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Circular

The Use of Planning Conditions for Development Management

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The Use of Planning Conditions for Development Management

Audience

Chief planning officers of local planning authorities; businesses; government agencies; other public sector groups; professional bodies and interest groups; voluntary groups and the general public.

Overview

This circular updates the information and guidance to be used by local planning authorities when drafting planning conditions.

Action required

For local planning authorities to be aware that from 06 October 2014:

1. Welsh Government Circular WGC 016/2014, which provides contemporary information and guidance on the drafting of planning conditions for local planning authorities, takes effect;

2. Welsh Office Circular 35/95 (The Use of Conditions in Planning Permissions) is cancelled.

Further Information

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Additional copies

This guidance is available from the Welsh Government website at:
http://wales.gov.uk/topics/planning/policy/circulars/welshgovcirculars/

Related documents

Review of Planning Conditions Circular and model conditions

Consultation document (2014) – available on the Welsh Government website at:

http://wales.gov.uk/consultations/planning/review-of-planning-conditions-circular/?status=closed

Review of Planning Conditions Circular and model conditions

Summary of responses document (2014) – available on the Welsh Government website at:

http://wales.gov.uk/consultations/planning/review-of-planning-conditions-circular/?status=closed

Table of Contents

Paragraph

1.0 Introduction

2.0 The Power to Impose Conditions 2.0

Summary of powers 2.1
Powers for conditions on land outside the application site and temporary permissions 2.3
Power to vary or remove the effect of conditions 2.4
Other constraints 2.6

3.0 The Six Tests 3.0

i) Necessary 3.2
Duplication of controls 3.6
Completion of development 3.7
ii) Relevant to Planning 3.10
Other planning controls 3.11
Non-planning controls 3.12
iii) Relevant to the Development 3.15
iv) Enforcement 3.18
Time limits 3.20
Practicality of enforcement 3.22
Whether compliance is reasonable 3.25
Enforcing pre-commencement conditions and conditions imposed on permission for operational development 3.28
v) Precise 3.32
Clarity 3.34
Vague conditions 3.36
Over precise conditions 3.39
v) Reasonable 3.40
Avoidance of onerous requirements 3.42
Control over land 3.43
Grampian Conditions 3.46

4.0 Drafting, Agreeing and Discharging Conditions 4.0
Discussing Conditions 4.1
Flexibility 4.4
Conditions Requiring Actions 4.7
Retained or Maintained 4.9
Modifying Proposed Development 4.12
Conditions on Retrospective Applications 4.14
Structuring Decision Notices 4.15
Reasons for Conditions 4.19
Planning Obligations and Community Infrastructure Levy 4.21
Conditions that should not be Imposed 4.23
Applications made under planning condition and monitoring of conditions 4.28

5.0 The Regulation of Development 5.0

The list of Model Conditions 5.2
Outline Permissions 5.7
Details supplied in outline applications 5.8
Conditions relating to outline permissions 5.9
Conditions Reserving Other Matters 5.11
Time Limits 5.12
Time limits on full permissions 5.14
Time limits on outline permissions 5.15
Variation of standard time-limits 5.17
Separate submission of different reserved matters 5.18
Effect of time-limits 5.20
Temporary Permissions 5.22
Principles applying to temporary permissions 5.23
Short-term buildings or uses 5.26
Trail-runs 5.27
Restoration of sites 5.29
Approved Plans and Drawings 5.30
Access 5.32
Access for disabled people 5.36
Advertisements 5.37
Aerodromes 5.40
Affordable Housing 5.41
Annexes 5.43
Archaeology 5.46
Balconies 5.49
Boundary Treatment 5.50
Contaminated land 5.52
Design 5.57
Drainage 5.59
Fume Extraction 5.62
Grampian Conditions 5.63
Gypsy Travellers 5.66
Hours of Operation 5.71
Landscaping 5.73
Listed Buildings 5.75
Materials 5.76
Minerals 5.77
Nature Conservation 5.80
Noise 5.82
Occupancy & Personal Permission 5.83
Residential occupancy conditions and rural enterprise dwellings 5.85
Staff accommodation 5.92
Seasonal / Holiday occupancy 5.93
Live / work units 5.95
One Planet Development 5.97
Parking 5.98
Permitted Development Rights 5.101
Presumption against such restrictions 5.105
Ancillary uses 5.106
Renewable Energy 5.107
Retail 5.110
Trees 5.113
Waste 5.115

Appendix – List of model conditions

The Use of Planning Conditions for Development Management

1.0 INTRODUCTION

1.1 Welsh Office Circular 35/95 gave advice about the use of planning conditions. Much of that advice remains relevant, but it contains a number of references to legislation and guidance which have either been replaced or amended since the circular was published. This circular takes account of Court decisions and includes references to current case law examples as well as an expanded appendix containing 'model' conditions. It also brings outdated references up to date and incorporates additional policy advice and guidance issued since 1995, for example, in Technical Advice Notes (TANs). Additional advice has been included in respect of:

advertisements
contaminated land
drainage
fume extraction
Grampian conditions
gypsy travellers
hours of operation rural enterprise dwellings
One Planet development
renewable energy

1.2 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, understandable, reasonable and practicable. This circular sets out guidance on how this can be achieved.

1.3 Chapter 3.0 details the six tests that must be applied when drafting a planning condition. The chapter stresses 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 3.2 to 3.9 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 paragraphs 3.28 to 3.31, which alert planning authorities to Court rulings with important implications for enforcing planning conditions.

1.4 The operation of the planning system should instil public confidence and the sensitive use of conditions can assist in achieving this. The use of conditions that are unreasonable or unenforceable can damage that confidence and the use of too many conditions can be confusing. Cooperation and discussion between the parties involved in a planning decision can reduce the number of conditions attached to a decision since it may be possible to resolve development issues before planning permission is granted, making for a more effective planning system. It is also important that

conditions remain flexible, although not to the extent where they would become ambiguous and imprecise. Everyone should know what has been granted permission and on what conditions[1].

1.5 Conditions should encourage developers to commence development as soon as possible through phasing and should require information or works at the most appropriate time. In addition to the six tests set out in Chapter 3.0, Chapter 4.0 provides guidance on the drafting, agreement and discharge of conditions. Particular attention is drawn to paragraphs 4.15 to 4.18 which detail how conditions should be structured in decision notices to encourage the logical arrangement of conditions into the order they are to be discharged and to promote consistency throughout Wales.

1.6 Chapter 5.0 discusses the consideration needed for different types of planning condition and development scenarios, many of which are provided in model form in the appendix. There is an emphasis on the fact that conditions should be tailored to fit a specific development context and that model conditions may have to be adapted to suit the unique circumstances of a particular proposal.

1.7 When applications come to appeal, reasoned suggestions from the parties as to conditions which they would find acceptable if permission were to be granted are required by Inspectors. Such suggestions will be fully examined and may or may not be adopted. Conditions will not be imposed if they are considered to be ultra vires or if they are unacceptable on policy grounds.

1.8 In the event that a condition is breached, compliance can be ensured by serving a breach of condition notice under S187A of the Town and Country Planning Act 1990. Guidance about this type of notice is given in Annex 4 of Welsh Office Circular 24/97 (Enforcing Planning Control: legislative Provisions and Procedural Requirements). If a valid breach of condition notice is contravened, the resulting offence is open to prosecution. 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 a prosecution, the Magistrate's Court will then have no doubt about exactly what is required in order to comply with the terms of a planning condition.

1.9 This circular does not include specific advice on the use of planning conditions for the specialist subject of minerals working or for most developments relating to waste management. Advice on conditions applicable to mineral development is contained in the series of Minerals Technical Advice Notes (MTANs) and on waste development management issues in TAN 21.

1.10 Unless otherwise stated, this circular does not seek to replace advice in Planning Policy Wales or on specialist matters set out in other circulars and TANs, some of which may also contain suggested wording for conditions.

1.11 The guidance in this circular should be taken into account by local planning authorities in the determination of applications. Conditions should only be imposed that satisfy the six tests set out below in Chapter 3. Statutory consultees and applicants are also able to use this document as a reference when, for example, drafting suggested conditions. However, it is ultimately the decision of the local planning authority as to what conditions are attached to a grant of planning permission.

[1] Warley v Wealden DC [2011] EWHC 2083 (Admin)

2.0 THE POWER TO IMPOSE CONDITIONS

Summary of powers

2.1 Conditions can only be imposed within the powers available. A summary of these powers is given below. This summary is intended to be a guide, and it is not definitive. An authoritative statement of the law can only be made by the Courts. The principal powers are contained in sections 70, 72, 73, 73A, and Schedule 5 to the Town and Country Planning Act 1990 Act (the 1990 Act). Sections 91 and 92 of the Act require the imposition of time-limiting conditions on grants of planning permission (see paragraphs 5.12 to 5.21 below). Powers to impose conditions are also conferred on the Welsh Ministers or their Inspectors by sections 77, 79 and 177 of, and Schedule 6 to, the 1990 Act. Unless the permission otherwise provides, planning permission runs with the land and any conditions imposed on the permission will bind successors in title.

2.2 Section 70(1)(a) of the Act enables local planning authorities in granting planning permission to impose 'such conditions as they think fit'. This power is not as wide as it appears and has to be interpreted in light of Court decisions and public law principles.

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

2.3 Section 72 of the Act enables local planning authorities to impose conditions regulating the development or use of land under the control of the applicant, even if such land is outside the site which is the subject of the application. The Courts have held that the question of whether land is under control of the applicant is to be determined according to the facts of a particular case, and it is not dependent on the existence of a freehold or a leasehold interest: only such control over the land is needed as is required to enable the developer to comply with the condition[2]. The section also allows local planning authorities to grant planning permission for a specified limited period, known as the grant of temporary planning permission.

Power to vary or remove the effect of conditions

2.4 Section 73 of the Act provides for applications to be made for planning permission to develop land without complying with conditions previously imposed on a planning permission i.e. to vary or remove a condition. The local planning authority 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 subsist whatever the outcome of the application under section 73. Section 73 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. Paragraph 5.21 details how section 73 can be used to renew planning permissions.

2.5 Section 73A of the Act provides for "retrospective planning permission" to be granted in respect of development which has already been carried out without planning

[2] Davenport v London Borough of Hammersmith and Fulham [1999] J.P.L. 1122

permission or without having complied with one or more of the planning conditions to which it was subject. Special consideration may need to be given to conditions imposed on planning permissions granted under section 73A. For example, the standard time-limiting condition would not be appropriate where development has begun before planning permission has been granted.

Other constraints

2.6 The limits of the enabling powers are not the only constraints on the use of conditions. Conditions should normally be consistent with Planning Policy Wales, TANs, MTANS and other national planning guidance. They should also normally accord with the provisions of development plans. Where a certain kind of condition is specifically endorsed by a development plan policy, it is still necessary to consider whether it meets the six tests and is justified in the particular circumstances of the proposed development.

2.7 Planning conditions may have serious implications for the individual, so it is important to bear in mind the human rights implications[3] when considering their use. The critically sensitive areas include the loss of one's home (article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms[4]); discrimination (article 14 of the Convention); loss of one's business, and a serious reduction in the value of one's property (both article 1 of the First Protocol of the Convention). Interference with human rights requires proper justification and the implications to be outweighed by other material considerations.

[3] Equality Act 2010: http://www.legislation.gov.uk/ukpga/2010/15

[4] Convention for the Protection of Human Rights and Fundamental Freedoms: http://conventions.coe.int/treaty/EN/Treaties/html/005.htm

3.0 THE SIX TESTS

3.1 The Courts have laid down general criteria for the validity of planning conditions[5]. In addition to the Courts, the Welsh Government considers that conditions should be necessary, precise and enforceable, ensuring that they are effective and do not make unjustifiable demands of applicants. Conditions should only be imposed where they satisfy all of the tests described in this chapter. In summary, 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.

(i) Necessary

3.2 In considering whether a particular condition is necessary, local planning authorities should ask themselves whether planning permission would have to be refused if a condition were not imposed, or if it would be expedient to enforce against a breach of the condition. If it would not, then the local planning authority needs to carefully justify why the condition is being imposed in the first place. A condition should not be imposed unless it is considered necessary.

3.3 The same principles must be applied in dealing with applications for the removal of a condition under section 73 or section 73A. A condition should not be retained unless there are sound and clear reasons for doing so.

3.4 Conditions should be designed to tackle specific problems rather than impose unjustifiable controls. If a condition is wider in its scope than is necessary to achieve the desired objective, it will fail the test of necessity. For example, where an extension to a dwelling house in a particular direction would be unacceptable, a condition on the permission for the dwelling should specify that, and not simply remove all rights to extend the building.

3.5 Permissions should not be overloaded with conditions. It might be appropriate for example, in a conservation or other sensitive area, to impose on a permission a requirement that all external details and materials should be in complete accordance with the approved plans and specifications, rather than recite a long list of architectural details one by one. In such cases, a condition specifying those plans and specifications should be imposed.

Duplication of controls

3.6 Conditions should not repeat the provisions of other conditions or duplicate controls under other legislation unless there is a planning reason for doing so. For example, conditions relating to drainage should not be imposed where the matter can be

[5] Newbury DC v SoS for the Environment (1981) A.C. 578;
Brent London Borough Council v SoS for the Environment (1988) JPL 222,
MJ Shanley Ltd v SoS for the Environment (1982) JPL 380

adequately addressed through Building Regulations. As discussed in paragraph 3.14, a condition may, however, be needed if the alternative form of control might not be exercised in a manner or to the degree needed to secure planning objectives. A key question to ask is whether a condition is necessary in its own right on planning grounds.

Completion of development

3.7 Conditions requiring a development to be carried out in its entirety or in *complete* accordance with the approved plans, will fail the test of necessity if used to require more than is needed to address the problem they are designed to solve.

3.8 If what is really wanted is to ensure that particular features of the development are provided before a certain stage of development commences, or that it is finished in a certain way, then specific conditions are preferable to a general requirement. For example, a point of access into a development may need to be completed before any other development is carried out (see condition 08 of the appendix); Further advice on drafting conditions requiring action is provided at paragraphs 4.7 and 4.8.

3.9 A condition requiring that the whole of the development permitted be completed is likely to be difficult to enforce. If a large development such as an estate of houses is left half-complete, this may well be because of market changes (for example, a shift of demand from four-bedroom to two-bedroom houses), and it would clearly not be desirable to compel the erection of houses of a type for which there was no demand or need. Conditions requiring the completion of the whole of a development should therefore not normally be imposed.

(ii) Relevant to Planning

3.10 A condition which has no relevance to planning is ***ultra vires*** i.e. beyond the powers of the local planning authority, and potentially both unnecessary and unreasonable. A condition that the first occupants of dwellings must be drawn from the local authority's housing waiting list, for example, would be improper because it was meant to meet the objectives of the local authority as housing authority and was not imposed for planning reasons. Although a condition can quite properly require the provision of open space to serve the approved development (as part of a housing estate for example) it would be ultra vires if it required the open space to be dedicated to the public. Other conditions affecting land ownership (requiring, for example, that the land shall not be disposed of except as a whole) would similarly be ultra vires. The appropriate means of making provision for the transfer of land is through planning obligations.

