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THE USE OF CONDITIONS IN PLANNING PERMISSIONS

1. DOE Circular 1/85 (WO 1/85) gave advice about the use of planning conditions. Much of that advice remains relevant, but it contains a number of references to legislation which has been replaced or amended since the Circular was published. This Circular brings these references up to date and incorporates additional policy guidance issued since 1985, for example, in Planning Policy Guidance Notes: in particular, it reflects guidance on the use of conditions in respect of transport, retail development, contaminated land, noise and affordable housing. Additional advice has been included in respect of design and landscape, lorry routeing, 'granny' annexes, staff accommodation, access for disabled people, holiday occupancy, and nature conservation/endangered species (see Index for details). The Circular also takes account of court decisions and includes an expanded Appendix containing 'model' conditions.

2. The power to impose conditions when granting planning permission is very wide. If used properly, conditions can enhance the quality of development and enable many development proposals to proceed where it would otherwise have been necessary to refuse planning permission. The objectives of planning, however, are best served when that power is exercised in such a way that conditions are clearly seen to be fair, reasonable and practicable. This Circular, with its Annex, sets out guidance on how this can be achieved.

3. Paragraphs 14-42 of the Annex, stress that conditions should only be imposed where they are both necessary and reasonable, as well as enforceable, precise and relevant both to planning and to the development to be permitted. Attention is particularly drawn to paragraphs 15-17 which advise that in considering whether a condition is necessary authorities should ask themselves whether planning permission would have to be refused if the requirements of that condition were not imposed. If it would not, then the condition needs special and precise justification. Attention is also drawn to paragraph 29 of the Annex, alerting authorities to a judgment with important implications for enforcing planning conditions.

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

5. When applications come to appeal, the Secretaries of State or Planning Inspectors welcome reasoned suggestions from the parties as to conditions which they would find acceptable if permission were granted. Such suggestions will be fully examined and may or may not be adopted, but conditions will not be imposed if they are considered to be invalid or if they are unacceptable on policy grounds.

6. Since July 1992, local 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 Annex 2 to DOE Circular 17/92 (WO 38/92). 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, the Magistrates' Court will then have no doubt about exactly what is required in order to comply with the terms of a planning condition.

7. This Circular does not include specific advice on policy on the use of planning conditions for the specialist subject of minerals workings or for most developments relating to waste management. Advice on conditions applicable to mineral developments is contained in the series of Minerals

Planning Guidance Notes (MPGs) and on waste management development control in PPG 23: Planning and Pollution Control (England only).

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

9. Department of the Environment Circular 1/85 (WO 1/85) is now cancelled.

Richard Jones, Assistant Secretary
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Appendix A and Appendix B can be accessed in the 'See also' section above.

POWERS

Summary of powers

1. Conditions may only be imposed within the 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 70, 72, 73, 73A, and Schedule 5 to the Town and Country Planning Act 1990 (referred to below as "the Act"). Sections 91 and 92 of the Act require the imposition of time-limiting conditions on grants of planning permission (see paragraphs 53-56 below). Powers to impose conditions are also conferred on the Secretaries of State or their Inspectors by sections 77, 79 and 177 of, and Schedule 6 to, the Act. Unless the permission otherwise provides, planning permission runs with the land and any conditions imposed on the permission will bind successors in title. In some areas there may also be powers under local Acts which complement or vary the powers in the 1990 Act.
2. Section 70(1)(a) of the Act enables the local planning authority in granting planning permission to impose "such conditions as they think fit". This power is not, however, as wide as it appears, and has to be interpreted in the light of court decisions.

Powers for conditions on land outside application site and temporary permissions

3. Section 72(1)(a) amplifies the general power in section 70(1)(a) in two ways. It makes clear that the local 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 control of an applicant is a matter to be determined according to the facts of the particular case, and is not dependent on the existence of a freehold or leasehold interest: only such control over the land is needed as is required to enable the developer to comply with the condition). The section also makes clear that the local planning authority may grant planning permission for a specified period only.

Power to vary or remove the effect of conditions

4. Section 73 of the Act provides for applications for planning permission to develop land without complying with conditions previously imposed on a planning permission. The local planning authority can grant such permission unconditionally or subject to different conditions, or they can refuse the application if they decide the original condition(s) should continue. The original planning permission will continue to subsist whatever the outcome of the application under section 73. Section 73 will not apply if the period in the previous condition limiting the duration within which the development could begin has now expired without the development having begun (see endnote 1).
5. Section 73A of the Act provides, among other things, for retrospective planning applications to be made in respect of development which has been carried out without 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 73A. For example, the standard time-limiting condition will not be appropriate where development has begun before planning permission has been granted.

OTHER CONSTRAINTS

Policy and other constraints

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,

Planning Policy Guidance notes, Minerals Policy Guidance Notes and other published material. They should also normally accord with the provisions of development plans and other policies of local planning authorities. Where a certain kind of condition is specifically endorsed by a development plan policy, however, 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 21-23 below).

PRACTICE

Role of informal discussions

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

"Standard conditions"

8. The compilation by local planning authorities of lists of model conditions can be of great benefit. They can improve the consistency of decisions, the use of staff resources, and the speed with which planning applications are processed. They may also, however, encourage the use of conditions as a matter of routine, without the careful assessment of the need for each condition which every applicant should be entitled to expect. Model conditions therefore need to be treated with caution. Such lists can usefully be made available locally so that developers can take account of possible conditions at an early stage in drawing up their proposals, but should contain a warning that they are not comprehensive and that conditions will always be devised or adapted where appropriate to suit the particular circumstances of a case.

Policies about Conditions in Structure and Local Plans

9. Where appropriate, development plans should specify the policies which the authority propose to implement regularly by means of planning conditions. (For further policy advice and guidance see paragraph 5.55 of PPG12: Development Plans and Regional Planning Guidance (Paragraph 5.54 of PPG12 (Wales)-Development Plans and Strategic Planning Guidance in Wales)).

Reasons

10. It is for the local 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 the requirements in Article 22 of the Town and Country Planning (General Development Procedure) Order 1995, that an authority deciding to grant permission subject to conditions shall state the reasons for their decision, reasons must be given for the imposition of every condition. Reasons such as "to comply with the policies of the Council", "to secure the proper planning of the area" or "to maintain control over the development" are vague, and 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. The likelihood of proper and acceptable conditions being challenged on appeal, so that development proposals are held up, will also be diminished.

Notes or "informatives"

11. Sometimes local 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 (see paragraphs 45 and 46 below). On occasions, a local planning authority may wish to draw the attention of an applicant to other statutory consents (eg. listed building consent or a footpath diversion order) which must be obtained before development can commence. This should not be done by imposing a condition: instead a note may be appended to the planning permission. A note may also be desirable to

draw the attention of the applicant to his or her right to make an application to vary or remove a condition under section 73 of the Act, or indeed for other purposes.

