

# Conditions



## What's New since the last version

Changes highlighted in yellow made on 15 February 2016:

Updated in respect of the need for clear and precise reasons for conditions (paragraphs 21, 62 and 73); the use of 'tailpiece' conditions (paragraphs 43 and 45); scope of conditions (paragraph 53); 'Grampian' conditions (paragraph 58); and, new paragraphs 118 (occupancy and personal conditions) and 119 (establishing ground/finished slab levels) inserted.

## Contents

Legislation, policy and guidance .....	3
Applying the tests .....	4
Natural justice – avoid surprises .....	4
No conditions suggested? .....	5
Drafting conditions .....	5
General advice .....	5
'Anatomy' of a condition .....	6
The order of conditions .....	7
Giving reasons for imposing or not imposing conditions .....	7
When do conditions come into effect? .....	8
Would it be possible to enforce the condition? .....	9
Altering a development by condition? .....	9
Nullifying the benefit of a condition .....	9
Viability .....	10
Using a condition to split a decision .....	10
Conditions which contradict the permission .....	10
Conditions or planning obligations? .....	10
'Revoking' an existing planning permission by condition? .....	11
'Tailpiece' conditions .....	12
Conditions requiring money from an appellant .....	12
Conditions requiring a planning obligation .....	13
Description of development and the need for conditions .....	13
Conditions precedent .....	14
Grampian conditions .....	15
Specific types of conditions .....	15
Time limits .....	15
The 'plans' condition .....	15
Conditions where development has already been started or carried out .....	17
Outline and reserved matters applications .....	21
Removing permitted development rights .....	23
Opening hours .....	24
Conditions relating to other regulatory requirements .....	25
Car free housing .....	25

Temporary planning permissions .....	27
Affordable housing.....	27
Prior approval appeals .....	28
Neighbours' extensions .....	28
Housing standards.....	29
Annexe A .....	31
Conditions checklist.....	31

This document is continually updated - Only valid as of 24/04/17

## Introduction

- 1 Inspectors make their decisions on the basis of the evidence before them. Consequently, they may, where justified by the evidence, depart from the advice given in this guide.
- 2 This training material applies to English casework only<sup>1</sup>.

## Legislation, policy and guidance

- 3 The powers enabling LPAs to impose conditions on planning permissions are set out in sections 91 and 92 (the compulsory statutory conditions) and also sections 70 and 72 of the Town and Country Planning Act 1990. Although 70(1) allows LPA's to impose "such conditions as they think fit", this very wide discretion has been held by the courts to have three legal limitations. In *Newbury District Council v Secretary of State for the Environment* (1981) (the 'Newbury' test) it was found that conditions imposed:
  - must be for a planning purpose and not for any ulterior one
  - must fairly and reasonably relate to the development permitted
  - must not be so unreasonable that no reasonable planning authority could have imposed them (ie "Wednesbury"<sup>2</sup> unreasonable)
- 4 Sections 77 and 79 allow an Inspector or the Secretary of State similarly to impose conditions.<sup>3</sup>
- 5 Conditions should be used to enable development to proceed by mitigating the adverse effects of the development where it would otherwise have been necessary to refuse planning permission.<sup>4</sup>
- 6 The Framework (paragraph 206) states that planning conditions should only be imposed where they are:
  - (1) necessary
  - (2) relevant to planning
  - (3) relevant to the development to be permitted
  - (4) enforceable
  - (5) precise
  - (6) reasonable in all other respects
- 7 The government's Planning Practice Guidance refers to these as the 'six tests'. It provides detailed guidance in the section on 'Use of Planning Conditions' (note that although Circular 11/95 Use of Conditions in Planning Permission was cancelled, Appendix A on model conditions is

---

<sup>1</sup> PINS Wales produces separate material for Wales which summarises differences in policy.

<sup>2</sup> ([Associated Provincial Picture Houses v Wednesbury Corporation 1948 Court of Appeal](#)).

<sup>3</sup> Planning Practice Guidance ID 21a-002-20140306 – 'What are the main legal powers relating to the use of conditions?'

<sup>4</sup> Planning Practice Guidance ID 21a-001-2014-20140306 – 'Why are conditions imposed on a planning permission?'

currently retained). PINS has now made available for Inspectors its new [suite of suggested planning conditions](#), which will be available in DRDS when the interim solution is launched (they will not be published on the Planning Portal or GOV.UK, and their predecessor suite of 'model conditions' will be removed from the Planning Portal), although some revised conditions are included in this training material); they are a starting point to consider and amend if appropriate to the circumstances of a case. Rigorous application of the 'six tests' can reduce the need for conditions and it is good practice to keep the number of conditions to a minimum wherever possible.<sup>5</sup>

## Applying the tests

- 8 The Planning Practice Guidance sets out the key questions that need to be considered when assessing whether conditions comply with the six tests<sup>6</sup> and provides guidance on the circumstances where planning conditions should not be used.<sup>7</sup>
- 9 Even where the parties agree to the imposition of a particular condition, it does not automatically follow that it is necessary or that it meets the other tests. The Planning Practice Guidance stresses that conditions should be kept to a minimum wherever possible.<sup>8</sup>

## Natural justice – avoid surprises

- 10 The Courts have made it clear that Inspectors should not impose conditions which the parties (including, in some cases third parties) have not seen and on which they might reasonably expect to be given the opportunity to comment ([William John Jory v SSTER \[2002\] EWHC 2724](#)). Consequently, have you considered the following:
  - Would the condition come as a surprise to the parties? If you consider imposing a condition which has not been discussed at an Inquiry or Hearing or which has not been referred to, either directly or implicitly in the representations, you must give the parties an opportunity to comment on it – unless the condition is obviously uncontroversial – such as matching materials where indicated on the plans or application form.
  - Would your condition be more onerous than one that has been suggested? If so, should the parties be given the chance to comment on it?
  - Would your condition be so different from one that has been suggested by the parties that they should be given the chance to comment on it? However, it is acceptable to redraft conditions to conform to the tests without referring them

---

<sup>5</sup>Planning Practice Guidance ID21a-018-20140306 – 'How can both the local planning authority and the applicant reduce the need for conditions?'

<sup>6</sup> Planning Practice Guidance ID21a-004-20140306 – 'How does the LPA ensure that the six tests in paragraph 206 of the National Planning Policy Framework have been met?'

<sup>7</sup> Planning Practice Guidance ID 21a-005-20140306

<sup>8</sup> Planning Practice Guidance ID21a-018-20140306

back to the parties - for example, to add an implementation clause - as long as the essence of the condition is unchanged.

- Would a condition that has not been suggested by the parties make the proposal acceptable? If so, would the condition be uncontentious? (for example, obscure glazing to a bathroom – especially if such details are shown on a plan) Alternatively, would the condition be likely to come as a surprise? (if so, you should seek the views of the parties).

## No conditions suggested?

11 If the LPA has not suggested any conditions – have you considered:

- Are any conditions likely to be necessary?
- If they are necessary, would they be uncontentious – an example could be matching materials if the plans show that this is intended. If not, then ask the LPA to provide, without prejudice, a list of conditions it would wish to see imposed. The appellant will then need to be given an opportunity to comment on them. The same applies if the LPA has only provided a brief outline of its suggested conditions (rather than the actual wording).

