

WELWYN HATFIELD BOROUGH COUNCIL
DEVELOPMENT MANAGEMENT COMMITTEE – 13 OCTOBER 2016
REPORT OF THE EXECUTIVE DIRECTOR

IMPROVING THE USE OF PLANNING CONDITIONS

1 Executive Summary

1.1 The Department of Communities & Local Government (DCLG) is seeking views on their intention of ensuring that pre-commencement conditions can only be used with the agreement of the applicant; how this would operate, and the potential for a wider application of primary legislation to prohibit conditions in targeted circumstances. This report summaries the proposed changes and sets out the Council's proposed response to each issue.

1.2 A copy of the consultation document can be viewed at:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/551121/Improving_the_use_of_planning_conditions_-_consultation.pdf

1.3 The deadline for responding is 2nd November.

2 Recommendation(s)

2.1 That Members comment on the proposed responses set out below.

Implications

3 Legal Implication(s)

3.1 The main powers in primary legislation relating to local planning authority use of conditions are in Sections 70, 72, 73, 73A, 74A and Schedule 5 of the Town and Country Planning Act 1990. Section 70(1)(a) of the 1990 Act enables the local planning authority in granting planning permission to impose 'such conditions as they think fit'. This power is broad but must be interpreted in light of material factors such as the National Planning Policy Framework, its supporting guidance on the use of conditions, and relevant case law. The National Planning Policy Framework asks that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

4 Financial Implication(s)

4.1 Consultation with applicants before imposing pre-commencement conditions would increase time spent in dealing with applications, whilst awaiting responses from applicants. This could potentially have impact on performance increasing the risk of the authority failing to meet statutory targets. If this risk arose, the authority would be defined as a 'poorly performing' authority whereby applicants would have the option of submitting applications directly to the Planning Inspectorate for determination. The Inspectorate would receive the fee whilst all administrative tasks would continue to be actioned by the Council for which no fee would be received. However, it would be possible, with the applicant's

agreement to agree a time extension to the statutory period. This would not be the aim of government who is trying to speed up the processing of applications.

4.2 There would also be, with the additional time spent in emailing applicants, an additional financial resource. At this stage, it is not possible to give an indication of likely costs although it would be unlikely be significant.

4.3 Should an applicant not respond or agree to pre-commencement conditions and the Council considers that it is only possible to grant permission with such conditions, then more refusal of applications would be likely. This might lead to further resubmissions being received which are generally not subject to a further fee or could result in additional cost in the servicing of planning appeals.

5 Security & Terrorism Implication(s)

5.1 No security or terrorism implications arise from this consultation.

6 Procurement Implication(s)

6.1 No procurement implications arise from this consultation.

7 Climate Change Implication(s)

7.1 No climate change implications arise from this consultation.

8 Explanation

8.1 Planning conditions can perform an important function in shaping planning proposals, and helping to achieve sustainable development. However, the government remains concerned that too many overly restrictive and unnecessary conditions are routinely attached to planning permissions, with little regard given to the additional costs and delays that they impose. In addition, delays in discharging conditions which require the approval of details can mean that development is not able to be completed as quickly as it should. Unnecessary conditions and delays in discharging conditions can have significant negative impacts on all users of the planning system, not least by holding up the delivery of housing development on sites which have already been granted planning permission

8.2 The proposals would not restrict the ability of local planning authorities to seek to impose conditions that are necessary to achieve sustainable development, in line with the National Planning Policy Framework. The government expects that this process would become a part of the dialogue between the applicant and the local planning authority, building on current best practice. In the event that an applicant refuses to accept a necessary pre-commencement condition proposed by a local planning authority, the authority can refuse planning permission. This will maintain appropriate protections for important matters such as heritage, the natural environment, green spaces, and measures to mitigate the risk of flooding.

8.3 Conditions generally fall into two broad types:

- controls over how the development is carried out or its onward operation (i.e. controlling hours of operation in the interests of preserving local amenity)

- conditions requiring the submission and approval (discharge) of something by the local planning authority before a prescribed part of the development goes ahead. This includes pre-commencement conditions which prevent any development taking place before approval is given

8.4 The following issues are under consideration:

Issue 1: Too many unnecessary conditions are imposed

8.5 The Council always aims to only attach conditions that comply with the tests as set out in the NPPF. The challenge in dealing with applications is that advice to local authorities is to only request the minimum information required in order to determine a planning application. The Council amended its local planning application validation checklist last year to reduce the amount of information that was required to be submitted in order for an application to be valid. This, however, has implications in terms of conditions, in that very often additional information is then required prior to the commencement of the development. It is likely that the majority of applications would still be granted subject to the same conditions if this proposal were to be brought into legislation.

