

Appendix 1

Planning Guidance Note Planning Conditions

Policy Overview

Government guidance on the use of planning conditions is contained within the National Planning Policy Framework (NPPF) and the Planning Practice Guidance.

[Paragraph 206 of the NPPF](#) states planning conditions should only be imposed where they meet the following six tests:

1. necessary;
2. relevant to planning and;
3. to the development to be permitted;
4. enforceable;
5. precise and;
6. reasonable in all other respects.

The Benefits of Effective Planning Conditions

If used properly, conditions can enhance the quality of development and enable development proposals to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects of the development.

Key Tasks for the Local Planning Authority to Ensure the Use of Effective Conditions

1. The following six tests are taken directly from the Government's on-line Planning Practice Guidance (www.planningguidance.communities.gov.uk/) and must be applied by the Local Authority in drawing up/approving conditions:
 - a. *A condition must not be imposed unless there is a definite planning reason for it, i.e. it is needed to make the development acceptable in planning terms. If a condition is wider in scope than is necessary to achieve the desired objective it will fail the test of necessity.*
 - b. *A condition must not be used to control matters that are subject to specific control elsewhere in planning legislation (for example, advertisement control, listed building consents, or tree preservation). Specific controls outside planning legislation may provide an alternative means of managing certain matters (for example, works on public highways often require highways' consent).*
 - c. *It is not sufficient that a condition is related to planning objectives: it must also be justified by the nature/impact of the development. A condition cannot be imposed to remedy a pre-existing problem or issue not created by the proposed development.*
 - d. *Unenforceable conditions include those for which it would, in practice, be impossible to detect a contravention or remedy any breach of the condition, or those concerned with matters over which the applicant has no control.*

- e. *A condition should be written in a way that makes it clear to the applicant and others what must be done to comply with it. Poorly worded conditions are those that do not clearly state what is required and when, must not be used.*
- f. *Conditions which place unjustifiable and disproportionate burdens on an applicant will fail the test of reasonableness. Unreasonable conditions cannot be used to make development that is unacceptable in planning terms acceptable.*
2. Planning Officers should similarly question consultee requirements against the six tests - and if they do not meet the tests they should be omitted or reworded.
 3. At the pre-application stage there should be clear guidance regarding what information is required to ensure that the development can be implemented quickly and with the minimum of conditions.
 4. Conditions that require the resubmission and approval of details that have already been submitted as a part of the planning application are unlikely to pass the test of necessity and should not be applied. Prescriptive or compliance conditions should be preferred to restrictive conditions that require the submission and approval of further details.
 5. The format, content and structure of conditions should be discussed during the Application process and prior to the decision being made to minimise or avoid the use of restrictive and other conditions.
 6. For clarity, the Decision Notice should set out conditions in the following order:-
 - I. Pre-commencement of development (thus allowing works, demolition etc.)

Contamination could be dealt with in this way. However, the condition may be structured for large schemes to enable development to be implemented in phases.
 - II. Pre-Commencement of Principal Supporting Infrastructure

Details of drainage or highway works may typically fall within this section.
 - III. Pre-Commencement of Buildings and other Structures

This could include details such as landscaping and external materials.
 - IV. Pre-Occupation of Building

Details such as BREEAM compliance, travel plans etc.
 - V. Compliance Conditions, Post Completion

This may include conditions that place restrictions on the occupancy of a building or the hours of use.

APPENDIX 5

1) Planning Conditions

The note sets out the statutory test for conditions, and the guidance on the proper use of planning conditions. It also advocates working with the applicant to minimise the number of required conditions through a robust initial submission, and setting an order of conditions. These are all sensible points and should be supported and reflect existing practice at Tamworth.

2) Member Involvement in the Planning Process

The suggestions in this paper raise most concern as they depart from our normal practice which has evolved over many years to deliver the speed and efficiency that we currently deliver and which work well.

