

Supporting Statement

Application under Section 42 of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006: Removal of condition no. 12 of planning consent reference: P/11/0595/FUL

This statement provides a case to support the removal of condition no. 12 which ties the occupation of the house given approval under planning reference P/11/0595/FUL to agricultural employees.

Supporting Statement

Application under Section 42 of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006: Removal of condition no. 12 of planning consent reference: P/11/0595/FUL

Background

Planning permission was granted, subject to conditions, on 21st September 2012 for the Erection of Dwellinghouse, Storage Buildings, New Retail Store, Café and Associated Ancillary Buildings, Associated Parking and New Vehicular Access at Drumbroider Farm, Falkirk, FK1 2HN.

Condition number 12 of the planning consent states: "Occupation of the house will be limited to a person solely or mainly employed, or last employed in agriculture at Drumbroider Farm, or to a widow or widower of such a person and to any dependants."

The inclusion of this condition has rendered the permission undeliverable as mortgage lenders are not willing to accept its terms. Funding is therefore being withheld on this basis.

The Scottish Government's advice to planning authorities through Scottish Planning Policy and Advice from the Chief Planner supports, and encourages development which supports growth of the rural economy including rural housing where appropriate development plan policies are met. Scottish Governments advice and guidance does not support restrictions on occupancy.

This statement will demonstrate that condition 12 is not appropriate or necessary, is overly onerous and is questionable in its ability to be enforced. By removing the condition, the development could proceed; complementing and completing the high quality rural development which supports the economy and tourism trade in the area.

Scottish Planning Policy

"Scottish Planning Policy promotes a positive approach to rural housing. It does not promote the use of occupancy restrictions."

(Letter from Chief Planner to Heads of Planning, 4th Nov 2011.)

National Statute and Policy

Scottish Planning Policy 2010 (SPP) (Current policy at time of consideration of the application)

"Development plans should support more opportunities for small scale housing development in all rural areas, including new clusters and groups ...and new build or conversion housing which is linked to rural businesses..."

The aim is not to see small settlements lose their identity nor to suburbanise the Scottish countryside but to maintain and improve the viability of communities and to support rural businesses.

...new housing outwith existing settlements may have a part to play in economic regeneration and environmental renewal. All new development should respond to the specific local character of the location, fit in the landscape and seek to achieve high design and environmental standards, particularly in relation to energy efficiency." (Scottish Planning Policy, 2010)

The policy advice provided by the Scottish Government clearly promotes sensitive and appropriate rural development, including housing particularly where linked to rural businesses. Therefore the principle of a house linked to a rural business is accepted as appropriate and supported. The report of handling (Appendix 1) relating to the application confirms that appropriate consideration was given to siting, design and environmental considerations as well as the economic benefits. The officer concluded that the house was acceptable as part of the overall development.

Scottish Planning Policy 2014 (SPP 2014) Published 23rd June 2014

The recently published SPP 2014 confirms the Government's commitment to encourage and support for well-planned rural development.

"The planning system should:

- *in all rural and island areas promote a pattern of development that is appropriate to the character of the particular rural area and the challenges it faces;*
- *encourage rural development that supports prosperous and sustainable communities and businesses whilst protecting and enhancing environmental quality;..."* (SPP 2014, para75)

The Scottish Government does not support the use of occupancy conditions in any circumstance related to rural housing.

Both paragraphs 81 and 83 explicitly advise against the use of occupancy conditions in relation to new rural housing.

"In accessible or pressured rural areas, where there is a danger of unsustainable growth in long-distance car-based commuting or suburbanisation of the countryside, a more restrictive approach to new housing development is appropriate, and plans and decision-making should generally:

- *guide most new development to locations within or adjacent to settlements; and*
- *set out the circumstances in which new housing outwith settlements may be appropriate, **avoiding use of occupancy restrictions.**"* (SPP 2014, para 81)

"In remote rural areas, where new development can often help to sustain fragile communities, plans and decision-making should generally:

- ***not impose occupancy restrictions on housing.**"* (SPP 2014, para 83)

Circular 4/1998: The Use of Conditions in Planning Permissions

This statute states that planning conditions should only be imposed where they meet the following 6 tests. Conditions must be:-

- necessary
- relevant to planning
- relevant to the development to be permitted
- enforceable
- precise
- reasonable in all other respects.

Necessary:

"TEST: NEED FOR A CONDITION

*In considering whether a particular condition is necessary, authorities should ask themselves whether planning permission would have to be refused if that condition were not to be imposed. If it would not, then the condition needs special and precise justification. Planning authorities should also **avoid imposing conditions through anxiety to guard against every possible contingency, however remote.** The argument that a condition will do no harm is no justification for its imposition; **as a matter of policy a condition ought not to be imposed unless there is a definite need for it.** The same principles, of course, must be applied in dealing with applications for the removal of a condition under section 33 or 42 of the Act; **a condition should not be retained unless there are sound and clear-cut reasons for doing so.**" (Circular 4/1998)*

Guidance was provided to the Heads of Planning Authorities across Scotland in the form of a Letter from the then Chief Planner – Jim McKinnon – in November 2011. The advice was clear:

“Scottish Planning Policy promotes a positive approach to rural housing. It states that development plans should support more opportunities for small scale housing development in all rural areas, including housing which is linked to rural businesses. It does not promote the use of occupancy restrictions.

The Scottish Government believes that occupancy restrictions are rarely appropriate and so should generally be avoided.

Where the authority is satisfied that an adequate case has been made, it should not be necessary to use formal mechanisms to restrict occupancy. In areas where new housing can help to support vibrant rural communities or sustain fragile rural areas, planning authorities should seek to support suitable investment in additional provision, focussing on the issues of location, siting, design and environmental impact rather than seeking to place restrictions on who occupies the housing.” (Letter from Chief Planner to Heads of Planning, Nov 2011).

A copy of the full letter from the Chief Planner can be found in Appendix 1 for information.

Guidance and advice both directly from the Chief Planner and contained in the Scottish Planning Policy promote rural housing linked to rural business, and do not support the use of occupancy conditions. On this basis it is challenged that the condition is needed in the context that the rural business expansion granted permission was fully supported throughout the planning process.

Reasonable:

“TEST: REASONABLENESS

Avoidance of Onerous Requirements

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. For example, a condition which would put a severe limitation on the freedom of an owner to dispose of his property, or which would obviously make it difficult to finance the erection of the permitted building by borrowing on mortgage, should be avoided on these grounds. An unduly restrictive condition can never be made acceptable by offering the prospect of informal relaxation of its effect.”

(Circular 4/1998)

The occupancy limitation applied through condition 12 has directly impacted on the ability of Mr. and Mrs. Baird to gain mortgage funding for the house. The condition limits the banks’ ability to guarantee a return at the full market value for the house even with a first ranking security. The value of the house will be suppressed by the condition on the basis that the house cannot be openly marketed. On this basis condition 12 does not meet the test for reasonableness. This is confirmed within the Letter from the Chief Planner also referenced above which states:

*"A number of issues have arisen with the use of occupancy restrictions, some of which have been exacerbated by the current economic situation. **Some people have found it difficult to get a mortgage to buy a house with an occupancy restriction.** Others have found it difficult to sell the house, or have the restriction lifted, when they are forced by necessity to move... **In areas where new housing can help to support vibrant rural communities or sustain fragile rural areas, planning authorities should seek to support suitable investment in additional provision, focussing on the issues of location, siting, design and environmental impact rather than seeking to place restrictions on who occupies the housing.**" (Letter from Chief Planner to Heads of Planning, Nov 2011).*

On the basis of the above, condition 12 is not considered to meet the test of reasonableness.

Enforceable:

"TEST: ABILITY TO ENFORCE

A condition should not be imposed if it cannot be enforced...

Practicality of Enforcement

Sometimes a condition will be unenforceable because it is in practice impossible to detect an infringement. **More commonly it will merely be difficult to prove a breach** of its requirements... **Slavish or uncritical application of conditions is wholly inappropriate."** (Circular 4/1998)

Again referencing the Letter from the Chief Planner, it clearly states that occupancy conditions are both difficult to monitor and enforce providing another reason why occupancy conditions should not be imposed.

"Occupancy restrictions can also be intrusive, resource-intensive and difficult to monitor and enforce." Letter from Chief Planner to Heads of Planning, Nov 2011).

Historically, the application of standardised occupancy conditions tying rural housing to agriculture was a common approach to protecting the rural environment from over development. However the recent guidance provided in Scottish Planning Policy and advice from the Chief Planner to planning authorities takes a more proactive and positive approach to rural development and actively promotes appropriate development in the countryside where it complies with relevant policy.

The report of handling confirms that the planning officer was content that the development, in all respects, complied with all relevant policies in both the development plan and at national level. Condition 12 appears to have been added in response to concerns raised from comments received from 3rd parties. This position is not supported by statute, policy, guidance or from consultees.

Conclusion

In conclusion, SPP and SPP 2014 supports and promotes housing in rural areas, particularly where linked to rural businesses, provided it is developed sensitively within the appropriate landscape context.

The house, as part of the overall development, was fully considered at the planning application stage and confirmed by the officer as complying with all relevant policies and guidance in the report of handling. The house was therefore considered to be acceptable.

Statute makes it clear when, and in what context, conditions are acceptable, through application of the 6 tests within Circular 4/1998.

The Letter from the Chief Planner referenced above (Nov 2011), confirms that if a development is, in all other respects, acceptable, the use of occupancy conditions is rarely appropriate and should be avoided particularly where this leads to limitation of funding.

According to the Chief Planner, the need for a condition to restrict occupancy of a house, is not necessary, is onerous and is difficult to monitor and enforce. The condition does not therefore meet 3 of the 6 tests within Circular 4/1998.

In this context, it is respectfully requested that the condition be removed, allowing the development to proceed.

Appendix 1: Supporting Documents

Report of Handling: P/11/0595/FUL

http://eplanning.falkirk.gov.uk/online/files/A0AE3F3BF8EEE357D310E507E252CAD0/pdf/P_11_0595_FUL-Report_of_Handling-334865.pdf

Planning Decision Notice:

http://eplanning.falkirk.gov.uk/online/files/DB88BDDEAAA2CBACF8E3894B26BB2E91/pdf/P_11_0595_FUL-Decision_Note-334861.pdf

Scottish Government Circular 4/1998: The Use of Conditions in Planning Permissions

<http://www.scotland.gov.uk/Publications/1998/02/circular-4-1998/circular-4-1998-a>

Scottish Government: Scottish Planning Policy, Feb 2010

<http://www.scotland.gov.uk/Resource/Doc/300760/0093908.pdf>

Scottish Government: Scottish Planning Policy, June 2014

<http://www.scotland.gov.uk/Resource/0045/00453827.pdf>

Letter from Chief Planner to Heads of Planning Nov 2011:

<http://www.scotland.gov.uk/Resource/0042/00427279.pdf>

Copies of documents referred to in links in Appendix 1: Supporting Documents

1. P/11/0595/FUL Report on Handling
2. P/11/0595/FUL Planning Decision Notice
3. SG Circular 4/1998 The Use of Conditions in Planning Permissions
4. SPP (2010) Scottish Planning Policy 2010
5. SPP (2014) Scottish Planning Policy 2014
6. Letter From Chief Planner to Heads of Planning – Nov 2011

PLANNING APPLICATION DETERMINED BY DIRECTOR OF DEVELOPMENT SERVICES UNDER DELEGATED POWERS – REPORT OF HANDLING

PROPOSAL : Erection of Dwellinghouse, Storage Buildings, New Retail Store, Café and Associated Ancillary Buildings, Associated Parking and New Vehicular Access
LOCATION : Drumbroider Farm, Falkirk, FK1 2HN
APPLICANT : Central Saddlery
APPN. NO. : P/11/0595/FUL
REGISTRATION DATE : 23 September 2011

1. SITE LOCATION / DESCRIPTION OF PROPOSAL

The site consists of the Drumbroider farm unit, which is located between the villages of Avonbridge and Standburn. The main farm buildings are currently all grouped together at a high point on the land, with the property sloping off gently in both a north-west and south-east direction. The lower section of the farm land to the south-east runs into an area covered by Avon Valley Area of Great Landscape Value (AGLV). The farm unit as a whole is also divided by the B825 road, which is a main link between this rural area and the main A class roads and the motorway network. The farm is currently an active livestock farm, but also contains on-site a saddlery business which members of the public are able to visit. Due to the success of the saddlery business, it is being proposed to reorganise the farm unit. This will consist of demolishing the existing barns which are used as the shop unit and office, and then erecting a large new unit which will consist of a retail area, cafe, storage areas and offices for the business. It is also being proposed as part of the redevelopment to separate the areas accessible by members of the public from that of the operational farm. It is therefore being proposed to erect a second dwelling to the lower south-east section of the farm, which would also include associated farm buildings to allow livestock operations to take place within this new area. This would allow the majority of operations to be split and not require as many crossings of livestock over the B825 road. It is being proposed that the son of the farm owner would occupy the property, as he is employed full-time on the farm, but currently lives remotely from the unit. The remainder of the main farm cluster would also be organised so the farm operations do not cross into the public areas, although the existing and proposed buildings would remain grouped together.

