

Planning Conditions; Their Development and Practical Limitations in Common Application.

As acoustic consultants we are in the enviable position of seeing planning conditions from a number of Local Authorities throughout the country. The range and style of conditions witnessed have varied considerably and this article hopes to highlight some of the more common mistakes made. However, it begins with a brief review of the history behind town planning and the reasons why conditions need to be set in the firstplace.

Town and country planning as it exists today has its origins in nineteenth century concerns for poor public health and housing that affected the majority of the general public at this time.

It was not until 1909 that the term "town planning" was first coined in the Housing, Town Planning Act of that year. Attempts were made during the inter-war years, to further develop the system, however these attempts did little to expand the scope of the fledgling planning system. Then in 1947 the first specific planning act, the Town and Country Planning Act was passed, this Act subjected all development to a system of controls exercised by the creation of development plans and a requirement to obtain planning permission.

The change from development control effected thorough zoning; where schemes were produced illustrating where certain types of development would be permitted, to a system where proposed development was evaluated in the context of a development plan, remain the enduring legacy of the 1947 Act. Under the new system a plan was prepared which suggested the manner in which the local planning authority believed land within their jurisdiction should be used. The development plan did not however imply that permission would be granted for those proposals which accorded with the principles of the plan. In formulating it's decision the LPA was required to pay due regard to the development plan and just as importantly any other material considerations. Consequently the old certainty that once existed for developers had been removed, to be replaced with a new autonomy for LPA's which permitted them a degree of discretion in the decision making process.

A number of the provisions of the 1947 Act have since been repealed however the basic principle of development control has been preserved and consolidated into the 1990 Town and Country Planning Act. Latterly as concern over the potential impact of development on the amenity of the environment, in this case by virtue of noise, a considerable body of subordinate legislation and guidance has been developed in an attempt to reconcile some of these issues. With respect to noise, the issuing of Planning Policy Guidance 24 (PPG24) in September 1994 "Planning and Noise", provided guidance to local planning authorities (LPA's) in England on how the planning regime may be used to minimise the adverse effects of noise. The tool by which the effects of noise could be mitigated was the application of planning conditions. But could the imposition of conditions designed primarily to control land use be adequately used to control noise issues? A brief consideration of planning conditions will follow.

In granting planning permission for land use LPA's are permitted by virtue of section.70 of the 1990 Act, to impose conditions. Such planning conditions are useful for permitting what would otherwise be regarded as undesirable proposals, subject to compliance with the attached conditions. As PPG24 states "*Where it is not possible to achieve such 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.*" The LPA has wide discretion to apply conditions "as they think fit", but this does not mean as they please. Guidance on the limits of the LPA's discretion applying conditions is contained within sections

72 and 75 of the Act.

Over the years judicial intervention has led to the development of a number of tests of the validity for conditions. Three of the most often cited have come to be known as the Newbury tests, in this the House of Lords laid down the following principles for planning conditions:

- i) Be applied for a planning purpose.
- ii) Fairly and reasonably relate to the development permitted.
- iii) Be reasonable.

Further guidance relating to when the imposition of conditions may be acceptable in planning terms, rather than regulating or imposing legal control over the application of conditions is contained within Circular 11/95. The Circular specifies a further six tests that planning conditions must be:

- i) Necessary.
- ii) Relevant to planning.
- iii) Relevant to the development permitted.
- iv) Enforceable.
- v) Precise.
- vi) Reasonable.

The degree of similarity with the Newbury tests is obvious. A further restriction of particular relevance to noise issues is that planning conditions should not seek to duplicate controls available under other statutes, such as the Environmental Protection Act 1990.

When considering an application for a development proposal, the LPA is under a duty to consult with a range of public bodies, the number and type depending on the specific development. Representations made to the LPA are material planning considerations and must be taken into account before the application is decided. Where the issue of noise is raised it is usual for the LPA to seek advice from the Environmental Health Department of the local authority. Consultation with Environmental Health Departments is not a statutory requirement, but is undertaken on a discretionary basis where the LPA believes noise may be an issue. It is usually during these consultations that the need for a specific condition may be suggested to the LPA. Should a condition be imposed the LPA is under a duty, by virtue of article 22 of the General Development Procedure Order 1995, to specify why a condition has been imposed. Failure to do so does not however invalidate the condition.

The authority of any system of regulation is undermined if it does not contain adequate provisions for enforcement. Until recently the systems in place for enforcing planning law were often regarded as the weak link in the chain, many of the procedures being quite cumbersome. As a consequence the Planning and Compensation Act 1991 introduced a number of significant changes to the system of planning enforcement. Breaches of planning control are now enforced in one of four main ways:

The enforcement notice is the principle instrument of enforcement but its use by the LPA is discretionary, if used, such a notice must specify the steps to be taken to remedy the breach. The notice must also specify the date on which it becomes effective, this being a minimum of 28 days from the service of the notice, failure to comply with the notice in the specified period is a criminal offence. An appeal against the notice may be made before the notice comes into force, lodging an appeal automatically suspends the notice.

