



Ministry of Housing,
Communities &
Local Government

Improving the use of planning conditions

Consultation on draft regulations



© Crown copyright, 2018

Copyright in the typographical arrangement rests with the Crown.

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/>

This document/publication is also available on our website at www.gov.uk/mhclg

If you have any enquiries regarding this document/publication, complete the form at <http://forms.communities.gov.uk/> or write to us at:

Ministry of Housing, Communities and Local Government
Fry Building
2 Marsham Street
London
SW1P 4DF
Telephone: 030 3444 0000

For all our latest news and updates follow us on Twitter: <https://twitter.com/mhclg>

January 2018

ISBN: 978-1-4098-5180-6

Contents

About this consultation	4
How to respond	5
Scope of the consultation	6
Background to the consultation	7
The draft regulations that are the subject of this consultation	9
Equalities considerations	12
Annex A: Draft Town and Country Planning (Pre-commencement Conditions) Regulations 2018	13

About this consultation

This consultation document and consultation process have been planned to adhere to the Consultation Principles issued by the Cabinet Office.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry of Housing, Communities and Local Government will process your personal data in accordance with DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed the Consultation Principles? If not or you have any other observations about how we can improve the process please contact us via the [complaints procedure](#).

How to respond

To:	Local authorities, developers, and the general public
Body/bodies responsible for the consultation:	Ministry of Housing, Communities and Local Government
Duration:	This consultation will last for 4 weeks from 30th January 2018. It will close at 23:45 on 27th February 2018.
Enquiries:	For any enquiries about the consultation please contact sean.o'byrne@communities.gsi.gov.uk
How to respond:	<p>You may respond by completing an online survey at: https://www.surveymonkey.co.uk/r/SBJK536</p> <p>Alternatively you can respond via the above email address.</p> <p>Written responses should be sent to:</p> <p>Sean O'Byrne Ministry of Housing, Communities and Local Government Fry Building Marsham Street London SW1P 4DF</p> <p>When you reply it would be very useful if you confirm whether you are replying as an individual or submitting an official response on behalf of an organisation and include:</p> <ul style="list-style-type: none"> - your name, - your position (if applicable), - the name of the organisation (if applicable), and - an email address

Scope of the consultation

Topic of this consultation:	This consultation paper seeks views on draft regulations intended to be made under subsection (6) of section 100ZA of the Town and Country Planning Act 1990. Namely, the regulations would create an exemption to the requirement to obtain the written agreement of the applicant before imposing a pre-commencement condition on a grant of planning permission.
Scope of this consultation:	As part of the Neighbourhood Planning Act 2017, the Government introduced measures to improve the use of planning conditions. This consultation is intended to assist with the implementation of section 100ZA(6) under those powers in the Act.
Geographical scope:	These proposals relate to England only.
Impact Assessment:	An impact assessment of the measures was published as part of the Impact Assessment for the Neighbourhood Planning Act. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/582706/Summary_of_Impacts_-_House_of_Lords.pdf

Background to the consultation

1. Used effectively, planning conditions attached to a grant of planning permission can be a useful tool for both developers and local planning authorities in securing good development. Planning conditions enable development proposals to proceed where it would otherwise have been necessary to refuse planning permission. Some planning conditions must be met (discharged) by developers before development can start - these are known as 'pre-commencement conditions'. Pre-commencement conditions play an important and useful role in some cases. However, because they prevent any start on site being made until they are discharged, imposing such a constraint on development, when it is not justified, unnecessarily delays the delivery of development and drives up costs.
2. In response to developer concerns about unnecessary costs and delays to development caused by the inappropriate use of planning conditions, we undertook a consultation in 2016 seeking views on measures to address two issues: the inappropriate use of pre-commencement conditions, and whether to prohibit the use of other types of planning conditions which do not meet the policy tests (known as "the 6 tests") as set out in [paragraphs 203 and 206](#)¹ of the National Planning Policy Framework ("NPPF").
3. Further information on the 2016 consultation and the Government's subsequent response, is set out in the following documents.

[Improving the use of planning conditions](#)

[Government response to the consultation on improving the use of planning conditions](#)

4. Following the consultation the Government inserted section 100ZA to the Town and Country Planning Act 1990 ("the 1990 Act"), via section 14 of the Neighbourhood Planning Act 2017 ("the 2017 Act")². When brought into force sub-sections 100ZA(4) (5) and (6) of the 1990 Act³ will prohibit the grant of planning permission subject to a pre-commencement condition⁴ without the written agreement of the applicant to the terms of the condition except in prescribed circumstances.

