

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 AppendicesA and B of SDD Circular18/1986.

ENQUIRIES AND FURTHER COPIES

12. Enquiries about the content of this Circular should be addressed to MrStephen Bruce (Telephone 01312447065). 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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Model Planning Conditions

Introduction

1. SODD Circular4/1998, issued in February 1998, set out Government policy on The Use of Conditions in Planning Permissions. This superseded Circular18/1986 although AppendicesA andB to the 1986 Circular, which provided examples of acceptable and unacceptable planning conditions, were not cancelled. It was explained in Circular4/1998 that further work on model conditions would be undertaken with local authority representatives and that further guidance would be issued in due course. This work has now been concluded and the Appendices to the 1986Circular are now superseded.

2. The model conditions have been drawn up in association with development control officers from Glasgow, Inverclyde, Moray, Scottish Borders and West Dunbartonshire. They should always be read in conjunction with Circular4/1998 and the following key elements of the Government's policy on the use of conditions are worth repeating:

- no condition should be imposed unless it meets the following tests -
 - **necessary**
 - **relevant to planning**
 - **relevant to the development to be permitted**
 - **enforceable**
 - **precise, and**
 - **reasonable in all other respects.**
 - conditions must not be applied slavishly - a clear and precise reason must be given for each and every condition imposed.
- 3.** The following points should be borne in mind when considering the use of the model conditions:
- the conditions which follow are intended as models only and may need to be adapted to the circumstances of particular cases;
 - the list is not exhaustive;
 - model reasons cannot be given for the imposition of the conditions shown - the reasons will vary according to the circumstances of each case.

Some examples of unacceptable conditions are included. On the right hand margin the reference, where appropriate, to the relevant paragraph in the Annex to Circular 4/1998 is given.

4. A list, again not exhaustive, of examples of satisfactory and unsatisfactory reasons for imposing planning conditions is also included.

A. TIME LIMIT FOR COMMENCEMENT

Circular Ref.: Time limits Paras 45-52 Planning Permissions Para 46 Outline Permissions Para 47

1. Planning Permissions

The development hereby permitted shall be commenced within [5]years from the date of this permission.

Note: Numbers put in square brackets as time periods can be varied with justification.

2. Outline Planning Permissions

a. Before development commences written approval from the planning authority must be obtained for the details of the siting, design and external appearance of any building(s), the means of access and the landscaping (collectively these are termed "reserved matters").

Note: This condition is appropriate in its entirety only where the outline application contained details of none of the items described as 'reserved matters' in Article 2 of The Town and Country Planning (General Development Procedure) (Scotland) Order 1992).

b. Plans and particulars of the reserved matters referred to in Condition2 (a) above shall be submitted for consideration by the planning authority and no work shall begin until the written approval of the authority has been given.

c. Application for approval of reserved matters shall be made to the planning authority within [3]years from the date of this permission.

d. The development hereby permitted shall commence within [5]years from the date of this permission, or within [2]years from the date of approval by the planning authority of the last of the reserved matters to be approved.

Note: Numbers put in square brackets as time periods can be varied with justification.

Examples of unacceptable conditions

- To require that a development (except in the case of mineral workings) shall be completed within a time limit.

Explanation - This would not normally be acceptable on the grounds of unreasonableness. To be reasonable it would have to serve a clear planning objective.

- To require that development shall not be carried out until, for example, 5 years from the date of permission.
- Explanation - It would not normally be acceptable to grant permission on condition that the right to carry out development is deferred until some future date. A suspensive condition could be useful if it served a clear planning purpose - see Model Condition A7 on page 3.

3. Details of Reserved Matters - Housing Estate

The subsequent application for the approval of reserved matters shall be accompanied by:

- i. a site layout plan at a scale of [*specify*] showing the position of all buildings, roads, footpaths, parking areas (distinguishing, where appropriate, between private and public spaces), walls and fences and landscaping;
- ii. plans and elevations of each house and garage type showing their dimensions and type and colour of external materials;
- iii. a landscaping plan at a scale of [*specify*] showing the location, species and ground spread of existing and proposed trees, shrubs and hedges;
- iv. details of the phasing of development;
- v. details of existing and finished ground levels, and finished floor levels, in relation to a fixed datum, preferably ordnance datum.

4. Reserving other matters

Before development commences, written approval from the planning authority must be obtained for the details of [*specify*].

5. Phasing of development

Details of the phasing of the development shall be submitted to the planning authority for approval, and no work shall begin until the phasing scheme has been approved in writing. Following approval, the development shall be implemented in accordance with the approved scheme.

