



## ENVIRONMENTAL SERVICES

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Our reference: DA/LRB161

Your reference: MLRB0161/ACK

Chief Legal Officer  
Per Mr D Westmacott  
Committee Services  
The Moray Council  
High Street  
ELGIN  
IV30 1BX

14 October 2016

Dear Sir

**TOWN AND COUNTRY PLANNING (SCHEMES OF DELEGATION AND LOCAL REVIEW PROCEDURE) (SCOTLAND) REGULATIONS 2008**  
**NOTICE OF REVIEW: PLANNING APPLICATION 16/00344/APP ERECT A SINGLE STOREY OFFICE BUILDING ON LAND 170M NORTHWEST OF DAMHEAD FARM KINLOSS**

I refer to your letter dated 29 September 2016 which relates to the Moray Local Review Body (MLRB) agreement to defer consideration of the above Notice of Review to a Hearing Session on 27 October 2016.

I respond on behalf of the Transportation Manager and confirm that I intend to appear at the Hearing Session and enclose the following items in accordance with Schedule 1 Regulation 4 as follows:

1. Written Statement;
2. List of documents referred to within the statement;
3. Copies of those documents contained on the list which have not previously been submitted to the MLRB.

Yours faithfully



**Diane Anderson**  
Senior Engineer

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Nicola Moss – Transportation Manager



Certificate GB13/89299

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## Local Review

LRB Ref 161

Planning Application Reference 16/00344/APP Erect a single storey Office building on land 170m northwest of Damhead farm, Kinloss

### Hearing Statement from Transportation, Moray Council

1. My name is Diane Anderson and I am the Senior Engineer for the Moray Council Transport Development team. I have over 25 years of experience in Local Government and as a Transportation Consultant advising on transportation requirements for new developments.
2. This statement is in response to the Notice of Review, the Statement of Case and the Further Evidence submitted on behalf of Mr David Nelmes and summarises observations by Transportation on the information which has been supplied to Transportation to date. This statement also seeks to provide the Local Review Board members with clarification in relation to Transportation's approach to the use of negatively worded suspensive planning conditions.
3. This review concerns planning application 16/00344/APP for the erection of a single storey Office building on a site served by a private access off the B9089 Kinloss – Burghead Road, which at this location is subject to a de-restricted speed limit. Transportation received the consultation for planning application 16/00344/APP on 11 March 2016. A copy of the consultation response is contained within **Appendix 1** of the case papers.
4. The existing access onto the public road has restricted visibility in both directions. This is due to the alignment of the road, hedges/trees/vegetation and the position of an adjacent boundary fence. Photographs of the view from the access onto the public road are contained within **Appendix 1** (Document ref TMC02) of the case papers.
5. A visibility splay of 4.5 metres x 120 metres to the west, and 4.5 metres x 160 metres to the east, clear of any obstruction above 0.26 metres (measured from the level of the public carriageway) would be required at this existing access.
6. To the east of the access the visibility splay extends over ground which is unfenced and currently obstructed by trees, vegetation and a sign. To the west the visibility splay extends over the garden ground of the properties 'Jhelum' and 'Le Nid'.
7. The road frontage boundary of 'Jhleum' is a post and wire fence. Behind this fence there are dense bushes, trees and vegetation which severely restrict the required visibility splay. The road frontage boundary of 'Le Nid' is also a post and wire fence. Currently the area directly behind this fence is laid to grass. The boundary between 'Jhelum' and 'Le Nid' is a panel fence, adjacent to which small shrubs have been planted within the garden ground of 'Le Nid'.
8. The formation of the visibility splay would require removal of all obstructions including the setting back of fence lines and signage to a position outwith the splay.

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9. The Appellant's statement of appeal, contained within **Appendix 2** of the case papers, acknowledges the requirement to improve the visibility at the access onto the public road and states in paragraph 4.4.1 b) that '*The Appellant has the permission of the local landowner to control and maintain the visibility splay required.*' However at that time no written evidence of any agreement with the local landowners had been submitted as part of the planning application or to the Local Review Board. Nor was there any submission of a drawing which clearly showed the extent of the required visibility splays. The Appellant's statement suggests that the issues relating to visibility could be '*suitably mitigated and dealt with suspensive condition*'.
10. Scottish Government Planning Circular 4/1998: The Use of Conditions in Planning Permissions states in Paragraph 38 that:  
  
*'Particular care needs to be taken over conditions which require works to be carried out on land in which the applicant has no interest at the time when planning permission is granted.... If the land is outside that site, a condition requiring the carrying out of works on the land cannot be imposed unless the authority are satisfied that the applicant has sufficient control over the land to enable those works to be carried out.'*  
  
A copy of Planning Circular 4/1998 is attached (**TMCHS01**).
11. Negatively worded suspensive planning conditions (also referred to as 'Grampian' style planning conditions) that require something to take place before a development may commence are subject to the six tests set out in Planning Circular 4/1998; Need; Relevance to planning; Relevance to the Development permitted; Ability to enforce; Precision; and Reasonableness.
12. The use of suspensive planning conditions is therefore only suitable when there is a reasonable prospect that the condition can be achieved.
13. Transportation's consideration of this planning application and appeal took into account the recent planning applications (15/02231/PPP and 15/02233/PPP) and enquiries relating to housing development which would be served by the same access onto the Public Road and would be subject to the same requirements to improve the visibility splay as the appeal site. Transportation objected to both of these planning applications and they were subsequently withdrawn. Copies of the Transportation Consultation Responses to planning applications 15/02231/PPP and 15/02233/PPP are attached (**TMCHS02** and **TMCHS03** respectively).
14. At the time of the planning applications Transportation was aware that the landowner to the east of the access onto the public road had been unwilling to enter into an agreement with the promoters of the housing development sites, and therefore considered that without written evidence of an agreement there would be no reasonable prospect of the visibility splay being provided for the proposed Office development.