2. SITE HISTORY

P/11/0791/FUL - Erection of Wind Turbine (50 kW) (25 Metres to Hub) (34 Metres to Blade Tip) - Granted

3. CONSULTATIONS

The following responses to consultation were received:

Civil Aviation Authority	No objection to the proposal.
PassiM Developments Ltd	No objection to the proposal. The information provided appears to show that the project would be financially viable and the proposals have been adequately researched.
DE Operations North	No objection to the proposal.
RSPB	No response received.
NATS En-Route Ltd	No objection to the proposal.
Air Ambulance	No response received.

Cumbernauld Airport Limited	No response received.
Central Scotland Police	No response received.
Roads Development Unit	No objection to the proposal.
Scottish Water	No objection to the proposal.
Environmental Protection Unit	No objection to the proposal, however, a contaminated land assessment would be required to be conditioned if the proposal was to be granted.
BAA Safeguarding Team	No objection to the proposal.

Where the local Community Council requested consultation, their comments appear above.

4. PUBLIC REPRESENTATION

In the course of the application, 7 contributor(s) submitted letter(s) to the Council. The salient issues are summarised below.

- Objections to a proposed wind turbine are no longer relevant, as the turbine was removed from the proposal.
- The criteria for building a new dwellinghouse should be based solely on the need for livestock farming and not on the retail element of the business.
- Land is rented out to another farmer; there is no need for a further dwelling when the livestock side of the business is diminishing.
- The move of the retail business into a new development would release two existing barns. These could then be used for farming purposes rather building new barns/outbuildings.
- The occupant for the proposed dwelling is heavily involved in the saddlery business, it is not clear if the livestock business alone could support this person.
- Livestock operations are to be moved to the southern fields of the farm for health and security, as much of the land is to the north, why is this?
- Noise and disturbance would be caused by the proposed farm dwelling and outbuildings to the nearby dwelling of Heatherstalks.
- The Council should reject proposals for a new farm within a greenfield location.
- No objection if the new dwelling was to be erected adjacent to the existing farm buildings.
- The property could be erected and then sold, then not being used in conjunction with the farm unit.

5. THE DEVELOPMENT PLAN

The proposed development was assessed against the undernoted Development Plan(s):

Falkirk Council Structure Plan

Econ.7 Tourism

Env.1 Countryside and Protected Areas

Env.3 Nature Conservation

Env.7 Quality of Development

Falkirk Council Local Plan

The proposed development was assessed against the following policy or policies:

EQ19 - Countryside

EQ22 - Landscape and Visual Assessment

EQ23 - Areas of Great Landscape Value

EQ24 - Ecological Sites and Features

EQ26 - Trees, Woodland and Hedgerows

SC03 - Housing Development in the Countryside

EP05 - Business and Industrial Development in the Countryside

EP09 - Food and Drink

EP16 - Leisure and Tourism Development in the Countryside

5A. MATERIAL CONSIDERATIONS

Falkirk Council Supplementary Guidance

Assessment of Public Representations

6. PLANNING ASSESSMENT

The Development Plan

The proposal was assessed against both the Falkirk Council Structure Plan and the Falkirk Council Local Plan.

Structure Plan Policies

Policy ECON.7 Tourism - The proposed development would be seen to support and expand the main market of day trips to the district, especially with the addition of the cafe element. It is proposed that this would encourage current customers to spend longer at the site and bring family members, friends etc, who currently would not generally accompany the main user. The expanded facilities would also be seen as the basis for being able to offer business tourism and further expand the potential of visit types i.e. allowing horse trekking trips to begin/end at the facilities. The proposal is seen to require the countryside location, given that it is overall integrated within the current farm business, and is part of a wider reorganisation of the farm unit. The current location is also seen to be suited to the saddlery business, and allows easy access for owners to bring horses, ponies etc to the site to be fitted for equipment. It is therefore considered that the proposal accords with Policy ECON.7.

Policy ENV.1 Countryside and Protected Areas - It has been demonstrated by the applicants that a countryside location is essential for the proposals, and elements of the proposal are also seen to be appropriate forms of agricultural diversification. The proposal has been assessed against the relevant Local Plan policies appropriate to specific protected areas as defined generally in Schedules ENV.1 and ENV.3 of the Falkirk Council Structure Plan. It is therefore considered that the proposal accords with Policy ENV.1.

Policy ENV.3 Nature Conservation - Although there are no specific protected wildlife or nature sites within the application sites, the drainage from the main farm unit would eventually drain to a wildlife site to the north of the main unit. It is however not considered that this would have any impacts on this particular wildlife site, given that current water run-off reaches this specific location. The drainage will also have to meet the relevant SEPA and Council standards, which would protect the quality and amount of water run-off. The proposal is therefore not going to have an adverse effect on the wildlife site. It is therefore considered that the proposal accords with Policy ENV.3.

Policy ENV.7 Quality of Development - The buildings contained within the proposal have been designed in a contemporary style, but have taken the main elements from more traditional countryside buildings. The exterior materials and overall appearance would be suitable for a countryside location, and relevant supporting documents were submitted which take into account the items in Schedule ENV.7 of the Falkirk Council Structure Plan. The relevant local plan policies, as well as supplementary planning guidance have been assessed. It is therefore considered that the proposal accords with Policy ENV.7.

Local Plan Policies

Policy EQ19 Countryside - It is not considered that the proposed developments would have an adverse impact on the character of the countryside. The siting of the proposed buildings has been carefully considered, for both operational reasons and the impact on the surrounding area. It is considered that the proposed main units will integrate well into the existing farm buildings and site, whilst the proposed dwelling and outbuildings have been placed to the southern ends of the lands on a lower location in the land. A planting scheme around the proposed dwelling will be required, which will reduce its overall impact within the landscape. The building designs are sympathetic to that found within a rural location, with external materials and colours also being suitable to a countryside location. All boundary and curtilage treatments will be required through condition to be confirmed with the Council, which will ensure that they are adequate for the location. It is therefore considered that the proposal accords with Policy EQ19.

Policy EQ22 Landscape and Visual Assessment - The application included relevant supporting information which assessed the design and impact of this within the landscape, as part of the design statement. It is considered that the setting is capable of absorbing the proposed developments, and suitable landscape mitigation measures will be conditioned where necessary. It is believed however that the proposed locations are both operationally viable for the farm, whilst maintaining the landscape character of the area. It is therefore considered that the proposal accords with Policy EQ22.

Policy EQ23 Areas of Great Landscape Values - The proposed farm dwelling is contained within, albeit on the edge, of the Avon Valley Area of Great Landscape Value (AGLV). The proposal was accompanied by relevant information relating to the proposed designs and the impact on the surrounding landscape. It is not considered that in this location the proposed farm dwelling and associated outbuildings would be detrimental to the amenity and distinctive landscape quality. The proposed are suitable additions to the rural area, and externally will be constructed of materials associated with such areas. If granted, the proposal will include conditions in relation to planting around the proposed farm dwelling and outbuildings, which will further integrate the proposal into the surrounding landscape. It is therefore considered that the proposal accords with Policy EQ23.

Policy EQ24 Ecological Sites and Features - Although there are no specific protected wildlife or nature sites within the application sites, the drainage from the main farm unit would eventually drain to a wildlife site to the north of the main unit. It is however not considered that this would have any impacts on this particular wildlife site, given that current water run-off reaches this specific location. The drainage will also have to meet the relevant SEPA and Council standards, which would protect the quality and amount of water run-off. The proposal is therefore not going to have an adverse effect on the wildlife site. It is therefore considered that the proposal accords with Policy EQ24.

Policy EQ26 Trees, Woodland and Hedgerows - The proposed developments will see the removal of hedgerows to allow relevant access points to be created. However, if granted, it would be conditioned that a plan be submitted and approved by the Council in relation to all new boundary treatment. It will be considered where possible that hedgerows will be replanted using appropriate native species. It is therefore considered that the proposal accords with Policy EQ26.

Policy SC3 Housing Development in the Countryside - It has been demonstrated through supporting documentation submitted, that the business is financially viable and could accommodate the further dwelling in association with the business. The countryside location is essential as the proposed dwelling would be a key component of the reorganised farm operations. There is currently no other dwellings owned by the farm unit that could be used, and due to the overall business plan for the farm unit, no suitable buildings which could be converted to a dwelling. The locations of existing buildings on the farm are also not seen to be suitable in terms of the proposal to relocate the majority of livestock operations, hence the proposed dwellings location. The business however is seen to be capable of providing the

main source of income for the proposed occupier, which has been verified for the Council by an independent agricultural consultant. It is therefore considered that the proposal accords with Policy SC3.

Policy EP5 Business and Industrial Development in the Countryside - The current saddlery and livestock businesses are established on the farm unit, and have been for many years. It is considered that the proposed extensions to the businesses, in terms of new on-site facilities, can be accommodated without any additional adverse impact on the rural environment. The majority of the proposals will be seen to take place within and adjacent to the existing farm buildings cluster. The improved facilities will benefit the overall appearance of the unit, as well as increase environmental efficiencies. The proposed properties will also be seen to use materials externally that are suitable for a rural environment, giving an overall sympathetic and expectant rural appearance. It is therefore considered that the proposal accords with Policy EP5.

Policy EP9 Food and Drink - The proposed extended retail unit within the proposals, will also include an ancillary cafe. It is considered acceptable at this location, as it will offer the opportunity to create more of a tourism function than simply a retail outlet. There will be no adverse impact on the amenity of the surrounding area in terms of noise, disturbance, litter or odours. Parking, access and traffic generation have all been addressed through design of the overall site, and would be considered acceptable. It is therefore considered that the proposal accords with Policy EP9.

Policy EP16 Leisure and Tourism Development in the Countryside - The extension to the current saddlery business, which already occupies a countryside location and would continue to require such given its integration within the farm unit and business as a whole, will be seen to add elements which will operate a tourism function. The new facilities will include a cafe, which it is hoped will bring more members of the public to the area i.e. retail visitors may bring friends, family members etc along, who would not normally accompany them on a purely retail visit. It is hoped that this facility may also allow such activities as horse trekking to start and end on the site. This would therefore be ancillary to the main retail use, but would be an appropriate facility linked to it, and provide a suitable attraction for members of the public to use. The proposals overall would not be seen to affect the overall rural environment at this location, and it would comply with all other relevant local plan policies. It is therefore considered that the proposal accords with Policy EP16.