## Drafting conditions

### General advice

12 The conditions imposed on a permission are likely to be carefully scrutinised by the parties. Small drafting errors or omissions can alter the intended meaning of a condition or prevent it from being enforced, thus making them an easy target for challenge. Consequently conditions need to be very carefully written and checked.

13 If you intend to impose several conditions – consider:

- would the presentation of your decision be improved by including them in a schedule at the end of the decision?
- if so, have you adjusted the standard template 'decision' wording? (for example, to read '*subject to the conditions set out in Schedule 1*' - and the heading above the conditions should be '*Schedule 1 – Conditions*' or similar).

14 Suggested wording for conditions with the same aims can vary considerably from one appeal to another. Have you considered:

- basing your conditions on those from PINS [suite of suggested planning conditions](#)? This is good practice and will help with consistency.
- if so, have you adapted the condition to meet the specific circumstances of the case and made sure that it covers any specific requirements sought by the LPA (or, if that requirement is not necessary, have you explained why)?

15 In addition, have you checked to see whether the suggested condition:

- contains any overly detailed specifications of particular requirements? Could consideration of such details reasonably be left to the assessment of the required scheme by the local planning authority?
- includes any unnecessary references to specific documents - eg British Standards? Would there be problems implementing the condition if the document were to be cancelled, amended or replaced by another? Is a reference to a specific document essential?
- seeks to delegate approval of a scheme to another party - such as the Environment Agency? The approval of a scheme required by condition is the responsibility of the local planning authority and it will be for them to decide whether or not to consult with any other parties when considering if a submitted scheme is acceptable.<sup>9</sup>

### 'Anatomy' of a condition

- 16 Many planning conditions naturally fall into three parts: a requirement to submit details for approval; the grant of approval and; implementation (and retention) in accordance with the approval. Think carefully about the component parts of a condition. Would the condition actually achieve what it needs to? Consider whether the condition should include:

**an implementation clause?** – where it is necessary to ensure that development is carried out in accordance with approved details (eg materials) – *'Development shall be carried out in accordance with the approved details'*

**a timing clause?** – where it is necessary to provide something at a specific time – *'The house shall not be occupied until parking space has been provided in accordance with the approved details'*

**a retention clause?** – where it is necessary to permanently retain something after it has been provided – *'The parking space shall thereafter be retained for use by vehicles at all times'*

- 17 The following is an example of a condition relating to parking spaces. It contains submission (for approval), implementation, timing and retention clauses:

*Before development commences, a scheme showing the layout of parking spaces on the site shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented before the building is occupied. The agreed parking spaces shall thereafter be kept available for the parking of vehicles at all times.*

Looking at the 'anatomy' of this condition:

When should the scheme be submitted?	<i>before development commences</i>
What should the scheme cover?	<i>the layout of parking spaces on the</i>

<sup>9</sup> See Planning Practice Guidance ID 21a-016-20140306 'What about conditions that are requested by third parties?'

	<i>site</i>
Who should it be submitted to, who will approve it and how?	<i>submitted to and approved in writing by the local planning authority</i>
What should be implemented?	<i>the approved scheme</i>
When should it be implemented?	<i>before the building is occupied</i>
How will the effect of the condition be ensured over time?	<i>the agreed parking spaces shall thereafter be kept available for the parking of vehicles at all times</i>

- 18 A 'Condition checklist' is at Annex A. (Note that if one of the component parts is missing, a condition may be sufficiently flawed that the entire decision falls if challenged).

### The order of conditions

- 19 The Planning Practice Guidance provides advice on the order of conditions when granting permission.<sup>10</sup>

### Giving reasons for imposing or not imposing conditions

- 20 *The Town and Country Planning (Development Management Procedure) (England) Order 2015* requires under article 35(1) that:

"where planning permission is granted subject to conditions, the notice must state clearly and precisely their full reasons –

- i) for each condition imposed; and
- ii) in the case of each pre-commencement condition, for the condition being a pre-commencement condition;"

- 21 The Planning Practice Guidance also states that clear and precise reasons must be given for the imposition of every condition.<sup>11</sup> This means Inspectors should be satisfied that conditions proposed by the LPA or agreed with the appellant are clearly explained and justified. Justifications such as 'in the interests of proper planning' and/or 'for the avoidance of doubt' are not adequate.

- 22 It is important that the parties to an appeal are able to understand the reasons for a decision. Consequently, if the appeal is being allowed, have you clearly explained your reasons:

- for imposing any conditions other than the standard time limits?

<sup>10</sup> Planning Practice Guidance ID 21a-024-2014036 'How should a local planning authority order conditions on decision notices?'

<sup>11</sup> Planning Practice Guidance ID 21a-023-20140306 'Does the local planning authority need to give reasons for imposing conditions?'

- for imposing any pre-commencement conditions (and if so, are you satisfied that they are so fundamental to the development permitted that it would have been otherwise necessary to refuse the whole permission)?
- for not imposing conditions suggested by the parties (including third parties – for example, conditions are often suggested by highway authorities and the Environment Agency)?

23 If you are dismissing the appeal:

- have you dealt with any conditions that have been proposed in order to overcome the harm (for example, by the appellant and any parties supporting the proposal) - and explained why you consider that they would not do so.
- is there any need to refer to the conditions suggested by the LPA or others opposing the development? (usually this will not be necessary unless issues relating to a condition are central to your reasoning.)

24 Your reasons for imposing or not imposing conditions should be proportionate in length and detail to the relevant matter. Have you considered:

- the test of necessity is often the most critical – is it essential to refer to any other tests?
- are your reasons as brief as they can be (particularly for uncontested conditions)?
- are there any conditions where more explanation is likely to be needed (for example, when imposing or not imposing conditions which have been strongly contested by a party – or when dealing with more unusual conditions)?
- explaining the reasons for any substantial changes to conditions? (However, minor changes to the LPA's suggested wording - for instance to make conditions more succinct, improve clarity or to add an implementation clause - will not usually require any explanation)
- explaining in your conditions reasoning that, where imposed, suggested conditions have been amended for clarity and to meet the Framework tests? (if this is so)

25 If you indicate or imply that a condition is necessary in your reasoning on conditions or in your consideration of the main issues or other matters) have you actually imposed it?

## When do conditions come into effect?

26 Conditions requiring actions must make it clear when they should come into effect, for example:

- 'No dwelling shall be occupied until ...'
- 'No development shall take place until ...'

27 Conditions cannot come into effect if the permission itself has not been implemented. So, for example:

- a condition requiring all trees on the site to be protected during development would not prevent damage to them before the permission is implemented



- a condition removing permitted development rights for extensions to an existing house would not prevent extensions being added under permitted development rights until the permission had been implemented.

## Would it be possible to enforce the condition?

- 28 A condition which is difficult to enforce would not necessarily be invalid, (*Bizony v SSE* [1976] JPL 306), but one which was impossible to enforce, or which was otherwise incomplete, might be regarded as absurd and so invalid for that reason (*Penwith DC v SSE* [1986] JPL 432, *Bromsgrove DC v SSE* [1988] JPL 257). A condition which is not reasonably enforceable is not a reasonable condition for the purposes of the *Newbury* tests (*R v Rochdale MBC, ex parte Tew* [1999] 3 PLR 74).

