



# RTPI

mediation of space · making of place

Royal Town Planning Institute  
41 Botolph Lane  
London EC3R 8DL  
Tel +44(0)20 7929 9494  
Fax +44(0)20 7929 9490

Email [online@rtpi.org.uk](mailto:online@rtpi.org.uk)  
Website: [www.rtpi.org.uk](http://www.rtpi.org.uk)

Registered Charity Numbers  
England 262865  
Scotland SC 037841

Patron HRH The Prince of Wales KG KT PC GCB

19<sup>th</sup> March 2010

Planning Conditions Consultation  
Communities and Local Government  
Floor 1, Zone A2 Eland House Bressenden Place  
London  
SW1E 5DU

Email response sent to: [planningconditions@communities.gsi.gov.uk](mailto:planningconditions@communities.gsi.gov.uk)

Dear Sir/Madam,

## **RESPONSE TO CONSULTATION PAPER: Improving the Use and Discharge of Planning Conditions consultation**

Thank you for the opportunity to respond to the above. The Royal Town Planning Institute (RTPI) is a membership organisation representing over 22,000 spatial planners. It exists to advance the science and art of town planning for the benefit of the public.

The response has been formed drawing together internal consultations and the results of meetings and discussions with members through the RTPI's Development Planning, Development Management Networks, and the RTPI's National Association for Planning Enforcement (NAPE).

The RTPI supports the Government's initiative to update national policy on conditions.

The opportunity to strengthen the guidance to ensure that conditions meet the established six tests thereby ensuring that conditions are only imposed when wholly warranted is particularly welcomed.

Early discussion of proposed conditions with relevant parties is supported. Regard should be had to the overarching development management principle of front loading in relation to this issue. In particular the important role of consultees in the use of conditions which comply with the six tests has been emphasised by our members, in the context of the inability of case officers to have a detailed understanding of all specialist knowledge areas.

Avoiding the duplication of conditions through non-planning controls is supported. Specific examples of conditions which should not be imposed so as to avoid duplication with other statutory controls (as is presently the case with Circular 11/95) would be useful. The consultation by the Planning Inspectorate on model planning conditions does not include examples of conditions which are unacceptable.

In relation to CO10 (Listing of approved plans), the Planning Inspectorate appear to remove this condition when allowing appeals. It was suggested that this matter requires clarification and measures to ensure consistency.

In supporting the proposed new policy on the use of planning conditions it would be helpful to include a statement that

commencing development without discharging pre commencement conditions (conditions precedent) could render the planning permission unlawful and cite the case law as a footer note.

Please find attached the RTPI's response to the specific consultation questions below. If you require any further assistance, please contact Trish Cookson, Networks and Associations Developer on 01262 605972 or email [trish.cookson@rtpi.org.uk](mailto:trish.cookson@rtpi.org.uk).

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Matt Thomson', with a long horizontal flourish extending to the right.

Matt Thomson  
**Acting Director Policy and Partnerships**  
Enc.

## **Question 2**

The RTPI comprises of members from a wide variety of professionals working in planning and enforcement. The following two options have been considered appropriate with merits for each option highlighted below:

### **Option B (NAPE)**

NAPE supports Option B which provides additional policy guidance on the use of conditions contingent on the completion of a section 106 agreement, and agree with the exceptional circumstances suggested finding the explanation helpful.

### **Option A (Event attendees)**

(CO18) Some LPAs will not accept applications without a signed Section 106 (S106). This is broadly considered to be an appropriate approach in the context of the principle of front loading. Current arrangements, either the need for a S106 Agreement to be signed prior to submission or the use of Committee resolutions to approve subject to signature of such an Agreement, provide appropriate mechanisms to secure a S106 Agreement without the need to move to the suggested Option B.

Although a suggestion was made that Option B did reflect the proactive and facilitating intentions of development management, the group consensus was a strong view that this added detail was not helpful and the provisions were not justified. The strong majority view was that the existing provisions are clear and are applied consistency. Although resistance to emphasised additional flexibility could be construed as being obstructive, the development management network instead argues that such provisions actually undermine the intensions which underpin the development management concept by reducing certainty in the decision making process. Furthermore, such flexibility would undermine the appropriate emphasis being placed upon the pre-application process.

The development management network therefore has a strong presumption in favour of Option A in relation to the relationship between conditions and S106 Agreements. The development management network believes that further guidance/policy measures could be introduced to formalise the need for a signed S106 Agreement, or Draft Heads of Terms as a minimum, prior to the validation of a planning application. This would support the front loading, clarity and certainty principles in the development process.

(CO20.2) It is suggested that further emphasis should be placed on the inappropriateness of dual controls through the application of conditions on both planning permissions and obligations. Such practices still occur and this places the developer at a disadvantage, being able to appeal against a condition but potentially still being limited by the remaining controls associated with the planning obligation.