Supplementary Guidance

Scottish Planning Policy - The proposed developments at Drumbroider Farm would allow the farm livestock business and saddlery business to continue to grow, as well as allowing a diversification of the farms main business. This is supported by Scottish Planning Policy, if it is ensured that the distinctiveness as well as the environmental quality of the rural area is protected. It is considered that the proposal will enable this, whilst securing an economic future for the farm, and helping with the overall rural economy of the area. It will also be seen to help in the promotion of tourism within the area, again bringing a source of income into the rural area in a sensitive manner, which is again generally supported within Scottish Planning Policy. It is therefore considered that the proposal accords with Scottish Planning Policy.

Assessment of Public Representations

- The proposed business plan for the farm was reviewed by an independent Agricultural Consultant for the Council, with the business plan being seen as suitable for the rural area and financially viable. The saddlery business is well established on this farm, and diversification of farm businesses is supported within Scottish Planning Policy, it is therefore suitable to include it within the overall assessment of the site.
- The land is still within the ownership of the farm, and as such, can be used as part of their long-term business plan. This was seen to be acceptable as verified by an independent Agricultural Consultant.
- The current plans for the farm include a shift of the livestock business to the southern lands, which is why there is a remote dwelling and barns within the application. Current properties on-site are all still intended to be used for the businesses, with no building currently being proposed as surplus to requirements.
- The person who intends to occupy the new dwelling is employed full-time within the farm businesses, which has been verified from supporting information.

- It was intended to move much of the livestock activities to the southern section of the farm as an overall plan to reorganise the farm unit. This would also allow less crossings of the B825 road of livestock each year.
- Environmental Protection was consulted on the application and had no concerns relating to noise or disturbance from the new dwelling/out-buildings in relation to neighbouring dwellings. If noise or disturbance was experienced, Environmental Protection could be informed, and if necessary, take any action to resolve the matter.
- The site for the new dwelling/out-buildings is not specifically protected, and therefore has been assessed under the relevant countryside policies.
- The dwelling is not proposed adjacent to the existing farm as the overall farm unit is to be reorganised, with a new area created to the southern farm land which would be capable of dealing with livestock.
- A condition will be placed on the occupancy of the new dwelling, restricting it to persons employed in agriculture by the farm and/or their dependants. Any removal of such conditions would require a further application to the Planning Authority, which would have to be fully assessed under the relevant policies at that time.

7. CONCLUSION

It is considered that the proposal is acceptable development and is in accordance with Policy ECON.7, ENV.1, ENV.3 and ENV.7 of the Falkirk Council Structure Plan and Policy EQ19, EQ22, EQ23, EQ24, EQ26, SC3, EP5, EP9 and EP16 of the Falkirk Council Local Plan. There are no material planning considerations which would justify a refusal of planning permission.

8. RECOMMENDATION

Grant Planning Permission

Permission should be subject to the following condition(s):-;

1. The development to which this permission relates must be begun within three years of the date of this permission.
2.
 - i. No development shall commence on site unless otherwise agreed with the planning authority until a contaminated land assessment has been submitted and approved. The assessment must determine the nature and extent of any contamination on the site, including contamination that may have originated from elsewhere. Any potential risks to human health, property, the water environment and designated ecological sites should be determined. The contaminated land assessment must be approved in writing by the Planning Authority.
 - ii. Where contamination (as defined by Part IIA of the Environmental Protection Act 1990) is encountered, a detailed remediation strategy should be submitted to the Planning Authority demonstrating that the site will be made suitable for its intended use by removing any unacceptable risks, caused by the contamination. The scheme must be approved in writing by the Planning Authority.
 - iii. Prior to the commencement of development of the site, the remediation works must be carried out in accordance with the terms and conditions of the remediation scheme, and as agreed by the Planning Authority. No part of the development shall be occupied until a remediation completion report/validation certificate endorsed by the relevant parties have been submitted to and agreed in writing by the Planning Authority.
 - iv. If unexpected contamination is found after development has begun, development of the affected part of the site must stop. The developer must notify the Planning Authority immediately and carry out a contaminated land assessment, and undertake any necessary remediation works, before development of the affected part of the site may continue.
3. To provide adequate screening within the Avon Valley Area of Great Landscape Value, the proposed dwelling and associated outbuildings shall be screened by appropriate native species

planting to the southern and eastern sides of the plot. An appropriate plan detailing the exact specification of the planting must be provided, the species to be planted, proportions, sizes of nursery stock at planting, planting density / spacing, methods of protection (tree shelters & fencing) together with a statement on the proposed maintenance to aid rapid establishment (e.g. hand / chemical weed to a diameter of 1m² around each tree for first 2 years). The plan and associated information shall be submitted to, and approved in writing by, the Planning Authority.

4. Details of the materials to be used on the external surfaces of the buildings, and in the construction of any hard standings/walls/fences, shall be submitted to and approved in writing by the Planning Authority. The development shall thereafter be carried out using the approved materials or such alternatives as may be agreed in writing with the Planning Authority.
5. Development shall not begin until details of the scheme of hard and soft landscaping works have been submitted to and approved in writing by the Planning Authority. Details of the scheme shall include (as appropriate):
 - i. existing and finished ground levels in relation to a fixed datum, preferably ordnance
 - ii. existing landscaping features and vegetation to be retained and, in the case of damage, restored
 - iii. location and design, including materials, of walls, fences and gates
 - iv. soft and hard landscaping works
6. The first 2 metres of the main farm unit access road and the dwelling access road, as well as the subsequent changes to the roadside drainage, shall be designed and constructed in accordance with Falkirk Council's "Design Guidelines and Construction Standards for Roads in the Falkirk Council Area".
7. The main farm unit access road junction with the B825, shall have a visibility splay of 2.4m by 140m provided and maintained, within which there should be no obstruction to visibility over 1m in height above carriageway level.
8. The proposed dwelling access road junction with Candie Road Lower, shall have a visibility splay of 2.4m by 80m provided and maintained, within which there should be no obstruction to visibility over the verge level.
9. Any gates on the access road from the B825 to the main farm unit shall be located a minimum of 20 metres from the public road.
10. Before the main farm unit building is occupied, the associated public car parking shown on the Approved Plans shall be completed.
11. Development shall be carried out in accordance with the requirements of the Scottish Environmental Protection Agency in relation to the treatment and discharge of drainage water, and so that there is no adverse impact on the Drumbroider Moss Wildlife Site. Evidence of such compliance shall be submitted to the Planning Authority on demand.
12. Occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed in agriculture at Drumbroider Farm, or to a widow or widower of such a person and to any dependants.

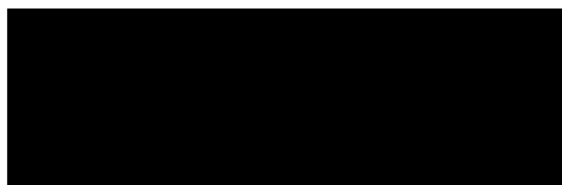
Reason(s):

1. The development to which this permission relates must be begun within five years of the date of this permission.
2. To ensure the ground is suitable for the proposed development.
3. To safeguard the visual amenity of the area.

4. To safeguard the visual amenity of the area.
5. To safeguard the visual amenity of the area.
6. To safeguard the interests of the users of the highway.
7. To safeguard the interests of the users of the highway.
8. To safeguard the interests of the users of the highway.
9. To safeguard the interests of the users of the highway.
10. To ensure that adequate car parking is provided.
11. To safeguard the environmental amenity of the area.
12. To ensure control over the agricultural occupancy of the dwelling in association with Drumbroider Farm.

Informatives:

1. For the avoidance of doubt, the plan(s) to which this decision refer(s) bear our online reference number(s) 01D, 02A, 03B, 04D, 05C, 06B, 07C, 08B, 09D, 10, 11A, 12B, 13B and 15B.
2. The Roads Manager within Corporate and Commercial Services should be contacted to obtain a Minor Roadworks Consent before forming a vehicular access onto the public road or undertaking any work on, or under, the public road.
3. Separate consent may be required from Scottish Water for certain aspects of this development.



Director of Development Services

Deirdre McPhee

21/9/12

Date

**Contact Officer : Stephen McClure
(Planning Officer) 01324 504702**

Reference No. P/11/0595/FUL



Please note: this permission does not carry with it any necessary consent or approval for the proposed development under any other statutory enactments.

Falkirk Council

**Town and Country Planning (Scotland) Acts as Amended
Issued under a Statutory Scheme of Delegation.**

Planning Permission

Applicant

Central Saddlery
Drumbroider Farm
Avonbridge
Falkirk
FK1 2HN

This Notice refers to your application registered on 23 September 2011 for permission in respect of the following development:-

Development Erection of Dwellinghouse, Storage Buildings, New Retail Store, Café and Associated Ancillary Buildings, Associated Parking and New Vehicular Access at

Location Drumbroider Farm, Falkirk, FK1 2HN

The application was determined under Delegated Powers. Please see the attached guidance notes for further information, including how to request a review of the decision.

In respect of applications submitted on or after 1 January 2010, Falkirk Council does not issue paper plans. Plans referred to in the informatives below can be viewed online at <http://eplanning.falkirk.gov.uk/online/applicationDetails.do?action=showSummary&caseNo=P/11/0595/FUL>. In accordance with the plans docquetted or itemised in the attached informatives as relative hereto, Falkirk Council, in exercise of its powers under the above legislation, hereby

Grants Planning Permission

This decision is issued subject to the following condition(s):-

1. The development to which this permission relates must be begun within three years of the date of this permission.
2.
 - i. No development shall commence on site unless otherwise agreed with the planning authority until a contaminated land assessment has been submitted and approved. The assessment must determine the nature and extent of any contamination on the site, including contamination that may have originated from elsewhere. Any potential risks to human health, property, the water environment and designated ecological sites should be determined. The contaminated land assessment must be approved in writing by the Planning Authority.
 - ii. Where contamination (as defined by Part IIA of the Environmental Protection Act 1990) is encountered, a detailed remediation strategy should be submitted to the Planning Authority demonstrating that the site will be made suitable for its intended use by removing any unacceptable risks, caused by the contamination. The scheme must be approved in writing by the Planning Authority.

- iii. Prior to the commencement of development of the site, the remediation works must be carried out in accordance with the terms and conditions of the remediation scheme, and as agreed by the Planning Authority. No part of the development shall be occupied until a remediation completion report/validation certificate endorsed by the relevant parties have been submitted to and agreed in writing by the Planning Authority.
 - iv. If unexpected contamination is found after development has begun, development of the affected part of the site must stop. The developer must notify the Planning Authority immediately and carry out a contaminated land assessment, and undertake any necessary remediation works, before development of the affected part of the site may continue.
3. To provide adequate screening within the Avon Valley Area of Great Landscape Value, the proposed dwelling and associated outbuildings shall be screened by appropriate native species planting to the southern and eastern sides of the plot. An appropriate plan detailing the exact specification of the planting must be provided, the species to be planted, proportions, sizes of nursery stock at planting, planting density / spacing, methods of protection (tree shelters & fencing) together with a statement on the proposed maintenance to aid rapid establishment (eg hand / chemical weed to a diameter of 1m² around each tree for first 2 years). The plan and associated information shall be submitted to, and approved in writing by, the Planning Authority.
4. Details of the materials to be used on the external surfaces of the buildings, and in the construction of any hard standings/walls/fences, shall be submitted to and approved in writing by the Planning Authority. The development shall thereafter be carried out using the approved materials or such alternatives as may be agreed in writing with the Planning Authority.
5. Development shall not begin until details of the scheme of hard and soft landscaping works have been submitted to and approved in writing by the Planning Authority. Details of the scheme shall include (as appropriate):
- i. existing and finished ground levels in relation to a fixed datum, preferably ordnance
 - ii. existing landscaping features and vegetation to be retained and, in the case of damage, restored
 - iii. location and design, including materials, of walls, fences and gates
 - iv. soft and hard landscaping works
6. The first 2 metres of the main farm unit access road and the dwelling access road, as well as the subsequent changes to the roadside drainage, shall be designed and constructed in accordance with Falkirk Council's "Design Guidelines and Construction Standards for Roads in the Falkirk Council Area".
7. The main farm unit access road junction with the B825, shall have a visibility splay of 2.4m by 140m provided and maintained, within which there should be no obstruction to visibility over 1m in height above carriageway level.

