Conditions

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July 2026: Added paras 132 – 133 regarding 'informatives' for major development. February 2026: • Advice on 'The Plans Condition' at paragraphs 60 - 70	

Key legislation and policy

Legislation	• Town and Country Planning Act 1990 (TCPA90), sections 70, 72, 91 and 92. Sections 77 and 79 allow an Inspector or the Welsh Ministers similarly to impose conditions.
National policy and guidance	• Planning Policy Wales, edition 10 (PPW) contains various broad references to the use of conditions. • The Technical Advice Notes (TANs) consider the planning conditions required for various specialist areas. • Minerals Technical Advice Notes (MTANs) set out relevant conditions for mineral developments. • Welsh Government Circular WGC 016/2014 'The Use of Planning Conditions for Development Management' (October 2014). • Welsh Government Circular 13/97 'Planning Obligations' (July 1997) • Development Management Manual Rev 2 (May 2017), Section 10.
Judgments	• Newbury District Council v Secretary of State for the Environment (1981) (The 'Newbury' test) AC 578. • William John Jory v Secretary of State for the Environment and Regions (2002) EWHC 2724. • *I'm Your Man Ltd v SSE & North Somerset DC* [1999] 4 PLR 107 • *Winchester CC v SSCLG & Others* [2013] EWHC 101 (Admin) • *Telford and Wrekin Council v SSCLG & Growing Enterprises Ltd* [2013] JPL 865 • *Uttlesford DC v SSE & White [1992] JPL 171*

Other guidance	Guidance on the Community Infrastructure Levy, Ministry of Housing, Communities & Local Government.

Introduction

1. This chapter sets out legal, policy and practical considerations regarding the imposition of conditions on planning permissions in Wales. It is intended to support the Welsh Government Circular WGC 016/2014 'The Use of Planning Conditions for Development Management' (the Circular) and should be read alongside it.

2. Conditions and planning obligations can enable development proposals to proceed where it would otherwise be necessary to refuse planning permission. However, the Circular sets out that conditions should only be imposed where they are:
   i. Necessary;
   ii. Relevant to planning;
   iii. Relevant to the development to be permitted;
   iv. Enforceable;
   v. Precise; and
   vi. Reasonable in all other respects.

3. The Circular refers to these as the 'six tests' and states that each of them needs to be satisfied for each condition that a planning authority (or, by extension, an Inspector) intends to apply.

4. Any proposed condition which fails to meet one of six tests should not be used, even if it is suggested by an applicant, members of a planning committee, statutory consultee or third party.

5. Conditions attached to planning permissions should not duplicate the controls contained in other legislation. Sufficient information should accompany development proposals in order for decisionmakers to be satisfied that proposals are capable of effective regulation.

6. Planning conditions may have serious implications for the individual, so it is important to bear in mind the human rights implications when considering their use:

Think about:

(a) The number of conditions imposed through a planning permission should be kept to the minimum necessary to ensure good quality sustainable development.

(b) If a matter is controlled under other regulatory regimes then it should not be the subject of a planning condition.

(c) A prescriptive condition setting out what would make the detail of a scheme acceptable is often a better option than an approval of detail condition.

(d) Consider the impact of a condition on deliverability: inappropriate timing or lack of clarity about phasing can increase risk and cost.

(e) Wherever practical, frame a requirement as a condition rather than require a planning obligation.

Informatives are put on a decision notice as guidance for the developer. They are not conditions and are not enforceable. **Inspectors should not include informatives within their decisions.**

The legal framework

The 'Compulsory Standard Conditions'

7. Section 91(1) of the TCPA90 provides that every planning permission shall be granted or deemed to be granted subject to the condition that the development to which it relates must be begun **not later than the expiration of specified periods**.

8. S92(2) provides that outline planning permission for development consisting in or including the carrying out of building or other operations, shall be granted subject to **specified conditions**.

9. The 'compulsory statutory conditions' apply to permissions granted by planning authorities, Inspectors or the Welsh Ministers.

Powers to Impose other Conditions

10. S70(1)(a) empowers a planning authority, subject to s62D(5), s91 and s92, to grant planning permission on application unconditionally or '**subject to such conditions as they think fit**'.

11. The s70(1)(a) power must be interpreted with regard to the legal tests and policy tests described below, the development plan, other material considerations including PPW and TANs, plus any case law which may be relevant to legal and/or policy matters.

12. S72(1) describes particular types of conditions which may be imposed under s70(1) 'without prejudice to the generality of' that section:

(a) for regulating the development or use of any land under the control of the applicant…or requiring the carrying out of works *on any such land, so far as appears…to be expedient for the purposes of or in connection with the development authorised by the permission;*

(b) for requiring the removal of any buildings or works authorised by the permission, or the discontinuance of any use of land *so authorised, at the end of a specified period, and the carrying out of any works required for the reinstatement of land at the end of that period.*

13. Planning permission granted subject to a s72(1)(b) condition shall be referred to as 'planning permission granted for a limited period'; s72(2).

14. S77(4)(a) provides that the powers set out under s70 and 72(1) apply to applications referred to the Welsh Ministers.

15. Schedule 5 of the TCPA90 deals with Mineral Working conditions.

Development Orders

16. Planning permission granted by any development order may be subject to conditions or limitations as specified. Conditions on classes of permitted development (PD) are conditions on a grant of planning permission, but s70(1), s72(1) and s79(1) of the TCPA90 do not apply.

17. Advice on the grant of an *express* permission subject to conditions which withdraw PD rights is given below. The General Permitted Development Order and Prior Approvals Appeals chapter covers other matters relating to conditions, including imposing conditions in prior approval appeals.

