

Introduction

The Landscape Institute (LI) is an educational charity and chartered body responsible for protecting, conserving and enhancing the natural and built environment for the benefit of the public. It champions well-designed and well-managed urban and rural landscape. The LI's accreditation and professional procedures ensure that the designers, managers and scientists who make up the landscape architecture profession work to the highest standards. Its advocacy and education programmes promote the landscape architecture profession as one which focuses on design, environment and community in order to inspire great places where people want to live, work and visit.

The Landscape Institute has a number of serious and substantive reservations in respect of the revisions to Model Conditions as proposed by PINS. Original text is shown in italics. Comments and revisions are bulleted. Proposed new conditions in bold.

AMENITY LAND

.....
The details of the landscaping of the site required to be submitted shall include details of a scheme for the preservation or laying out of that part of the application site shown..... on the submitted/attached plan as amenity land.

- Reference should be made clarifying the details that will be required to ensure quality of provision. These should reflect the detail referred to in the Landscape conditions elsewhere.

LANDSCAPING

No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include [for example]:-

- i. proposed finished levels or contours;*
- ii. means of enclosure;*
- iii. car parking layouts;*
- iv. other vehicle and pedestrian access and circulation areas;*
- v. hard surfacing materials;*
- vi. minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting, etc.);*
- vii. proposed and existing functional services above and below ground (e.g. drainage, power, communications cables, pipelines etc. indicating lines, manholes, supports.);*
- ix. retained historic landscape features and proposals for restoration, where relevant.*

Soft landscape works shall include [planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; implementation programme].

- This should be renamed LANDSCAPE DESIGN PROPOSALS
- "and these works shall be carried out as approved" should be omitted as superfluous (see LANDSCAPE IMPLEMENTATION below)
- Vi: ADD floodlighting and CCTV installations to list.

- vii and viii comprise one sentence, not two. Add CCTV to the list.
- retained historic ADD: "OR OTHER" landscape features and proposals for restoration, where relevant
- ADD x. water features

Landscape works implementation

All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out before any part of the development is occupied or in accordance with the programme agreed with the local planning authority.

No development shall take place until details of earthworks have been submitted to and approved in writing by the local planning authority. These details shall include the proposed grading and mounding of land areas including the levels and contours to be formed, showing the relationship of proposed mounding to existing vegetation and surrounding landform.

Development shall be carried out in accordance with the approved details.

Details of any floodlighting shall be submitted to and approved in writing by the local planning authority before [the use hereby permitted commences] [and] [the building(s) is/are occupied]. Development shall be carried out in accordance with the approved details.

No development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed before [the use hereby permitted is commenced] or [before the building(s) is/are occupied] or [in accordance with a timetable agreed in writing with the local planning authority]. Development shall be carried out in accordance with the approved details.

- This condition, which requires implementation to be carried out in accordance with the approved landscape design scheme (as per the previous condition) has been completely muddled up with other issues relating to submission of design details.
- Circular 11/95 made it very clear that there was a need to distinguish between the submission of landscape design details for approval, which would result in discharge of that condition, and the subsequent implementation of the scheme some time later, requiring separate discharge following satisfactory completion. This distinction has been completely lost in the revised version here.
- The essence of this condition is in the first paragraph. The content and objectives of the subsequent paragraphs is effectively incorporated in the previous LANDSCAPE DESIGN PROPOSALS condition. These three paragraphs were included in Circular 11/95 as separate conditions relating simply to their specific objectives and based partly on legacy usage. They are not properly part of the Landscape Implementation condition and are superfluous if the Landscape Design Proposals condition is used to cover whatever is relevant for a given development's external works.
- The rationale behind separate but symbiotic conditions for design and implementation is set out in para 49 and supported by paras 48 and 50 of Circular 11/95. It will be appreciated that an approved landscape design scheme should result in discharge of the relevant condition, thus marking an agreed scheme (with an expectation of quality standards as set out in detailed documentation e.g. specifications and method statements as well as drawings) to be taken forward. The implementation of this scheme may be subject to many variables in terms of workmanship, materials, environmental conditions and construction-related constraints. The quality of plants, preparation of soil, on-site handling and aftercare will all contribute significantly to the success or otherwise of the proposed scheme. Significant defects, omissions or failures will result in non-discharge of the implementation

condition, providing the local planning authority with the ability to take enforcement action as appropriate (thereby meeting the key tests).

- A note should be added to the Landscape Design Proposals and Landscape Implementation conditions that they should always be used in combination, reflecting the separate discharge requirements for each stage.