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15. Transportation also considered that as the visibility splay to the west clearly crossed the garden ground of two properties, 'Jhelum' and 'Le Nid', one of which 'Jhelum' has bushes, trees and vegetation which form screening of the property from the public road, that without evidence that the owners of these properties were willing to make their land available through sale or agreement, there was at that time no reasonable prospect that the visibility splay could be achieved.
16. Transportation generally limits the use of suspensive planning conditions for visibility splays in rural areas to planning applications where there is a clear indication in the application documents that the land is in the ownership of the applicant but the applicant has not submitted a drawing/details of how the visibility splay will be formed, or where the visibility splays are generally unobstructed and/or cross agricultural land. In these cases Transportation considers that there is a reasonable prospect that a suspensive planning condition could be met.
17. Further evidence was submitted by the appellant on 8 August 2016 in the form of a letter from Forest Enterprise Scotland dated 5 August 2016, a letter from Bowlts dated 8 August 2016 and a Deed of Servitude (all contained within **Appendix 4** of the case papers) Transportation was consulted on this evidence on 29 August 2016 and provided a response on 12 September 2016. A copy of Transportation's response to the further evidence is contained within **Appendix 5** of the case papers.
18. The letter concluded that Transportation considered that the further evidence submitted was not sufficient to demonstrate that there was a reasonable prospect that the entire visibility splay in both directions could be secured as the Forest Enterprise Scotland letter was unclear and was 'in principle' and that there had been no submission of an agreement with the owner of the property 'Le Nid'.
19. The Bowlts letter dated 8 August 2016 and the copy of the Deed of Servitude for the property 'Jhelum' was however accepted as although the Deed of Servitude was not in favour of the appellant, the Bowlts letter clearly demonstrates that the beneficiaries of the servitude would enable rights to form and maintain the visibility splay.
20. Transportation considers the following information to be acceptable in terms of demonstrating that the appellant has sufficient agreement at this stage in order to enable the use of a suspensive planning condition in relation to this appeal:
  - a) A drawing (Scale 1:500 or 1:1000) showing the full extent of the required visibility splays 4.5 metres by 160 metres to the east and 4.5 metres by 120 metres to the west which identifies the areas of land which are out with the road verge and under the control of third parties, including the names of the third parties, along with the identification of all works required to form and maintain the required visibility splays, clear of any obstruction above 0.26 metres (measured from the level of the public carriageway); and
  - b) A signed letter from each third party land owner, or their representative, clearly stating their agreement to the formation and on-going maintenance visibility splay across their land and referring to the above drawing (this is not required for the Property 'Jhelum'); or

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- c) A signed letter from each third party land owner, or their representative, clearly stating their willingness to sell their land to the appellant to enable the formation and on-going maintenance of the required visibility splay.

21. Transportation, respectfully, requests the MLRB to uphold the decision by the appointed officer in the absence of the drawing and supporting letters of agreement described above, on the grounds that Moray Local Plan Policy T2: Provision of Road Access is not satisfied and that based on the evidence supplied to Transportation to date is not sufficient to demonstrate that there is a reasonable prospect that the required visibility splay at the access onto the public road can be secured to enable the use of a suspensive planning condition.

Diane Anderson  
Senior Engineer - Transport Development  
Moray Council  
14 October 2016

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**Hearing Statement from Transportation, Moray Council**

List of Documents

- Appendix 1 Transportation Consultation Response dated 29 March 2016
- Appendix 1 Site photographs of access onto the public road
- Appendix 2 Appellant's Statement of Appeal
- TMCHS01 Scottish Government Planning Circular 4/1998
- TMCHS02 Transportation Consultation Response for Planning Application 15/02231/PPP
- TMCHS03 Transportation Consultation Response for Planning Application 15/02233/PPP
- Appendix 4 Forest Enterprise Scotland letter dated 5 August 2016
- Appendix 4 Bowlts letter dated 8 August 2016
- Appendix 4 Deed of Servitude
- Appendix 5 Transportation Letter in response to Further Evidence dated 12 September 2016

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## Circular 4/1998

### INTRODUCTION

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

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

### GENERAL POLICY

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

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

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

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

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

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

### DEVELOPMENT PLANS

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

### APPEALS

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

### BREACH OF CONDITION NOTICES

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

**SPECIALIST SUBJECTS**

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

**MANPOWER AND FINANCIAL CONSIDERATIONS**

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

**MODEL CONDITIONS**

11. The Secretary of State is of the view that detailed guidance on model conditions should be provided. Further work with local authority representatives in this area will be undertaken and a list of model conditions will be issued in due course. This Circular should be read with the forthcoming guidance on model conditions. Until the new list of model conditions is published, authorities should continue to refer to these in 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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## Circular 4/1998

### Annex A THE USE OF CONDITIONS IN PLANNING PERMISSIONS

#### POWERS

##### *Summary of Powers*

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

##### *General Power*

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

##### *Powers for Conditions on Land Outside Application Site and Temporary Permissions*

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

##### *Power to Vary or Remove the Effect of Conditions*

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

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

#### OTHER CONSIDERATIONS

##### *Policy and Other Considerations*

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

#### PRACTICE

### **Role of Pre-application Discussions**

7. Even before an application is made, informal discussions between the applicant and the planning authority can be very helpful. They can allow the applicant to formulate the details of a project so as to take full account of the requirements of the authority and assist the authority in making sure that those requirements are reasonable in the light of the development proposed. Discussion can also reduce the need for conditions, enable the authority to explore the possible terms of conditions which remain necessary and ensure that these are tailored to the circumstances of the case.

### **"Standard Conditions"**

8. Lists of standard or model conditions can be of great benefit. They can improve consistency of decisions, make effective use of staff resources and increase the speed of processing of planning applications. They may also, however, encourage the use of conditions as a matter of routine, without the careful assessment of the need for a condition which every applicant should be able to expect. Slavish or uncritical application of conditions is wholly inappropriate. Lists of standard conditions can usefully be made available locally, so that developers can take account of possible conditions at an early stage in drawing up their proposals. Such lists should contain a warning that they are not comprehensive and that conditions will always be devised or adapted where appropriate to suite the particular circumstances of a case.

