planning Consultants	
	Local Planning Authority	
	Government Agency/Other Public Sector	
	Professional Bodies/Interest Groups	
	Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations)	
	Other (other groups not listed above) or individual	

Q1	Do you think an updated circular on conditions is required?	Yes	Yes (subject to further comment)	No

Comments:
Yes, we think this is sensible given the circumstances explained in the consultation.

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

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Comments:
We believe that Circular 35/95 has been useful. For the sake of continuity what is still relevant in it should be retained. We have some comment on proposed standard conditions for the historic environment (see below).

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)?			

Comments:
It may be difficult to contrive further tests given the “relevant to planning” test which should be retained.

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

Comments:
We have no case law to add.

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

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Comments: We are interested in the standard conditions for Listed Buildings and for Archaeology. The proposed condition for the protection of historic assets can usefully be applied to archaeological features. We suggest either that these headings are combined to allow for this or a cross-reference or repeated condition is used.

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

Comments:
This is a good idea.

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

Comments:
We agree with this as it adds to the clarity of the permission. However, it will be no substitute for the LPA retaining reference copies of the approved drawings as plans for development are typically worked on further by developers and their designers after the planning stage often without a full audit trail on the timing of amendments.

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

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Comments:
Bearing in mind the case law, this seems an unavoidable conclusion.

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

Comments:
The advice on pre-application discussions seems sound. Part of the discussions on how conditions might be avoided by both scheme design and submission timing and procedure are good practice. A willingness to agree conditions in advance (sometimes these can be suggested by the applicant) forms part of this and the issue of a draft decision notice for information can also help in the process. This should not, however, be allowed to contribute to delays in the process as a whole.

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

Comments:
We cannot think of any.

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

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Comments:
The standard set will be adequate in the vast majority of circumstances. It is likely that more detailed conditions for use in listed building consents do not readily lend themselves to standardization because of the specific circumstances of individual cases.

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

Comments:

We have the following suggestions (please also see our suggestion with regard to the applicability of conditions to the wider historic environment at Q5):

Condition 22. We suggest the wording “...proposed archaeologist is suitably qualified and experienced. A copy...”. This wording is supported by Circular 60/96.

Condition 23. We think this “calling card” condition is unclear in its expectations other than ensuring that access cannot be denied. We think the Circular 60/96 approach should be invoked. The following has been suggested to us; you may already have seen this suggestion.

Any historic or archaeological features not previously identified which are revealed when carrying out the development hereby permitted shall be retained in-situ and reported to the local Planning authority in writing within [...] working days. Works shall be halted in the area/part of the building affected until provision has been made for the retention and/or recording in accordance with details submitted to and approved in writing by the local planning authority.

Condition 24. This condition has, in the past, given rise to difficulties because of vagueness about what is actually, in practice, being asked for. It is also a Grampian condition whereas, often, the full extent of what is required needs to be ascertained as work proceeds. Again a suggestion has been made to us which would at least set the parameters for the more tailored conditions routinely being used as best practice by LPAs.

A) No demolition/development shall take place/commence until a Written Scheme of Investigation has been submitted to and approved by the local planning authority in writing. The scheme shall include an assessment of significance and research questions; and:

- a. The programme and methodology of site investigation and recording**
- b. The programme for post investigation assessment**
- c. Provision to be made for analysis of the site investigation and recording**
- d. Provision to be made for publication and dissemination of the analysis and records of the site investigation**
- e. Provision to be made for archive deposition of the analysis and records of the site investigation**
- f. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.**

B) No demolition/development shall take place other than in accordance with the Written Scheme of Investigation approved under condition (A).

C) The development shall not be occupied until the site investigation and

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
Comments:				

Q14	Should any conditions be totally removed from Appendix A of the draft circular?	Yes	Yes (subject to further comment)	No
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:
We have no further comments, other than to welcome this initiative.	

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:

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