CONTENTS

→ Introduction

→ National and local planning policy

→ Planning Practice Guidance

→ The tests of planning conditions

→ LOAELS and SOAELs

→ Some example planning conditions

→ Conclusions
INTRODUCTION

- Planning system is complex and can be contradictory
- Noise is complex
- Decision makers often laypersons (Councillors) or generalists (Inspectors)
- Planners don’t understand noise
- Many EHOs don’t understand planning
- Advocates don’t understand practicalities of monitoring and enforcement
- Planning enforcement regime is weak and slow
THE PLANNING SYSTEM

National Policy
- Noise Policy Statement England 2010
- National Planning Policy Framework 2012
- Planning Practice Guidance (from 2014)

Local Policy
- Local Plans
- The London Plan (London only)
- Any saved policies
- SPDs
NOISE POLICY STATEMENT ENGLAND 2010

Promote good health and a good quality of life through the effective management of noise within the context of Government policy on sustainable development

Three noise aims:

→ Avoid significant adverse effects (>SOAEL)

→ Mitigate/minimise adverse effects (>LOAEL, <SOAEL)

→ Where possible, contribute to improvement
NATIONAL PLANNING POLICY FRAMEWORK 2012

‘A presumption in favour of sustainable development that is the basis for every plan and every decision’

Four noise aims:

→ Avoid significant adverse effects (>SOAEL)
→ Mitigate/minimise adverse effects (>LOAEL, <SOAEL)
→ Recognise that development will often create some noise and existing businesses should not have unreasonable restrictions put on them because of changes nearby (subject to EPA 1990)
→ Identify and protect areas of tranquillity

Onus excludes ‘where possible improve’ following change of Government
PLANNING PRACTICE GUIDANCE

Web based guidance documents on 47 aspects of planning. Includes:

→ Determining a planning application

→ Ensuring effective enforcement

→ Use of planning conditions

→ Minerals

→ Noise
DETERMINING A PLANNING APPLICATION PPGN

→ In accordance with the development plan (DP) unless there are material considerations that indicate otherwise

→ NPPF is a material consideration… and must be taken into account

→ Conflicts between DP policies…as guided by the NPPF

→ If decision makers disregard the NPPF, clear and convincing reasons are needed
USE OF PLANNING CONDITIONS PPGN

→ LPA can impose ‘such conditions as they think fit’

→ ‘This power must be interpreted in light of material factors such as the NPPF, this supporting guidance on the use of conditions and relevant case law’

→ ‘It is important to ensure that conditions are tailored to tackle specific problems rather than standardised…’

→ The six tests are reiterated
THE SIX TESTS

Planning conditions should only be imposed where they are:

1. necessary;

2. relevant to planning and;

3. to the development to be permitted;

4. enforceable;

5. precise and;

6. reasonable in all other respects
Will it be appropriate to refuse planning permission without the requirements imposed by the condition?

A condition must not be imposed unless there is a definite planning reason for it, i.e. it is needed to make the development acceptable in planning terms.

If a condition is wider in scope than is necessary to achieve the desired objective it will fail the test of necessity.
RELEVANT TO PLANNING

→ Does the condition relate to planning objectives and is it within the scope of the permission to which it is to be attached?

→ A condition must not be used to control matters that are subject to specific control elsewhere in planning legislation (for example, advertisement control, listed building consents, or tree preservation). EPR? Licensing?

→ Specific controls outside planning legislation may provide an alternative means of managing certain matters (for example, works on public highways often require highways’ consent).
RELEVANT TO THE DEVELOPMENT BEING PERMITTED

→ Does the condition fairly and reasonably relate to the development to be permitted?

→ It is not sufficient that a condition is related to planning objectives: it must also be justified by the nature or impact of the development permitted.

→ A condition cannot be imposed in order to remedy a pre-existing problem or issue not created by the proposed development.
Would it be practically possible to enforce the conditions?

Unenforceable conditions include those for which it would, in practice, be impossible to detect a contravention or remedy any breach of the condition, or those concerned with matters over which the applicant has no control.
PRECISE

➔ Is the condition written in a way that makes it clear to the applicant and others what must be done to comply with it?

➔ Poorly worded conditions are those that do not clearly state what is required and when must not be used.

➔ R (XPL Ltd) v Harlow Council May 2016

- The ‘ejusdem generis’ rule has no place in the interpretation of planning conditions
- Natural and ordinary language in the condition
- Interpretation does not differ materially from that appropriate to other legal documents
Is the condition reasonable?

Conditions which place unjustifiable and disproportionate burdens on an applicant will fail the test of reasonableness.

