



## Using and discharging conditions – Ten best practice principles

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### About this advice note

This advice note has been written by a group representing interests from across the development sector and local government. It's intended to complement policy and guidance with ten good practice principles. If followed by all stakeholders in the planning process, these principles should help improve the way conditional planning permissions work for everyone. Their goal is to help reduce the uncertainty and cost that can result from over reliance on conditions. They should also ensure that all conditions are better tailored to the purpose and encourage a more streamlined discharge process.

For each principle the reader should consider the action points described and embed these good practices into their work.

### Introduction

Local Planning Authorities (LPAs) grant permission for most planning applications and there has been a significant improvement in the speed of determination. However, where it exists, poor practice around conditions on planning permissions impacts on development viability and delays in bringing forward developments. It adds to the costs for LPAs, developers and statutory consultees; and can cause local communities to feel that the process of considering applications is opaque and confusing.

In summary the criticisms are:

- LPAs paying too little attention to the conditions that are applied to planning permissions.
- Too little priority is given to managing the discharge of these conditions by developers, LPAs and consultees.

All sectors involved in planning and development agree that the flexibility offered by conditions, when used well, facilitates development. They enable developers to spread cost and risk by providing information about detailed considerations after the principle of development has been accepted and provide a mechanism for restricting unacceptable aspects of a development rather than refusing the whole proposal.

The policies for the use of conditions are defined in the National Planning Policy Framework (NPPF) para 203 and 206. The 6 tests (para 206) provide a robust and familiar framework against which proposed conditions should be tested. Further practical guidance about the wording of conditions and detail of how and when certain types of conditions can be used is in the government's Planning Practice Guidance (PPG). These should be referred to along with the 10 good practice principles.

## The ten principles

### Principle 1

**The number of conditions imposed through a planning permission should be kept to the minimum necessary to ensure good quality sustainable development.**

Planning conditions should comply fully with NPPF's six tests. LPAs need to ensure that all case officers are fully familiar with them and are encouraged to be rigorous in the case of each proposed condition. It's equally the case for the officers of statutory consultees, who may not be planners, but who should nonetheless be familiar with the tests in relation to the conditions they recommend.

In practice, while standard conditions can be a useful aid for consistency and supporting enforceability, there is a danger that not enough thought is given to whether the condition is necessary: i.e. will it be appropriate to refuse planning permission without the requirements imposed by the condition?

The reason for imposing a condition is often not clearly set out in decision letters. A local plan policy does not of itself justify the imposition of a condition. More consideration given to explaining why a condition is needed (rather than relying on a simple reference to a policy number, or generalisation such as to preserve the amenity of the area) will result in conditions honed to specify what is actually required in order to make a development acceptable.

Planning officers should add value by rationalising the conditions requested by various consultees so that the submission of a detail for approval will take account of various requirements for linked aspects of the development e.g. where the EA have ground water contamination concerns and environmental health are concerned about the impact of contamination for human habitation, there will be benefit in a co-ordinated approach to the design solution. The best such solution and clearest conditions will be reached through conversation between the parties about what is required.

Actions for LPAs:

- Be robust in testing your proposed conditions against the 6 tests.
- Use standard conditions as a guide rather than a pick and mix.
- Give better reasons for the conditions you are imposing and relate these to the development.
- Rationalise conditions that relate to similar matters where appropriate.

Actions for statutory consultees:

- Be robust in testing your requested conditions against the 6 tests.
- Explain clearly what the requested condition is designed to achieve in relation to this development
- Be open to rationalising the form of conditions where requirements overlap.

## Principle 2

### **Better detail submitted = fewer conditions.**

When a planning submission contains full detail relating to the proposed development, impact analysis and mitigation measures; fewer conditions will be required to ensure the quality of the resultant development. As long as there's sufficient information to allow for the proper consideration of the proposal, there is an element of choice for the applicant about whether some matters of detail are submitted up front (giving more certainty) or after the principal of development is established and conditions imposed (managing the cash flow and timelines in the planning process). Where the submission includes material or notes that are purely illustrative, this needs to be clearly indicated.

LPA's should not impose or statutory consultees request conditions that, in effect, duplicate the information or detail already supplied as part of the application. The PPG advises that a condition requiring resubmission and approval of details that have already been submitted as part of the application is unlikely to pass the test of necessity. It may in some limited circumstances be necessary to require that a particular aspect of a development be completed as part of the development e.g. to ensure that mitigation required as part of a flood risk assessment submitted with the application is carried out.