The Legal Tests

18. While planning authorities, the Welsh Ministers and Inspectors may impose 'such conditions as they think fit', the House of Lords held in *Newbury DC v SSE & Others* [1980] 2 WLR 379, [1981] AC 578 that conditions must be:

    (a) Imposed for a planning purpose and no other purpose, however desirable;
    (b) Fairly and reasonably related to the development permitted;
    (c) Not so unreasonable that no reasonable planning authority could have imposed them – that is, '*Wednesbury*' unreasonable[1].

19. These are the '*Newbury'* or legal tests. While there is some overlap, they should not be confused with the policy tests described below. The legal tests will rarely be addressed in planning appeal casework. Questions relating to the validity of conditions normally arise only in Enforcement appeals proceeding on legal grounds.

[1] *Associated Provincial Picture Houses v Wednesbury Corporation* [1948] (Court of Appeal)

Overview of planning policy

The Policy Tests

20. The Circular states that decision makers should consider whether otherwise unacceptable development could be made acceptable through the use of conditions. However, such conditions should only be imposed where they are:

    (a) Necessary;
    (b) Relevant to planning;
    (c) Relevant to the development to be permitted;
    (d) Enforceable;
    (e) Precise; and
    (f) Reasonable in all other respects.

21. The Circular refers to these as the 'six tests' and states that each of them needs to be satisfied for each condition intended to be imposed. The explanation for each of the tests is set out in section 3 of the Circular and is not repeated here.

22. Any permission granted at appeal will be at risk of challenge if conditions do not meet the six tests including precision, or are incomplete, or are not imposed at all when they should be.

23. Attention is particularly drawn to paragraphs 3.2 to 3.9 of the Circular which advise that in considering whether a condition is necessary decision makers should ask themselves whether planning permission would have to be refused if the requirements of that condition were not imposed. If it would not, then the condition needs special and precise justification.

24. Where a proposed condition fails to meet one of six tests it should not be used, even if it is suggested by an applicant, members of a planning committee or third party. Even if all parties to an appeal agree to a condition being imposed, the Inspector as the decision-maker will need to establish whether the condition would be necessary and meet other tests.

25. Further to the relevant section in the Circular, in considering whether a condition is necessary, bear in mind that it is usually not possible to rely on the description of development to control, restrict or limit a development. It was held in *I'm Your Man Ltd v SSE & North Somerset DC* [1999] 4 PLR 107 that there is no direct or implied legal power to impose a time limitation on a planning permission except by means of 'temporary' condition.

26. However, it is not necessary to impose a condition to define what is permitted if the permission itself does so properly. It was held in *Winchester CC v SSCLG & Others* [2013] EWHC 101 (Admin) upheld in [2015] EWCA Civ 563 that a permission granted for a 'travelling show peoples site' could not be interpreted as a general permission for a residential caravan site, although no occupancy

condition had been imposed, because a 'travelling show people's site' is a sui generis use, and other conditions imposed were commensurate with the permission being for that use.

27. When granting permission, any restriction to the development should be secured by condition, whether that be a limitation to opening or operating hours, the occupation of the site or the duration of the permission. Even if the description of development purports to contain a restriction, such as a proposal for 'a dwelling for occupation by a farm worker', a restriction to that end will only be enforceable if secured by condition; see advice on temporary, personal and occupancy conditions and withdrawing PD and change of use rights in section 5 of the Circular.

28. Further to the relevant section in the Circular, Conditions must be worded so that they can be understood by the appellant and/or their successor(s) in title, the authority and interested parties. The condition must be clear as to what is required and, where relevant, by when. Any rights being removed by condition should be precisely explained by reference to the relevant legislation.

29. The Courts will interpret conditions based on the natural and ordinary meaning of the words – including the meaning conferred by grammar. It was held in *Telford and Wrekin Council v SSCLG & Growing Enterprises Ltd* [2013] JPL 865 that a condition requiring that details of products to be sold '*should be submitted to and agreed in writing by the local planning authority*' did not prohibit the sale of goods **not** on the list because of the difference in meaning between 'shall' and 'should'.

Conditions to Avoid

30. The Circular sets out at 4.23 – 4.27 where conditions should **not** be imposed. In general conditions to avoid include:

    (a) Conditions which unreasonably impact on the deliverability of development;
    (b) If details are submitted with an outline application for approval, conditions cannot be imposed to reserve these matters for future consideration.
    (c) Conditions requiring development to be carried out in its entirety.
    (d) Conditions requiring compliance with other regulatory requirements.
    (e) Conditions requiring that land is given up or ceded to other parties.
    (f) Positively worded conditions requiring the payment of money or other consideration.

31. Furthermore, in the case of DB Symmetry Ltd v Swindon BC, the Supreme Court established that it is not lawful to impose planning conditions that require

the dedication of any new access roads as public highway. The power to impose conditions should not be interpreted, in the absence of clear words, as derogating from the owner's property rights. A condition that requires a developer to dedicate land as a public highway without compensation is an unlawful condition; Hall & Co Ltd v Shoreham by Sea UDC [1964] 1 WLR 20 applied. Such matters should be dealt with through a s106 planning obligation because the applicant could be subjected to an obligation only by its voluntary act, rather than a unilaterally imposed condition.

Model Conditions

32. The Circular provides at Appendix 1 a list of model conditions. This list is not exhaustive but is provided as a reference point.

33. PEDW provides its own suite of planning conditions. This can be accessed in DOT.DOCs. Again, the list is not exhaustive, and the conditions given may need to be amended if appropriate to the case.

