

IMPROVING THE USE OF PLANNING CONDITIONS

RESPONSE FROM Highbury Group on Housing Delivery

Introduction

The Highbury Group is an independent group of specialists from public, private and independent sectors with a membership drawn from housing, planning and related professions; it offers advice and makes representations to Government and other agencies on planning and housing, with the aim of maintaining and increasing the output of housing, including high quality affordable housing (see footnote for membership).

The key purpose of the group is to promote policies and delivery mechanisms, which:

- * increase the overall supply of housing in line with need;
- * ensure that the supply of both existing and new housing in all tenures is of good quality and affordable by households on middle and lower incomes;
- * support the most effective use of both existing stock and new supply;
- * ensure that housing is properly supported by accessible infrastructure, facilities and employment opportunities.

Response to consultation 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?

By definition a planning condition is imposed in circumstances where it is needed to make a scheme acceptable. The applicant is unlikely to agree to conditions and by seeking their agreement to pre – commencement conditions, the proposed process would add an additional level of administration to the planning process. Where consent is not achieved the planning authority can simply adjust the condition by requiring discharge within a certain timeframe after commencement.

Those of our group who work in and with the local authority sector do not consider the changes will improve the quality of the planning process but will fail the burden of administration test while those representing the development sector report that they do not consider the proposals will do anything to address their complaints with regard to cost and speed of implement planning permissions.

There are certain pre application conditions which applicants prefer to discharge after achieving consent and prior to commencement of the scheme due to their prohibitive cost in undertaking prior to planning permission being in place. These include wildlife survey and mitigation, certain subterranean assessment and archaeological assessments. These are helpfully retained in the proposals but clearer guidelines on these should be provided.

There is potentially a risk of increased refusals if Local Planning Authorities (LPAs) cannot achieve agreement with the developers and a lack of clarity as to what will happen if non-agreed conditions are appealed? Will they simply be judged under the planning condition tests?

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?

Planning conditions should be reported in the officer’s report on planning and then subsequently resolved in a timely fashion in the decision notice. Given the already existing pressures placed on LPAs on achieving planning decisions in time there should be a short period in which these conditions can be discussed. A draft decision note should be shared and responses received by the applicant within 5 working days for minor applications and 7 working days for major applications or by planning decision expiry date whichever is the sooner.

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

No. Since planning conditions are determined on a case by case basis and all must meet the tests it is not appropriate to entirely rule out the potential need for a certain condition to be a pre-commencement in all circumstances. There is little actual evidence for the need for such restrictions beyond the current system.

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

It is our opinion that the tests of reasonableness for conditions serve the purpose. If developers have had concerns about the nature of planning conditions the opportunity to challenge them has always been available by proving they did not meet the tests. There is really relatively little such challenge that has been evidenced in the system.

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 Equality 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?

There are some conditions which are required to be demonstrated pre-commencement which satisfy local labour and employment requirements; particularly for major schemes. They are often worded asking the developer to demonstrate that their contractual arrangements require contractors and sub-contractors to engage with local labour markets and employment projects. These are pre-commencement conditions for the reason that contract are agreed prior to commencement of development and once they are, if these provisions have not been secured it is not possible to enforce the local labour arrangements. Given these are mostly applied in areas of high unemployment, youth unemployment these may meet the provisions of the Equality Act 2010.

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?

Please see our response to question 1. In general this may be a sledgehammer to crack a nut. It may be better to simply introduce an additional test of planning conditions that requires the timeframe for discharge of the condition to be set such that it makes sense within the planning and delivery context of the scheme and does not unreasonably impede the start of the development.

We would also express our concern that is difficult to fully assess the impact of the Government proposal until the draft regulations relating to the enacted provisions of the 2016 Housing and Planning Act available, especially those relating to the clauses relating to 'Permission in Principle'. It would be constructive for the Government to complete one round of planning legislation before introducing another round.

Footnote

The Highbury Group is an independent group of specialists from public, private and independent sectors from housing, planning and related professions which prepares proposals for Government and other agencies aimed at maintaining and increasing the output of housing including affordable housing.

The group was established in 2008. The group now meets at the University of Westminster, 35 Marylebone Road, London NW1. The views and recommendations of the Highbury Group as set out in this and other papers are ones reached collectively through debate and reflect the balance of member views. They do not necessarily represent those of individual members or of their employer organisations.

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The group comprises the following core members:

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- Stephen Ashworth - Denton Wilde Sapte
- Julia Atkins - Housing consultant
- Richard Bate - Green Balance
- Stephen Battersby - Pro-housing alliance/ Generation Rent
- Richard Blyth - RTPi
- Andy von Bradsky - PRP
- Glen Bramley - Heriot Watt University
- Alisdair Chant - Berkeley Group
- Bob Colenutt - Northampton Institute for Urban Affairs
- Martin Crookston - Planning Consultant
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- Rebecca Neil – University of Westminster

For previous statements and submissions by the Highbury Group on Housing Delivery, see <https://www.westminster.ac.uk/highbury-group-documents>