Other planning controls

3.11 A local planning authority should not impose conditions on a grant of planning permission to control matters which are the subject of different controls elsewhere in planning legislation such as, advertisement control, listed building consent or tree preservation. If these controls are relevant to the development, the authority should normally rely on them and not impose conditions on a grant of planning permission to achieve the purposes of a separate system of control (but on trees note paragraphs 5.113 and 5.114). It may however be helpful to append a note or informative to the decision to draw the applicant's attention to matters that may need further consideration, or to other forms of consent that must be gained before development can commence.

Non-planning controls

3.12 Other matters are subject to control under separate legislation, yet also the concern of the planning system. A condition which duplicates the effect of other controls will normally be unnecessary, and one whose requirements conflict with those of other controls is ultra vires because it is unreasonable. For example, a planning condition would not normally be appropriate to control the level of emissions from a proposed development where they are subject to pollution control. However, a condition may be needed to address the impact of the emissions to the extent that they might have land-use implications and are not controlled by the appropriate pollution control authority.

3.13 A condition needs to be relevant to planning and cannot be justified on the grounds that the local planning authority is not the body responsible for exercising a concurrent control and therefore cannot ensure that it will be exercised properly. Nor can a condition be justified on the grounds that a concurrent control is not permanent but is subject to expiry and renewal (such as a licence). Even where a condition does not actually duplicate or conflict with another control, differences in requirements can cause confusion, and it will be desirable as far as possible to avoid solving problems by the use of conditions instead of, or as well as, by another more specific control.

3.14 A condition can however be justified, where another system of control exists, if the alternative control cannot be relied upon to secure planning objectives, or to prevent development being carried out in a way which would likely give rise to onerous requirements under other powers at a later stage. Such a condition may be used for example to ensure adequate sewerage provision and water supply for new developments and thus avoid subsequent intervention under the Public Health Acts.

(iii) Relevant to the Development

3.15 A condition is also ultra vires if it does not fairly and reasonably relate to the development to be permitted.

3.16 It is not sufficient that a condition is related to planning objectives; it must also be justified by the nature of the development permitted or its effect on the surroundings. For example, if planning permission is to be granted for the alteration of a factory building, it would be wrong to impose conditions requiring additional parking facilities to be provided for an existing factory simply to meet a need that already exists. A condition will not be relevant to a development if it attempts to control something not created by it in the first place.

3.17 It would, however, be proper for conditions to secure satisfactory access, for example, or parking facilities, genuinely required by the users of the proposed development (see condition 101 in the appendix). Conditions can be justified where the need for them arises out of the effects of the development rather than its features. For example, a condition requiring additional sound insulation to be installed in an existing building for which an intensification of use is proposed, may be entirely relevant to mitigate against the additional impact that use is likely to have (refer to conditions 89 and 90 on noise insulation in the appendix).

(iv) Enforceable

3.18 A condition should not be imposed if it cannot be enforced. It is often useful to consider what means are available to secure compliance with a proposed condition. There are two provisions which authorities may use to enforce conditions: an enforcement notice, under section 172 of the Act, or a breach of condition notice under section 187A. Further guidance on enforcement notices and procedures are available in TAN 9[6] and Welsh Office Circular 24/97[7]. Precision in the wording of conditions will be vital when it comes to enforcement.

3.19 An enforceable condition should:

i) set out clearly and precisely what steps the applicant needs to take to fulfil the condition, and

ii) include an appropriate time limit to confirm when any action specified in the condition is required to be carried out by or by what time elements of a development should be completed.

Time limits

3.20 Officers drafting conditions should give careful consideration to how compliance with a condition could be achieved if it were to be breached. Where a condition requires action to be carried out or information to be submitted, the condition should specify at what point in the development the required information should be submitted by or by what date works should be completed, otherwise the condition may be unenforceable. This may result in an unacceptable development being able to continue. For example, a condition may require a fence to be stained dark green or brown to soften its appearance within its setting. If the time limit for compliance is not stated within the condition (e.g. within 4 weeks of the erection of the fence), the condition cannot be enforced. The condition should also specify, if it is desirable, that the stated colour of the fence should be retained, otherwise subsequent changes to the colour of the fence may not be able to be reversed through enforcement action.

3.21 In terms of monitoring, officers and other interested parties need to be able to assess whether the development is progressing as approved and be confident that there are no outstanding matters at any given point in the development process. Therefore, conditions need to be clear about what elements of a condition need to be fulfilled and the stage or timeframe within which they should be satisfied.

Practicality of enforcement

3.22 Sometimes a condition will be unenforceable because it is, in practice, impossible to detect a contravention, for example, a condition imposed for traffic reasons restricting the number of persons resident at any one time in a block of flats would be difficult to prove a contravention. However, it will not usually be difficult to monitor a condition intended to prevent harm to the amenity of an area, when that harm is clearly likely to result from the development, and the condition is clearly stated (for example, a condition requiring an amusement centre to close at a certain time in the evening).

[6] Link to TAN 9 Enforcement of Planning Control:
http://wales.gov.uk/topics/planning/policy/tans/tan9

[7] Link to Welsh Office Circular 24/97: Enforcing Planning Control: Legislative Provisions and Procedural Requirements:
http://wales.gov.uk/topics/planning/policy/circulars/welshofficecirculars/circular2497

3.23 Just because a condition is inconvenient to monitor does not mean it is unenforceable. For example, a condition limiting the hours of use of a hot food takeaway may result in officers undertaking monitoring work outside normal office hours; but planning permission should not be refused just because it would be inconvenient to do so.

3.24 When drafting conditions, the means by which compliance can be monitored or by which a breach can be demonstrated should be considered. Provisions made within a condition can be useful in checking compliance, for example, requiring that a log book of guests be kept at a bed and breakfast (see example at condition 91 in the appendix) or restricting the display of non-farm goods for sale from a farm shop to 25% of the gross floor space of the shop unit.

Whether compliance is possible

3.25 A condition should only be imposed if a developer can reasonably be expected to fulfil its requirements. If not, then the condition may be unlawful and enforcement action cannot be taken. One type of case where this might happen is where a condition is imposed requiring the carrying out of works (e.g. construction of a means of access) on land within the application site, but not under the control of the applicant at the time of the grant of planning permission. Conditions may be imposed on land that falls outside the planning application site provided the land is under the control of the applicant. Conditions should not be imposed on land that is not under the control of the applicant, but see paragraph 3.27.

3.26 Such difficulties can usually be avoided by drafting the condition so as to require that the development authorised by the permission should not commence until the access has been constructed. These conditions are known as 'Grampian conditions' and are discussed further in paragraphs 3.46 and 3.47.

3.27 Case law[8], however, has demonstrated that scenarios may occur where conditions can be imposed when land falls outside applicant's control, if they are nevertheless able to comply with it. An example condition would be one which prevents the collection of passengers from a taxi office.

Enforcing pre-commencement conditions and conditions imposed on permission for operational development

3.28 Enforcing compliance with conditions becomes complicated when development has commenced without compliance with a pre-commencement condition, or where operational development has commenced and is materially different to the approved plans[9].

3.29 It has been determined in the Courts[10] that an otherwise legally sound condition may prove unenforceable, if it is linked to operational development which has not been carried out in accordance with, and is materially different to, the approved plans. Where the approved details of a planning permission have not been implemented, its conditions cannot be enforced. Where this occurs and the development is substantially different from that approved, the local planning authority should consider seeking the

[8] Davenport v Hammersmith & Fulham LBC (1999) JPL 1112
[9] Copeland Borough Council v SoS for Env (1976) 31 P & CR 403
[10] Handoll and Others V Warner Goodman and Streat and Others (1995) 25 EG 157, and, Leisure Great Britain Plc v Isle of Wight County Council [1999] 80 P & CR 370

submission of an amended application, or take enforcement action if it is expedient to do so.

3.30 Where pre-commencement conditions have not been satisfied the implementation of planning permission may not be lawful. In order to make the development lawful, the conditions would have to be complied with or varied under section 73 of the 1990 Act. However, it has been held[11] that this principle does not apply to all conditions but only those that go to the heart of the permission i.e. those that are fundamental to the development. Pre-commencement conditions should be carefully worded to be expressively prohibitive i.e. state that development must not commence until the condition has been complied with, since non-compliance with such conditions can mean the permission has not been lawfully implemented.

3.31 In instances where the development is considered not to have been lawfully commenced, and there is no opportunity to discharge the condition retrospectively, planning permission can lapse and a new application will be required. Conditions 24, 27, 32, 58 and 101 in the appendix are all pre-commencement conditions.

(v) Precise

3.32 The framing of conditions requires care, not least to ensure a condition is enforceable. A condition should be sufficiently precise for the applicant to know exactly what they need to do to comply with it and when it should come into effect. A condition, for example, requiring that 'a landscaping scheme shall be submitted for the approval of the local planning authority' is incomplete, since if the applicant were to submit the scheme, even if it is approved, the local planning authority is unlikely to be able to require the scheme to be implemented. Therefore a further requirement needs to be included to set the date by which the work must be implemented, ensuring the condition is complete, clear and enforceable. Phrases such as 'no development shall take place until' or 'before the development hereby permitted is occupied' set out clearly when a specific action should be carried out.

3.33 Frequently, conditions require submission of details for the local planning authority's approval. The approved details then provide precise guidelines to be followed by the developer and as a consequence satisfy the 6 tests. These types of condition can speed up the issuing of a decision notice but can place additional demands on resources at a later stage. Too many conditions can result in a confusing decision notice and reduces the ability of representations to be made in respect of potentially detailed aspects of a development. Instead pre-application discussions and the submission of as much information as possible for consideration before a planning permission is issued should be encouraged. If details can be submitted with the original application, then they should be and precise regulatory conditions can then be used to implement the approved details for example, by requiring that a development must be implemented in full compliance with a submitted, and referenced, schedule of materials by a particular date.

Clarity

3.34 Conditions should be both precise and clear. A plan issued with a decision, and referred to in a decision notice, can assist in demonstrating what needs to be done to comply with a particular condition, for example, by showing the location of the various

[11] Hart Aggregates Ltd V Hartlepool Borough Council (2005) EWHC 840 (admin)

development uses approved as part of a mixed use scheme. The use of precisely worded conditions provides clarity and helps avoid any ambiguity that may prevent the development from being inappropriately managed in the future.

3.35 The description of development and the details submitted with an application cannot always be relied upon to control a use of land or future changes of use. A condition attached to the decision may be more effective at achieving the desired control. For example, where the description of development specifies the hours of intended operation of a takeaway, this must be secured by condition if such a limitation is required to make the proposal acceptable (see condition 64 in the appendix). Similarly, where a description indicates that permission is being sought for a temporary period, a condition should also be imposed stating when the use must cease[12].

Vague conditions

3.36 A condition which is not sufficiently precise for the applicant to be able to ascertain what must be done to comply with it is ultra vires and cannot be imposed. A condition which uses ambiguous terms such as 'to an acceptable level' or is subject to qualifications such as 'if it is desirable' are too vague and give the applicant little idea of what is expected of them. Such conditions may be difficult or even impossible to enforce. Similarly, a condition will generally be too vague and not sufficiently precise if it requires that development is carried out 'to the satisfaction of the local planning authority' and is also likely to be unenforceable. Conditions should provide an objective or criteria by which the applicant can ascertain what is required.

3.37 The use of the terms *'unless otherwise agreed by the local planning authority'* or *'except with the prior approval of the local planning authority',* for example, create ambiguity in conditions and suggest that the local planning authority may be willing to accept an alternative to that which has already been agreed or to which is referred to in the condition. The Court of Appeal has objected to the use of such 'tailpieces' as "wholly uncertain" and unlawful[13][14]. What planning permissions are intended to permit should be clear from what has been granted and what the conditions say and so the above terms should not therefore be used.

3.38 Section 73 of the 1990 Act provides the proper mechanism for the reconsideration of the conditions that are attached to a permission. Discretionary conditions seek to provide an unofficial way of circumventing section 73 and can deny third parties the opportunity to comment in respect of a change to the development.

Over-precise conditions

3.39 There is a danger of being too precise and unreasonable in the requirements of a condition. It is important that the right balance is achieved. For example, a condition restricting the sale of goods in an out-of town retail store to 'non-convenience' goods is likely to be too vague, whereas a condition preventing the sale of 'fruit, condiments, fresh meat and toiletries' is too precise. The appropriate middle ground would be to consider what items if sold would have an adverse impact upon the town centre and apply an appropriate term, for instance food and drink, or limit the use to the sale of

[12] I'm Your Man Limited v SoS for the Environment (1999) 77P. & C.R.251
[13] Warley v Wealden DC [2011] EWHC 2083 (Admin)
[14] R (Midcounties Co-Operative Limited) v Wyre Forest District Council & Tesco Stores Limited & Others (2010) EWCA Civ 841

particular items such as soft furnishings. An alternative option could be to apply a percentage, for example limiting the amount of non-food retail to 30% of the gross retail floor space in a supermarket.

(vi) Reasonable

3.40 A condition can be ultra vires on grounds of unreasonableness, even if it is precisely worded and otherwise within the powers available. A condition might be unreasonable because it is unduly restrictive. For instance a condition may impose a continuing restriction on the use of land (provided that there are good planning reasons for that restriction), but that restriction should not nullify the benefit of the permission. For example, it would normally be reasonable to restrict the hours during which an industrial use may be carried out if the use of the premises outside these hours would affect the living conditions of local residents. However, it would be unreasonable to do so to such an extent as to make it impossible for the occupier to run the business properly. If it appears that permission could be given only subject to conditions that are unreasonable then it is likely that permission should be refused.

3.41 An unreasonable condition does not become reasonable just because an applicant suggests it, or agrees to its terms. A condition must always be justified on its planning merits and will normally run with the land and will therefore still be operative long after the applicant has moved on.

Avoidance of onerous requirements

3.42 Even where a condition would not be so unreasonably restrictive as to be ultra vires, it may still be so onerous that as a matter of policy it should be avoided. Any condition which would put a severe limitation on the freedom of owners to dispose of their property, or that would obviously make it difficult to raise finance for the development, should be avoided. An unduly restrictive condition can never be made acceptable by offering the prospect of informal relaxation of its effect.

Control Over land

3.43 It would be unreasonable to expect an applicant to comply with a condition which relates to an area of land or an element not in their control at the time when planning permission is granted. If the land is included in the site in respect of which the application is made, such conditions can in principle be imposed, but the authority should have regard to the points discussed above in paragraphs 3.25 and 3.27.

3.44 It would be unreasonable to place a restriction on the use of on-street parking by traffic generated by an approved development because the applicant does not have control over parking on the public highway[15]. A condition can however be attached to a permission to ensure sufficient off-street parking is provided on-site, to encourage users of the development not to park on the highway.

3.45 It would normally be unreasonable to require works which the developer has no power to carry out, or which would need the consent or authorisation of a third party, for example, a condition which requires air traffic to approach an airfield by a particular route where traffic services for the particular aerodrome are the responsibility of the Civil Aviation Authority or the National Air Traffic Service.