If information or detail is to be submitted later through approval of detail or reserved matter application, discussing **when** in the delivery programme will avoid compromising the quality of the development.

Actions for applicants:

- Use pre-application discussion to agree your submission material and reserved matters.
- Don't reserve matters where there is not a practical reason for delaying the submission of these details in the planning application.
- Share your prospective development programme with planners so that timing of detail conditions doesn't hold up development.
- Be clear about what material is simply illustrative and what is to be considered within the application.

Actions for LPA's:

- Don't impose a condition that in effect duplicates material in the application submission.
- Publish your list of standard conditions on your website.

## Principle 3

### **Positive dialogue between applicant/planning authority/statutory consultees/community is likely to result in fewer conditions being imposed as issues can be resolved as they arise.**

Pre-application discussions and regular conversations about matters to be covered by a condition will help streamline the planning process, and aid transparency about what is being granted permission. Such conversations should take place early and drafts of proposed conditions shared with the applicant as early as is practical, not just when the council officers' report is being drafted. As per the NSIP regime, it could be helpful for clarity if the applicant includes a schedule of expected conditions in an application submission.

In some cases it may not be possible to rely on a condition to provide information needed before planning permission can be granted, such as a flood risk assessment or land contamination issues. Pre-application discussions can help identify information requirements and save time and wasted effort during the application stage.

Decision letters should clarify why a condition is necessary (to make the development acceptable). For additional clarity and transparency, it could also explain, if applicable, that an applicant has requested that this detail be considered later.

When an application is submitted, any omission or ambiguity in the application submission should, wherever possible, be discussed with the agent or applicant and sorted out rather than be left to condition.

If an element of the proposed development shown on the submitted plans is unacceptable and a modification is required to make the proposal acceptable, giving the applicant a chance to amend the application or to delete reference to the problem element can avoid a condition and make the proposal clearer for the community. A condition requiring approval (before the relevant phase of the construction) of a substitute detail can be imposed provided that the amendment does not change the nature of the development sought, and the applicant is able to confirm that the amendment is capable of delivery. Compliance with the plans in other respects can be assured by standard conditions such as that used by PINS.

By the time the officer's report is written up, the applicants should be familiar with all the conditions that are being proposed by the LPA. The cost of making and considering applications to vary conditions or to take enforcement action should a condition be breached, provides another compelling argument for making sure that all parties are up to speed and in agreement about the conditions prior to the determination of the application.

Actions for LPAs:

- Discuss with an applicant where a modification to the application might avoid a condition.
- Give applicants the chance to amend an unacceptable feature rather than impose a condition.
- Encourage applicants to discuss post application timing for the submission of reserved details.
- Share the list of proposed conditions with the applicant as early as possible and certainly before the report is finalised.

Actions for applicants:

- Discuss proposed conditions with the LPA and statutory consultees at the earliest opportunity.
- Respond promptly to modify the application submission if amendment will avoid an approval of detail application later.
- Provide a list of planning conditions that you feel would be appropriate for your proposal.

## **Principle 4**

### **If a matter is controlled under other regulatory regimes then it should not be the subject of a planning condition.**

Planning is not the safety net for controlling all matters pertaining to a development. The second NPPF test requires conditions to be relevant to planning and the PPG warns against conditions that require compliance with other regulatory regimes.

The wide scope of planning considerations leaves the NPPF test fairly open to interpretation. However, where matters are capable of control under other legislation, there is good reason to let the control lie there. Duplicating conditions in planning permissions and other consents can lead to overlap and confusion. Moreover, conditions relating to other regimes are also often tricky to draft in a manner to make them enforceable under planning.

The best mechanism for avoiding confusion or dispute over such conditions is an active discussion with statutory consultees and other relevant agencies including other council services. Applicants are encouraged to have pre-application discussions with other regulators and make parallel applications where possible so that the different regulatory regimes can be 'dovetailed' so far as possible. Many of the statutory consultees offer advice services to help applicants to integrate the various requirements of planning and non-planning consenting regimes.

An informative may be sufficient to draw attention to a requirement under another regime, rather than using a condition requiring details to be submitted.

Actions for third parties, including statutory consultees:

- Do not duplicate requirements where it is possible to control development or regulate use under other regimes or permits.
- Be prepared to participate in an LPA led "development team" discussions to ensure that your requirements can be integrated into proposals alongside the requirements of others.

