



# RTPI

mediation of space · making of place

Royal Town Planning Institute  
41 Botolph Lane  
London EC3R 8DL  
Tel +44(0)20 7929 9494  
Fax +44(0)20 7929 9490

Email [online@rtpi.org.uk](mailto:online@rtpi.org.uk)  
Website: [www.rtpi.org.uk](http://www.rtpi.org.uk)

Registered Charity Numbers  
England 262865  
Scotland SC 037841

Patron HRH The Prince of Wales KG KT PC GCB

19<sup>th</sup> March 2010

Email response sent to: [richard.holland@pins.gsi.gov.uk](mailto:richard.holland@pins.gsi.gov.uk)

Dear Mr Holland,

## **RESPONSE TO CONSULTATION PAPER: Model planning conditions PINS consultation**

Thank you for the opportunity to respond to the above. The Royal Town Planning Institute (RTPI) is a membership organisation representing over 22,000 spatial planners. It exists to advance the science and art of town planning for the benefit of the public.

The response has been formed drawing together internal consultations and the results of meetings and discussions with members through the RTPI's National Association for Planning Enforcement (NAPE).

The RTPI fully supports the Government's initiative to comprehensively update national policy on conditions. The opportunity to strengthen the guidance to ensure that conditions meet the established six tests thereby ensuring that conditions are only imposed when wholly warranted is particularly welcomed.

The proposed model conditions generally represent a consolidation of the models in Circular 11/95, the PINS model conditions published in 2008 and the DCLG model conditions in respect of land affected by contamination and NAPE would like to make the some general observations followed by detailed comments on a number of particular conditions.

The RTPI would have liked to have seen specific examples of conditions which should not be imposed so as to avoid duplication with other statutory controls as is the case presently with Appendix B of Circular 11/95. The consultation does not include examples of conditions which are unacceptable.

The RTPI is concerned that the vast majority of the proposed conditions lack clarity and precision in their wording. Some of the conditions don't appear to meet the 6 tests and would be, in the RTPI's view, unenforceable. A precise definition of some of the wording is required. Some conditions seem to stop short of what is required (i.e. submission of a scheme but no requirement to implement or retain). The additional wording "and thereafter shall be maintained as such" would be beneficial.

Having regard to judicial authority, for the avoidance of doubt and in the interests of consistency, it is considered that the wording of all of the models of pre-commencement conditions (including affordable housing etc.) should be amended fit the convention:

"No development shall commence on site until..."

The RTPI is further concerned that at a time when it is being advocated to make conditions simpler and clearer to understand, and LPA's are being asked to reduce the number of conditions they impose, that the list of model conditions, which is far from being exhaustive, as pointed out in the consultation, that there are a number of unclear and imprecise conditions and there is a list of some 150 conditions presented compared with 79 conditions in Circular 11/95. This seems at odds with the Killian Pretty review which calls for a thorough overall and examination of current practice in how conditions are used and discharged and reducing the number of conditions to those no more than are required to make developments acceptable.

Please find attached the RTPI's response to the individual conditions below. If you require any further assistance, please contact Trish Cookson, Networks and Associations Developer on 01262 605972 or email [nape@rtpi.org.uk](mailto:nape@rtpi.org.uk).

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Matt Thomson', with a long horizontal flourish extending to the right.

Matt Thomson  
**Acting Director Policy and Partnerships**  
Enc.

The proposed model conditions with which the RTPI raise concerns with are those reproduced below, with the RTPI's commentary set out in italics below each condition: -

#### ACCESS

No structure or erection exceeding [ ] metres in height shall be placed [to the [east] of a line from [ ] to [ ]] [as shown on drawing No [ ]] [within the sight lines referred to in Condition [ ]].

*The RTPI consider that this condition is complicated and not easy to understand.*

#### ADVERTISEMENTS

To ensure removal after a temporary permission expires:

The [hoarding] hereby granted consent shall not be retained on the site after the expiry of [1 year] from the date of this decision.

*This would read better if worded: 'shall be removed from the site by [insert date]'*

To ensure proper screening as part of a poster display:

The timber security fencing on the [western] boundary of the site shall not be less than [2.4 metres] in height.

*This suggests that a fence of any height above the imposed limit could be constructed, even though it may need planning permission*

To restrict the illumination to opening hours:

The sign permitted by this consent shall only be illuminated during the opening hours of the premises to which it relates.