PLANNING OBLIGATIONS

12. It may be possible to overcome a planning objection to a development proposal equally well by imposing a condition on the planning permission or by entering into a planning obligation under section 106 of the Act. The Secretaries of State consider that in such cases the local planning authority should impose a condition rather than seek to deal with the matter by means of a planning obligation. This is because the imposition of restrictions by means of a planning obligation deprives the developer of the opportunity of seeking to have the restrictions varied or removed by an application or appeal under Part III of the Act if they are or become inappropriate or too onerous. It should be noted, however, that section 106A of the Act allows a developer to apply to the local planning authority to discharge or modify a planning obligation after the expiry of five years after the obligation is entered into--for further advice see DOE Circular 28/92 (WO 66/92).

13. Where conditions are imposed on a planning permission they should not be duplicated by a planning obligation. Permission cannot be granted subject to a condition that the applicant enters into a planning obligation under section 106 of the Act or an agreement under other powers.

TESTS

Six tests for conditions

14. On a number of occasions the courts have laid down the general criteria for the validity of planning conditions. In addition to satisfying the court's criteria for validity, the Secretaries of State take the view that 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 satisfy all of the tests described in paragraphs 14-42. In brief, these explain that conditions should be

- i. necessary;
- ii. relevant to planning;
- iii. relevant to the development to be permitted;
- iv. enforceable;
- v. precise; and
- vi. reasonable in all other respects.

NEED FOR A CONDITION

15. 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. The argument that a condition will do no harm is no justification for its imposition: as a matter of policy, a condition ought not to be imposed unless there is a definite need for it. The same principles, of course, must be applied in dealing with applications for the removal of a condition under section 73 or section 73A: a condition should not be retained unless there are sound and clear-cut reasons for doing so.

16. In some cases a condition is clearly 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.

17. 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. Where an extension to a dwellinghouse in a particular direction would be unacceptable, for example, a condition on the permission for its erection should specify that, and not simply remove all rights to extend the building. Permissions should not be overloaded with conditions, however: 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

18. 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 (for example, model conditions 17 and 22) are far preferable to a general requirement.

19. 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 local 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 therefore be appropriate to include a specific condition to ensure compliance with the restrictions.

RELEVANCE TO PLANNING

20. 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 (but see paragraph 97 below). Although a condition can quite properly require the provision of open space to serve the permitted 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) would similarly be ultra vires.

Other planning controls

21. 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 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 paragraph 51).

Non-planning controls

22. Other matters are subject to control under separate legislation, yet 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, but may be needed to address the impact of the emissions to the extent that they might have land-use implications and are not controlled by the appropriate pollution control authority (for further advice on conditions and pollution see paragraphs 3.23--3.28 of PPG23: Planning and Pollution Control) (England only). A condition cannot be justified on the grounds that the local planning authority is not the body responsible for exercising a concurrent control, and therefore cannot ensure that 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). Nor, as a matter of policy, should conditions be imposed in order to avoid a liability to pay compensation under other legislation. 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.

23. 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 sewerage and water supply for new developments and thus avoid subsequent intervention under the Public Health Acts).

RELEVANCE TO THE DEVELOPMENT TO BE PERMITTED

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

25. Thus it is not 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, and similarly 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. Nevertheless it is proper for conditions to secure satisfactory access, for example, or parking facilities, genuinely required by the users of the 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; where a permission will result in intensification of industrial use of a site, for instance, 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.

ABILITY TO ENFORCE

26. 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 172 of the Act, or a breach of condition notice under section 187A. (Detailed advice about breach of condition notices is in Annex 2 of DOE Circular 17/92 (WO Circular 38/92)). Precision in the wording of conditions will be vital when it comes to enforcement (see paragraph 27 below).

Practicality of enforcement

27. Sometimes a condition will be unenforceable because it is in practice impossible to detect a contravention. 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 a contravention. However, where a condition is intended to prevent harm to the amenities 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, as those affected by contravention of its requirements are likely to be able to provide clear evidence of any breaches.

Whether compliance is reasonable

28. 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. construction of

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 conditions, the local 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

29. 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 judgment in the case of *Handoll and Others v Warner Goodman and Streat (A firm) and Others*, (1995) 25 EG 157, which held that the judgment of the Divisional Court in *Kerrier DC v Secretary of State for the Environment and Brewer* (1980) 41 P&CR 284, had been wrongly decided. Both cases concerned a planning permission for the erection of a dwelling subject to an agricultural occupancy condition. (see endnote 2)

TEST OF PRECISION

30. The framing of conditions requires care, not least to ensure that a condition is enforceable. A condition, for example, requiring only that "a landscape scheme shall be submitted for the approval of the local planning authority" is incomplete, since if the applicant were to submit the scheme, even if it is approved, the local planning authority is unlikely to be able to require the scheme to be implemented. In such a case the requirement that needs to be imposed is that landscape work shall be carried out in accordance with a scheme to be approved in writing by the local 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 landscape work must be done, which can similarly lead to enforcement difficulties. Conditions which require specific works to be carried out should state clearly when this must be done.

Vague Conditions

31. A condition which is not sufficiently precise for the applicant to be able to ascertain what must be done to comply with it is *ultra vires* and cannot be imposed. Vague expressions which sometimes appear in conditions, for example such as "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. 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", which do not provide any objective and certain criteria by which the applicant can ascertain what is required.

Discretionary or vetting conditions

32. 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 local planning authority" make the applicant no more certain of just what is required. Conditions which are imprecise or unreasonable cannot be made acceptable by phrases such as "except with the prior approval of the local 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 (see paragraph 47). Nor should they be confused with occupancy conditions which follow the specific criteria on affordable housing included in a development plan, if these are imposed to ensure that the housing provided is used as intended, where a different planning decision might have been taken if the proposed development did not provide for affordable housing.

Clarity

33. Conditions should be not only precise but also clear. Where a precise 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).

REASONABLENESS

34. 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

35. 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 amenities of the neighbourhood, but it would be unreasonable to do so to such an extent as to make it impossible for the occupier to run the 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 it will be necessary to refuse permission altogether.

Avoidance of onerous requirements

36. 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. Any condition which would put a severe limitation on the freedom of owners to dispose of their 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 (see paragraph 32 above).

Control over land

37. 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 28 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 (see, however, paragraphs 38-41 below).

Conditions depending on others' actions

38. 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 (for example, a condition which requires an aerodrome owner to impose a particular pattern of aircraft flight routeings, where air traffic services for the particular aerodrome are the responsibility of the Civil Aviation Authority or the National Air Traffic Service). Similarly, conditions which require the applicant to obtain an authorisation from another body (such as Her Majesty's Inspectorate of Pollution) should not be imposed.

39. Although it would be ultra vires, however, to require works which the developer has no power 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.

40. It is the policy of the Secretaries of State that such a condition should only be imposed on a planning permission if there are at least reasonable prospects of the action in question being performed within the time-limit imposed by the permission (see endnote 3).

41. Thus for example, if it could be shown that, although current sewerage facilities were inadequate for a new housing estate, improvements were under way and that there are reasonable prospects that the facilities would be completed not long after the houses, it might be appropriate to grant permission subject to a condition that the houses should not be occupied until the relevant sewerage works were complete. In an appropriate case, too, it might be reasonable to use a condition requiring that the development should not commence until a particular highway had been stopped up or diverted, if there were reasonable prospects that the highway authority would be able and willing to take the necessary action.