Landscape management plan

A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than small, privately owned, domestic gardens, shall be submitted to and approved in writing by the local planning authority before occupation of the development or any phase of the development, whichever is the sooner, for its permitted use. The landscape management plan shall be carried out as approved.

No development shall take place until a schedule of landscape maintenance for a minimum period of [] years has been submitted to and approved in writing by the local planning authority. The schedule shall include details of the arrangements for its implementation. Development shall be carried out in accordance with the approved schedule.

- This is unchanged from Circular 11/95. It highlights the importance of aftercare in achieving and sustaining landscape areas. In the interests of clarity, however, consideration could usefully be given to separating the first and second paragraphs.
- The first requires that a management plan, including maintenance schedules is submitted and approved. This would importantly apply, for example, to communal areas, public open spaces, green infrastructure components and assets, areas of biodiversity importance or sensitivity and heritage assets. It would establish what the objectives are, who would be responsible and how and when the responsibilities would be discharged.
- The second should be titled: MAINTENANCE SCHEDULE. This would set out the maintenance requirements to ensure good establishment of new planting and provide a manual for owners or occupiers on issues such as tree inspections, pruning of shrubs or hedges, access maintenance, cleaning operations, etc. It would be applicable to smaller or singularly managed sites, where a detailed management plan might not be needed.
- A suggested minimum period of maintenance for the establishment of new planting (e.g. esp. trees and hedges) would be 5 years, although up to 10 years might be considered reasonable in certain circumstances. In the case of newly planted trees, it is desirable to provide for their long term protection and management through TPOs which should be applied prior to or at planting.
- The final sentence of the Maintenance paragraph (as copied from Circular 11/95 which contains this error) should read "MAINTENANCE (delete *Development*) shall be carried out in accordance with the approved schedule.

TREES

Note: "Retained tree" means an existing tree which is identified in the plan and particulars as being retained.

Outline consent - Location of trees on and adjacent to development sites

1, The plans and particulars submitted in accordance with condition [] above shall include:

(a) a plan, to a scale and level of accuracy appropriate to the proposal, showing the position of every tree on the site and on land adjacent to the site (including street trees) that could influence or be affected by the development, indicating which trees are to be removed;

(b) and in relation to every tree identified a schedule listing:

- i. information as specified in paragraph 4.2.6 of British Standard BS5837 - Trees in Relation to Construction - Recommendations);*
- ii. any proposed pruning, felling or other work;*

(c) and in relation to every existing tree identified to be retained on the plan referred to in (a) above, details of:

- i. any proposed alterations to existing ground levels, and of the position of any proposed excavation, that might affect the root protection area (see paragraph 5.2.2 of BS5837)*
- ii. all appropriate tree protection measures required before and during the course of development (in accordance with Clause 7 of BS5837)*

(d) areas of existing landscaping to be protected from construction operations and the method of protection.

- This has been altered from the Condition in Circular 11/95.
- It requires every tree to be identified and surveyed, without defining a lower size limit. This is imprecise and unenforceable and therefore fails at least two key tests.
- It makes reference to clauses in BS5837-2005. This is currently under revision and will be revised further periodically. It is therefore inappropriate and will be imprecise to refer to clauses which will not apply in future editions of the Standard.
- BS5837 sets out good practice guidance on surveying, protecting and managing trees in relation to construction or development and will continue to reflect current good practice in future revisions. It is widely referred to by planners, tree officers and PINS inspectors. It may therefore be helpful for a Model Condition to simply state:
- Existing trees on or near the site and likely to be affected by the development proposals shall be identified and surveyed in accordance with the relevant recommendations of BS5837: Trees in Relation to Construction. This information, including trees proposed to be retained or removed, shall be submitted to the local planning authority, together with details of development proposals that may affect existing trees. Details of proposals for the protection of retained trees, in accordance with the relevant recommendations of BS5837 or other recognised sources of technical guidance, shall be submitted for approval.**

Full consent - Existing trees which are to be retained

2, No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with Clause 7 of British Standard BS5837 - Trees in Relation to Construction - Recommendations has been agreed in writing by the local planning authority. These measures shall be carried out as described and approved.

6, No fires shall be lit within [10] metres of the nearest point of the canopy of any retained tree.

7, No equipment, machinery or structure shall be attached to or supported by a retained tree.

8, No mixing of cement or use of other contaminating materials or substances shall take place within, or close enough to, a root protection area that seepage or displacement could cause them to enter a root protection area.

9, No alterations or variations to the approved works or tree protection schemes shall be made without prior written consent of the local planning authority.