34. Treat the wording of any suggested condition with caution and do not rely on it meeting the tests especially if further details are sought; see advice on the Anatomy of Conditions below.

Imposing conditions in planning appeals

The Parties and Conditions

35. The planning authority will be asked to provide a list of suggested conditions and reasons with the questionnaire. They may provide the list with their statement or via other documentation such as their committee report. Suggested conditions are also included on the Householder Appeal Questionnaire.

36. If the authority does not provide a list, you must ask for one if you are minded to allow the appeal and grant planning permission. If a matter suggested to be subject to a condition is not in the Circular or DOT.DOCs you may wish to ask for suggested wording if the authority has only provided a brief outline of conditions/reasons to be imposed.

37. Always check whether the appellant, statutory consultees and/or other parties have suggested conditions; it is not unusual for the Highways Authority or Natural Resources Wales. The need to impose these must be considered against the relevant tests. Sometimes parties will indicate that certain measures might be necessary, such as landscaping – even if they have not discussed conditions in terms. You should consider whether such proposals could and should be secured by condition.

38. As part of your reasoning you may need to address whether a condition suggested by an appellant would overcome the harm identified.

39. ‘Informative’ notes set out on planning permissions do not carry any legal weight. If a matter covered by an informative is necessary it must be imposed as a condition although their addition as an informative is an indication that the Council does not consider that they meet the tests for a condition.

Natural Justice

40. An Inspector may take the view that a condition which has **not** been suggested would be necessary to make a development acceptable. You should not impose conditions where the parties, including third parties, would reasonably expect but did not have any opportunity to comment[2].

41. A condition may come as a surprise to the parties if it was not mentioned in the written representations or at the hearing or inquiry. You would then need to give the parties a chance to comment unless:

    (a) The appellant has commented on the mitigation that the condition would achieve, for example, obscure glazing.
    (b) Other parties have proposed some mitigation and the appellant has had an opportunity to comment.
    (c) The condition is ‘standard’ and obviously uncontentious for the case, such as use of matching materials or landscaping .
    (d) The condition is required to secure the provision and/or retention of part of the proposal shown on the plans such as the layout of parking spaces.

42. Inspectors may need to re-draft suggested conditions suggested by the parties so that they comply with the six tests or simply for precision or clarity. It is not necessary to refer back to the parties if the essence of the condition is unchanged.

43. If you re-draft a condition take care not to change its meaning or effect, such that the parties would expect to have an opportunity to comment.

Drafting Conditions

44. The Circular[3] states that conditions should offer flexibility, although not to the extent that the development is substantially different to that which is granted permission.

45. Conditions imposed on a permission are likely to be scrutinised by the parties. Small drafting errors or omissions can alter the intended meaning of a condition or prevent it from being enforced, such that a high court challenge or further application or appeal may follow. Conditions must therefore be carefully written and checked.

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[2] *Jory v SSTLGR* [2002] EWHC 2724
[3] Paragraph 4.4

46. Where several conditions are imposed, it improves the look and flow of a decision if they are set out in a schedule at the end. You would need to word the 'decision' so that planning permission is granted '*subject to the conditions set out in Schedule 1*' or similar and the schedule is so headed.

47. Where possible, use the conditions in DOT.DOCs to ensure consistency and best practice. However, you should always consider whether a relevant standard condition would need to be modified, or a non-standard condition should be used to reflect the circumstances of the case, and perhaps deal with specific requirements of the parties.

48. It is always necessary to check whether every suggested condition:

    (a) Contains any unnecessary requirements or overly detailed specifications of particular requirements. This sort of assessment should be undertaken, for example, with 'landscaping' conditions. It may be reasonable to leave the planning authority to decide, for example, the extent and species of planting.

    (b) Refers to any statutory instrument, policy or guidance document which may be subject to future updates or withdrawal such as the GPDO or British Standards. Consider whether it is necessary to refer to the document at all and, if so, whether the condition can be worded to remain enforceable and otherwise stand the test of time.

    (c) Purports to delegate approval of a scheme to another party, such as Natural Resources Wales. Approval is the responsibility of the planning authority and it will be for them to decide whether or not to consult with any other parties when considering if a submitted scheme is acceptable.

'Anatomy' of a Condition

49. Many planning conditions have different component parts, such as a requirement to submit details for approval, and implementation (and retention) in accordance with the approval.

50. When considering suggested conditions, you must consider whether each suggested component is necessary – and if any necessary components are missing, for the condition to fulfil the reason for its imposition:

    (a) If **further details** are required, they should be submitted to and approved by the local planning authority in writing.
    (b) An **implementation clause** should be included where it is necessary to control how the development is carried out: *'Development shall be carried out in accordance with the approved details*'.
    (c) A **timing clause** should be included where it is necessary to control when something is done: '*The dwellinghouse hereby*

approved shall not be occupied until a parking space has been laid out in accordance with the approved plan'.

(d) A **retention clause** should be included where it is necessary that something is retained in posterity: *'The parking space shall thereafter be retained for use for parking by the occupiers of the approved dwellinghouse at all times*'.

(e) **Maintenance clauses** are occasionally necessary to ensure that the works or installation being required will remain effective. Maintenance should be in accordance with the approved details or with the scheme to be approved by the planning authority.

51. If an essential component part is missing, the condition as a whole may be sufficiently flawed that the entire decision is at risk of challenge or the condition may be unenforceable.

The Order of Conditions

52. The Circular recommends that conditions should be set out relative to the order in which they are to be discharged, with the time limit condition and condition identifying the approved plans and documents appearing first.

