

18 October 2016**Agenda Item: 5****REPORT OF CORPORATE DIRECTOR – PLACE****RESPONSE TO DCLG ON THE TECHNICAL CONSULTATION ON IMPROVING THE USE OF
PLANNING CONDITIONS****Purpose of Report**

1. To seek Members approval of the County Council's proposed response to the Department for Communities and Local Government (DCLG) on the consultation paper entitled "Improving the use of planning conditions".

Information and Advice

2. On 7 September 2016 the Government published the Neighbourhood Planning Bill (first announced in the Queen's speech in May) which introduced a number of new measures to support house building and provide communities with greater input into the Neighbourhood Planning process. As part of this Bill a reform of the use of planning conditions is proposed.
3. The Government has issued a public consultation paper entitled "Improving the use of planning conditions" seeking views on the Government's proposals to improve the use of planning conditions. The consultation paper outlines two measures that the Government is seeking views on:
 - The proposed process to prohibit pre-commencement conditions from being imposed unless the local authority has the written agreement of the applicant; and
 - The potential wider application of primary legislation to prohibit conditions in targeted circumstances.
4. The Government has identified two issues; firstly it is concerned that too many unnecessary, or otherwise unacceptable, conditions are being attached to planning permissions. This can present considerable burdens for applicants as well as local planning authorities. Conditions must meet the six tests set out in the National Planning Policy Framework (necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable) and should be the subject of discussions between the authority and the applicant to establish how a condition will impact on the planned delivery of the development.

5. The second issue identified by the Government is the use of pre-commencement conditions that must be formally discharged by the local planning authority before development can start on site. This can cause unnecessary delays in the delivery of the development and drive up costs.
6. In order to tackle these issues the Government has two proposals; these are the subject of this consultation document;
 - The process of prohibiting pre-commencement conditions from being imposed without the prior written agreement of the applicant; and
 - The wider application of primary legislation to prohibit certain conditions in defined circumstances where they do not meet the tests in the NPPF.
7. The proposed measures will not change the way conditions can be used to maintain existing protection for matters such as heritage, the natural environment, green spaces and the mitigation of flooding.
8. The Council's proposed response to the consultation forms Appendix 1 to this report. However, in summary, the planning decisions issued by this Authority are defended with the following evidence;
 - Proposed conditions are assessed against the six tests set out in the NPPF.
 - Conditions, where appropriate, are agreed with the applicant.
 - Relevant conditions are drafted in consultation with specialist officers such as conservation, heritage or noise experts.
 - Where necessary, conditions are drafted following the involvement of the Monitoring and Enforcement Team who are responsible for the subsequent monitoring of the planning permission including the attached conditions.
 - The County Council has a rigorous and transparent signing off procedure involving the case officer and either one or two managers depending on the case.
 - Conditions attached to the planning decisions made by this authority have not been the subject of an appeal or challenge.
9. In order to help formulate the response to DCLG, officers have asked the Planning Inspectorate (PINS) for some national statistics relating to number of appeals they have received specifically relating to conditions. They have provided the following information:

Fiscal Year	Conditions	Other	Total	% of total appeals	
2012-2013	324	10233	10557	3.1%	
2013-2014	274	9711	9985	2.7%	
2014-2015	287	10420	10707	2.7%	
2015-2016	593	11183	11776	5.0%	
2016-2017	303	5054	5357	5.7%	up to 19/09/16

10. As can be seen by the figures above the number of appeals against conditions is very low as a percent of total appeals which suggests that there is not a major issue relating to the conditions that local authorities attach to planning permissions. PINS further confirmed that although the success rate of appeals against conditions was fairly high (compared to other appeals) they only form an average of 1.5% of appeals allowed as a percentage of all appeals received.
11. In terms of the response to the proposal relating to pre-commencement conditions it is worth noting that the Council currently allows applicants to view and comment on proposed conditions, where appropriate. As such there would be no objection in principle for a requirement for local authorities to secure confirmation in writing that the applicant was satisfied with proposed pre-commencement conditions so long that this did not delay the decision making process.
12. The proposal to legislate against those conditions which do not meet the six tests set out in the NPPF is considered to be completely unnecessary. The full response is set out in the Appendix.

The Next Stage

13. DCLG's consultation period ends on 2 November 2016. The consultation is designed to help support the development and implementation of policy and will inform debate during the Bill's passage through Parliament. Members will be kept informed of any significant changes to the County Council planning processes as a consequence of the Bill.

Other Options Considered

14. No alternative options have been considered.

Statutory and Policy Implications

15. This report has been compiled after consideration of implications in respect of finance, the public sector equality duty, human resources, crime and disorder, human rights, the safeguarding of children, sustainability and the environment,

and those using the service and where such implications are material they are described below.

Implications for Service Users

16. Depending on the outcome of the consultation, if the proposals for changes to the use of planning conditions are taken forward there may be implications some of the County Council's planning processes and for those applicants who submit applications to the County Council for determination.

Human Rights Implications

17. Relevant issues arising out of consideration of the Human Rights Act have been assessed. Rights under Article 8 (Right to Respect for Private and Family Life), Article 1 of the First Protocol (Protection of Property) and Article 6 (Right to a Fair Trial) are those to be considered. In this case, however, there are no impacts of any substance on individuals and therefore no interference with rights safeguarded under these articles.

