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Planning Conditions Workshop

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Planning Conditions

...a recap



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Introduction

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Objective

- To review and update the Planning Service's existing model conditions document.
- To help improve the Planning Service's use of conditions when issuing decision notices.



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Model Conditions – What have we done?

- Review conditions to ensure meet 6 tests.
- Discuss with relevant consultees.
- Standardise wording of model conditions so can be used when drafting new conditions to help with consistency across the Shire.
- **Model Conditions document is a “living” document - if standards change or experience shows that some conditions aren’t working as well as we intended, we can revise or update the wording to address any concerns.**



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Use of the Document and Best Practice

- To assist in drafting appropriate conditions.
- However, each condition used needs to be adapted to the circumstances of particular cases.
- The list is not exhaustive and does not cover every eventuality.
- Conditions should not be left until the end of the process and rushed through!
- They are **VERY IMPORTANT** and can save a lot of time in the future if done correctly. Can also be very time consuming and costly to the Council. e.g. Complaints, SPSO decisions, costs.





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Use of the Document and Best Practice

- Planners encouraged to engage with consultees. DM don't have to apply all consultee conditions. Should inform them though if we don't & detail within ROH.
- Consultee responses should not be taken straight across to the decision notice. Have to be re-worded to meet 6 tests.
- Confirm revised wording with consultee.
- Hoped conditions and wording used in document should help with this.



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Number of conditions

- Conditions requiring submission and approval of further information should generally be avoided for FPPs.
- If information is fundamental to allow it to be approved it should be submitted before the decision is made.
- Pre-app, validation procedures and Reg 24 letters can help reduce number of conditions to be used.



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Reason for Conditions

- A reason must be provided for every condition to be used.
- Reasons such as 'to comply with the policies of the Council' and 'to protect amenity' are too vague and need amplification.
- A consultee in their request for a condition to be used should justify why.
- These are just as important as the condition itself. If wrong can also have serious future implications for the Council. E.g. complaints and expenses.





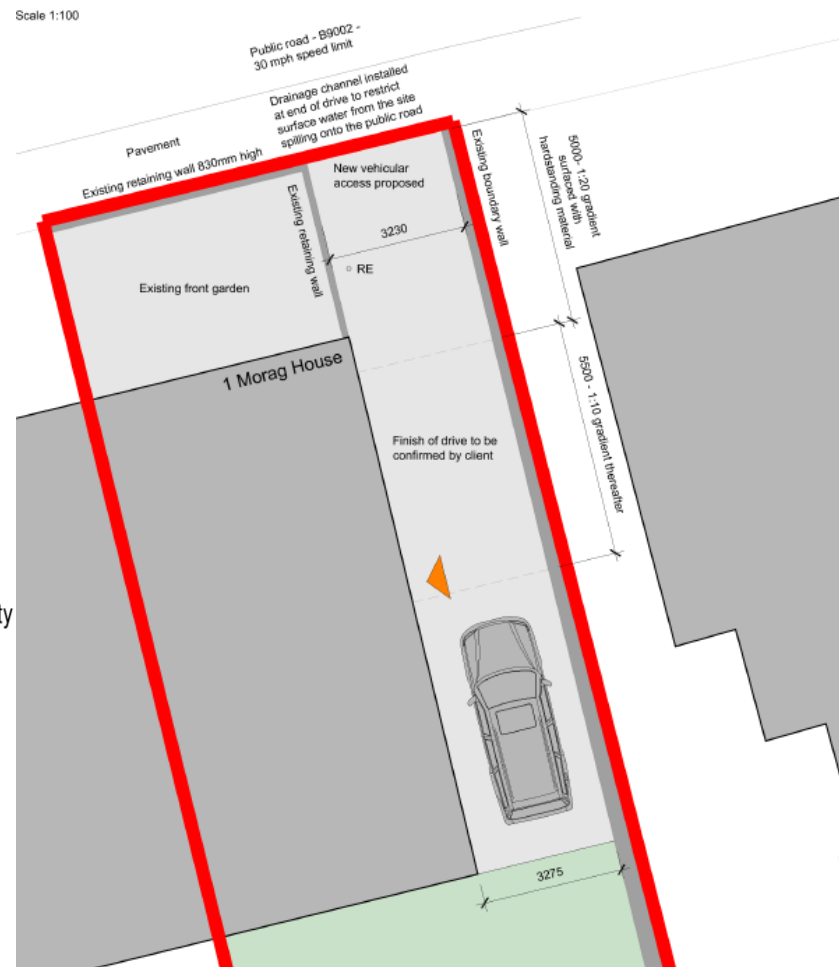
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Example 1