## Altering a development by condition?

- 29 The Planning Practice Guidance states that conditions which modify a development in such a way as to make it substantially different from that set out in the application should not be used.<sup>12</sup> However, the Planning Practice Guidance advises that it may be possible to impose a condition that would result in a minor modification to the development.<sup>13</sup>
- 30 In *Wheatcroft v SSE* [1982] JPL p37 the High Court considered the issue of amendments in the context of conditions. It was concluded that the test to consider is whether the result of the condition would be:

*"to allow development that is in substance not that which was applied for." [In deciding this:] "the main, but not the only, criterion on which that judgment should be exercised is whether the development is so changed that to grant it would be to deprive those who should have been consulted on the changed development of the opportunity of such consultation."*

## Nullifying the benefit of a condition

- 31 Have you checked to make sure that the condition would not nullify the benefit of the permission? For example, this might occur where a restriction on hours of use would make it impossible for the user to run the business properly. Such conditions should not be imposed - if running the business properly would cause significantly adverse effects this is likely to indicate that permission should be refused (unless there are material considerations that indicate otherwise).

<sup>12</sup> Planning Practice Guidance ID 21a-012-20140306 - 'Can conditions be used to modify plans and other details submitted with an application?'

<sup>13</sup> Planning Practice Guidance ID 21a-012-20140306 - 'Can conditions be used to modify plans and other details submitted with an application?'

## Viability

- 32 The Planning Practice Guidance advises that conditions should not unreasonably impact upon the deliverability of a development.<sup>14</sup>

## Using a condition to split a decision

- 33 On appeal, s79 of the 1990 Act provides the power to “*reverse or vary any part of the decision of the local planning authority (whether the appeal relates to that part of it or not)*”. Consequently, you have the option of issuing a split decision. Further advice on split decisions is provided in Annex 1 of ‘The approach to decision-making’.
- 34 In some cases you may conclude that, although one part of a proposed development is acceptable, there are sound planning objections to another part. If the two parts are clearly severable a split decision could be issued – dismissing the appeal in relation to one part but allowing the appeal and granting permission for the other. This is generally a better option than allowing the appeal, granting permission and then using a condition to preclude some aspect of it.
- 35 If you intend to issue a split decision take care with any conditions you impose. Make sure that any conditions you have imposed are relevant to the part of the development you have allowed?
- 36 The Planning Practice Guidance advises on the circumstances where a LPA might use a condition to split a decision.<sup>15</sup> LPAs do not have the same powers under s79 that you have on appeal.

## Conditions which contradict the permission

- 37 Make sure that your conditions do not contradict the formal decision. For example, if permission is granted for a ‘house and garage’, then it would not be appropriate to attach a condition which seeks to prevent a ‘garage’ from being built. Instead, if there are sound planning objections to the ‘garage’, consider the option of a split decision.

## Conditions or planning obligations?

- 38 In some cases a particular requirement or restriction could reasonably be achieved by either a condition or a planning obligation. Have you considered which would be most appropriate?

---

<sup>14</sup> Planning Practice Guidance ID 21a-005-20140306 – ‘Are there any circumstances where planning conditions should not be used?’

<sup>15</sup> Planning Practice Guidance ID 21a-013-20140306 ‘Can conditions be used to limit the grant of planning permission to only part of the development proposed (a split decision)?’

- Paragraph 203 of the Framework states that “planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.” The Planning Practice Guidance reiterates this stance.<sup>16</sup>
- Where there is a choice, conditions are generally preferable because they represent the most straightforward approach, form part of the decision, are easier to enforce and provide the opportunity for an applicant to seek to vary or remove the restrictions/requirements by means of an application to the local planning authority or by appeal.
- However, a condition cannot override or supersede a completed planning obligation. Consequently, if a completed planning obligation has been provided, you will need to consider whether a condition that would directly duplicate its effects or requirements would be necessary?
- If an obligation has not been completed, and an essential matter could be dealt with either by a condition or obligation – have you considered imposing a condition?

## **‘Revoking’ an existing planning permission by condition?**

- 39 The implementation of an existing permission cannot be prevented by a condition attached to a subsequent permission. The ‘revocation’ of a planning permission can only be carried out by the local planning authority or the Secretary of State by a process (including compensation) under sections 97 and 100 of the 1990 Act. However, an appellant can enter into a binding obligation in which they would agree not to carry out a previously approved development.
- 40 In some cases permission will be sought for a development as an alternative to a previously approved and un-implemented scheme (for example the re-siting of a house on a plot or a different house extension or garage). In such cases have you considered:
- Would it be physically possible to carry out both developments?
  - If so, would that be an acceptable outcome or are there specific and convincing planning objections to both developments going ahead?
  - If there are such objections, is there a completed s106 obligation which would prevent both permissions being implemented?
  - If there is not, you would need to consider dismissing the appeal scheme (because there would be no means of preventing both going ahead).
- 41 However, there may also be cases where the proposal is to replace an existing lawful development (for example a domestic garage). In such cases:
- Would it be physically possible to build the replacement without demolishing the existing building?
  - Are there sound planning objections to both developments being in place?
  - Has the proposal clearly been advanced as a replacement?

<sup>16</sup> Planning Practice Guidance ID 21a-011-20140306 ‘What about cases where the same objective can be met using either a condition or a planning obligation?’

- If so, have you considered imposing a condition which would require that the existing building is demolished before the appeal development is implemented?

## 'Tailpiece' conditions

- 42 Conditions sometimes contain a mechanism for their own alteration such as "unless otherwise agreed in writing". These are sometimes referred to as a 'tailpiece'.
- 43 However, such wording should be used with care. It should not be used where it could allow significant changes to the development or circumvent the statutory processes for seeking to vary conditions (e.g. changes to the dimensions of a wind turbine) thus depriving third parties of the opportunity to comment.
- 44 The case of *Midcounties Co-operative Ltd v Wyre Forest District Council* [2009] EWHC 964 concerned a permission where a tailpiece had been added to a condition to limit floor space allocations. The Judge concluded that: *"It makes it hopelessly uncertain what is permitted. It enables development not applied for, assessed or permitted to occur. It side steps the whole of the statutory process for the grant of permission and the variation of conditions..."*.
- 45 In *Hubert v Camarthenshire CC* [2015] the permission for the construction of a wind turbine included a condition that the turbine should be of certain dimensions "unless given the written approval of the local planning authority". It was held that the "unless" clause should be removed from the permission as it otherwise allowed the local authority to approve variations that could result in a turbine of a scale and environmental impact that were greater than those for which permission had been granted.
- 46 However, such wording can be used where any changes would be minor. An example might be where a condition requires the implementation of a detailed planting scheme submitted with the application. In such cases a tailpiece might reasonably be used to allow minor variations to the scheme.

## Conditions requiring money from an appellant

- 47 The Planning Practice Guidance advises that a positively worded condition should not be used to require a payment of money or other consideration. However, a negatively worded condition can be used to prohibit development until a specific action has taken place (for example, the entering into of a planning obligation requiring the payment of a contribution towards the provision of infrastructure.<sup>17</sup> However, see the

<sup>17</sup> Planning Practice Guidance ID 21a-005-20140306 'Are there any circumstances where planning conditions should not be used'

advice below about requiring a planning obligation by means of a condition.