¹ Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions and planning conditions should only be imposed where they are necessary; relevant to planning and to the development to be permitted; enforceable; precise and reasonable in all other respects." Paragraphs 203 and 206 of the National Planning Policy Framework.

² <http://www.legislation.gov.uk/ukpga/2017/20/part/1/crossheading/planning-conditions>

³ We intend to commence sub-sections 100ZA(4) to (13) of the 1990 Act, as inserted by section 14 of the 2017 Act at the same time as the regulations which are the subject of this consultation.

⁴ A "pre-commencement condition" is defined for the purposes of section 100ZA as "a condition imposed on a grant of planning permission (other than a grant of outline planning permission within the meaning of section 92 of the 1990 Act) which must be complied with before any building or other operation comprised in the development is begun, or where the development consists of a material change in the use of any buildings or other land, before the change of use is begun" (section 100ZA8).

5. This consultation paper seeks views on draft regulations (Annex A), which set out the circumstances when a pre-commencement condition can be imposed without the written agreement of the applicant.

How we envisage the process of making pre-commencement conditions will work

6. In line with existing good practice, we expect that in most cases, local planning authorities and applicants will discuss the range of planning conditions (including any pre-commencement conditions) that will need to be imposed, during the course of their negotiations about the application and before a final decision is made. We expect that the local planning authority will share with the applicant any draft pre-commencement conditions at the earliest possible opportunity. If the applicant confirms their agreement to a pre-commencement condition in writing, that pre-commencement condition can be imposed.
7. If an applicant indicates that they are not going to agree to provide their written agreement to the terms of a pre-commencement condition, that pre-commencement condition cannot be imposed. (see paragraph 9(b) for the options open to the authority).
8. The draft regulations (which are set out at Annex A and explained more fully in paragraphs 10-21) enable a local planning authority to issue a notice setting out the terms of a proposed pre-commencement condition. If the applicant fails to provide a substantive response to the notice by the date specified in the notice the local planning authority may grant planning permission subject to the pre-commencement condition without the written agreement of the applicant.
9. When a local planning authority issues a notice to the applicant the applicant has 4 options:
 - a) to **provide written agreement** to the terms of the proposed pre-commencement condition, in which case the local planning authority may grant planning permission subject to that pre-commencement condition.
 - b) to **indicate that they do not agree** to the terms of the proposed pre-commencement condition, in which case the local planning authority may then either:
 - i. grant planning permission without the pre-commencement condition,
 - ii. seek written agreement to an alternative pre-commencement condition, or
 - iii. refuse to grant permission (if it considers that the disputed pre-commencement condition is necessary to make the development acceptable in planning terms).
 - c) to **provide comments** on the proposed pre-commencement condition, in which case that condition cannot be imposed. Further negotiations could follow which may result in agreement. The local planning authority could subsequently issue a further notice triggering a new date for a response.

- d) to **not respond** (i.e. remain silent). If there is no response by the date given in the notice the local planning authority may grant planning permission subject to the terms of the pre-commencement condition specified in the notice.

The draft regulations that are the subject of this consultation

10. Sections 100ZA(4),(5) and (6) of the Town and Country Planning Act 1990 provide that:

- in relation to an application for a relevant grant of planning permission⁵, planning permission for the development of the land may not be granted subject to a pre-commencement condition without the written agreement of the applicant to the terms of the condition; and
- the requirement for the applicant to agree to the terms of a pre-commencement condition does not apply in such circumstances as may be prescribed (section 100ZA(6)).

11. The power to make regulations under section 100ZA(6) is subject to a requirement to carry out a public consultation in advance of making regulations; this consultation fulfils that requirement (section 100ZA(7)).

12. The draft regulations provide that the written agreement of the applicant to the terms of a pre-commencement condition is not required if:

- a) the local planning authority (or the Secretary of State as the case may be) has given notice in writing to the applicant that, if planning permission is granted the authority or Secretary of State intends to impose the pre-commencement condition specified in the notice, and
- b) the applicant does not provide a substantive response to the notice by the date specified in the notice.

13. The requirement to obtain the applicant's written agreement to the imposition of a pre-commencement condition and the draft regulations apply when a local planning authority decides an application made under Part 3 of the 1990 Act. This includes an application to develop land without complying with conditions previously attached.⁶

14. The requirement to obtain the applicant's written agreement to the imposition of a pre-commencement condition and the draft regulations also apply when the Secretary of State proposes to grant planning permission, subject to a pre-commencement condition under his call-in powers and under his powers to determine planning

⁵ References to a relevant grant of planning permission are to any grant of permission to develop land which is granted on an application made under Part 3 of the 1990 Act (section 100ZA(13)(a)).