Unreasonable conditions cannot be used to make development that is unacceptable in planning terms acceptable.
NOISE PPGN

→ Noise should not be considered in isolation from economic, social and other environmental dimensions

→ Plan making and decision taking should consider whether or not
  ▪ Significant adverse effect
  ▪ Adverse effect
  ▪ Good standard of amenity

→ Tabulated summary of the noise exposure hierarchy citing example outcomes
<table>
<thead>
<tr>
<th>Perception</th>
<th>Example outcome</th>
<th>Effect level</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not Noticeable</td>
<td>No effect</td>
<td>&lt; NOEL</td>
<td>None</td>
</tr>
<tr>
<td>Noticeable and not intrusive</td>
<td>Noise can be heard … Can slightly change the acoustic character… No change to quality of life</td>
<td>&gt;NOEL, &lt;LOAEL</td>
<td>None</td>
</tr>
<tr>
<td>Noticeable and intrusive</td>
<td>Small changes in behaviour - turning up volume, speaking more loudly, having to close windows. Potential for sleep disturbance. Perceived change in quality of life</td>
<td>&gt;LOAEL, &lt;SOAEL</td>
<td>Mitigate and reduce to a minimum</td>
</tr>
<tr>
<td>Noticeable and disruptive</td>
<td>Material changes in behaviour – avoiding activities, keeping windows closed, difficult getting to sleep, awakening, diminished quality of life</td>
<td>&gt;SOAEL</td>
<td>Avoid</td>
</tr>
<tr>
<td>Noticeable and very disruptive</td>
<td>Psychological/physiological effects, medically definable harm</td>
<td></td>
<td>Prevent</td>
</tr>
</tbody>
</table>
NOISE PPGN (2)

Para 005
→ As noise is a complex technical issue, it may be appropriate to seek experienced specialist assistance when applying this policy.

Para 006 – Not a simple relationship between noise levels and impact. Influential factors include:
→ nature of source, absolute source level, existing residual level, background level, time of day, number of noise events, spectral content, noise character, topology/topography, cumulative impacts, intermittency, duration, nature of exposure (internal/external), Important Areas, (END NAPs), noise ancillary to development etc.

Paras 008 and 009 – How can adverse effects be mitigated?
→ Engineering, layout, conditions/obligations, insulation, sheltered facades, quiet amenity spaces, quiet publically accessible amenity space nearby.
NON-STATUTORY GUIDANCE SOURCES

→ PPG24:1994 Planning and Noise (withdrawn but cited in many local policies)

→ WHO 1999 Community Guidelines and 2009 Night Noise Guidelines

→ DMRB, V.11, S.3, P.11 2011 – Environmental Assessment Techniques

→ AECOM for DEFRA 2013 – Possible Options for the Identification of SOAEL and LOAEL in Support of the NPSE (Discussion of available evidence and prospective values)

→ URS for DEFRA 2014 – Evidence and Usage of LOAEL, SOAEL etc (Many examples of local authority adopted thresholds)

→ BS4142:2014 – Methods for rating and assessing industrial and commercial sound

→ BS8233:2014 – Sound insulation and noise reduction in buildings

→ CIEH, IOA, ANC 2016 – Professional Practice Guidance on Planning and Noise Consultation Draft (Promoting a noise risk based approach – values only tentatively align)

Many others but those with less relevance or a lower level of endorsement will carry less weight
OPTIONS PRESENTED BY GUIDANCE

→ Absolute levels – usually for new residential

→ Relative levels – increase in absolute levels – usually for new transport sources

→ Rating levels – varying interpretation generally from -10 to +5

→ Qualitative/quantitative – may include frequency of events

→ Qualitative – important in the PPG but response based – uncomfortable territory for acousticians and arguable

→ Subjective considerations (such as noise character or dose response) will almost always be relevant (PPG) but may be already ‘built in’ to the numerical assessment via dose response relationships e.g. DMRB

→ Multiple approaches may be relevant e.g. new noise sensitive receptors proposed near existing industrial/commercial
IS THIS SYSTEM STUPID OR IS IT JUST ME?

- Concepts of LOAEL and SOAEL introduced into UK Noise Policy as the sole measures of both health and quality of life impacts from noise.

- Taken from the field of toxicology where they correlate with specific concentrations of substances found to produce adverse alterations in target organisms under laboratory conditions.

- PPG with response based descriptions and various non-statutory guidance documents off varying weights resulting in contradictory approaches and values.

- The illusion of a national policy of protection from noise, but actually so unworkable as to facilitate the pro-development growth agenda?