## Conditions requiring a planning obligation

- 48 The Planning Practice Guidance advises that a positively worded condition should not be used to require an applicant to enter into a planning obligation and that a negatively worded condition (i.e. limiting development until an obligation is entered into) is unlikely to be appropriate in the majority of cases. However, it states that

"in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk. . . . [In these circumstances the appropriateness of using a condition and] the heads of terms or principal terms need to be agreed prior to planning permission being granted . . ."

- 49 Any such condition would need to be very carefully worded to ensure that it would comply with the six tests.

## Description of development and the need for conditions

- 50 It is usually not possible to rely on the description of development to control, restrict or limit a development.
- 51 [I'm Your Man Ltd v SSE \(1998\)](#) concerned a case where permission had previously been granted for "*sales, exhibitions, and leisure activities for a temporary period of seven years*". However, no condition was imposed requiring the cessation of that use at the end of the seven years. The Court found that, despite the unambiguous nature of the description, it was actually a *permanent* permission. The "*temporary period of seven years*" was an attempt to impose a limitation on the permission granted and there is no direct or implied legal power to impose such limitations except by means of a planning condition.
- 52 However, a condition should be interpreted as a whole in a "benevolent manner within its context, which includes the permission it limits."<sup>18</sup> The following example illustrates this point:

Planning permission was granted for "5 detached open market dwellings and 3 affordable units". A condition was imposed requiring that a scheme of affordable housing was to be submitted and approved by the LPA. The condition did not specify the number of affordable houses to be provided. However, the condition did impose a limitation on the permission and the description of development was relevant to the interpretation of that condition. If the condition was interpreted

---

<sup>18</sup> The principle that conditions should be interpreted benevolently comes from [Carter Commercial Developments Ltd v Secretary of State for the Environment \[2002\] EWHC 1200 \(Admin\)](#) where it was held that a planning permission is to be given the meaning a reasonable reader would give to it, having available only the permission.

benevolently within its context (i.e. including the description of the development permitted) the effect of the condition was to require 3 affordable units. However, if there had been no condition relating to affordable housing, it is likely that the purported 'limitation' in the description of development (relating to 3 affordable units) would not have been effective.

- 53 This principle set out in 'I'm Your Man' was revisited in [Dunsfold Park Ltd v SSCLG and Waverley Borough Council \[2013\] EWHC 1878 \(Admin\)](#). Permission had been granted for "*the erection, repair and flight testing of aircraft*". It was found that the wording of the planning permission only permitted flights for the testing of aircraft. It did not permit unrestricted aviation activity. The Judge concluded that the principle that restrictions cannot be implied into a planning permission as set out in 'I'm Your Man Ltd v SSE' was not offended by this conclusion. This is because "*there is a clear difference between implying something into a planning permission which is not there in the first place and simply seeking to give meaning to the express terms of the permission.*" The claimant's subsequent appeal to the Court of Appeal was dismissed ([2014] EWCA Civ 627). Similarly, in [Mr M Wall and others v Winchester City Council and SSCLG \[2015\] EWCA Civ 563](#) it was found that a 'travelling show peoples site' could not be interpreted as a general permission for a residential caravan site, simply because there was no restrictive condition on the original planning permission.
- 54 Consequently, if you are allowing an appeal for the avoidance of doubt you should ensure that any essential restrictions (such as hours of opening, limitation on use, temporary periods, occupation only by a rural worker or the numbers of dwellings in outline permissions) have been secured by condition, even where the description of development purports to contain the 'limitation'.
- 55 Similarly, the description of development cannot, in itself, be used to control future changes of use. Where the description of development 'limits' the use, the use can be changed without any breach of planning control provided the change is permitted development or does not amount to a material change of use. So if, for example, permission had been given for a 'funeral directors' no further permission would be required to change to another use to falling within Class A1 of the Use Classes Order, unless that change had been specifically restricted by condition.

## Conditions precedent

- 56 These are conditions which prevent the development authorised by the permission (or part of it) from taking place until the condition has been complied with (for example, none of the houses shall be occupied until ...). The Planning Practice Guidance provides general guidance on the use of such conditions<sup>19</sup>.

---

<sup>19</sup> Planning Practice Guidance ID 21a-007-20140306 – 'When can conditions be used that prevent any development until the requirements of the condition have been met (conditions precedent)?'

- 57 Such conditions should only be used where the local planning authority or Inspector is satisfied that the requirements of the condition (including the timing of compliance) are so fundamental to the development permitted that it would have been otherwise necessary to refuse the whole permission.

## Grampian conditions

- 58 These are conditions which prohibit development authorised by the planning permission or other aspects linked to the planning permission until a specified action has been taken (such as the provision of supporting infrastructure) where the works relate to land which is not controlled by the appellant. Such conditions **may overcome the harm caused by a development, but** should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the **permission. Whether a Grampian condition is an acceptable solution in a particular context is a matter of planning judgement on all the evidence.** The Planning Practice Guidance provides general guidance on the use of such conditions<sup>20</sup>.

## Specific types of conditions

### Time limits

- 59 The Planning Practice Guidance provides advice on conditions which specify the time limits within which a development must begin. It also explains the circumstances in which a shorter or longer time limit might be appropriate.<sup>21</sup>

### The 'plans' condition

- 60 The Planning Practice Guidance states that specifying the application drawings by means of a condition is good practice and creates certainty for all parties, particularly where applications have been subject to a number of revisions.<sup>22</sup>
- 61 Furthermore, if permission has been granted subject to a condition which lists the plans it is possible to make an application under section 73 of the 1990 Act to vary those plans in order to make 'minor material amendments'. If such an application is approved, the effect would be to grant a new planning permission with a revised plan condition referring to different plans showing the relevant 'minor material amendment.' The Planning Practice Guidance provides advice on this.<sup>23</sup>

<sup>20</sup> Planning Practice Guidance ID 21a-009-20140306 - 'When can conditions be used relating to land not in control of the applicant'

<sup>21</sup> Planning Practice Guidance ID 21a-027/028-20140306 - 'Conditions relating to time limits'

<sup>22</sup> Planning Practice Guidance ID 21a-022-20140306 - 'Can conditions be used to specify the application drawings and other details which form part of the permission?'

<sup>23</sup> Planning Practice Guidance ID 17a-017-20140306 and ID 17a-018-20140306

- 62 For these reasons, where you allow an appeal and grant planning permission, you should consider imposing a condition specifying the plans, with a reason along the following lines:

*I have imposed a condition specifying the relevant drawings as this provides certainty.*

- 63 However, it is not appropriate to impose the condition:

- for development involving a change of use only or where the application is wholly in outline (because there would be no details shown on a plan). An exception may be when a Masterplan or other drawings have been submitted for an outline scheme which have been agreed to be necessary in order to fix the parameters of the development.
- where the development has already been carried out (because the condition requires the development to be *carried out* in accordance with the plans)

- 64 If you are allowing the appeal and the development has already been carried out it is best practice to refer to the relevant plans in your formal decision. This makes clear the plans on which your decision was based. For example (emphasis added):

The appeal is allowed and planning permission is granted for [ ] at [ ] in accordance with the terms of the application, Ref [ ], dated [ ], **[and the plans numbered x, y and z]**, subject to the following condition[s]: [ ].