### **Reasons**

9. It is for the planning authority, in the first instance, to judge on the facts of the case whether a particular development proposal should be approved subject to planning conditions. By virtue of Article22(1)(a) of The Town and Country Planning (General Development Procedure) (Scotland) Order 1992, an authority deciding to grant permission subject to conditions must state the reasons for their decision. Where a planning authority, by virtue of Article15 of the General Development Procedure Order, has consulted other bodies in respect of a planning application and is disposed to grant planning permission subject to a condition suggested to them by another body, the authority should ensure that the body has provided clear reasons for suggesting the imposition of the condition. Such conditions should only be imposed where they will meet clear land use planning objectives; as stated in paragraph6 above conditions should not be used to duplicate controls available under other legislation. Reasons must be given for the imposition of every condition. It may be that more than one condition will be justified on the same basis, in which case it will be acceptable that such conditions be grouped together and justified by one reason. Reasons such as "to comply with the policies of the Council", "to secure the proper planning of the area" or "to maintain control over the development" are vague, and can suggest that the condition in question has no proper justification. The phrase "to protect amenity" can also be obscure and will often need amplification. If the reasons for the imposition of conditions are clearly explained, developers will be better able to understand the need for them and to comply with them in spirit as well as in letter. The likelihood of proper and acceptable conditions being challenged on appeal, so that development proposals are held up, will also be diminished.

### **Notes for Information**

10. Sometimes planning authorities will wish to give guidance to an applicant for outline planning permission as to the kind of details of reserved matters which they would find acceptable. A planning authority may also wish to draw the attention of an applicant to other statutory consents (eg listed building or road construction consent) which must be obtained before development can commence. This should not be done by imposing a condition: instead a note may be appended to the planning permission. A note may also be desirable to draw the attention of the applicant to his or her right to make an application to vary or remove a condition under section42 of the Act, or indeed for other purposes.

### **Planning Agreements**

11. Problems posed by a development proposal may be solved either by imposing a condition on the planning permission or by concluding a planning agreement under section75 of the Act or under other powers. The Secretary of State's policy on planning agreements is set out in SODD Circular12/1996. This makes it clear that the planning authority should normally seek to regulate a development by a condition rather than through an agreement, since the imposition of restrictions by means of an agreement deprives the developer of the opportunity of seeking to have the restrictions varied or removed by an application or appeal under PartIII of the Act if they are subsequently seen as being inappropriate or too onerous. Planning authorities should note that if a certain restriction is contrary to the advice contained in this Circular it is likely to be objectionable regardless of whether it is suggested that it should be implemented by a condition or an agreement. It is *ultra vires* to impose a condition in a planning permission requiring an applicant to enter into an agreement. Nor should conditions imposed on a grant of planning permission be duplicated in a planning agreement.

## **TESTS**

### **Six Tests for Conditions**

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

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

### **TEST: NEED FOR A CONDITION**

13. In considering whether a particular condition is necessary, authorities should ask themselves whether planning permission would have to be refused if that condition were not to be imposed. If it would not, then the condition needs special and precise justification. Planning authorities should also avoid imposing conditions through anxiety to guard against every possible contingency, however remote. The argument that a condition will do no harm is no justification for its imposition; as a matter of policy a condition ought not to be imposed unless there is a definite need for it. The same principles, of course, must be applied in dealing with applications for the removal of a condition under section33 or42 of the Act: a condition should not be retained unless there are sound and clear-cut reasons for doing so.

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

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

#### **Completion of Development**

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

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

#### **TEST: RELEVANCE TO PLANNING**

18. A condition which has no relevance to planning is *ultra vires*. A condition that the first occupants of dwellings must be drawn from the local authority's housing waiting list, for example, would be improper because it was meant to meet the ends of the local authority as housing authority and was not imposed for planning reasons. Although a condition can quite properly require the provision of open space to serve the approved development (as part of a housing estate, for example) it would be *ultra vires* if it required the open space to be dedicated to the public. Other conditions affecting land ownership (requiring, for example, that the land shall not be disposed of except as a whole) where there was no planning justification for such a constraint would similarly be *ultra vires*.

#### **Other Planning Controls**

19. Some matters are the subject of specific control elsewhere in planning legislation, for example advertisement control, listed building consent or tree preservation. If these controls are relevant to the development the planning authority should normally rely on them and not impose conditions on a grant of planning permission to achieve the purposes of a separate system of control (but on Trees note paragraphs 77 and 78 below).

#### **Non-planning Controls**

20. Other matters are subject to control under separate legislation, yet are also of concern to the planning system. A condition which duplicates the effect of other controls will normally be unnecessary and one whose requirements conflict with those of other controls will be *ultra vires* because it is unreasonable. For example, a planning condition would not normally be appropriate to control the level of emissions from a proposed development where they are subject to pollution control legislation. However, such a condition may be needed to address the impact of the emissions to the extent that they might have land-use implications and/or are not controlled by the appropriate pollution control authority. (For further advice on this subject, see Planning Advice Note 51 *Planning and Environmental Protection*.) A condition cannot be justified on the grounds that the planning authority is not the body responsible for exercising a concurrent control and, therefore, cannot ensure it will be exercised properly. Nor can a condition be justified on the grounds that a concurrent control is not permanent but is subject to expiry and renewal (as, for example, with certain licences). Even where a condition does not actually duplicate or conflict with another control, differences in requirements can cause confusion and it will be desirable as far as possible to avoid solving problems by the use of conditions instead of, or as well as, by another more specific control.

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

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

#### **TEST: RELEVANCE TO THE DEVELOPMENT TO BE PERMITTED**

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

24. It is not, therefore, sufficient that a condition is related to planning objectives: it must also be justified by the nature of the development permitted or its effect on the surroundings. For example, if planning permission is being granted for the alteration of a factory building, it would be wrong to impose

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

#### **TEST: ABILITY TO ENFORCE**

25. A condition should not be imposed if it cannot be enforced. It is often useful to consider what means are available to secure compliance with a proposed condition. There are two provisions which authorities may use to enforce conditions; an enforcement notice under section 127 of the Act or a breach of condition notice under section 145. Precision in the wording of conditions is crucial when it comes to enforcement.