53. A condition should not appear twice on the same decision.

Reasons for Imposing (or not imposing) Conditions

54. Article 24 of the Town and Country Planning (Development Management Procedure)(Wales) Order 2012 requires decision notices to state clearly and precisely the full reasons to be given for conditions, and to specify all relevant development plan policies and proposals.

55. Where appeals are **allowed**, subject to conditions, reasons must be given for the imposition of every condition and include the relevant development plan policy. Reasons also need to be specifically tailored to the development type and context. Examples of reasons are set out within the annex.

56. The Circular states that if the reasons for the imposition of conditions are clearly explained developers will be better able to understand the need to comply with them.

57. It is essential that you **double check** your decision to be sure that there is consistency between your reasoning on the main issue(s), reasoning in the Conditions section, overall conclusion and actual decision. If you indicate that a condition would be necessary, it must actually be imposed.

58. Where appeals are dismissed it is essential that the parties can understand why any conditions proposed by them would not overcome the harm.

Types of condition

59. Section 5 of the Circular discusses different types of condition that are used to regulate development. However, questions are frequently raised regarding certain types of conditions such as the following:

The 'Plans' Condition

60. It remains good practice to grant permission subject to a condition which specifies the approved plans as it creates certainty for all parties

61. Imposing a plans condition allows the appellant to make a s73 application for 'minor material amendments' to the permission. If a new permission is granted under s73, it should be subject to a new plans condition which lists the plans that show the development subject to minor material amendments.

62. If none of the parties suggests imposing a plans condition, you should still do so, and do not need to confer with the parties first. It should not come as a surprise to any party that the development permitted should be carried out as shown on the approved plans.

63. However, it is not appropriate to impose a plans condition:

- On a grant of permission for development involving a change of use only.
- On a grant of outline permission where all submitted plans are indicative or illustrative – unless there is a Masterplan or other drawing showing an outline scheme that is agreed to necessarily fix the parameters of the development.

64. If the development has already been carried out (Retrospective applications/appeals), it may be unnecessary to impose a plans condition. If that is the case, it is still good practice to refer to the plans in the effective part of the decision:

"The appeal is allowed, and planning permission is granted for [ ] at [ ] in accordance with the terms of the application, Ref [ ], dated [ ], [and the plans numbered x, y and z], subject to the following condition[s]: [ ]"

Note: This wording should not be used if a plans condition is imposed

65. However, you should always be mindful that permission is granted for the development applied for, which may not be the same as the development on the ground. If there are differences between what is proposed and what was actually built, impose a plans condition to require that the development is completed in accordance with the plans.

66. Ideally the condition will list the plans by number or title. If the plans are not numbered or named, the condition should refer to those 'submitted' and perhaps the date of the plans or date of receipt by the authority. If there are many plans, they should be listed in a schedule that is referenced in the condition and appended to the decision.

67. If it is necessary to require the submission and approval of further details, you should impose the standard plans condition and word the 'details' condition along the following lines:

    "Notwithstanding condition # [the plans condition], the development hereby permitted shall not be occupied until details of # have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

68. If the plans show some unacceptable detail which can simply be omitted from the development, and is therefore not fatal to a grant of permission, you should adapt the standard plans condition along the following lines:

    The development hereby permitted shall be carried out in accordance with the following approved plans: [insert plan numbers] except in respect of the [specify the detail] shown on plan [insert plan number].

69. The standard plans condition cannot require that all features shown on the plans are provided or retained, or that the development and all of its component parts must be completed. The condition can only ensure that the development accords with the plans if and insofar as it is carried out.

70. If it is essential – assuming the permission is implemented – that some specific feature shown on the plans is provided, such as proposed parking spaces or landscaping, you must impose an additional condition to ensure that the feature is delivered and, if necessary, retained.

Pre-commencement Conditions

71. The meaning of the term 'pre-commencement condition' is a condition imposed on a grant of planning permission which must be complied with either before any building or other operation comprised in the development is begun, or where the development consists of a material change in the use of any buildings or other land, before the change of use is begun'.

72. For a planning permission to be lawfully implemented, the developer must first ensure that all pre-commencement conditions are complied with (the 'Whitley Principle'[4]).

[4] works that contravene conditions precedent cannot be taken as lawfully commencing development

73. Development is taken to be **begun** when 'material operations' or 'material development' as described by s56 of the TCPA90 have taken place in accordance with the development permitted[5].

74. Pre-commencement conditions should only be used where there is a clear justification, which is likely to be mean that the requirements of the condition (including the timing of compliance) are so **fundamental** to the development permitted that it would otherwise be necessary to refuse the whole permission.

75. Where the requirements are 'fundamental', a pre-commencement condition will amount to a 'condition precedent' for enforcement or other purposes. A condition precedent is essentially characterised by:

    (a) Prohibiting **any** development authorised by the permission from taking place until the condition is complied with; **and**

    (b) Going to the heart of the permission.

76. Conditions precedent can range from something as considerable as: "no development to commence until a bypass has been completed" to something as routine as: "no development to commence until building materials have been approved".

77. Deciding whether a pre-commencement condition is a condition precedent will turn on its own facts. A planning permission should be read together with all of its conditions to consider both the purpose and effect of the conditions to then see if they go to the heart of the permission (irrespective of whether or not they are prohibitive either in their wording or their effect). For example, is this condition truly intended to prohibit all and any development until the step required in the condition has been discharged?

78. The issue was considered in *Bedford Borough Council v The Secretary of State for Communities and Local Government and Aleksander Stanislaw Murzyn* [2008] EWHC 2304 (Admin). This case concerned the refusal of the local planning authority to issue a certificate of lawful use or development for a barn conversion.

