

Section 73 applications to vary temporary timescale conditions for a further five years
CCBC ref: 08/0231/FULL Condition 3 and MTCBC ref: P/08/0091 Condition 1 at Cwmbargoed Disposal Point

1. Introduction

This Planning and Green Infrastructure (GI) Statement supports applications made under section 73 of the Town and Country Planning Act 1990 to vary the temporary timescale conditions attached to the above planning permissions, in order to extend the relevant period by a further five years.

The permissions relate to the continuation of the established use of the Cwmbargoed Disposal Point and associated ancillary operations connected with the wider Ffos-y-Fran restoration programme.

Restoration works associated with Ffos-y-Fran remain ongoing and are the subject of a separate live process with Merthyr Tydfil County Borough Council under application P/25/0037 (Variation of conditions 4 (Duration of Restoration), 6 (Approved Plans) and 50 (Restoration Strategy) of planning permission APP/U6925/A/10/2129921 involving a revision to the restoration scheme).

2. Site and planning history context

The existing permissions and their controlling conditions establish a framework to manage the continuation of the use on a temporary basis, with associated controls addressing matters such as restoration, landscaping, drainage and operational management.

The purpose of the current submissions is limited to varying the relevant timescale conditions only, to ensure the planning framework remains aligned with the ongoing restoration programme.

3. The permissions and conditions to be varied

MTCBC permission P/08/0091 Condition 1 and CCBC permission 08/0231/FULL Condition 3 restricts the duration of the permission by setting a cessation date of 31st December 2024.

The application seeks to vary that temporary timescale condition to extend the permitted period for a further five years.

4. Section 73 considerations and approach

The applications are made under section 73 to vary conditions only. No amendment is sought to the description of development, and no amendment is sought to the suite of operational and environmental control measures already secured by condition.

In section 73 terms, the key consideration is whether extending the duration gives rise to any materially different planning impacts compared with those previously assessed and controlled. In this instance, the planning effects remain managed through the existing framework of conditions, and the submissions do not introduce new development outside that established envelope.

A S73 application is an appropriate means to extend the period of operations for the following reasons:

Implemented permissions remain extant

Under s.56(4) of the Act and case law in *Whitley & Sons v Secretary of State for Wales* (1992) 64 P&CR 296, once a planning permission has been lawfully implemented by a material operation, it endures in perpetuity. A later breach of condition does not extinguish the permission; it simply renders the activity unauthorised until the breach is remedied. The 2008 permissions were clearly implemented and therefore continues to exist in law.

Distinction between a temporary permission and a controlling condition

The Court of Appeal in *I'm Your Man Ltd v Secretary of State for the Environment* [1999] 77 P&CR 251 held that a limitation on duration expressed only in a condition does not make the permission itself temporary. The permission endures; the condition regulates how long the approved use or operations may continue. Continued use and therefore breach of that condition does not nullify the original granting of the planning permission.

Although Condition 3 uses the words “this consent shall cease to have effect”, it still appears as a numbered condition rather than in the operative grant or description of development. Reading the decision notice as a whole, the more natural construction is that the condition regulates the period of active operations, not the life of the permission itself.

This interpretation is supported by the restoration condition (Condition 4), which expressly anticipates that demolition and engineering works will take place after the date set in Condition 3. If the permission truly expired in its entirety on 31 December 2024, Condition 4 would be incapable of operation or enforcement. Consistent with the principles of *Trump International Golf Club Scotland Ltd v Scottish Ministers* [2015] UKSC 74 and *R v Ashford BC ex p Shepway DC* [1999] PLCR 12, permissions must be interpreted so that all conditions can sensibly take effect. The only coherent reading is therefore that Condition 3 controls the working period rather than nullifying the grant of planning permission.

Temporary conditions distinguished from commencement conditions

Welsh Government Circular 016/2014 (*The Use of Planning Conditions for Development Management*) explains the difference between temporary and commencement-related conditions:

“Temporary permissions differ from conditions which require the development to be begun within a certain time. Such conditions, which limit the time within which development must be started, are intended to ensure that authorities can review the proposal in the light of changed circumstances after a reasonable period. Temporary permissions, on the other hand, are used where it is expected that the planning circumstances will change in a particular way at the end of the period, or where a trial period is needed to assess the effect of the development.” (para 4.30)

This makes clear that temporary-period conditions are regulatory devices governing duration, not clauses determining the existence of a permission. The CDP condition therefore operates as a control over activity.

Section 73 power and its limits

Section 73 empowers an authority to grant permission “subject to conditions differing from those subject to which the previous permission was granted.” The power is broad but not unlimited:

- In *Finney v Welsh Ministers* [2019] EWCA Civ 1868 the Court of Appeal held that s.73 cannot alter the operative part or description of development.
- *Armstrong v Secretary of State* [2023] EWHC 176 (Admin) confirmed there is no “minor-material-only” restriction; substantive changes are permissible provided they do not conflict with the operative grant.
- *Test Valley BC v Fiske* [2024] EWCA Civ 1541 reaffirmed that s.73 cannot introduce conditions that contradict the operative permission.