8. The proposed dwelling access road junction with Candie Road Lower, shall have a visibility splay of 2.4m by 80m provided and maintained, within which there should be no obstruction to visibility over the verge level.
9. Any gates on the access road from the B825 to the main farm unit shall be located a minimum of 20 metres from the public road.
10. Before the main farm unit building is occupied, the associated public car parking shown on the Approved Plans shall be completed.
11. Development shall be carried out in accordance with the requirements of the Scottish Environmental Protection Agency in relation to the treatment and discharge of drainage water, and so that there is no adverse impact on the Drumbroider Moss Wildlife Site. Evidence of such compliance shall be submitted to the Planning Authority on demand.
12. Occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed in agriculture at Drumbroider Farm, or to a widow or widower of such a person and to any dependants.

Reason(s):-

1. The development to which this permission relates must be begun within five years of the date of this permission.
2. To ensure the ground is suitable for the proposed development.
- 3-5. To safeguard the visual amenity of the area.
- 6-9. To safeguard the interests of the users of the highway.
10. To ensure that adequate car parking is provided.
11. To safeguard the environmental amenity of the area.
12. To ensure control over the agricultural occupancy of the dwelling in association with Drumbroider Farm.

The Council's decision is based on the following reason(s):-

The proposals accord with the provisions of the Development Plan and there are no material considerations which would warrant refusal of the application.

This application is not subject to a planning obligation in terms of Section 75 of the Town and Country Planning (Scotland) Act 1997.

Informative(s):-

1. For the avoidance of doubt, the plan(s) to which this decision refer(s) bear our online reference number(s) 01D, 02A, 03B, 04D, 05C, 06B, 07C, 08B, 09D, 10, 11A, 12B, 13B, 15B, 16 and 17.
2. The Roads Manager within Corporate and Commercial Services should be contacted to obtain a Minor Roadworks Consent before forming a vehicular access onto the public road or undertaking any work on, or under, the public road.
3. Separate consent may be required from Scottish Water for certain aspects of this development.

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Circular 4/1998

INTRODUCTION

1. This Circular and the accompanying Annex sets out Government policy on the use of conditions in planning permissions. It updates and revises the guidance in SDD Circular18/1986, which (except for Appendices A and B - see paragraph 11 below) is now cancelled, to take account of:-

- new legislation, in particular the consolidation of the Planning Acts;
- Court decisions, which are referred to at relevant sections of the Annex;
- additional topics, such as Environmental Assessment and Nature Conservation; and
- good planning practice in the use of conditions.

GENERAL POLICY

2. Conditions imposed on a grant of planning permission can enable many development proposals to proceed where it would otherwise have been necessary to refuse planning permission. While the power to impose planning conditions is very wide, it needs to be exercised in a manner which is fair, reasonable and practicable. Planning conditions should only be imposed where they are:-

- **necessary**
- **relevant to planning**
- **relevant to the development to be permitted**
- **enforceable**
- **precise**
- **reasonable in all other respects.**

The Secretary of State attaches great importance to these criteria being met so that there is an effective basis for the control and regulation of development which does not place unreasonable or unjustified burdens on applicants and their successors in title.

3. Planning conditions must not, however, be applied slavishly or unthinkingly; a clear and precise reason for a condition must be given. While the use of standard conditions can be important to the efficient operation of the development control process, such conditions should not be applied simply as a matter of routine. Conditions should be used to achieve a specific end, not to cover every eventuality.

4. It is essential that the operation of the planning system should command public confidence. The sensitive use of conditions can improve the effectiveness of development control and enhance that confidence. Conditions imposed in an unreasonable way, so that it proves impracticable or inexpedient to enforce them, will damage such confidence and should be avoided.

5. The Annex to the Circular sets out the policy in greater detail.

DEVELOPMENT PLANS

6. Where appropriate, development plans should specify the policies which the authority propose to implement regularly by means of planning conditions. Where applicants for planning permission are aware of such policies, they are more likely to incorporate appropriate details in their submissions, thus reducing the risk of delay in determining the applications and possibly avoiding the need to impose a specific condition.

APPEALS

7. Paragraph19 of AnnexA to SODD Circular13/1997 states that, in the case of planning inquiries, the statement submitted by the planning authority should include a list of conditions that it would wish to see imposed on any approval which may be given. A similar practice, which some authorities already follow, is also appropriate to cases proceeding by way of written submissions. The Secretary of State expects Reporters will be vigilant in ensuring that conditions imposed meet the criteria in paragraph2 above and the detailed policy set out in the Annex.

BREACH OF CONDITION NOTICES

8. Since July 1992, planning authorities have been able to ensure compliance with many planning conditions by serving a breach of condition notice. Guidance about this type of notice is given in SOEnD Circular36/1992. If a valid breach of condition notice is contravened, the resulting offence is open to summary prosecution. But the prosecution's case must always be proved on the criminal standard of proof ("beyond reasonable doubt"). Consequently, if the breach of condition notice procedure is to operate effectively, planning conditions must be formulated precisely. In the event of prosecution, Courts will then have no doubt about exactly what is required in order to comply with the terms of a planning condition.

SPECIALIST SUBJECTS

9. This Circular does not include specific advice on the use of planning conditions for specialist subjects such as minerals workings or for developments relating to waste management.

MANPOWER AND FINANCIAL CONSIDERATIONS

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

MODEL CONDITIONS

11. The Secretary of State is of the view that detailed guidance on model conditions should be provided. Further work with local authority representatives in this area will be undertaken and a list of model conditions will be issued in due course. This Circular should be read with the forthcoming guidance on model conditions. Until the new list of model conditions is published, authorities should continue to refer to these in Appendices A and B of SDD Circular 18/1986.

ENQUIRIES AND FURTHER COPIES

12. Enquiries about the content of this Circular should be addressed to Mr Stephen Bruce (Telephone 0131 244 7065). Further copies of the Circular and a list of current planning circulars may be obtained from The Scottish Office Development Department, Planning Division, 2-H, Victoria Quay, Edinburgh, EH66QQ (Telephone 0131 244 7066 or 7825).

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Circular 4/1998 Annex A

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Circular 4/1998

Annex A THE USE OF CONDITIONS IN PLANNING PERMISSIONS

POWERS

Summary of Powers

1. Conditions on planning permissions may be imposed only within the statutory powers available. Advice on these powers is given below. This advice is intended to be a guide, and it must be stressed that it is not definitive. An authoritative statement of the law can only be made by the Courts. The principal powers are in sections 37 and 41 of the Town and Country Planning (Scotland) Act 1997 (referred to below as "the Act"). Sections 58 and 59 of the Act require the imposition of time-limiting conditions on most grants of planning permission (see paragraphs 45 to 52 below). Powers to impose conditions are also conferred on the Secretary of State or Reporters by sections 46, 48 and 133 and Schedule 4 of the Act. Unless the permission otherwise provides, planning permission runs with the land and conditions imposed on the grant of planning permission will bind successors in title.

General Power

2. Section 37(1) of the Act enables the planning authority to grant planning permission "either unconditionally or subject to such conditions as they think fit". The power to impose conditions is not, however, as wide as it appears, and must be interpreted in the light of Court decisions.

Powers for Conditions on Land Outside Application Site and Temporary Permissions

3. Section 41(1) amplifies the general power in section 37(1) in two ways. It makes clear that the planning authority may impose conditions regulating the development or use of land under the control of the applicant even if it is outside the site which is the subject of the application. (The Courts have held that the question whether land is under the control of an applicant is a matter to be determined according to the facts of the particular case. It is only necessary to have such control over the land as is required to enable the developer to comply with the condition.) The section also makes clear that the planning authority may grant planning permission for a specified period only.

Power to Vary or Remove the Effect of Conditions

4. Section 33 of the Act provides, among other things, for planning applications to be made in respect of development which has been carried out without planning permission and for applications for planning permission to authorise development which has been carried out without complying with some planning condition to which it was subject. Special consideration may need to be given to conditions imposed on planning permissions granted under section 33. For example, the standard time-limiting condition will not be appropriate where development has begun before planning permission has been granted.

5. Section 42 of the Act provides for applications for planning permission to develop land without complying with conditions previously imposed on a planning permission. The planning authority can grant such permission unconditionally or subject to different conditions, or they can refuse the application if they decide that the original condition(s) should continue. The original planning permission will continue to subsist whatever the outcome of the application under section 42. This section will not apply if the period within which the development could begin, as specified in the previous condition, has expired without the development having begun.*

OTHER CONSIDERATIONS

Policy and Other Considerations

6. The limits of the enabling powers are not the only constraints on the use of conditions. Conditions should normally be consistent with national planning policies, as expressed in Government Circulars, National Planning Policy Guidelines (NPPGs) and other published material. They should also normally be consistent with the provisions of development plans and other policies of planning authorities. However, where a certain kind of condition is specifically endorsed by a development plan policy it is still necessary to consider whether it is justified in the particular circumstances of the proposed development. In general, conditions which duplicate the effect of other legislation should not be imposed (see paragraphs 19-22).

PRACTICE

Role of Pre-application Discussions

7. Even before an application is made, informal discussions between the applicant and the 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 requirements of the authority and assist the authority in making sure that those requirements are reasonable in the light of the development proposed. Discussion can also reduce the need for conditions, enable the authority to explore the possible terms of conditions which remain necessary and ensure that these are tailored to the circumstances of the case.

"Standard Conditions"

8. Lists of standard or model conditions can be of great benefit. They can improve consistency of decisions, make effective use of staff resources and increase the speed of processing of planning applications. They may also, however, encourage the use of conditions as a matter of routine, without the careful assessment of the need for a condition which every applicant should be able to expect. Slavish or uncritical application of conditions is wholly inappropriate. Lists of standard conditions can usefully be made available locally, so that developers can take account of possible conditions at an early stage in drawing up their proposals. Such lists 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.

Reasons

9. It is for the planning authority, in the first instance, to judge on the facts of the case whether a particular development proposal should be approved subject to planning conditions. By virtue of Article 22(1)(a) of The Town and Country Planning (General Development Procedure) (Scotland) Order 1992, an authority deciding to grant permission subject to conditions must state the reasons for their decision. Where a planning authority, by virtue of Article 15 of the General Development Procedure Order, has consulted other bodies in respect of a planning application and is disposed to grant planning permission subject to a condition suggested to them by another body, the authority should ensure that the body has provided clear reasons for suggesting the imposition of the condition. Such conditions should only be imposed where they will meet clear land use planning objectives; as stated in paragraph 6 above conditions should not be used to duplicate controls available under other legislation. Reasons must be given for the imposition of every condition. It may be that more than one condition will be justified on the same basis, in which case it will be acceptable that such conditions be grouped together and justified by one reason. 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 can suggest that the condition in question has no proper justification. The phrase "to protect amenity" can also be obscure and will often need amplification. If the reasons for the imposition of conditions are clearly explained, developers will be better able to understand the need for them and to comply with them in spirit as well as in letter. The likelihood of proper and acceptable conditions being challenged on appeal, so that development proposals are held up, will also be diminished.