79. The local planning authority took the view that the development that had been carried out was unlawful as two conditions attached to the planning permission for the development (requiring the approval of the landscaping scheme and boundary treatment prior to commencement) had not been complied with. It was found by an Inspector on appeal and subsequently in the High Court that neither of these conditions were 'true conditions precedent' in that they did not go to the heart of permission. Therefore, although the conditions had been

[5] The term 'implementation' is not defined in statute and '*can be used to refer to the beginning of the development authorised by a planning permission…[or] more generally to the carrying out or completion of the development authorised by a planning permission*'; *R (oao) Robert Hitchens Ltd v Worcestershire CC* [2015] EWCA Civ 1060 and see also the Enforcement chapter

breached, the building works that had been commenced were not, by definition, unlawful.

Grampian Conditions

80. Grampian (or negative) conditions have been used to control development under a planning permission where works are to be carried out off-site.

81. The term 'Grampian' derives from the decision in Grampian Regional Council v City of Aberdeen (1983) P&CR, 633 and in summary it provides that a condition precluding the implementation of development permitted by a planning permission until some step has been taken is valid. Accordingly, it is lawful for a decision maker to grant planning permission, even in respect of land not within the planning applicant's ownership, subject to a negative condition restricting its implementation, in whole or in part, until some event has occurred. However, it is important to note that it is not possible to impose such a condition when there are no prospects at all of the action in question being performed within the time-limit imposed by the permission.

82. 'Grampian' conditions can be extremely useful, particularly to secure environmental and infrastructure improvements.

    Here is an example of a typical 'Grampian' condition:

    "The development authorised by this permission shall not begin until the local planning authority has approved in writing a full scheme of works for improvement to:
    (i)
    (ii)
    (iii) etc
    The occupation of the development shall not begin until those works have been completed in accordance with the local planning authority's approval and have been certified in writing as complete by the local planning authority."

'Phasing' Conditions

83. Phasing of development encourages developers to commence development as soon as possible. Conditions setting out such phasing of operations should require information or works at the most appropriate time. The decision maker needs to give careful consideration to the sequence of development and the stage for compliance imposed when drafting a condition. For example, if information does not have to be provided until prior to occupation then conditions should not burden the developer by requiring it earlier, which can unnecessarily delay development.

Retrospective Permission

84. Conditions may be imposed on any planning permission being granted retrospectively, whether the application was made under s78, s73A or, in an enforcement appeal, s174 and s177 of the TCPA90. However:

    • The standard commencement condition should not be imposed.
    • Other standard conditions may be unnecessary, for example, requiring the use of matching materials.

85. Advice on imposing the 'Plans' condition is provided above.

86. Some standard conditions require action, such as the submission and approval of a landscaping scheme, before the development is begun or occupied. In retrospective cases, such conditions must be adapted to set a timetable for action, and a 'sanction' for non-compliance in order to be enforceable. Dot.Docs includes conditions that require action in simple and complex retrospective cases.

87. In cases where the matters to be required by condition go the heart of the permission i.e. planning permission must be refused without them, the 'sanction', in both the simple and complex conditions, must be the use being granted permission must cease or the building being granted permission must be demolished in the event of failure to take the required action by the specified time.

88. Conditions should only be imposed if they are necessary but there will be circumstances where a requirement does not go to the heart of the permission, for example in minor development, boundary treatment or landscaping. In such cases requiring a use to cease of building to be demolished is likely to be disproportionate. The LPA would be able to serve a breach of condition notice with the threat of a fine if it the condition is not complied with.

89. Where possible requirements should be specified. If it appears biodiversity enhancement could be met by simple measures such as a bird of bat box, or the erection of a close boarded fence on a boundary, the LPA should be invited, without prejudice, to indicate what would be acceptable and the appellant invited to comment. Dot.Docs includes examples of conditions where requirements are known and where further information is required.

90. You should give the following reason for imposing the standard condition which requires action in a complex retrospective case:

    'As permission is being granted retrospectively it is not possible require approval of details before development takes place. Condition/s X and Y are necessary to [] and are worded such that the [use would be required to cease]/[the development would be required to be demolished if the conditions are not complied with.'

91. Whether imposing the long or short-form retrospective condition, it is essential to consider not only whether it is necessary and reasonable to require the further details, but also whether the timeframe being given for the submission of those details is reasonable in the circumstances.

Extensions, outbuildings and Annexes

92. The owners of neighbouring properties will occasionally extend their houses such that each extension would be, more or less, a mirror image of the other. If it is necessary that the two houses continue to have a symmetrical or cohesive appearance, each extension may only be acceptable if the other would be carried out.

93. However, if neither of the appellants has control over the other's land, it would be unreasonable to impose conditions which require the completion of both extensions or would prevent the occupation of one until both are completed. If it is essential that both extensions are completed, probably on visual grounds, then such appeals are likely to fail unless there is a completed planning obligation signed by the appellants in which both undertake to carry out the development as a single scheme.