Consent of applicant to unreasonable conditions

42. 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

43. An applicant who proposes to carry out building 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 local planning authority: the siting of the building, its design, its external appearance, the means of access, or the landscaping of the site ("reserved matters") (cf model condition 2). An applicant cannot seek an outline planning permission for a change of use alone or for operations other than building operations.

Details supplied in outline applications

44. An applicant can however choose to submit as part of an outline application details of any of these "reserved matters". Unless the applicant 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 local 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

45. Once outline planning permission has been granted, it cannot be withdrawn except by a revocation order under section 97 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, local 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.

46. If the local 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 local planning authority.

Conditions reserving other matters

47. 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 local 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 (cf model condition 20). In the case of a full permission, such a condition can relate to details (such as landscape works) 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 78 of the Act if they cannot get the authority's approval, agreement or consent to matters reserved under such a condition as they have in respect of applications for approval of reserved matters.

DESIGN AND LANDSCAPE

48. The appearance of a proposed development and its relationship to its surroundings are material considerations. As explained in Annex A to PPG 1: General Policy and Principles, local authorities should not attempt to use conditions simply to impose matters of taste on applicants for planning permission. But, there will, however, 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. In such cases, the use of conditions may be acceptable. The appearance and treatment of the spaces between and around buildings is also of great importance. Similarly, local 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.

49. 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 that result 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 differing 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 landscape requirements

50. 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 (model condition 25). Enforcing compliance with landscape schemes can pose problems, since work on landscaping can rarely proceed until building operations are nearing completion, and only on permissions for a change of use would it be acceptable to provide that the development permitted should not proceed until the landscape work had been substantially completed. Where permission is being granted for a substantial estate of houses, it might be thought 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 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 has been completed in accordance with the landscape scheme; but 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 have been completed.

Endnotes

1. However, it was held by Pill J in *R v Secretary of State for the Environment ex parte Corby BC* [1994] 1 P.L.R.38 that an application can be made under section 73 after the period for approval of reserved matters on an outline planning permission has expired but before the expiry of the period for commencement of development.
2. The apparent consequences of the Court of Appeal's judgment in the Handoll case are that:

- (1) where operational development is carried out in a way which differs materially from approved plans, it amounts to development without planning permission; and
- (2) any conditions imposed on the planning permission for those operations are unenforceable because the particular planning permission has not been implemented.

Authorities should ensure, in any case where planning permission has been granted for the carrying-out of operations subject to conditions, that the operations do not differ materially from the approved plans. If there is a material difference, they will need to consider seeking a specific application for planning permission to authorise the operations and granting the permission within four years of the substantial completion of those operations. They could then impose the same conditions on that permission. Alternatively, they may wish to consider taking enforcement action to remedy the breach, or to require the development to comply with the terms of the permission, if they intend to enforce the conditions.

3. *British Railways Board v Secretary of State for the Environment and Hounslow LBC* [1994] J.P.L. 32; [1993] 3 P.L.R.125-the House of Lords established that the mere fact that a desirable condition, worded in a negative form, appears to have no reasonable prospects of fulfillment does not mean that planning permission must necessarily be refused as a matter of law. However, the judgment leaves open the possibility for the Secretary of State, to maintain as a matter of policy that there should be at least reasonable prospects of the action in question being performed within the time-limit imposed by the permission.

TREES

51. Section 197 of the Act places an express duty on the local 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 198 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.

52. The planting and establishment of new trees may need work over several months or years, and the authority may wish to ensure that they secure 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 during the first few years (specifying the number of years) and that any which die or are removed within that time shall be replaced. DOE Circular 36/78 (WO 64/78) deals in more detail with the use of conditions in relation to trees and with trees and development generally. See also model conditions 71-75 Appendix 4 of DOE Circular 36/78 (WO 64/78) is hereby cancelled.

TIME-LIMITS ON THE COMMENCEMENT OF DEVELOPMENT

Statutory time-limits

53. The imposition of time-limits on the commencement of development is not required by the Act for temporary permissions (paragraphs 108-113 below), or for permissions granted by a development order or an enterprise zone scheme.

Time-limits on full permissions

54. Other grants of planning permission (apart from outline permissions) must, under section 91 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 (model condition 1) (but see paragraph 55 below). 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

55. Grants of outline planning permission must, under section 92 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 (model conditions 4 and 5). The periods specified in the section are three years from the grant of outline permission for the submission of applications for approval of reserved matters, and 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, for starting the development.

Variation from standard time-limits

56. If the authority consider it appropriate on planning grounds, however, they may use 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 54 and 55 above. 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 92(5) 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.

Separate submission of different reserved matters

57. 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.

58. 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 reserved matters.

Effect of time-limit

59. After the expiry of the time-limit for commencement of development it is not possible for development to be begun under that permission; a further application for planning permission must be made (see paragraph 4 above).

Renewal of permissions before expiry of time-limits

60. Developers who delay the start of development are likely, as the time-limit for implementation approaches, to want their permission renewed. Under Regulation 3 of the Town and Country Planning (Applications) Regulations 1988, applications for such renewals may be made simply by letter, referring to the existing planning permission, although the local 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 highway considerations, or the publication by the Government of new planning policy guidance, material to the renewal application);

b. continued failure to begin the development 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.

COMPLETION OF DEVELOPMENT

Completion of whole of development

61. 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 means of a completion notice under section 94 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 it may be that the only practical step open to the local planning authority, if they wish to secure the completion of the development, is the acquisition of the land. If a large development such as an estate of houses is left half-complete, this may well be because of market changes (for example, a shift of 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 or need. Conditions requiring the completion of the whole of a development should therefore not normally be imposed.

Completion of elements of a development

62. 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 inclined 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 may become established (on landscape design, see paragraphs 48-50 above).

PHASING

Phasing required by infrastructure

63. Conditions may also be imposed to ensure that development proceeds in a certain sequence where some circumstance of the case (eg. the manner of provision of infrastructure) makes this necessary. See model condition 42.

HIGHWAY CONDITIONS

Parking, Public Transport, Walking and Cycling

64. Developments often generate extra traffic, usually in the form of haulage or delivery vehicles or cars belonging to 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 to allow for parking.

65. Any conditions specifying the number of parking spaces should support the locational policies in the development plan, but they also need to be reasonable in relation to the size and nature of the development and to satisfy the other tests in paragraph 14 above.

66. Sometimes parking space in the form of a lay-by will be satisfactory. More often a parking site separate from the highway will be needed. In the latter 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 highway.

67. 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.

68. In certain circumstances, developers may enter into a planning obligation with the local planning authority to provide off-site parking or to contribute to measures to assist public transport or walking and cycling-see paragraphs B5-B10 of DOE Circular 16/91 (WO 53/91) and PPG13: Transport (but not for Wales where the former version of PPG 13 [November 1988] continues to apply). Advice on how local authorities should integrate transport and land use planning is also contained in PPG 13.

Access

69. 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 highway to be by means of the service road. If such a condition is not imposed at outline stage it may not be possible to secure the objective at a later stage (see paragraph 45). 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 made at the stage of consideration of details.

