



WOKINGHAM BOROUGH COUNCIL

A Meeting of an **INDIVIDUAL EXECUTIVE MEMBER
DECISION** will be held in SF1 - Civic Offices on **FRIDAY 23
MARCH 2018 AT 12.30 PM**

Manjeet Gill
Interim Chief Executive
Published on 15 March 2018

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WOKINGHAM BOROUGH COUNCIL

Our Vision

A great place to live, an even better place to do business

Our Priorities

Improve educational attainment and focus on every child achieving their potential

Invest in regenerating towns and villages, support social and economic prosperity, whilst encouraging business growth

Ensure strong sustainable communities that are vibrant and supported by well designed development

Tackle traffic congestion in specific areas of the Borough

Improve the customer experience when accessing Council services

The Underpinning Principles

Offer excellent value for your Council Tax

Provide affordable homes

Look after the vulnerable

Improve health, wellbeing and quality of life

Maintain and improve the waste collection, recycling and fuel efficiency

Deliver quality in all that we do

For consideration by

Simon Weeks, Executive Member for Planning and Enforcement

Officers Present

Luciane Bowker, Democratic and Electoral Services Specialist

Justin Turvey, Interim Operational Development Management Lead Officer

IMD NO.	WARD	SUBJECT	
IMD 2018/17	All Wards	RESPONSE TO GOVERNMENT CONSULTATION REGARDING PRE- COMMENCEMENT REGULATIONS	5 - 14

CONTACT OFFICER

Luciane Bowker

Tel

Email

Postal Address

Democratic & Electoral Services Specialist

0118 974 6091

Luciane.bowker@wokingham.gov.uk

Civic Offices, Shute End, Wokingham, RG40 1BN

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Agenda Item IMD17

INDIVIDUAL EXECUTIVE MEMBER DECISION REFERENCE IMD: 2018/17

TITLE	Response to Government consultation entitled 'Improving the Use of Planning Conditions'
DECISION TO BE MADE BY	Executive Member for Planning and Enforcement - Simon Weeks
DATE, MEETING ROOM and TIME	23 March 2018 SF1 – Civic Offices
WARD	(All Wards);
DIRECTOR	Interim Director of Environment - Josie Wragg

OUTCOME / BENEFITS TO THE COMMUNITY

The use of planning conditions ensures that the development which is delivered is acceptable in planning terms. Reducing the number of pre-commencement conditions seeks to speed up the provision of development but does not improve the quality of development experienced by occupants and neighbours, and is of limited benefit to the community.

RECOMMENDATION

That the Executive Member for Planning and Enforcement:

- 1) Notes the comments made in respect of the Government's consultation regarding improving the use of planning conditions
- 2) Approves the Council's response to the consultation sent to the Ministry of Housing, Communities & Local Government (Set out at Appendix 1)

SUMMARY OF REPORT

A consultation exercise has been undertaken by Government to seek views on proposals to improve the use of planning conditions through the requirement to seek the applicant's approval of pre-commencement conditions prior to them being imposed on a planning permission.

The report highlights several issues with this approach, including the strict timetable for conditions to be agreed and impact upon performance, the quality of application submissions which necessitate the use of pre-commencement conditions, and the limited benefits in speeding up the planning process as a whole.

Background

A government consultation exercise has been undertaken (30th January – 27th February) seeking views on proposed regulations (under S100ZA of the Town and Country Planning Act 1990 as amended) which will prohibit the imposition of a pre-commencement condition on a grant of planning permission without the written agreement of the applicant.

A pre-commencement condition is one which is imposed on a grant of planning permission which must be discharged (through the submission of an application to discharge condition/s) before any building or other operation is begun. They are often used by local planning authorities in circumstances where the harm from a development needs to be assessed before a development can commence but the harm cannot be identified until significant works are undertaken to a site e.g. in respect of contamination or archaeology, or where important details are required but have not been submitted by an applicant e.g. the use of materials or lighting details. Developers and Government are concerned that because they prevent any work on site before they are discharged, the inappropriate use of pre-commencement conditions unnecessarily delays the delivery of development and increases costs.

The aim of the consultation is to seek views on the government's proposal to introduce regulations to limit the imposition of pre-commencement conditions except in prescribed circumstances discussed below.