94. Where it is proposed to construct an extension to or a separate building in the curtilage of a dwellinghouse, the use of the structure will normally be for one of two purposes. ***Uttlesford DC v SSE & White [1992] JPL 171*** assists in explaining the difference between the two. These are:

- To provide additional living space – this is primary living accommodation, such as a bedroom, a bathroom, or a kitchen. Particularly in the case of a proposed outbuilding that would provide primary living accommodation, the parties might suggest that such a use is 'ancillary' to the main dwellinghouse use. This description would not be accurate. Unless used as a separate dwellinghouse (see the paragraph below), the use of a building or extension that provides primary living accommodation would be part and parcel of the existing dwellinghouse use; or

- For purposes incidental to the use of the dwelling – meaning a use that is not 'part and parcel' of the existing dwellinghouse use, but has a functional relationship with the existing dwellinghouse use and a relationship which is one that is normally found (see *Harrods v SSETR [2002] JPL 1258*). Uttlesford informs that incidental "means something occurring together with something else and being subordinate to it …incidental purposes are regarded as being those connected with the running of the dwelling-house or with the domestic or leisure activities of the persons living in it, rather than with the use as ordinary living accommodation". Examples of incidental uses are parking/garaging, garden storage buildings, home gyms etc.

95. Where it is proposed to construct an extension or outbuilding to provide living space for a relative or other person (often described as an 'annexe'), the use will normally be:

- Part and parcel of the existing dwellinghouse use - because the use of the extension or annexe would be physically and/or functionally connected to the use of the main house and a new planning unit would not be created; or

- Use as a separate dwellinghouse in a separate planning unit.

96. If an extension or outbuilding is proposed for incidental use, a condition to restrict the use will rarely be needed. The same applies to proposals for an extension or an outbuilding that would provide primary living accommodation, but where the facilities would be limited, such that the occupier would wholly rely on most of the facilities within the main house and where the occupier of the proposal would be part of the family and/or household.

97. Care should be taken when considering proposals that provide for independent living; that is where the accommodation provides the facilities required for day-to-day private domestic existence (*see Gravesham BC v SSE & O'Brien [1983] JPL 306*). Remember that *Uttlesford* informs that such proposals would not necessarily become a separate planning unit from the main dwelling; much will depend on the particular circumstances of the case.

98. If you are minded to grant permission, you should be satisfied that the description of the development is consistent with (i.e. could not be interpreted as anything other than) a proposed extension or building to be used in a way that is part and parcel of the existing dwellinghouse use. Otherwise, having regard to section 75(3) of the 1990 Planning Act, there is a risk that permission might inadvertently be granted for a separate dwelling.

99. Provided you are satisfied that what is described in the application would be development used in a way that is part and parcel of the existing dwellinghouse use, a condition is unlikely to be necessary. Even if the development could be used as a separate dwelling and a party has raised sound planning objections to such a use, it should suffice to point out that there is no proposal for a separate dwelling before you.

100. Furthermore, if following a grant of permission, the structure is not built or used as proposed, or if there is a future material change of use to create a separate dwelling, then another grant of permission would be required, and the building or use would be at risk of enforcement action if such permission is not granted.

101. For proposals where the description of development might not be sufficiently precise, you might still be satisfied that, having regard to the evidence before you, its use would be part and parcel of the existing dwellinghouse use. Bear in mind that the development will remain in place long after the need which gave

rise to the application has gone. Imposing a condition to restrict the use may make the development acceptable in planning terms and thus ensure that your decision is proportionate. An appropriate condition might be:

The [extension/building/development] hereby permitted shall not be used other than as part of the dwelling known as [**].

102. As for proposals for development that accommodates uses that would be incidental to the existing dwellinghouse use, if, despite the advice above, you consider a condition controlling its use would be necessary, the following is suggested:

The [extension/building/development] hereby permitted shall not be used other than for purposes incidental to the dwelling known as [**].

Casework issues

Amended Plans/Proposals

103. The appeal process cannot be used to evolve a scheme[6]. Once a notice of appeal has been served, appellants seeking to vary an application from that considered by the LPA will be advised the variation is not permitted. Amendments cannot therefore be accepted. The only circumstances in which an amendment may be accepted are the correction of drawing or drafting errors which do not affect the substance of the application, or where it is necessary to ensure consistency in the information contained in the application and the accompanying documents. The decision made on an appeal must always be made in respect of the proposal and plans considered by the LPA. Should appellants wish to amend or revise a proposal, this should be done by making a new planning application to the LPA.

104. Where revised plans were submitted to the LPA before it made its decision, it is not necessary to explain that these plans are before you unless there is some disagreement or uncertainty to resolve.

105. Where revisions to a proposal are submitted as evidence to demonstrate that the reasons for refusal can be overcome, consider whether planning permission could be granted subject to conditions which resolve the matter in dispute. It would not be appropriate to do this where this would involve a change to the description of the development, because permission should not be granted for a different development to the one proposed in the original application.

[6] Sections 78 (4BA)-(4BB) and 195(1DA)-(1DB) of the TCPA and Article 26C of The Town and Country Planning (Development Management Procedure) (Wales) Order 2012; Section 21(4A)-(4B) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and Regulation 12B of the Planning (Listed Buildings and Conservation Areas) Regulations 2012; and Section 21(3E)-(3F) of the Planning (Hazardous Substances) Act 1990 and Regulation 13A of the Planning (Hazardous Substances) Regulations 2016.

106. When carrying out an accompanied site visit in written representation casework, clarify with the parties which plans were before the LPA when it made its decision and which were provided with the appeal. If any uncertainty remains after the site visit, seek clarification in writing.

Split Decisions

107. When deciding a planning application or appeal, the planning authority or Inspector may make a 'split decision' whereby permission for part of the development is allowed and part is refused. (See also 'Approach to Decision Making').

108. Inspectors deciding appeals made under s79 of TPCA90 may also make a split decision, since they may 'reverse or vary any part of the decision of the local planning authority…'.

109. Where a split decision is made, take care to ensure that any conditions imposed relate only to the part of the development being allowed.

Conflicting Conditions

110. It is crucial that conditions are not imposed which would conflict with others on the same permission – or conflict with conditions imposed on an existing permission that is still extant and relevant to the site.

