

Ref: 19/01646/PPP - Planning at Land South East of Tarf House, West Linton
Supporting Evidence for Appeal

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1.1 Evidence to support removal of condition on grounds of reasonableness

The National Spatial Strategy established by National Planning Framework 4 sets out that *“Planning will play a key role in creating a globally competitive, entrepreneurial, inclusive and sustainable economy, with thriving and innovative businesses, quality jobs and fair work for everyone.”*

Planning Permission was granted based on a comprehensive business case that gave an economic justification to develop a house and workshop on the site at West Linton. Whilst the applicants were accepting of the occupancy restriction when permission was granted, recognising that it is an intention of SBC’s [Policy for New Housing in the Countryside](#) to restrict inappropriate isolated rural housing, it then became apparent that this condition was an obstacle as mortgage lending could not be obtained to progress the build.

The Scottish Government sets out relevant guidance for the use of planning conditions in [Planning Circular 4/1998: the use of conditions in planning permissions](#). It is submitted that Condition 3 of [Planning Permission in Principle 19/01646/PPP](#) has proven not to be “fair, reasonable and practical”. Circular 4/1998 requires that conditions that are “unreasonable or unjustified burdens on applicants and their successors in title” are not used.

1.2 Relevant Clauses from Planning Circular 4/1998

Test

Six tests for conditions

12. On a number of occasions the Courts have laid down the general criteria for the validity of planning conditions. In addition to satisfying the Courts' criteria for validity, 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 are:

- necessary
- relevant to planning
- relevant to the development to be permitted
- enforceable
- precise, and
- reasonable in all other respects

Test: reasonableness

33. A condition can be ultra vires on the grounds of unreasonableness, even though it may be precisely worded and apparently within the powers available.

Conditions invalid on grounds of unreasonableness

34. A condition may be unreasonable because it is unduly restrictive. Although a condition may in principle impose a continuing restriction on the use of land (provided that there are good planning reasons for that restriction), such a condition should not be imposed if the restriction effectively nullifies the benefit of the permission. For example, it would normally be reasonable to restrict the hours during which an industrial use may be carried on if the use of the premises outside these hours would affect the amenity of the neighbourhood. However, it would be unreasonable to do so to such an extent as to make it impossible for the occupier to run his business properly. If it appears that a permission could be given only subject to conditions that would be likely to be held unreasonable by the Courts, then planning permission should be refused altogether.

Avoidance of onerous requirements

35. Even where a condition would not be so unreasonably restrictive as to be ultra vires, it may still be so onerous that as a matter of policy it should be avoided. For example, a condition which would put a severe limitation on the freedom of an owner to dispose of his property, or which would obviously make it difficult to finance the erection of the permitted building by borrowing on mortgage, should be avoided on these grounds. An unduly restrictive condition can never be made acceptable by offering the prospect of informal relaxation of its effect.

1.3 Example cases where occupancy restrictions removed

Please refer to two cases with similar issues where the Scottish Government decided to remove occupational restrictions, determining there was an adequate business need to support the permission.

Case 1: PPA-270-2005 [Scottish Government - DPEA - Case Details \(scotland.gov.uk\)](https://www.scotland.gov.uk/Topics/Information/Planning/PPA/PPA-270-2005)
Woodside, Strathpeffer – Highland Council

This case has several similar factors. Planning permission was granted based on business need, but an occupancy restriction meant no mortgage lending was available. The Scottish Government removed the restriction stating that as permission had been granted based on an appraisal of need for the family farming business this should suffice, stating the occupancy restriction did not meet the necessity test, referencing the Chief Planner's guidance in Planning [Circular 3/2012](#): Planning Obligations and good neighbour agreements

Concerns raised by Highland Council that removal of the condition would allow re-sale and have a detrimental impact are acknowledged on the Decision Notice. However, the Government considers such concerns are unfounded as the appraisal of need and justification used to permit the development could not be used more than once and should not lead to a succession of applications.

Case 2: PPA-270-2133 (Planning Permission Appeal) [Scottish Government - DPEA - Case Details \(scotland.gov.uk\)](#) **Culbokie, Dingwall, Highland Council**

This case notes that Scottish Planning Policy encourages the development of small-scale rural businesses and sustainable development providing employment. It concludes that where it is established there is an operational need to justify a new house on the land, it is not appropriate to impose an occupancy condition on the permission.

1.4 Summary

It is respectfully requested that Condition 3 is removed from Planning Permission 19/01646/PPP. This would safeguard security of tenure for the Applicant's new family home. While a bank may be willing to extend flexibility to lend on the basis of a varied condition at the present time, there is no guarantee that lending rules will not be tightened in future years – which would potentially prevent re-mortgaging. Indeed, the trajectory over both the previous ten years and twenty years has been for the availability of mortgage lending to become more restricted.

The approved development is sited in an enclosed location down a private way, removed from the public road. The approved dwelling does not represent ribbon development and is justified in planning terms, and more generally, by the economic requirement to support internal direct investment and employment locally within the Borders. This objective is clearly supported by Policy 29 of NPF4 which supports development that delivers “diversification of existing businesses” and “production and processing facilities for local produce and materials”.

As noted in Decision Notice, West Linton experiences very high demand for small scale employment premises for the use of manufacturing and fabrication activity as well as storage and repair. The village is notable for suffering from a pronounced under supply of appropriate premises. The approved development makes a significant contribution to readdressing the under-supply.

2.1 Evidence on Variation of condition to satisfy mortgage requirements

As a minimum amendment, the applicants request a variation to Condition 3 to satisfy mortgage lender requirements.

This variation would retain the intention of Condition 3 of Planning Permission in Principle 19/01646/PPP but will allow mortgage lending to be accessed to enable growth of these rural businesses in the Borders.

The applicants have obtained advice directly from potential mortgage lenders regarding acceptable wording as stated below:

3. Occupation of the proposed dwellinghouse to be limited to a person employed in the saddle and leather goods businesses outlined in the business plan submitted with the application, or any dependent of such a person residing with him or her but including a widow or widower of such a person. In the circumstances that the property is re-possessioned by a mortgage lender, Condition 3 shall cease to apply.

2.2 Planning conditions with mortgagee in possession clause

As an example, the case below applied to Argyll and Bute Council to amend an occupancy condition to enable mortgage lending. This was approved and planning condition amended:

[Planning Application 11/00661/PP \(argyll-bute.gov.uk\)](http://argyll-bute.gov.uk)

“Occupation of the dwellinghouse to which this permission relates, shall be limited to a person(s) carrying on, or last carrying on, the crofting activities within Adrian’s Croft, North Connel or a dependant of such person residing with him or her or a widow or widower of such person. In the event that any person, company or organisation in whose favour the owner of the land on which the dwellinghouse is built grant a Standard Security over that said land exercise a power of sale in terms of the said Standard Security by reason of the granters being in default, then this Condition 6 shall cease to apply.”

Using these terms within conditions to enable mortgage lending appears to be a standard approach in Argyll and Bute Council as referenced in [Minutes of a meeting](#) following the 2011 letter from the Scottish Government Chief Planner to all Planning Authorities clarifying the Government’s views on the use of conditions or planning obligations to restrict the occupancy of new rural housing.

It states that “[Argyll and Bute Council] operate a system whereby the occupancy restriction is automatically removed if the property defaults and is reverted to the bank / lender. This approach has found favour with all mortgage lenders and applicants that we have ever dealt with”.