#### ***Practicality of Enforcement***

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

#### ***Whether Compliance is Reasonable***

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

#### ***Enforcing Conditions Imposed on Permission for Operational Development***

28. An otherwise legally sound condition may prove unenforceable because it is imposed on a grant of planning permission for the carrying out of operations which have not been carried out in accordance with the approved plans. Authorities should take into account the Court of Appeal's judgement in the case of *Handoll and Others v Warner Goodman and Streat (A firm) and Others*, (1995) 25EG157, which held that the judgement of the Divisional Court in *KerrierDC v Secretary of State for the Environment and Brewer* (1980) 41P&CR284, had been wrongly decided. Both cases concerned a planning permission for the erection of a dwelling subject to an agricultural occupancy condition. \*\*

#### **TEST: PRECISION**

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

#### ***Vague Conditions***

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

#### ***Discretionary or Vetting Conditions***

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

#### ***Clarity***

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

## TEST: REASONABLENESS

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

### *Conditions Invalid on Grounds of Unreasonableness*

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

### *Avoidance of Onerous Requirements*

35. Even where a condition would not be so unreasonably restrictive as to be *ultra vires*, it may still be so onerous that as a matter of policy it should be avoided. For example, a condition which would put a severe limitation on the freedom of an owner to dispose of his property, or which would obviously make it difficult to finance the erection of the permitted building by borrowing on mortgage, should be avoided on these grounds. An unduly restrictive condition can never be made acceptable by offering the prospect of informal relaxation of its effect.

### *Control Over Land*

36. Particular care needs to be taken over conditions which require works to be carried out on land in which the applicant has no interest at the time when planning permission is granted. If the land is included in the site in respect of which the application is made, such conditions can in principle be imposed, but the authority should have regard to the points discussed in paragraph 3 above. If the land is outside that site, a condition requiring the carrying out of works on the land cannot be imposed unless the authority are satisfied that the applicant has sufficient control over the land to enable those works to be carried out.

### *Conditions Depending on Others' Actions*

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

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

### *Consent of Applicant to Unreasonable Conditions*

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

## REGULATION OF DEVELOPMENT

### *Outline Permissions*

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

### *Details Supplied in Outline Applications*

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

### *Conditions Relating to Outline Permissions*

42. Once outline planning permission has been granted, it cannot be withdrawn except by a revocation order under section 65 of the Act, and any subsequent approval of reserved matters does not constitute the granting of a further planning permission. Any conditions relating to anything other than the reserved matters should be imposed when outline permission is granted. The only conditions which can be imposed when the reserved matters are approved are conditions which directly relate to those matters. So, where certain aspects of the development are crucial to the decision, planning authorities will wish to consider imposing relevant conditions when outline permission is granted. For example, it may be considered necessary to require a building to be constructed within a specified "footprint" or to retain important landscape features which would affect the setting of the building and its neighbours.

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

#### ***Conditions Reserving Other Matters***

44. Authorities should seek to ensure, where possible, that conditions other than those relating to reserved matters, are self-contained and do not require further approvals to be obtained before development can begin. Where necessary, however, a planning authority may also, when granting a full or outline planning permission, impose a condition requiring that details of a specified aspect of the development which was not fully described in the application (eg the provision of car parking spaces) be submitted for approval before the development is begun. In the case of full permission such a condition can relate to details (such as landscaping) which might have been reserved matters had the application been made in outline. The applicant has the same right of appeal to the Secretary of State under section 47 of the Act if he cannot get the authority's approval, agreement or consent to matters reserved under such a condition as he has in respect of applications for approval of reserved matters.

#### **TIME-LIMITS ON THE COMMENCEMENT OF DEVELOPMENT**

##### ***Statutory Time-limits***

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

##### ***Time-limits on Full Permissions***

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

##### ***Time-limits on Outline Permissions***

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

##### ***Variation from Standard Time-limits***

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

49. A condition requiring the developer to obtain **approval** of reserved matters within a stated period should not be used, since the timing of an approval is not within the developer's control. A condition, therefore, should set time-limits only on the **submission** of applications for approval of reserved matters.

##### ***Separate Submission of Different Reserved Matters***

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

##### ***Effect of Time-limit***

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

**Renewal of Permissions Before Expiry of Time-limits**

52. Developers who delay the start of development are likely to want their permission renewed, as the time-limit for implementation approaches. Under Article5 of The Town and Country Planning (General Development Procedure) (Scotland) Order 1992 applications for such renewals may be made simply by letter, referring to the existing planning permission, although the planning authority have power subsequently to require further information, if needed. As a general rule, such applications should be refused only where:

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

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## Circular 4/1998

### COMPLETION OF DEVELOPMENT

#### *Completion of Whole Development*

53. A condition requiring that the whole of the development permitted be completed is likely to be difficult to enforce. If a development forming a single indivisible whole, such as a single dwellinghouse, is left half-finished, it may be possible to secure completion by a completion notice under section 61 of the Act. If, however, the reason for failure to complete is financial difficulties experienced by the developer, neither a completion notice nor the enforcement of conditions would be likely to succeed. In such circumstances, the only practical step open to the planning authority, if they wish to secure the completion of the development, would be to carry it out themselves following acquisition of the land. If a large development, such as an estate of houses is left half-complete, this may be due to market changes (for example, a shift in demand from four-bedroom to two-bedroom houses) and it would clearly not be desirable to compel the erection of houses of a type for which there was no demand. Conditions requiring the completion of the whole of a development should, therefore, not normally be imposed.

#### *Completion of Elements of a Development*

54. Conditions may be needed, however, to secure that a particular element in a scheme is provided by a particular stage or before the scheme is brought into use, or to secure the provision of an element of a kind a developer might otherwise be tempted to defer or omit. Thus it may be desirable to require that a new access to the site should be constructed before any other development is carried out; or, where an office scheme includes a car park, that the car park is completed before the offices are occupied; or, where the scheme includes both offices and housing, that the offices should not be occupied before the houses are complete. The approach adopted must, of course, be reasonable. Taking the last example, it could well be unacceptable to require that the houses should be completed before the offices are begun; this would be likely to be an unjustifiable interference with the way the development is carried out. Or, to take another example, it could well be unacceptable to demand that all the requirements of a landscape condition should be complied with before a building is occupied; this could involve the building lying empty for many months, since such a condition will often provide for a considerable maintenance period so that trees can become established.