Formation of Vehicular Access

- ☒ Prior to occupancy of development, a drop kerb footway crossing must be formed at the new driveway.
- ☒ The maximum gradient of the first 5m of the new access must not exceed 1 in 20.
- ☒ Prior to occupancy of development, first 5m of driveway (measured from edge of road or back of footway) to be fully paved.
- ☒ Prior to commencement of development, Visibility Splays, measuring 2.0m by 59m to be formed on either side of the junction of the vehicular access with the public road. The visibility splays so formed shall thereafter be kept free of all permanent obstructions above adjacent carriageway level.





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Example 1

Formation of Vehicular Access

The development shall be served in accordance with the approved drawings and the following details:

- a) The maximum gradient of the first 5m of the access must not exceed 1 in 20.
- b) Prior to occupancy of development, the first 5m of access (measured from edge of road or back of footway) must be fully paved.
- c) Prior to commencement of development, visibility splays measuring 2m x 59m are to be formed on either side of the junction of the vehicular access with the public road. The visibility splays so formed shall thereafter be kept free of all permanent obstructions above adjacent carriageway level.
- d) Prior to occupancy of development, a drop kerb footway crossing must be formed at the new driveway

Reason: In order to ensure that the development is served by an appropriate standard of access and associated servicing in the interests of road safety.



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Example 1

Formation of Vehicular Access

04020 Access surfaced and drop kerb formed

The vehicular access, driveway and parking area hereby approved shall not be brought into use unless both have been provided and surfaced **in accordance with the details shown on the approved plans** and the drop kerb footway crossing has been formed at the new access. The first five metres of the driveway measured from the back of the [...~~footway~~/carriageway...] shall be fully paved and shall have a maximum gradient not exceeding 1:20. The [...~~access~~/driveway/parking area...] shall be internally drained and formed in such a way to prevent any flow of surface water either onto or from the public road. Once provided, the access, driveway and parking area shall thereafter be permanently retained as such.

Reason: To ensure the timely completion of the access, driveway and parking area to an adequate standard; to prevent the carriage of loose driveway material on to the public road and to ensure the retention of adequate off-street parking facilities, all in the interests of road safety.

04001 Visibility plays (same distance)

No development in connection with the permission hereby granted shall commence and the access hereby approved shall not be brought into use unless visibility of [59] metres in both directions along the centre line of the [public road] has been provided from a point [2.0] metres measured at right angles from the existing edge of the carriageway surface along the centre line of [the/each] approved [~~new access~~/driveway/road] in accordance with the Council's Standard for Road Construction Consent and Adoption. The visibility plays shall be physically formed on the ground and any existing fences, walls, hedges or other means of enclosure or obstructions within the plays shall be removed and relocated outwith the plays in accordance with the approved plans. Once formed, the visibility plays shall be permanently retained thereafter and no visual obstruction of any kind shall be permitted within the visibility plays so formed.

Reason: To enable drivers of vehicles using the access to have a clear view of other road users and pedestrians in the interests of road safety.



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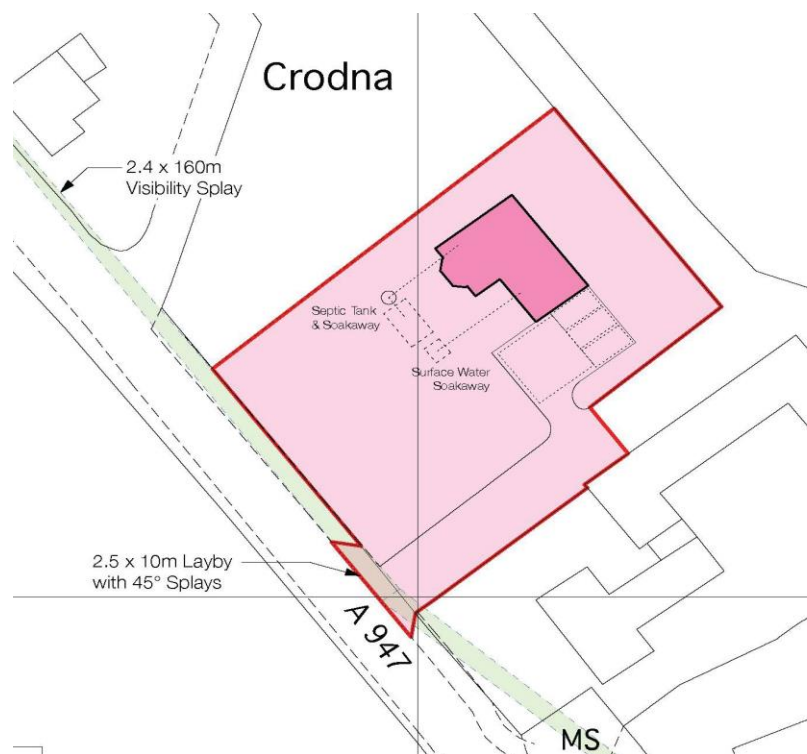
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Example 2