[15] Davenport v London Borough of Hammersmith and Fulham [1999] J.P.L. 1122

Grampian Conditions

3.46 Although it would be ultra vires to require work to land over which the developer has no control or which requires the consent of a third party, to carry out, it may be possible to achieve a similar result by a condition worded in a negative form, prohibiting development until a specified action has been taken. Such conditions are often called 'Grampian' conditions and are also referred to in paragraph 3.26. In Grampian R.C. v City of Aberdeen (1984) it was held that a condition can be negatively phrased i.e. it can provide that a development is not carried out, or is not occupied, until certain works have been carried out on land that is not in the control of the applicant.

3.47 These conditions should not be imposed if there is no reasonable prospect of the required action being performed within the time limit imposed by the permission. For example, it may be appropriate to grant planning permission for a new housing estate subject to a condition that the houses could not be occupied until adequate sewerage facilities had been provided to the required standard. The local planning authority would have to be satisfied that some reasonable prospect existed that the sewerage system would be sufficiently improved or provided before the proposed occupation of the houses. More information on Grampian conditions is provided in Chapter 5 (See conditions 47 to 49 in the appendix for examples of Grampian conditions).

4.0 DRAFTING, AGREEING AND DISCHARGING CONDITIONS

Discussing Conditions

4.1 Pre-application discussions between an applicant and the local planning authority can be very helpful. They can allow the applicant to formulate the details of a project so as to take full account of the authority's requirements and can assist the authority in ensuring that those requirements are reasonable in the light of the development proposed. They can reduce the need for conditions, explore the possible terms of conditions which remain necessary and ensure that these are tailored to the circumstances of the case. Welsh Government Circular 002/2012 'Guidance for local planning authorities on the use of the Standard Application Form ('1 App') and Validation of Applications'[16] recognises that pre-application discussions can be important in assisting applicants to understand a local planning authority's information requirements such as the contents of any required assessment. Additional guidance in the form of a practice guide on the potential of pre-application discussions is also available on the Welsh Government's website[17].

4.2 Early discussions with statutory consultees, for example, can give an applicant opportunity to resolve as many issues as possible before planning permission is granted, thereby avoiding the need for a condition or, if the issue cannot be fully resolved, simplify the drafting of a condition. Pre-application discussions can help resolve such matters before the application is submitted and help to avoid delay in the determination of the application. The planning authority is ultimately responsible for the conditions attached to a planning permission and so where conditions are suggested by the applicant or consultees, the local planning authority must first be satisfied that all six tests are met.

4.3 Where possible, local planning authorities should look favourably on requests to view draft conditions from applicants as it may be possible for them to submit further information prior to a decision being issued which could potentially remove the need for the condition altogether. Engagement with an applicant prior to the submission of an application and during the application process can reduce the need for conditions, although, it is at the local planning authority's discretion whether they await submission of this additional information prior to issuing a decision. They may decide not to if it would delay a decision unnecessarily.

Flexibility

4.4 Conditions should offer flexibility, although not to the extent that the development is substantially different to that which has been granted permission. Local planning authorities should consider how conditions can assist the developer in commencing the development and prevent delay. Phasing, for example, can allow a developer to commence, or even complete development on one part of the site whilst information is

[16] Link to Welsh Government Circular 002/2012: http://wales.gov.uk/topics/planning/policy/circulars/welshgovcirculars/1appcircular

[17] Link to practice note on pre-application discussions: http://wales.gov.uk/topics/planning/policy/guidanceandleaflets/preappguide

being put together to comply with a condition in relation to another part of the site. Such methods can also assist where the ability of a developer to commence on one part of the site depends upon the sale of a previous phase.

4.5 Local planning authorities need to give careful consideration to the sequence of development and the stage for compliance imposed when drafting a condition. If information does not have to be provided until prior to occupation then conditions should not burden the developer by requiring it earlier, which can unnecessarily delay development.

4.6 There may be instances where local planning authorities are able to break the periods of compliance within a condition down to encourage the commencement of work on site. For example, where details of contaminated land are only required in relation to one part of the site, the condition could specifically relate to that part and therefore, provided all other requirements have been satisfied and there is no risk of cross contamination, a developer can begin work on another part of the site. A plan can be used to clarify what parts of a site certain conditions apply to.

Conditions requiring actions

4.7 All conditions requiring actions should be worded so that it is clear when they should come into effect. If a condition is imposed that requires the submission of further details for approval (for example samples of materials) the condition must include an implementation clause. This usually takes the form, *'…. the [x] shall be carried out in accordance with the approved details prior to the first use of the [x]'*.

4.8 Conditions may be needed to secure a particular element in a scheme by a particular stage or to secure the provision of an element a developer might otherwise be inclined to defer or omit. It may be desirable therefore to require that a new access to the site should be constructed to a specified standard before any other development or works are carried out; or, where an office scheme includes a car park, that the car park is completed before the offices are occupied; or, where the scheme includes both offices and housing, that some or all of offices should not be occupied before the houses are complete. The approach adopted must, of course, be reasonable. Taking the last example, it could well be unacceptable to require that the houses should be completed before the offices are begun: this would be likely to be an unjustifiable interference with the way the development is carried out.

Retained or maintained

4.9 If it is necessary to ensure that the approved element is kept in the form approved for a period of time, the term 'retained' not 'maintained' should be used as the latter is imprecise. The condition can take the form;
'The parking area shown in plan number (x) shall be completed in accordance with the approved details before the dwelling is first occupied and retained as such for as long the development hereby permitted remains in existence'.

4.10 There may also be occasions where a condition requiring some feature of a development to be maintained is appropriate. Care should be taken to ensure that the level and period of maintenance required is precise and that the condition is readily enforceable. If the period for the retention or maintenance of a particular feature is not specified in the condition then that condition will not be entirely enforceable. Failure to require this may result in alternative materials being applied at a later stage without

consideration by the local planning authority. If the local planning authority is not concerned about the materials changing then the condition should not be applied in the first place.

4.11 The issue of maintenance often arises with regard to something being kept in good repair or in a prescribed manner, for example, landscaping features or ventilation equipment for restaurants and hot-food take-aways. If it is necessary to ensure that ventilation equipment continues to work effectively, it is usually appropriate to impose a condition requiring that it be operated and maintained in accordance with the manufacturer's instructions. With regard to landscaping, the period for maintenance needs to be specified to ensure that the scheme becomes established (see paragraphs 5.73 to 5.74 and 5.113 to 5.114).

Modifying proposed development

4.12 If some feature of a proposed development, or lack of it, is unacceptable in planning terms, the best course will often be for the applicant to be invited to modify the application (if the modification is substantial, of course, a fresh application may be needed). It may however, depending on the case, be quicker and easier for the local planning authority to impose a condition modifying in some way the development permitted. A condition could state:

> *'Notwithstanding the details shown in plan [x] there shall be no windows installed in the [x] elevation'*

4.13 A condition modifying the development cannot be imposed if it would make the development permitted substantially different from that comprised in the application. It would thus be legitimate to require by condition that a factory proposal, for example, should include necessary car parking facilities, but wrong to grant permission for a development consisting of houses and shops subject to a condition that houses should be substituted for shops. Whether a modification would amount to substantial difference will depend upon the circumstances of the case, but a useful test will be whether it would so change the proposal that those interested in it would wish to comment on the modification.

Conditions on retrospective applications

4.14 If a development has already begun or been completed and there is an application made under Section 73A of the Town and Country Planning Act i.e. a "retrospective planning application", it may be necessary to frame conditions with time limits. This helps to ensure that non-compliance can be enforced against. For example a condition stating *'within three months of the date of this decision a 1.8m close boarded fence shall be erected on the western boundary'* informs the applicant of what they have to do to comply with the condition and that they have a limited period to do it in. If further details need to be submitted for consideration, the time limit imposed should be sufficient to enable an applicant to draw up and agree the details with the local planning authority.

Structuring Decision Notices

4.15 Decision notices should be structured in a logical way that allows the recipient to easily identify what information or action is required of them and when.

4.16 To ensure consistency of approach across Wales, local planning authorities should structure decision notices in a logical order, clearly identifying what steps should be carried out at what point. It is recommended that conditions should be positioned on a decision notice relative to the order in which they are to be discharged, with the time limit condition and condition identifying the approved plans and documents appearing first. Inclusion of a condition specifying the approved plans and documents allows subsequent minor material amendments to be made to an application via S73 of the Town and Country Planning Act 1990.

4.17 Structuring decision notices in this manner encourages local planning authorities to think about the implementation period of the condition being applied by considering its appropriateness as well as assisting applicants in prioritising what conditions should be dealt with at what stage. A decision notice may consist of conditions identifying the time limit for commencement, the approved plans and documents, stage conditions, regulatory conditions and informative notes, which normally draw the applicant's attention to certain matters but cannot be enforced.

4.18 There will be occasions where a condition may have a dual purpose, for example, a condition may refer to actions to be carried out prior to the commencement of development as well as containing a regulatory element. Where this occurs or where two different periods of compliance are referred to in a condition, the condition should be placed on the decision notice according to the most significant element or where the local planning authority deem most appropriate.. A condition should not appear twice on the same decision notice.

Reasons for Conditions

4.19 Article 24 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 requires decision notices to state clearly and precisely the full reasons to be given for conditions, and to specify all relevant development plan policies and proposals. Reasons must be given for the imposition of every condition. Reasons such as *'to comply with the policies of the Council'*, *'to secure the proper planning of the area'* or *'to maintain control over the development'* are vague and suggest that a condition has no proper justification. The phrase *'to protect amenity'* is also obscure and will need amplification. If the reasons for the imposition of conditions are clearly explained, developers will be better able to understand the need to comply with them. If a condition has been breached, careful and accurate reasoning can also assist officers in understanding why it is expedient to take action to enforce implementation of the condition.

4.20 Like planning conditions, reasons also need to be specifically tailored to the development type and context. Reasons for conditions have not been provided in the list of model conditions in the appendix. Although conditions can be standardised to some degree, a similarly worded condition can potentially be applied to a variety of developments for a number of reasons and the development plan policies referred to would be different in each local planning authority. It would therefore be inappropriate to standardise reasons for conditions.

Planning Obligations and Community Infrastructure Levy (CIL)

4.21 Local planning authorities should seek to overcome planning objections, where appropriate, or secure mitigation by condition rather than by a planning obligation. Legal agreements can take considerable time to draw up and it is important to avoid burdening applicants with unnecessary costs and delay. Also, the imposition of restrictions through a planning obligation limits the ability of developers to seek to have restrictions varied or removed by an application or appeal. Further, conditions can be enforced using a breach of condition notice and this is likely to offer a simpler and less costly way to remedy a breach than recourse to the Courts for breach of an agreement. Matters required by condition should not be duplicated in a planning obligation.

4.22 There are however some matters which are more appropriately required through a planning obligation and should not be required in a condition, for example, commitments on behalf of the developer involving transfers of land or payments to be made to the local planning authority. Further guidance on the use of Planning Obligations is provided in Welsh Office Circular 13/97[18] and guidance on the use of the Community Infrastructure Levy is provided by the Department of Communities and Local Government[19].

Conditions That Should Not Be Imposed

4.23 A condition which fails any of the six tests should not be imposed. Examples of conditions that should not be used for whatever reason have been identified throughout this circular, with further examples provided below.

4.24 In addition to the freedoms for development deemed acceptable under The Town and Country Planning (General Permitted Development) Order 1995 and the Town and Country Planning (Use Classes) Order 1987, local planning authorities will also be able to confer permitted development rights at a local level through the introduction of Local Development Orders (LDO) under section 61A of the 1990 Act. Once in place, a local planning authority should not use conditions to remove rights conferred through an LDO.

4.25 Planning conditions are not an appropriate means of controlling the right of passage over public highways and can be very difficult to enforce. Where it is essential to prevent traffic from using particular routes, the correct mechanism for doing so is an Order under the Traffic Management Act 2004.

4.26 Conditions are often imposed to protect archaeological resources and ensure sufficient recording is undertaken. However, there may be instances where archaeological and investigative surveys should be submitted for consideration prior to the determination of the application. Where local planning authorties have been informed that a development site is extremely likely to contain an archaeological resource of importance they may deem it inappropriate to attach a condition, such as those listed in the appendix, and instead consider that the information is required as part of the

[18] Link to Welsh Office Circular 13/97:
http://wales.gov.uk/topics/planning/policy/circulars/welshofficecirculars/circular1397

[20] DCLG (Dec 2012) 'Community Infrastructure Levy guidance':
https://www.gov.uk/government/publications/community-infrastructure-levy-guidance

application. Failure to provide sufficient information in such instances could lead to the refusal of planning permission.

4.27 Conditions requiring environmental statements or surveys of habitats or protected species to be carried out and submitted to the local planning authority for consideration should not be imposed. Where relevant, such information is a material consideration in the determination of an application and so should not be left to be considered after planning permission has been granted. The submission of environmental statements and habitats surveys are currently required in order for an application to be accepted by a local planning authority and validated. This information will be assessed during the course of the application and then conditions attached to a grant of planning permission may incorporate mitigation measures proposed in the environmental statement. An appropriate condition can be attached to a planning permission to ensure that follow-up surveys are conducted and submitted to the local planning authority for approval prior to the commencement of work.

Applications Made Under Planning Condition and Monitoring of Conditions

4.28 An application made under planning condition to "discharge" a condition should be made to a local planning authority using the 1APP standard application form[20] and should identify the original permission, the relevant condition and the details which the local planning authority are to consider.

4.29 If the local planning authority considers that the details submitted are insufficient to discharge a condition or that it has not yet been complied with, the authority should explain to the applicant in writing what remains to be done and can refuse to determine the application until they are satisfied that the condition has been complied with. The authority should issue confirmation of compliance when satisfied, unless it finds that enforcement action or a retrospective planning application would be more appropriate in the circumstances.

4.30 Article 22 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 states that local planning authorities must determine applications to discharge conditions within eight weeks. Early engagement between all stakeholders may mean that the application to discharge the condition can be determined much earlier.

4.31 If a condition is attached to a decision as the result of consultation with a specialist body or statutory consultee, a local planning authority may need to consult that same body with regards to the discharge of that condition. In seeking comments from consultee bodies on discharging of conditions, it is good practice for local planning authorities to state in writing a time limit by which they expect to receive a response and after which they will be looking to make a decision.

4.32 Conditions which will remain in force after the development has been carried out need particular care as they can place onerous and permanent restrictions on what can be done with the premises affected. Conditions also need to be clear about what requirements need to be fulfilled and the stage or timeframe within which they should

[20] Advice on the use of the Standard Application Form (1App) and validation of applications can be found at:
http://wales.gov.uk/topics/planning/policy/guidanceandleaflets/1appguidance

be satisfied to enable effective monitoring, as well as enabling the developer to be able to comply with them.

5.0 THE REGULATION OF DEVELOPMENT

5.1 This section discusses different types of condition that are used to regulate development and also provides guidance on the approach that should be taken when drafting conditions associated with different development types. Where the topic areas correspond to conditions in the appendix, the relevant condition numbers have been provided as a reference.