Issue 2: Use of pre-commencement conditions

8.6 The Council reviewed its use of pre-commencement conditions 2-3 years ago. It is therefore considered that in the majority of cases, such conditions are used only when they are genuinely required.

Question 1 – Do you have any comments about the proposed process for prohibiting pre-commencement conditions from being imposed where the local authority do not have the written agreement of the applicant?

8.7 Information regarding the actual process for agreeing pre-commencement conditions has not been given, such as what is a realistic timescale for the developer to respond to such a request. Additionally, if a planning committee were looking to over-turn an application and pre-commencement conditions were required as a result – how should these be agreed. Would each Council have to ensure that if pre-commencement conditions were not agreed with for an overturn that they are, in effect, agreeing that the application should be refused. In such cases, the process for agreeing the process for refusals would likely be very confusing for Councillors, members of the public and developers alike.

Question 2 – Do you think it would be necessary to set out a default period, after which an applicant’s agreement would be deemed to be given? If so, what do you think the default period should be?

8.8 Yes. The challenge would be in ensuring that the statutory timescale for dealing with applications could also be met when resources within planning departments are particularly stretched and officers are often dealing with the application on the same day as it expires. Appropriate resources should be directed towards planning as well as encouraging people to join the profession within local authorities.

8.9 It is recommended that the default time period should be a minimum of 5 working days.

Question 3 – Do you consider that any of the conditions referred to in Table 1 (see below) should be expressly prohibited in legislation? Please specify

which type of conditions you are referring to and give reasons for your views.

- 8.10 In relation to item 6 within the table, positively worded conditions can assist with facilitating development in certain circumstances e.g. Grampian style conditions. Developers more often than not are in agreement to such conditions. Financial payments should be made via a planning obligation although it is known that the Planning Inspectorate has imposed conditions requiring payments of monies. However, it is not considered necessary to expressly prohibit the use of such conditions in legislation.

Question 4 – Are there other types of conditions, beyond those listed in Table 1, that should be prohibited? Please provide reasons for your views.

- 8.11 None can be thought of.

Question 5 – (i) Do you have any views about the impact of our proposed changes on people with protected characteristics as defined in section 149 of the Equality Act 2010?

(ii) What evidence do you have on this matter?

(iii) If any such impact is negative, is there anything that could be done to mitigate it?

- 8.12 It is unlikely that the proposals would affect or have any impact on people with protected characteristics.

Question 6 – (i) Do you have any views about the impact of our proposed changes on businesses or local planning authorities?

(ii) What evidence do you have on this matter?

(iii) If any such impact is negative, is there anything that could be done to mitigate it?

- 8.13 It is likely to add a significant resource implication for local authorities. It is understood why the government is considering such measures. Consultation with applicants before imposing pre-commencement conditions would increase time spent in dealing with applications, whilst awaiting responses from applicants. This could potentially have impact on performance increasing the risk of the authority failing to meet statutory targets.
- 8.14 There would also be, with the additional time spent in agreeing conditions with applicants, an additional financial resource. At this stage, it is not possible to give an indication of likely costs although it would unlikely be significant.
- 8.15 Should an applicant not respond or agree to pre-commencement conditions and the Council considers that it is only possible to grant permission with such conditions, then more refusal of applications would be likely. This might lead to further resubmissions being received which are generally not subject to a further fee or additional cost in the servicing of planning appeals.

9 Equality and Diversity

9.1 An Equality Impact Assessment (EIA) has not been carried out in connection with the proposals that are set out in this report.

Name of author Lisa Hughes
 Title Development Management Service Manager
 Date 29 September 2016

Table 1

	Conditions	NPPF test this condition would fail
1	Conditions which unreasonably impact on the deliverability of a development – e.g. disproportionate financial burden	<ul style="list-style-type: none"> • Test of reasonableness • Test of relevance to the development to be permitted
2	Conditions which reserve outline application details	<ul style="list-style-type: none"> • Test of reasonableness • Test of relevance to the development to be permitted
3	Conditions which require the development to be carried out in its entirety	<ul style="list-style-type: none"> • Test of enforcement • Test of necessity
4	Conditions which duplicate a requirement for compliance with other regulatory requirements – e.g. Building Regulations	<ul style="list-style-type: none"> • Test of necessity • Test of relevance to planning
5	Conditions requiring land to be given up	<ul style="list-style-type: none"> • Test of reasonableness • Test of enforcement
6	Positively worded conditions requiring payment of money or other consideration	<ul style="list-style-type: none"> • Test of necessity • Test of reasonableness