PPP for Erection of Dwellinghouse and Formation of Vehicular Access

- ☒ The maximum gradient of the first 5m of the new access must not exceed 1 in 20.
- ☒ Prior to occupancy of development, first 5m of driveway (measured from edge of road or back of footway) to be fully paved.
- ☒ Prior to occupancy of development, Parking spaces, surfaced in hard standing materials shall be provided within the site in accordance with the Council's Car Parking Standards.
- ☒ Prior to commencement of development, a lay-by measuring 8.0m x 2.5m with 45° splays to be formed on frontage of the site & the proposed vehicular access to be taken via this. Construction shall be to a standard appropriate to the location & must be agreed in advance with Roads Development.
- ☒ Prior to commencement of development, Visibility Splays, measuring 2.4m by 160m to be formed on either side of the junction of the vehicular access with the public road. The visibility splays so formed shall thereafter be kept free of all permanent obstructions above adjacent carriageway level.
- ☒ Prior to occupancy of development a refuse bin uplift store area shall be constructed (behind any visibility splay) so as to be accessible for bin uplift & shall be secure enough to prevent empty bins from being wind blown. Details must be submitted to Roads Development for approval.
- ☒ Prior to occupancy of development a suitable vehicle turning area, measuring not less than 7.6m x 7.6m, must be formed within the site to enable all vehicle movements onto or from the public road to be carried out in a forward gear.



- ☒ All vegetation within the visibility splay to be removed prior to construction of the site access.



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Example 2

PPP for Erection of Dwellinghouse and Formation of Vehicular Access

01001 Matters Requiring Further Approval (PPP)

Details of the specified matters listed below shall be submitted for consideration by the planning authority, in accordance with the timescales and other limitations in section 59 of the Town and Country Planning (Scotland) Act 1997 (as amended). No development shall begin on the site unless all of the details listed in this condition have been submitted to and approved in writing by the planning authority. The development shall be carried out in complete accordance with the details approved in relation to this condition.

Specified matters:

- a) full details of the siting, design, layout, external appearance and finishing materials of the proposed development **including waste bin uplift area, driveway, vehicle parking and turning area;**
- (b) full details of the proposed means of access to the development including visibility splays and lay-by; The lay-by shall measure 8.0m x 2.5m with 45 degree splays;**
- (c) a landscaping scheme for the development including details of the existing landscape features and vegetation to be retained; the locations of new trees, shrubs, hedges and grassed areas; a schedule of plants including species, plant sizes and proposed numbers and density; the layout, design and materials of all hard landscaping works including walls, fences and gates; and a programme for the completion and subsequent maintenance of the proposed landscaping;
- (d) a detailed levels survey of the site and cross sections showing proposed finished ground and floor levels relative to existing ground levels and a fixed ordnance datum point;
- (e) full details of the proposed means of disposal of foul and surface water from the development.

Reason: Permission for the development has been granted in principle only and subsequent approval is required for these matters in accordance with Section 59 of the Town and Country Planning (Scotland) Act 1997 (as amended).



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Example 2

PPP for Erection of Dwellinghouse and Formation of Vehicular Access

04001 Visibility splays (same distance) or 04002 Visibility splays (different distances)

No other development in connection with the permission hereby granted shall commence and the access hereby approved shall not be constructed unless visibility of 160 metres in both directions along the channel line of the public road has been provided from a point 2.4 metres measured at right angles from the existing edge of the carriageway surface along the centre line of the approved new access and driveway in accordance with the Council's Standards for Road Construction Consent and Adoption. The visibility splays shall be physically formed on the ground and any existing fences, walls, hedges, vegetation or other means of enclosure or obstructions within the splays shall be removed and relocated outwith the splays in accordance with the approved plans. Once formed, the visibility splays shall be permanently retained thereafter and no visual obstruction of any kind shall be permitted within the visibility splays so formed.

