



planning advisory service

## A quick note on Planning Conditions

Planning conditions are an important tool that allows development to go forward but with provisos:

- to make sure that the details of the plans are acceptable or
- to prevent unacceptable impacts that would otherwise harm communities and places.

It is always good practice to discuss proposed conditions with the applicant prior to the decision being taken on an application. However, sometimes a matter will arise when you consider an application at a committee meeting and you may want to suggest a condition. Similarly when discussing an application with your communities, you might want to suggest a condition that would alleviate their concerns about a planning matter. In these cases you need to have a general understanding of the principles and restrictions on the use of conditions.

This quick note has been created to explain when and how conditions can be imposed legally and made 'easy' to enforce. **Remember if a condition is not 'legal' you won't be able to enforce it!**

### Resources

There is legislation, government policies (the National Planning Policy Framework – NPPF) and guidance (the [Planning Practice Guidance](#) - PPG) limiting the use of conditions.

We have included embedded links to relevant web sites so that the reader can check the detailed provisions if needed.

[PAS](#) has also published “10 best practice principles” for using conditions which picks up good practice from top performing local planning authorities (LPAs) as well as the [Local Government Ombudsman \(LGO\)](#), who has views about how conditions are used.

### Why and how are conditions imposed?

The National Planning Policy Framework (para [187](#)) tells LPAs that they should look for solutions rather than problems in considering planning applications and seek to approve applications for sustainable development where possible. It goes on (para [203](#)) to say that LPAs should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations (although planning obligations shouldn't be used where a condition will do the job).

Remember, **you do not have** to impose conditions on permissions and the more conditions you do impose, may impact on if the development will ever take place.

### How do you know whether a condition is likely to be lawful?

The LPA has to be sure that any conditions that are imposed on a planning permission are going to be lawful. The NPPF ([para 206](#)) says that Planning conditions should only be imposed where they are **necessary, relevant to planning, relevant to the development** to be permitted, **enforceable, precise** and **reasonable** in all other respects. All conditions should be judged against these six tests. The [PPG](#) gives more guidance about what these tests mean in practice.

**Even if the applicant suggests or agrees with a condition being imposed, it must still meet the tests to be enforceable.**

## The six tests

- Necessary
  - Will it be appropriate to refuse planning permission without the condition?
    - A condition must be needed to make the development acceptable in planning terms.
    - The condition should not require more than is necessary to make the development acceptable.
- Relevant to planning
  - Does the condition relate to planning objectives and the application being considered?
    - A condition can't be used to control matters regulated under other planning regimes e.g. advertisement, listed building consents, or tree preservation.
    - Nor can it be used where there is a separate non planning control such as works on public highways (Highways Act), building regulations or pollution control (Environment Act).
- Relate directly to the development to be permitted
  - Will the condition fairly and reasonably relate to the development to be permitted?
    - A condition must be justified by the type or impact of the development proposed.
    - A condition cannot be imposed to fix a problem that already exists or won't be created by the development.
- Enforceable
  - Would it be realistically possible to enforce the condition?
    - Unenforceable conditions include those where it would be:
      - impossible to detect a contravention or
      - impossible to remedy any breach of the condition,
      - related to matters over which the applicant has no control.

- Precise
  - Is the condition written in a way that makes it clear to the applicant and others what must be done to comply with it?
- Reasonable in all other respects
  - Is the condition reasonable?
    - Conditions cannot be used to make a fundamentally unacceptable development permissible e.g. by changing the nature of the development that has been sought
    - A condition should not impose an unreasonable or disproportionate e.g. a requirement that would make a proposal unviable.
    - If such a condition would be required to make a development acceptable, then it should be refused permission.

## What other things need to be considered?

Unfortunately, the six tests are not the only things to consider and this is the tricky bit as it is part wrapped up in legislation, part in Government Guidance and part in how the legal system operates and not to mention the influence of the Local Government Ombudsman. Certain conditions are required by law or are good practice and need to appear on all decisions notice's, i.e. Start the development by a given date, normally 3 years after the date of consent (although the LPA can grant a shorter or longer period) and that the development has to be completed in accord with specified plans, specifications and supporting documents listed. These 'standard conditions' will mostly be imposed as a matter of course by your officers.

If during the time that the application is being considered by your officer, issues are raised by your constituents or, indeed you consider to be important yourself, there is no reason why you should not discuss this with the case officer and see if a condition would be appropriate or if the application can be amended to take account of these issues.

Devising legal, enforceable conditions at the Planning Committee can be a difficult. It's always best to have a draft ready, if you think you will want to ask for a condition to be imposed at this late stage and to have discussed this with the officers. This is NOT pre-determining the application, it is a practicable step to ensure the condition is 'legal'.

Most applicants will want to limit the number of conditions that are going to be imposed. Remember, planning conditions imposed on consents are subject to an Appeals Process, just like refusals of permission as they restrict what the applicant can do.

Conditions fall into two main types:

- Conditions precedent – where a condition needs to be complied with (discharged) prior to a development commencing or some other stage in the development process. Usually this will require some additional detail of the proposal to be submitted and approved.
- Ongoing requirements – where the requirements of the condition will continue for the life of the development or use permitted.

