

Improving the use of Planning Conditions - DCLG

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. The Department of Communities and Local Government (DCLG) has produced a public Consultation Paper on Planning Conditions comprising of six questions outlining changes the Government proposes to make to the planning system including:-

Section 1: Proposals to prohibit pre-commencement conditions from being imposed without the prior written agreement of the applicant

3. This section of 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.
4. If the applicant does not agree, the Local Planning Authority would retain the right to refuse the planning application if it considers that the pre-commencement condition is necessary to make the development acceptable.
5. The consultation paper requests comments on the proposed process and seeks opinion on whether “a default period, after which an applicant’s agreement would be deemed to be given” would be necessary, and if so, how long that period should be.

Section 2: Proposals for the wider application of primary legislation to prohibit specific types of condition

6. The Neighbourhood Planning Bill is draft primary legislation which proposes to prohibit the imposition of pre-commencement conditions in the absence of the applicant’s written agreement. It would allow “the Secretary of State to prohibit certain conditions in defined circumstances”.
7. There are six tests that conditions should meet in order to be acceptable. These are set out in National Planning Practice Guidance (NPPG), which also provides examples of conditions that are considered to be unacceptable.
8. The consultation paper seeks opinion on whether the ‘unacceptable’ conditions identified in the NPPG should be prohibited through legislation. Additionally, the paper invites suggestions of any other conditions which would fail the six tests and should also be prohibited in legislation.

Consultation

9. The Cabinet Members for Economy, Housing and Environment & Transport together with the Chair and Vice Chair of Planning and Development Committee have been consulted..

Alternative Options

10. Not to respond to the consultation.

Implications of Recommended Option

11. **Resources:**

- a) **Financial Implications** – None
- b) **Human Resources Implications** – None
- c) **Property Implications** - Potential for the Council as applicant being consulted on pre-commencement conditions.

12. **Risk Management Implication** - None

13. **Equality and Diversity Implications** - None

14. **Crime and Disorder Implications** – None

15. **Health Implications** - None

16. **Sustainability Implications** – None

17. **Human Rights Implications** - None

18. **Area and Ward Implications** - None specific

19. **Background Information**

CLG 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/551121/Improving_the_use_of_planning_conditions_-_consultation.pdf

The consultation deadline for responses is noon on 2 November 2016, Therefore, the consultation response has been submitted but was submitted subject to cabinet approval.

List conditions that should not be used

Table 1: Summary of the current list of planning conditions that should not be used (as per planning practice guidance)

	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
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 necessity ▪ Test of enforcement
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

Response of Gateshead Council to the Public Consultation “Improving the Use of Planning Conditions”

Section 1: Proposals to prohibit pre-commencement conditions from being imposed without the prior written agreement of the applicant

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?

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 Local Planning Authority (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. Whilst Part 1, Section 7(6) of The Neighbourhood Planning Bill allows for the Secretary of State to prescribe circumstances where the applicant’s agreement to pre-commencement conditions would not be required, these remain undefined. Therefore, in the absence of this definition, the proposals in this public consultation are currently understood to relate to all pre-commencement conditions.

On this basis, 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 or 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 DCLG 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.

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?

It is considered that a default period would be necessary and that 7 days from the date agreement is requested would be an appropriate timescale.

Section 2: Proposals for the wider application of primary legislation to prohibit specific types of condition.

Question 3 – Do you consider that any of the conditions referred to in Table 1 [Annex 2] should be expressly prohibited in legislation? Please specify which type of conditions you are referring to and give reasons for your views.

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'. It is considered that prohibition in primary legislation would reinforce this requirement for officers.

Question 4 – Are there other types of conditions, beyond those listed in Table 1 [Appendix 2], that should be prohibited? Please provide reasons for your views.

No further types of conditions are suggested by the Council to be prohibited.

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 Equalities 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.

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?

- (i) The Council considers that there would be potential for an impact on the timescales/deadlines during the application determination process, due to the time needed to gain confirmation from an applicant as to whether they agree with the conditions or not. This could have a subsequent impact on officer caseloads and the ability of the LPA to meet determination timescales, which could increase the potential for Planning Inspectorate intervention. This in turn could have an impact on the capacity of the Planning Inspectorate.

Additionally, in the event that an application is refused based on the lack of agreement from the applicant, there would be a right of appeal and officers would need to dedicate time to work on such appeals. These do not incur a fee and could have a further impact on the ability to meet determination timescales on other applications.

Finally, as it is considered likely that there would be an increase in the number of applications that are refused there is also potential for an impact on relationships between applicants and the local planning authority.

- (ii) As evidence, the exemptions list of Schedule 6 of The Town and Country Planning (Development Management Procedure) (England) Order 2015 has resulted in applicants not being able to implement schemes prematurely and unsafely (as the exempt conditions cannot be deemed to be discharged in the absence of formal approval of the local planning authority).
- (iii) If the proposal to prohibit from being imposed without the written agreement of the applicant was to go ahead, it is considered that a default period after which an applicant's agreement would be deemed to be given would be necessary and that 7 days would be an appropriate timescale.

Additionally, 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.