The List of Model Conditions

5.2 The intention of the list of model conditions in the appendix of this Circular is to act as a reference point for local planning authorities when drafting conditions to attach to a grant of planning permission. The list does not provide conditions for every possible development scenario but acts as a best practice guide to be used in conjunction with this Circular. The conditions contained within the list should therefore not be applied without careful thought. Regard must always be had to the six tests.

5.3 The compilation of local lists of model conditions by local planning authorities can improve the consistency of decisions, the use of staff resources, and the speed with which planning application are processed. They may also, however, encourage the use of conditions as a matter of routine, without the careful assessment of the need for each condition which every applicant should be entitled to expect.

5.4 Model conditions need to be treated with caution. Such lists can be made available locally so that developers can take account of possible conditions at an early stage in the drawing up of their proposals, but should contain a warning that they are not comprehensive and that conditions will always be devised or adapted where appropriate to suit the particular circumstances of a case

5.5 Amongst the conditions in the appendix are some which will be used regularly, such as those in relation to materials (condition 82), whilst others will be rarely used, for example, conditions in relation to aerodromes (conditions 17 to 19) and conditions relating to personal permissions (conditions 50 and 51). However, the less common conditions included in the appendix provide a useful resource for officers drafting conditions for more rare development scenarios.

5.6 The majority of conditions in the appendix have been listed in alphabetical order so the topics can be easily found. The conditions listed can be applied to several stages of development with appropriate amendments. It is therefore recommended that the conditions in the appendix are tailored to suit the context of a particular development rather than be applied without thought.

Outline permissions

5.7 An applicant who proposes to carry out building operations may choose to apply for either full planning permission, or for outline permission with one or more of the following matters reserved by condition for the subsequent approval of the local planning authority:

i) access;
ii) appearance;

iii) landscaping;
iv) layout, and
v) scale

An applicant cannot seek an outline planning permission for change of use alone or for operations other than building operations.

Details supplied in outline applications

5.8 An applicant can choose to submit as part of an outline application details of any of the "reserved matters". Unless the applicant has indicated that those details are submitted for 'illustrative purposes only' (or has otherwise indicated that they are not formally part of the application), the local planning authority must treat them as part of the development in respect of which the application is being made; the authority cannot reserve that matter by condition for subsequent approval, unless the applicant is willing to amend the application by withdrawing the details.

Conditions relating to outline permissions

5.9 Once outline planning permission has been granted, it cannot be withdrawn except by a revocation order under section 97 of the 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 and do not materially derogate from the outline permission[21]. So, where certain aspects of the development are crucial to the decision, local planning authorities will wish to consider imposing relevant conditions when outline permission is granted. For example, it may be considered necessary to require a building to be constructed within a specified 'footprint' or to retain important landscape features which would affect the setting of the building and its neighbours.

5.10 If the local planning authority consider that whatever the precise form the development is to take, access to the building should be from a particular road then a condition to this effect must be imposed on the outline permission. It is desirable that, wherever possible, notes should be appended to an outline permission to give the developer guidance as to what precise form of development will be acceptable to the local planning authority.

Conditions reserving other matters

5.11 Authorities should seek to ensure, where possible, that conditions other than those relating to reserved matters are self-contained, and do not require further approvals to be obtained before development can begin. Where necessary, however, a local planning authority may impose a condition requiring that details of a specified aspect of the development which was not fully described in the application (e.g., the provision of car parking spaces) be submitted for approval before the development is begun. In the case of a full planning permission, such a condition can relate to details (such as landscape works) which might have been reserved matters had the application been made in outline.

[21] R v Newbury DC ex parte Stevens & Partridge (1992) JPL 1057

Time Limits (Conditions 01 to 04 of the appendix)

5.12 When granting detailed planning permission, listed building consent or conservation area consent, the local planning authority must impose a time limit within which the development or works must start. A time limit on commencement is not required for temporary permissions since they will expire in entirety within a limited period or for development which has been applied for in retrospect (see section 91 (4) of the 1990 Act).

5.13 Failure to impose a time limit condition will result in the permission or consent being deemed to be granted subject to the standard time limits as set out below.

Time limits on full permissions

5.14 Under section 91 of the 1990 Act, detailed planning permission, listed building consent and conservation area consent must be made subject to a condition imposing a time limit within which the development authorised must be started. The section specifies that development should commence within a period of **five years** from the date of the permission.

Time limits on outline permissions

5.15 Grants of outline planning permission must, under section 92 of the 1990 Act, must 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.

5.16 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.

Variation of standard time-limits

5.17 Section 91 of the 1990 Act also allows local planning authorities to apply longer or shorter time periods than those specified in the 1990 Act if they consider it to be appropriate and they must give their reasons for doing so. Whereas section 92 allows a local planning authority to specify separate periods, on outline permission, for different parts of a site and apply conditions accordingly. Such tools can be used where development is to be carried out in phases or uncertain economic conditions may have an effect on the ability of developers to bring forward development. The timescales should be appropriate to the size and nature of the development or works.

Separate submission of different reserved matters

5.18 Applications for approval under an outline permission may be made either for all reserved matters at once, or one or more at different times. 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 submission of applications for approval of reserved matters has expired no applications for such an approval can be made. In such cases a further application for planning permission must be made.

5.19 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.

Effect of time-limit

5.20 After the expiry of the time-limit for commencement of development it is not possible for development to be begun under that permission; a fresh application for planning permission must be made.

5.21 Planning permission can be renewed before the time-limit for the commencement of development has expired, under section 73 of the 1990 Act. As a general rule, such applications should only be refused where:

there has been some material change in planning circumstances since the original permission was granted (e.g. a change in some relevant planning policy for the area, or in relevant highway considerations, or the publication by the Government of new planning policy guidance, material to the renewal application);
continued failure to begin the development will contribute unacceptably to uncertainty about the future pattern of development in the area; or
the application is premature because the permission still has a reasonable time to run.

Temporary Permissions (Condition 05)

5.22 Section 72(1)(b) of the 1990 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 permission is granted for the development of the operation of land of a statutory undertaker this power does not apply except with the undertaker's consent (section 267 of the 1990 Act). Conditions of this kind are sometimes confused with conditions which impose a time-limit for the implementation of a permission (paragraphs 5.12 – 5.21 above), but they are quite distinct, and different considerations arise in relation to them.

Principles applying to temporary permissions

5.23 In deciding whether conditions on a temporary permission are appropriate, the following should be taken into account:

it will rarely be necessary to grant temporary permission for development which conforms with the provisions of the development plan;
it is undesirable to impose a condition requiring the demolition, after a stated period, of a building that is clearly intended to be permanent, and the material considerations to which regard must be had in granting permission are not limited or made different by a decision to make the permission a temporary one. The reason for granting a temporary permission should never be that a time limit is necessary because of the effect of the development on the amenity of the area.

5.24 These considerations will mean that a temporary permission will normally only be appropriate, either where the applicant proposes temporary development, or when a trial run is needed in order to assess the effect of the development on the area.

5.25 Where objections to a development arise in response to its effect on, for example, the quality of life of the occupants of nearby residential properties, they should, if necessary, be met by conditions whose requirements will safeguard that amenity. If it is not possible to devise such conditions, and if the damage to amenity cannot be accepted, then the only course open is to refuse permission.

Short-term buildings or uses

5.26 Where a proposal related to a building or use which the applicant is expected to retain or continue only for a limited period, whether because they have specifically volunteered that intention, or because it is expected that the planning circumstances will change in a particular way at the end of that period, then a temporary permission may be justified. For example, permission might reasonably be granted on an application for the erection of a temporary building to last seven years on land which will be required for road improvements eight or more years hence, although an application to erect a permanent building on the land would normally be refused.

Trial runs

5.27 Where an application is made for permanent permission for a use which may be 'potentially detrimental' to existing uses nearby, but there is insufficient evidence to enable the authority to be sure of its character or effect, it might be appropriate to grant a temporary permission in order to give the development a trial run, provided that such a permission would be reasonable having regard to the capital expenditure necessary to carry out the development. However, a temporary permission would not be justified merely because, for example, a building is to be made of wood rather than brick. Nor would a temporary permission be justified on the grounds that, although a particular use, such as a hostel or playgroup, would be acceptable in a certain location, the character of its management may change. It may be possible to grant temporary permission for the provision of a caravan or other temporary accommodation where there is some evidence to support the grant of planning permission for an application for an agricultural or forestry dwelling but there is doubt about the sustainability of the proposed enterprise. This allows time for such prospects to be clarified.

5.28 A second temporary permission should not normally be granted. A trial period should be set that is sufficiently long for it to be clear by the end of the first permission whether permanent permission or a refusal is the right answer. Usually a second temporary permission will only be justified where highway or redevelopment proposals have been postponed, or in cases of hardship, where temporary instead of personal permission has been granted for a change of use.

Restoration of sites

5.29 If a temporary permission is for development consisting of or including the carrying out of operations, provision must be made for the removal of any buildings and associated works, as well as the cessation of the use, and for the reinstatement of the land when the permission expires.

Approved Plans and Drawings (Condition 06)

5.30 The approved plans that accompany a planning permission should be listed in a condition near to the top of a decision notice, ideally immediately after the time limit for commencement condition (see paragraph 4.16). This makes sure that there is no doubt over what development should be built and to what development the remaining conditions are applicable. Only those plans that have been approved should be referred to in the condition and no previous versions should be listed.

5.31 The inclusion of a condition specifying the plans relevant to a grant of planning permission allows applicants to make minor material amendments to the associated planning permission by using section 73 of the 1990 Act to vary the condition. The use of this mechanism simplifies the process of making minor amendments existing planning permissions for both the local planning authority and applicant and so it is advised that local planning authorities include this condition.

Access (Conditions 07 to 11)

5.32 Conditions attached to planning applications for outline planning permission can control the location of an access serving a development, the details of which will subsequently be required for consideration as part of the reserved matters application for consideration. Without such a condition it may not be possible to secure its location at the reserved matters stage. For example, if it is desired that there should be no direct access on to a main road, or that access must be taken from a particular side road, a condition to that effect should be imposed on the outline permission.

5.33 A condition may require the provision or improvement of a service road or means of access even if such works are not included in the application, provided that they can be undertaken on the site in respect of which the application is made, or on other land which is under the control of the applicant and sufficiently relates to the proposed development. The condition should be framed so as to require the laying out or improvement of the means of access, or the relevant section of the service road, on defined land before the relevant buildings are occupied.

5.34 A ‘Grampian’ condition can be used to prevent the commencement of development until certain highway improvements are made, if they relate directly to the development. TAN 18 (Transport) provides further advice with regards to such conditions.

5.35 Details of an access should normally be submitted for consideration with the other detailed plans in association with the proposal, rather than required to be submitted at a later stage by condition. For some developments such details must be confirmed in a ‘design and access statement’ (Article 7 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012). Further advice on the use of design and access statements is provided in appendix 1 of TAN 12 (Design). Some details can however be required by condition where it has been demonstrated that an acceptable access can be provided. A condition can be attached to require that the visibility splay is kept free of obstructions or to ensure that the access is provided in accordance with the approved plans.

Access for disabled people

5.36 Where a building is new, or is being altered, it is usually sufficient to rely on building regulations to ensure adequate access for disabled people is provided. However, some new development does not require building regulation approval and so it may only be through a planning condition that access for disabled people can be assured and enforced. Examples of this include the layout of estates, pedestrian schemes, surroundings of buildings, access to parks and the countryside, i.e. development affecting the setting of buildings, but not the buildings themselves.

Advertisements (Conditions 12 to 16)

5.37 TAN 7: Outdoor Advertisement Control[22] provides advice on outdoor advertisement control. All outdoor advertisements are required to comply with the five standard conditions imposed by the Town and Country Planning (Control of Advertisement) Regulations 1992.

5.38 The Regulations also provide for the grant of consent subject to such additional conditions as the local planning authority think fit. Under Regulation 13 of the Control of Advertisement Regulations, it is stated that where a Local Planning Authority do not state the period for the length of a permission, express consent will have been deemed to have been granted for five years. Therefore, if a local planning authority considers a sign should be removed after a more limited time period, a condition should be attached to the permission to require it. If the local planning authority intends that the sign should be in place for five years a condition should also be attached to clarify this.

5.39 Conditions can also be used to control the level and times of illumination of signage. In some instances where consent is granted for an advertisement hoarding it may be considered necessary to use landscaping to mitigate its appearance and an appropriate condition can be attached to the associated consent. TAN 7 states that where a proposal includes advertisement features, conditions should not be used which relate to adverts especially where they seek to limit, or remove, the benefit of any deemed consent for the display of an advertisement.

Aerodromes (Conditions 17 to 19)

5.40 When drafting conditions attached to a grant of planning permission for an aerodrome, local planning authorities should consider paragraph 3.45. If the aerodrome is likely to have an impact on the residential amenity of its neighbours, the number of air traffic movements may need to be restricted. If such a condition is used then in order to make it enforceable it may be desirable to require that a log of all incoming and outgoing flights is kept up to date and available for viewing. There may also be a need to use conditions to restrict air traffic movements at particular times of year to allow seasonal breeding or winter feeding to take place.

[22] Link to TAN 7: Outdoor Advertisement Control: http://wales.gov.uk/topics/planning/policy/tans/tan7

Affordable Housing (Condition 20)

5.41 The Courts have held that the community's need for a mix of housing types – including affordable housing – is capable of being a material planning consideration. Conditions should not be used to control matters such as tenure, price or ownership and therefore planning obligations are the normal means of achieving affordable housing.

5.42 Negatively worded conditions can be used to prevent either the occupation or construction of other properties until the affordable housing has been constructed. These conditions will normally only be necessary where a different planning decision might have been taken if the proposed development did not provide for affordable housing and should make clear the nature of the restriction by referring to criteria set out in the relevant local plan policy.

Annexes (Condition 21)

5.43 Where it is proposed to build an extension to a dwelling or construct a building nearby for use as an annexe, it may be appropriate to impose a planning condition to ensure the annexe is only used as ancillary accommodation to the main dwelling house and to prevent its occupation independent of the main house.

5.44 Where the occupancy of an annexe is restricted by condition it may be necessary to include a reversion clause so that the unit is returned to its ancillary role once occupation by the individual mentioned in the condition has ceased.

5.45 Where an existing house is within the curtilage of another building, and the two are in the same occupation, any proposal to occupy the two buildings separately is likely to amount to a material change of use. Such a situation may arise where one building is being used as staff accommodation. Planning permission would be required for such a proposal. Local planning authorities should normally consider applications for such development sympathetically. If the need for such a dwelling for the accommodation of an employee, for example, disappears, there will generally be no justification for requiring the building to stand empty or to be demolished.

Archaeology (Conditions 22 to 24)

5.46 The designation of scheduled ancient monuments and the consent process to carry out works to them (scheduled monument consent) are set out in the Ancient Monuments and Archaeological Areas Act 1979. Where these provisions apply, their effect should not be duplicated by planning conditions, although authorities granting planning permission in such circumstances are advised to draw the attention of the applicant to the relevant provisions of the 1979 Act.