### **Condition Precedent.**

While this type of condition can be useful for a developer by allowing for a permission to be granted, while details of issues such as ground conditions, levels and materials are worked out later. But equally developers sometimes find that these conditions unreasonably delay when work can start on site. A recent change in the law gave applicants the right to a Deemed Discharge of Condition if the LPA are slow in determining whether the details submitted by the applicant are acceptable or not

Needless to say, conditions of this type need to be considered carefully and legislation restricts when they can be used and when they are, specific reasons have to be given as to why they have been imposed. It is always best to agree this type of condition with the applicant.

If this type of condition is needed, that the timing within the condition should relate to when details need to have been agreed in order to ensure an acceptable, quality development e.g. A condition requiring a scheme for the treatment of fumes and odours from a use within a development is not needed before the work starts on site (which could be months or years before the development is brought into use) but it is needed before the use is started.

A negative condition known as a Grampian condition is a special type of condition precedent. These are often used to ensure that some necessary infrastructure is delivered before the main development is commenced. They are appropriate when the applicant does not have control over the land on which the infrastructure will be located or the programming of works e.g. a highway junction. In exceptional circumstances a Grampian style condition can be used to ensure that a s106 agreement for the provision of a developer contribution to necessary infrastructure is completed after the permission is granted. But it cannot be used to positively require the payment of money and must pass the test of relevance to the development (see the notes below)

**Remember, a condition cannot make a bad application acceptable.**

### **Enforcement of Conditions**

This is a lot simpler than the normal 'Enforcement' regime that Councils have to follow. Enforcement of conditions is via a legal notice called a 'Breach of Condition Notice' (BCN).

Unlike 'normal' planning enforcement notices, once a BCN has been served there is NO right of appeal to the Planning Inspectorate. If the notice is not complied with, the Council can prosecute the applicant in the Magistrates Courts.

This is a double edged sword, as Magistrates are often not planning experts and as such it places an extra burden on the Council to ensure that the 'six tests' are demonstrably complied with.

### **Conditions for special circumstances:**

- Minor modifications to consents
  - It is possible to grant permission subject to some minor change to some aspect of the development. It should not affect a substantive aspect of the development sought and should be with the agreement of the applicant who should amend the application to delete the unacceptable element.
- Phasing of development
  - Typically, this kind of condition will require key aspects of the scheme to be implemented before others are e.g. commercial development being completed before residential. Care needs to be taken to ensure that the condition is reasonable and does not adversely affect viability.
- Split decisions
  - In exceptional cases it may be appropriate to use a condition to grant permission for only part of the development. Such conditions should only be used where the 'acceptable' and 'unacceptable' parts of the proposal are clearly distinguishable and only with the agreement of the applicant.
- Temporary consents
  - May be appropriate when an application is on vacant land/buildings and will allow a use until longer term regeneration plans coming forward or more generally to encourage empty property to be brought back into use.
  - May be appropriate where it will be helpful for a 'trial run' to assess the impacts of a use
  - There is no presumption that planning permission should be granted permanently at a later date.
  - Temporary consent is not suitable in the case of the erection of a substantial building.
- Personal consents
  - Planning permission relates to land, so personal consents are only appropriate where the occupier 'occupier' of the land or building is able to demonstrate exceptional circumstances such that a development that would normally be unacceptable should be allowed. Most often this will be for a class of person (e.g. agricultural workers) rather than for an individual.
- Clarification of plans
  - The LGO recommends that where details on plans are particularly important, such as the distance of an individual building to a boundary, that this be conditioned so as to ensure that the any enforcement that may be necessary, is fully supported.
- Conditions to enter into a S.106
  - As mentioned above, a negatively worded condition could require a S.106 to be entered into at a later date. However, it is by far best to complete the s106 agreement prior to granting planning permission.

### **Types of condition that should not be imposed are as follows:**

- Conditions that the development be carried out in its entirety
  - These will fail the test of necessity by requiring more than is needed to deal with the problem they are designed to solve. Such a condition will be difficult to enforce due to as the decision whether or not to carry out and complete a development is solely that off the developer.
- Conditions to comply with other legislation i.e. Building Regulations, Environmental Protection Act
  - Conditions requiring compliance with other regulatory regimes will not meet the test of necessity and may not be relevant to planning.
- Conditions requiring 'standards' to be met.
  - The government has recently created a set of national technical standards for accessibility, energy, water efficiency and residential space. Councils cannot use conditions to impose other standards than those in the national set, most of which are enforced through building regulations.
- Conditions to pay money or give up land
  - No payment of money, ceding of land or other consideration can be required through a positively worded condition when granting planning permission.
- Conditions to remove permitted development
  - Conditions restricting the future use of permitted development rights or changes of use, will rarely pass the test of necessity. An example where it could be used, is where the development has met parking standards by the inclusion of an integral garage. The change of this garage to a habitable room would be permitted development, but the loss of a parking space would mean the development would not be acceptable.
- Conditions reserving outline application details
  - Where details have been submitted as part of an outline application, they must be as forming part of the development for which the application is being made. Conditions cannot be used to reserve these details for subsequent approval.

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