Analysis of Issues

The draft regulations set out that planning permission may not be granted with a pre-commencement condition imposed unless it has the written agreement of the applicant. In order to impose a pre-commencement condition, the local planning authority must give notice to the applicant, setting out:

- 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 (rather than using another trigger such as pre-occupation), and
- d) the date by which any response must be received (at least 10 working days beginning with the day after the date on which the notice is given).

Once notice is received, the applicant has the following options:

- a) to provide written agreement, in which case the local planning authority may progress with the application.
- b) indicate that they do not agree, in which case the local planning authority may then:
 - i. grant planning permission without the pre-commencement condition,
 - ii. seek written agreement to an alternative pre-commencement condition, or
 - iii. refuse permission
- c) provide comments on the proposed pre-commencement condition, in which case that condition cannot be imposed but further negotiations could follow.
- d) do nothing. If there is no response by the date given in the notice the local planning authority may grant permission including the pre-commencement condition specified in the notice.

Main Issues:

Whilst the aim of the regulations is to speed up development, they may have the effect of slowing down the determination of planning applications. Applications are determined to an 8 or 13 week timescale. The regulations would effectively require applications to be ready to be issued to a 6 or 11 week timescale because the local planning authority must serve notice of any pre-commencement conditions with a 10 working day (i.e. 2 weeks) period. Working to a 6/11 week timescale often isn't possible because of a number of factors including the volume of applications an officer will have on hand at any one time, the time it takes to assess complicated submissions and additional information on matters which may require comments from internal and external consultees, including the Environment Agency, and because of Committee timetables. Determination of applications often takes place towards the latter part of the 8/13 week process and increasing the time required to deal with conditions lessens the time available to consider the application itself. This may result in more applications going over the 8/13 week targets, or more applications being refused on the basis that conditions haven't been agreed.

It is likely that many applicants will accept a pre-commencement condition rather than receive a refusal on the basis that additional information has not been supplied or to halt an application whilst they prepare additional information (often complex in its nature) which would require further delays in the determination of their application. The overriding aim for a developer who has submitted an application is to secure planning permission, and as such they are often content to deal with the details at a later date once they have permission in place.

Additionally, although the consultation implies the blame for placing too many pre-commencement conditions lies with the local planning authority, often the reason for so many pre-commencement conditions being imposed on a planning permission is because the quality of submissions is poor and/or because detailed information is lacking. In some cases, the developer will have given little thought at application stage to matters which are the subject of pre-commencement conditions e.g. materials details. As such, it is not clear that the regulations would necessarily tackle the issue of local planning authorities imposing pre-commencement conditions because the 'fault' often lays with the developer.

Other issues include that:

- The draft regulations don't appear to have accounted for a situation where Planning Committee decides to impose a pre-commencement condition. If, for example, a developer is not happy with a condition Committee imposes, it may be that the condition has to be reconsidered at the next committee meeting, further slowing the process.
- Additional officer time will also be required in dealing with pre-commencement conditions at application stage to discuss conditions in more detail with consultees, serve notice on the applicant, engage in further discussions with the applicant and ensure only agreed pre-commencement conditions are placed on consents (it is not clear what happens if a permission is issued without notice having been given to the applicant).
- In some circumstances it would be possible to replace a pre-commencement condition with a condition with a slightly later trigger that would serve the same

purpose e.g. a trigger which required the submission of details 'pre-construction above damp proof course level', and therefore the regulations may only serve to change the trigger for conditions rather than remove them altogether (although it should be noted that some conditions, such as those relating to archaeology, would be likely to still require discharge prior to commencement)

- Whether the trigger for a condition is pre-commencement or another trigger is agreed (e.g. pre-occupation), developers will still need to submit that information at some stage if they haven't done so with the application, and so removing a pre-commencement condition doesn't necessarily speed up development overall.

Summary:

The draft regulations are aimed at speeding up development, but the end result is the creation of more administrative work and negotiations during the application stage, which serve to slow down determination of planning applications. The regulations also do not resolve the issues relating to the quality of submissions that results in the requirement for pre-commencement conditions. As such, officers have responded negatively to the consultation. The submitted response to consultation is appended to this report.

FINANCIAL IMPLICATIONS OF THE RECOMMENDATION

The Council faces severe financial challenges over the coming years as a result of the austerity measures implemented by the Government and subsequent reductions to public sector funding. It is estimated that Wokingham Borough Council will be required to make budget reductions in excess of £20m over the next three years and all Executive decisions should be made in this context.