5.47 Welsh Office Circular 60/96[23] addresses the use of planning conditions in respect of archaeology. Where planning permission is granted for development which might affect land which is in an area considered to be of archaeological interest, the local planning authority may wish to impose conditions designed to protect the archaeological resource or ensure that reasonable access is provided to an archaeologist. The regional archaeological body will be able to offer advice to an local

[23] Link to Welsh Office Circular 60/96: Planning and the Historic Environment: Archaeology: http://wales.gov.uk/topics/planning/policy/circulars/welshofficecirculars/circular6096

planning authority with regards to the location and extent of the known resource and make suggestions to reduce the potential conflict between development and preservation of archaeological remains. Conditions usually require that either a watching brief or archaeological investigation is undertaken. These conditions help to ensure that the archaeology is preserved and recorded.

5.48 In some areas, the exercise of permitted development rights can pose a risk to the archaeological resource and so when granting permission for certain developments a local planning authority may decide to remove these rights.

Balconies (Condition 25)

5.49 Class A, Part 1, Schedule 2 of The Town and Country Planning (General Permitted Development) Order 1995 (as amended) restricts permitted development rights in relation to alterations to dwelling houses which involve the construction or provision of a balcony or roof terrace. However, the utilisation of the roof of a new extension to a commercial premises as a balcony or roof terrace may also have an adverse effect. For example, a restaurant may decide to utilise its flat roof as a smoking area which could generate an unacceptable level of noise. In certain circumstances it may therefore be necessary to attach a condition to a planning permission, where it has been identified in the application that there is a risk that the use of an area as a balcony or roof terrace will have an adverse effect, to prevent it from being used as such.

Boundary Treatment (Condition 26)

5.50 Details of boundary treatment for a development can often be reserved for subsequent approval if they are not detailed in the application or unless they affect whether permission should be granted, in which case they should be considered as part of the planning application.

5.51 It may be considered necessary to attach a condition to a planning permission to ensure that a wall is constructed in a certain type of brick or that it is rendered, or, that a fence is painted in a particular colour within a specified period of its construction. However, such conditions should only be used when another type of colour or construction would prove unacceptable.

Contaminated Land (Conditions 27 to 34)

5.52 Land formally used for industrial purposes for waste disposal can be contaminated by substances that pose immediate or long-term hazards to the environment or to health, or which may damage any buildings erected on such sites. Contaminants may also escape from the site to cause air and water pollution and pollution of nearby land; the emission of landfill gas may be particularly hazardous. In these circumstances, appropriate conditions may be imposed in order to ensure that the development proposed for the site will not expose future users or occupiers of the site, any buildings and services, or the wider environment to risks associated with the contaminants present. However, local planning authorities should base any such conditions on a site specific assessment of the environmental risks which might affect, or be affected by, the particular proposed development.

5.53 If it is known or strongly suspected that a site is contaminated to an extent which would adversely affect the proposed development or infringe statutory requirements, an investigation of the hazards by the developer and proposals for remedial action will normally be required before the application can be determined by the planning authority. Any subsequent planning permission may need to include planning conditions requiring certain remedial measures to be carried out.

5.54 In cases where there is only a suspicion that the site might be contaminated, or where the evidence suggests that there may be only slight contamination, planning permission may be granted subject to conditions that development will not be permitted to start until a site investigation and assessment have been carried out and that the development itself will incorporate any remedial measures shown to be necessary.

5.55 Conditions might also be imposed requiring the developer to draw to the attention of the planning authority the presence of significant unsuspected contamination encountered during redevelopment.

5.56 Determining whether a site includes contaminants can impose significant costs on developers and conditions requiring investigation and the extent of investigations are required will depend on the individual circumstances of the proposal. The appendix of this circular includes model conditions for smaller contamination risks and for more complex sites (conditions 27 to 29 of the appendix). The level of work required must be proportionate to the problems that are envisaged and the more onerous conditions should not be imposed as a matter of course. If there is evidence to suggest that contamination is likely to be restricted to part of the site then the condition should reflect that, providing that sufficient regard has been had to the possibility of cross-contamination, meaning development can commence on other parts of the site. Regard must also be had to controls under other legislation, for example that governing the transfer of waste and aggregates (The Waste (England and Wales) Regulations 2011), and conditions should not duplicate these controls.

Design (Conditions 26, 61, 82)

5.57 TAN 12[24] provides advice on design and related issues. It emphasises that conditions should not be imposed which allow the main design issues to be considered at a later date. Conditions can however be useful in securing and maintaining desired details. It may also be appropriate for conditions relating to matters contained in a design and access statement to be imposed when planning permission is granted. These conditions should ensure that the required details are to be submitted and approved before a development progresses beyond a defined stage.

5.58 Local planning authorities may wish to use conditions to ensure that important vistas are safeguarded by keeping them clear of obstruction or that landscape features are provided to improve the overall setting of a development.

[24] Link to Technical Advice Note 12 (TAN 12): Design: http://wales.gov.uk/topics/planning/policy/tans/tan12

Drainage (Conditions 38 to 42)

5.59 TAN 15[25] provides advice with regards to drainage and its role in managing flood risk as well as sustainable drainage systems (SuDs). Drainage (for both foul and surface water) can form a crucial part of a development, especially for residential and other urban developments. Conditions can be useful in securing provision of these details for approval and it would be difficult to justify the commencement of development until foul and surface water drainage details, for example, had been agreed, and occupation of the development should be prevented until a working drainage system is in place.

5.60 Planning conditions can also be used to secure sustainable means of drainage. If a SuDS has not already been proposed as part of the development and no assessment has taken place as to whether the site is capable of adaptation, then it will be necessary to attach a condition to prevent commencement of development until an assessment has taken place and drainage works subsequently approved. If it is demonstrated that SuDS could work on a site, and subject to the appropriate agreements being in place with regard to adoption, then the planning authority would require SuDS to be implemented. Developers will need to give good reason why SuDS could not be implemented.

5.61 For all drainage systems planning officers should consider at what point in the development of a site it is necessary to require completion and/or operation of certain parts of the system. If the completion and operation of the system can wait until the pre-occupation stage, for example, then a condition should require this.

Fume Extraction (Condition 43)

5.62 Often the location or appearance of an external fume extraction chimney can be unacceptable in its surroundings or the technical specification of the flue itself might be substandard given the type of fumes being extracted. Where development needs an external flue to be installed, details should ideally be considered as part of the application, whether that be for a change of use to a hot food establishment or specifically for a chimney, to ensure that an acceptable outcome is achievable. The maintenance of the system in accordance with the manufacturer's details can then be secured through a condition.

Grampian Conditions (Conditions 47 to 49)

5.63 By their nature, Grampian conditions are drafted negatively and require that the development permitted should not be commenced, or occupied, until a specified obstacle to that development has been overcome on land that is not in control of the applicant. As with other conditions, Grampian conditions must be constructed having regard to the particular circumstances that exist and which affect or are affected by the development. Grampian Conditions are discussed in more detail above in paragraphs 3.25, 3.26 and 3.46 to 3.47.

5.64 Annex F of Technical Advice Note 18: Transport (TAN 18) states that Grampian conditions can be applied where the carrying out of works in the highway is required

[25] Link to TAN 15: Development and Flood Risk: http://wales.gov.uk/topics/planning/policy/tans/tan15

as part of the planning permission. It states: 'A 'Grampian' condition may be necessary where works must be carried out in an existing highway in order to safely and efficiently accommodate traffic created by a development.' Highway works required by a Grampian condition might include widening an existing highway or provision of junction improvements to maintain road capacity, accommodate increased traffic or address a safety risk.

5.65 The use of Grampian conditions should generally not be considered where there is no prospect of them being delivered. This is however, a matter of policy and the decision maker has discretion as to whether Grampian conditions should be attached, depending on the individual circumstances.

Gypsy Travellers (Conditions 50 to 60)

5.66 The Planning Inspectorate has a large number of conditions on the Planning Portal website[26] that can be attached to decisions to grant permission for Gypsy/Traveller caravan sites. A few of the key conditions have been provided in the appendix.

5.67 A local planning authority might be minded to grant planning permission for the use of a site as a Gypsy or Traveller site subject to either a temporary time limit condition or a condition restricting use of the site to particular individuals. Welsh Government Circular 30/2007[27], *'Planning for Gypsy and Traveller Caravan Sites'*, states that local planning authorities should give consideration to granting a temporary consent for a Gypsy/Traveller caravan site: where there is unmet need; no alternative Gypsy and Traveller site provision in an area, and, a reasonable expectation that new sites are likely to become available at the end of that period in the area which will meet that need. When a temporary permission is granted, then a condition should be attached to that permission to ensure that the site is returned to its former condition when the permission expires.

5.68 If a personal permission is applied then limiting the use of the site to a particular family may be too vague. The condition should identify particular individuals and limit use of the site to them and their dependants.

5.69 There may be instances where it is necessary to attach a condition to ensure that caravans and associated outbuildings are sited in accordance with a plan or layout drawing, in order to minimise the impact of the proposal upon its surroundings. A plan is a clear and understandable tool which can be used to limit further development making it easier to identify the introduction of further caravans or structures on the site at a later time.

5.70 Travelling show people are excluded from the definition of gypsies in the Caravan Sites Act 1968. However, some of the conditions contained in the appendix can be easily adapted to apply to applications for sites for travelling show people, for example, site layout (condition 54) and restriction of commercial vehicles (condition 59). Welsh

[26] Link to Planning Inspectorate Gypsy/Traveller conditions: http://www.planningportal.gov.uk/planning/planninginspectorate/inspector/modelconditions#gypsy

[27] Link to Welsh Government Circular 30/2007: http://wales.gov.uk/publications/circular/2007/gypsy

Office Circular 78/91[28] *'Travelling Showpeople'* provides further advice to local planning authorities about considerations relating to travelling showpeople.

Hours of Operation (Conditions 62 to 65)

5.71 Conditions limiting hours of operation can restrict deliveries, use of a premises by customers, as well as the operation of the main use to which the permission relates. The aim of such conditions is to reduce the impact of the use on the amenity of the users of the neighbouring buildings, which can often be residential. It should be noted that subsequent material changes of use permitted under the GPDO could mean that any operating conditions imposed, including hours of operation, would not be carried forward to the new permitted use. Where appropriate, conditions may be appropriate restrict subsequent changes of use.

5.72 Planning conditions can also be used to restrict construction hours. However, since hours of construction are governed under other legislation (The Control of Pollution Act 1974 and Environmental Protection Act 1990) such conditions are not always necessary unless the aim is to place tighter restrictions on construction than those that already exist.

Landscaping (Conditions 66 to 70)

5.73 With regard to landscaping conditions, the objective should also be to ensure that the intended design quality is achieved in practice. If a landscaping scheme has not been submitted with the application then it is important that the authority give some advance indication of the essential characteristics of an acceptable landscape scheme. Such requirements should not be unreasonable. The design and implementation stages of landscape treatment may therefore be addressed more successfully by separate conditions, occurring as they do at different stages and under differing circumstances.

5.74 To ensure that a landscaping scheme is prepared, conditions may require that no development can commence until the scheme is approved, so long as that requirement is reasonable. Care needs to be taken to ensure that conditions do not require a landscaping scheme to be implemented at an unreasonable or impractical stage in the development. Work on landscaping can rarely proceed until building operations are nearing completion. Only on some permissions for a change of use would it be acceptable to require that the development permitted should not proceed until the landscape work had been substantially completed. Where permission is being granted for a substantial estate of houses, it might be appropriate to draft the relevant condition to allow for approval of landscape works to be phased in accordance with a programme or timetable to be agreed between the developer and the authority. Alternatively, the erection of the last few houses might be prohibited until planting has been completed in accordance with the landscape scheme; but in relation to a permission for an industrial or office building it would be possible to impose a condition prohibiting or restricting occupation of the building until such works have been completed.

[28] Link to Welsh Government Circular 78/91: http://wales.gov.uk/topics/planning/policy/circulars/welshofficecirculars/circular7891

Listed Buildings (Conditions 71 to 80)

5.75 Guidance on conditions associated with listed buildings is provided in Welsh Office Circulars 61/96[29] and 1/98[30]. Although legislation governing Listed Buildings consent is contained in the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990, the same basic principles and the six tests set out in this circular for drafting conditions must be followed when drafting conditions attached to listed building consent. The conditions attached to a listed building consent may vary in comparison to those attached to an associated planning permission.

Materials (Conditions 82 to 84)

5.76 The use of inappropriate materials in a development can have a significant impact upon how it appears within its surroundings. The use of some materials may be preferable to others, especially where one type of material is particularly prevalent in an area and sensitive materials can be used to enhance local character. It may be sufficient to require that details are submitted and approved at a later stage following the approval of a planning permission. Where details are approved with the application, it may be desirable to attach a condition to the grant of planning permission to ensure that the approved materials are used and retained.

Minerals (No specific conditions at the appendix)

5.77 Where appropriate, conditions should be attached to planning permissions for mineral working and related operations to control the environmental impact during the life of the development and after operation has ceased. The conditions imposed by the planning system should compliment and not conflict with or attempt to duplicate controls better regulated by other bodies under different consent regimes.

5.78 Where minerals are concerned, planning conditions can impose measures such as:

- measurable performance requirements;
- an adequate and appropriate monitoring scheme of the environmental consequences of workings;
- traffic routing;
- measures to mitigate impacts, such as the provision of wheel-wash facilities, road cleansing, speed restrictions, sheeting of vehicles;
- working programmes/site design and layout
- hours of operation
- site restoration

5.79 Further guidance on the use of conditions in relation to minerals application is contained within the MTANS[31].

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[29] Welsh Office Circular 61/96: Planning and the Historic Environment: Historic Buildings and Conservation Areas:
http://wales.gov.uk/topics/planning/policy/circulars/welshofficecirculars/circular6196

[30] Welsh Office Circular 1/98: Planning and the Historic Environment: Directions by the Secretary of State for Wales:
http://wales.gov.uk/topics/planning/policy/circulars/welshofficecirculars/circular198

[31] Link to Mineral Technical Advice Notes:
http://wales.gov.uk/topics/planning/policy/mineralstans

Nature Conservation (Conditions 125 to 127)

5.80 Nature conservation can be a significant material consideration in determining many planning applications. But local planning authorities should not refuse permission if development can be permitted subject to conditions that will prevent damaging impacts on wildlife habitats or important physical features. Where there is a risk of damage to a site, the planning authority should consider the use of conditions or planning obligations in the interests of nature conservation. Conditions can be used, for example, to require areas to be fenced or bunded to protect them, or to restrict operations or uses at particular times of the year.

5.81 In addition, there are certain sites where any conditions or obligations affecting them will need to be consistent with the provisions applicable for their protection. In some cases the provisions have statutory force. For further advice see TAN 5: Nature Conservation and planning[32]and paragraph 4.29.

Noise (Conditions 85 to 90)

5.82 Noise can have a significant effect on the environment and on the quality of life enjoyed by individuals and communities. Where it is not possible to separate noise sensitive uses from noisy developments local planning authorities should consider whether it is practicable to control or reduce noise levels or to mitigate the impact of the noise. Conditions can be used to do this. Liaison with environmental health colleagues will be necessary to ensure that a suitable condition can be drafted that is capable of enforcement. TAN 11: Noise [33] provides further advice on considering planning applications where noise control or mitigation might be necessary. It provides advice on mitigation and includes examples of conditions in the appendix.

