Use of Planning Conditions

April 2015
Preamble

This Development Management Practice Note is designed to guide planning officers and relevant users on the use of planning conditions in decision notices and deals primarily with procedures as well as good practice. It forms part of a series of new practice notes stemming from the Planning Act (Northern Ireland) 2011 (the 2011 Act) and any related subordinate legislation. The emphasis is very much on advice but where explicit legislative requirements must be followed these will be made clear.

Where appropriate this practice note will therefore highlight:

- Relevant legislation;
- Procedural guidance;
- Definitions;
- Best practice examples / relevant case law

This guidance is not intended to replace the need for judgement by planning officers and those making planning applications. Nor is it intended to be a source of definitive legal advice. Reference should be made to the actual legislation referred to in this document and if any discrepancy or conflict exists between the Practice Note and legislation the provisions of the legislation will prevail.
1.0 THE USE OF CONDITIONS IN PLANNING PERMISSION

1.1 The power to impose conditions when granting planning permission is very wide. If used appropriately, 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.

1.2 Conditions should only be imposed where they are necessary and reasonable, as well as enforceable, precise and relevant both to planning and to the development to be permitted. In considering whether a condition is necessary one should ask 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.

1.3 It is essential that the operation of the planning system should command public confidence. The sensitive use of conditions can improve the development management process and enhance confidence.

2.0 THE POWER TO IMPOSE CONDITIONS

2.1 The power to impose conditions is contained within Sections 45 and 52 of the 2011 Act, and the scope of this power should always be borne in mind when drafting conditions. Section 61 and 62 of the 2011 Act require the imposition of time-limiting conditions on grants of planning permission. Under Section 61(1)(b) a standard time period condition can be made longer or shorter as the council or, as the case may be, the Department considers appropriate having regard to the provisions of the local development plan, so far as material to the application, and to any other material considerations.
2.2 Section 45 of the 2011 Act enables the council or, as the case may be, the Department in granting planning permission to impose "such conditions as they think fit". This power is not, however, as wide as it appears, and has to be interpreted in light of court decisions.

Powers for conditions on land outside the application site and temporary permissions

2.3 Section 52 of the 2011 Act amplifies the general power to impose conditions in Section 45 in two ways:

1) It makes clear that the council or, as the case may be, the Department may impose conditions for regulating the development or use of land under the control of the applicant (whether or not it is land in respect of which the application was made) or requiring the carrying out of works on any such land, so far as appears to the council or, as the case may be, the Department to be expedient for the purposes of or in connection with the development authorised by the permission.

2) It makes clear that the council or, as the case may be, the Department may grant planning permission requiring the removal of any buildings or works authorised by the permission, or the discontinuance of any use of land so authorised, at the end of a specified period, and the carrying out of any works required for the reinstatement of land at the end of that period. (temporary permission).

Permission to develop land without compliance with conditions previously attached

2.4 Section 54 of the 2011 Act applies to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted. On receipt of such an application,
the authority must consider only the question of the conditions subject to which planning permission should be granted.

2.5 The council or, as the case may be the Department can grant such permission unconditionally or subject to different conditions, or they can refuse the application if they decide the original condition(s) should continue. The original planning permission will continue to exist whatever the outcome of the Section 54 application. Section 54 will not apply if the period in the previous condition limiting the duration within which the development could begin has now expired without the development having begun.

2.6 In accordance with Section 54 (5) planning permission must not be granted under this section to the extent that it has effect to change a condition subject to which a previous planning permission was granted by extending the time limit. As such, any application made under Section 54 to vary a time commencement condition alone should be returned to the applicant.

2.7 **Section 55** of the 2011 Act provides for retrospective planning applications to be made in respect of development which has been carried out without permission, and for applications for planning permission to authorise development which has been carried out without complying with a planning condition to which planning permission was granted. Special consideration may need to be given to conditions imposed on planning permissions granted under Section 55. For example, the standard time-limiting condition will not be appropriate where development has begun before planning permission has been granted.

## 3.0 THE SIX TESTS FOR CONDITIONS

3.1 Conditions should only be imposed where they satisfy all of the tests below. Conditions should be:

i. necessary;
ii. relevant to planning;

iii. relevant to the development to be permitted;

iv. enforceable;

v. precise; and

vi. reasonable in all other respects.