	How much will it Cost/ (Save)	Is there sufficient funding – if not quantify the Shortfall	Revenue or Capital?
Current Financial Year (Year 1)	N/A	N/A	N/A
Next Financial Year (Year 2)	N/A	N/A	N/A
Following Financial Year (Year 3)	N/A	N/A	N/A

Other financial information relevant to the Recommendation/Decision
N/A

Cross-Council Implications
Other Council departments who provide comments on planning applications will need to be aware of the implications of proposing pre-commencement conditions.

SUMMARY OF CONSULTATION RESPONSES	
Director – Corporate Services	None
Monitoring Officer	None
Leader of the Council	None

List of Background Papers	
<ul style="list-style-type: none"> - Chief Planning Officer letter dated 30th January 2018 - Ministry of Housing, Communities & Local Government 'Improving the use of Planning Conditions' consultation on draft regulations January 2018 	

Contact Justin Turvey	Service Place
Telephone No Tel: 0118 974 6349	Email justin.turvey@wokingham.gov.uk

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Appendix 1

Wokingham Borough Council's Response to Government 'Improving the Use of Planning Conditions' Consultation

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 precommencement condition?

- A. That is acceptable in principle, but unnecessary for the reasons set out in answer to Q4 below.

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

- A. No comments.

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?

- A. It is considered that 10 working days is too long because it would serve to slow down determination of planning applications as set out in the answer to Q4 below.

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

- A. Whilst the aim of the regulations is to speed to development up, they may have the effect of slowing down the determination of planning applications. Applications are determined to an 8 or 13 week timescale. The regulations would effectively require applications to be ready to be issued to a 6 or 11 week timescale because the local planning authority must serve notice of any pre-commencement conditions with a 10 working day (i.e. 2 weeks) period. Working to a 6/11 week timescale often isn't possible because of a number of factors including the volume of applications an officer will have on hand at any one time, the time it takes to assess complicated submissions and additional information on matters which may require comments from internal and external consultees, including the Environment Agency, and because of Committee timetables. Determination of applications often takes place towards the latter part of the 8/13 week process and increasing the time required to deal with conditions lessens the time available to consider the application itself. This may result in more applications going over the 8/13 week targets, or more applications being refused on the basis that conditions haven't be agreed.

It is likely that many applicants will accept a pre-commencement condition rather than receive a refusal on the basis that additional information has not been supplied or to halt an application whilst they prepare additional information (often complex in its nature) which would require further delays in the

determination of their application. The overriding aim for a developer is to secure planning permission, and as such they are often content to deal with the 'details' at a later date once they have permission in place.

Additionally, although the consultation implies the blame for placing too many pre-commencement conditions lies with the local planning authority, often the reason for so many pre-commencement conditions being imposed on a planning permission is because the quality of submissions is poor and/or because detailed information is lacking. In some cases, the developer will have given little thought at application stage to matters which are the subject of pre-commencement conditions e.g. materials details, Construction Method Statement etc. As such, it is not clear that the regulations would necessarily tackle the issue of local planning authorities imposing pre-commencement conditions because the 'fault' often lays with the developer.

Other issues include that:

- The draft regulations don't appear to have accounted for a situation where Planning Committee decides to impose a pre-commencement condition. If, for example, a developer is not happy with a condition Committee imposes, it may be that the condition has to be reconsidered at the next committee meeting, further slowing the process.
- Additional officer time will also be required in dealing with pre-commencement conditions at application stage to discuss conditions in more detail with consultees, serve notice on the applicant, engage in further discussions with the applicant and ensure only agreed pre-commencement conditions are placed on consents (it is not clear what happens if a permission is issued without notice having been given to the applicant).
- In some circumstances it would be possible to replace a pre-commencement condition with a condition with a slightly later trigger that would serve the same purpose e.g. a trigger which required the submission of details 'pre-construction above damp proof course level', and therefore the regulations may only serve to change the trigger for conditions rather than remove them altogether (although it should be noted that some conditions, such as those relating to archaeology, would be likely to still require discharge prior to commencement)
- Whether the trigger for a condition is pre-commencement or another trigger is agreed (e.g. pre-occupation), developers will still need to submit that information at some stage if they haven't done so with the application, and so removing a pre-commencement condition doesn't necessarily speed up development overall.

The draft regulations are aimed at speeding up development, but the end result is the creation of more administrative work and negotiations during the application stage, which serve to slow down determination of planning applications. The regulations also

do not resolve the issues relating to the quality of submissions that results in the requirement for pre-commencement conditions.

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?

A. No comments

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