6. Completion of Elements of a Development

Prior to the occupation of [*specify*] the [*specify the element*] shall be completed in accordance with the approved details.

7. Conditions Depending on Others' Action

No development shall take place on the site until [*specify off-site works on which implementation of the planning permission depends*] have been carried out.

B. TEMPORARY PLANNING PERMISSIONS

Circular Ref: Reserving other Matters Para 44

1. The [*specify development*] hereby permitted shall cease on [*specify date*].
2. The [*specify e.g. buildings/works*] hereby permitted shall be removed or the use hereby permitted shall be discontinued and the land restored to [*specify requirements*]. Any such restoration works shall be carried out by [*specify date*].

C REGULATION OF DEVELOPMENT

Circular Ref: Regulation of Development Paras 40-44 Regulation after Development Paras 84-90

1. Uses

The land which is the subject of this permission shall be used for [*specify use*] and for no other use notwithstanding the provisions of Class [*specify*] of the Town and Country Planning (Use Classes) (Scotland) Order and the General Permitted Development Order [*specify dates*].

Note: This condition should only be used in exceptional circumstances to achieve clear planning objectives.

2. Permitted Development

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order(s) [*specify relevant date(s)*] no [*specify development*] shall be built on the site which is the subject of this application. Construction of [*specify*] cannot be carried out without planning permission being granted on an application made to the planning authority.

3. Hours of Use

The use hereby permitted shall not operate between [*specify hours and days*].

4. Hours of Operation

No machinery shall be operated, no process carried out and no deliveries received at or despatched from the site between [*specify hours*] from Monday to Saturday inclusive and at any time on Sundays.

5. Personal Permissions

The use hereby permitted shall be carried on only by [*specify person*].

Circular Ref: Personal Permissions Para 92

6. Occupancy

a. Housing related to agricultural and forestry employment

Occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed in the locality in [*specify*] or to a widow or widower of such a person and to any dependants.

Circular Ref: Conditions restricting occupancy of buildings and land Paras 91-103

b. Housing related to other employment

Occupation of the dwelling shall be limited to a person solely or mainly employed in [*specify*].

c. Granny 'Annexes'

The extension hereby permitted shall be used solely as part of the existing dwellinghouse, and at no time shall it be occupied as a separate dwelling.

Circular Ref: Granny 'Annexes' Paras 97

7. Restrictions on operations

a. Storage of Materials

No materials, including waste products, shall be stored on the site outwith the buildings.

b. Storage of Materials - Hazard

No [*specify materials*] shall be stored within [*specify*] metres of buildings on the site or within [*specify*] metres of the site boundary.

c. Stacking of Materials - Height

Stacking of [*specify*] on the site shall not exceed [*specify*] metres in height [*specify datum*].

d. Burning

There shall be no burning of materials outwith the building(s) on the site.

Example of an unacceptable condition

- To require that the site shall be kept tidy at all times.
- Explanation - This is vague and unlikely to be capable of enforcement.

8. Retail Development

The use of the retail units hereby permitted shall be limited to the sale of non-food goods of the following types [*specify*]. In any unit, the use of more than [*specify percentage*] of the net retail floor area for the sale of goods other than those specified shall not be permitted without the written approval of the planning authority.

9. Garages and Outbuildings

All garages and outbuildings shall be used solely for domestic purposes incidental to the use of the dwellinghouse.

D. DESIGN

1. Density

The development hereby permitted shall not exceed a density of [*specify*] dwellings per hectare, net of [*specify what is excluded from the calculation of density*].

Circular Ref: Design and Landscape Para 74-76

2. Materials

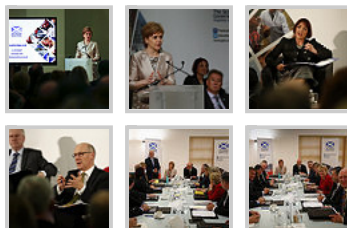
a. The type and colour of materials to be used in the development shall be as specified on the approved drawings/application form/letter dated [*specify*] unless the prior written approval of the planning authority is obtained for other materials.

b. Development shall not begin until samples of materials to be used (on external surfaces of the buildings) or (in construction of hard standings/walls/fences) have been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out using the approved materials or such alternatives as may be agreed in writing with the planning authority.