4.0 THE NEED FOR A CONDITION

4.1 In considering whether a particular condition is necessary, the council or, as the case may be the Department, must consider whether planning permission would be refused if that condition were not to be imposed. If it would not, then the condition needs special and precise justification. The argument that a condition will do no harm is no justification for its imposition: a condition ought not to be imposed unless there is a definite need for it. The same principles must be applied in dealing with applications for the removal of a condition under Section 54 in that a condition should not be retained unless there are sound reasons for doing so.

4.2 Conditions should be tailored to tackle specific issues, rather than impose unjustified controls. In so far as a condition is wider in its scope than is necessary to achieve the desired objective, it will fail the test of need e.g. where an extension to a dwelling house in a particular direction would be unacceptable, for example, a condition on the permission for its erection should specify that, and not simply remove all rights to extend the building.
5.0 PRACTICE BY COUNCILS AND THE DEPARTMENT

5.1 Reasons for conditions

By virtue of the requirements in Article 21 of the Planning (General Development Procedure) Order (NI) 2015, (the GDPO) the council or, as the case may be, the Department in deciding to grant permission subject to conditions shall state the reasons for their decision. Reasons must be given for the imposition of every condition. If the reasons for the imposition of conditions are clearly explained, applicants will be better able to understand the need for them and to comply with them. The likelihood of proper and acceptable conditions being challenged on appeal, so that development proposals are held up, will also be diminished.

5.2 Planning Agreements

It may be possible to overcome a planning objection to a development proposal equally well by imposing a condition on the planning permission or by entering into a planning agreement under Section 76 of the Planning Act. In such cases the council or, as the case may be, the Department should firstly endeavour to impose a condition rather than seek to deal with the matter by means of a planning agreement. Where conditions are imposed on a planning permission they should not be duplicated by a planning agreement. Permission cannot be granted subject to a condition that the applicant enters into a planning agreement or an agreement under other powers.

5.3 Consent of applicant to unreasonable conditions

An unreasonable condition does not become reasonable because an applicant suggests it or consents to its terms. Any condition must always be justified on its planning merits.
6.0 CONDITIONS RELATING TO OUTLINE PLANNING PERMISSION

6.1 Outline planning permission should not only establish the acceptability in principle of development but should clearly establish the substantive planning parameters within which subsequent development can take place.

6.2 Where an outline permission is granted, it is conditional on the subsequent approval by the Department of the details of the proposed development known as reserved matters. Section 2 (1) of the General Development Procedure Order defines reserved matters as:

‘… any of the following matters in respect of which details have not been given in the application namely (a) siting (b) design (c) external appearance (d) means of access (e) the landscaping of the site”

6.3 Once outline planning permission has been granted, it cannot be withdrawn except by a Revocation Order under Section 68 and 72 of the Planning Act, and any subsequent approval of reserved matters does not constitute the granting of a further planning permission. Any conditions relating to anything other than the reserved matters should be imposed when outline permission is granted. The only conditions which can be imposed when the reserved matters are approved are conditions which directly relate to those matters. Therefore, where certain aspects of the development are crucial to the decision, the council or, as the case may be, the Department should impose relevant conditions when outline permission is granted.

6.4 It is crucial to remember that conditions must not be imposed relating to the principle of the development at reserved matters stage. Careful attention must be given to specifying the reserved matters and the framing of appropriate reserved conditions when dealing with an outline planning permission. Such conditions should set out clearly and precisely the requirements which the applicant must meet to obtain approval of reserved matters. This is particularly important because the reserved matters and reserved conditions
in the outline permission are intended to give clear guidance to applicants as to what they are required to do to obtain any subsequent approval(s).

7.0 TIME-LIMIT CONDITIONS ON THE COMMENCEMENT OF DEVELOPMENT

7.1 Statutory time-limits

The imposition of time-limits on the commencement of development is not required by Section 61 (3) of the 2011 Act to any-

a) Outline planning permission;
b) Planning permission granted by a development order;
c) To any planning permission granted for a limited period;
d) Planning permission granted for development carried out before the grant of that permission;
e) Planning permission granted by an enterprise zone scheme; or
f) Planning permission granted by a simplified planning zone scheme.