### PHASING

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

### TRAFFIC AND TRANSPORT

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

#### *Parking, Public Transport, Walking and Cycling*

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

58. Normally a parking site separate from the road will be needed. In this case, conditions should ensure, where necessary, that space is provided for the turning of vehicles so that they do not have to reverse on to the road. Where the authority decides that it is appropriate to require the provision of car parking spaces on other land under the control of the applicant, the development must be readily accessible from the car park.

59. In certain circumstances, developers may enter into a planning agreement with the planning authority to provide off-site parking or to contribute to other transport measures directly related to the development, for example to assist public transport or walking and cycling. The provisions of such agreements should reflect Government policy as set out in SODD Circular12/1996.

#### **Access**

60. Where a service road is needed as part of a large development for which outline permission is to be granted, it may be necessary to impose a condition requiring all access to the main road to be by means of the service road. If such a condition is not imposed at outline stage it may not be possible to secure the objective at a later stage (see paragraph42). Similarly, if it is desired that there should be no direct access on to a main road, or that access must be taken from a particular side road, a condition to that effect should be imposed on the outline permission, as without such a condition these restrictions could not normally be introduced when details are being considered.

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

62. In considering the imposition of conditions concerning "access", planning authorities should bear in mind the definition of "road" in section277 of the Town and Country Planning (Scotland) Act 1997 which refers to the definition in section151 of the Roads (Scotland) Act 1984:

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

Roads fall into 2particular categories- "public roads" and "private roads", defined in section151 of the Roads (Scotland) Act 1984. The former are those included in a list of public roads kept by the roads authority and such roads are managed and maintained by the authority. Private roads are those over which the public has a right of passage but whose maintenance is not the responsibility of a roads authority. Such roads are maintainable privately but they are not private in any other way. They are not included in the list of public roads but there is provision in the 1984 Act under which they can be added to the roads authority's list provided they are of adoptable standard. There is sometimes confusion as to what is a private road and that term is often associated in the public mind with, for example, driveways up to private houses. These are not "roads" in terms of the Roads (Scotland) Act as there is no public right of passage over them (anyone using them does so on the sufferance of the owner) and they are, in fact, private accesses. Planning authorities should ensure that prospective developers are fully aware of the significant difference between a private access and a private road. "Private road" marked on a plan indicates that the public will have a right of passage over the land comprising the road: the developer will be required to seek from the roads authority a separate written consent to build such a road and it must be constructed to the standard required by that authority.

#### **Lorry Routing**

63. Planning conditions are not an appropriate means of controlling the right of passage over public roads. Although negatively worded conditions which control such matters might sometimes be capable of being validly imposed on planning permissions, such conditions are likely to be very difficult to enforce effectively. It may be possible to encourage drivers to follow preferred routes by posting site notices to that effect, or by requiring them to use a particular entrance to (or exit from) the site. But where it is judged essential to prevent traffic from using particular routes, the appropriate mechanism for doing so is by means of an Order under section1 of the Road Traffic Regulation Act 1984.

#### **Cession of Land**

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

### **DEVELOPMENT OF CONTAMINATED SITES**

#### **Contaminated Land**

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

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

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

68. Conditions might also be imposed requiring the developer to draw to the attention of the planning authority the presence of significant unsuspected contamination encountered during redevelopment. The planning authority may then require the developer to take further remediation action under public health duties. Further guidance on contaminated land is contained in NPPG10- *Planning and Waste Management*. PAN33- *Development of Contaminated Land* and PAN51- *Planning and Environment Protection*. A new regime for identifying and remediating contaminated land is being introduced through the provision of the Environmental Protection Act 1990, as amended by the Environment Act 1995. This uses a risk-based approach in identifying

contaminated land and applies the polluter pays and 'suitable for use' principles. The role of the planning system in addressing contamination will continue alongside the new regime.

#### **ENVIRONMENTAL ASSESSMENT**

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

#### **NOISE**

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

#### **NATURE CONSERVATION AND LANDSCAPE**

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

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

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

#### **DESIGN AND LANDSCAPE**

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

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

#### ***Enforcement of Landscaping Requirements***

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

#### **TREES**

77. Section 159 of the Act places an express duty on the planning authority, when granting planning permission, to ensure whenever appropriate that adequate conditions are imposed to secure the preservation or planting of trees, and that any necessary tree preservation orders are made under section 160 of the Act. When granting outline planning permission, the authority may consider it appropriate to impose a condition requiring the submission of particular details relating to trees to be retained on the site, such as their location in relation to the proposed development and their general state of health and stability. When granting detailed planning permission, conditions may be used to secure the protection of trees to be retained, for example by requiring the erection of fencing around trees during the course of development or restricting works which are likely to adversely affect them. The long-term protection of trees, however, should be secured by tree preservation orders rather than by condition. Such orders may also be expedient for the temporary protection of existing trees until details of the reserved matters are submitted and it becomes clear whether there is a need to retain the trees.

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

## **SITES OF ARCHAEOLOGICAL INTEREST**

### ***Archaeological Sites***

79. Monuments scheduled as of national importance by the Secretary of State are protected by Part I of the Ancient Monuments and Archaeological Areas Act 1979. Where its provisions apply, their effect should not be duplicated by planning conditions (see paragraphs 19-21), although authorities granting planning permission in such circumstances are advised to draw the attention of the applicant to the relevant provisions of the 1979 Act.

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

## **MAINTENANCE CONDITIONS**

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

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

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

## **CONDITIONS ALTERING THE NATURE OF THE DEVELOPMENT**

### ***Modifying Proposed Development***

83. If some feature of a proposed development, or the lack of it, is unacceptable in planning terms, the best course will often be for the applicant to be invited to modify the application. If the modification is substantial, of course, a fresh application will be needed. It may however, depending on the case, be quicker and easier for the planning authority to impose a condition modifying the development permitted in some way. The precise course of action will normally emerge during discussion with the applicant. It would thus be legitimate to require by condition that a factory proposal, for example, should include necessary car parking facilities, but wrong to grant permission for a development consisting of houses and shops subject to a condition that houses be substituted for the shops. Whether a modification would amount to substantial difference will depend upon the circumstances of the case. A useful test will be whether it would so change the proposal that: (i) those who have shown an interest in it would wish to comment on the modification; and (ii) those who, although they had a right to object to the original application and chose not to do so, would be prejudiced if they were not now given an opportunity to comment. A condition modifying the development, however, cannot be imposed if it would make the development permitted substantially different from that comprised in the application.