Occupancy and Personal Permission (Conditions 91 to 98)

5.83 Since planning controls are concerned with the use of land rather than the identity of the user, the question of who is to occupy the premises for which permission is to be granted will normally be irrelevant. Conditions restricting occupancy to a particular occupier or class of occupier should only be used when sound planning grounds can be demonstrated, and where the alternative would normally be refusal of permission. A local planning authority who imposes such conditions may run the risk of contravening its duties under the Equality Act 2010 and care should be taken to avoid such conflict. Conditions should not be imposed which provide for a system of vetting by the local planning authority or the use of a vague test such as “needing to be located in the area”.

5.84 Commercial and industrial buildings in an area of open countryside will not become more acceptable because their occupancy is restricted. Similarly, the expansion of a local firm will not necessarily lead to less pressure for further development (e.g. housing) than the arrival of a firm from outside. Such conditions are therefore undesirable.

[32]Link to Technical Advice Note 5: Nature Conservation and Planning: http://wales.gov.uk/topics/planning/policy/tans/tan5

[33] Link to Technical Advice Note 11: Noise: http://wales.gov.uk/topics/planning/policy/tans/tan11

Residential Occupancy Conditions and Rural Enterprise Dwellings

5.85 If the development of a site for housing is an acceptable use of land there will seldom be any good reason on land-use planning grounds to restrict the occupancy of those houses to a particular type of person. However, there are exceptions, for example, in the case of rural enterprise dwellings.

5.86 It may be difficult for local planning authorities to prevent the removal of a residential occupancy condition if the alternative is that the property remains empty. Local planning authorities therefore need to ensure that the property subject to the condition is sufficiently justified in the first instance, for example, that the need for a rural enterprise worker's dwelling in the area is demonstrated as part of the application.

5.87 The imposition of a residential occupancy condition can draw an artificial and unwarranted distinction between new houses or new conversions and existing houses that are not subject to such restrictions on occupancy or sale. It may deter house builders from providing homes for which there is a local demand and mortgage providers from providing finance. It may also impose hardship on owners who subsequently need to sell. Extreme care should therefore be taken when applying such conditions to a grant of planning permission to ensure that an individual's human rights are not harmed.

5.88 One of the few circumstances in which new, isolated residential development may be acceptable in the open countryside is where it would enable rural enterprise workers to live at, or close to their place of work. Traditionally such conditions were used to ensure that new agricultural workers' dwellings remained as such. In light of the strict controls over development in the open countryside it will be necessary, where a new dwelling is justified, to ensure that it remains available to meet this need.

5.89 An appropriately worded condition will ensure that the dwelling is kept available to meet the needs of other rural enterprises in the locality if it is no longer needed by the original business, thus avoiding a proliferation of dwellings in the open countryside. Care should be taken to ensure that the condition does not have the effect of preventing occupation by the dependants of the rural enterprise worker referred to in the condition. Condition 98 of the appendix ensures that the accommodation can also be used to provide affordable housing when there are no eligible dependants or demand from those employed in local rural enterprises.

5.90 Where a rural enterprise occupancy condition has been imposed it will not be appropriate to remove it on a subsequent application unless it is shown that the existing need for such dwellings for rural enterprise workers in the locality no longer warrants reserving the house for that purpose. If planning permission for a dwelling would in all probability be granted without such a condition, this would be a material consideration.

5.91 Further advice can be found in Technical Advice Note 6, 'Planning for Sustainable Rural Communities' (TAN 6)[34].

[34] Link to TAN 6: Planning for Sustainable Rural Communities: http://wales.gov.uk/topics/planning/policy/tans/tan6

Staff Accommodation

5.92 Conditions tying the occupation of dwellings to that of separate buildings (e.g. requiring a house to be occupied only by a person employed by a nearby garage) should be avoided. However, exceptionally, such conditions may be appropriate where there are sound planning reasons to justify them. To grant an unconditional permission would mean that the dwelling could be sold off for general use thereby undermining established countryside policy and the terms of TAN 6. To ensure that the dwelling remains available to meet the identified need it may therefore be acceptable to grant permission subject to a condition that ties the occupation of the new house to the existing business.

Seasonal / Holiday occupancy

5.93 TAN 13: Tourism provides advice on the use of seasonal occupancy conditions[35].Tourism is an important contributor to the economy. Holiday makers are drawn to the most attractive and, therefore, usually most protected areas of countryside and coastline. Most modern self catering accommodation is capable of occupation all year round. Where such accommodation is located in areas within which the provision of permanent housing would be contrary to national and/or local policies, it may be reasonable to impose a condition specifying its use as holiday accommodation. For example, conversions of redundant buildings into holiday accommodation where conversion to residential dwellings would not be permitted, may reduce the pressure on other housing in rural areas. A holiday occupancy condition would be more appropriate than a seasonal occupancy condition.

5.94 However, in some cases a seasonal occupancy condition may be more appropriate: for example, to prevent the permanent residential use of accommodation which by virtue of its construction or design is unsuitable for continuous occupation, particularly in the winter months. Also seasonal conditions may be necessary to protect local features, for example where the site is near a fragile habitat which requires protection at particular times of year to allow seasonal breeding or winter feeding to take place.

Live / work units

5.95 Depending on the circumstances, it may be necessary to impose a condition which controls the use of live/work units. In framing such a condition, a number of factors need to be considered. Firstly, it may be appropriate that the work unit is provided before the residential element is occupied, or within a specified period. Secondly, it is necessary to ensure that the 'work' part of the unit is not used for any purposes other than for the business being considered. Thirdly, there needs to be a tie between the work and live elements which would allow for continued occupation of the residential element in the event of the business ceasing and provision would need to be made for dependants.

5.96 Although it is unlikely to be reasonable to require vacation of the home in the event of the business use ceasing, it may be reasonable to require the business unit to remain available for such use by the occupiers of the residential part. If the current occupiers are unable to make their business a success, this would ensure that the occupants cannot use the business space for anything else. It might also provide the incentive to

[35] Link to Technical Advice Note 13: Tourism: http://wales.gov.uk/topics/planning/policy/tans/tan13

dispose of the premises to someone interested in using the live / work unit for a business.

One Planet Development[36] (Conditions 99 to 100)

5.97 In order for its location in the open countryside to be justified, TAN 6 requires One Planet Development to satisfy strict requirements and that it must be supported by a management plan. In order to guard against any abuse of the planning system, planning permissions for One Planet Development should include a condition requiring the use of the site to be carried out in accordance with the management plan supporting the proposed development.

Parking (Conditions 101 to 103)

5.98 Conditions specifying the number of parking spaces should reflect the locational policies in the development plan, but they also need to be reasonable in relation to the size and nature of the development and to satisfy all of the six tests.

5.99 Sometimes parking space in the form of a lay-by will be satisfactory. More often a parking site separate from the highway will be needed. In the latter case, conditions should ensure, where necessary, that space is provided for the turning of vehicles to avoid reversing on to the highway.

5.100 Where the authority decides that it is appropriate to require the provision of car parking spaces on other land under the control of the applicant, the development must be readily accessible from the car park.

Permitted Development Rights (Conditions 104 to 106 of the appendix)

5.101 It is possible to impose conditions to restrict further development or a change of use that would normally be permitted development. Conditions can also be used to restrict changes that would not be regarded as development at all, whether because the change is not a “material” change within the terms of section 55 (1) of the Act, or by reason of section 55 (2) and the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended). It should be noted that any conditions restricting permitted development rights, only come into effect once that permission is implemented.

5.102 In terms of uses, changes can be restricted by either prohibiting any change from the use permitted or by precluding specific alternative uses. However, a condition restricting changes 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.

5.103 It may be possible to justify the removal of permitted development rights under the Town and Country Planning (General Permitted Development) Order 1995 (as amended) to restrict the construction of any curtilage buildings in a new high-density housing estate to retain a sufficient level of residential and visual amenity. A condition

[36] For a definition of One Planet Development see TAN 6: Planning for Sustainable Rural Communities: http://wales.gov.uk/topics/planning/policy/tans/tan6

could also be imposed to restrict permitted development rights to preserve an exceptionally attractive open plan estate free of fences.

5.104 In terms of restricting changes of use, a condition may prevent the change of use of a large retail premises to a food or convenience goods supermarket, where such use might generate an unacceptable level of additional traffic or have a damaging effect on the vitality of a nearby town centre.

Presumption against such restrictions

5.105 The Town and Country Planning (General Permitted Development) Order 1995 (as amended) and the Town and Country Planning (Use Classes) Order 1987 (as amended) 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. For example, a condition would only prove reasonable if there was evidence that it would prevent a serious adverse effect on amenity or the environment, there were no other forms of control and it served a planning purpose. Care must be taken to ensure that the condition is no more onerous than can be justified. If a more specific condition can be imposed which will address the problem, rather than restricting development, then it should be. For example, where it is necessary to restrict the volume of noise emitted from an industrial site, a specific noise condition (see conditions 66 to 69 of the appendix) may be more appropriate than a condition restricting development.

Ancillary uses

5.106 Conditions are sometimes imposed restricting ancillary or incidental activities. Conditions of this kind can be burdensome to some industries where there may be a need for higher than normal levels of ancillary office research or storage uses, or for short-term changes in uses, which would not normally be material changes of use. Such conditions should therefore not normally be imposed on permissions for manufacturing or service industry, except where they are designed to preclude or regulate activities giving rise to hazard, noise or offensive omissions.

Renewable Energy (Conditions 107 to 114)

5.107 The range of renewable energy developments that require planning permission can vary considerably, in type and size and can include wind turbines, solar technology and biogas plants. The conditions provided in the appendix are associated with larger renewable energy schemes.

5.108 Many of the considerations in proposals for renewable energy developments are similar to other forms of operational development. TAN 8: Renewable Energy[37] provides detailed guidance on dealing with such applications. Generally, conditions may be attached to control: the impact on archaeological and biological resources; noise; lighting; ancillary development, monitoring and decommissioning.

[37] Link to TAN 8: Renewable Energy: http://wales.gov.uk/topics/planning/policy/tans/tan8

5.109 Planning conditions should ensure that householder renewable energy projects requiring planning permission are maintained in accordance with manufacturer's guidelines. Information on the likely impact of larger renewable energy schemes should be submitted with the application for consideration. Monitoring conditions can then be attached to confirm that the development is meeting its specification, for example, in terms of noise generated or level of energy generated. It will be reasonable to attach a condition to require the removal of the energy generating equipment if it ceases to operate for a specified period of time.

Retail (Condition 115)

5.110 Retail parks can change their composition over time. If such a change would create a development that the planning authority would have refused on the ground of the impact on vitality and viability of an existing town centre, it may be sensible to consider the use of planning conditions to ensure that these developments do not subsequently change their character unacceptably.

5.111 Any conditions imposed on the types of products sold should only refer to the main categories of goods for example, food and convenience goods, hardware, electrical goods, furniture and carpets) and should not seek to control details of particular products to be sold.

5.112 It may also be appropriate to impose conditions to control the number or size of units to prevent the development being subdivided into a large number of outlets (or vice versa), if the effect of such a change would be to change significantly the nature of the retail development to one that would not have been given permission.

Trees (Conditions 117 to 122)

5.113 Section 197 of the 1990 Act places an express duty on the local planning authority, when granting planning permission, to ensure, whenever appropriate, that adequate conditions are imposed to secure the preservation or planting of trees, and that any necessary tree preservation orders are made under section 198 of the 1990 Act. When granting outline planning permission, the authority may consider it appropriate to impose a condition requiring the submission of particular details relating to trees to be retained on the site, such as their location in relation to the proposed development and their general state of health and stability. When granting detailed planning permission, conditions may be used to secure the protection of trees to be retained, for example by requiring the erection of fencing around the trees during the course of development or restricting works which are likely to adversely affect them. The long-term protection of trees, however, should be secured by tree preservation orders rather than by condition; such orders may also be expedient for the temporary protection of existing trees until details of the reserved matters are submitted and it becomes clear whether there is a need to retain the trees.

5.114 The planting and establishment of new trees may need work over several months of years, and the authority may wish to ensure that they secure details of those responsible for the management and maintenance of certain planted areas during that period of time. Where appropriate, a condition may require not just initial planting, but also that trees shall be maintained during the first few years (specifying the number of years) and that any which die or are removed within that time shall be replaced.

Waste (No specific conditions in the appendix)

5.115 TAN 21: Waste[38] (TAN 21) contains advice on waste management and conditions associated with such planning applications. Conditions should complement pollution control regime rather than duplicate it and so it should not be necessary to control pollution in a waste management facility through conditions where a permit from the pollution control authority is needed.

5.116 Some matters may be outside the controls of a waste management license or permit and so conditions can be used to control certain aspects of the development, for example:

transport modes, mode transfer facilities, access arrangements and volume of traffic
the physical nature of the wastes acceptable or excluded
the timescale of operations and any phasing of uses on a site
ancillary development
minimising nuisance from dust, birds, vermin or litter
restoration of the site and aftercare

5.117 In waste facilities, such as in a landfill operation, it may also be necessary to attach conditions to control the environmental impact of the development, such as conditions relating to: dust from construction; noise; drainage and surface water; odour and, lighting, all of which are addressed in the appendix.

5.118 Conditions need to be planned in a holistic manner to ensure that satisfactory standards of restoration are achieved with a clear regard to the end use of the site. Model conditions relating directly to waste development have not been provided in the appendix since such developments are so varied in their nature and context. Conditions throughout the list of model conditions can be used or amended for the purposes of a planning permission for a waste development, for example, conditions in relation to hours of operation and de-commissioning.

Rosemary F Thomas
Chief Planner

Chief Executive:
County and County Borough Councils in Wales
The National Park Officer:
National Park Authorities in Wales

[38] Link to Technical Advice Note 21: Waste:
http://wales.gov.uk/topics/planning/policy/tans/tan21

APPENDIX

Time Limit

01 The development shall begin not later than five years from the date of this decision.

Time Limit (outline planning permission)

02 Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.

03 Any application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.

04 The development shall begin either before the expiration of five years from the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

Time Limit (temporary permission)

05 [The use shall be discontinued / The building] and any associated [paraphernalia / chattels including [list items]] associated with [its/the] use shall be removed from the land in its entirety and the land shall be restored to its former condition on or before [date] in accordance with a scheme of work submitted to an approved in writing by the local planning authority prior to the commencement of development

Plan Specification (new)

06 The development shall be carried out in accordance with the following approved plans and documents: [insert plan nos. with revision references, if relevant.]

Access (outline)

07 The means of vehicular access to the [building(s)/development] hereby approved shall be from [road name] only.

Access

08 Before the commencement of the development the access shall be completed in accordance with the details shown in drawing no. [x] and retained for as long as the development remains in existence.

09 The [x] by [x] visibility splays shown on plan no. [x] shall be maintained free of any obstruction exceeding [0.6m/1.05m] in height for as long as the development exists

10 No structure or erection exceeding [x] metres in height shall be placed [to the east] of a line from [x] to [x] as shown on drawing no. [x], within the sight lines referred to in Condition [x].