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E. LANDSCAPE

1. Landscaping

Circular Ref Design and Landscape Paras 74-76

a. 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
- v. existing and proposed services such as cables, pipelines, sub-stations
- vi. other artefacts and structures such as street furniture, play equipment
- vii. programme for completion and subsequent maintenance.

b. Details of the scheme of soft landscaping works shall include (as appropriate):

- i. indication of existing trees, shrubs and hedges to be removed, those to be retained and, in the case of damage, proposals for their restoration
- ii. location of new trees, shrubs, hedges and grassed areas
- iii. schedule of plants to comprise species, plant sizes and proposed numbers/density
- iv. programme for completion and subsequent maintenance.

c. All hard and soft landscaping works shall be carried out in accordance with the scheme approved in writing by the planning authority.

d. Development shall not begin until details of earthworks have been submitted to and approved in writing by the planning authority. Details shall include existing and proposed levels (in relation to a fixed datum, preferably ordnance) and contours in relation to surrounding vegetation and landform (with datum levels). Development shall be carried out in accordance with the approved details.

e. Existing trees and shrubs as shown on [*specify drawing reference*] on the site shall not be lopped, topped, felled, removed or disturbed in any way without the prior written consent of the planning authority.

f. Development on the site shall not begin until trees marked for retention on [*specify drawing reference*] have been protected by suitable fencing. Details of this fencing shall be submitted for the consideration of the planning authority and no work shall begin until written approval of the planning authority has been given.

g. During construction work on the site, including the laying of services, no excavation shall be undertaken under the crowns of trees.

h. Before development begins a scheme for the maintenance of open space, including play areas, within the development shall be submitted to and approved in writing by the planning authority.

i. Any trees or shrubs, including hedges on the site which, in the opinion of the planning authority, are dying, severely damaged or diseased within [*specify*] years of planting shall be replaced by trees or shrubs of a similar specification to those originally planted.

2. Play Areas - Submission of Scheme

Before development begins a scheme for the provision of a play area as outlined [*specify drawing reference*] shall be submitted for the consideration of the planning authority and no work shall begin until written approval of the planning authority has been given. Details to be submitted include-

- i. type and location of play equipment, seating, fences, walls and litter bins
- ii. surface treatment of the play area
- iii. proposals for the implementation/phasing of play area(s) in relation to the construction of houses on the site.

3. Play Areas - Implementation

All works required for the provision of play area(s) shall be completed in accordance with the scheme approved in writing by the planning authority.

Example of an unacceptable condition

- Provision of Dog Fouling Areas and/or a scheme shall be developed by the applicant.

- Explanation - This condition fails the test of relevance to planning.

F. NATURAL HERITAGE

1. Restrictions on Development

a. No development, including the deposit of materials during construction and the deposit of waste materials, shall take place in the area hatched [*specify drawing reference*].

Circular Ref: Nature Conservation and Landscape Paras 71-73

b. No construction or engineering operations shall take place on site between [*specify dates*], which period coincides with the breeding season of [*specify*].

2. Footpath Links

Before development on the site begins details of a footpath link between points A and B on [*specify drawing reference*] shall be submitted to and approved in writing by the planning authority. The footpath shall be constructed in accordance with the approved scheme within [*specify*] of the planning authority's written approval of the scheme.

3. Species Protection

Before development on the site begins, a scheme for the protection of [*specify*] shall be submitted to and approved in writing by the planning authority. Any [*specify works or actions*] shall thereafter be carried out in accordance with the approved scheme.

G. BUILT HERITAGE

1. Building Details

Details of the design of doors/windows [*specify*] and other architectural details [*specify*] shall be submitted to the planning authority in the form of drawings at a scale of [*specify*]. The drawings should include dimensions of doors/windows, materials [*specify*], etc. No work shall begin until written approval of the planning authority to the details has been given.

2. Stone Cleaning

Details of the justification for and proposed method of stone cleaning shall be submitted for the consideration of the planning authority and no work shall begin until written approval of the planning authority has been given.

3. Stone Pointing

Details and specifications of the proposed stone pointing shall be submitted for the consideration of the planning authority and no work shall begin until written approval of the planning authority has been given.

4. Harling

Details of the proposed harling shall be to the planning authority and no work shall begin until written approval of the planning authority has been given to these details.

5. Materials

Samples of materials [*specify*] to be used in the development shall be submitted for the consideration of the planning authority and no work shall begin until written approval of the planning authority has been given.

6. Replacement of Natural Stone

The coursing and surface finish of the replacement stonework shall match, in terms of texture and appearance, the stone on the existing/adjoining building(s) [*specify as appropriate*]. A sample shall be submitted for the consideration of the planning authority and no work shall begin until written approval of the planning authority has been given.

7. Archaeology

a. No development shall take place within the site until a scheme of archaeological investigation (including a timetable) has been submitted to and approved in writing by the planning authority.