70. 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 sufficiently relates to the proposed development. The condition should be framed so as to require the laying out or improvement of the means of access, or the relevant section of the service road, on defined land before the relevant buildings are occupied. (Policy advice and guidance about conditions requiring works in the highway is contained in Annex C to PPG 13: Transport (but not for Wales where the former version of PPG13 [November 1988] continues to apply)).

Lorry routeing

71. Planning conditions are not an appropriate means of controlling the right of passage over public highways. 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 essential to prevent traffic from using particular routes, the correct mechanism for doing so is an Order under either section 1 or section 6 (as appropriate) of the Road Traffic Regulation Act 1984.

Cession of land

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

DEVELOPMENT OF CONTAMINATED SITES

Contaminated land

73. Land formerly used for industrial purposes or for waste disposal can be contaminated by substances that pose immediate or long-term hazards to the environment or to health, or which may damage any buildings erected on such sites. Contaminants may also escape from the site to cause air and water pollution and pollution of nearby land; the emission of landfill gas 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, any buildings and services, or the wider environment to risks associated with the contaminants present. However, local planning authorities should base any such conditions on a site-specific assessment of the environmental risks which might affect, or be affected by, the particular proposed development.

74. 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.

75. 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.

76. 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. Further planning policy guidance on contaminated land is contained in PPG23: Planning and Pollution Control (England only) (paragraph 4 and Annex 10) (in Wales, Welsh Office Circular 22/87-Contaminated land. (See also model conditions 56-58).

ENVIRONMENTAL ASSESSMENT

77. For projects subject to environmental assessment, conditions attached to a grant of planning permission may incorporate mitigation measures proposed in an environmental statement where such conditions meet the criteria summarised in paragraph 14 above. It may be appropriate, within the powers 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 local planning authority before any development is undertaken. (Model condition 25 is an example of this type of condition). Such conditions should not duplicate the effect of other legislative controls, where such controls are available. 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 (see paragraph 1.34 of PPG23 (England only)).

NOISE

78. 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, local 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 obligations. Further advice is contained in PPG24: Planning and Noise (England only), and MPG 11: The Control of Noise at Surface Mineral Workings. (See also model conditions 6-11).

LISTED BUILDINGS

79. Guidance on conditions and listed buildings is contained in Annex B to PPG15: Planning and the Historic Environment (England only), which also contains advice about World Heritage sites (paragraphs 2.22-2.23 and 6.35--6.37).

SITES OF ARCHAEOLOGICAL INTEREST

80. Scheduled ancient monuments are protected by Part I of the Ancient Monuments and Archaeological Areas Act 1979, and investigation for archaeological purposes is provided for in designated areas by Part II of that Act. Where these provisions apply, their effect should not be duplicated by planning conditions (cf paragraphs 21-23 above), 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.

81. Where, however, planning permission is being granted for development which might affect a monument which has not been scheduled, or which might affect land in an area which is considered to be of archaeological interest but which has not been formally designated as such under section 33 of the 1979 Act, the local planning authority may wish to impose conditions designed to protect the monument or ensure that reasonable access is given to a nominated archaeologist - either to hold a "watching brief" during the construction period or specifically to carry out archaeological investigation and recording before or in the course of the permitted operations on the site. (For further advice on archaeology and planning conditions see paragraphs 29 and 30 of PPG 16: Archaeology and Planning or PPG 16 (Wales), and model conditions 53-55).

MAINTENANCE CONDITIONS

82. A condition may be imposed, where appropriate, requiring some feature of development to be retained-car parking spaces, for example, or an area of open space in a housing scheme (a better solution, however, is that adopted in model conditions 22 and 24). 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 local 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 CONSIDERATION FOR THE GRANT OF PERMISSION

83. 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 public car parking facilities, should accordingly not be attached to planning permissions. However, conditions may in some cases reasonably be imposed to oblige developers to carry out works on land within the application site, to overcome planning objections to the development eg. provision of an access road. Further advice on this and on agreements with developers to cover such matters is given in "Planning Obligations" (DOE Circular 16/91, WO 53/91).

CONDITIONS ALTERING THE NATURE OF THE DEVELOPMENT

Modifying proposed development

84. 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 local planning authority to impose a condition modifying in some way the development permitted. The precise course of action will normally emerge during discussion with the applicant. A condition modifying the development, however, cannot be imposed if it would make the development permitted substantially different from that comprised in the application. 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, but a useful test will be whether it would so change the proposal that those interested in it would wish to comment on the modification.

REGULATION AFTER DEVELOPMENT

85. 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 the balance of advantage. The following paragraphs give more detailed guidance.

CONDITIONS RESTRICTING PERMITTED DEVELOPMENT OR OTHERWISE RESTRICTING USE

Restrictions on use or permitted development

86. It is possible, exceptionally, to impose conditions to restrict further development which would normally be permitted by a development order, or to restrict changes of use which would not be regarded as development (whether because the change is not a "material" change within the terms of section 55(1) of the Act, or by reason of section 55(2) and the provisions of the Town and Country Planning (Use Classes) Order 1987) (SI 1987/764). Changes of use can be restricted either by prohibiting any change from the use permitted or by precluding specific alternative uses (see model conditions 48--49). It should be noted, however, that a condition restricting changes of use will not restrict ancillary or incidental activities unless it so specifies (see paragraph 91 below). 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

87. Both development orders 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. Save in exceptional circumstances, conditions should not be imposed which restrict either permitted

development rights granted by development orders or future changes of use which the Use Classes Order would otherwise allow. The Secretaries 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 were no other forms of control, and that the condition would serve a clear planning purpose.

88. It might, for example, be possible to justify imposing a condition restricting permitted development rights allowed by Part 2, Class A, of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 so as to preserve an exceptionally attractive open plan estate free of fences, or under Part 1, Class A of the General Permitted Development Order so as to avoid overdevelopment by extensions to dwellinghouses in an area of housing at unusually high density; or restricting changes of use so as to prevent the use of large retail premises as a food or convenience goods supermarket where such a use might generate an unacceptable level of additional traffic or have a damaging effect on the vitality of a nearby town centre; or so as to limit the storage of hazardous substances in a warehouse.

Specific conditions better than general ones

89. 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 (it may be helpful to refer to paragraph 36 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-see model conditions 6-11 -that condition should be imposed, rather than one restricting the permitted uses). Scrupulous care in the giving of proper, adequate and intelligible reasons for imposing conditions (see paragraph 10 above) can help authorities to ensure that the conditions they impose are not more onerous than is necessary to achieve their objective.

90. 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, as in model condition 49 (provided the list does not become too long), rather than in terms which prevent any change of use at all; but in many cases a condition confining the use to the use permitted may be necessary (model condition 48). 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 such a change would involve a material change of use amounting to development of the land and thus would require planning permission in any event.