Notes for Information

10. Sometimes planning authorities will wish to give guidance to an applicant for outline planning permission as to the kind of details of reserved matters which they would find acceptable. A planning authority may also wish to draw the attention of an applicant to other statutory consents (eg listed building or road construction consent) which must be obtained before development can commence. This should not be done by imposing a condition: instead a note may be appended to the planning permission. A note may also be desirable to draw the attention of the applicant to his or her right to make an application to vary or remove a condition under section 42 of the Act, or indeed for other purposes.

Planning Agreements

11. Problems posed by a development proposal may be solved either by imposing a condition on the planning permission or by concluding a planning agreement under section 75 of the Act or under other powers. The Secretary of State's policy on planning agreements is set out in SODD Circular 12/1996. This makes it clear that the planning authority should normally seek to regulate a development by a condition rather than through an agreement, since the imposition of restrictions by means of an agreement deprives the developer of the opportunity of seeking to have the restrictions varied or removed by an application or appeal under Part III of the Act if they are subsequently seen as being inappropriate or too onerous. Planning authorities should note that if a certain restriction is contrary to the advice contained in this Circular it is likely to be objectionable regardless of whether it is suggested that it should be implemented by a condition or an agreement. It is *ultra vires* to impose a condition in a planning permission requiring an applicant to enter into an agreement. Nor should conditions imposed on a grant of planning permission be duplicated in a planning agreement.

TESTS**Six Tests for Conditions**

12. On a number of occasions the Courts have laid down the general criteria for the validity of planning conditions. In addition to satisfying the Courts' criteria for validity, conditions should not be imposed unless they are both necessary and effective, and do not place unjustifiable burdens on applicants. As a matter of policy, conditions should only be imposed where they are:

- **necessary,**
- **relevant to planning,**
- **relevant to the development to be permitted,**
- **enforceable,**
- **precise, and**
- **reasonable in all other respects.**

TEST: NEED FOR A CONDITION

13. In considering whether a particular condition is necessary, authorities should ask themselves whether planning permission would have to be refused if that condition were not to be imposed. If it would not, then the condition needs special and precise justification. Planning authorities should also avoid imposing conditions through anxiety to guard against every possible contingency, however remote. The argument that a condition will do no harm is no justification for its imposition; as a matter of policy a condition ought not to be imposed unless there is a definite need for it. The same principles, of course, must be applied in dealing with applications for the removal of a condition under section 33 or 42 of the Act; a condition should not be retained unless there are sound and clear-cut reasons for doing so.

14. In some cases a condition will clearly be unnecessary, such as where it would repeat provisions in another condition imposed on the same permission. In other cases the lack of need may be less obvious and it may help to ask whether it would be considered expedient to enforce against a breach- if not, then the condition may well be unnecessary.

15. Conditions should be tailored to tackle specific problems, rather than impose unjustified controls. In so far as a condition is wider in its scope than is necessary to achieve the desired objective, it will fail the test of need. For example, where an extension to a dwellinghouse in a particular direction would be unacceptable, a condition on the permission for its erection should specify that, and not simply remove all rights to extend the building. Permissions should not, however, be overloaded with conditions. It might be appropriate, for example, to impose on a permission in a conservation or other sensitive area 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.

Completion of Development

16. Conditions requiring development to be carried out in its entirety, or in complete accordance with the approved plans, often fail the test of need by requiring more than is needed to deal with the problem they are designed to solve. If what is really wanted is simply to ensure that some particular feature or features of the development are actually provided or are finished in a certain way, specific conditions to this end are far preferable to a general requirement.

17. The absence of a specific condition does not prevent enforcement action being taken against development which differs materially from the approved design. However, it may well be easier for planning authorities to enforce compliance with a condition that has been breached, than to enforce on the basis of a material variation from the approved plans or description of development. Where an application includes information, for example on likely hours of working, which significantly influence the planning decision, it may be appropriate to include a specific condition to ensure compliance with the restrictions.

TEST: RELEVANCE TO PLANNING

18. A condition which has no relevance to planning is *ultra vires*. 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 ends 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) where there was no planning justification for such a constraint would similarly be *ultra vires*.

Other Planning Controls

19. Some matters are the subject of specific control elsewhere in planning legislation, for example advertisement control, listed building consent or tree preservation. If these controls are relevant to the development the planning 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 77 and 78 below).

Non-planning Controls

20. Other matters are subject to control under separate legislation, yet are also of concern to 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 will be *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 legislation. However, such a condition may be needed to address the impact of the emissions to the extent that they might have land-use implications and/or are not controlled by the appropriate pollution control authority. (For further advice on this subject, see Planning Advice Note 51 *Planning and Environmental Protection*.) A condition cannot be justified on the grounds that the planning authority is not the body responsible for exercising a concurrent control and, therefore, cannot ensure 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 (as, for example, with certain licences). 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.

21. Where other controls are also available, a condition may, however, be needed when the considerations material to the exercise of the two systems of control are substantially different, since it might be unwise in these circumstances to rely on the alternative control being exercised in the manner or to the degree needed to secure planning objectives. Conditions may also be needed to deal with circumstances for which a concurrent control is unavailable. A further case where conditions may be justified will be where they can prevent development being carried out in a manner which would be likely to give rise to onerous requirements under other powers at a later stage (eg to ensure adequate arrangements for the disposal of sewage and thus avoid subsequent intervention under the Sewerage (Scotland) Act 1968).

22. As a matter of policy, conditions should not be imposed in order to avoid compensation payments under other legislation (although such a condition would not be *ultra vires* if it could be justified on planning grounds). Although conditions which have the effect of restricting for planning purposes the activities in respect of which planning permission is granted may reasonably be imposed without any liability for compensation arising under planning legislation, great care should be taken with conditions which would have the effect of removing future liability for compensation which might arise under other legislation. For example, a condition requiring sound-proofing measures may be appropriate to a permission for residential development near a major road where noise levels are high. But it will be inappropriate to impose such a condition with the aim of removing the roads authority's liability to install soundproofing when proposals for major road improvement are implemented. A condition of this sort is not relevant to the existing planning circumstances, but looks to future circumstances in respect of which other legislation provides compensation for those affected.

TEST: RELEVANCE TO THE DEVELOPMENT TO BE PERMITTED

23. Unless a condition fairly and reasonably relates to the development to be permitted, it will be *ultra vires*.

24. It is not, therefore, 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 being 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. It would similarly be wrong to require the improvement of the appearance or layout of an adjoining site simply because it is untidy or congested. Despite the desirability of these objectives in planning terms, the need for the action would not be created by the new development. On the other hand, it is proper for conditions to secure satisfactory access or parking facilities, for example, which are genuinely required by the users of a proposed development. Conditions can also be proper where the need for them arises out of the effects of the development rather than its own features; for example, where a permission will result in intensification of industrial use of a site, a condition may be necessary requiring additional sound-insulation in the existing factory buildings. It may even be justifiable to require by condition that an existing building be demolished - perhaps where to have both would result in the site being over-intensively developed.

TEST: ABILITY TO ENFORCE

25. 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 127 of the Act or a breach of condition notice under section 145. Precision in the wording of conditions is crucial when it comes to enforcement.

Practicality of Enforcement

26. Sometimes a condition will be unenforceable because it is in practice impossible to detect an infringement. More commonly it will merely be difficult to prove a breach of its requirements. 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 impracticable to monitor and pose severe difficulties in proving an infringement. However, where a condition is intended to prevent harm to the amenity of an area which is clearly likely to result from the development (for example, a condition requiring an amusement centre to close at a certain time in the evening), it will not usually be difficult to monitor compliance with the condition. Those affected by contraventions of its requirements are likely to be able to provide clear evidence of any breaches.

Whether Compliance is Reasonable

27. A condition may raise doubt about whether the person carrying out the development to which it relates can reasonably be expected to comply with it. If not, subsequent enforcement action is likely to fail on the ground that what is required cannot reasonably be enforced. One type of case where this might happen is where a condition is imposed requiring the carrying out of works (eg the construction of a means of access) on land within the application site but not, at the time of the grant of planning permission, under the control of the applicant. If the applicant failed to acquire an interest in that land and carried out the development without complying with the condition, the planning authority could enforce the condition only by taking action against the third party who owned the land to which the condition applied and who had gained no benefit from the development. Such difficulties can usually be avoided by framing the condition so as to require that the development authorised by the permission should not commence until the access has been constructed.

Enforcing Conditions Imposed on Permission for Operational Development

28. An otherwise legally sound condition may prove unenforceable because it is imposed on a grant of planning permission for the carrying out of operations which have not been carried out in accordance with the approved plans. Authorities should take into account the Court of Appeal's judgement

in the case of *Handoll and Others v Warner Goodman and Streat (A firm) and Others*, (1995) 25EG157, which held that the judgement of the Divisional Court in *KerrierDC v Secretary of State for the Environment and Brewer* (1980) 41P&CR284, had been wrongly decided. Both cases concerned a planning permission for the erection of a dwelling subject to an agricultural occupancy condition.**

TEST: PRECISION

29. The framing of conditions requires great care, not least to ensure that a condition is enforceable. A condition, for example, requiring only that "a landscaping scheme shall be submitted for the approval of the planning authority" is incomplete since, if the applicant were to submit the scheme and even obtain approval for it, but neglect to carry it out, it is unlikely that the planning authority could actually require the scheme to be implemented. In such a case, a requirement should be imposed that landscaping shall be carried out in accordance with a scheme to be approved in writing by the planning authority; and the wording of the condition must clearly require this. A condition of this kind also sets no requirement as to the time or the stage of development by which the landscaping must be done, which can similarly lead to enforcement difficulties. Conditions which require specific works to be carried out at a certain 'time' or stage should state clearly when this must be done.

Vague Conditions

30. A condition which is not sufficiently precise for the applicant to be able to ascertain what he must do to comply with it is *ultra vires* and must not be imposed. Vague expressions which sometimes appear in conditions, for example "keep the buildings in a tidy state" or "so as not to cause annoyance to nearby residents", give occupants little idea of what is expected of them. Furthermore, conditions should not be made subject to qualifications, such as "if called upon to do so" or "if the growth of traffic makes it desirable", because these do not provide any objective and certain criterion by which the applicant can ascertain what is required.

Discretionary or Vetting Conditions

31. Conditions which attempt to provide for an arbiter to interpret such expressions or qualifications do not avoid this difficulty. Conditions requiring that tidiness, for example, shall be "to the satisfaction of the planning authority" make the applicant no more certain of what is required. Conditions which are imprecise or unreasonable cannot be made acceptable by phrases such as "except with the prior approval of the planning authority" which purport to provide an informal procedure to waive or modify their effect. Similarly, conditions restricting the occupation of a building should not set up a vetting procedure for prospective occupiers. Conditions which raise these difficulties, however, are not to be confused with conditions which require the submission of a scheme or details for approval which will, when granted, provide the precise guidelines to be followed by the developer.

Clarity

32. Conditions should be not only precise but clear. Where the wording of a condition may be difficult to follow, it may be helpful to attach to the permission an illustrative plan (eg describing sight lines required at the entrance to an access road).

TEST: REASONABLENESS

33. A condition can be *ultra vires* on the grounds of unreasonableness, even though it may be precisely worded and apparently within the powers available.

Conditions Invalid on Grounds of Unreasonableness

34. A condition may be unreasonable because it is unduly restrictive. Although a condition may in principle impose a continuing restriction on the use of land (provided that there are good planning reasons for that restriction), such a condition should not be imposed if the restriction effectively nullifies the benefit of the permission. For example, it would normally be reasonable to restrict the hours during which an industrial use may be carried on if the use of the premises outside these hours would affect the amenity of the neighbourhood. However, it would be unreasonable to do so to such an extent as to make it impossible for the occupier to run his business properly. If it appears that a permission could be given only subject to conditions that would be likely to be held unreasonable by the Courts, then planning permission should be refused altogether.