## **REGULATION AFTER DEVELOPMENT**

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

### ***Restrictions on Use or Permitted Development***

85. Exceptionally, conditions may be imposed to restrict further development which would normally be permitted by the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, or to restrict changes of use which would not be regarded as development whether because the

change is not a "material" change within the terms of section26(1) of the Act, or by reason of section26(2) and the provisions of The Town and Country Planning (Use Classes) (Scotland) Order 1997. Changes of use can be restricted either by prohibiting any change from the use permitted or by precluding specific alternative uses. It should be noted, however, that a condition restricting changes of use will not restrict ancillary or incidental activities unless it so specifies. Similarly, a general condition which restricts the use of land does not remove permitted development rights for that use unless the condition specifically removes those rights as well.

#### ***Presumption Against Such Restrictions***

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

87. To illustrate some exceptional circumstances, it may be possible to justify imposing a condition restricting permitted development rights allowed by Class7 of the General Permitted Development Order so as to preserve an exceptionally attractive open plan estate free of fences, or under Class1 of the General Permitted Development Order so as to avoid over-development by extensions to dwellinghouses in an area of housing at unusually high density. Similarly, changes of use may be restricted so as to prevent the use of large retail premises as a food or convenience goods supermarket, where such a use may generate an unacceptable level of additional traffic or have a damaging effect on the vitality of a nearby town centre. Conditions may also limit the storage of hazardous substances in a warehouse.

#### ***Specific Conditions Better than General Ones***

88. Because of the general presumption against such restrictions on permitted development or on changes of use which are not development, it will always be necessary to look carefully at the planning reasons for any restriction and to ensure that the condition imposed is no more onerous than can be justified (see paragraph87 above). It would not be right to use a condition restricting uses where an alternative, more specific, condition would achieve the same end. For example, where it is necessary to restrict the volume of noise emitted from an industrial site and a condition addressing the problem expressly can be used, that condition should be imposed, rather than one restricting the permitted uses. Scrupulous care in the giving of proper, adequate and intelligible reasons for imposing conditions (see paragraph9) can help authorities to ensure that the conditions they impose are not more onerous than is necessary to achieve their objective.

#### ***Restrictions on Use***

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

#### ***Ancillary Uses***

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

### **CONDITIONS RESTRICTING THE OCCUPANCY OF BUILDINGS AND LAND**

#### ***Occupancy: General Considerations***

91. Since planning controls are concerned with the use of land rather than the identity of the user, the question of who is to occupy premises for which permission is to be granted will normally be irrelevant. Conditions restricting occupancy to a particular occupier or class of occupier should only be used when special planning grounds can be demonstrated and where the alternative would normally be refusal of permission.

#### ***Personal Permissions***

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

#### ***General Undesirability of Commercial and Industrial Occupancy Conditions***

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

#### **Conditions Governing Size of Unit Occupied**

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

#### **Domestic Occupancy Conditions**

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

#### **Affordable Housing**

96. The community's need for a mix of housing types- including affordable housing- is capable of being a material planning consideration. It follows that there may be circumstances in which it will be acceptable to use conditions to ensure that some of the housing built is occupied only by people falling within particular categories of need. Such conditions would normally only be necessary where a different planning decision might have been taken if the proposed development did not provide for affordable housing and should make clear the nature of the restriction by referring to criteria set out in the relevant development plan policy. Conditions should not normally be used to control matters such as tenure, price or ownership. Guidance on affordable housing is contained in NPPG 3: *Land for Housing*.

#### **"Granny Annexes"**

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

#### **Staff Accommodation**

98. The above considerations may equally apply to staff accommodation. Where an existing house is within the curtilage of another building and the two are in the same occupation, any proposal to occupy the two buildings separately is likely to amount to a material change of use, so that planning permission would be required for such a proposal even in the absence of a condition. Planning authorities should normally consider applications for such development sympathetically since, if the need for such a dwelling (for the accommodation of an employee, for example) disappears, there will generally be no justification for requiring the building to stand empty or to be demolished.

99. Conditions tying the occupation of dwellings to that of separate buildings (eg requiring a house to be occupied only by a person employed by a nearby garage) should be avoided. However, exceptionally, such conditions may be appropriate where there are sound planning reasons to justify them, eg where a dwelling has been allowed on a site where permission would not normally be granted. To grant an unconditional permission would mean that the dwelling could be sold off for general use which may be contrary to development plan policy for the locality. To ensure that the dwelling remains available to meet the identified need, it may therefore be acceptable to grant permission subject to a condition that ties the occupation of the new house to the existing business.

#### **Agricultural and Forestry Dwellings**

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

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

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

#### **Retail Development**

103. Out-of-centre retail developments, including retail parks, can change their composition over time. If such a change would create a development that the planning authority would have refused on the grounds of impact on vitality and viability of an existing town centre, it may be sensible to consider the use of planning conditions to ensure that these developments do not subsequently change their character unacceptably. Any conditions imposed should apply only to the main ranges of goods (eg food and convenience goods, hardware, electrical goods, furniture and carpets) and should not seek to control details of particular products to be sold. For further guidance see NPPG 8: *Retailing*.

#### **TEMPORARY PERMISSIONS**

104. Section 41(1)(b) of the Act gives power to impose conditions requiring that a use be discontinued or that buildings or works be removed at the end of a specified period. Where permission is granted for the development of the operational land of a statutory undertaker, however, this power does not apply except with the undertaker's consent (see section 219 of the Act). Conditions of this kind are sometimes confused with conditions which impose a time-limit for the implementation of a permission (paragraphs 45 to 49) but they are quite distinct and different considerations arise in relation to them.

