

# West Midlands Regional Assembly

## GOOD PRACTICE GUIDE FOR REGIONAL CONFORMITY ADVISORS (RCAs)

### PROVISION OF CONFORMITY ADVICE BY RCA'S TO THE REGIONAL PLANNING BODY (RPB) IN RESPECT REGIONALLY SIGNIFICANT PLANNING APPLICATIONS

#### Reason for this Guide

In accordance with the Conformity Protocol for the West Midlands it is the RCAs role (plus that of the Minerals and Waste Conformity Panel) to provide advice to the RPB on the general conformity of regionally significant planning applications that Local Planning Authorities (LPAs) have consulted the RPB on. The RPB has considered that a short Good Practice Guide be written to assist RCAs in order to provide clarity and a consistent steer in relation to this subject.

#### Definition of general conformity with regard to planning applications

The Conformity Protocol states that when the RPB receives a planning application that fits its criteria, it will then provide advice on whether the proposal is in general conformity with the West Midlands Regional Spatial Strategy (WMRSS). Unlike Development Plan Documents (DPDs), it has been discussed and agreed that the RPB should not consider the test of general conformity to be whether the proposed development is likely to cause '*significant harm to the implementation of the RSS*'. This being the definition of 'general conformity' with regard to DPDs as defined in paragraph 4.20 of PPS12.

This is because, in practice, such cases individually are likely to be few and far between and would, on a reasonable interpretation of 'significant harm', probably negate the need to consider most of the applications identified through the criteria.

Given this situation, it is the view that a more precise approach should be adopted to the consideration of regionally significant planning applications (as defined by the RPBs criteria) which is to consider **whether the proposed development would prejudice the objectives and/or policies of the WMRSS** i.e. as the 'general conformity' test.

At the same time, the RPB also considers that it is important to clarify that, in undertaking the above general conformity assessment, it is only WMRSS policies and principles that should be addressed. It is not the role of the RPB to consider other material considerations (e.g. local environmental or access considerations) and, indeed, the RPB could never be in a position to do so. This is clearly the role of the LPA who, in coming to its judgement on any

application, has to weigh up all material considerations, including the views of statutory consultees.

Ultimately, therefore, the RPB should not be recommending approval or refusal of an application but in practice would clearly set out its conformity advice on the above basis. In adopting this approach, it would nevertheless need to be clearly understood that the RPB would subsequently expect the LPA, in making its final judgements, to give considerable weight to its advice given that the WMRSS is part of the Development Plan for the area.

#### Situation where the objectives and/or policies of the WMRSS are prejudiced

As the advice to be provided by the RCAs is to be defined as to whether proposed development would prejudice the objectives and/or policies of the WMRSS, there is a point of clarification that needs to be provided. This is when an application is at odds with one objective or policy from the WMRSS and whether this would then trigger an opinion of non conformity where other objectives or policies might support the proposals.

Where a proposed development is judged against several objectives/policies (some of which might support and some of which might be against the proposal) it will be for the RCA to provide an overall opinion as to whether, on balance, any conflict between objectives/policies would result in either a conclusion of general conformity or not in general conformity.

Therefore, if the proposals are at odds with one objective or policy it does not necessarily mean that it should be seen as not being in general conformity with the WMRSS. Any conflict will have to be balanced against other objectives/policies within the WMRSS. This being on the basis that the term the RPB is using in concluding the advice to the Regions LPAs is whether an application is in "general" conformity and not absolute conformity. Within a final conclusion it is appropriate to acknowledge (where relevant) that the proposal does not accord with certain objectives or policies, whilst at the same time stating that because the proposals are supported by other objectives or policies is the reason why the overall view is one of general conformity.

#### Good Practice on the use of Conditions and Obligations

There has previously been debate as to whether the RPB can recommend to LPAs that they impose planning conditions or obligations in their response. Having reviewed some of the legislation and guidance that describes the consultation arrangements on regionally significant planning applications it is considered that there is nothing within the relevant legislation and guidance to limit the Regionally Planning Body's response solely to one specifying general conformity or non conformity with the WMRSS. The RPB therefore considers that in providing their advice that RCAs can suggest that the RPB recommend the imposition of planning conditions/obligations as part of their consultation response to LPAs. The following guidance is provided to aid RCAs in this regard.

The use and imposition of planning conditions should always be in accordance with the Government's stated position (paragraph 20 of Planning Policy Statement 1) and the relevant Government Circular: 11/95. The use of planning obligations is discussed in paragraphs 22 and 23 of Planning Policy Statement 1 and Government Circular 05/05. For the purpose of the following advice both planning conditions and/or planning obligations are referred to as "condition(s)" reflecting the fact that both aim to limit, control, or restrain development in some way but by different means.

It should be borne in mind that conditions should not be considered in order to overcome an opinion of non conformity if the reason for that stance is one of fundamental principle.

Where the application would only be acceptable by imposing a condition then the RCA should satisfy themselves that the condition(s) they are considering are appropriate and could be implemented. If the RCA is unsure of this they should contact the relevant Development Control Officer of the Local Planning Authority concerned to establish whether a condition could be imposed if the LPA accepted the Assembly's justification for their imposition.

When provided advice to the RPB a RCA should distinguish between those conditions which, if not imposed by the LPA, would lead them to conclude to the RPB that the application would not be in general conformity with the WMRSS, as opposed to those conditions that are consistent with WMRSS objectives and policies that are considered to be desirable in order secure the effective implementation of a development.

When providing advice RCAs should only suggest what the condition(s) are aiming to achieve or control rather than the precise wording or means of control (i.e. by planning condition and/or planning obligation). This should be left to the Local Planning Authority to decide if they accept the justification for the condition(s). Justification should be provided as to why the condition(s) is required, including a link with relevant RSS Policy.

Tim Williams – January 2008