- 65 The condition could state:

*The development hereby permitted shall be carried out in accordance with the following approved plans: (insert plan numbers).*

Or (if there are a lot of plans):

*The development hereby permitted shall be carried out in accordance with the approved plans listed in schedule (insert name or number of schedule of plans).*

Or (for outline permissions):

*The development hereby permitted shall be carried out in accordance with the following approved plans: No(s).....but only in respect of those matters not reserved for later approval. [for an outline permission where some but not all matters are reserved].*

- 66 If the plans are not numbered, refer instead to their titles. If there are no numbers or titles you can refer to the drawings 'submitted with the application' or 'submitted with the appeal' – whichever is correct.

- 67 In some cases it may be necessary to require that some detail shown on the drawings is changed and that further details are submitted and approved (for example, relating to a car parking layout). If so, you can impose an additional condition along the following lines:

*Notwithstanding condition # [i.e. the condition requiring that the development is carried out in accordance with the approved plans] no development shall take*



*place until details of the [specify details – for example, the layout of the car parking area] have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details”.*

- 68 There may be a situation where you consider a detail shown on the plans should not be provided because it would be harmful to do so. An example might be an additional car parking space in the front garden which would be visually harmful but would not actually be necessary for the development in question to be acceptable. In such circumstances the plans condition could be worded:

*The development hereby permitted shall be carried out in accordance with the following approved plans: [insert plan numbers] except in respect of the [specify the detail] shown on plan [insert plan number].*

- 69 Remember that the plans condition does not specifically require that all features shown on the plans must be provided or retained or that the development and all its component parts must be completed. It merely requires that if they are provided then they must accord with the plans. Thus, if it is essential that a specific feature on the plans is provided – for instance a fence, planting, an access or a car parking area, you must impose a separate additional condition that would ensure that the particular feature is provided and, if necessary, retained.
- 70 If the plans condition is imposed there is no need to refer to the plans in the decision itself (i.e. the words *"and the plans submitted with it"* can be left out of the decision).
- 71 There is no need to go back to the parties where the plans condition has not been suggested. It should not come as a surprise to any party that an approved development should be carried out as shown on the approved plans.
- 72 It is debatable whether 'existing' plans need to be referred to in the plans condition (for example plans showing an existing elevation prior to the proposed extension). However, it is best to refer to all the plans because then there can be no doubt in future over what was 'existing'. However, it is not incorrect to omit existing plans.
- 73 Finally, make sure you refer to the correct plans, particularly if revised plans have been submitted, **and that you have given clear and precise reasons why a 'plans' condition has been imposed.**

### **Conditions where development has already been started or carried out**

- 74 In principle, the use of retrospective conditions (used in enforcement appeals where permission is granted (ground a) and also in appeals for retrospective planning permission under s78) can pass the legal tests as set out by the court in the Newbury judgment (and subsequent judgments) and also the six policy tests in the Framework and in the Planning Practice Guidance. But because they contain the comparatively

draconian measure of removing or suspending the benefit of a grant of planning permission or because there are strict timetables to be adhered to for dealing with detailed matters, they need to be drafted with particular care and with a clear explanation of the operation and effect of the condition in the Inspector's decision or report.

- 75 Particular care is also needed when drafting conditions where the development has already been carried out because many example or 'standard' conditions are written to apply only where development has not begun and because the conditions have to be very carefully worded in order to be enforceable.
- 76 Given the development has already commenced you should not:
- use phrases such as "no development shall begin" – for example, in conditions which require the submission of details
  - impose the standard time limit condition for commencement.
- 77 In light of the above, the following 'long form' and 'short form' PINS conditions may be imposed as appropriate in the specific circumstances of the appeal, and the corresponding paragraph should be inserted into the decision as an explanation as to the reasoning and effect of the condition in each case:

**Long form condition**

*The [use/activity]/[building/engineering/mining/other operations] hereby permitted shall [cease]/[be demolished to ground level]/[be removed] and all [equipment and materials brought onto the land for the purposes of such use]/[materials resulting from the demolition] shall be removed within [\*\*] days of the date of failure to meet any one of the requirements set out in i) to iv) below:*

- i) *Within [e.g. 3] months of the date of this decision a scheme for [specify] shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.*
- ii) *If within [e.g. 11] months of the date of this decision 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.*
- iii) *If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.*
- iv) *The approved scheme shall have been carried out and completed in accordance with the approved timetable.*

*Upon implementation of the approved [scheme] specified in this condition, that [scheme] shall thereafter [be maintained/retained/remain in use].*

*In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.*

### **Reasoning for Inspectors' decisions using the long form condition**

*The purpose of condition XX is to require the appellant to comply with a strict timetable for dealing with [define the outstanding matter of detail] which needs to be addressed in order to make the development acceptable. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because the development has already taken place. The condition therefore provides for the loss of the effective benefit of the grant of planning permission where the detailed matters in question are not submitted for approval during the time set by the condition, approved (either by the local planning authority ("LPA") or by the Secretary of State on appeal), and then implemented in accordance with an approved timetable. Should the requirements of the condition not be met in line with the strict timetable, then the planning permission falls away.*

### **Short form condition**

*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 and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.*

*If no scheme in accordance with this condition is approved within [\*\*] months of the date of this decision, the use of the site [or occupation for whatever] shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.*

*Upon implementation of the approved [scheme] specified in this condition, that [scheme] shall thereafter [be maintained/retained/remain in use].*

*In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.*

### **Reasoning for Inspectors' decisions using the short form condition**

*The purpose of condition XX is to require the appellant to comply with a strict timetable for dealing with [define the outstanding matter of detail] which needs to be addressed in order to make the development acceptable. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively*

*worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because the development has already taken place. The purpose and effect of the condition is therefore to ensure that the use of the site authorised by the grant of planning permission may only continue if the appellant complies with each one of a series of requirements.*

- 78 The following PINS condition for Gypsy and Traveller casework may be imposed as appropriate in the specific circumstances of the appeal, and the corresponding paragraph should be inserted into the decision as an explanation as to the reasoning and effect of the condition in each case:

***Gypsy and Traveller condition***

*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 [\*\*] days of the date of failure to meet any one of the requirements set out in i) to iv) below:*

- i) *Within [e.g. 3] months of the date of this decision a scheme for [insert any matters which need to be covered by the condition, e.g.: 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; the internal layout of the site, including the siting of caravans, plots, hardstanding, access roads, parking and amenity areas; tree, hedge and shrub planting and where appropriate earth mounding including details of species, plant sizes and proposed numbers and densities; the restoration of the site to its condition before the development took place, (or as otherwise agreed in writing by the local planning authority) at the end of the period for which planning permission is granted for the use, or the site is occupied by those permitted to do so, as appropriate] (hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.*
- ii) *If within [e.g. 11] months of the date of this decision 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.*
- iii) *If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.*
- iv) *The approved scheme shall have been carried out and completed in accordance with the approved timetable.*

