

The New Planning Conditions Consultation

**CONTACT**

James Doherty
07900 890559
james.doherty@rapleys.com

Central government recently published the Neighbourhood Planning Bill (The Bill) and a public consultation document entitled “Improving the use of planning conditions.”

A principal aim of the government is to speed up housing delivery. The imposition of a large number of pre-commencement conditions on planning permissions serves to slow delivery following the grant of permission. It is their view that the regime is “overly restrictive and unnecessary”.

An extensive list of pre-commencement conditions not only runs the risk of delay and additional costs to developers, but also creates resourcing issues for the Local Planning Authority (LPA) who are tasked with reviewing the information submitted to discharge the condition.

The latest proposal follows on from the deemed discharge of planning conditions which came into effect on 15 April 2015. This sought to address unnecessary delays in approving condition details and the new proposal goes a step further in avoiding their imposition in the first instance.

The government proposal

The government proposes to prohibit the use of pre-commencement conditions unless the applicant has agreed to them in writing beforehand. The aim is to ensure that pre-commencement conditions are only used when necessary, so that development can commence without delay, while retaining the ability of the LPA to impose conditions that are required to achieve sustainable development. This will provide the applicant with an earlier opportunity to challenge any pre-commencement conditions that may be unnecessary, such as conditions that could be discharged at a later stage of development.

The approach will not apply to outline permissions.

The Bill also gives the Secretary of State the power to prescribe the circumstances in which certain conditions may, or may not, be imposed.

The principal difference between this and the tests set out in the National Planning Policy Framework (NPPF) is that developers will have the opportunity to confront any pre-commencement conditions they feel are unjustified at an early stage.

Applicant/LPA agreement

Whilst in most cases, it is likely that the applicant and LPA will reach an agreement on what pre-commencement conditions should be imposed, if the applicant does not agree to a certain pre-commencement condition, the LPA would have the option to alter the condition in question, allow the developer to comply with the condition after the development is underway or remove the condition altogether. However, the LPA will still have the right to refuse the application if it considers a pre-commencement condition is necessary to make the development acceptable, as it does currently.

If this is the case, the developer would have the option to appeal the condition and the LPA would be expected to justify the condition and why it is needed at pre-commencement stage.

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Agreement of conditions

Before giving their written agreement to conditions, developers should ask themselves a number of questions:

- Is there scope for negotiation of the conditions?
- Does the LPA want an appeal?
- Will the conditions cause concern to funders or other third parties?
- Is there an opportunity to amend the conditions at a later date by submitting a non-material or minor material amendment application?

Consultation

The Consultation seeks comments on the proposed process to prohibit pre-commencement conditions from being imposed where the LPA does not have the written agreement of the applicant. The paper also seeks views on whether it would be necessary to make provision for a default period, after which an applicant's written agreement would be deemed to have been given, if no response has been received. This would allow the LPA to proceed to impose the pre-commencement condition if no response has been received from the applicant within a given period.

The Secretary of State will have the power to prohibit certain conditions in defined circumstances. The Bill provides that the Secretary of State may only make such regulations if he is satisfied that the conditions are necessary, relevant, sufficiently precise and reasonable, that is to say that the conditions satisfy the existing policy requirements on planning conditions.

Although the proposals are to be cautiously welcomed, there is some reservation about whether the examples given in the paper are being enforced by LPA's, and therefore that new regulations would make any real difference in the challenge to boost housing delivery.

Whilst it is an admirable attempt by the government to speed up the planning process there is some uncertainty as to how effective these changes will be. When put into practice, previous attempts to speed up the planning process have shown that despite the best intentions, the process is not usually sped up in any significant way and delays are still apparent. There is also some caution that more complex planning applications may be refused where they should otherwise be granted, or negotiations over the imposition of conditions and details to satisfy the LPA are simply shifted to before determination.

Consultation ends at 12pm on Wednesday 2 November and it will be interesting to see the response.

If you have any questions about the above, wish to submit representations or would like to discuss any other planning matter, please contact a member of our nationwide team.