- No site clearance, preparatory work or development shall take place until proposals for the protection of the retained trees (i.e. the tree protection plan and / or the arboricultural method statement) in accordance with the relevant recommendations of BS5837 - Trees in Relation to Construction have been submitted to and approved by the local planning authority. These measures shall be carried out as approved.

All tree work shall be carried out in accordance with British Standard BS3998 - Recommendations for Tree Work.

- No comment – should be included as existing.

No retained tree shall be cut down, uprooted, destroyed, pruned, cut or damaged in any manner within [1-5 years] from [the date of the occupation of the building for its permitted use], other than in accordance with the approved plans and particulars, without the prior written approval of the local planning authority.

If any retained tree is cut down, uprooted or destroyed or dies another tree shall be planted at the same place and that tree shall be of such size and species and planted, in accordance with condition [13], at such time as may be specified in writing by the local planning authority.

- It is probably inappropriate and contrary to government guidance to try and protect trees through the use of conditions. It is proper to use conditions to protect trees during construction operations and to protect young or new plantings during an establishment period of say 5 -10 years. However, for existing trees, TPOs should be used to provide certainty of long term protection and good management (including planned removal or thinning, where appropriate). The first part of this Condition should therefore be amended to cover only the construction period, rather than the post-occupation period.
- The second part needs to be amended to incorporate serious defects / damage arising within 5 years of completion of the development or relevant phase of the development. This allows for the time that construction-related damage may take to manifest itself in a tree's decline or death (e.g. through significant but not total root disturbance or changes to local water tables).
- A suggested revision would be:

All trees shown as retained on the approved drawings shall be protected from damage for the duration of works associated with the permitted development. Any tree that dies or is removed or is seriously damaged or becomes, in the opinion of a competent expert, seriously defective within 5 years of completion of the development or relevant phase of the development shall be replaced by a tree or trees of size and species and in such locations and at such time as may be directed by the local planning authority

Site supervision

10, No works or development shall take place until a scheme of supervision for the arboricultural protection measures required by condition [2] has been approved in writing by the local planning authority. This scheme will be appropriate to the scale and duration of the works and will include details of: (select as appropriate)

- a. *Induction and personnel awareness of arboricultural matters*
 - b. *Identification of individual responsibilities and key personnel*
 - c. *Statement of delegated powers*
 - d. *Timing and methods of site visiting and record keeping, including updates*
 - e. *Procedures for dealing with variations and incidents.*
 - f. *The scheme of supervision shall be carried out as agreed.*
 - g. *The scheme of supervision will be administered by a qualified arboriculturist instructed by the applicant and approved by the local planning authority.*
- This proposed new condition sets an interesting precedent. It could equally be applied to the technical expert fields of landscape design and management, nature conservation, ecology, hydrology, heritage and conservation issues, geology, bio-engineering, etc. Whilst the principles which underlie the condition are agreed and supported, it seems inappropriate (and unreasonable?) for a planning condition to require the appointment of an expert with particular qualifications (a qualified

arboriculturist) when other competent persons may be not only capable but, in some cases, better suited to provide relevant expertise. BS5837 requires the services of a competent person who may, for example, be a structural engineer to design foundations that avoid damage to or by tree roots.

- It would seem more appropriate for this requirement to be covered by the previous condition requiring protection measures in accordance with BS5837 to be submitted, approved and implemented. The details set out here would more properly be included, as relevant, in such submissions. This Condition does not appear to meet the tests as it extends the requirements for tree protection measures in very specific and potentially constricting ways.
- PROPOSED NEW CONDITION
- In respect of trees in particular, it would be desirable to include a model condition requiring submission of details of any excavations proposed as part of the development, including foundation design and service trenches. The installation of services is generally outside the remit of planning concerns but can act as a fundamental constraint on new planting proposals, particularly street trees. Services can also result in significant threats to the stability and health of existing retained trees. Foundation design of new housing can also constrain opportunities for new planting of trees and shrubs, especially on shrinkable clay soils, because of the risk of subsidence damage. These constraints can be overcome to enable new and existing planting to co-exist with development if their implications are realised and appropriate design modifications made at an early pre-construction stage. In the light of climate change implications and the need to introduce more urban greenery for cooling, shade, shelter and precipitation interception, there is a key role for planning to ensure that appropriate resilience and robustness is incorporated into new buildings and services. The following model is suggested:

Prior to the commencement of any works on site, details of all underground services and excavations, including the foundation design of structures, and the implications that these may have for existing and proposed planting, shall be submitted for approval.

For any queries relating to this response, or for future consultations, please contact:

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