Actions for LPAs:

- Be prepared to challenge conditions recommended by statutory consultees and other third parties where these relate to matters that can be controlled through other regimes.
- Encourage applicants to 'parallel track' applications for planning permission and other permits and licences
- Use informatives to draw attention to the requirements of other regimes

Actions for applicants:

- Avoid inconsistencies and additional conditions by considering all the relevant development requirements including non-planning consenting regulations when preparing your proposals.
- 'Parallel track' applications for planning permission and other consents and permits wherever possible.

## Principle 5

**A prescriptive condition setting out what would make the detail of a scheme acceptable is often a better option than an approval of detail condition.**

Approval of detail applications create uncertainty and are more costly and time consuming for the applicant, the LPA and statutory consultees. As a general guide, approval of detail applications are a tool more appropriate for major schemes where the complexity and longer design/delivery phases mean that some significant issues will be finalised after the application determination process (see Principle 2).

In many instances it will be practical to say what would constitute an acceptable detail/method and embody this in a prescriptive condition rather than using an approval of details condition to ask for a drawing or a specification to be submitted.

Often it is possible to refer to an accepted standard to be achieved or a methodology: e.g. for tree protection there is a relevant British Standard BS 5837:2012. For design details it may be possible to refer to a design code for an area to describe an acceptable approach or material. This approach can both save time and make the expectation clear to all. It can also provide a degree of flexibility for the developer where, for example, a pallet of materials would be acceptable rather than a single brick or roofing material.

Actions for LPAs:

- Consider using prescriptive conditions in preference to approval of details conditions where what is required can be specified.
- Design standard conditions that refer to locally acceptable design approaches or national standards where appropriate.

Actions for third parties and statutory consultees:

- Consider whether it is possible to formulate standard format conditions that specify appropriate standards to be achieved in order to meet a given requirement.

Actions for applicants:

- Let the LPA and others know what you consider would be possible or practical to specify in a given situation

## Principle 6

**Consider the impact of a condition on deliverability: inappropriate timing or lack of clarity about phasing can increase risk and cost.**

It is clear in the PPG that consideration must be given to the impact of a condition on the deliverability of a development. Conditions that require the submission and approval of details prior to commencement of some aspect of a development should take account of the development process and such conditions should be discussed with the applicant. The DMPO 2015 now specifically requires reasons to be given for using pre-commencement conditions.

Equally, although not required by legislation, it is good practice for the LPA to ensure that all such conditions precedent are grouped on the decision notice, and that the conditions themselves make absolutely clear which conditions relate to which phase of a multi-stage development and which to the development as a whole. Similarly, in the case of hybrid applications seeking detailed permission

for development on one part of a site and outline permission for another part of the same site, grouping the conditions into those that apply to each and those that apply across the site and/or to all phases of development will give greater clarity.

Actions for LPAs and statutory consultees:

- Fine tune your requirements for submission of details to take account of development and construction sequencing.
- Group conditions on the decision notice to make clear which conditions relate to which phase or part of the development and which relate to the development as a whole.
- Use the reasons for a condition to also explain the timing for submission of details.

Actions for applicants:

- Share the development project planning with the LPA and other parties if timing of conditions will affect deliverability.

## **Principle 7**

**Wherever practical, frame a requirement as a condition rather than require a planning obligation.**

It is vital that all parties do their utmost to ensure that the process of considering a planning application should take no longer than is necessary. Where it's required that something is in place in order to make a development acceptable, all parties should take an active role in ensuring that the means of resolution is clearly agreed before determination. Resolving an issue by using a condition to secure acceptable development avoids the potential for delay in completing a planning obligation.

But where a planning obligation is required, **all** parties should follow the planning guidance and work to finalise the obligation in a timely manner. Thus both applicants and councils should strive to complete the S106 agreement within the government's 13 week target or any agreed extension date.

A condition requiring completion of the S106 agreement before development commences will not be appropriate in the majority of cases. However, in exceptional circumstances, for example if completion of the S106 agreement for complex strategic development is not immediately possible but there is clear evidence that a lack of a planning permission would risk deliverability of the development, such a condition could be considered if it is negatively worded. Clearly in such cases use of the condition should be agreed between the council and the applicant. Transparent decision making will require the terms of the S106 to be clear when the application is determined, albeit that the agreement has not yet been completed.

Actions for LPAs:

- Use a condition to secure a requirement in preference to a planning obligation to save time and cost.
- Use every effort to enable the S106 agreement to be completed expeditiously.
- If such a condition is used ensure clarity about the terms prior to determination and discuss the condition with the applicant.

Actions for applicants:

- Use every effort to enable the S106 agreement to be completed expeditiously.