*There is uncertainty with this condition as there is possible conflict between licensing hours and any hours specified under planning consent.*

To ensure that the sign is not displayed at the same time as an existing approved one:

The sign permitted by this consent shall not be displayed at the same time as the sign granted express consent by the Council on ....

*The RTPI suggest this should read 'Before the sign permitted by this consent is displayed the sign previously granted express consent by the Council on [date/ref no] shall be removed.'*

To limit the number of lights:

No more than [four] lights shall be used in association with the display of the illuminated sign hereby permitted. They shall be evenly-spaced along the frontage above the sign.

*What is the definition of evenly spaced? This condition is too vague and open to interpretation. The condition also presupposes that only down lighters are acceptable.*

Landscaping and maintenance of landscaping:

The advertisements permitted by this consent shall not be displayed until full details of [both] the [hard and soft] landscape works proposed [and also a schedule of landscape maintenance for the period of express consent] has been submitted to and approved in writing by the Local Planning Authority. The landscaping scheme shall be carried out within [3] months of the Local Authority's written approval and maintained in accordance with the approved schedule.

*Maintained for how long? Retention of landscaping?*

To limit the display to fascia height (especially where appellant is willing to lower it from above the fascia):

The sign permitted by this consent shall not be displayed other than on the built fascia and no part of the sign shall exceed the height of the fascia.

*The term 'built fascia' requires definition.*

#### AERODROMES

The total number of aircraft movements shall not exceed [ ] per [period of time] except in an emergency.

Aircraft movements shall take place only between [hours of day] on [days of week], except in an emergency.

*What constitutes an emergency? Needs clearer definition.*

#### AMENITY LAND

Provision of amenity land

None of the building operations hereby permitted shall be carried out on that part of the application site shown on the submitted/attached plan.

*So they can't build anything then? Suggest 'shown on the submitted/approved plan as [ ]'.*

Laying out of land allocated as amenity land

Before/within 12 months from the date when the change of use hereby permitted is carried out/any of the buildings permitted are occupied/any of the buildings permitted are first used for the purpose of [ ] the land shown on the permitted plan as [ ] shall be laid out in accordance with that plan as amenity land.

*No mention of retention and maintenance.*

DETAILS - WHERE RETROSPECTIVE PLANNING PERMISSION IS GRANTED (where matters to be approved are relatively straightforward)

Unless within [ ] months of the date of this decision a scheme for the [whatever works are required], is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within [ ] months of the local planning authority's approval, the use of the site [or occupation for whatever] shall cease until such time as a scheme is approved and implemented.

If no scheme in accordance with condition [(x)] above is approved within [ ] months of the date of this decision, the use of the site [or occupation for whatever] shall cease until such time as a scheme approved by the local planning authority is implemented.

*It is questionable whether a LPA would really want a use or occupation to cease, and be justified in doing so, after they've just granted retrospective planning permission. Conversely, the LPA would have to under enforce via an Enforcement Notice rather than issue a BCN. If it was that critical the LPA should be getting the details in before deciding the planning application anyway.*

GLAZING – OBSCURED

Before the first occupation of the building/extension hereby permitted the windows(s) at [ ] shall be fitted with obscured glazing and any part of the window(s) that is less than 1.7 metres above the floor of the room in which it is installed shall be non-opening. The window(s) shall be permanently retained in that condition thereafter.

*It is considered that as currently worded the condition does not meet the tests of precision and enforceability as there is no reference to the level of obscurity of glazing required.*

*The only industry standard is the Pilkington Glass levels of obscure glazing – levels 1-5, with level 1 being the lowest. The condition would be better constructed if it required a minimum level of obscurity to conform to Pilkington Glass level 3 or equivalent.*

GYPSY CONDITIONS

*In general it is considered that there are far too many model conditions which overlap with each other and that this section of conditions should be reduced in number. For example:*

GYPSY: SUBMISSION OF FURTHER DETAILS- largely repeats DETAILS-WHERE RETROSPECTIVE PERMISSION IS GRANTED.

GYPSY: TEMPORARY largely repeats TEMPORARY PERMISSION: REINSTATEMENT.

The GYPSY: PERSONAL conditions largely repeat PERSONAL PERMISSIONS

Specifically:

GYPSY: PERSONAL

The occupation of the site hereby permitted shall be carried on only by the following and their resident dependants: (add names).