- So, its not just you, the system is pretty stupid.
PLANNING CONDITIONS FOR NOISE

→ Compliance with a standard
→ Noise limit conditions/design constraints
→ Generic, engineered or facade mitigation measures
→ Days/hours restrictions
→ Prohibition/restriction of certain activities
→ Noise management plans
→ Scheme to be agreed
RESTRICT NOISE FROM PLANT

Necessary?

Precise? Index? Time period?

The level of noise emitted from the (specify machinery) plant hereby approved shall be at least 5dB(A) below the background level, as measured from any point 1 metre outside the window of any room of a neighbouring residential property.

Reasonable? Accessible? Façade? External amenity?

Standard, not tailored

If the noise emitted has a distinguishable, discrete continuous note (whine, hiss, screech, hum) and/or distinct impulse (bangs, clicks, clatters, thumps), then it shall be at least 10dB(A) below the background level, as measured from any point 1 metre outside the window of any room of a neighbouring residential property.

Possible to detect? Unenforceable?

No consideration of necessity, poor precision, unreasonable.
What about garden amenity?

2. Condition.
The noise level from the operation of the approved air handling plant between 07:00 and 23:00 shall not exceed a rated level of 42dB L(A)eq 1 hour measured 3.5m from the facade of any residential property. The meaning of rated shall be as in BS4142:1997 or its replacement.

Precise? The meaning of rated in the 2014 standard is radically different!

3. Condition. The combined emissions of noise from all sources at the approved development shall not exceed a rated* level of 35dB L(A)eq 15minute measured in free field condition in external residential amenity space. The meaning of rated shall be as in BS4142: 1997.

Perhaps – determined in accordance with might have been better…
3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the link building hereby permitted and details of the doors to be fitted in the southern elevation have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

4) Prior to the operation of the wood shavings line beyond those hours permitted by the Council under application reference details of an acoustic absorption system to be installed within the link building shall be submitted to and approved in writing by the local planning authority. The details submitted shall include an assessment of the noise mitigation that would result from the proposed mitigation. Development shall be carried out in accordance with the approved details.

5) The link building hereby permitted shall be completed including the fitting of the acoustic absorption system and the doors to the southern elevation prior to any extension of the approved hours of operation. The agreed acoustic absorption system shall thereafter be retained and maintained. The doors in the link building shall not be opened between 22.00 hours and 06.30 hours the following day.

6) Prior to the operation of the wood shavings line beyond those hours permitted by the Council under application reference details of acoustic barriers extending from the link buildings and along the boundary with Station House opposite the link building shall be submitted to and approved in writing by the local planning authority. The details submitted shall include an assessment of the noise mitigation that would result from the proposed mitigation. The acoustic barriers shall be provided in accordance with the approved details prior to any extension of the approved hours of operation and the agreed acoustic barriers shall thereafter be maintained and retained.

7) Prior to the operation of the wood shavings line beyond those hours permitted by the Council under application reference details of the attenuation measures for the furnace feed fan shall be submitted to and approved in writing by the local planning authority. The details submitted shall include an assessment of the noise mitigation that would result from the proposed measures. The furnace feed fan attenuation measures shall be carried out in accordance with the approved details prior to any extension of the approved hours of operation and the attenuation measures shall thereafter be maintained and retained.

8) Noise from the operation of the wood shavings line and ancillary activities between 23.00 hours and 07.00 hours the following day shall not exceed a rated noise level, as indicated in BS142:1997, of 40dB measured as a L[A]eq5 mins in free field conditions. The noise limit will apply at 3.5 metres from the nearest facade of the following residential properties:-
21. That at wind speeds not exceeding 12 m/s as measured or calculated at a height of 10m above ground level at the wind farm, the wind farm noise emission level at any dwelling existing at the time of this permission shall comply with the following:

- During night time hours, as defined in ETSU-R-97 as 23.00 to 07.00 on all days, the cumulative wind farm noise emission level shall not exceed 43 dB LA90, 10 min or the ETSU-R-97 derived “night hours” noise limit based on the measured LA90, 10 min background noise level plus 5dB(A), whichever is the greater.

- At all other times, the cumulative wind farm noise emission level shall not exceed 35dB LA90, 10 min or the ETSU-R-97 derived “quiet waking hours” noise limit based on the measured LA90, 10 min background noise level plus 5dB(A), whichever is the greater.

- The above noise emission limits may be increased cumulatively to 45 dB LA90, 10 min or the relevant ETSU-R-97 derived “quiet waking hours” or “night hours” noise limit based on the measured LA90, 10 min noise level plus 5dB(A), whichever is the greater, when measured at any dwelling owned by persons with financial involvement with the wind farm.