- Be clear about what is deliverable in your discussion of planning obligations prior to determination of your application.
- Work towards completion of a S106 agreement within the government's targets or the alternative date you have agreed with the LPA.

## **Principle 8**

**Informatives are put on a decision notice as guidance for the developer. They are not conditions and are not enforceable, but do provide an insight.**

Informatives are the additional comments from the local authority, usually listed at the end of planning permissions. They don't form part of the planning permission, but are used as a useful means for providing guidance to the developer (who may not in the end be the applicant) about other requirements of the council and third parties, such as statutory consultees.

Confusion arises when informatives are used to set out additional detail as to what is required in order to satisfy a condition or make a development acceptable in planning terms. If a particular detail or treatment is necessary in order to make a development acceptable, then that information should be conveyed in the condition, otherwise it is not enforceable. But in a situation where there is more than one potentially acceptable option, an informative can give advice about what would not be acceptable e.g. brick or stone is acceptable but render is not.

Informatives may be useful as a means of raising awareness of the developer about other regulatory requirements but these are essentially advisory rather than regulatory.

Actions for LPAs:

- Don't use informatives to set out mandatory requirements.
- Do use them when signposting to requirements of other regulations or to permit as they will help a developer to step through the development process.

Actions for applicants:

- Heed the signposts and advice contained in informatives in order to save time and cost

## **Principle 9**

**Adopt a robust systematic approach to discharging conditions and seeking approval of details applications and consider using a PPA to agree project management milestones and resources.**

A wide range of practices for registering and recording the discharge of conditions applications exists in LPAs. Often this needs to be tightened up as a first step to better management of this part of an LPA's workload. The deemed consent for conditions provisions of the DMPO 2105 will provide a backstop date to encourage LPAs to give greater priority to discharge of conditions applications generally. But, for larger applications, it is much more effective for all parties to agree a sensible timescale for their consideration; taking into account the complexity of the details requested and the need to consult with other experts. Where the applicant and the LPA have agreed an alternative date in writing, the deemed discharge consent provisions in the DMPO 2015 do not apply.

In dealing with complex developments where (despite good practice) there are still a number of conditions on the permission, all stakeholders stand to gain from agreeing a programme for the submission, consideration and approval of conditions.

Agreeing a PPA to cover the discharge of conditions is a positive step to project planning this stage as it provides clear agreed milestones and a mechanism to input the necessary resources to deal with the applications more expeditiously. Where a PPA already exists this could be extended to cover the approval of details phase. Otherwise a new PPA could be agreed. Other parties such as statutory consultees should be offered a chance to input into such discussions.

Actions for LPAs:

- Have clear processes to register and track applications for discharge/approval of conditions.
- Encourage PPAs to cover the post application phase as well as management of the application process.
- Encourage pre-submission discussion of details required by condition in order to iron out any potential issues.

Actions for applicants:

- Support a clearer approach to discharge of conditions by making separate applications for the discharge of conditions/approval of details relating to similar matters.
- Discuss with the LPA the likely timing for submission of details pursuant to conditions.
- Participate in pre-submission discussions including with statutory consultees where the conditions relate to their area of expertise.

Actions for statutory consultees and other third parties:

- Give appropriate priority to expediting the discharge of conditions and approval of details, particularly when the condition has been imposed at your request and requires your expertise to assess the detailed submission.

## **Principle 10**

**If an approval of detail application involves consulting with the community/parish/neighbourhood planning forum, this should be flagged and explained in the reason for the condition.**

It has been unusual to consult with the community over the approval of details which have been required by a condition, but in light of the increasing numbers of communities that are engaged in neighbourhood planning, it is probable that this will increase. Whether it is necessary to consult on approval of details applications will be a matter of judgement for the LPA having regard to the circumstances.

For reasons of transparency and good project planning, it would help to have such conditions flagged as such. This will enable an applicant to be proactive and speak with the community when working up proposals in relation to this condition. For their part, the community representatives who are consulted should demonstrate responsiveness to the need for speedy consideration of submissions.

Actions for LPAs:

- Consider whether third parties, especially neighbourhood planning groups, should have an ongoing engagement role in the approval of details applications

- Flag with the applicant instances where community involvement will be desirable so the applicant is advised that pre-submission engagement is appropriate and can allow time for this.

Actions for applicants:

- Be proactive and engage with the community when working up proposals in relation to conditions.
- Be sure that you give enough time in your schedule to allow communities to engage with your proposals.

Actions for communities:

- Take a positive role in discussions with applicants regarding submissions required by conditions and provide timely responses when the details are submitted.