#### ***Principles Applying to Temporary Permissions***

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

#### ***Short-Term Buildings or Uses***

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

#### ***Trial Runs***

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

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

#### ***Restoration of Sites***

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

#### **ACCESS FOR DISABLED PEOPLE**

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

#### **SEASONAL USE**

##### ***Seasonal Occupancy Conditions***

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

##### ***Holiday Occupancy Conditions***

112. In recent years there has been an increased demand for self-catering holiday accommodation- whether new buildings (including mobile homes) or converted properties- which may be constructed to a standard that would equally support permanent residence in some comfort. But this accommodation may also be located in areas in which the provision of permanent housing would be contrary to national policies on development in the countryside or not

in accordance with development plan policies, or both. The Secretary of State considers that the planning system should respond to these changes without compromising policies to safeguard the countryside.

113. There may be circumstances where it will be reasonable for the planning authority to grant planning permission for holiday accommodation as an exception to these policies, with a condition specifying its use as holiday accommodation only. For example, conversions of redundant buildings into holiday accommodation where conversion to residential dwellings would not be permitted may reduce the pressure on other housing in rural areas. A holiday occupancy condition would seem more appropriate in those circumstances than a seasonal occupancy condition. But authorities should continue to use seasonal occupancy conditions to prevent the permanent residential use of accommodation which by the character of its construction or design is unsuitable for continuous occupation, particularly in the winter months.

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## Circular 4/1998

### 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 Condition 2 (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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## Circular 4/1998

### 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 1hour). 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.

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Circular 4/1998 Satisfactory and Unsatisfactory Reasons

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## Circular 4/1998

### SATISFACTORY AND UNSATISFACTORY REASONS

Reasons should be specific and explain clearly but succinctly why the condition is being attached to the permission. It should not state the obvious, or simply repeat the terms of the condition. The following are examples of satisfactory and unsatisfactory reasons.

SUBJECT	ISSUE	UNSATISFACTORY REASONS	SATISFACTORY REASONS
REGULATION OF USE	Hours of opening	In the interests of residential amenity.	To protect occupants of nearby housing from noise/disturbance late in the evening.
DESIGN	Materials	In the interests of visual amenity.	To ensure that the extension matches the external appearance of the existing building and thereby maintains the visual quality of the area.
LANDSCAPE	Tree protection	In the interests of visual amenity.	To maintain the contribution of existing trees to the landscape quality of the area.
Transport	Visibility splays	In the interests of traffic safety.	To enable drivers of vehicles leaving the site to have a clear view over a length of road sufficient to allow safe exit.
	Hard surface first (x) metres of driveway	In the interests of traffic safety.	To prevent loose material being carried onto the public highway/footpath in the interests of traffic safety.
	Turning circle	In the interests of traffic safety.	To allow adequate space for vehicles to turn and exit the site in forward gear in the interests of traffic safety.
Environmental Control	Road traffic noise	In the interests of residential amenity.	To protect local residents from traffic noise.
	Odours/ cooking	In order to safeguard the property itself and the amenity of the surrounding area.	To protect local residents from nuisance resulting due to the disposal of cooking odours.

Enquiries about the contents of this document should be addressed to Susan Whitty, The Scottish Office, Planning Services Division, Room 2-H, Victoria Quay, Edinburgh EH6 6QQ (0131 244 7551) or by e-mail to [susan.whitty@scotland.gov.uk](mailto:susan.whitty@scotland.gov.uk). Further copies may be obtained by telephoning (0131 244 7066).

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# TMCHS02

## Consultation Request Notification

Planning Authority Name	<b>The Moray Council</b>
Response Date	<b>25th January 2016</b>
Planning Authority Reference	<b>15/02231/PPP</b>
Nature of Proposal (Description)	<b>Erect dwellinghouse on</b>
Site	<b>Site North Of Damhead Cottage Kinloss Moray</b>
Site Postcode	<b>N/A</b>
Site Gazetteer UPRN	<b>000133069381</b>
Proposal Location Easting	<b>308041</b>
Proposal Location Northing	<b>862388</b>
Area of application site (Ha)	<b>1200 m<sup>2</sup></b>
Additional Comment	
Development Hierarchy Level	
Supporting Documentation URL	<a href="http://public.moray.gov.uk/eplanning/centralDistribution.do?caseType=Application&amp;keyVal=NZQZH0BGAK000">http://public.moray.gov.uk/eplanning/centralDistribution.do?caseType=Application&amp;keyVal=NZQZH0BGAK000</a>
Previous Application	<b>15/02232/PPP 15/02233/PPP</b>
Date of Consultation	<b>11th January 2016</b>
Is this a re-consultation of an existing application?	<b>No</b>
Applicant Name	<b>G A Rhind &amp; Partners</b>
Applicant Organisation Name	
Applicant Address	<b>[REDACTED]</b>
Agent Name	<b>Bowlts Chartered Surveyors</b>
Agent Organisation Name	
Agent Address	<b>Barnhill Pluscarden Elgin Moray IV30 8TZ</b>
Agent Phone Number	
Agent Email Address	<b>N/A</b>
Case Officer	<b>Richard Smith</b>
Case Officer Phone number	<b>01343 563256</b>
Case Officer email address	<b>richard.smith@moray.gov.uk</b>
PA Response To	<b>consultation.planning@moray.gov.uk</b>

**NOTE:**

If you do not respond by the response date, it will be assumed that you have no comment to make.

The statutory period allowed for a consultation response is 14 days. Due to scheduling pressures if a definitive response is not received within 21 days this may well cause the two month determination period to be exceeded.

Please respond using the attached form:-

**MORAY COUNCIL**

**PLANNING CONSULTATION RESPONSE**

**From:** Transportation Manager

**Planning Application Ref. No: 15/02231/PPP**

**Erect dwellinghouse on Site North Of Damhead Cottage Kinloss Moray for G A Rhind & Partners**

I have the following comments to make on the application:-

- |   | <b>Please</b>                       |
|---|-------------------------------------|
| (a) I OBJECT to the application for the reason(s) as stated below   | <input checked="" type="checkbox"/> |
| (b) I have NO OBJECTIONS to the application and have no condition(s) and/or comment(s) to make on the proposal            | <input type="checkbox"/>            |
| (c) I have NO OBJECTIONS to the application subject to condition(s) and/or comment(s) about the proposal as set out below | <input type="checkbox"/>            |
| (d) Further information is required in order to consider the application as set out below                                 | <input type="checkbox"/>            |

**Reason(s) for objection**

The proposed development, if permitted, would involve the intensification of use an access onto B9011 Kinloss-Burghead Road where visibility is restricted by the alignment of the road, hedges/trees/vegetation and an adjacent boundary fence, and would be likely to give rise to conditions detrimental to the road safety of road users contrary to Moray Local Development Plan policies T2 Provision of Access and IMP1 Development Requirements.