(Measured background noise levels referred to in this condition shall be those recorded by the regression lines in Chapter Wind Farm).

Some ‘definitions’ excluded here

22. That if the tonal noise emitted by the development exceeds the threshold of audibility by 8dB or more, then the noise rating level specified in condition 16 shall be reduced by 5dB, always providing that the definition of audibility for the purposes of this condition shall be described in “The Assessment and Rating of Noise from Windfarms (ETSU-R-97)”.

Tonality has already been accounted for once!
What about noise from all the other points on the site?

**Condition 28**

Except for temporary operations, the free field Equivalent Continuous Noise Level $L_{Aeq}$ 1hr, due to operations in the site, shall not exceed 55dB $L_{Aeq}$ 1hr, when measured at the boundary of any residential dwelling. For temporary operations such as site preparation, soil and overburden stripping, screening, bund formation and removal and final restoration the free field noise level due to work at the nearest point to each dwelling shall not exceed 70dB $L_{Aeq}$ 1hr, when measured at the boundary of any residential dwelling. Temporary operations shall not exceed a total of eight weeks in a calendar year.

**REASON:** to minimise any nuisance to nearby residents by reason of noise.

How is this a valid reason in planning policy terms?
3. **Condition.** The music noise level, measured as a 15 minute L(A)eq, 1 metre from the façade of noise sensitive properties, or **within noise sensitive rooms with windows open in a typical manner for ventilation**, shall not exceed the representative background level L(A)90 (without entertainment noise). And, The L10 of the entertainment noise measured over a 15 minute period 1 metre from the façade of noise sensitive properties, or **within noise sensitive rooms with windows open in a typical manner for ventilation**, shall not exceed the representative background noise level L90 (without entertainment noise), in any third octave band between 40 Hz and 160 Hz.

Application of a background noise level inside a room is a bit dubious. **What bearing does the external L_A90 have on the internal noise level?** Often the internal L_A90 in the 40 – 160Hz third octave bands will be influenced by building services...

**Relevant to planning?** Surely the licensing regime will consider noise in the context of the prevention of public nuisance objective …
2 - There shall be no use of the northern terrace area after 8pm Monday to Sunday.

Necessary? Reasonable? Relevant to planning?
To whom? Precise? Reasonable? Relevant to planning?

3 - Any noise emanating from the premises must not be audible at the nearest affected residential facade. No music to be played on the outside terrace areas.

Structural transmission? Directionality – other receptors? Hmmm

4 - Noise of mechanical plant or equipment shall be at least dB below the recorded background noise level.

What, how, where, when? Better to provide a number
This cannot guarantee noise levels is the future

The design and installation of any plant, machinery or equipment shall be such that any associated noise complies with NR25 when measured within any nearby living apartment, and no structure borne vibration is perceptible within any nearby living apartment.

Access for measurement?

Perceptible by whom? Imprecise?
You have got to be kidding! How ever long is this excavation going to take?

The excavation of the development hereby approved shall be carried out using hand tools and no power tools except where approved in advance in writing by the Local Planning Authority. Prior to the use of any power tools for the excavation, times and justifications for each instance of the use of power tools shall be provided to and approved in writing by the Local Planning Authority.
Disproportionate burden. Unreasonable?

7. Prior to the commencement of the construction, excluding works below ground, a scheme to demonstrate the use of ventilation measures which removes the need for future residents of the apartments to open windows for summer cooling and rapid ventilation shall be submitted to and approved in writing by the Local Planning Authority. The approved ventilation measures shall ensure the noise standards in Condition 5 are not compromised and shall be implemented prior to the occupation of the development and thereafter be retained.

Very high capacity plant – noise generating itself?

The windows would need to be sealed. What about occupier choice?
THE CONSEQUENCES OF POOR CONDITIONS

→ The condition is wrongly believed to confer protection allowing decision makers to grant permissions which should not be granted

→ The condition is unlawful and therefore vulnerable to appeal or variation

→ Interested parties seek Judicial Review

→ Planning enforcement action fails due to flawed condition

→ LPA declines to initiate enforcement action due to risk

→ Complaints from occupants of the development or from those effected by it

→ LPA unable to act or pushed into statutory nuisance action
SUMMARY

→ The dynamics of national and local policies and guidance

→ The uncertainties around what constitutes a reason for refusal

→ The need and justification for planning conditions

→ The six tests

→ LOAELs and SOAELs

→ Some common flawed planning condition approaches

→ The consequences of flawed planning conditions
THANK YOU FOR LISTENING

ANY QUESTIONS?

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