

Ministry of Housing, Communities and Local Government (MHCLG) consultation on proposed changes to the planning system regarding the use of planning conditions

Policy Context

1. The policy context includes implications for City of Gateshead and Sustainable Gateshead (Vision 2030).
National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG).

Background

2. MHCLG have produced a public Consultation Paper on Planning Conditions with five questions outlining changes the Government proposes to make to the planning system. The paper includes draft regulations that would prohibit pre-commencement conditions from being imposed without the prior written agreement of the applicant within a specified timeframe. A pre-commencement condition is one imposed on a planning permission that prevents the development from commencing until some other action has taken place e.g. contaminated land investigations and remediation measures. Further details of the proposed changes are outlined in the attached annex.

Consultation

3. This paper was consulted on with Environment and Transport Portfolio Holders, Chair and Vice Chair of Planning and Development Committee.

Alternative Options

4. Not to respond to the consultation.

Implications of Recommended Option

Resources:

5.
 - a) **Financial Implications** – The Strategic Director, Corporate Resources confirms that there are no specific Financial Implications arising from this consultation response. However, there is potential for an impact on timescales/ deadlines during the application determination process. Additionally, in relation to the appeals process, potential for increase in officers time as a result of refusals of planning permission based on the applicants refusal to agree.
 - b) **Human Resources Implications** – None
 - c) **Property Implications** - Potential for the Council as applicant being consulted on pre-commencement conditions.
6. **Risk Management Implication** - None

7. Equality and Diversity Implications - None

8. Crime and Disorder Implications – None

9. Health Implications - None

10. Sustainability Implications – None

11. Human Rights Implications - None

12. Area and Ward Implications - None specific

13. Background Information

MHCLG Consultation Paper on Improving the Use of Planning Conditions

A copy of the consultation paper can be accessed via this link:-

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/677570/Consultation_on_regs_and_pre_commencement_conditions.pdf

The consultation deadline for responses was 23.45 on 27th February 2018, Therefore, the consultation response has been submitted but was submitted subject to cabinet approval.

Background

Applicant's prior written agreement to pre-commencement conditions

The consultation paper proposes changes to the process for imposing pre-commencement conditions on planning permissions. The Government intends to legislate to prohibit pre-commencement conditions from being imposed unless the applicant has first agreed them or if no response is received from the applicant within 10 working days of the Local Planning Authority notifying the applicant.

The consultation paper seeks opinion on whether the proposed required notice to the developer should include reasons for both the condition and for making it a pre-commencement condition; on the definition of "substantive response" in the draft regulations; on the proposal to not give local planning authorities discretion to agree with applicants a longer period than 10 working days to respond to the notice; and invites any other comments on the draft regulations.

Response of Gateshead Council to public consultation “Improving the use of planning conditions: Consultation on draft regulations” dated January 2018

Q1. Do you agree that the notice should require the local planning authority to give full reasons for the proposed condition and full reasons for making it a pre-commencement condition?

The Local Planning Authority (LPA) is already required to provide clear and precise reasons for the imposition of every condition. It is anticipated that the reason for making the condition a pre-commencement condition is likely to be raised by the developer if it was not provided in the notice, so the requirement for it to be included may save some time in the proposed new process.

However, in being clear and precise, the reason for a condition that would be a pre-commencement condition should be justification in itself, without time being used to provide a second reasoning. It is considered that the reasoning in the notice required by the draft regulations could be provided in the one reason for the condition and that this as a whole could be included in the decision notice if it was to be ultimately imposed.

Q2. Do you agree with our proposed definition of “substantive response” set out in draft Regulation 2(6)?

The Council broadly agree with the definition of “substantive response”, however, further clarity in the process would aid timescales. For example, the developer being required by the regulations to clearly confirm in writing whether they agree, do not agree or are providing comments (particularly in terms of the latter, to avoid potential misinterpretation of responses and therefore further delay).

Q3. Do you agree with our proposal not to give local planning authorities discretion to agree with applicants a longer period than 10 working days to respond to the notice?

It is considered that 10 working days (14 days in total) to allow for a developer response would be unnecessarily long being a quarter of the whole time to make the decision on a non-major and non-EIA development applications. There would be potential for an impact on the timescales/deadlines during the application determination process, particularly if it is necessary to repeat the notification process and add a further 10 working days to the process following developer comments/discussions regarding pre-commencement conditions.

It is considered that a longer period than 10 working days for the developer to respond to the notice would have a greater impact on timescales/deadlines for determining the application.

Q4. Do you have any other comments on the draft regulations?

The Council has concerns regarding the practicalities of seeking written agreement of applicants in advance of making a determination. This is particularly concerning in the event that where applications are considered by the Planning and Development Committee and additional pre commencement conditions are required to be imposed by the Committee at the meeting itself.

In this situation, it is considered that the only options for the LPA would be to recommend that the application is granted subject to applicant agreement to pre-commencement conditions, to refuse due to the lack of applicant agreement, or to return the application for further consideration by the Committee once a full list of applicant agreed conditions that are recommended. There is potential for all of the above options to cause further delay to the applicant seeking planning permission and thus stalling the issue of the permission which may defeat the purpose of government's proposed change.

Additionally, it is considered that there is potential for the proposal to result in more refusals of planning permission. It is considered that, particularly on small scale schemes, there is potential for developer misunderstanding of the necessity of pre-commencement conditions. Withholding agreement to standard and commonly imposed pre-commencement conditions (eg. relating to contaminated land) is likely to occur, which could result in more refusals of planning permission and more delays in terms of resubmission of scheme being considered or appeals processes. It is considered that both of these are likely to take a longer time than determinations of applications to discharge necessary pre-commencement conditions.

In any event, Section 73 applications and Section 78 appeals are two mechanisms already in place for applicants to contest conditions imposed and apply to vary them. These instances are currently minimised by discussions with applicants prior to determination of the original application. Therefore, it is considered that the proposed requirement to gain applicant agreement would be a third, and potentially most time consuming, way for applicants to question pre-commencement conditions.

Further to the above, it is considered that another reason that the proposed requirement would be unnecessary is that local planning authorities are already required by national policy and guidance to only impose conditions that are 'necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects' (National Planning Practice Framework paragraph 206).

Therefore, it is considered that the proposed process would be unnecessary, impractical and very likely to be more onerous on both the applicant and the local planning authority, particularly as the existing processes to address conditions are not proposed to be removed.

If MHCLG decide to proceed with the proposed process, it is suggested that the circumstances prescribed by the Secretary of State where the applicant's agreement to pre-commencement conditions would not be required should be the

same as those identified in Schedule 6 of The Town and Country Planning (Development Management Procedure) (England) Order 2015.

Additionally, the Council consider that a 10 working day 'holding period' for a response from the developer would be an unnecessarily long time (as it would effectively a quarter of the whole determination period allowed for a non-major/non-EIA applications). It is considered that this would only be an acceptable process if the issuing of the notice to the developer paused the determination period for that application, and the period only started again once one of the 4 options for the developer had taken place.

Q5.

- i. Do you have any views about the impact of these proposals 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?**

No.