⁶ Section 73 of the 1990 Act.

applications. These powers would otherwise be determined by local planning authorities, which are designated as poorly performing and to his powers to grant or modify a grant of planning permission in relation to appeals, including enforcement appeals.⁷

The contents of the notice

15. The notice must include:

- a) the text of the proposed pre-commencement condition,
- b) the full reasons for the proposed pre-commencement condition,
- c) the full reasons for the proposed condition being a pre-commencement condition, and
- d) the date by which any response must be received which must not be before the last day of the period of 10 working days beginning with the day after the date on which the notice is given.

The requirement to give reasons for the condition

16. We have proposed these requirements because it is already the case that, where planning permission is granted subject to conditions, the decision notice must state clearly and precisely the full reasons for imposing the condition and in the case of pre commencement conditions, the reasons for the condition being a pre-commencement condition⁸.

17. We expect local planning authorities and developers to engage in early and timely discussions. In the course of these discussions it should be clear to developers why certain conditions are being proposed. In the event that an applicant does not engage with those discussions the proposed contents of the notice provide the applicant with an opportunity to understand the reasons for each pre-commencement condition and the case for it being a pre-commencement condition.

What is meant by a substantive response?

18. A “substantive response” is one which states that the applicant does not agree with the proposed condition to be imposed, or provides comments on the proposed condition. We have defined “substantive response” in this way because a pre-commencement condition can only be imposed with the written agreement of the applicant. It is only if there is no response to the notice that the pre-commencement condition can be imposed without written agreement.

The time-limit for responding

19. In order to limit delays in securing the applicant’s consent we proposed in the 2016 consultation to introduce a default period, after which an applicant’s agreement would be deemed to be given.

⁷ Sections 76A(10), 76C(1), 77(4), 79(4) and 177 of the 1990 Act.

⁸ Article 35 of the Town and Country Planning (Development Management Procedure Order) 2015.

20. The majority of respondents to the 2016 consultation agreed that we should introduce such a default period. We recommended a period of 10 working days, as this timescale was considered to provide a suitable balance between avoiding undue delay in the process to determine a planning application where no response was received from the applicant, whilst allowing a meaningful time for applicants to consider the pre-commencement conditions proposed by the local planning authority.
21. The applicant's written agreement would effectively be deemed to have been given to the pre-commencement condition where the applicant does not provide a substantive response to the notice within 10 working days after the date on which the notice was given. Whilst the Government response to the 2016 consultation proposed "a default period of 10 working days, in addition to the ability for local authorities to agree a longer timescale with the applicant", the draft regulations do not give the local planning authority the discretion to set a longer period for response in the notice. We are proposing this because we want to avoid undue delay in the process of determining whether a pre-commencement condition can be imposed, and to help facilitate the timely determination of planning applications. It is possible for agreement to be reached at any stage and there is no time limit to reaching agreement outside of the notice process.

Questions:

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?

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

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?

Q4. Do you have any other comments on the draft regulations?

Equalities considerations

22. We do not consider that the measures contained in the draft regulations, as covered in this consultation, will have a negative impact on discrimination, good relations or equality of opportunity. The overall aim of these measures is to improve the use of planning conditions to support the delivery of housing development. However, we would welcome your comments as part of this consultation.

Q5.

- i. Do you have any views about the impact of these proposals 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?**

Annex A: Draft Town and Country Planning (Pre-commencement Conditions) Regulations 2018

STATUTORY INSTRUMENTS

2018 No.

TOWN AND COUNTRY PLANNING, ENGLAND

The Town and Country Planning (Pre-commencement Conditions) Regulations 2018

<i>Made</i> - - - -	***
<i>Laid before Parliament</i>	***
<i>Coming into force</i> - -	***

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 100ZA(6) of the Town and Country Planning Act 1990(a)

In accordance with section 100ZA(7) of the Town and Country Planning Act 1990 the Secretary of State has carried out a public consultation.

Citation, commencement, application

1.—(1) These Regulations may be cited as the Town and Country Planning (Pre-commencement Conditions) Regulations 2018 and come into force on [date].

(2) These Regulations apply to conditions on a grant(b) of planning permission which is granted on or after [date].