7.2 Time-limits on full permissions

Other grants of planning permission must, under Section 61 of the Act, be made subject to a condition imposing a time-limit within which the development authorised must be started. Section 61 specifies a period of five years from the date of the permission. Where planning permission is granted without a condition limiting the duration of the planning permission, it is deemed to be granted subject to the condition that the development to which it relates must be begun not later than the expiration of 5 years beginning with the grant of permission.

7.3 Time-limits on outline permissions

Grants of outline planning permission must, under Section 62 of the Act be made subject to conditions imposing two types of time-limit, one within which applications must be made for the approval of reserved matters and a second
within which the development itself must be started. The periods specified in the section are three years from the grant of outline permission for the submission of applications for approval of reserved matters, and either five years from the grant of permission, or two years from the final approval of the last of the reserved matters, whichever is the longer, for starting the development.

7.4 Variation from standard time-limits

If the council or, as the case may be, the Department consider it appropriate on planning grounds, however, they may use longer or shorter periods than those specified in the 2011 Act, and must give their reasons for so doing (Section 61 (1) (b)). Such a condition must be imposed at the time outline planning permission is granted.

7.5 Separate submission of different reserved matters

Applications for approval under an outline permission may be made either for all reserved matters at once, or for one at one time. Even after details relating to a particular reserved matter have been approved, one or more fresh applications may be made for approval of alternative details in relation to the same reserved matter. Once the time-limit for applications for approval of reserved matters has expired, however, no applications for such an approval can be made. A condition requiring the developer to obtain approval of reserved matters within a stated period should not be used, since the timing of an approval is not within the developer's control. A condition, therefore, should set time-limits only on the submission of reserved matters.

7.6 Effect of time-limit

After the expiry of the time-limit for commencement of development it is not possible for development to be begun under that permission.
8.0 CONDITIONS RESTRICTING PERMITTED DEVELOPMENT OR OTHERWISE RESTRICTING USE

8.1 Restrictions on use or permitted development

It is possible, exceptionally, to impose conditions to restrict further development which would normally be permitted by a development order, or to restrict changes of use which would not be regarded as development. Changes of use can be restricted either by prohibiting any change from the use permitted or by precluding specific alternative uses. It should be noted, however, that a condition restricting a change of use will not restrict ancillary or incidental activities unless it so specifies. Similarly, a general condition which restricts the use of land does not remove permitted development rights for that use unless the condition specifically removes those rights as well.

8.2 Presumption against such restrictions

Both development orders and the Use Classes Order\(^1\), however, are designed to give or confirm a freedom from detailed control which will be acceptable in the great majority of cases. Save in exceptional circumstances, conditions should not be imposed which restrict either permitted development rights granted by development orders or future changes of use which the Use Classes Order would otherwise allow. Such conditions may be unreasonable unless there is clear evidence that the uses excluded would cause demonstrable harm if allowed, that there were no other forms of control, and that the condition satisfies the six tests set out in Paragraph 3.0.

8.3 Specific conditions better than general ones

Because of the general presumption against such restrictions on permitted development or on changes of use which are not development, it will always be necessary to look carefully at the planning reasons for any restriction, and to ensure that the condition imposed is no more onerous than can be justified.

\(^1\) This refers to The Planning (Use Classes) Order (Northern Ireland) 2015
It would not be right to use a condition restricting uses where an alternative, more specific, condition would achieve the same end. Scrupulous care in the giving of proper, adequate and intelligible reasons for imposing conditions can help the council or, as the case may be, the Department to ensure that the conditions they impose are not more onerous than is necessary to achieve their objective.

9.0 TEMPORARY PERMISSIONS

9.1 Section 52 of the 2011 Act gives power to impose conditions requiring that a use be discontinued or that buildings or works be removed at the end of a specified period. Where this is the case, the wording of such a condition should be clearly set out in the decision notice.

Relevant Case Law

I’m your man Ltd v Secretary of State for the Environment [1999] PLCR 109 confirmed that if you wish to narrow or limit a permission, it must be done by way of condition.

In this case, the description of the approval stated that it was a temporary permission but, because the permission contained no condition that limited the lifespan of the approval, the courts found that it was not in fact a temporary permission but a permission for all time.

10.0 Further Reading

10.1 Guidance on the use of model conditions (produced by The Department for Communities and Local Development for the planning system in England) can be found at:

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