Improving the use of planning conditions

POS response to consultation on draft regulations

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Background

The Planning Officers Society (POS) is the single credible voice for public sector planning practitioners, pursuing good quality and effective planning practice. The Society's aim is to ensure that planning makes a major contribution to achieving sustainable development in ways that are fair and equitable, and achieving the social, economic and environmental aspirations of all sectors of the community.

POS and the British Property Federation (BPF) submitted a joint response to the first consultation on this topic, Improving the use of Planning Conditions which was an open consultation from September - November 2016.

We objected to the original consultation suggesting primary legislation to require written agreement to pre-commencement conditions, and POS continue's with that objection. The proposal would have a significant impact on resources at a time where LPAs need to be frugal in their use so as to be as efficient as possible in playing their part in facilitating the delivery of housing.

It is also the case that these proposed provisions could have an adverse effect on developers as LPAs will be forced to require more information to be supplied with applications or will have to refuse more applications. The system will be forced into being more bureaucratic and less flexible, with the unintended consequences once again of development being stalled – particularly but not exclusively for housing.

Although POS agrees that it is best practice to agree conditions prior to granting planning permission, we strongly urge that this should be laid out in the NPPF and NPPG not in primary legislation. Our submission to the first consultation is include as a appendix to this document.

POS would strongly recommend the following;

- The requirement to agree in writing pre-commencement conditions should be included in the NPPF and NPPG, not in primary legislation. The imposition of legislation places a considerable burden on both parties that may lead to unintended and harmful consequences, it is not practical or necessary to give 10 days notice of pre-commencement conditions on smaller scale schemes. It is likely that many extensions in time will be required to cover this period, extending the period of determining applications from 8 weeks to 10 weeks on average

- Officer resources are severely constrained in LPAs and we do not support the use of a scarce resource in this way

- The NPPF should require LPAs to publish their standard conditions online

- The NPPG should require applicants to set out suggested conditions as part of the submission, based wherever possible on the LPAs published standard conditions, this gives conditions more focus throughout the assessment and starts conversations much earlier in process as well as being best practice

- There is a real risk that an application will be refused to meet determination date because the applicant or their agent is on holiday or cannot respond in time

- The need for a pre-commencement condition may only arise late in the processing of an application, such as at the delegated report or committee stage, leaving no time to seek agreement. This brings a whole raft of unintended consequences such as delays in issuing decisions and the risk of having to report back to committee. Procedural complexity that brings the risk of JR if the LPA went ahead and attached the condition in such circumstances needs to be considered very carefully. Adding reasons for granting permission and adding policies to reasons for conditions have been removed for this reason. We are at risk of creating a new JR door with these changes.

- It is likely that if an applicant does not agree in writing to a pre-commencement condition then planning permission will be refused as suggested in paragraph 9b of consultation, as LPAs will consider the disputed pre-commencement condition is necessary to make the development acceptable in planning terms. Otherwise the LPA would not have suggested the condition in the first place.

- The original consultation did not consider other pre-commencement matters such as: tree protection measures; demolition methodologies; and other site specific circumstances that could need addressing before any work starts (e.g. an alternative access for construction purposes). These and other potentially pre-commencement matters are hard to predict and underlie the difficulties arising from removing the flexibility that is currently within the development management procedure and replacing it with this very limiting, proposed legislative approach.

- POS continues to recommend that a clearer approach would be to signal that an award costs would be made on appeal where ultra vires conditions are imposed. These are conditions that fail one or more of the six statutory tests. A pre-commencement condition that was unnecessary or unreasonable would be ultra vires. The approach whereby an appeal is lodged (with a clear risk of paying costs) is far better than a refusal of planning permission simply because the applicant will not/ cannot agree to pre-commencement conditions. This would use scarce DM resources more wisely and ensure the DM process is as positive as it can be and more understandable to the wider community

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?

No,

Although this is a requirement on the decision notice, it will be a new burden upon LPAs with little benefit. Setting this out and then providing 10 working days for an applicant to respond is likely to slow down house building and create opportunity for additional deliberations prior to granting planning permission.

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

No. It seems that the developer can just disagree and not give any reason. Without an explanation what is the LPA supposed to do when considering its next step? The main option will be for an LPA to refuse planning permission.

On the other hand, if a developer is encouraged to respond substantively this may result in some developers/consultants labouring a point with additional information or try to submit additional information to overcome the need for a condition. This will only delay the grant of planning permission further.

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?

No. As a base point we disagree with the entire conditions proposal, but if it is to go ahead we would suggest a much shorter period than 10 days. Despite our position, and although we normally agree there there shouldn't be an extension, but to prevent LPAs to agree an extension seems to go too far. For example, it may be that a large scale major application needs more time for conditions to be considered, and the LPA has scheduled this time in considering committee dates.

Q4. Do you have any other comments on the draft regulations?
If this is still going to be included in legislation against our objections then we would suggest three working days for a minor application and five working days for a major application. It cannot be a longer time, given the limited period within which applications have to be dealt with under the planning guarantee and that this is an additional process that cannot be properly undertaken until towards the end of the process in most cases, particularly smaller developments.

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