*Upon implementation of the approved [scheme] specified in this condition, that [scheme] shall thereafter [be maintained/retained/remain in use].*

*In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits*

*specified in this condition will be suspended until that legal challenge has been finally determined.*

### **Reasoning for Inspectors' decisions using the above condition**

*The purpose of condition XX is to require the appellant to comply with a strict timetable for dealing with [define the outstanding matter of detail] which needs to be addressed in order to make the development acceptable. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because the development has already taken place. The condition therefore provides for the loss of the effective benefit of the grant of planning permission where the detailed matters in question are not submitted for approval during the time set by the condition, approved (either by the local planning authority ("LPA") or by the Secretary of State on appeal), and then implemented in accordance with an approved timetable. Should the requirements of the condition not be met in line with the strict timetable, then the planning permission falls away.*

- 79 When drafting conditions carefully consider the use of the above PINS conditions. They have been carefully written to ensure that they are enforceable. In the event that their requirements are not met they require that the use/activity ceases and/or that any buildings are demolished. Consequently, given these potential outcomes, have you considered very carefully whether any conditions are necessary (i.e. would planning permission have to be refused if the condition were not imposed; would it be unreasonable to impose such conditions)?
- 80 If any remedial or additional works are necessary (for example, landscaping, provision of parking, change of materials or alteration of some existing feature), it will be necessary to specify a time limit for the works to be carried out and for any detailed scheme to be agreed. Is the suggested timescale reasonable or too onerous? Time limits should enable an appellant to draw up, submit and negotiate a reasonable scheme. The overall time limit should enable the agreed scheme to be implemented. For a landscaping scheme, this may not be until the next planting season.

### **Outline and reserved matters applications**

- 81 General information on outline and reserved matters appeals is provided in 'The approach to decision-making'.
- 82 The standard reserved matters are set out in *The Town and Country Planning (Development Management Procedure) (England) Order 2015*.
- 83 They are:
- layout
  - scale
  - appearance

- access
- landscaping.

84 The Order provide a definition of the scope of each of the reserved matters<sup>24</sup>.

85 If you intend to allow an outline application – have you:

- established which matters are reserved for subsequent approval and which are to be dealt with now? ('The approach to decision-making' provides further information on this)
- imposed a condition requiring that details of the reserved matters are submitted for approval? Does your condition refer only to matters which are reserved for subsequent approval?
- imposed conditions requiring that the application for the approval of the reserved matters should be within 3 years and that development shall begin not later than 2 years from the date of the approval of the last of the reserved matters?<sup>25</sup>
- considered whether any conditions are needed to control matters which fall outside the scope of the five reserved matters - for example, drainage or contamination? (the outline approval is the planning permission and matters falling outside the scope of the reserved matters or which are not reserved for subsequent approval cannot be controlled later at the time of a reserved matters application – if you are unclear about the scope of any of the reserved matters – look at the definition in the Order)<sup>26</sup>
- considered whether any conditions are required to further control reserved matters which are being considered at the outline stage? (for example, if 'access' is being considered at the outline stage, it would be appropriate to impose a condition requiring that visibility splays are provided and subsequently kept free from obstruction – if there are sound planning reasons for doing so). It is not possible to add such conditions at the reserved matters stage.
- checked to make sure you have not unnecessarily imposed conditions which fall within the definition of any of the matters reserved for subsequent approval? For example, if you have conditioned 'landscaping' as a reserved matter, it would not usually be necessary to impose further detailed conditions relating to hard or soft landscape works. However, an additional condition would be acceptable if it relates to something which is fundamental – for example, although appearance might be conditioned as a reserved matter – it could be a guiding principle that there should be no windows in a particular elevation.
- considered whether it might be necessary to clarify the condition requiring the submission of reserved matters (for example, if it is an issue, you might require details of '*landscaping, including details of the trees to be retained and*

<sup>24</sup> Note that the interpretation of 'layout' and 'scale' in 'The Town and Country Planning (Development Management Procedure) (England) Order 2015 does not imply that 'mix of use' can be part of either 'layout' or 'scale'.

<sup>25</sup> Planning Practice Guidance ID 21a-o28-20140306 – What about time limits for outline planning permissions?

<sup>26</sup> Planning Practice Guidance ID-21a-025-20140306 – 'Can conditions be attached to reserved matters applications relating to outline permissions?'

*how they will be protected during construction' or 'layout, including space for the parking of vehicles') - or alternatively, such matters could be dealt with by means of a separate condition.*

86 If you are dealing with an application to approve reserved matters – have you considered:

- Is it necessary to impose any conditions in relation to the reserved matters which are before you? (you can impose further conditions at this stage but only if they arise directly from the reserved matters application - see [R v Newbury DC ex parte Stevens & Partridge \[1992\]](#) and the Planning Practice Guidance<sup>27</sup>. As an example, if 'appearance' is a reserved matter, you might require a window to be obscure glazed at the reserved matters stage because it would not have been known where the windows would be placed at the time the outline application was considered).

### Removing permitted development rights

87 Paragraph 200 of the Framework states that planning conditions should not be used to restrict national permitted development rights unless there is **clear justification** for doing so. The Planning Practice Guidance advises that conditions restricting the future use of permitted development rights or changes of use *"will rarely pass the test of necessity and should only be used in **exceptional circumstances**"*<sup>28</sup> (emphasis added).

88 If you consider that there is a clear justification and that exceptional circumstances exist have you:

- precisely defined the scope of the condition by reference to the relevant provisions in the Town and Country Planning (General Permitted Development) (England) Order 2015? Permitted development rights cannot be removed by implication – a condition stating *'no further extensions shall be made'* or *'the use is limited to ....'* would not remove existing permitted development rights – see *Dunoon Developments v Poole Borough Council* (Court of Appeal) [1992] JPL 936 and the Planning Practice Guidance.<sup>29</sup>
- made sure that you are not removing more permitted development rights than is necessary? (for example, it would not be reasonable to remove rights relating to all extensions if the only concern relates to additions or alterations to the roof)
- ensured that your condition refers to the 2015 Order? (it should do even if that Order is amended by a subsequent order)
- based your condition on a PINS condition

89 You should note that a condition will only take effect once the planning permission is implemented. Consequently, a condition cannot prevent

<sup>27</sup> Planning Practice Guidance ID 21a-025-20140306 – 'Can conditions be attached to reserved matters applications relating to outline permissions?'

<sup>28</sup> Planning Practice Guidance ID 21a-017-20140306 – 'Is it appropriate to use conditions to restrict the future use of permitted development rights or changes of use?'

<sup>29</sup> Planning Practice Guidance ID 21a-017-20140306 – 'Is it appropriate to use conditions to restrict the future use of permitted development rights or changes of use?'

permitted development rights being exercised before commencement. So if, for example, an extension to a house is only acceptable provided that extensions are not added under permitted development rights you will need to consider:

- Is there a completed s106 obligation in which the appellant agrees to forgo permitted development rights immediately the planning permission is granted? If not, would there be any mechanism to prevent extensions which would be permitted development being added before the appeal development. In these circumstances, a logical consequence would be that the appeal might fail.

