

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.