111. For example, if you need to impose a condition requiring the provision and retention of a visibility splay with no obstructions over 0.6m – or there is a pre-existing condition to that effect – it would be unreasonable to impose another condition requiring that the development is landscaped in accordance with a plan that shows trees within the splay. The appellant would be put at risk of enforcement action if they plant the trees and thereby breach the visibility splay condition.

Discretionary or 'Tailpiece' Conditions

112. Conditions are sometimes worded to suggest that the requirements may be changed, usually by including a phrase such as 'unless otherwise agreed by the local planning authority in writing'. These are sometimes referred to as a 'tailpiece' phrases or conditions.

113. Such wording should be considered with care and avoided where possible, because it can create a risk that developers will seek to make significant changes to the development and/or to circumvent the statutory routes to vary conditions, depriving third parties of the opportunity to comment.

114. It was held in *Midcounties Co-operative Ltd v Wyre Forest DC* [2009] EWHC 964 that a tailpiece added to a condition to limit floor space allocations *'makes it hopelessly uncertain what is permitted. It enables development not applied for,*

assessed or permitted to occur. It side steps the whole of the statutory process for the grant of permission and the variation of conditions…'

115. In *Hubert v Carmarthenshire CC* [2015] EWHC 2327 (Admin), permission had been granted for the construction of a wind turbine and it was held that a condition stating that the turbine should be of certain dimensions '*unless given the written approval of the local planning authority*' could lead to the approval of a turbine of a greater scale and environmental impact than had been permitted; the clause had to be removed.

116. Tailpiece conditions should only be used where the potential for change would be minor, perhaps where a condition requires the implementation of a planting scheme submitted with the application, to give the authority scope to agree changes to the timing or species planted.

Conditions and Planning Obligations

117. In some cases a particular requirement or restriction could reasonably be achieved by imposing a planning condition or by the appellant entering into a planning obligation under s106 of the TCPA90. However, decision makers should seek to overcome planning objections, where appropriate, or secure mitigation by condition rather than by a planning obligation.

118. Nevertheless, the Circular sets out at paragraphs 4.22 that there are some matters which are more appropriately required through a planning obligation and should not be required in a condition, for example, commitments on behalf of the developer involving transfers of land or payments to be made to the local planning authority. Further guidance on the use of Planning Obligations is provided in Circular 13/97 the ITM and DM Manual.

119. It is important to note that a condition cannot override, supersede or revoke a completed planning obligation. If a completed obligation has been provided, it will be essential to consider whether a duplicating condition would be necessary.

Sustainable Drainage Systems and Conditions

120. Schedule 3 to the Flood and Water Management Act 2010 makes the provision of Sustainable Drainage Systems (SuDS) a mandatory requirement for new developments over a certain size.

121. From 7 January 2019, the majority of new developments will require SuDS approval. From this date SuDS on new developments must be designed and built in accordance with the Statutory SuDS Standards published by the Welsh Ministers. SuDS Schemes must be approved by the local authority acting in its SuDS Approval Body role (SAB) before construction work begins.

122. The SuDS guidance states that there may be a need for planning obligations, as it is a separate approval, however, imposing conditions or requiring a Section 106 agreement is likely to be unnecessary as they would duplicate other legislation, unless it can be demonstrated that there is a planning purpose for the obligation or condition. For example, a condition simply prohibiting the commencement of development before SuDS approval would not meet the tests in the Circular.

Biodiversity and Conditions

123. The Circular advises that any necessary measures to protect biodiversity should be in place through conditions and/or planning obligations, before permission is granted. The power (by s70 of the Act) to impose conditions is a way of both defining the limits of that process and also controlling the way that process itself is carried out. This might include conditions relating to hours of work or the erection of protective fencing around trees. It could also include the control of the development for protection of habitats such as nesting birds during the breeding season.

124. In the case of using a condition to control site clearance during the bird breeding season, although disturbance to breeding birds is an offence in itself (in the same way as damage to trees protected under a TPO), imposing a condition to protect against disturbance for the duration of the works is a straightforward mitigation of the effects of the development. Where evidence points to habitats for breeding birds on a proposed development site, the imposition of such a condition to regulate the development would not be construed as being for an ulterior purpose as opposed to a planning purpose. The condition would be enforceable because any breach of clearance works during the breeding season would be detectable from a site visit with enforcement action in the form of a stop notice or injunction as appropriate.

125. Policy 9 of Future Wales (FW), which has development plan status, states that; 'In all cases, action towards securing the maintenance and enhancement of biodiversity (to provide a net benefit), the resilience of ecosystems and green infrastructure assets must be demonstrated as part of development proposals through innovative, nature-based approaches to site planning and the design of the built environment'.

126. A scheme that does not include biodiversity enhancement will conflict with the development plan (FW) and, unless material considerations indicate otherwise, should be dismissed.

127. In most cases, it would not be proportionate to dismiss an appeal for otherwise acceptable development because biodiversity enhancement is not embedded in the design.

128. If no biodiversity enhancement is secured at the design stage and no condition has been suggested, and you intend to allow the appeal, consult the parties on

the potential wording and reason for imposing the suggested condition in Dotdocs.

Gigabit Capable Broadband Infrastructure

129. Policy 13 of Future Wales states; 'New developments should include the provision of Gigabit capable broadband infrastructure from the outset.'

130. Amended building regs come in to force on 1 July 2025 which together with previous regulations require all new buildings to be served by broadband infrastructure.