## Opening hours

90 Great care is needed when drafting opening hours conditions. Consider carefully:

- are the suggested restrictions on opening hours necessary?
- should the restriction apply to the use or just to specific aspects of it (see examples below)?
- does your condition set out exactly what hours are being allowed and on what days?
- is your condition clear and will it have the intended effect?
- have you justified the restrictions in your reasoning?
- Does your condition take away the benefit of the planning permission?

91 To ensure clarity and consistency, have you:

- considered using the 24 hour clock?
- avoided terms like 'weekdays' or 'weekends' which are open to interpretation
- considered basing your condition on one of PINS conditions?

92 Have you carefully considered the degree of control that is necessary? PINS conditions below provide three options:

**Option 1:** *The premises shall only be open for customers between the following hours: []*

This requires that the premises be *open* to the public for the serving of meals during the specific time period – but allows a 'reasonable time' period for people on the premises to finish their meals etc and leave. ([K Miah v SSE & Hillingdon LB \[1986\] JPL 756](#))

**Option 2:** *Customers shall only be permitted on the premises between the following hours []*

This is more restrictive and requires that customers are only on the premises during the specific time period. However, it would allow staff to remain on site for washing up etc.

**Option 3:** *The use hereby permitted shall only take place between the following hours: []*

This is the most restrictive option. In [Christopher Rees v SSE & Chiltern DC \[October 11 1994\] \(CO/2719/93\)](#) it was held that such a condition relates to the "total use" and so means that no operations connected with the use can take place outside of the specified time period; including cleaning, washing up and tidying.



- 93 Does your condition make it very clear what hours are being permitted and which are not? If no opening is to be allowed on a particular day, it is good practice to make this clear – for example:

*The premises shall only be open for customers between the following hours: 1100 – 2330, Mondays to Saturdays. The premises shall not be open for customers at any time on Sundays.*

- 94 Would the permitted opening hours spread from one day into another? If so, does your condition make this clear? PINS condition below suggests:

*The use hereby permitted shall only take place between the following hours: Mondays to Saturdays 0800 - 0030 the following morning [in this example you might also add that opening is not permitted at any other times on Sundays].*

### **Conditions relating to other regulatory requirements**

- 95 The Planning Practice Guidance advises that such conditions will not meet the test of necessity and may not be relevant to planning.<sup>30</sup>

### **Car free housing**

- 96 The term 'car free housing' is sometimes used to describe housing developments that are not provided with any off-street parking and where the demand for on-street parking has reached a critical 'saturation' point. Therefore occupants would not use a car and would be prevented from obtaining a residents parking permit. Such developments tend to be found in locations where occupants would not be dependent on a car because they are well-served by public transport and close to local services and facilities. They are often located in controlled parking zones where the demand for on-street car parking would, if not controlled, exceed the supply. The issue often arises in central London boroughs. It should be remembered that car 'ownership' is not the same as car 'use'. People may own a car and want to park it locally even though they may not use it much and undertake most of their journeys on public transport.
- 97 If it is argued that the development should be 'car free' then you will need to consider:
- i) Is it necessary to ensure that the development would be car free? What harm would result if it were not car free (highway safety, the living conditions of neighbours?). Would the harm be so significant that permission should be refused if the development were not car free.
  - ii) If it is necessary, how would car free development be achieved? There are three broad options: the use of planning obligations, conditions or non-planning powers. It should be remembered that these will only be effective in areas within a Controlled Parking Zone.

---

<sup>30</sup> Planning Practice Guidance ID 21a-005-20140306 'Are there any circumstances where planning conditions should not be used?'

- iii) If it is necessary to ensure the development is car free and there are no means of achieving this, the logical outcome is that the appeal would be dismissed (unless material considerations indicate otherwise).

### *Planning obligations*

- 98 The [Westminster City Council v SSCLG and Acons \[2013\] EWHC 690 \(Admin\)](#) judgment highlights the difficulty in formulating an obligation to prevent an application for a parking permit which would fall within the scope of s106 and be enforceable. However, it is now considered that it is possible to draft a car free obligation to restrict the use of land in prohibiting occupation of the property by anyone holding a permit. Further advice on this is provided in 'Planning Obligations'.

### *Conditions*

- 99 In the absence of a workable and lawful planning obligation, negatively worded planning conditions have been used by LPAs and Inspectors to attempt to achieve car free housing. Many of these conditions imposed by LPAs have been poorly drafted, unworkable and unlawful. The PINS condition below addresses the concerns in *Westminster* and could be taken forward subsequently in a s106 obligation, although as indicated by the Planning Practice Guidance the condition can only be used in exceptional circumstances:

*No development shall take place until arrangements shall have been made to secure the development as a car-free development in accordance with a detailed scheme or agreement which shall have been approved in writing by the local planning authority. The approved scheme or agreement shall ensure that:*

- i) no occupiers of the approved development shall apply for, obtain or hold an on-street parking permit to park a vehicle on the public highway within the administrative district of the local planning authority (other than a disabled person's badge issued pursuant to section 21 of the Chronically Sick and Disabled Persons Act 1970 or similar legislation); and*  
*ii) any occupiers of the approved development shall surrender any such permit wrongly issued or held.*

*Such scheme or agreement shall be implemented prior to the occupation of the development hereby permitted and shall be retained and operated for so long as the use hereby permitted continues.*

- 100 The Planning Practice Guidance advises that 'in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk.'<sup>31</sup>.

- 101 Whether or not the test in the Planning Practice Guidance is met will be for the Inspector to conclude on.

---

<sup>31</sup> Planning Practice Guidance ID: 21a-010-20140306 – 'Is it possible to use a condition to require an applicant to enter into a planning obligation or an agreement under other powers?'

### *Non-planning powers.*

102 Does the LPA have non-planning powers to restrict permits? For example, are there limits to the numbers of permits in the Controlled Parking Zones or is the Council able to amend the zone to exclude certain properties. In order to rely on such alternatives it would be necessary to have evidence that such controls exist and could be reasonably applied and enforced by the LPA.

103 Guidance is provided in the Planning Practice Guidance.<sup>32</sup>

### **Temporary planning permissions**

104 Guidance is provided in the Planning Practice Guidance.<sup>33</sup>

### **Affordable housing**

105 See the advice in 'Housing' and PINS condition below on affordable housing, although the condition can only be used in exceptional circumstances as indicated by the Planning Practice Guidance:

*No development shall take place until a scheme for the provision of affordable housing as part of the development shall have been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2: Glossary of National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:*

- v) the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall consist of not less than [\*\*]% of housing units/bed spaces;*
- vi) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;*
- vii) the arrangements for the transfer of the affordable housing to an affordable housing provider[or the management of the affordable housing] [if no Registered Social Landlord involved];*
- viii) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and*
- ix) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.*

*The affordable housing shall be retained in accordance with the approved scheme.*

<sup>32</sup> Planning Practice Guidance ID 21a-015-20140306 – 'Is it appropriate to use conditions to limit the benefits of the planning permission to a particular person or group of people?'

<sup>33</sup> Planning Practice Guidance ID 21a-014-20140306 – 'When can conditions be used to grant planning permission for a use for a temporary period only?'

