

General Principles on Imposition of Approval Conditions

Under section 16(5) of the Town Planning Ordinance (the Ordinance), the Town Planning Board (the Board) is empowered to impose condition as it thinks fit in granting planning permission. In general, planning conditions can be imposed only if they are (i) for a planning purpose, (ii) fairly and reasonably related to the development; and (iii) reasonable. If a condition does not satisfy the above criteria, and it will be beyond the powers of the Town Planning Board to impose it, the condition may be ‘ultra vires’. Planning conditions should be imposed on a need basis with reference to the following principles:

1. **For a Planning Purpose**

- 1.1 A condition may not be imposed for an ulterior purpose¹, however desirable that object may seem in the public interest².
- 1.2 Matters on land use, physical form of the development, traffic, environment, drainage, infrastructure provision are clearly planning issues.

2. **Relevant to the Development to be Permitted**

- 2.1 The need for provision of additional facilities should preferably generate from the development to be permitted, despite the applicant’s own initiatives to provide or pay for such facilities.
- 2.2 If the need for provision of additional facilities does not generate from the development to be permitted, approval condition should not be imposed unless the implementation of such facilities could be mutually agreed between the requesting party and the applicant or between the applicant being a project proponent and the relevant bureau/department(s) being an implementation agent.

3. **Reasonableness**

- 3.1 An approval condition to require the applicant to undertake off-site improvement works may only be imposed if the consent of the relevant land owner has been obtained.
- 3.2 It is possible to impose a ‘negative’ condition to ensure that the development will not commence or be occupied until the off-site improvement works are in place, e.g. road improvement works near the site and affecting the development, population intake commencing upon completion of road improvement works, pond filling commencing upon completion of the compensatory pond, etc.

4. **Responsibility**

- 4.1 If the facilities are proposed by the applicant of his own accord, relevant Government departments should be asked to confirm the need for and acceptability of the proposed provision. It should also be clearly specified in the approval condition that the facilities are “as proposed by the applicant”.

¹ Newbury District Council v. Secretary of State for the Environment (Journal of Planning and Environmental Law, 1980)

² See Pyx Granite Co. Ltd. v. Ministry of Housing and Local Government [1958] 1 Q.B. 554

5. Enforceability

- 5.1 A condition should not be imposed if it cannot be enforced. It is important to consider what means are available to secure compliance with the proposed condition or to detect a contravention.
- 5.2 Enforcement of approval condition could be undertaken under the Ordinance if a revocation clause imposed as one of the approval conditions (only for Regulated Areas and other areas currently or previously covered by development permission area plans). The discharge of approval condition within the period of validity of planning permission would also be monitored by Director of Planning under the delegated authority of the Board.

6. Validity Period of Planning Permission

- 6.1 The Board may impose time limit on the commencement of a development usually for four years. If it is considered appropriate on planning grounds, the Board may specify a longer or shorter period and should give reasons for doing so.
- 6.2 For premise-based uses or planning applications to regularise existing uses, there is no need to impose time limit for commencement as the development has already been in existence.

7. Compliance Period of Approval for Temporary Uses

- 7.1 The Board may impose time limit on the compliance with approval conditions. Conditions which require specific works to be carried out should state clearly when this must be done.
- 7.2 In imposing approval conditions for temporary uses, the time limit for the submission of necessary improvement/mitigation measures, e.g. landscaping, drainage and paving proposals, and implementation of such proposals should be separated.

8. Consultation with Relevant Government Departments

- 8.1 Relevant departments may advise or should be consulted on the proposed planning conditions in respect of their jurisdiction. If there are major concerns from government departments or their no objection is based on the prohibition of certain activities, a relevant approval condition may still need to be imposed.
- 8.2 An approval condition should be fulfilled to the satisfaction of relevant government department(s), other than the Board itself, as the former is considered the most appropriate authorities for accepting the compliance of the approval condition.

9. Covered by Other Regulations

- 9.1 If a certain requirement can be covered by other statutory, regulatory or administrative regimes, there is no need to impose a condition on such requirement in granting planning permission.