Ancillary uses

91. Conditions are sometimes imposed restricting ancillary or incidental activities. Conditions of this kind can be burdensome to some technologically advanced industries where there may be 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, which would not normally be material changes of use involving development. 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

92. 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

93. Unless the permission otherwise provides, planning permission runs with the land and it is seldom desirable to provide otherwise. There are occasions, however, where it is proposed exceptionally to grant permission for the use of a building or land for some purpose which would not normally be allowed at the site, simply because there are strong compassionate or other personal grounds for doing so. In such a case the permission should normally be made subject to a condition that it shall enure only for the benefit of a named person-usually the applicant (model condition 35): a permission personal to a company is inappropriate because its shares can be transferred to other persons without affecting the legal personality of the company. This condition 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

94. 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 Secretaries of State therefore regard such conditions as undesirable in principle. (For further policy guidance see PPG4: Industrial and Commercial Development and Small Firms).

Exception where occupancy conditions may be appropriate

95. However, where the need of a local firm to expand is sufficiently exceptional to justify a departure from a general policy of restraint it will be essential to ensure that such a permission is not abused. It may be reasonable to impose a "local occupancy" condition in such circumstances, provided it is for a limited period (10 years is considered to be a suitable maximum), covers a large catchment area (for example, the area of the relevant county) and clearly defines the categories of persons or firms who may occupy the premises. Occupancy conditions should be imposed only where special planning grounds can be demonstrated and where the alternative would normally be to refuse the application. It would not normally be appropriate to impose such conditions on small buildings of less than 300 square metres of office floorspace (or 500 square metres of industrial floorspace). Occupancy conditions should not be imposed which provide for a system of vetting by the local planning authority or the use of a vague test such as "needing to be located in the area".

Domestic occupancy conditions

96. Subject to the advice about affordable housing (paragraph 97 below), staff accommodation (paragraphs 100-101), agricultural dwellings (paragraphs 102-105), and seasonal use (paragraphs 115-117), 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 is 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. In the view of the Secretaries of State, 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

97. The courts have held that 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 local plan policy. Conditions should not normally be used to control matters such as tenure, price or ownership. More detailed advice on affordable housing is contained in PPG3: Housing (PPG3 (Wales): Land for Housing in Wales).

'Granny'/Staff Annexes

98. 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 dwelling house. See model condition 47.

99. 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

100. 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. Local 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.

101. 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 thereby undermining established countryside policy. 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. (See model condition 46.)

Agricultural dwellings

102. Despite planning policies which impose strict controls on new residential development in the open countryside, there may be circumstances where permission is granted to allow a house to be built to accommodate an agricultural or forestry worker on a site where residential development would not normally be permitted. In these circumstances, a condition should be imposed to ensure that the dwellings are kept available for meeting this need - -see model condition 45.(see endnote 4)

103. It should not be necessary to tie occupation of the dwelling to workers engaged in one specific farm or forestry business even though the needs of that business justified the provision of the dwelling. The model occupancy condition will ensure that the dwelling is kept available to meet the needs of other farm or forestry businesses in the locality if it is no longer needed by the original business, thus avoiding a proliferation of dwellings in the open countryside (see Annex E of PPG7: The Countryside and the Rural Economy for further details about agricultural and forestry dwellings).

104. Local 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 occupation by the dependants of the person defined (the agricultural occupant).(see endnote 5)

105. 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 the existing need for dwellings for agricultural workers in the locality no longer warrants reserving the house for that purpose. This assessment will be necessary in all cases, including those where the condition was originally inappropriately imposed (*Sevenoaks DC v Secretary of State for the Environment and Mr and Mrs Geer* (1995) 69 P. & C.R. 87). However, the fact that planning permission for a dwelling would in all probability be granted today without an agricultural occupancy condition is a material consideration (*Hambleton DC v Secretary of State for the Environment and others* [1994] EGCS 202).

Conditions governing size of unit occupied

106. 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 of floorspace, represent, in the view of the Secretaries of State, a significant interference with property rights which is likely to inhibit or delay the productive use of the buildings affected. Such conditions therefore should normally be avoided unless there are sound planning reasons to impose them. For example, in the case of retail development, it may be appropriate to impose conditions to control the number or size of units to prevent the development being subdivided into a large number of outlets (or vice versa), if the effect of such a change would be to change significantly the nature of the retail development to one that would not have been given permission, or would increase the need for parking or alter significantly the traffic and transport impact of the proposal.

Retail development

107. 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 advice see PPG6: Town Centres and Retail Development.

TEMPORARY PERMISSIONS

108. Section 72(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: section 267 of the Act). Conditions of this kind are sometimes confused with conditions which impose a time-limit for the implementation of a permission (paragraphs 53-60 above), but they are quite distinct, and different considerations arise in relation to them.

Principles applying to temporary permissions

109. Advice on minerals permissions is given in Minerals Policy Guidance notes. In other cases, in deciding whether a temporary permission is appropriate, three main factors should be taken into account. First, it will rarely be necessary to give a temporary permission to an applicant who wishes to carry out development which conforms with the provisions of the development plan. Next, 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 amenities of the area. Where such objections to a development arise they should, if necessary, be met instead by conditions whose requirements will safeguard the amenities. If it is not possible to devise such conditions, and if the damage to amenity cannot be accepted, then the only course open is to refuse permission. These considerations will mean that a temporary permission will normally only be appropriate either where the applicant 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

110. Where a proposal relates to a building or use which the applicant is expected to retain or continue only for a limited period, whether because they have 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 the 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

111. Again, where an application is made for permanent permission for a use which may be "potentially detrimental" 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 application 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.

112. 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 first permission whether permanent permission or a refusal is the right answer. Usually a second temporary permission will only be justified where highway 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

113. 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 (model condition 41). 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 Part 5 of the General Permitted Development Order. (see endnote 6)

ACCESS FOR DISABLED PEOPLE

114. 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. (See model condition 37.)

SEASONAL USE

Seasonal occupancy conditions

115. 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 local 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; a suitable form of condition to secure seasonal use is given in model

condition 43. 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, for 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

116. 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 Secretaries of State consider that the planning system should respond to these changes without compromising policies to safeguard the countryside.

117. There may be circumstances where it will be reasonable for the local 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. (For further advice about holiday and seasonal occupancy conditions see Annex C to PPG21: Tourism)

NATURE CONSERVATION

118. Nature conservation can be a significant material consideration in determining many planning applications. But local planning authorities should not refuse permission if development can be permitted subject to conditions that will prevent damaging impacts on wildlife habitats or important physical features. Where there is a risk of damage to a site, the planning authority should consider the use of conditions or planning obligations in the interests of nature conservation. Conditions can be used, for example, to require areas to be fenced or banded off to protect them, or to restrict operations or uses at particular times of the year.

119. In addition, there are certain special sites where any conditions or obligations affecting them will need to be consistent with the provisions applicable for their protection. In some cases the provisions have statutory force. For further advice see PPG9: Nature Conservation (England only).

PROTECTED SPECIES

120. Local planning authorities should not refuse planning permission if appropriate conditions can be imposed or planning obligations entered into which are designed to prevent deliberate harm to the protected species. For further advice see paragraphs 44-48 of PPG9 (England only).