*The problem with this is that Travellers use two surnames, paternal and maternal, and a personal condition such as this should be accompanied by a requirement to provide identity details together with a photograph to the local planning authority.*

When the land ceases to be occupied by those named in condition x above the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to the land in connection with the use including the amenity block hereby approved, shall be removed. Within x months of that time the land shall be restored in accordance with a scheme previously submitted to and approved in writing by the local planning authority.

*All those named or some of those named?*

GYPSY: SITING OF CARAVANS

No caravan shall be brought onto the site until details of its intended siting have been submitted to and approved in writing by the local planning authority. The caravan(s) shall only be positioned in the approved location(s).

No caravan shall be stationed on the land other than within the area shown hatched black on plan xxx attached.

The caravans shall be sited in accordance with plan No:

Any material change to the position of a mobile home, or its replacement by another mobile home in a different location shall only take place following the written agreement of the Council.

*Why have we switched from caravan to mobile home? If they are different what is the definition of a mobile home?*

#### GYPSY: NUMBER AND TYPE OF CARAVANS

No more than x caravan(s), as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than y shall be a static caravan or mobile home) shall be stationed on the site at any time.

What is the definition of a static caravan and mobile home?

The residential use hereby permitted shall be restricted to the stationing of no more than x caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, at any time (of which no more than y shall be a static caravan or mobile home).

*What is the definition of a static caravan and mobile home?*

There shall be no more than x pitches on the site and on each of the x pitches hereby approved no more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, shall be stationed at any time, of which only one caravan shall be a residential mobile home.

*What is the definition of a static caravan and mobile home?*

Any caravans positioned on the site shall be capable of being lawfully moved on the public highway, without division into separate parts.

*This conflicts with the definition of a caravan in the Caravan Sites and Control of Development Act as qualified by the Caravan Sites Act and as further amended by the Social Landlords (Permissible Additional Purposes) (England) Order 2006 (Definition of Caravan) (England) Order 2006*

#### GYPSY: SUBMISSION OF FURTHER DETAILS (where retrospective planning permission is being granted)

The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within [28 days] of the date of failure to meet any one of the requirements set out in (i) to (iv) below:

- i. within 3 months of the date of this decision a scheme for: [the means of foul and surface water drainage of the site; proposed and existing external lighting on the boundary of and within the site; improved visibility splays at the site access;
- ii. the internal layout of the site, including the siting of caravans, plots, hardstanding, access roads, parking and amenity areas; and tree, hedge and shrub planting and where appropriate earth mounding including details of species, plant sizes and proposed numbers and densities; and/or any other matters to be specified] (hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation;
- iii. if within 11 months of the date of this decision the site development scheme has not been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State;
- iv. if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State;
- v. the approved scheme shall have been carried out and completed in accordance with the approved timetable.

At the same time as the site development scheme required by condition x above is submitted to the local planning authority there shall be submitted a schedule of maintenance for a period of five years of the proposed planting beginning at the completion of the final phase of implementation as required by that condition; the schedule to make provision for the replacement, in the same position, of any tree, hedge or shrub that is removed, uprooted or destroyed or dies or, in the opinion of the local planning authority, becomes seriously damaged or defective, with another of the same species and size as that originally planted. The maintenance shall be carried out in accordance with the approved schedule.

*Could not (i) and (ii) be grouped as one?*

#### GYPSY: TEMPORARY AND PERSONAL

The use hereby permitted shall be carried on only by Mr/s, his/her partner and children and shall be for a limited period being the period of x years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.

When the premises cease to be occupied by Mr/s, his/her partner and children or at the end of x years, whichever shall first occur, the use hereby permitted shall cease, all materials and equipment brought on to the premises in connection with the use [including the amenity block hereby approved] shall be removed and the land restored to its former condition in accordance with a scheme of work submitted to and approved in writing by the local planning authority.

*There is no timescale for submitting the restoration scheme.*

#### GYPSY: TEMPORARY

The use hereby permitted shall be for a limited period being the period of x years from the date of this decision. At the end of this period the use hereby permitted shall cease, all materials and equipment brought on to the land in connection with the use shall be removed, and the land restored in accordance with a scheme previously submitted to and approved in writing by the local planning authority.

The use hereby permitted shall be discontinued and the land restored on or before the end of a period of x years from the date of this decision in accordance with a scheme previously submitted to and approved in writing by the local planning authority.