(a) 1990 c.8; section 100ZA was inserted by section 14(1) of the Neighbourhood Planning Act 2017 (c.20). For the definition of “prescribed” see sections 100ZA(13) and 336(1).
(b) See section 100ZA(13) for the meaning of “grant”.

Imposition of pre-commencement condition without the agreement of the applicant

2.—(1) The requirement under section 100ZA(5) of the Town and Country Planning Act 1990 for the applicant to agree to the terms of a pre-commencement condition(c), does not apply in the case of a grant of planning permission under section 70(1), 73(2), 79(1) or 177(1)(a) of the Act^d where—

- (a) the local planning authority (or the Secretary of State, as the case may be) gives notice in writing to the applicant that, if planning permission is granted, the authority or the Secretary of State intends to grant that permission subject to the pre-commencement condition specified in the notice, and
- (b) the applicant does not provide a substantive response to the notice by the date in paragraph (5)(d).

(2) The requirement under s100ZA(5) of the Town and Country Planning Act 1990 for the applicant to agree to the terms of a pre-commencement condition does not apply in the case of a modification under section 79(1) or 177(1)(b) and (4) of that Act where—

- (a) The Secretary of State gives notice in writing to the applicant that, if the permission is modified, the Secretary of State intends to modify it so that the permission is subject to the pre-commencement condition specified in the notice, and
- (b) The applicant does not provide a substantive response to the notice by the date mentioned in paragraph (5)(d).

(3) Unless paragraph (4) applies, where notice has been given under paragraphs (1)(a) and (2)(a), the application for planning permission must not be determined until the date given in the notice, in accordance with paragraph (5)(d), for a substantive response to be received has passed.

(4) An application for planning permission may be determined before the date given in the notice in accordance with paragraph (5)(d) if, before that date, the local planning authority or the Secretary of State (as the case may be) receives—

- (a) a substantive response, or
- (b) written agreement to the terms of the proposed pre-commencement condition.

(5) The notices referred to in paragraphs (1)(a) and (2)(a) must include—

- (a) the text of the proposed pre-commencement condition,
- (b) the full reasons for the proposed condition, set out clearly and precisely,
- (c) the full reasons for the proposed condition being a pre-commencement condition, set out clearly and precisely, and
- (d) the date by which any substantive response must be received by the authority or the Secretary of State which must not be before the last day of the period of 10 working days beginning with the day after the date on which the notice is given.

(6) In this regulation—

- (a) “a substantive response” means a response which—
 - (i) states that the applicant does not agree to the imposition of the proposed condition, or
 - (ii) provides comments on the proposed condition;
- (b) “working day” means a day which is not a Saturday, Sunday or public holiday; and “public holiday” means Christmas Day, Good Friday or a day which is a bank holiday in England under the Banking and Financial Dealings Act 1971^e

Signed by authority of the Secretary of State for Housing, Communities and Local Government

(c) See section 100ZA(8) of the Town and Country Planning Act 1990 (c.8) for the definition of “pre-commencement condition”.

(d) 1990 c.8 Section 79(1) was amended by paragraph 24 of Schedule 12 to the Housing and Planning Act 2016 c22 (not yet in force), section 177 was amended by paragraph 24(1)(a) of Schedule 7 to the Planning and Compensation Act 1991 c.34.

(e) 1971.c.80.

Name

Minister of State

Ministry of Housing, Communities and Local Government

Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 100ZA of the Town and Country Planning Act 1990 (the 1990 Act), which was inserted by section 14 of the Neighbourhood Planning Act 2017, provides that a local planning authority cannot grant planning permission subject to pre-commencement conditions (as defined in section 100ZA(8) of the 1990 Act) without first obtaining the applicant's written agreement to the terms of that condition. This requirement is subject to such exclusions as may be prescribed by the Secretary of State (see section 100ZA(6)).

Regulation 2 provides that planning permission may be granted subject to a pre-commencement condition without the applicant's written agreement provided the applicant has been notified of the intention to impose a pre-commencement condition and has not responded within the time period specified in the notice.

Section 14(3) of the Neighbourhood Planning Act 2017 provides that section 100ZA of the 1990 Act has effect in relation to conditions on a grant or modification of a planning permission only if the permission is granted or modified on or after the coming into force of that section. The provisions made in these Regulations apply only to conditions on a grant or modification of planning permission granted or modified after the coming into force of these Regulations.

'A separate impact assessment has not been produced for this instrument as no significant impact on the private or voluntary sectors is foreseen. The existing impact assessment for primary legislation can be found at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/582706/Summary_of_Impacts_-_House_of_Lords.pdf