The note refers to effective Member involvement helping them to better represent their constituents and enrich local democratic debate, but also advocates that Members should be involved in pre-application discussions. There are occasions when it is entirely appropriate for Members to be involved at the pre application stage and this already takes place in Tamworth through briefing papers to Planning Committee. However, circumstances will vary dependent on the wishes of the potential applicant and the specific proposals. Officers are concerned that by imposing a process which brings all pre-application proposals to Planning Committee that it will slow down the pre-app process, may put potential applicants off engaging with us and clog up Planning Committee business. Therefore, it is suggested that pre-application discussion with members only takes place through Planning Committee and where the potential applicant has asked for this to happen. Officers will recommend that potential applicants allow officers to seek views of Planning Committee when it is considered appropriate. In all instances where members become involved in pre application discussions they should be aware of potential pre determination issues. Therefore the recommended response is that locally set thresholds and procedures should be put in place by each Council.

Point 2 advocates at least 4 training sessions per year for all Planning Committee members, and that these should ideally be facilitated by an outside body and again this is inline with existing practice in Tamworth. Our local protocol for councillors and officers dealing with planning matters sets out sets out the training requirements. It requires Members dealing with planning issues to attend training sessions each year to receive guidance in relation to planning regulations and procedures and on declarations of personal or prejudicial interests. This training should include a balance of the following:-

- Organised visits to review permissions granted, with evaluation and lessons learned presented as a paper;
- Short (half day) sessions on special topics of interest or where overturns have indicated problems with planning policy;
- Special topic groups to consider difficult and challenging issues in depth;
- Formal training by internal and external speakers;
- Visits to other authorities who have received good inspection / audit feedback;
- Quick presentations by officers on hot topics, e.g. new legislation, white papers and there impact, followed by a brief question and answer session;
- Attendance at inquiries where officers have identified that there is something specific to learn which will benefit members.

The report of the Audit Commission 'Building in Quality' recommend that Councillors should revisit a sample of implemented planning permissions to assess the quality of the decisions. Such a review should improve the quality and consistency of decision making, thereby strengthening public, confidence in the planning system, and can help with reviews of planning policies. Such reviews are best undertaken at least annually. They should include examples from a broad range of categories such as major and minor development; permitted departures; upheld appeals; listed building works and enforcement cases. Briefing notes

should be prepared on each case. The Planning Committee should formally consider the review and decide whether it gives rise to the need to reconsider any policies or practices.

Point 3 suggests that it would be appropriate for Members to undertake site visits to permitted developments to see their impact and use the knowledge to inform future decisions. This is covered in the training.

Point 4 suggests that committees should consider introducing a “right to reply” whereby committee members have the ability to question the applicant or objector/supporter to clarify points they have raised. It is suggested that this can help to reduce the need to defer an application or avoid determinations based on a misunderstanding. Officers consider that the committee procedure in Tamworth has evolved into a streamlined process that successfully balances the proper debate around proposals with the need for timely efficient decision making, and would therefore not support this proposal. Supporters, Objectors and local ward members all have opportunity to speak on applications. A “right to reply” would be difficult to manage and may lead to confusion on what is being applied for. It is therefore suggested that the GBSLEP omit this from the guidance notes.

The paper also suggests that Members should be informed of updates to legislation, policy or case law. This is agreed, and forms part of our current procedures.

Finally, this paper advocates that for larger schemes, applicants should engage with local Members prior to submitting a planning application. Whilst this may be appropriate, our current procedure for very significant schemes is to produce an early Issues Report, which ensures that committee Members are aware of the proposal and that they have an opportunity to comment prior to the application coming before them for determination. This ensures a consistent Member view from elected Members with an understanding of the planning considerations, and is a valuable input to the overall assessment of such proposals. It also removes any question of pre-determination as the process is managed in an open transparent manner through the Committee process. Officers would endorse maintaining this current process.

The Pre-Application Process

This note sets out the benefits of early engagement, setting out the potential to improve the efficiency and effectiveness of the planning application system for all parties, and the likelihood of achieving improved outcomes. The paper is welcomed and agreed.

Planning Obligations

The note sets out when it is appropriate to enter in to a legal agreement, and that it is best to seek early agreement on Heads of Terms, and to simplify such agreements as much as possible. It also suggests that LPA’s within the LEP should consider some joint working to produce and maintain a library of “standard” draft planning obligations. Officers welcome the note, and have no objection to “shared” practice provided that it met with the approval and agreement of our legal advisors.

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