Varying the temporary operation condition would not alter the description of development or conflict with any approved plans. The proposal would merely extend the temporal restriction controlling operations. It therefore falls squarely within the statutory scope of s.73.

Precedent practice

Inspectors have repeatedly accepted Section 73 applications to vary time-limiting conditions where the underlying permission had been implemented, for example:

APP/M2460/W/22/3304137 – Shawell Roof Tile Works, Leicestershire (2023)

Paragraph 2:

"In reaching my decision I have had regard to the judgments in the cases of John Leslie Finney v Welsh Ministers & Carmarthenshire County Council and I'm Your Man Ltd v SSE & North Somerset DC [1999] 4 PLR 107, which found that an application under section 73 may not be used to obtain a permission that would require a variation to the terms of the 'operative' part of the planning permission, and that there is no direct or implied legal power to impose a time limitation on a planning permission except by means of 'temporary' condition, respectively."

Paragraph 4:

"Thus, notwithstanding the description of development taken from the relevant planning permission, the requested time limit variation in this case derives from the imposition of conditions and consequently does not alter the description of development. As a result, there is no conflict with the two cases in question."

Old Leake Caravan Park – APP/Z2505/X/21/3280081

Paragraph 22:

"The appellant contends that there is no implied power to impose conditions on a grant of planning permission, save for that granted by a Development Order, in line with the principles established in the I'm Your Man judgment and the subsequent line of similar judgments which include Cotswold Grange Country Park LLP."

Paragraph 26:

"Therefore, in the absence of a material change of use, if no condition was in place limiting the occupation by agricultural workers to a temporary period, the continued use would be lawful having regard to the I'm Your Man line of cases."

Paragraph 45:

"Thus, condition 7 is unclear on its face and the uncertainty cannot be satisfactorily resolved by implication. Consequently, in my view, condition 7 of the 2019 permission cannot be given an ascertainable meaning and it is not enforceable as a result."

The Inspector directly applies *I'm Your Man* to confirm that temporal limits must be secured through clear, enforceable conditions—and that the absence or failure of such a condition means the permission itself remains in force. This supports your reading that Condition 3 regulates use duration rather than terminating the permission.

These illustrate accepted practice consistent with the reasoning above.

Summary

- The 2008 permissions were lawfully implemented and therefore remains in force. There is no reference to development being temporary within the the description of development (i.e. the operative part of the planning permission).
- CCBC ref: 08/0231/FULL Condition 3 and MTCBC ref: P/08/0091 Condition 1 are properly construed as a control on duration, not a limitation extinguishing the grant.
- The permissions including post-2024 restoration requirement confirms that the permission must subsist beyond the stated date to allow compliance and enforcement.
- Ongoing use and works at the site therefore comprise a breach of condition, rather than works that do not benefit from planning permission.
- Varying CCBC ref: 08/0231/FULL Condition 3 and MTCBC ref: P/08/0091 Condition 1 would not conflict with the operative part of the permission and is therefore lawfully achievable under Section 73.

5. Planning assessment

Principle of development

The principle remains that the use is controlled on a temporary basis to support the delivery and completion of the wider restoration programme. The requested time extension is sought to maintain continuity of the established arrangements whilst restoration activities are progressed through the relevant mechanisms.

Amenity and environmental controls

The existing permissions include conditions that continue to control relevant matters associated with the use, including restoration and landscaping requirements, drainage provisions and operational management measures. These controls remain applicable and effective for the extended period sought.

Planning balance

The request is confined to a time extension only. When considered against the ongoing restoration context and the continued application of the existing control framework, it is considered that the requested extension can be supported.

6. Green infrastructure and drainage statement

The proposals solely relate to a paperwork exercise to extend the relevant timescale conditions by a further five years. There are no amended physical works proposed as part of this submission, and no changes are sought to the approved plans or the established operational envelope. As such, there are no new GI or drainage effects arising from the section 73 submissions.

7. Conclusion

The section 73 applications seek a further five-year extension to the temporary timescale conditions attached to CCBC ref 08/0231/FULL and MTCBC ref P/08/0091.

Given that the submissions relate to a time extension only, with no amended physical works proposed and with the existing controlling conditions remaining in force, it is concluded that the variations can be supported. There is:

- Material reduction in impact: Operations are limited to restoration activities; no extraction or processing now occurs.
- No new built form: The proposal does not involve new structures, hardstanding, or plant.

- Consistency with the ongoing Ffos-y-Fran restoration scheme: The CDP is essential for completing approved restoration, which is itself a major environmental benefit.
- Continued control through conditions: All existing environmental, noise, and dust conditions remain in force; only the time control would be varied.

Accordingly, the continuation of use during the restoration phase would not conflict with local or national policy objectives and would achieve the intended end-state of the original permission.