Access (disabled)

11 The approved scheme for disabled access [reference plan no] shall be implemented before the development is [occupied/brought into [x] use] and retained for as long as the development exists

Advertisements

12 The [advertisement/hoarding] and any associated fittings shall be removed from the site in its entirety no later than [x] [months/years] from the date of this decision or [x] months/years after the date of completion of building operations, whichever first occurs.

13 The advertisement shall only be illuminated between the hours of [x] and [x]

14 The sign shall not be displayed until the sign shown in [photograph [x]/plan no. [x]] and its fittings have been removed in their entirety

15 The advertisement shall not be displayed until full details of [both] the [hard and soft] landscape works proposed and also a schedule of landscape maintenance for the period of express consent has been submitted to and approved in writing by the local planning authority. The landscaping scheme shall be carried out within [x] months of the local planning authority's written approval and maintained in accordance with the approved schedule

Advertisement Illumination

16 The intensity of the illumination of the [sign] permitted by this consent shall be no greater than [xx] candela.

Aerodromes

17 The total number of aircraft movements shall not exceed [x] per [period of time]

18 A log of all incoming and outbound flights to and from the site shall be kept on site and be made available at the site for inspection by the local planning authority at all reasonable times. The log shall record the time and date of arrival and departure of each craft, the type of craft and the name and licence number of the pilot. A landing and take off will represent two separate movements

19 Aircraft movements shall not take place outside the hours of [x] and [x] on [state days].

Affordable Housing

20 Prior to commencement of development the development shall not begin until a scheme for the provision of affordable housing as part of the development has 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 B of TAN 2 or any future guidance that replaces it. The scheme shall include:

i) the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall consist of not less than X% of housing units/bed spaces;
ii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
iii) the arrangements for the transfer of the affordable housing to an affordable housing provider [or the management of the affordable housing (if no RSL involved)];
iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
v) 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.

Annexes

21 The [extension / building] shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as [x].

Archaeology (watching brief)

22 No development or site clearance shall commence until the local planning authority have been informed in writing of the name of a professionally qualified archaeologist who is to be present during the undertaking of any excavations in the development area so that a watching brief can be conducted. No work shall commence until the local planning authority has confirmed in writing that the proposed archaeologist is suitable. A copy of the watching brief report shall be submitted to the local planning authority within two months of the archaeological fieldwork being completed.

23 The developer shall afford access at all reasonable times to any archaeologist nominated by the local planning authority, and shall allow him/her to observe the excavations and record items of interest and finds.

Archaeology (archaeological investigation)

24 No development shall take place until the applicant, or their agents or successors in title, has secured agreement for a written scheme of historic environment mitigation which has been submitted by the application and approved by the local planning authority. Thereafter, the programme of work will be fully carried out in accordance with the requirements and standards of the written scheme.

Balconies

25 The roof area of the extension shall not be used as a storage area, balcony, roof garden or similar amenity area.

Boundary Treatment

26 Prior to the occupation of the [x] hereby approved a plan indicating the positions, height, design, materials and type of boundary treatment to be erected shall be submitted to and approved by the local planning authority. The boundary treatment shall be completed as approved before the use is [commenced / before the building(s)] [is/are] occupied].

Contaminated Land (Investigation)

27 No development shall commence until an assessment of the nature and extent of contamination affecting the application site area [refer to plan to identify specific area within site] has been submitted to and approved in writing by the local planning authority. This assessment must be carried out by or under the direction of a suitably qualified competent person *in accordance with BS10175 (2011) *Investigation of Potentially Contaminated Sites Code of Practice* and shall assess any contamination on the site, whether or not it originates on the site.

The report of the findings shall include:

(i) a desk top study to identify all previous uses at the site and potential contaminants associated with those uses and the impacts from those contaminants on land and controlled waters. The desk study shall establish a 'conceptual site model' (CSM) which identifies and assesses all identified potential source, pathway, and receptor linkages;

(ii) an intrusive investigation to assess the extent, scale and nature of contamination which may be present, if identified as required by the desk top study;

(iii) an assessment of the potential risks to:
human health,
groundwater and surface waters
adjoining land,
property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
ecological systems,
archaeological sites and ancient monuments; and
any other receptors identified at (i)

(iv) an appraisal of remedial options, and justification for the preferred remedial option(s).

All work and submissions carried out for the purposes of this condition must be conducted in accordance with Welsh Local Government Association and the Environment Agency Wales' '*Development of Land Affected by Contamination: A guide for Developers*' (2012).

28 No development shall take place until a site investigation of the nature and extent of contamination has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and

approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development begins. If during the course of development any contamination is found that has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures before the development is occupied.

29 A monitoring and maintenance scheme to include monitoring the long-term effectiveness of the proposed remediation over a period of [x] years, and the provision of reports on the same shall be submitted to and approved by the local planning authority, prior to the occupation of any approved building.

Following completion of the measures identified in that scheme and when the remediation objectives have been achieved, reports that demonstrate the effectiveness of the monitoring and maintenance carried out shall be submitted to the local planning authority at the end of every subsequent [x] month period and approved in writing to demonstrate the effectiveness of the monitoring and maintenance carried out. In the event that the remediation objectives are not achieved within the monitoring period, a revised remediation scheme and verification plan shall be submitted to and approved in writing by the local planning authority within two months following the end of the monitoring period. Any further works necessary shall be undertaken within an agreed timescale until the remediation objectives are achieved and reports confirming the same have been submitted to and approved in writing by the local planning authority.

Contaminated Land (imported aggregates)

30 Any aggregate (other than virgin quarry stone) or recycled aggregate material to be imported shall be assessed for chemical or other potential contaminants in accordance with a scheme of investigation which shall be submitted to and approved in writing by the local planning authority in advance of its importation. Only material approved by the local planning authority shall be imported. All measures specified in the approved scheme shall be undertaken in accordance with the Welsh Local Government Association guidance *'Requirements for the Chemical Testing of Imported Materials for Various End Uses'.*

Subject to approval of the above, sampling of the material received at the development site to verify that the imported soil is free from contamination shall be undertaken in accordance with the approved scheme.

Contaminated Land (imported soils)

31 Any topsoil (natural or manufactured),or subsoil, to be imported shall be assessed for chemical or other potential contaminants in accordance with a scheme of investigation which shall be submitted to and approved in writing by the local planning authority in advance of its importation. Only material approved by the local planning authority shall be imported. All measures specified in the approved scheme shall be undertaken in accordance with the Welsh Local Government Association guidance *'Requirements for the Chemical Testing of Imported Materials for Various End Uses'.*

Subject to approval of the above, sampling of the material received at the development site to verify that the imported soil is free from contamination shall be undertaken in accordance with the approved scheme.

Contaminated Land (land gas monitoring and protection measures)

32 Prior to the commencement of any development works a scheme to investigate and monitor the site for the presence of gases* being generated at the site or land adjoining thereto, including a plan of the area to be monitored, shall be submitted to and approved in writing by the local planning authority.

Following completion of an approved monitoring scheme, in the event that gases are being generated the proposed details of appropriate gas protection measures to ensure the safe and inoffensive dispersal or management of gases and to prevent lateral migration of gases into or from land surrounding the application site shall be submitted to and approved in writing to the local planning authority.

All required gas protection measures shall be implemented as approved and appropriately verified before occupation of any part of the development which has been permitted and the approved protection measures shall be retained and maintained until such time as the local planning authority agrees in writing that the measures are no longer required. A copy of the verification certificate should be submitted to the local planning authority prior to the first beneficial use of the site.

* 'Gases' include landfill gases, vapours from contaminated land sites, and naturally occurring methane and carbon dioxide, but does not include radon gas. Gas monitoring programmes should be designed in line with current best practice as detailed in CIRIA 665 (Construction Industry Research and Information Association) and/or BS8485 2007 Code of Practice for the Characterization and Remediation from Ground Gas in Affected Developments.

Contamination (water)

33 No development shall commence until the results of an assessment of the quality of water in watercourses within the site and groundwater beneath the site, the methodology for which shall be agreed in writing by the local planning authority, has been submitted to and approved in writing to the local planning authority.

34 No development shall commence until the details of a scheme for the monitoring of water quality in watercourses within the site and groundwater beneath the site throughout the construction period has been submitted to and approved in writing by the local planning authority. The scheme shall include measures to be taken should the quality of water deteriorate.

Construction Method Statement

35 No development shall commence, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved statement shall be adhered to throughout the construction period. The statement shall provide for:

i) the parking of vehicles of site operatives and visitors;
ii) loading and unloading of plant and materials;
iii) storage of plant and materials used in constructing the development;
iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
v) wheel washing facilities;
vi) measures to control the emission of dust and dirt during demolition and construction; and
vii) a scheme for recycling/disposing of waste resulting from demolition and construction works.

Density (outline)

37 The development shall not exceed a [gross / net] density of [x] [dwellings / habitable rooms] per hectare.

Drainage

38 No development shall commence until details of a scheme for the disposal of foul and surface water has been submitted to and agreed in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details prior to the [x] use of the development and retained in perpetuity.

Drainage (sustainable drainage systems)

39 No building shall be occupied until [a / the] sustainable drainage system for the site has been completed in accordance with the [approved details / details first submitted to and agreed in writing by the local planning authority]. The sustainable drainage system shall be managed and maintained thereafter in accordance with the agreed management and maintenance plan.

40 No building shall be occupied until surface water drainage works have been implemented in accordance with details that have been submitted to and approved in writing by the local planning authority. Before these details are submitted, an assessment shall be carried out of the site potential for disposing of surface water by means of a sustainable drainage system, and the results of the assessment provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:

i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
ii) include a period for its implementation; and
iii) provide a management and maintenance plan of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

41 No building shall be occupied until the sustainable drainage scheme for the site has been completed in accordance with the submitted details. The sustainable drainage

scheme shall be managed and maintained thereafter in accordance with the agreed management and maintenance plan.

42 No development shall take place until details of the implementation, maintenance and management of the sustainable drainage scheme have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. Those details shall include:

i) a timetable for its implementation, and
ii) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage system throughout its lifetime.

Fume extraction

43 Before the use commences, the equipment to control the emission of fumes and odour from the premises shall be installed in accordance with approved details [reference approved document]. All equipment installed as part of the scheme shall thereafter be operated and maintained in accordance with the approved details for as long as the use continues.

Garage /Parking spaces (use restriction)

44 The [garage(s)/car park spaces] to be provided shall be kept available for the parking of motor vehicles at all times.

45 The [garage(s)/car park spaces] shall be used solely for the benefit of the occupants of the dwelling of which it forms part and their visitors and for no other purpose and permanently retained as such thereafter.

Glazing

46 Before the development hereby permitted is brought into use, the windows[s] at [x] shall be fitted with obscured glazing, details of which shall first be submitted to and agreed in writing by the local planning authority and any part of the window[s] that is less than 1.7m above the floor of the room in which it is installed shall be non-opening. The windows shall be permanently retained in that condition thereafter.

Grampian Condition (highways)

47 The dwellings shall not be occupied until the road widening scheme in [document reference] has been constructed in accordance with the approved details.

48 The dwellings shall not be occupied until the access road shown on plan [x] has been constructed to the base course level.

Grampian Condition (sewerage)

49 No development shall commence [on the site] until the sewerage [or specify service infrastructure] system in the locality has been upgraded in accordance with [document reference]

Gypsies & Travellers (personal)

50 The occupation of the site shall only be by [travelling show people as defined by paragraph 2 of Circular 78/91 / Gypsies and Travellers as defined by paragraph 3 of Circular 30/2007 / the following and their resident dependents: [add names]].

51 When the land ceases to be occupied by those named in condition [condition number] the use shall cease and all caravans, structures, materials and equipment brought on to or erected on the land, or works undertaken to it in connection with the use, shall be removed and the land shall be restored to its condition before the development took place within [x] calendar months of that date.

Gypsy (temporary)

52 The use shall cease on or before [date] and all caravans, buildings, structures, materials and equipment brought on to, or erected on the land, or works undertaken to it in connection with the use shall be removed, and the land restored to its condition before the development took place within [x] calendar months of this date.

53 No development shall take place until details of a scheme to restore the land at the end of the period for which planning permission is granted for the use (or the end of the period in which the site is occupied by those permitted to do so) to its condition that existed before the development took place and a timetable for its implementation, have been submitted to and approved in writing by the local planning authority. The restoration works shall be carried out in accordance with the approved details and within any such timescale as specified.

Gypsy (siting of caravans)

54 No caravan shall be brought onto the site until details of its intended siting have been submitted to and approved by the local planning authority in writing. The caravan(s) shall only be positioned in the approved locations. The caravans shall be sited in accordance with plan number [x].

55 Any material change to the position of a static caravan, or its replacement by another mobile home in a different location shall only take place in accordance with details submitted to and approved in writing by the local planning authority.

Gypsy (number and type of caravans)

56 No more than [x] caravan[s], as defined in the Caravan Sites and Control of Development Act 1990 and the Caravan Sites Act 1968 (of which no more than [y] shall be static caravans) shall be stationed on the site at any time.

57 Any caravans positioned on the site shall be capable of being lawfully moved on the public highway, without division into separate parts.

Gypsy (industrial / commercial activities)

58 No commercial activities shall take place on the land, including the storage of materials, except in the area shown on plan number [x]. No materials shall be stored above a height of [x], no burning of materials shall take place on the site and no commercial activities shall take place outside the hours of [x] to [x] Monday - Saturday and not at all on Sundays.

59 No more than one commercial vehicle per plot shall be kept on the land for use by the occupiers of the caravans hereby permitted, and they shall not exceed [3.5 / 7.5] tonnes in weight.

Gypsy (retrospective)

60 Within 3 months of the date of this decision a scheme for: [insert any matters which need to be covered by the condition] shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation.

Height of Building (outline)

61 No building on any part of the development shall exceed [x] metres in height above the [finished ground level of the site / level of the highway].

Hours of Operation

62 Deliveries shall not be taken at or dispatched from the site outside the hours of [x] to [x] Monday to Friday, [x] to [x]on Saturdays and [x] to [x] on Sundays.

63 The use shall not be carried out outside the hours of [x] to [x] Monday to Friday, [x] to [x] on Saturdays and [x] to [x] on Sundays.

64 Customers are not permitted on the premises outside the hours of [x] to [x] Monday to Friday, [x] to [x] on Saturdays and [x] to [x] on Sundays.

Hours of Operation (construction)

65 Demolition or construction works shall not take place outside the hours of [x] to [x] Mondays to Fridays and [x] to [x] on Saturdays and at no time on Sundays or Public Holidays.

Landscaping

66 **(To be applied with below landscaping condition).**
No development or site clearance shall take place until there has been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include indications of all existing trees (including spread and species) and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.

67 **(To be applied with above landscaping condition).**

All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

68 No development shall take place until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include:

i) A statement setting out the design objectives and how these will be delivered;
ii) earthworks showing existing and proposed finished levels or contours;
iii) means of enclosure and retaining structures;
iv) other vehicle and pedestrian access and circulation areas;
v) hard surfacing materials;
vi) minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, etc.), and
vi) water features.