Further Information

The required visibility splay at this access onto the public road is 4.5 metres by 120 metres to the west and 4.5 metres by 160 metres to the east, clear of any obstruction above 0.26 metres. All vegetation would need to be removed and boundary fences set back to the position behind the visibility splay.

**Contact: DA**

**email address: [transport.develop@moray.gov.uk](mailto:transport.develop@moray.gov.uk)**

**Consultee: TRANSPORTATION**

**Date 25 January 2016**

**Return response to**

**[consultation.planning@moray.gov.uk](mailto:consultation.planning@moray.gov.uk)**

Please note that information about the application including consultation responses and representations (whether in support or objection) received on the proposal will be published on the Council's website at <http://public.moray.gov.uk/eplanning/> (You can also use this site to track progress of the application and view details of any consultation responses and representations (whether in support or objection) received on the proposal). In order to comply with the Data Protection Act, personal information including signatures, personal telephone and email details will be removed prior to publication using "redaction" software to avoid (or mask) the display of such information. Where appropriate other "sensitive" information within documents will also be removed prior to publication online.

# TMCHS03

## Consultation Request Notification

Planning Authority Name	<b>The Moray Council</b>
Response Date	<b>27th January 2016</b>
Planning Authority Reference	<b>15/02233/PPP</b>
Nature of Proposal (Description)	<b>Erect dwellinghouse on</b>
Site	<b>Site South Of Blackstob Wood Kinloss Moray</b>
Site Postcode	<b>N/A</b>
Site Gazetteer UPRN	<b>000133069208</b>
Proposal Location Easting	<b>308333</b>
Proposal Location Northing	<b>862509</b>
Area of application site (Ha)	<b>1740 m<sup>2</sup></b>
Additional Comment	
Development Hierarchy Level	<b>LOCAL</b>
Supporting Documentation URL	<a href="http://public.moray.gov.uk/eplanning/centralDistribution.do?caseType=Application&amp;keyVal=NZQZHYBGAK000">http://public.moray.gov.uk/eplanning/centralDistribution.do?caseType=Application&amp;keyVal=NZQZHYBGAK000</a>
Previous Application	<b>15/01511/PE 15/02231/PPP 15/02232/PPP</b>
Date of Consultation	<b>13th January 2016</b>
Is this a re-consultation of an existing application?	<b>No</b>
Applicant Name	<b>Messrs A &amp; K Rhind</b>
Applicant Organisation Name	
Applicant Address	<b>[REDACTED]</b>
Agent Name	<b>Bowlts Chartered Surveyors</b>
Agent Organisation Name	
Agent Address	<b>Barnhill Pluscarden Elgin Moray IV30 8TZ</b>
Agent Phone Number	
Agent Email Address	<b>N/A</b>
Case Officer	<b>Maurice Booth</b>
Case Officer Phone number	<b>01343 563274</b>
Case Officer email address	<b>maurice.booth@moray.gov.uk</b>
PA Response To	<b>consultation.planning@moray.gov.uk</b>

**NOTE:**

If you do not respond by the response date, it will be assumed that you have no comment to make.

The statutory period allowed for a consultation response is 14 days. Due to scheduling pressures if a definitive response is not received within 21 days this may well cause the two month determination period to be exceeded.

Please respond using the attached form:-

**MORAY COUNCIL**

**PLANNING CONSULTATION RESPONSE**

**From:** Transportation Manager

**Planning Application Ref. No: 15/02233/PPP**

**Erect dwellinghouse on Site South Of Blackstob Wood Kinloss Moray for Messrs A & K Rhind**

I have the following comments to make on the application:-

- |   | <b>Please</b>                       |
|---|-------------------------------------|
| (a) I OBJECT to the application for the reason(s) as stated below   | <input checked="" type="checkbox"/> |
| (b) I have NO OBJECTIONS to the application and have no condition(s) and/or comment(s) to make on the proposal            | <input type="checkbox"/>            |
| (c) I have NO OBJECTIONS to the application subject to condition(s) and/or comment(s) about the proposal as set out below | <input type="checkbox"/>            |
| (d) Further information is required in order to consider the application as set out below                                 | <input type="checkbox"/>            |

**Reason(s) for objection**

The proposed development, if permitted, would involve the intensification of use an access onto B9011 Kinloss-Burghead Road where visibility is restricted by the alignment of the road, hedges/trees/vegetation and an adjacent boundary fence, and would be likely to give rise to conditions detrimental to the road safety of road users contrary to Moray Local Development Plan policies T2 Provision of Access and IMP1 Development Requirements.

Further Information

The required visibility splay at this access onto the public road is 4.5 metres by 120 metres to the west and 4.5 metres by 160 metres to the east, clear of any obstruction above 0.26 metres. All vegetation would need to be removed and boundary fences set back to the position behind the visibility splay.

**Contact: DA**

**Date 25 January 2016**

**email address: [transport.develop@moray.gov.uk](mailto:transport.develop@moray.gov.uk)**

**Consultee: TRANSPORTATION**

**Return response to**

**[consultation.planning@moray.gov.uk](mailto:consultation.planning@moray.gov.uk)**

Please note that information about the application including consultation responses and representations (whether in support or objection) received on the proposal will be published on the Council's website at <http://public.moray.gov.uk/eplanning/> (You can also use this site to track progress of the application and view details of any consultation responses and representations (whether in support or objection) received on the proposal). In order to comply with the Data Protection Act, personal information including signatures, personal telephone and email details will be removed prior to publication using "redaction" software to avoid (or mask) the display of such information. Where appropriate other "sensitive" information within documents will also be removed prior to publication online.