*How do we secure submission of a restoration scheme? Does this require another condition requiring submission of a scheme within a specified period? No timescale for removal of materials and equipment is included.*

#### HEIGHT OF BUILDING

No building on any part of the development hereby permitted shall exceed [ ] storeys in height.

*Needs definition of the height of a storey? Surely the number of storeys would be shown on an approved plan.*

#### ALL 'HOURS OF' CONDITIONS

Would prefer to use 'between the hours of' rather than 'outside the hours of' as this is simpler to understand

#### LANDSCAPING

*There is a need to ensure that any conditions requiring implementation of an approved scheme specify timescale for implementation*

#### MATERIALS – MATCHING

The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those used in the existing building.

No development shall take place until samples of the materials to be used in the construction of the external surfaces of the extension hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

*In certain instances the submission of samples are unnecessary and the condition could read: "No development shall take place until a detailed schedule and specification of all external materials and finishes (including windows and external doors, has been submitted to and approved in writing by the local planning authority. The development shall be implemented strictly in accordance with the approved details and maintained as such."*

#### ALL NOISE CONDITIONS

*Would prefer to use 'between the hours of' rather than 'outside the hours of' as this is simpler to understand*

#### OCCUPANCY

##### Agricultural Workers

The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or in forestry, or a widow or widower of such a person, and to any resident dependants.

*Is that dependents of the person working in agriculture or also include dependents of the surviving spouse?*

#### Commercial or Industrial Building: Limitation on Occupancy

Until [normally not more than 10 years ahead] the premises shall be occupied only by a person, firm, company or other organisation which was, immediately before occupying the accommodation to which this permission relates, in occupation for at least [two] years of premises within the County of used as a [general or light industrial building] [warehouse] [office].

*The purpose of this condition is not clear.*

#### Staff accommodation

The occupation of the dwelling shall be limited to a person solely or mainly employed or last employed in the business occupying the plot edged red on the attached plan, or a widow or widower of such a person, or any resident dependants.

*Is that dependents of the person employed or also include dependents of the surviving spouse?*

#### PARKING

No [dwelling] shall be occupied until space has been laid out within the site [in accordance with drawing No [ ]] for [number] cars to be parked [and for the loading and unloading of [number] vehicles] [and for vehicles to turn so that they may enter and leave the site in forward gear].

No [dwelling] shall be occupied until space has been laid out within the site [in accordance with the plan attached] for [number] bicycles to be parked

*These conditions need to require future retention of such spaces.*

#### PETROL FILLING STATIONS

The premises shall not be open for business, nor shall supplies of fuel be delivered thereto, outside the hours of [ ].

*Would prefer the use of 'between the hours of' rather than 'outside the hours of' as this is simpler to understand.*

#### SHOP WINDOW DISPLAY

A window display shall be provided at all times in the window(s) fronting [ ] street.

*What is the definition of a shop window display?*

#### STORAGE

[Scrap] material shall not be stacked or deposited to a height exceeding..... metres.

*Consider this to be poorly worded. Suggest [Scrap] material shall not be stacked or deposited above a height of x metres*

#### TEMPORARY PERMISSION: REINSTATEMENT

[The building hereby permitted shall be removed] [The use hereby permitted shall be discontinued] and the land restored to its former condition on or before [date] in accordance with a scheme of work submitted to and approved in writing by the local planning authority.

*Insert "or such other condition as agreed by the local planning authority" after condition.*

*Of all the conditions contained in the model conditions consultation the RTPI finds it surprising that the conditions are quiet on the subject of site levels. This is an area of perennial complaints of planning cases which are referred to the Local Government Ombudsman where there has been a failure to properly take into account alterations in ground levels. The RTPI therefore recommends the following conditions should feature in the list of model conditions:*

#### SITE LEVELS

No development shall take place until the following information has been submitted to and approved in writing by the Local Planning Authority:

- (i) a full site survey showing:
  - the datum used to calibrate the site levels
  - levels along all site boundaries

levels across the site at regular intervals

floor levels of adjoining buildings

(ii) full details of the proposed finished floor levels of all buildings and hard surfaces.

The development shall be carried out only in accordance with the approved details.

No development shall take place until full details of the finished levels, above ordnance datum, of the ground floor(s) of the proposed building(s), in relation to existing ground levels have been submitted to and approved by the Local Planning Authority. The development shall be carried out in strict accordance with the levels approved.