

2. Limitations and conditions

Subsection 119(4) permits the Council to make a diversion order "subject to limitations or conditions"; and the Council is routinely failing to understand the difference between a 'limitation' and a 'condition'. The Council wrongly believe that, in the making of an order, no 'condition' could be specified other than in the form of a permissible limitation - eg. the erection of a stile or gate.

In reality, however, an imposed condition relates to the specification of circumstances which are required to prevail before the order becomes effective. For example, an order could be made subject to conditions that, before coming into effect, a requested planning application has been approved, and the planning consent is subject to specified environmental requirements, and the actual development is ready to commence.

Contrary to the Council's belief, there is no restriction on the nature of conditions which may be specified; and such conditions are fundamentally distinct from the quite separate consideration of recording perpetual limitations within a Definitive Statement when the Definite Map is eventually modified.

3. Anticipation of future developments

The Council wrongly believe that it would be sensible to sanction an unconditional diversion which is justified by some aspiration for future development which might not actually occur - including a diversion which would be appropriate only if planning permission might be granted in due course.

In reality, it would be wholly unacceptable for a diversion to be ordered when there is some possibility that the projected justification would not come to fruition. If diversions were sanctioned just on the basis that planning consent might be granted, and the development might be implemented in due course, the Definitive Map would progressively include several diversions which never actually result in any benefit to the applicants.

Under circumstances where the future cannot be sensibly forecast, the Council have two options - either to delay the processing of the requested diversion until the future situation is clarified, or to make an order which comes into effect only when specified conditions might eventually be fulfilled in due course.