Soft landscape works shall include [planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants noting species, plant supply sizes and proposed numbers/densities where appropriate; an implementation programme (including phasing of work where relevant).

69 The landscaping works shall be carried out in accordance with [the approved details [within [x] months / during the first planting season immediately following [completion / occupation] of the development] / the agreed implementation program]. [The completed scheme shall be [managed and/or maintained] in accordance with an approved scheme of [management and/or maintenance].

Landscaping (management plan)

70 A landscape management plan, including management responsibilities and maintenance schedules for all landscaped areas, other than privately owned domestic gardens, shall be submitted to and approved in writing by the local planning authority prior to the occupation of any of the dwellings on the site. The landscape management plan shall be carried out as approved.

Listed Buildings / Conservation (protection)

71 The works shall not be carried out before the details and position of a fence to protect the [nearby building/conservation asset] have been submitted to and approved in writing by the local planning authority. The approved fence shall be erected before works commence and shall be retained until the approved works are completed in their entirety and all heavy machinery removed from site.

72 The [specify features] included in the [works / alterations] hereby approved shall be [specify design and/or materials].

Listed Building (access for recording)

73 No works to which this consent relates shall commence until an appropriate programme of historic building recording and analysis has been secured and implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.

Listed Building (enabling development)

74 Before the [[buildings / dwellings] hereby permitted are occupied / [x] use begins], the listed building [name] shall have been repaired and restored completely in accordance with the submitted [plans [drawing number(s) x] and/or the schedule of works].

Listed Building (protection of features)

75 The following [architectural features] shall be removed [under the supervision of a specialist contractor first approved by the local planning authority] and stored in a suitable place to be agreed with the local planning authority prior to the commencement of development.

76 No [works / development] shall begin until a method statement for the [retention / re-use] of [list features] has been submitted to and approved by in writing by the local planning authority. The method statement shall include the timing of the removal and reinstatement [specify any other conditions] and measures to be taken to secure and protect the interior features against accidental loss or damage. The work shall thereafter be carried out in accordance with the approved method statement.

77 Before any work hereby authorised begins a method statement detailing what steps will be taken to secure the safety and stability of [part of the building/architectural feature] which is to be retained in accordance with condition [state number] above shall be submitted to and approved in writing by the local planning authority. [Such steps shall, where necessary, include measures to strengthen any wall or vertical surface; to support any floor, roof or horizontal surface; and to provide protection for the building against the weather during the progress of the works].

78 Any historic or archaeological features not previously identified which are revealed when carrying out the works/development shall be retained in-situ and reported to the local planning authority in writing within [x] working days. Works shall be halted in the area/part of the building affected until provision has been made for the retention and/or recording of the feature by a suitably qualified person in accordance with details submitted to and approved in writing by the local planning authority.

Listed Buildings (demolition)

79 The works of demolition shall not be carried out before details of the method of demolition have been submitted to and approved in writing by the local planning authority. The demolition of the building shall be carried out in accordance with the approved details.

80 The demolition of [specify] shall be carried out by hand (or by hand-held tools) only and the materials stored for re-use [specify location/how to be re-used].

Levels

81 No development shall commence until details of existing ground levels and proposed finished ground and floor levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

Materials

82 The materials to be used in the construction of the external surfaces of the extension shall match those used in the existing building.

83 Prior to the construction of the [extension / building / dwellings] hereby approved [details and/or samples] of the materials to be used in the construction of the external surfaces of the [extension / building / dwellings] have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

84 The external surfaces of the building(s) shall be constructed of the materials specified on plan [x]

Noise

85 [Specify activity] shall not take place anywhere on the site except within building(s) identified on plan [x].

86 The level of noise emitted from the site shall not exceed [x]dB between [x and x hours] Monday to Friday and [x]dB at any other time, as measured on the [specified boundary/boundaries] of the site at [location(s) of monitoring point(s)].

87 Notwithstanding the provisions of Part 8 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended for Wales) (or any order revoking and re-enacting that Order with or without modification) no plant or machinery other than that expressly authorised by this permission shall be installed on the site.

88 No [specified machinery] shall be operated on the premises before [time in the morning] on weekdays and [time in the morning] on Saturdays nor after [time in the evening] on weekdays and [time in the evening] on Saturdays, nor at any time on Sundays, Bank Holidays or Public Holidays.

Noise (insulation)

89 The building shall be [constructed / adapted] so as to provide sound insulation against internally generated noise of not less than [x]dB(A), a schedule of how this is to be achieved shall be submitted to and approved in writing by the local planning authority prior to the commencement of development. The sound insulation works shall be completed as approved before the use of the building begins and thereafter retained in perpetuity.

90 The building envelope of plot number[s] [x] shall be constructed so as to provide sound attenuation against external noise, not less than [x]dB(A), with windows shut and other

means of ventilation provided. The sound attenuation works shall be completed before the use of the building begins and thereafter retained in perpetuity.

Occupancy (holiday accommodation)

91 The development shall be occupied as holiday accommodation only and shall not be occupied as a person's sole or main place of residence or by any persons exceeding a period of [x] days in any[[x] day period / calendar year]. An up to date register shall be kept at the holiday accommodation hereby permitted and be made available for inspection by the local planning authority upon request. The register shall contain details of the names of all of the occupiers of the accommodation, their main home addresses and their date of arrival and departure from the accommodation.

Occupancy (live/work units)

92 The business floorspace of the live/work unit shall be finished ready for occupation before the residential floorspace is occupied and the residential use shall not precede commencement of the business use.

93 The business floorspace of the live/work unit shall not be used for any purpose other than for purposes within class [B1] in the schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that class in any statutory instrument revoking and re-enacting that order with or without modification.

94 The residential floorspace of the live/work unit shall not be occupied other than by a person solely or mainly employed, or last employed in the business occupying the business floorspace of that unit, a widow or widower or civil partner of such a person, or any resident dependants.

Occupancy (personal permissions)

95 The [development / use] shall be [occupied / carried on] only by [insert name]

96 All materials and equipment brought [onto the land / into the premises] in connection with the [development / or use] permitted, shall be removed within one month following the cessation of the occupation by the above named person.

Occupancy (staff accommodation)

97 The occupation of the dwelling shall be limited to a person solely or mainly employed or last employed in the business occupying the plot edged red on the attached plan, or a widow, widower or civil partner of such a person, or any resident dependents.

Occupancy (rural enterprise)

98 The occupancy of the dwelling shall be restricted to:

a) a person solely or mainly working, or last working on a rural enterprise in the locality, or a widow, widower or surviving civil partner of such a person, and to any resident dependants;

or if it can be demonstrated that there are no such eligible occupiers,

b) a person or persons who would be eligible for consideration for affordable housing under the local authority's housing policies, or a widow, widower or surviving civil partner of such a person, and to any resident dependants.

One Planet Development

99 The use of the site shall be carried out in accordance with the management objectives set out in [the management plan dated x].

100 No later than [specify date] each year, commencing in the second year after development commences, the occupiers of the site shall submit to the local planning authority a written report giving details of the activities carried out during the previous twelve months, setting out performance against the management objectives included within the Management Plan. In the event that the report identifies that any objective has not been met a supplementary report setting out corrective or mitigating measures shall be submitted to the local planning authority no later than [specify date] of that year. Those measures shall be implemented in accordance with the supplementary report.

Parking

101 No development shall take place until details of the construction of the car park shown on drawing number [x], including levels, drainage and details of the finished surface have been submitted to and approved in writing by the local planning authority. Development shall be completed in accordance with the approved details prior to the occupation of the [buildings / dwellings / development] and the car parking spaces shall remain available for their designated use in perpetuity.

102 No [dwelling] shall be occupied until space has been laid out within the site [in accordance with drawing no [x] for [number] cars to be parked [and for the loading and unloading of [number] vehicles [and for vehicles to turn so that they may enter and leave the site in forward gear]] and that space shall thereafter be kept available for the [parking of vehicles / such purposes] in perpetuity.

103 The development shall not be occupied until facilities for the secure storage of cycles have been provided in accordance with details to be submitted to and approved in writing by the local planning authority and they shall be retained in perpetuity.

Permitted Development Rights

104 Notwithstanding the provisions of schedule 2, part 1, class E of the Town and Country Planning (General Permitted Development) Order 1995 (as amended for Wales) (or any order revoking and re-enacting that order with or without modification), no buildings shall be erected other than those expressly authorised by this permission and shown on plan number [x].

105 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended for Wales) (or any order revoking and re-enacting that Order with or without modification), no fences, gates or walls shall be

erected within the curtilage of any dwelling house forward of the principle elevation of that dwelling house.

106 The [premises **/** land] shall be used for [specify use] and for no other purpose (including any other purpose in class [x] of the schedule to the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to that class in any statutory instrument revoking and re-enacting that order with or without modification).

Renewable Energy

107 Within [x] calendar years from the date when electricity is first generated to the grid, or within [x] months of the cessation of electricity generation by the [type of energy] facility, whichever is sooner, the [facility and all associated works/equipment] shall be dismantled and removed from the site and the land restored to its former condition in line with the restoration plan [doc reference] hereby approved.

108 The permission hereby granted shall endure for a period of [x] years from the date when electricity is first exported from [renewable energy facility]. Written confirmation of the first export date shall be sent to local planning authority within one month of the first export date.

109 Within the year prior to decommissioning of the site, but no later than [x] months prior to decommissioning, a full ecological survey of the site shall be undertaken to inform decommissioning, as required by condition [x]. A survey report shall be submitted to and approved in writing by the local planning authority prior to the commencement of decommissioning and then implemented as approved. The report shall include ecological mitigation measures, as appropriate, based on the ecological assessment findings to be followed during decommissioning, and beyond.

110 In the event of [renewable energy equipment] failing to produce electricity supplied to the local grid for a continuous period of [x] months, then it will be deemed to have ceased to be required, the [renewable energy equipment] and its ancillary equipment shall be dismantled and removed from the site within [x] months of the deemed cessation date and the site restored to its former condition.

Renewable Energy: wind (noise)

111 The level of noise emissions from the turbine hereby permitted when measured in free field conditions at the boundary of any dwelling which lawfully exists or has planning permission for construction at the date of this planning permission shall not exceed [x dB or y dB above prevailing background noise levels] up to wind speeds of [x metres] derived at a height of [x metres] above ground level at a location near to the turbines.

Renewable Energy: wind (decommissioning)

112 No later than 12 months before the expiry date of the planning permission hereby granted a decommissioning and site restoration scheme shall be submitted in writing to the local planning authority. The scheme shall include:

i. Details of the removal of all the wind turbines and the surface elements of the development plus one metre of the turbine bases below ground level

ii. A construction method statement including the details required by conditions [x].

Renewable Energy: wind (project definition)

113 No development shall take place until details of the external finish of the turbines hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

114 All electricity and control cables between the turbines and the site control building shall be laid underground and alongside tracks which are constructed on the site as part of the development. Any variation shall be submitted to and approved in writing before development commences. Development shall be carried out in accordance with the approved details.

Retail

115 The gross retail floorspace hereby permitted shall not exceed [x] square metres and shall not be used for purposes other than the sale of [[x] products / goods], and shall not be used for any other purpose including those set out in class A1 of the schedule for the Town and Country Planning (Use Classes) Order 1987 or any Order revoking, amending or re-enacting that order with or without modification. The retail floorspace hereby approved shall not be subdivided to form units of less than [x] square metres.

Stables

116 The [stable[s] / building / manege] shall be used for the [private stabling / use] of horses incidental to the enjoyment of the dwelling house known as [x] and shall not be used for livery or any commercial purpose.

Trees

117 No development shall take place, nor any demolition works or site clearance, until there has been submitted to and approved in writing by the local planning authority details of a scheme for the protection of trees shown to be retained on drawing number [x]. The approved scheme shall be carried out during the demolition of the buildings and throughout the course of the development and shall include:

a) a plan, at [state scale] showing the position of every tree on the site and on land adjacent to the site (including street trees) that could influence or be affected by the development, indicating which trees are to be removed;
b) and in relation to every tree identified a schedule listing:
information as specified in paragraph 4.4.2.5 of British Standard BS5837:2012 - *Trees in Relation to Design, Demolition and Construction - Recommendations*;
any proposed pruning, felling or other work;
c) and in relation to every existing tree identified to be retained on the plan referred to in (a) above, details of:
any proposed alterations to existing ground levels, and of the position of any proposed excavation, that might affect the root protection area;

all appropriate tree protection measures required before and during the course of development (in accordance with BS5837:2012).

d) areas of existing landscaping to be protected from construction operations and the method of protection.

118 No development shall take place, nor any demolition works or site clearance, until there has been submitted to and approved in writing by the local planning authority details of a scheme for the protection of trees shown to be retained on drawing number [x]. The approved scheme shall be carried out during the demolition of the buildings and throughout the course of the development.

119 [All the trees [and hedges] shown on the landscaping plan [x] as "to be retained" and/or any trees whose canopies overhang the site] shall be protected by strong fencing, the location and type to be previously approved in writing by the local planning authority. The fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any fenced area, and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the local planning authority.

120 If within a period of [5 years] from the date of the planting of any tree proposed as part of the [landscaping scheme] , or any tree planted in replacement of it, is removed, uprooted or destroyed or dies or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted at the same place during the next planting season immediately following the death/removal/destruction of that tree.

121 No development shall take place until a plan showing those trees to be retained and those to be removed has been submitted to and approved in writing by the local planning authority. Development shall thereafter take place in accordance with the approved plan.

Trees (impact of growth or loss)

122 Details of foundation design to take account of [existing trees / future tree planting / tree removal] shall be submitted to and approved in writing by the local planning authority before the commencement of the development. Development shall thereafter take place in accord with the approved details.

Unstable Land

123 No development shall take place until a site investigation has been carried out in accordance with a methodology first submitted to and approved in writing by the local planning authority. The results of the site investigation shall be submitted to the local planning authority before any development begins. If any land instability issues are found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development shall be submitted to and approved in writing by the local planning authority. Remedial measures shall be carried out prior to the first beneficial use of the development in accordance with the approved details and retained in perpetuity.

124 If during the course of development, any unexpected land instability issues are found which were not identified in the site investigation referred to in condition [x], additional measures for their remediation in the form of a remediation scheme shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures which shall be retained [for the period agreed in the remediation scheme / in perpetuity].

Wildlife and Habitat Protection

125 No development shall take place until a [wildlife / habitat] protection plan has been submitted to and approved in writing by the local planning authority. The [wildlife / habitat] protection plan shall include:

i) A plan showing [wildlife / habitat] protection zones'

ii) Details of development and construction methods within [wildlife / habitat] protection zones and measures to be taken to minimise the impact of any works;

iii) Details of phasing of construction.

The protection plan shall then be implemented in accordance with the timings approved by the local planning authority.

126 The [x] work shall be carried out [between the months of [x] and [x] / prior to [demolition of the building / clearance of the site]].

127 Prior to the erection of the lighting shown on plan [x] a light mitigation strategy, including measures to reduce light spillage onto foraging habitats for bats [identified in x], shall be submitted to and approved in writing by the local planning authority.