Reason: To enable drivers of vehicles using the access to have a clear view of other road users and pedestrians in the interests of road safety.

04004 Access provided first (simple) or 04005 Access provided first (variation)

No development in connection with the permission hereby granted, **other than that required by condition 2**, shall commence unless the vehicular access has been provided and **surfaced in accordance with the details shown on the plans submitted and approved under condition 1**. Once provided, the vehicular and pedestrian access shall thereafter be permanently retained as such.

Reason: To ensure the provision and retention of a means of access to an adequate standard in the interests of road safety.



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Example 2

PPP for Erection of Dwellinghouse and Formation of Vehicular Access

04012 Driveway & parking provided (known)

The dwellinghouse hereby approved shall not be occupied unless its lay-by, driveway, turning and parking area has been provided and surfaced in accordance with the details shown on the plans submitted and approved under condition 1. Once provided, all parking and turning areas shall thereafter be permanently retained as such.

Reason: To ensure the timely completion of the driveway to an adequate standard to prevent the carriage of loose driveway material on to the public road in the interests of road safety.

04019 Refuse Bin Uplift Store Area (PPP)

The dwellinghouse hereby approved shall not be occupied unless the refuse bin uplift store area has been provided and surfaced in accordance with the details shown on the plans submitted and approved under condition 1. Once provided, the refuse bin uplift store area shall thereafter be permanently retained as such.

Reason: To ensure the provision of an appropriate means of servicing in the interests of road safety.



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Planning Conditions

...from an enforcement perspective



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Why Enforce Planning Conditions?

“the integrity of the DM process depends upon the PA’s readiness to take effective enforcement action where necessary” – **Circular 10/2009**

Implications of poorly worded conditions?



Risk of maladministration



Risk of legal challenge



Planning appeal allowed and costs awarded against the Council

CASE REVIEW



Necessary

Relevant to planning

Relevant to the development to be permitted

Enforceable

Precise

Reasonable



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Case Study 1 : SPSO Case, 2017



Air Source Heat Pump Condition

“Prior to the operation of the air source heat pump, a timber fence of 1.8m in height shall be erected between the garage and the existing plot boundary fence (east). For the avoidance of doubt, the fence shall be forward of the air source heat pump but should not project beyond the north east elevation”

SPSO critical of Aberdeenshire Council -

*“lacked **precision**” and was “open to interpretation”*

“learning point for the Council”



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Case Study 2 : SPSO Case, 2017



Tree Survey Condition

“That no works in connection with this permission hereby approved shall take place unless the preservation and protection measures outlined in the submitted and approved Tree Survey have been complied with and maintained in perpetuity”

SPSO critical of Aberdeenshire Council -

“The Council unreasonably attached an unachievable planning condition...”

*“Condition was fundamentally flawed and **unenforceable**”*

*“... not **enforceable** or sufficiently **precise**”*



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Case Study 3: Retrospective

“No development shall commence until a scheme for the storage of refuse and recycling within the application site has been submitted to, and approved in writing by, the Planning Authority. The approved scheme shall thereafter be implemented prior to the first use of the development and thereafter maintained in perpetuity”

Retrospective application

Unenforceable as condition could not be complied with from the offset due to the development having already commenced



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Case Study 4: Expiry of Permission

“That within one month following the expiry of this permission the site shall be restored all in accordance with a scheme of restoration, which shall be submitted for written approval no less than three months prior to the expiry of the temporary planning permission”

The permission has expired

Unenforceable as the condition ceased to have effect

“Conditions only apply during the period for which development is authorised by those permissions” - Avon Estates Ltd v Welsh Ministers 2011



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How to interpret planning conditions – a reconsideration by the Supreme Court

What was at issue in the case?

Whether planning condition 14 was enforceable

What does Trump mean for anyone drafting or reviewing planning conditions?