The LPA may also serve either a Planning Contravention Notice (PCN) or a Breach of Condition

Notice (BCN), both introduced by the 1991 Act, in the case of a breach of condition notice no right of appeal exists. Service of a PCN requires information relating to the use of the land to be supplied to the LPA, knowingly supplying incorrect information is a criminal offence as is ignoring the notice. The recipient of such a notice may regard it as a warning that the LPA will take further formal action if necessary. The BCN is served in cases where compliance with a condition is deficient, compliance being required within 28 days by the notice.

The final enforcement sanction available to LPA's, where swift action to remedy a breach is required, is the service of a stop notice. Receipt of a stop notice makes it an offence to continue the specified activity once the notice comes into force, this may be within 3 to 28 days from the date of service. A stop notice can only be served in those circumstances where an enforcement notice exists or where the two notices are served simultaneously. Again there is no right of appeal against the service of a stop notice, consequently the legitimacy of the notice must be challenged in any proceedings brought for ignoring the notice.

Considering the rigorous and extensive procedure that must be adhered to when specifying a planning condition, it is surprising how many do not achieve their primary goal. The following examples are based upon actual planning conditions that have been applied to various developments.

Example 1

This development involved the re-roofing of an industrial building that contained various light industrial uses situated close to residential dwellings.

The following planning condition was imposed:

Before the new roof is erected, an acoustic report shall be submitted to and approved in writing by the Local Planning Authority indicating the acoustic standard of the new roof structure and materials. The new roof shall be of at least the same acoustic standard in comparison with the existing structure. The development shall not commence until detailed information has been submitted to and approved in writing by the Local Planning Authority to ensure that the acoustic standard of the proposed structure and materials is comparable with the existing structure. Only the approved scheme shall be implemented.

Reason for condition:

To safeguard the amenity of and existing characteristics of the area for the benefit of neighbouring residents.

The Local Authority has rightly recognised that the new roof must contain adequate sound insulation to protect the nearby residential dwellings from excessive noise. However, the roof in



Photograph 1.



Photograph 2.

question was



Photograph 3.



Photograph 4.

approximately 100 years old and extremely dilapidated which was why it was to be replaced. Unsurprisingly, no record of the roof's initial design performance specification existed, and there had never been any tests conducted to establish its in situ performance. Additionally, at the time of this redevelopment access to any part of the roof was forbidden due to fears over its structural soundness and so the performance of the existing roof could not be established.

Photographs 1 to 4 detail the poor state of the existing roof, as viewed from the underside and a visual site inspection highlighted numerous holes. Therefore it is quite reasonable to say that the sound insulation performance of the existing roof was negligible and as such, compliance may have been achieved acoustically through the fitment of a piece of clingfilm as a replacement roof. Needless to say, this was not the case and a roof acceptable to all parties concerned was specified.

The stipulated condition was correct in spirit but was imprecise and unenforceable and it is felt serves as a good example of how badly worded planning conditions do not help to fulfil the Local Authority's original aims.

Example 2

The following is based on condition imposed on a development for a national distribution centre involving several hundred HGV movements per day and night, located within a rural area with a number of residential dwellings sparsely scattered within the near vicinity.

Noise from the development shall not cause the 'A' weighted equivalent continuous sound pressure level dB (LAeq) measured at a height of 1.5 metres above ground level and not less than 3 metres from the façade of any building to exceed the values given within the table below at the locations shown on the plan.

Location	dB (A)
A	65
B	62
C	58
D	54

Reason for Condition

To prevent disturbance to the occupants of nearby residential properties.

Again, a valid reason and at face value a well worded and precise condition, leaving aside any argument regarding the suitability of dB (A) for assessment of low frequency based HGV noise. However, the locations shown on the plan were not positioned at the individual nearby residential properties, but were set up at varying distances from the source, much in the same

way as noise contours would be. However, the advantage of noise contours is that clearly defined zones are produced that encompass a gradual degradation of allowable noise level with distance from the source but, this is not the case when showing a singular measurement location.

The result in this case being that a number of residential dwellings were located nearer to the development than any of the measurement locations, without the safeguard of a target noise level to be met. Therefore, compliance with this condition could have been achieved but nearby residents may still be exposed to high levels of noise.

Example 3

This final example deals with a classic mistake that it seems everyone has heard of or knows about but nevertheless still occurs regularly.

"... written details for the proposed sound insulation scheme must be provided to the Local Planning Authority prior to the commencement of the development."

Of course, any scheme can therefore be submitted to the Local planning Authority, regardless of whether it meets the required specification not, since with this condition, the LPA has no authority to reject the proposal. The correct wording of such a condition should be along the lines of :

"... written details for the proposed sound insulation scheme must be provided to the Local Planning Authority for approval, prior to the commencement of the development. The development must not proceed unless written approval of the proposed scheme has first been issued by the LPA"

These are just a few of the common mistakes present within planning conditions. It is hoped that this article has served to highlight some of the areas where planning may go awry and perhaps may lead to a review of some standard conditions which may have been specified unchallenged for a number of years.

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