Avoidance of Onerous Requirements

35. 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. For example, a condition which would put a severe limitation on the freedom of an owner to dispose of his property, or which would obviously make it difficult to finance the erection of the permitted building by borrowing on mortgage, should be avoided on these grounds. An unduly restrictive condition can never be made acceptable by offering the prospect of informal relaxation of its effect.

Control Over Land

36. Particular care needs to be taken over conditions which require works to be carried out on land in which the applicant has no interest 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 in paragraph 3 above. If the land is outside that site, a condition requiring the carrying out of works on the land cannot be imposed unless the authority are satisfied that the applicant has sufficient control over the land to enable those works to be carried out.

Conditions Depending on Others' Actions

37. It is unreasonable to impose a condition worded in a positive form which developers would be unable to comply with themselves, or which they could comply with only with the consent or authorisation of a third party. Similarly, conditions which require the applicant to obtain an authorisation from another body, such as the Scottish Environment Protection Agency, should not be imposed.

38. Although it would be *ultra vires* to require works which the developer has no powers to carry out, or which would need the consent or authorisation of a third party, 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. Whereas previously it had been understood that the test of whether such a condition was reasonable, was strict; to the effect that there were at least reasonable prospects of the action in question being performed, the House of Lords (in *the British Railways Board v the Secretary of State for the Environment and Hounslow LBC* [1994] JPL32; [1993] 3 PLR 125) established that the mere fact that a desirable condition, worded in a negative form appears to have no reasonable prospects of fulfilment does not mean that planning permission need necessarily be refused as a matter of law. Thus, while an authority will continue to have regard to all relevant factors affecting a planning application and whether it should be granted with or without conditions, there is no longer a legal requirement to satisfy a reasonable prospects test in respect of any negative condition they may decide to impose. For example, if it could be shown that improvements to sewerage facilities for a new housing development were planned but there was no clear indication that they would be built within the time limits imposed by the permission, it might still be possible to grant consent subject to a condition that the houses should not be occupied until the relevant sewerage works were completed. It might also be reasonable to use a condition requiring that a development should not commence until a particular road had been stopped up or diverted, even if the timing remained uncertain. Planning authorities should therefore note this recent House of Lords ruling and its implications for a less restrictive view in the use of negative conditions.

Consent of Applicant to Unreasonable Conditions

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

REGULATION OF DEVELOPMENT

Outline Permissions

40. An applicant who proposes to carry out building or other operations may choose to apply either for full planning permission, or for outline permission with one or more of the following matters reserved by condition for the subsequent approval of the planning authority: the siting, design or the external appearance of the building, the means of access, or the landscaping of the site ("reserved matters"). An applicant cannot seek an outline planning permission for a change of use alone.

Details Supplied in Outline Applications

41. An applicant can, however, choose to submit as part of an outline application details of any of these "reserved matters". Unless he 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 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

42. Once outline planning permission has been granted, it cannot be withdrawn except by a revocation order under section 65 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. So, where certain aspects of the development are crucial to the decision, 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.

43. If the planning authority consider that, whatever the precise form the development is to take, access to the buildings should be from a particular road (or, alternatively, that there should be no means of access from a particular road), then a condition to this effect must be imposed on the outline permission. Approval of the details of the means of access to the permitted buildings can be refused on the grounds that there should not be access to the site from a particular road only if the need for such a restriction arises from the details of the development which have been submitted for approval (eg from the density which is indicated by submitted details of the design and siting of the buildings). 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 planning authority.

Conditions Reserving Other Matters

44. 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 planning authority may also, when granting a full or outline planning permission, impose a condition requiring that details of a specified aspect of the development which was not fully described in the application (eg the provision of car parking spaces) be submitted for approval before the development is begun. In the case of full permission such a condition can relate to details (such as landscaping) which might have been reserved matters had the application been made in outline. The applicant has the same right of appeal to the Secretary of State under section 47 of the Act if he cannot get the authority's approval, agreement or consent to matters reserved under such a condition as he has in respect of applications for approval of reserved matters.

TIME-LIMITS ON THE COMMENCEMENT OF DEVELOPMENT

Statutory Time-limits

45. The imposition of time-limits on the commencement of development is, by virtue of section 58 of the Act, not required for temporary permissions (see paragraphs 104-109), for permissions for any development carried out before the grant of planning permission, or for permissions granted by a development order, an enterprise zone or simplified planning zone scheme.

Time-limits on Full Permissions

46. Other grants of planning permission (apart from outline permissions) should, under section 58 of the Act, be made subject to a condition imposing a time-limit within which the development authorised must be started. The section specifies a period of five years from the date of the permission. Where planning permission is granted without a condition limiting the duration of the planning permission, it is deemed to be granted subject to the condition that the development to which it relates must be begun not later than the expiration of 5 years beginning with the grant of permission.

Time-limits on Outline Permissions

47. Grants of outline planning permission must, under section 59 of the Act, be made subject to conditions imposing two types of time-limit, one within which applications must be made for the approval of reserved matters and a second within which the development itself must be started. The periods specified for the submission of applications for approval of reserved matters are: the latest of three years from the grant of outline permission; 6 months from the date of refusal of an earlier application; and 6 months from the date on which an appeal against such a refusal was dismissed. The periods specified for starting the development are 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.

Variation from Standard Time-limits

48. If the authority consider it appropriate on planning grounds, they may specify longer or shorter periods than those specified in the Act, and must give their reasons for so doing. In the absence of specific time-limiting conditions, permission is deemed to have been granted subject to conditions imposing the periods referred to in paragraphs 46 and 47. It may be particularly desirable to adopt a flexible approach to the fixing of time-limits where development is to be carried out in distinct parts or phases; section 59(6) of the Act provides that outline permissions may be granted subject to a series of time-limits, each relating to a separate part of the development. Such a condition must be imposed at the time outline planning permission is granted.

49. 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 applications for approval of reserved matters.

Separate Submission of Different Reserved Matters

50. Applications for approval under an outline permission may be made either for all reserved matters at once, or for one at one time and others at another. Even after details relating to a particular reserved matter have been approved, one or more fresh applications may be made for approval of alternative details in relation to the same reserved matter. Once the time-limit for applications for approval of reserved matters has expired, however, no applications for such an approval can be made.

Effect of Time-limit

51. After the expiry of the time-limit for commencement of development it would be *ultra vires* for development to be begun under that permission; a further application for planning permission must be made.

Renewal of Permissions Before Expiry of Time-limits

52. Developers who delay the start of development are likely to want their permission renewed, as the time-limit for implementation approaches. Under Article 5 of The Town and Country Planning (General Development Procedure) (Scotland) Order 1992 applications for such renewals may be made simply by letter, referring to the existing planning permission, although the planning authority have power subsequently to require further information, if needed. As a general rule, such applications should be refused only where:

- a. there has been some material change in planning circumstances since the original permission was granted (eg a change in some relevant planning policy for the area, or in relevant road considerations or the issue by the Government of a new planning policy which is material to the renewal application);
- b. there is likely to be continued failure to begin the development and this will contribute unacceptably to uncertainty about the future pattern of development in the area; or
- c. the application is premature because the permission still has a reasonable time to run.

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Circular 4/1998

COMPLETION OF DEVELOPMENT

Completion of Whole Development

53. A condition requiring that the whole of the development permitted be completed is likely to be difficult to enforce. If a development forming a single indivisible whole, such as a single dwellinghouse, is left half-finished, it may be possible to secure completion by a completion notice under section 61 of the Act. If, however, the reason for failure to complete is financial difficulties experienced by the developer, neither a completion notice nor the enforcement of conditions would be likely to succeed. In such circumstances, the only practical step open to the planning authority, if they wish to secure the completion of the development, would be to carry it out themselves following acquisition of the land. If a large development, such as an estate of houses is left half-complete, this may be due to market changes (for example, a shift in 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. Conditions requiring the completion of the whole of a development should, therefore, not normally be imposed.

Completion of Elements of a Development

54. Conditions may be needed, however, to secure that a particular element in a scheme is provided by a particular stage or before the scheme is brought into use, or to secure the provision of an element of a kind a developer might otherwise be tempted to defer or omit. Thus it may be desirable to require that a new access to the site should be constructed before any other development is 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 the 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. Or, to take another example, it could well be unacceptable to demand that all the requirements of a landscape condition should be complied with before a building is occupied; this could involve the building lying empty for many months, since such a condition will often provide for a considerable maintenance period so that trees can become established.

PHASING

55. Conditions may also be imposed to ensure that development proceeds in a certain sequence where some circumstances of the proposal, for example the manner of infrastructure provision, makes this necessary. A condition delaying development over a substantial period is a severe restriction on the benefit of the permission granted. If land is available for a particular purpose, its commencement should not be delayed by condition because the authority have adopted a system of rationing the release of land for development.

TRAFFIC AND TRANSPORT

56. The Government is planning to publish a White Paper in 1998 setting out its new integrated transport policy. This will aim, for example, to offer genuine choice to the travelling public by promoting more integrated public transport systems and to address the problems of congestion and transport related pollution. New planning guidance and advice flowing from the new policy will be issued in due course and it is likely that this will have implications for the level of parking provision which it would be appropriate to prescribe in planning conditions. Subsequent paragraphs need to be read against this general background.

Parking, Public Transport, Walking and Cycling

57. Developments often generate extra traffic, usually in the form of haulage or delivery vehicles or cars of residents, visitors or employees. Unless this demand is minimal (as it might be, for example, in the case of some very small firms) and unlikely to cause obstruction, space may need to be provided for off-street parking. Any conditions specifying the number of parking spaces should be consistent with the development plan as well as transport policies for the area. They also need to be reasonable in relation to the size and nature of the development and to satisfy the tests referred to in paragraph 12.

58. Normally a parking site separate from the road will be needed. In this case, conditions should ensure, where necessary, that space is provided for the turning of vehicles so that they do not have to reverse on to the road. 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.

59. In certain circumstances, developers may enter into a planning agreement with the planning authority to provide off-site parking or to contribute to other transport measures directly related to the development, for example to assist public transport or walking and cycling. The provisions of such agreements should reflect Government policy as set out in SODD Circular 12/1996.

Access

60. Where a service road is needed as part of a large development for which outline permission is to be granted, it may be necessary to impose a condition requiring all access to the main road to be by means of the service road. If such a condition is not imposed at outline stage it may not be possible to secure the objective at a later stage (see paragraph 42). Similarly, 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, as without such a condition these restrictions could not normally be introduced when details are being considered.

61. 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 relates to the proposed development. The condition should be framed so as to require the laying out or improvement of the means of access on the relevant section of the service road on defined land before the relevant buildings are occupied.

62. In considering the imposition of conditions concerning "access", planning authorities should bear in mind the definition of "road" in section 277 of the Town and Country Planning (Scotland) Act 1997 which refers to the definition in section 151 of the Roads (Scotland) Act 1984:

"any way (other than a waterway) over which there is a public right of passage (by whatever means) and whether subject to a toll or not and includes the road's verge, and any bridge (whether permanent or temporary) over which, or tunnel through which, the road passes and any reference to a road includes a part thereof."