Departure from previous approach

Condition expanded to include ‘intention’ of LPA

Moved the law in terms of ‘implied conditions’

Potential uncertainty over meaning and what compliance entails

Importance of engaging with applicants on wording and compliance



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Part 2 : Workshop

- 6 Scenario Based Questions
- Copy of Model Conditions Document
- Need to try and think about what conditions to apply, how to amend them, and what further information is required.



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Question 1

EH Requests for Hot Food Takeaways



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Question 1

Suggested Conditions

The premises shall not open for business unless the grease trap has been installed in accordance with the approved details. Once installed, the approved grease trap shall be permanently retained thereafter in accordance with the approved maintenance scheme.

Reason: In order to protect the public sewer from a build-up of fats and greases.

Noise level due to the operation of the ventilation plant when measured at 1 m from any window, door or other ventilation opening serving any adjacent property shall not exceed 38 dB LAeq (1 hour).

Reason: To ensure that noise from the development does not result in undue loss of amenity for surrounding properties.

The premises shall not open for business unless the odour control system has been installed in accordance with the approved details. Once installed, the approved odour control system shall be permanently retained thereafter in accordance with the approved maintenance scheme.

Reason: To ensure that odour from the development does not result in undue loss of amenity for surrounding properties.



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Question 2

Single Change of House Type



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Question 2

List of Conditions to apply

Energy Statement

Harling

Foul and Surface Drainage

Travel Plan

Driveway, turning and parking area

Kerb along Strichen and Boothby Rd

Bus Stop on Strichen Road

Pedestrian Crossings

Roads/Pavements

All roads pavements

Boundary treatments

Public water supply

Public sewer



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Question 3

Part retrospective application



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Question 3

Suggested Conditions

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 or any order amending, revoking or re-enacting that Order no visual obstruction of any kind shall be permitted within the visibility splays shown hatched on the approved plans.

Reason: To enable drivers of vehicles using the road to have a clear view of other road users and pedestrians in the interests of road safety.

Within 6 months of the date of this planning permission, the vehicular and pedestrian access shall be provided and surfaced in accordance with the details shown on the approved plans. Once provided, the vehicular and pedestrian access shall thereafter be permanently retained as such.

Reason: To ensure the provision and retention of a means of access to an adequate standard in the interests of road safety.

The dwellinghouse hereby approved shall not be occupied unless its driveway, turning and parking area has been provided and surfaced in accordance with the details shown on the approved plans. Once provided, all parking and turning areas shall thereafter be permanently retained as such.

Reason: To ensure the timely completion of the driveway to an adequate standard to prevent the carriage of loose driveway material on to the public road in the interests of road safety.

The dwellinghouse hereby approved shall not be occupied unless the refuse bin uplift store area has been provided and surfaced in accordance with the details shown on the approved plans. Once provided, the refuse bin uplift store area shall thereafter be permanently retained as such.

Reason: To ensure the provision of an appropriate means of servicing in the interests of road safety.



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Question 4

Private Water Supply



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Question 4

Suggested Conditions

Details of the specified matters listed below shall be submitted for consideration by the planning authority, in accordance with the timescales and other limitations in section 59 of the Town and Country Planning (Scotland) Act 1997 (as amended). No development shall begin on the site unless all of the details listed in this condition have been submitted to and approved in writing by the planning authority. The development shall be carried out in complete accordance with the details approved in relation to this condition.

Specified matters:

(f) full details of the water treatment system to be installed to the water supply serving the development including maintenance of the system.

The proposed development shall not be brought into use unless the proposed private water treatment system has been installed in accordance with the details submitted and approved under condition 1. Once installed the private water treatment system shall thereafter be permanently retained in accordance with the approved maintenance scheme.

Reason: To ensure the long term sustainability of the development and the safety and welfare of the occupants and visitors to the site.



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Question 5

Landscaping



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Question 5

Considerations

Get all details shown on the plans including timescales for implementation.

Discuss with Env Team & Agent re. timescales for implementing each part.

Ensure have details re. maintenance and who will be responsible.



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Question 6

Roads



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Question 6

Considerations/Conditions

Existing access.

Need to discuss with Roads Officer.

The dwellinghouse hereby approved shall not be occupied unless its driveway, turning and parking area has been provided and surfaced in accordance with the details shown on the approved plans. Once provided, all parking and turning areas shall thereafter be permanently retained as such.

Reason: To ensure the timely completion of the driveway and parking area to an adequate standard in the interests of road safety.



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Thank you

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