Endnotes

4. Model condition 45 includes the words " ...limited to a person solely or mainly working, or last working, in the locality in agriculture or forestry ..". "Last working" covers the case both of a person who is temporarily unemployed or of a person who from old age, or illness is no longer able to work. Nor need the words necessarily exclude a person who is engaged in other part-time, or temporary employment, if that person could still be regarded as a farm worker or retired farm worker, or a worker in one of the other specified categories. (*Fawcett Properties Ltd v Buckingham County Council* [1961] A.C. 636 at pages 671 to 672). A person who last worked in agriculture/forestry but who now works on a permanent basis mainly in non-agricultural/forestry employment, would not satisfy model condition 45.

5. "Dependants" means persons living in family with the person defined and dependent on him (or her) in whole or in part for their subsistence and support (Fawcett Properties Ltd v Buckingham County Council [1961] A.C. 636 at page 671).

6. This section does not deal with specific legislation or advice on restoration of mineral workings, where all permissions are time-limited; nor on restoration of landfill sites. Advice on restoration of mineral workings is in MPG7; and for landfill sites in Annex 11 of PPG23 (England only).

APPENDIX A: SUGGESTED MODELS OF ACCEPTABLE CONDITIONS FOR USE IN APPROPRIATE CIRCUMSTANCES

Notes

i. No condition should be imposed unless, having regard to the circumstances of each case, it meets the tests set out in the Annex to this Circular. The conditions set out below are only models, and may need adaptation to the circumstances of particular cases. The model conditions are formulated in relation to proposed development and will not necessarily be appropriate for retrospective applications.

ii. This list is not exhaustive, and it will be possible to word many acceptable conditions to meet planning problems which are not mentioned here.

iii. Model reasons for the imposition of the conditions shown below cannot be given, as the reasons for imposing conditions will vary in each case, depending on its circumstances.

iv. Entries [thus] are words in the models which will commonly need variation, or alternative wording; entries [thus] are descriptions of what is to be inserted in a model: entries thus are explanatory notes. A reference to (paragraph 11) refers to paragraph 11 of the Annex to this Circular.

Time limit for commencement of development

1. The development hereby permitted shall be begun before the expiration of [five] years from the date of this permission.

In the case of full permissions (paragraph 54).

Outline Permissions

2. Approval of the details of the siting, design and external appearance of the building[s], the means of access thereto and the landscaping of the site (hereinafter called "the reserved matters") shall be obtained from the local planning authority in writing before any development is commenced (paragraph 43).

Appropriate in its entirety only where the outline application contained details of none of the items described as "reserved matters" in Article 1(2) of the Town and Country Planning (General Development Procedure) Order 1995.

3. Plans and particulars of the reserved matters referred to in condition 2 above, relating to the siting, design and external appearance of any buildings to be erected, the means of access to the site and the landscaping of the site, shall be submitted in writing to the local planning authority and shall be carried out as approved (paragraph 43).

4. Application for approval of the reserved matters shall be made to the local planning authority before the expiration of [three] years from the date of this permission (paragraph 55).

5. The development hereby permitted shall be begun either before the expiration of [five] years from the date of this permission, or before the expiration of [two] years from the date of approval of the last of the reserved matters to be approved, whichever is the later (paragraph 55).

Noise

6. [activities] shall not take place anywhere on the site except within building[s].

The condition should describe precisely the activities to be controlled as well as the particular building(s) in which they are to take place.

7. The building shall be [constructed/adapted] so as to provide sound insulation against internally generated noise of not less than dB(A) (see endnote 7), with windows shut and other means of ventilation provided.

Other methods of specifying sound insulation are given in BS5821, Part 3: 1984, but this is likely to be replaced by a European Standard.

8. The level of noise emitted from the site shall not exceed [A] dB between [T] and [T] Monday to Friday and [A] dB at any other time, as measured on the [specified boundary/boundaries] of the site at [location(s) of monitoring points].

Specify: A-noise level expressed as $L_{Aeq,T}$ over a time period X (eg. 1 hour)

T-time of day

9. No [specified machinery] shall be operated on the premises before [time in the morning] on weekdays and [time in the morning] on Saturdays nor after [time in the evening] on weekdays and [time in the evening] on Saturdays, nor at any time on Sundays or Bank Holidays.

10. Before [any] [specified plant and/or machinery] is used on the premises, it shall be [enclosed with sound-insulating material] [and] [mounted in a way which will minimise transmission of structure borne sound] in accordance with a scheme to be approved in writing by the local planning authority.

Advice should be appended to the permission indicating the sound insulation required, or the maximum permitted noise level at a specified monitoring point.

11. Construction work shall not begin until a scheme for protecting the proposed [noise-sensitive development] from noise from the has been submitted and approved by the local planning authority; all works which form part of the scheme shall be completed before [any part of] the [noise-sensitive development(s)] is occupied.

Authorities should give applicants guidance on the maximum noise levels to be permitted within or around the noise-sensitive development so as to provide precise guidelines for the scheme to be permitted.

Aerodromes

12. The total number of aircraft movements shall not exceed

[] per [period of time] except in an emergency.

13. Aircraft movements shall take place only between [hours of day] on [days of week], except in an emergency.

Further model conditions which control noise by restricting use of an aerodrome or part of an aerodrome are contained in Annex 4 to PPG24: Planning and Noise (England only).

Accesses

14. Means of vehicular access to the permitted building shall be from Road only.

15. The building shall not be occupied until a means of vehicular access has been constructed in accordance with the approved plans.

16. The building shall not be occupied until a means of access for [pedestrians and/or cyclists] has been constructed in accordance with the approved plans.

17. Development shall not begin until details of the junction between the proposed service road and the highway have been approved in writing by the local planning authority; and the building shall not be occupied until that junction has been constructed in accordance with the approved details.

18. No structure or erection exceeding metres in height shall be placed to the [east] of a line from .to ..[as shown on the plan attached hereto].

To preserve site lines at a junction.

Service Roads

19. No [dwelling] shall be occupied until that part of the service road which provides access to it has been constructed in accordance with the approved plans (*paragraph 69*).

Parking

20. No [dwelling] shall be occupied until space has been laid out within the site [in accordance with the plan attached] for [number] cars to be parked [and for the loading and unloading of [number] vehicles] [and for vehicles to turn so that they may enter and leave the site in forward gear].

21. No [dwelling] shall be occupied until space has been laid out within the site [in accordance with the plan attached] for [number] bicycles to be parked.

22. The building shall not be occupied until the area shown on the plan attached hereto has been drained and surfaced [*or other steps as may be specified*] [in accordance with details submitted and approved by the local planning authority], and that area shall not thereafter be used for any purpose other than the parking of vehicles.

Transport

23. Development shall not commence until details of the proposed [bus/railway] station(s) or stop(s) have been approved in writing by the local planning authority; and the building(s) shall not be occupied until [that/those] station(s) or stop(s) have been constructed in accordance with the approved plans.

Play Areas

24. The building shall not be occupied until the area shown on the plan attached hereto has been laid out in accordance with [*specify relevant plan or drawing*], and that area shall not thereafter be used for any purpose other than as a play area.

Landscape design proposals (see endnote 8)

25. No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include [proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (eg. furniture, play equipment, refuse or other storage units, signs, lighting etc.); proposed and existing functional services above and below ground (eg. drainage power, communications cables, pipelines etc. indicating lines, manholes, supports etc.); retained historic landscape features and proposals for restoration, where relevant.]

