

Model Planning Conditions

Introduction

The Team

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Objective

- To review and update the Planning Service's existing model conditions document.
- To help improve the Planning Service's use of conditions when issuing decision notices.

What are Planning Conditions?

- As PA have powers under 1997 Act to grant planning permission subject to “such conditions as they think fit” – Section 37 (1).
- Section 41 (1) add that conditions may be imposed to
 - (a) regulate a development or use of any land under the control of the applicant; or
 - (b) to require the removal of any building(s) or works authorised by the permission, or the discontinuance of any use of land.

Planning Conditions

- Conditions should also be consistent with:
 - National planning policies, as expressed in SG Circulars, NPF3, SPP and other published material;
 - The provisions of the LDP and other policies of the PA.
- Most recent (or not so recent...) SG Guidance is Circular 4/1998 – The Use of Conditions in Planning Permissions.

Circular 4/1998

- States that a planning condition should only be imposed where it is:
 1. Necessary;
 2. Relevant to planning;
 3. Relevant to the development to be permitted;
 4. Enforceable;
 5. Precise; and
 6. Reasonable in all other respects.

Necessity

- Each condition added to a permission should be necessary.
- A question which should be asked is:

‘Would planning permission have to be refused if that condition was not imposed?’

- They should be tailored to tackle specific problems, rather than impose unjustified controls.
- PPs should not be overloaded with conditions.

Relevance to planning

- Conditions should not duplicate other legislation.
- Conditions should not be applied to a PP to achieve purposes of a separate system of control, i.e. TPO.

Relevance to the development

- Conditions should relate to the development to be permitted.
- It must not relate to wider planning objectives.
- It must be justified by the nature of the development permitted and its effect on the surroundings.

Enforceability

- A condition should not be imposed if it is not enforceable.
- A condition is sometimes unenforceable because in practice it is impossible to detect an infringement.

Precision

- Conditions need to be precise to ensure they are enforceable.
- Vague expressions are not precise. E.g. 'to be kept in a tidy condition'.
Who defines what is a tidy condition?

Reasonableness

- Conditions must be reasonable, even if they meet the other 5 tests.
- They should not be overly-restrictive. E.g withdrawing PD rights for entire house due to an extension.
- Conditions are not reasonable just because an applicant suggests or consents it. Conditions run with the land, so may be long in operation after the applicant.

What have we done?

- Review conditions to ensure meet 6 tests.
- Discuss with relevant consultees.
- Standardise wording of model conditions so can be used when drafting new conditions to help with consistency across the Shire.

The Document

Introduction

- Outlines purpose of document.
- Provides advice on considerations to be taken into account when drafting conditions.
- Introduction & guidance/procedure boxes to be for internal use only.

16 Sections

1. Time Limits
2. Temporary Permissions
3. Regulation of Development following approval
4. Access and servicing
5. Landscaping
6. Biodiversity
7. Built Heritage
8. Environmental Controls
9. Wind Turbines – Small Scale
10. Wind Turbines – Large Scale
11. Archaeology
12. Advertisements
13. Waste Management
14. Phasing of Development
15. Minerals
16. Informatives

Use of the document & Best Practice

- To assist in drafting appropriate conditions.
- However, each condition used needs to be adapted to the circumstances of particular cases.
- The list is not exhaustive and does not cover every eventuality.
- Conditions should not be left until the end of the process and rushed through!
- They are VERY IMPORTANT and can save a lot of time in the future if done correctly. Can also be very time consuming and costly to the Council. E.g. Complaints, SPSO decisions, costs.



Use of the document & Best Practice

- Encourage liaison with consultees. We don't have to apply their conditions. Should inform them though if we don't & detail within ROH.
- Consultee responses should not be taken straight across to the decision notice. Have to be re-worded to meet 6 tests.

Example

- Standard Roads consultation response states:



Prior to commencement of development, Visibility Splays, measuring 2.0m by 25m to be formed on either side of the junction of the vehicular access with the public road. The visibility splays so formed shall thereafter be kept free of all permanent obstructions above adjacent carriageway level.

Use of the document & Best Practice

- We recommend this be changed to:

'No other development in connection with the permission hereby granted shall commence and the access hereby approved shall not be brought into use unless visibility of 25 metres in both directions along the channel line of the public road has been provided from a point 2.0 metres measured at right angles from the existing edge of the carriageway surface along the centre line of the approved new access in accordance with the Council's Standards for Road Construction Consent and Adoption. The visibility splays shall be physically formed on the ground and any existing fences, walls, hedges or other means of enclosure or obstructions within the splays shall be removed and relocated outwith the splays in accordance with the approved plans. Once formed, the visibility splays shall be permanently retained thereafter and no visual obstruction of any kind shall be permitted within the visibility splays so formed.'

Reason: To enable drivers of vehicles using the access to have a clear view of other road users and pedestrians in the interests of road safety.'

- Confirm revised wording with consultee.
- Hoped conditions and wording used in document should help with this.

Number of conditions

- Conditions requiring submission and approval of further information should generally be avoided for FPPs.
- If information is fundamental to allow it to be approved it should be submitted before the decision is made.
- Details should be shown on the plans, i.e. materials to be used, boundary treatments.
- Pre-app, validation procedures and Reg 24 letters can help reduce number of conditions to be used.
- More information early in process improves transparency with public.

Decision Notice

- Try and group conditions on decision notice.
 - Conditions requiring further information before works start;
 - During development conditions;
 - Prior to occupation conditions;
 - Phased conditions;
 - In perpetuity conditions e.g. removal of PD rights.
 - Keep similar conditions together, e.g. roads, environmental etc.
- Ensure PPP conditions with matters requiring further approval (MSC) are detailed in full and not duplicated in separate conditions.

Finally don't
forget.....

.....The Reason for
each condition!

Reasons for conditions

- A reason must be provided for every condition to be used.
- They should be specific to the condition used and not vague.
- Reasons such as ‘to comply with the policies of the Council’ and ‘to protect amenity’ are too vague and need amplification.
- A consultee in their request for a condition to be used should justify why.
- These are just as important as the condition itself. If wrong can also have serious future implications for the Council. E.g. complaints and expenses.



So remember, take
your time with
conditions.....

.....as we all prefer
an easy life!



Thank you for your
time!