Roads fall into 2 particular categories- "public roads" and "private roads", defined in section 151 of the Roads (Scotland) Act 1984. The former are those included in a list of public roads kept by the roads authority and such roads are managed and maintained by the authority. Private roads are those over which the public has a right of passage but whose maintenance is not the responsibility of a roads authority. Such roads are maintainable privately but they are not private in any other way. They are not included in the list of public roads but there is provision in the 1984 Act under which they can be added to the roads authority's list provided they are of adoptable standard. There is sometimes confusion as to what is a private road and that term is often associated in the public mind with, for example, driveways up to private houses. These are not "roads" in terms of the Roads (Scotland) Act as there is no public right of passage over them (anyone using them does so on the sufferance of the owner) and they are, in fact, private accesses. Planning authorities should ensure that prospective developers are fully aware of the significant difference between a private access and a private road. "Private road" marked on a plan indicates that the public will have a right of passage over the land comprising the road: the developer will be required to seek from the roads authority a separate written consent to build such a road and it must be constructed to the standard required by that authority.

Lorry Routing

63. Planning conditions are not an appropriate means of controlling the right of passage over public roads. Although negatively worded conditions which control such matters might sometimes be capable of being validly imposed on planning permissions, such conditions are likely to be very difficult to enforce effectively. It may be possible to encourage drivers to follow preferred routes by posting site notices to that effect, or by requiring them to use a particular entrance to (or exit from) the site. But where it is judged essential to prevent traffic from using particular routes, the appropriate mechanism for doing so is by means of an Order under section 1 of the Road Traffic Regulation Act 1984.

Cession of Land

64. Conditions may not require the cession of land to other parties, such as the roads authority.

DEVELOPMENT OF CONTAMINATED SITES

Contaminated Land

65. Land formerly used for many purposes, including industry and waste disposal can be contaminated by substances that pose immediate or long-term hazards to the environment or to health, or which may damage buildings erected on such sites. Contaminants may also escape from the site to cause air and surface or groundwater pollution and pollution of nearby land. The emission of gas or leachate from a landfill site 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, buildings and services, or the wider environment to risks associated with the contaminants present. Planning authorities should, however, base any such conditions on a site-specific assessment of the environmental risks which might affect, or be affected by, the particular proposed development. Conditions should not duplicate the effect of other legislative controls. The contaminated land should be remediated to a standard which is suitable for the proposed use.

66. 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.

67. 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.

68. 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. The planning authority may then require the developer to take further remediation action under public health duties. Further guidance on contaminated land is contained in NPPG10- *Planning and Waste Management*. PAN33- *Development of Contaminated Land* and PAN51- *Planning and Environment Protection*. A new regime for identifying and remediating contaminated land is being introduced through the provision of the Environmental Protection Act 1990, as amended by the Environment Act 1995. This uses a risk-based approach in identifying contaminated land and applies the polluter pays and 'suitable for use' principles. The role of the planning system in addressing contamination will continue alongside the new regime.

ENVIRONMENTAL ASSESSMENT

69. For projects subject to environmental assessment, conditions attached to a grant of planning permission may incorporate monitoring and mitigation measures proposed in an environmental statement where such conditions meet the criteria summarised in paragraph 12. It may be appropriate to impose conditions on the grant of planning permission and in the light of the environmental assessment, to require a scheme of mitigation covering matters of planning concern to be submitted to and approved in writing by the planning authority before any development is undertaken. Again conditions should not duplicate the effect of other legislative controls. In particular, planning authorities should not seek to substitute their own judgement on pollution control issues for that of the bodies with the relevant expertise and the statutory responsibility for that control.

NOISE

70. Noise can have a significant effect on the environment and on the quality of life enjoyed by individuals and communities. The planning system should ensure that, wherever practicable, noise-sensitive developments are separated from major sources of noise and that new development involving noisy activities should, if possible, be sited away from noise-sensitive land uses. Where it is not possible to achieve such a separation of land uses, planning authorities should consider whether it is practicable to control or reduce noise levels, or to mitigate the impact of noise, through the use of conditions or planning agreements. (See SDD Circular 16/1973.)

NATURE CONSERVATION AND LANDSCAPE

71. Nature conservation and landscape quality can be important material considerations in determining many planning applications. Planning authorities should not, however, refuse permission if development can be permitted subject to conditions that will prevent damaging impacts on particular species, wildlife habitats or important physical features. Moreover, for some types of development, such as mineral workings, conditions can be used to provide, on completion of operations, a natural heritage asset. Conditions can also be used, for example, to require areas to be fenced or bunded off to protect them, to restrict operations or uses at or to particular times of the year, to safeguard particular views or to reinforce particular landscape features. The

views of Scottish Natural Heritage (SNH) will be particularly important in assessing the impact of development on the natural heritage of an area and in framing appropriate conditions.

72. Planning authorities should bear in mind that a number of areas valued for their landscape quality or nature conservation interest are afforded statutory protection. National Scenic Areas provide the national designation for landscape. For habitats, as well as national designations (primarily Sites of Special Scientific Interest), European Community Directives on nature conservation, most notably through Special Areas of Conservation under the Habitats Directive and Special Protection Areas under the Wild Birds Directive, are being implemented. A number of sites have also been designated under the Ramsar Convention on Wetlands of International Importance. Conditions affecting such areas will need to be consistent with the provisions applicable for their protection. Scottish Office Environment Department Circulars 13/1991 and 6/1995 are particularly important sources of information and guidance.

73. Where the primary concern relates to land management or access to natural heritage resources, planning authorities should consider whether mechanisms other than those provided under planning legislation might provide the best means of securing their objectives. Countryside Management Agreements under the Countryside (Scotland) Act 1967 as amended by the Natural Heritage (Scotland) Act 1991 provide a mechanism for securing appropriate management of natural heritage assets. Access or Public Path Creation Agreements under the 1967 Act can be used to secure appropriate access for enjoyment of the natural heritage.

DESIGN AND LANDSCAPE

74. The appearance of a proposed development and its relationship to its surroundings are material considerations in planning decisions. While planning authorities should not attempt to use conditions simply to impose matters of taste, there will be circumstances where it is important to secure a high quality of design in a proposal if this is to make a positive contribution to a site and its surroundings and show consideration for its local context. This could involve, for example, specifying in conditions the use of particular design features such as materials or finishes. The appearance and treatment of the spaces between and around buildings is also of great importance. Similarly, planning authorities may wish to use conditions to ensure that important vistas are preserved or that landscape features are provided to improve the overall setting of a development.

75. Landscape design may raise special considerations. The treatment of open space can vary greatly and the objective should be to ensure that the intended design quality is achieved in practice. It is, therefore, especially important for the authority to give some advance indication of the essential characteristics of an acceptable landscape scheme- always bearing in mind that such requirements should not be unreasonable. It is of equal importance to ensure that the design proposals are reflected in the quality of works and materials in the final product. 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 variable circumstances. The visual impact of a development will often need to be assessed as a whole and this may well involve considering details of landscape design together with other reserved matters.

Enforcement of Landscaping Requirements

76. To ensure that a landscape design scheme is prepared, conditions may require that no development should take place until the scheme is approved, so long as this requirement is reasonable. Enforcing compliance with landscape schemes can pose problems, since work on landscaping can rarely proceed until building operations are nearing completion. Only on permissions for a change of use would it be acceptable to provide that the development permitted should not proceed until the landscaping had been substantially completed. Where permission is being granted for a substantial estate of houses, it might be appropriate to frame the relevant condition to allow for landscape works to be phased in accordance with a programme or timetable to be agreed between the developer and the planning authority and submitted for approval as part of the landscape design proposals. Alternatively, the erection of the last few houses might be prohibited until planting had been completed in accordance with the landscape scheme. 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 had been completed.

TREES

77. Section 159 of the Act places an express duty on the 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 160 of the 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 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.

78. The planting and establishment of new trees may need work over several months or years and the authority may wish to ensure that they obtain 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 over a specified period of years and that any which die or are removed within that time shall be replaced.

SITES OF ARCHAEOLOGICAL INTEREST

Archaeological Sites

79. Monuments scheduled as of national importance by the Secretary of State are protected by Part I of the Ancient Monuments and Archaeological Areas Act 1979. Where its provisions apply, their effect should not be duplicated by planning conditions (see paragraphs 19-21), 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.

80. Where, however, planning permission is being granted for development which might affect the setting of a scheduled monument or a non-scheduled monument or its setting, the planning authority may wish to impose conditions designed to protect the monument or its setting; to secure the provision of archaeological excavation and recording prior to development commencing; or, if the expectation of significant archaeological deposits is low, to ensure arrangements are made for a watching brief before and during the construction period. Further advice on archaeology and planning conditions is given in NPPG 5 *Archaeology and Planning* and Planning Advice Note 42 *Archaeology*.

MAINTENANCE CONDITIONS

81. A condition may be imposed, where appropriate, requiring some feature of a development to be retained- car parking spaces off the road, for example, or an area of open space in a housing scheme. A condition requiring something to be maintained, in the sense of being kept in good repair or in a prescribed manner, should be imposed only when the planning authority are fully satisfied that the requirement is both relevant to the development which is being permitted, reasonable in its effects and sufficiently precise in its terms to be readily enforceable. Maintenance conditions should not normally be imposed when granting permission for the erection of buildings, or for works other than works of a continuing nature such as minerals extraction.

CONDITIONS REQUIRING A FINANCIAL OR OTHER CONSIDERATION FOR THE GRANT OF PERMISSION

82. As a general proposition no payment of money or other consideration can be required when granting a permission or any other kind of consent required by a statute, except where there is specific statutory authority. Conditions requiring, for instance, the cession of land for road improvements or for open space, or requiring the developer to contribute money towards the provision of facilities not directly related to the proposed development, should accordingly not be attached to planning permissions. There may, however, be certain circumstances whereby the general proposition should not apply. The appropriateness of conditions involving financial or other considerations is dependent on the particular circumstances of the development for which the planning authority intends to grant planning permission and whether, in particular, the proposed conditions satisfy the criteria in paragraph 12. Thus conditions, involving financial considerations, but which meet the tests in paragraph 12 need not necessarily be *ultra vires*. Planning authorities should also bear in mind the advice in SODD Circular 12/1996 on *Planning Agreements*.

CONDITIONS ALTERING THE NATURE OF THE DEVELOPMENT

Modifying Proposed Development

83. If some feature of a proposed development, or the 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 will be needed. It may however, depending on the case, be quicker and easier for the planning authority to impose a condition modifying the development permitted in some way. The precise course of action will normally emerge during discussion with the applicant. 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 be substituted for the shops. Whether a modification would amount to substantial difference will depend upon the circumstances of the case. A useful test will be whether it would so change the proposal that: (i) those who have shown an interest in it would wish to comment on the modification; and (ii) those who, although they had a right to object to the original application and chose not to do so, would be prejudiced if they were not now given an opportunity to comment. A condition modifying the development, however, cannot be imposed if it would make the development permitted substantially different from that comprised in the application.

REGULATION AFTER DEVELOPMENT

84. Conditions which will remain in force after the development has been carried out always need particular care. They can place onerous and permanent restrictions on what can be done with the premises affected and they should, therefore, not be imposed without scrupulous weighing of where the balance of advantage lies. The following paragraphs give more detailed guidance.

Restrictions on Use or Permitted Development

85. Exceptionally, conditions may be imposed to restrict further development which would normally be permitted by the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, or to restrict changes of use which would not be regarded as development whether because the change is not a "material" change within the terms of section 26(1) of the Act, or by reason of section 26(2) and the provisions of The Town and Country Planning (Use Classes) (Scotland) Order 1997. Changes of use can be restricted either by prohibiting any change from the use permitted or by precluding specific alternative uses. It should be noted, however, that a condition restricting 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.

Presumption Against Such Restrictions

86. Both the General Permitted Development Order and the Use Classes Order, however, are designed to give or confirm a freedom from detailed control which will be acceptable in the great majority of cases. Accordingly, save in exceptional circumstances, conditions should not be imposed which restrict either permitted development rights granted by the General Permitted Development Order or future changes of use which the Use Classes Order would otherwise allow. The Secretary of State would regard such conditions as unreasonable unless there were clear evidence that the uses excluded would have serious adverse effects on amenity or the environment, that there was no other forms of control and that the condition would serve a clear planning purpose.

