

The use of conditions in planning permission: introduction

Circular 11/95: The Use of Conditions in Planning Permission - This document is available as a download in PDF format at the foot of this page

Joint Circular from the Department of the Environment 2 Marsham Street, London SW1P 3EB
Welsh Office Cathays Park, Cardiff CF1 3NQ

The Use of Condition in Planning Permissions

- 1.** DOE Circular 1/85 (WO 1/85) gave advice about the use of planning conditions. Much of that advice remains relevant, but it contains a number of references to legislation which has been replaced or amended since the Circular was published. This Circular brings these references up to date and incorporates additional policy guidance issued since 1985, for example, in Planning Policy Guidance Notes: in particular, it reflects guidance on the use of conditions in respect of transport, retail development, contaminated land, noise and affordable housing. Additional advice has been included in respect of design and landscape, lorry routeing, 'granny' annexes, staff accommodation, access for disabled people, holiday occupancy, and nature conservation/endangered species (see Index for details). The Circular also takes account of court decisions and includes an expanded Appendix containing 'model' conditions.
- 2.** The power to impose conditions when granting planning permission is very wide. If used properly, conditions can enhance the quality of development and enable many development proposals to proceed where it would otherwise have been necessary to refuse planning permission. The objectives of planning, however, are best served when that power is exercised in such a way that conditions are clearly seen to be fair, reasonable and practicable. This Circular, with its Annex, sets out guidance on how this can be achieved.
- 3.** Paragraphs 14-42 of the Annex, stress that conditions should only be imposed where they are both necessary and reasonable, as well as enforceable, precise and relevant both to planning and to the development to be permitted. Attention is particularly drawn to paragraphs 15-17 which advise that in considering whether a condition is necessary authorities should ask themselves whether planning permission would have to be refused if the requirements of that condition were not imposed. If it would not, then the condition needs special and precise justification. Attention is also drawn to paragraph 29 of the Annex, alerting authorities to a judgment with important implications for enforcing planning conditions.
- 4.** It is essential that the operation of the planning system should command public confidence. The sensitive use of conditions can improve development control and enhance that confidence. The use of conditions in an unreasonable way, however, so that it proves impracticable or inexpedient to enforce them, will damage such confidence and should be avoided.
- 5.** When applications come to appeal, the Secretaries of State or Planning Inspectors welcome reasoned suggestions from the parties as to conditions which they would find acceptable if permission were granted. Such suggestions will be fully examined and may or may not be adopted, but conditions will not be imposed if they are considered to be invalid or if they are unacceptable on policy grounds.

6. Since July 1992, local planning authorities have been able to ensure compliance with many planning conditions by serving a breach of condition notice. Guidance about this type of notice is given in Annex 2 to DOE Circular 17/92 (WO 38/92). If a valid breach of condition notice is contravened, the resulting offence is open to summary prosecution. But the prosecution's case must always be proved on the criminal standard of proof ("beyond reasonable doubt"). Consequently, if the breach of condition notice procedure is to operate effectively, planning conditions must be formulated precisely. In the event of prosecution, the Magistrates' Court will then have no doubt about exactly what is required in order to comply with the terms of a planning condition.

7. This Circular does not include specific advice on policy on the use of planning conditions for the specialist subject of minerals workings or for most developments relating to waste management. Advice on conditions applicable to mineral developments is contained in the series of Minerals Planning Guidance Notes (MPGs) and on waste management development control in PPG 23: Planning and Pollution Control (England only).

8. This Circular repeats and brings up to date existing advice, and should therefore have no effect on local government manpower or expenditure.

9. Department of the Environment Circular 1/85 (WO 1/85) is now cancelled.

Richard Jones, Assistant Secretary

W P Roderick, Assistant Secretary

Index to Annex

Accesses 69-70 see also Outline permissions

Affordable housing 97

Agricultural dwellings 102-105

Alterations to nature of development 84

Applications for planning permission, discussion between local planning authorities and 7

Archaeological sites 80-81

Caravans 115

Chalets 115

Completion of development 61-62

Contaminated sites 73-76

Development plans 6,9

Design and landscape 48-50

Disabled persons 114

Environmental assessment 77

Enforceability of conditions (Test IV) 26-29. See also Precision.

'Granny' annexes 98-99

Highways 65-69

High-technology 91

Landscape design 48-50. See also Outline permissions.

Listed buildings 79

Lorry routeing 71

Maintenance requirements 82

Model conditions: use of lists by local planning authorities 8; models suggested in this Circular.

Appendix A.

Nature conservation 118

Need for a condition (Test I) 15

Noise 78

Notes attached to planning permissions 11
Occupancy restrictions 92-96
Outline permissions 43-46
Time-limits for, 55 Parking 64-68
Permitted development, restrictions on 86-90
Personal permissions 93
Phasing of development 63
Planning obligations 12-13
Powers to impose conditions 1-5. On land not under control of applicant 37
Precision of conditions (Test V) 30-33
Protected species 120
Reasonableness of conditions (Test VI) 34-42
Reasons for conditions 10
Relevance of conditions to planning (Test II) 20-23
Relevance of conditions to the development to be permitted (Test III) 24-25
Renewal of permissions 60
Reserved matters 43-58
Restrictions on uses and activities 86-91
Retail development 107
Service roads 69
Staff accommodation 100-101
Temporary permissions 108-112
Tests for imposing conditions 14
Time-limits for submission of reserved matters 55-58; for commencement of development 53; for Completion of development 61-62; Temporary permissions 108-112
Trees 50-52
Use, restrictions on 86-91

Annex

References to "model" are to the model conditions shown in Appendix A.

Appendix A and Appendix B can be accessed in the 'See also' section below.