106 The Planning Practice Guidance advises that 'in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk.'<sup>34</sup>. Whether or not the test in the Planning Practice Guidance is met will be for the Inspector to conclude on.

### **Prior approval appeals**

107 Decision-makers have sometimes imposed conditions on prior approval cases that are not deemed conditions as set out in the GPDO. Although the legality of doing so has not been tested by the Courts, the GPDO does not provide any general authority for imposing additional conditions beyond the deemed conditions. There are however specific powers in the two circumstances below:

- under paragraph A.4(12), Schedule 2, Part 1 of the GPDO "The local planning authority may grant prior approval unconditionally or subject to conditions reasonably related to the impact of the proposed development on the amenity of any adjoining premises."; and,
- under paragraph W(13) of Schedule 2, Part 3 of the GPDO "The local planning authority may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval."

108 In the above two circumstances the subject matter of the condition must be limited to that specified.

109 Conditions should not be imposed where the GPDO makes no provision for them.

110 Further advice is in 'Prior Approval Appeals'.

### **Neighbours' extensions**

111 Separate applications are sometimes made by the owners of neighbouring properties to extend their houses such that each extension would be, more or less, a "mirror image" of the other. If it is important to preserve a balanced appearance of the 2 properties such developments may only be acceptable if they are both carried out. However, even where the extensions are joint ventures, if neither applicant has any control over the neighbour's land a condition requiring the completion of both extensions, or one which prevents occupation until both are completed, is not a reasonably enforceable condition and should not be used. Consequently, unless a s106 obligation has been completed whereby both owners agree

---

<sup>34</sup> Planning Practice Guidance ID: 21a-010-20140306 – 'Is it possible to use a condition to require an applicant to enter into a planning obligation or an agreement under other powers?'

to carry out the development as one scheme (which would bind the land and any successors in title) such appeals are likely to fail.

## Housing standards

112 See the advice in 'Housing' on the background to the new system of Housing standards.

113 From 1 October 2015 the government's policy is that decision takers should only require compliance with the optional new national technical standards<sup>35</sup> where there are policies in an existing relevant Local Plan, neighbourhood plan, or supplementary planning document which demonstrate need and where the impact on viability of the new development has been considered<sup>36</sup>.

114 **Water efficiency and access** - should be interpreted by reference to the nearest equivalent new national technical standard. The new Building Regulations Optional Requirements are in force from 1 October 2015, and in respect of an application or appeal being decided a condition might read something like:

*The dwelling(s) shall not be occupied until the Building Regulations Optional requirement [x] has been complied with.*

115 **Space standard** – the nationally described space standard was introduced from 27 March 2015 and will be implemented through the planning system. Where the space standard is being applied a condition might read something like:

*The dwelling(s) shall not be occupied until the nationally described space standard [ref] has been complied with and the details of compliance provided to the local planning authority.*

116 **Energy performance** - where there is an existing plan policy which references the Code for Sustainable Homes, authorities may continue<sup>37</sup> to apply a condition for energy performance<sup>38</sup> requirements at a Code level 4 equivalent until the amendments to the Planning and Energy Act 2008 in the Deregulation Act are commenced. A condition might read something like:

---

<sup>35</sup> The Planning Practice Guidance provides advice on [Housing – Optional Technical Standards](#), covering accessibility and wheelchair housing standards, water efficiency standards and internal space standards.

<sup>36</sup> Planning Practice Guidance ID: 21a-005-20140306 'What approach should be taken to imposing conditions?'.

<sup>37</sup> The transition period for an existing energy performance requirement local plan policy continues beyond 1 October 2015. The Written Ministerial Statement of 25 March 2015 allows LPAs to apply existing energy performance policies that set requirements up to the equivalent of the energy requirements of Code level 4 until the amendments to the Planning and Energy Act 2008 in the Deregulation Act are commenced - no decision has yet been taken on when to commence the amendments and the WMS remains the most up-to-date statement of policy on the role of planning in delivering energy performance standards.

<sup>38</sup> The Building Regulations Part L 2013 is already equivalent to the former Code level 3 on energy performance.

*The dwelling(s) shall not be occupied until the relevant requirements of level of energy performance equivalent to ENE1 level 4 of the Code for Sustainable Home have been met and the details of compliance provided to the local planning authority.*

117 These conditions are not in DRDS.

### **Occupancy and personal conditions**

118 Such conditions may be used to limit occupancy in relation to agricultural/forestry workers dwellings or for other rural occupation, staff accommodation, live/work units or personal permissions for example. In doing so they may also restrict occupancy to any resident dependants. In *Shortt and Shortt v SSCLG and Tewksbury Borough Council* ([2015] EWCA Civ 1192) the Court of Appeal held that as a matter of ordinary language, 'dependants' is capable of referring to relationships without financial dependency. Because there was no requirement of financial dependency set out in the condition, it would be surprising if the intention was to permit family members to remain only so long as the farming enterprise remained profitable. (paragraphs 25-26)

### **Establishing ground/finished slab levels**

119 Where there is uncertainty about existing ground levels and/or finished slab levels (particularly where the site slopes and/or in relation to adjoining buildings) a condition requiring either a full site survey or details of the finished levels should be imposed.

## Conditions checklist

Do the conditions meet the <b>three legal</b> ("Newbury") and <b>six policy tests</b> in the NPPF and guidance in the PPG?	
Have you <b>imposed <u>all</u> the conditions you have said you will?</b> Tip: Write a list of conditions and then tick them off.	
Have you given <b>reasons for imposing/not imposing conditions</b> (especially those proposed in order to overcome the harm but you consider they would not do so, or where it is your view that the perceived harm will not result)?	
<b>Are the conditions accurate, complete</b> and do what's intended *?	
<b>Opening/operating times</b> – use the 24 hour clock, specifying which hours on which days, ensuring that the right degree of control is used.	
Would any of the conditions come as <b>a surprise</b> – need parties comment?	
Do any of your conditions substantially <b>alter the development</b> , contradict the permission or prejudice viability. If it does, do <b>not</b> use.	
Avoid <b>discretionary phrases</b> like ' <i>unless otherwise agreed by the local planning authority</i> ' if it could allow significant changes to the development.	
<b>The approved plan</b> condition should be attached to most planning permissions for the avoidance of doubt, and to allow for applications for minor material amendments.	
<b>Prior Approval appeals:</b> conditions can only be imposed in the circumstances under paragraph A.4(12), Schedule 2, Part 1 and paragraph W(13) of Schedule 2, Part 3 of the GPDO – are they applicable?	
If the <b>development has already been completed</b> - do <b>not</b> include a commencement condition or start others with 'Before development commences ...' Instead use the 'long' or 'short' form condition and explanatory paragraph in 'Conditions'.	

### \*Anatomy of a condition:

- **When?** eg before the development commences/is occupied?
- **What?** eg a scheme showing the layout of car parking on the site.
- **From whom and how?** eg "... shall be submitted to, and approved in writing by the LPA".
- **Implemented when?** eg "The agreed scheme shall be carried out before the development hereby permitted is brought into use" or "Development shall be carried out in accordance with the approved details".
- **What happens afterwards (retain/maintain)?** eg "...and the parking spaces shall thereafter be kept available for the parking of vehicles at all times".