Circular Ref: Archaeology Paras 79-80

b. No development shall take place until fencing has been erected in a manner and position to be agreed with the planning authority at [*specify name of monument*]; and no development shall take place within the fenced area until the prior written approval of the planning authority has been given.

c. The developer shall afford access at all reasonable times to any archaeologist nominated by the planning authority and shall allow him to observe work in progress and record items of archaeological interest.

Note: In relation to Model Condition G7c above, conditions should not require work to be held up while archaeological work takes place, although some developers may be willing to allow this.

H. TRANSPORT

1. Means of Access

The building/use [*specify*] hereby permitted shall not be occupied/commenced until vehicular, cycle and pedestrian access routes have been constructed in accordance with the approved plans.

Circular Ref: Traffic and Transport Paras 56-64

Examples of unacceptable conditions

- To require that the applicant shall construct an ancillary road as and when required by the planning authority.

Explanation - This is imprecise and unreasonable.

- To require that the land in front of the buildings shall be made available for future road widening.
- Explanation - There should be no requirement to make land available, although a condition could be framed to reserve land for future development.

2. Access for Disabled People

Development on the site shall not begin until a scheme indicating the provision to be made for disabled people to gain access to and within the site, including provision for parking, has been submitted to and approved in writing by the planning authority. The agreed scheme shall be implemented before the building/use is occupied/commenced.

Circular Ref. Access for Disabled People Para 110

3. Visibility Splays

No building or other structure or tree or shrub exceeding [*specify*] metres in height shall be allowed in the area shown on [*specify drawing reference*].

4. Parking

The car parking spaces shown on [*specify drawing reference*] shall be constructed and surfaced in accordance with the approved details before the building hereby permitted is occupied.

Example of an unacceptable condition

- To require that loading and unloading, and the parking of vehicles, shall not take place on the road at the front of the premises.
- Explanation - This condition seeks to exercise control in respect of a public road, which is not under the control of the applicant.

5. Cycle Racks

Before development on the site begins, details of a bicycle racking system for [*specify number*] bicycles shall be submitted to and approved in writing by the planning authority. The approved racking system shall be installed before the building is occupied.

6. Public Transport

Development shall not begin until details of the proposed bus/railway station(s) or stop(s) within the site have been submitted to and approved in writing by the planning authority. The development shall not be brought into operation until the station(s) or stop(s) have been constructed in accordance with the approved plans.

Circular Ref: Public Transport Paras 57-59

I. ENVIRONMENTAL CONTROLS

1. Noise

Circular Ref: Noise Para 70

a. Minimising the effect of noise on new noise sensitive development

Development shall not begin until a scheme for protecting [*specify development*] from noise from [*specify sources*] has been submitted to and approved in writing by the planning authority. The [*specify development*] shall not be brought into use until the measures in the approved noise prevention scheme operate to the satisfaction of the planning authority.

b. Restricting noise from industrial or commercial development

i. [*Specify activities*] should not take place within [*specify where*].

ii. The level of noise from the site shall not exceed [A] dB between [*specify time*] and [A] dB at any other time. The level of noise from the site is to be measured [*specify location(s)*].

Note: A - noise level expressed as L Aeq,T over a time period X (eg 1 hour). Conditions on noise must be tailored to particular circumstances and should be drawn up in consultation with environmental health officers.

2. Contaminated Land

Circular Ref: Development of Contaminated Sites Paras 65-68

Development shall not begin until a scheme to deal with contamination on the site has been submitted to and approved in writing by the planning authority. The scheme shall contain details of proposals to deal with contamination to include:

- i. the nature, extent and type(s) of contamination on the site
- ii. measures to treat/remove contamination to ensure the site is fit for the use proposed.
- iii. measures to deal with contamination during construction works
- iv. condition of the site on completion of decontamination measures.

Before any [*specify e.g. residential/commercial/business/retail*] unit is occupied the measures to decontaminate the site shall be fully implemented as approved by the planning authority.

3. Drainage/Sewage Disposal

None of the dwellings shall be occupied until the drainage/sewage disposal works have been completed in accordance with the submitted plans.

4. Hot Food Shops

The hot food shop shall not start trading until the flue and ventilation systems are operational in accordance with details approved in writing by the planning authority.

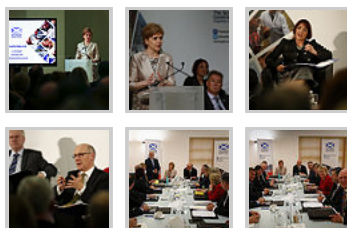
Example of an unacceptable condition

- Certification by ventilation engineer that kitchen equipment will meet prescribed standards.

Explanation - This is not a matter for planning legislation.

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