RECOMMENDATIONS

18. It is RECOMMENDED that Members approve the County Council's response to be sent to DCLG, as set out in Appendix 1 to this report, on the technical consultation on "Improving the use of planning conditions".

TIM GREGORY

Corporate Director – Place

Constitutional Comments

Planning and Licensing Committee is the appropriate body to consider the content of this report.

[RHC/03/10/2016]

Comments of the Service Director - Finance

There are no financial implications arising directly from this report.

[RWK 29/09/2016]

Background Papers Available for Inspection

The application file available for public inspection by virtue of the Local Government (Access to Information) Act 1985.

Electoral Divisions and Members Affected

All

Report Author/Case Officer

Jane Marsden-Dale

0115 9932576

For any enquiries about this report, please contact the report author.

Nottinghamshire County Council's response to the "Technical consultation on improving the use of planning conditions"

Questions

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 objective behind this proposal, which seems to be promoting greater dialogue between local planning authorities, applicants and any relevant consultees to achieve pre-commencement conditions which are acceptable to all parties, is welcomed. This Authority already gives applicants sight of proposed conditions where appropriate to do so, with an opportunity to comment. As such, there is no objection to this proposal to require pre-commencement conditions to be agreed in writing. However, any proposal which leads to any unnecessary delays in the decision making process and the Authority's ability to meet its statutory determination targets is not supported.

The view of the County Council in its role as a Statutory Consultee is that Planning Authorities are already well versed in planning legislation and guidance and have existing procedures in place to ensure transparency in their determination of matters which means that they will only apply pre-commencement conditions where they are already satisfied that they are both required and necessary to protect the interests of the public and environment. The Highway Authority and Local Lead Flood Authority will also only wish to have such conditions where they are genuinely required and can be defended. The existing relative certainty (subject to the agreement of the LPA) of reasonable and genuinely required pre-commencement conditions do also allow Statutory Consultees such as the Highway Authority and Local Lead Flood Authority to provide the ability to provide positive observations. It is the belief of the HA and LLFA that the Government's proposals on pre-commencement conditions will not assist in ensuring that applicants in all instances deliver improvements and facilities prior to developing their sites leading to additional difficulties for those Authorities involved and potentially leaving the public bemused at the processes behind planning.

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?

In connection with the answer given to Question 1 above relating to determination times, it is considered necessary to set a default period after which the applicant's agreement is deemed to have been given. A maximum period of 14 days should be allowed for the applicant to respond. The Government should also consider whether it would be appropriate to put in place the necessary legislation to "stop the clock" once the local planning authority has made a formal request to the applicant.

Question 3 – Do you consider that any of the conditions referred to in Table 1 (p.11) should be expressly prohibited in legislation? Please specify which type of conditions you are referring to and give reasons for your views.

This proposal to make conditions set out in Table 1 expressly prohibited in legislation is considered to be completely unnecessary. If conditions fail to meet the six tests set out in the NPPF they should not be being used. If this was a problem nationally there would be a significant number of appeals against unnecessary conditions being made and the Planning Inspectorate overturning planning decisions.

In order to help formulate Nottinghamshire County Council's response officers contacted the Planning Inspectorate who confirmed the following details:

Statistics on planning appeals relating to conditions

Fiscal Year	Conditions	Other	Total	% of total appeals	
2012-2013	324	10233	10557	3.1%	
2013-2014	274	9711	9985	2.7%	
2014-2015	287	10420	10707	2.7%	
2015-2016	593	11183	11776	5.0%	
2016-2017	303	5054	5357	5.7%	up to 19/09/16

These figures show that nationally the number of planning appeals relating to conditions is very low. PINS further confirmed that although the success rate of appeals against conditions was fairly high (compared to other appeals) they only form an average of 1.5% of appeals allowed as a percentage of all appeals received. Therefore this is clearly not considered to be a significant problem for applicants and as such the proposal to make certain conditions unlawful is not felt to be necessary. The requirements for conditions to meet the six tests set out in the NPPF should be retained and rigorously adhered to.

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

No, see answer to Question 3 above

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?

It is not anticipated that the proposed changes will have any impact on people with protected characteristics

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

No comments

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

No comments

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

As referred to in Question 1, the impact of the proposed changes will be to potentially cause unreasonable delays to the decision making process and to have an adverse impact on the Local Authority's ability to meet its statutory determination periods which would be unacceptable.

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

No comments

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

Set realistic default timeframes whereby the LPA can make a decision when there is no response from the applicant within the prescribed time.

APPENDIX 2

Table 1 – Referenced in Questions 3 and 4 of Appendix 1

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	Test of reasonableness
2	Conditions which reserve outline application details	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	Test of necessity Test of enforcement
4	Conditions which duplicate a requirement for compliance with other regulatory requirements – e.g. Building Regulations	Test of necessity Test of relevance to planning
5	Conditions requiring land to be given up	Test of reasonableness Test of enforcement
6	Positively worded conditions requiring payment of money or other consideration	Test of necessity Test of reasonableness