131. If LPAs suggest the imposition of the condition, the following text may be used.

'The Council has suggested the imposition of a condition requiring the provision of gigabit capable broadband infrastructure to comply with Policy 13 of Future Wales. From 1 July 2025 this is a requirement under building regulations for all new buildings and the imposition of a condition is, therefore, unnecessary.'

Informatives

132. It is not our usual practice to use informatives. However, Section 71ZB of the 1990 Act requires developers of major developments to give notice to the LPA stating the date on which the permitted development is to begin and, amongst other things, to display at or near the site and at all times, a copy of any notice of a decision to grant it.

133. A condition requiring this is not necessary but it must be included when granting permission for major development and the following should be used.

Prior to development taking place and throughout the course of development you must comply with your duties in Section 71ZB (notification of initiation of development and display of notice: Wales) of the Town and Country Planning Act 1990.

ANNEX

CONDITIONS CHECKLIST		Tick when checked
Do the conditions meet the THREE legal tests?	Imposed for a planning and no other purpose, however desirable.	
	Fairly and reasonably related to the development permitted.	
	Not so unreasonable that no reasonable planning authority could have imposed them.	
Do the conditions meet the SIX circular tests?	Necessary	
	Relevant to planning	
	Relevant to the development permitted	
	Enforceable	
	Precise	
	Reasonable in all other respects	
Have you checked the advice in the Circular and other relevant guidance?		
Have you given reasons for altering/not including the conditions suggested by the parties?		
Have you imposed all the conditions you said you would?		
Are the conditions accurate and complete?	Are **details** to be submitted for approval?	
	Is an **implementation** clause necessary?	
	…**timing** clause? …**retention** clause? …**maintenance** clause?	
	Have you deleted **'tailpiece' phrases** which could allow significant changes to the development?	

	Ensure that the wording of any model condition is adjusted to suit the circumstances of the case and do not rely on or accept uncritically the proposed wording put forward by any party to the appeal.	
Is the permission **retrospective?**	Do **not** include a 'standard' commencement condition.	
	Do impose the 'plans' condition but with care.	
	Do **not** impose pre-commencement conditions.	
	Do use a 'retrospective' condition to ensure the submission of details.	
Have you **addressed** all of the conditions suggested by **all** of the parties?		
Have you considered whether any conditions **not suggested** by the parties should be imposed? If **YES**, would any such conditions come as a surprise to the parties and do you need to consult them about it?		

REASONS FOR CONDITIONS

Section 71ZA of the 1990 Act requires decision notices to be updated and a revised version issued where consent is given for details required by a condition (including reserved matters applications), or approval is given for the removal or variation of a condition.

At the stakeholder events in autumn 2018 a number of LPA's raised the difficulties not having reasons listed with conditions causes when they have to update a planning permission granted on appeal. LPAs requested that we structure of our decisions in the same way as their decision notices.

Paragraphs 4.19 and 4.20 of Circular 14/16 state:

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

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

However, LPAs do have lists of standard conditions and reasons and to ensure a consistent approach, I see no harm in us doing the same. The list below is not exhaustive nor is the use of the suggested reasons compulsory. You should though, aim to keep them brief.

In all bar the time limit and plans conditions it will be necessary to list the relevant LDP policies. LPAs will be asked to indicate which policies are relevant to their suggested conditions.

It will still be necessary to include a section on conditions in a decision where you do not consider it necessary to impose conditions suggested by the parties. Where you are imposing all the suggested conditions but are not adopting the wording

suggested by the parties you should say that you have amended them to accord with the guidance in the Circular. You may consider it appropriate to explain why in the interest of LPAs improving the drafting of conditions.

EXAMPLES OF REASONS

Time Limit – Full

To comply with Section 91 of the Town and Country Planning Act 1990.

Time Limit – Outline

To comply with Section 92 of the Town and Country Planning Act, 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

Time Limit - Listed Building Consent

To comply with Section 18 of the Planning (Listed Building and Conservation Areas) Act 1990

Time Limit – Conservation Area Consent

To comply with Section 18 of the Planning (Listed Building and Conservation Areas) Act 1990

Reserved Matters

In the interests of highway safety/to ensure that the development hereby permitted does not have a detrimental impact on the character and appearance of the area.* *delete as appropriate.

Plans Condition

To ensure that the development is carried out in accordance with the approved documents, plans and drawings submitted with the application.

Adverts

In the interests of highway safety/amenity

Affordable housing

In order to address the identified need for affordable housing and in accordance with Policy H? of the LDP.

Archaeology

In order that an archaeological assessment is made and any features are recorded.

Character and appearance
Any condition relating to: design, materials, landscaping, levels, protecting trees and hedges etc.

To ensure that the development hereby permitted does not have a detrimental impact on the character and appearance of the area.

Contaminated land

To protect future users of the land/neighbouring land/controlled waters/property/ecological systems.

Drainage

To prevent pollution of the environment/flooding* by ensuring the provision of adequate foul/surface drainage.
*Delete as appropriate

Ecology

To ensure conservation of protected species and their habitats.

Highway safety
Any condition relating to access and parking.

In the interests of highway safety.

For cycle parking and transport plans

In order to promote the use of sustainable modes of transport.

Listed Buildings

In the interests of the special architectural/historic interest of the building

Noise, hours of operation, fumes

In order to safeguard the living conditions of local residents.

Obscure glazing/balconies/boundary treatment*

In order to safeguard the privacy of neighbouring residents.

*But, in the case of fences etc it could also be necessary to ensure that the development hereby permitted does not have a detrimental impact on the character and appearance of the area.

PD rights

Should only be removed in exceptional circumstances. Reasons likely to be related to character and appearance or living conditions.