26. Soft landscape works shall include [planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; implementation programme] (*paragraphs 48-50*).

Landscape works implementation

27. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the local planning authority (*paragraphs 48-50*).

28. No development shall take place until details of earthworks have been submitted to and approved in writing by the local planning authority. These details shall include the proposed grading and mounding of land areas including the levels and contours to be formed, showing the relationship of proposed mounding to existing vegetation and surrounding landform. Development shall be carried out in accordance with the approved details.

29. Details of any floodlighting shall be submitted to and approved in writing by the local planning authority before [the use hereby permitted commences] [and] [the building(s) is/are occupied]. Development shall be carried out in accordance with the approved details.

30. No development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed before [the use hereby permitted is commenced] or [before the building(s) is/are occupied] or [in accordance with a timetable agreed in writing with the local planning authority]. Development shall be carried out in accordance with the approved details.

Landscape management plan

31. A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than small, privately owned, domestic gardens, shall be submitted to and approved by the local planning authority prior to the occupation of the development or any phase of the development, whichever is the sooner, for its permitted use. The landscape management plan shall be carried out as approved.

32. No development shall take place until a schedule of landscape maintenance for a minimum period of [] years has been submitted to and approved in writing by the local planning authority. The schedule shall include details of the arrangements for its implementation. Development shall be carried out in accordance with the approved schedule (paragraph SO).

Storage

33. [Scrap] material shall not be stacked or deposited to a height exceeding.....metres.

Where open air storage is permitted.

34. No [timber] [propane or butane gas] shall be stored within metres of the [specified] boundary of the site.

Where necessary to avoid a fire hazard.

Personal Permissions

35. The use hereby permitted shall be carried on only by [name of person] and shall be for a limited period being the period (of years from the date of this letter, or the period) during which the premises are occupied by [name of person] whichever is the shorter (paragraph 93).

36. When the premises cease to be occupied by [name of person] or at the end (of years) whichever shall first occur, the use hereby permitted shall cease [and all materials and equipment brought on to the premises in connection with the use shall be removed].

Access for disabled people

37. Before the development hereby permitted is commenced a scheme indicating the provision to be made for disabled people to gain access to [] shall have been submitted to and approved by the local planning authority. The agreed scheme shall be implemented before the development hereby permitted is brought into use (paragraph 114).

Drainage

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

39. None of the dwellings shall be occupied until works for the disposal of sewage have been provided on the site to serve the development hereby permitted, in accordance with details to be submitted to and approved in writing by the local planning authority.

It may be necessary for the local planning authority to consult the water authority about the sewage disposal arrangements but this should not form part of any condition.

40. Development shall not begin until drainage works have been carried out in accordance with details to be submitted to and approved in writing by the local planning authority.

Temporary Permission: Reinstatement

41. [The building hereby permitted shall be removed] [The use hereby permitted shall be discontinued] and the land restored to its former condition on or before.[date] in accordance with a scheme of work submitted to and approved by the local planning authority (paragraph 113).

An agreed note showing the condition of the site before works begin should be attached to a permission granted subject to this condition.

Staging of Development

42. The works comprised in [specified part] of the development hereby permitted shall not be commenced before the works comprised in [specified part] are completed.

Where a proposal involves a number of separate parts, eg. 100 houses on site A, 10 shops and a car park on site B, and 100 houses on site C, it may be desirable to prescribe by condition the order in which-but not the time when-the parts shall be carried out (paragraph 63).

Caravans: Seasonal Sites

43. [No caravan on the site shall be occupied] [No caravan shall remain on the site] between [date] in any one year and [date] in the succeeding year (paragraph 115).

Commercial or Industrial Building: Limitation on Occupancy

44. Until .. [normally not more than 10 years ahead] the premises shall be occupied only by a person, firm, company or other organisation which was, immediately prior to occupying the accommodation to which this permission relates, in occupation for at least [two] years of .. premises within the County of used as a [general or light industrial building] [warehouse] [office] (paragraphs 94-95).

This condition needs to be supported by restraint policies in the development plan.

Agricultural Workers' Condition

45. The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or in forestry, or a widow or widower of such a person, and to any resident dependants (paragraphs 102-105).

Staff accommodation

46. The occupation of the dwelling shall be limited to a person solely or mainly employed or last employed in the business occupying the plot edged red on the attached plan, or a widow or widower of such a person, or any resident dependants (paragraphs 100-101).

"Granny" Annexes

47. The extension (building) hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as [] (paragraphs 98-99).

Restriction on Use

48. The premises shall be used for and for no other purpose (including any other purpose in Class .of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification) (paragraph 90).

49. The premises shall not be used for the sale of food for consumption off the premises other than confectionery (paragraph 90).

To prevent eg. a retail DIY warehouse from being used as a food supermarket.

Restrictions on Permitted Development

50. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no garages shall be erected [other than those expressly authorised by this permission] (paragraphs 86-88).

51. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no fences, gates or walls shall be erected within the curtilage of any dwellinghouse forward of any wall of that dwellinghouse which fronts onto a road (paragraphs 86-88).

Where there is sufficient merit in an open plan housing layout to justify control of front fencing.

52. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order) (with or without modification), no windows/dormer windows [other than those expressly authorised by this permission] shall be constructed.

Sites of archaeological interest (not scheduled or designated under 1979 Act)

53. No development shall take place until fencing has been erected, in a manner to be agreed with the local planning authority, about [insert name of monument]; and no works shall take place within the area inside that fencing without the consent of the local planning authority (paragraphs 80-81).

54. The developer shall afford access at all reasonable times to any archaeologist nominated by the local planning authority, and shall allow him to observe the excavations and record items of interest and finds (paragraphs 80-81).

Conditions should not require work to be held up while archaeological investigation takes place, though some developers may be willing to give such facilities.

55. No development shall take place within the area indicated (this would be the area of archaeological interest) until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the local planning authority.

Developers will wish to ensure that in drawing up a scheme, the timetable for the investigation is included within the details of the agreed scheme.

Contaminated land

56. Development shall not begin until a scheme to deal with contamination of the site has been submitted to and approved in writing by the local planning authority.

57. The above scheme shall include an investigation and assessment to identify the extent of contamination and the measures to be taken to avoid risk to the [public/buildings/environment] when the site is developed.

58. Development shall not commence until the measures approved in the scheme have been implemented.

Where investigation/remedial proposals carried out/agreed before planning permission granted.

Soil decontamination (see endnote 9)

59. Before the development hereby permitted commences on the site, a soil survey of the site shall be undertaken and the results provided to the local planning authority. The survey shall be taken at such points and to such depth as the local planning authority may stipulate. A scheme for decontamination of the site shall be submitted to and approved by the local planning authority in writing and the scheme as approved shall be fully implemented and completed before any [residential] unit hereby permitted is first occupied.

For use where soil contamination is known or suspected.

Density

60. The development hereby permitted shall not exceed a density of [] habitable rooms per hectare.
Height of building

61. No building on any part of the development hereby permitted shall exceed [] storeys in height.

Balconies

62. The roof area of the extension hereby permitted shall not be used as a balcony, roof garden or similar amenity area without the grant of further specific permission from the local planning authority.

