

Report of Chief Planning Officer**Report to Joint Plans Panel****Date: 31 January 2017****Subject: Government response to the use of planning conditions consultation**

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	☐ Yes	☐ No
Are there implications for equality and diversity and cohesion and integration?	☐ Yes	☐ No
Is the decision eligible for Call-In?	☐ Yes	☐ No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	☐ Yes	☐ No

Summary of main issues

1. This report brings the Government's response to the recent consultation on the use of planning conditions to members' attention.
2. The consultation response provides detail on the approach the Government will take through legislation on a new process for the written agreement, with the applicant for pre-commencement conditions and prohibition of the use of certain types of conditions.
3. Powers will be introduced in the Neighbourhood Planning Bill on these two areas.
4. The Government response to the consultation is included as an appendix to this report.

Recommendations

5. Members are recommended to note the report.

1 Purpose of this report

- 1.1 The Government published a consultation seeking views on proposals for improving the use of planning conditions on 7 September 2016. The consultation was open for 8 weeks and closed on 2 November 2016. The consultation was designed to help support the development and implementation of policy, and inform debate during the passage of the Neighbourhood Planning Bill (second reading scheduled for 17 January 2017).
- 1.2 In December 2016, the Government issued the response to the consultation and this report is to bring the Government's response to the attention of members.

2 Background information

- 2.1 The Government is of the view that planning conditions perform an important function in shaping planning proposals and achieving sustainable development. However, the Government's concern is that too many restrictive and unnecessary conditions are attached to planning permissions and the impact this has in terms of cost and delays.
- 2.2 In the Budget 2016 the Government announced their intention to legislate to ensure that pre-commencement conditions can only be used with the agreement of the applicant. Building on that announcement, the consultation paper sought views on how the process of prohibiting the use of pre-commencement conditions without the agreement of the applicant would operate and the potential for a wider application of the proposed powers in the Bill to prohibit conditions in certain circumstances.

3 Main issues

- 3.1 The full Government response is attached as appendix 1. The main issues were in relation to the use of pre-commencement conditions and prohibiting use of conditions on particular issues.
- 3.2 On the first issue, the consultation asked for comments on the proposed prohibition of pre-commencement conditions where a local authority did not have the written agreement of the applicant.
- 3.3 Approximately 25% of the responses, mainly from local authorities and archaeological and environmental bodies, stressed the importance of ensuring that certain pre-commencement conditions could still be imposed, for example, by exempting them from the requirement to seek the developer's agreement altogether.
- 3.4 However, in the Government's response to this they state that 'these proposals will 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'.
- 3.5 The proposed measures build on current Planning Practice Guidance, which clarifies that it is best practice for a local planning authority to agree proposed

conditions with an applicant before a decision is taken and as early in the planning application process as possible. The Government states that the requirement for the local authority to seek the agreement of the developer to pre-commencement conditions is intended to place that best practice on a statutory footing.

- 3.6 The Government anticipates that LPA workloads will be reduced, by reducing the number of pre-commencement conditions that have to be discharged. This may also have a small impact on planning fee income; the cost for a discharge of condition application is currently £97.
- 3.7 The consultation asked for views on whether permission for conditions should be deemed to be given, if after a period of time the LPA had not been contacted by the developer. This is to ensure that process for agreeing conditions is not unnecessarily delayed by the applicant. The Government's response is that there should be a default period of 10 working days, in addition to the ability for local authorities to agree a longer timescale with the applicant. The default period commences once the LPA has given notice of its intention to impose a pre-commencement condition and sought the agreement of the applicant.
- 3.8 On prohibiting types of planning conditions, the development industry represented about half of the respondents in favour of prohibition, suggesting that legislation would make clear that conditions that do not meet the national policy tests should not be imposed and therefore help speed up housing delivery. Local authorities made up about half of the respondents generally opposed to a prohibition suggesting that the current policy tests contained in the National Planning Policy Framework were a sufficient safeguard, together with the ability of applicants to appeal where planning permission is granted subject to conditions that fail to meet the tests. The Government's response is to prohibit six types of planning conditions which will be set out in draft regulations. These are:
- Conditions that unreasonably impact on the deliverability of a development.
 - Conditions that reserve outline application details.
 - Conditions that require the development to be carried out in its entirety.
 - Conditions that duplicate a requirement for compliance with other regulatory requirements.
 - Conditions requiring land to be given up.
 - Positively worded conditions requiring payment of money or other consideration.
- 3.9 The Government will issue a further consultation on the draft regulations, and prepare updated guidance to support this measure, should the Bill provisions come into force. However, the document stresses that in the event that an applicant refuses to accept a proposed pre-commencement condition, the authority can refuse planning permission. This is to ensure that protections are in place for matters such as heritage, the natural environment, green spaces and measures to mitigate the risk of flooding.

- 3.10 However, there are some concerns about the resourcing impacts of these changes for the LPA and the potential for delays associated with disagreements and subsequent appeals. Additionally, there is the potential for delay in receiving the upfront information required from applicants during determination period, due to the limited ability to impose conditions on certain areas. This could also prove to be more costly to developers who would need to provide that upfront detail and engage consultants during the determination process.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 This report is presented for information

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 There are no Equality and Diversity / Cohesion and Integration issues.

4.3 Council policies and City Priorities

- 4.3.1 The effective and expedient determination of planning applications contributes to the overall prosperity of the City and plays a key part in the regeneration and growth agenda.

4.4 Resources and value for money

- 4.4.1 The new process may have an impact on the resourcing of the service; the process introduces a new stage in the process, which will need to be administered. Additionally, it may have an impact on planning fee income as there is the potential for the number of conditions which require discharging may be reduced. However, it is unlikely that numbers will be significant and the changes will be embedded within the current process and met from existing resources.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 No identified issues.

4.6 Risk Management

- 4.6.1 There are no risks identified in this report.

5 Conclusions

- 5.1 The new approach to pre-commencement conditions and prohibiting the use of specific types of conditions which do not meet the tests in the National Planning Policy Framework will be introduced in the Neighbourhood Planning Bill and should embed the good practice of early engagement between the LPA and applicant, ensuring that unnecessary or inappropriate pre-commencement conditions are avoided. The government see this leading to time savings post permission as there will be fewer conditions to discharge. There will need to be good dialogue between the applicant and the LPA to ensure that application

process is not lengthened, waiting for applicants agreement responses to the draft conditions. The default measure where the applicant does not respond after a defined period should mitigate this, but it will add a further administrative step into the planning process.

- 5.2 The Government will issue a consultation on draft regulations and will also publish updated guidance to support the changes on prohibition of specific conditions, if they are brought forward. This will set out for both applicants and local planning authorities how the measures will work successfully within the existing process.

6 Recommendations

- 6.1 Members are recommended to note the report.

7 Background documents¹

¹ The background documents listed in this section are available for inspection on request for a period of four years following the date of the relevant meeting. Accordingly this list does not include documents containing exempt or confidential information, or any published works. Requests to inspect any background documents should be submitted to the report author.

Appendix 1

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/577341/20161213_-_Condition_ConDoc_Gov_t_Response.pdf