87. To illustrate some exceptional circumstances, it may be possible to justify imposing a condition restricting permitted development rights allowed by Class 7 of the General Permitted Development Order so as to preserve an exceptionally attractive open plan estate free of fences, or under Class 1 of the General Permitted Development Order so as to avoid over-development by extensions to dwellinghouses in an area of housing at unusually high density. Similarly, changes of use may be restricted so as to prevent the use of large retail premises as a food or convenience goods supermarket, where such a use may generate an unacceptable level of additional traffic or have a damaging effect on the vitality of a nearby town centre. Conditions may also limit the storage of hazardous substances in a warehouse.

Specific Conditions Better than General Ones

88. Because of the general presumption against such restrictions on permitted development or on changes of use which are not development, it will always be necessary to look carefully at the planning reasons for any restriction and to ensure that the condition imposed is no more onerous than can be justified (see paragraph 87 above). It would not be right to use a condition restricting uses where an alternative, more specific, condition would achieve the same end. For example, where it is necessary to restrict the volume of noise emitted from an industrial site and a condition addressing the problem expressly can be used, that condition should be imposed, rather than one restricting the permitted uses. Scrupulous care in the giving of proper, adequate and intelligible reasons for imposing conditions (see paragraph 9) can help authorities to ensure that the conditions they impose are not more onerous than is necessary to achieve their objective.

Restrictions on Use

89. It will be preferable if a condition designed to restrict changes of use can be drafted so as to prohibit a change to a particular unacceptable use or uses (provided the list does not become too long), rather than in terms which prevent any change of use at all. However, in certain cases a condition confining the use only to the use permitted may be necessary. In appropriate circumstances, it might be reasonable to impose a condition limiting the intensification of use of small office or industrial buildings where intensification beyond a certain point would generate traffic and/or parking problems. Conditions designed to prevent the primary use of an office building being changed to use as shops are unnecessary, as this would involve a material change of use amounting to development of land which would require planning permission.

Ancillary Uses

90. Conditions are sometimes imposed restricting ancillary or incidental activities which would not normally be material changes of use involving development. Conditions of this kind can be burdensome to some technologically advanced industries. They may have a need for higher than normal levels of ancillary office, research or storage uses, or for short-term changes in uses or the balance of uses. 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 emissions.

CONDITIONS RESTRICTING THE OCCUPANCY OF BUILDINGS AND LAND

Occupancy: General Considerations

91. Since planning controls are concerned with the use of land rather than the identity of the user, the question of who is to occupy 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 special planning grounds can be demonstrated and where the alternative would normally be refusal of permission.

Personal Permissions

92. Unless the permission otherwise provides, planning permission runs with the land and it is seldom desirable to provide otherwise. There are occasions relating, for example, to strong compassionate or other personal grounds, where the planning authority is minded to grant permission for the use of a building or land for some purpose which would not normally be allowed. In such a case the permission may be made subject to a condition that it shall enure only for the benefit of a named person- usually the applicant. A permission personal to a company is generally inappropriate. Conditions of this type will scarcely ever be justified in the case of a permission for the erection of a permanent building.

General Undesirability of Commercial and Industrial Occupancy Conditions

93. Conditions are sometimes imposed to confine the occupation of commercial or industrial premises to local firms. Such conditions can act- undesirably- to protect local businesses against fair competition and may hinder the movement of industry in response to economic demand. If a service, or the employment it generates, is needed in an area, there is no planning reason why it should be provided by one firm rather than another. Commercial and industrial buildings in an area of open countryside will not become more acceptable because their occupancy is restricted, nor will the expansion of a local firm necessarily lead to less pressure for further development (eg housing) than the arrival of a firm from outside. The Secretary of State therefore regards such conditions as undesirable in principle.

Conditions Governing Size of Unit Occupied

94. Conditions requiring that a large commercial or industrial building should be occupied either only as a single unit or, alternatively, only in suites not exceeding a certain area or floorspace, represent a significant interference with property rights which is likely to inhibit or delay the productive use of the buildings affected. Such conditions should, therefore, normally be avoided.

Domestic Occupancy Conditions

95. Subject to the advice about affordable housing (paragraph96), staff accommodation (paragraph98-99), agricultural and forestry dwellings (paragraphs100-102) and seasonal use (paragraphs111-113), if the development of a site for housing is an acceptable use of the 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 (eg those already living or working in the area). To impose such a condition would be to 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 housebuilders from providing homes for which there is a local demand and building societies from providing mortgage finance. It may also impose hardship on owners who subsequently need to sell. It involves too detailed and onerous an application of development control and too great an interference in the rights of individual ownership. Such conditions should, therefore, not be imposed save in the most exceptional cases where there are clear and specific circumstances that warrant allowing an individual house (or extension) on a site where development would not normally be permitted.

Affordable Housing

96. The community's need for a mix of housing types- including affordable housing- is capable of being a material planning consideration. It follows that there may be circumstances in which it will be acceptable to use conditions to ensure that some of the housing built is occupied only by people falling within particular categories of need. Such conditions would 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 development plan policy. Conditions should not normally be used to control matters such as tenure, price or ownership. Guidance on affordable housing is contained in NPPG 3: *Land for Housing*.

"Granny Annexes"

97. Some extensions to dwellings are intended for use as "granny annexes". It is possible that a "granny annex" which provides independent living accommodation, could subsequently be let or sold off separately from the main dwelling. Where there are sound planning reasons why the creation of an additional dwelling would be unacceptable, it may be appropriate to impose a planning condition to the effect that the extension permitted shall be used solely as accommodation ancillary to the main dwellinghouse. The same is true for separate buildings (often conversions of outbuildings) intended for use as "granny annexes". In these cases it is even more likely that a separate unit of accommodation will be created.

Staff Accommodation

98. The above considerations may equally apply to staff accommodation. 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, so that planning permission would be required for such a proposal even in the absence of a condition. Planning authorities should normally consider applications for such development sympathetically since, 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.

99. Conditions tying the occupation of dwellings to that of separate buildings (eg 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, eg where a dwelling has been allowed on a site where permission would not normally be granted. To grant an unconditional permission would mean that the dwelling could be sold off for general use which may be contrary to development plan policy for the locality. 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.

Agricultural and Forestry Dwellings

100. In many parts of Scotland planning policies impose strict controls on new residential development in the open countryside. There may, however, be circumstances where permission is granted to allow a house to be built to accommodate a worker engaged in *bona fide* agricultural or forestry employment on a site where residential development would not normally be permitted. In these circumstances, it will often be necessary to impose an agricultural or forestry worker occupancy condition.

101. Planning authorities will wish to take care to frame agricultural occupancy conditions in such a way as to ensure that their purpose is clear. In particular, they will wish to ensure that the condition does not have the effect of preventing future occupation by retired agricultural workers or the dependants of the agricultural occupant.

102. Where an agricultural occupancy condition has been imposed, it will not be appropriate to remove it on a subsequent application unless it is shown that circumstances have materially changed and that the agricultural need which justified the approval of the house in the first instance no longer exists.

Retail Development

103. Out-of-centre retail developments, including 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 grounds of 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. Any conditions imposed should apply only to the main ranges of goods (eg food and convenience goods, hardware, electrical goods, furniture and carpets) and should not seek to control details of particular products to be sold. For further guidance see NPPG 8: *Retailing*.

TEMPORARY PERMISSIONS

104. Section 41(1)(b) of the 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 operational land of a statutory undertaker, however, this power does not apply except with the undertaker's consent (see section 219 of the Act). Conditions of this kind are sometimes confused with conditions which impose a time-limit for the implementation of a permission (paragraphs 45 to 49) but they are quite distinct and different considerations arise in relation to them.

Principles Applying to Temporary Permissions

105. In other cases, in deciding whether a temporary permission is appropriate, three main factors should be taken into account. Firstly, it will rarely be necessary to give a temporary permission to an applicant who wishes to carry out development which conforms with the provision of the development plan. Secondly, it is undesirable to impose a condition requiring the demolition after a stated period of a building that is clearly intended to be permanent. Lastly, the material considerations to which regard must be had in granting any permission are not limited or made different by a decision to make the permission a temporary one. Thus, the reason for granting a temporary permission can never be that a time-limit is necessary because of the effect of the development on the amenity of the area. Where such objections to a development arise they should, if necessary, be met instead by conditions whose requirements will safeguard amenity. If it is not possible to devise such conditions and the damage to amenity cannot be accepted, then the proper course is to refuse permission. These considerations mean that a temporary permission will normally only be appropriate either where the applicant himself proposes temporary development or when a trial run is needed in order to assess the effect of the development on the area.

Short-Term Buildings or Uses

106. Where, therefore, a proposal relates to a building or use which the applicant is expected to retain or continue only for a limited period, whether because he has 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 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

107. Again, where an application is made for permanent permission for a use which may be a "bad neighbour" 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. In certain circumstances 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 agricultural or forestry dwelling but it is inconclusive, perhaps because there is doubt about the sustainability of the proposed enterprise. This allows time for such prospects to be clarified.

108. 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 permission whether permanent permission or a refusal is the right answer. Usually a second temporary permission will only be justified where road or redevelopment proposals have been postponed or in cases of hardship where temporary instead of permanent permission has been granted for a change of use.

Restoration of Sites

109. If the temporary permission is for development consisting of, or including, the carrying out of operations, it is important to make provision by condition for the removal of any buildings and works permitted- not merely for the cessation of the use- and for the reinstatement of the land when the permission expires. Where the permission is for temporary use of land as a caravan site, conditions may include a requirement to remove at the expiry of the permission any buildings or structures, such as toilet blocks, erected under Class 17 of the General Permitted Development Order.

ACCESS FOR DISABLED PEOPLE

110. 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. However, some new development does not require building regulation approval, eg development affecting the setting of buildings (layout of estates, pedestrianisation etc) rather than the buildings themselves. Where there is a clear planning need, it may be appropriate to impose a condition to ensure adequate access for disabled people.

SEASONAL USE

Seasonal Occupancy Conditions

111. Occasionally it may be acceptable to limit the use of land for a particular purpose to certain seasons of the year. For example, where planning permission is being granted for a caravan site, the planning authority may think it necessary to impose a condition to ensure that during the winter months the caravans are not occupied and are removed for storage to a particular part of the site or away from the site altogether. Where such a condition is imposed, particular care should be taken to see that the condition allows a reasonable period of use of the caravans in each year. A similar approach may be taken where it is necessary to prevent the permanent residential use of holiday chalets, which by the character of their construction or design are unsuitable for continuous occupation. Seasonal occupancy conditions may also be appropriate to protect the local environment, or example, where the site is near a fragile habitat which requires peace and quiet to allow seasonal breeding or winter feeding to take place.

Holiday Occupancy Conditions

112. In recent years there has been an increased demand for self-catering holiday accommodation- whether new buildings (including mobile homes) or converted properties- which may be constructed to a standard that would equally support permanent residence in some comfort. But this accommodation may also be located in areas in which the provision of permanent housing would be contrary to national policies on development in the countryside or not in accordance with development plan policies, or both. The Secretary of State considers that the planning system should respond to these changes without compromising policies to safeguard the countryside.

113. There may be circumstances where it will be reasonable for the planning authority to grant planning permission for holiday accommodation as an exception to these policies, with a condition specifying its use as holiday accommodation only. 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 seem more appropriate in those circumstances than a seasonal occupancy condition. But authorities should continue

to use seasonal occupancy conditions to prevent the permanent residential use of accommodation which by the character of its construction or design is unsuitable for continuous occupation, particularly in the winter months.

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