Matching materials

63. The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those used in the existing building.

64. No development shall take place until samples of the materials to be used in the construction of the external surfaces of the extension hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

Hours of use (industrial)

65. No machinery shall be operated, no process shall be carried out and no deliveries taken at or despatched from the site outside the following times [] nor at any time on Sundays, Bank or Public Holidays.

Hours of use (restaurants etc)

66. The use hereby permitted shall not be open to customers outside the following times [].

67. No amplified or other music shall be played in the premises outside the following times [].
Hours of deliveries

68. No deliveries shall be taken at or despatched from the site outside the hours of [] nor at any time on Sundays, Bank or Public Holidays.

Petrol filling stations

69. The site shall only be used as a petrol filling station, and no part shall be used for the sale, display, or repair of vehicles.

70. The premises shall not be open for business, nor shall supplies of fuel be delivered thereto, outside the hours of [].

TREES

Outline permissions

Location of trees on and adjacent to development sites

71. The plans and particulars submitted in accordance with condition [] above shall include:

(a) a plan showing the location of, and allocating a reference number to, each existing tree on the site which has a stem with a diameter, measured over the bark at a point 1.5 metres above ground level, exceeding 75 mm, showing which trees are to be retained and the crown spread of each retained tree;

(b) details of the species, diameter (measured in accordance with paragraph (a) above), and the approximate height, and an assessment of the general state of health and stability, of each retained tree and of each tree which is on land adjacent to the site and to which paragraphs (c) and (d) below apply;

(c) details of any proposed topping or lopping of any retained tree, or of any tree on land adjacent to the site;

(d) details of any proposed alterations in existing ground levels, and of the position of any proposed excavation, [within the crown spread of any retained tree or of any tree on land adjacent to the site] [within a distance from any retained tree, or any tree on land adjacent to the site, equivalent to half the height of that tree];

(e) details of the specification and position of fencing [and of any other measures to be taken] for the protection of any retained tree from damage before or during the course of development.

In this condition "retained tree" means an existing tree which is to be retained in accordance with the plan referred to in paragraph (a) above.

72. The plans and particulars submitted in accordance with condition [] above shall include details of the size, species, and positions or density of all trees to be planted, and the proposed time of planting.

Detailed planning permissions

Provision for tree planting

73. No works or development shall take place until full details of all proposed tree planting, and the proposed times of planting, have been approved in writing by the local planning authority, and all tree planting shall be carried out in accordance with those details and at those times.

74. If within a period of [two years] from the date of the planting of any tree that tree, or any tree planted in replacement for it, is removed, uprooted or destroyed or dies, [or becomes, in the opinion of the local planning authority, seriously damaged or defective,] another tree of the same species and size as that originally planted shall be planted at the same place, unless the local planning authority gives its written consent to any variation.

Existing trees which are to be retained

75. In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars; and paragraphs (a) and (b) below shall have effect until the expiration of [1 year (see endnote 10) from [the date of the occupation of the building for its permitted use].

(a) No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the local planning authority. Any topping or lopping approved shall be carried out in accordance with British Standard [3998 (Tree Work)].

(b) If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the local planning authority.

(c) The erection of fencing for the protection of any retained tree shall be undertaken in accordance with the approved plans and particulars before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written consent of the local planning authority.

AMENITY LAND

Provision of amenity land

76. None of the building operations hereby permitted shall be carried out on that part of the application site shown on the submitted/attached plan.

77. The details of the landscaping of the site required to be submitted shall include details of a scheme for the preservation or laying out of that part of the application site shown on the submitted/attached plan as amenity land.

Laying out of land allocated as amenity land

78. Before/within 12 months from the date when the change of use hereby permitted is carried out/any of the buildings permitted are occupied/any of the buildings permitted are first used for the purpose of [] the land shown on the permitted plan as [] shall be laid out in accordance with that plan as amenity land.

Prior approval

79. With respect to any condition that requires the prior written approval of the local planning authority, the works thereby approved shall be carried out in accordance with that approval unless subsequently otherwise approved in writing by that local planning authority.

Endnote

7. PPG24: Planning and Noise (England only), gives advice on the use of planning powers to minimise the impact of noise. Explanations of the technical terms used above are contained in the glossary to PPG 24.

8. Model conditions 28-30 are based on conditions contained in "Model Landscape Planning Conditions" produced by Hampshire Local Government Landscape Group.

9. Model conditions 59-63, 65-70, and 76-78 are reproduced with the permission of Sweet and Maxwell Limited and are contained in "Planning Law Practice and Precedents" - Editors Stephen Tromans and Robert Turrall-Clarke.

10. A specific time limit should be included. It is not considered to be reasonable to use conditions as an alternative to tree preservation orders to secure long-term protection of trees.

APPENDIX B: CONDITIONS WHICH ARE UNACCEPTABLE

Conditions of the following kinds are NOT acceptable (guidance on the reasons for this is given in the Annex above; references to the relevant paragraphs of the Annex are given in these examples):

1. To require that a development shall be completed within a time limit (paragraph 61 of the Annex A).
2. To require that means of access shall be set back and splayed in agreement with the local highway authority, when the latter are a third party (paragraph 38).
3. To require that no advertisements shall be displayed on the site. It is preferable for control of outdoor advertising to be exercised by means of the relevant provision in the Town and Country Planning (Control of Advertisements) Regulations 1992. Planning conditions should not normally be used to control advertisements (paragraph 21).
4. To require that the land in front of the buildings shall be made available for future road widening. This condition improperly requires land to be made available as part of the highway (paragraph 72).
5. To require that a lay-by shall be constructed and thereafter assigned to the highway authority (paragraph 72).
6. To require that flats, for example, should not be occupied by more than persons. This condition is unsatisfactory in enforcement terms since it would be difficult to monitor and require an intolerable degree of supervision (paragraphs 26 and 27).
7. To require that loading and unloading, and the parking of vehicles, shall not take place on the highway at the front of the premises. This condition purports to exercise control in respect of a public highway, which is not under the control of the applicant (paragraph 37).
8. To require that the site shall be kept tidy at all times. This is vague and likely to be incapable of enforcement (paragraph 31).
9. To require that the applicants shall construct an ancillary road as and when required by the local planning authority (paragraph 30).
10. To require that the developer shall comply with the bylaws and general statutory provisions in force in the district. This condition is unrelated to planning control (paragraph 20).
11. To require that furnishings, eg. the curtaining of a stage, shall be of a fireproof material. Fireproofing of furnishings of buildings is not a planning matter (paragraph 22).
12. To require that aircraft should only arrive or depart at an aerodrome on specified air traffic routes. This condition deals with an activity which is regulated by quite different statutory provisions and may well be unenforceable if the aerodrome developer is not responsible for air traffic control ie. where air traffic routing is the responsibility of the Civil Aviation Authority or the National Air Traffic Service (paragraphs 22 and 37).
13. To require that a shop window display be maintained in an attractive condition. Such a condition provides no certain and objective criterion by which it could be enforced (paragraph 31).