## **Proposed Measures to Improve the Discharge of Conditions**

Although it is recognised that the use of a standardised proforma to secure the discharge of conditions cannot be insisted upon due to the status of such a document, far greater emphasis should be placed upon the desirability of using this form as it is advantageous to the processing of the information provided

### **Measure 1: Discussion of potential condition to be a key component of pre-application engagement**

Measure 1 is supported. Planners should embrace recommendation 4 of the Killian Pretty Review and take the opportunity of pre application discussions not only to improve the quality of the application but to identify elements of the application which are both appropriate to include and, detailed enough in their specification, to avoid the need to impose unnecessary conditions.

There should be an audit trail of pre application discussions. This would be of particular value in cases of applications being referred to mediation or on appeal whether this be against the imposition of conditions or otherwise.

### **Measure 2: Structuring decision notices**

We support the setting out of conditions in the order of the four sequential headings.

### **Measure 3: Sharing draft decision notices for major applications with applicants before decisions are taken**

The RTPI believes that discussions around conditions should occur at the pre-application stage to support certainty and

the wider principles of front loading.

A distinction should be drawn between the planning officer's report setting out in full the recommendation with the draft conditions and the production of a draft decision notice. Publishing a draft decision notice could be onerous and confusing particularly so in cases where conditions are changed, deleted or added in the decision making process. There are potential pitfalls in this approach which could give rise to confusion and errors being made which, in turn, could result in complaints.

The sharing of the draft decision notice where the committee process is not involved also poses a number of difficulties. It requires knowledge of forethought as to when the decision is going to be taken in order for the suggested 5 days to be given. Moreover, if wider notification through electronic means is desired, effective notification of the publication of the draft would appear problematic. Emailing a draft to all interested parties may not always be possible, and if the intention is to post the draft on the web, people will still need to be told that it has been posted, and this could be any time after the end of the consultation period. How do the wider public know when the decision is going to be made and therefore know when to go online to view the suggested conditions?

Finally, we question what can be achieved within the 5 day period, if this is the first viewing of the conditions?

Discussing conditions at the earliest opportunity and ensuring the public has all information made available on the web when it is received would be better practice. So the emphasis should be on discussing proposed conditions during the pre-application stage, and at the earliest opportunity possible when additional conditions from, for example, statutory consultees are made available. The effective use of e-planning opportunities, including the publication online of application details on receipt with draft conditions if these have been agreed beforehand, and conditions requested by consultees when these are received, would support the dissemination of information to the wider public in a more useful manner, allowing engagement throughout the process on conditions, rather than during a constrained timescale close to the final decision point.

#### **Measure 4: Shortening the time limits for LPAs to deal with applications for consent agreement or approval required by a condition attached to grant of planning permission**

We support the principle of a single date for determination and the return of a fee in the absence of a decision. The RTPI also supports the timescale proposed for householder applications. For major applications however, it is considered that 6 weeks can be problematic due to the additional involvement of consultees and the analysis of complex information. It is suggested that a sliding scale of dates be introduced between 6 and 12 weeks depending upon the scale of the major development proposal.

#### **Measure 5: A planning services key performance indicator to include the use & discharge of conditions**

The time-target based culture has been at the expense of the pre and post application phases.

A new target based on the discharge of conditions is supported on the proviso that this is part of a package of quality of service indicators which reflect the overall quality of service and outcome.

It is important to recognise and properly resource the proactive compliance role within development management to ensure that the quality of the overall planning service is not compromised. Monitoring of this indicator could be by reference to the number of occasions fees had to be refunded.

#### **Measure 6: Fast track conditions appeals service**

The RTPI welcomes the reduction to 8 weeks the timescale for lodging an appeal against a condition and a similar in decision making for PINS. Although this may lead to an increase in the number of such applications, this would equally ensure the rapid resolution of the matter at hand.

#### **Measure 7: Developer to notify LPA prior to starting development**

This is a requirement in Scotland and often a requirement of a S106 Agreement and its widespread use is welcomed. However, CLG should clarify the definition of "commencement" for the purposes of ensuring the effectiveness of this measure as it is a little ambiguous in the context of the intentions of this measure.

**Measure 8: Developer to display decision notices and conditions on site**

This measure is supported and is already a requirement in Scotland.

**Measure 9: Default approval for applications made for consent, agreement, or approval required by a condition attached to a grant of planning permission**

The RTP1 does not support this proposal. If a condition is attached it must meet the 6 tests of planning conditions. On that basis all conditions attached must be necessary for the development to be acceptable. Carrying out a development without necessarily adhering adequately to the attached conditions would lead to an unacceptable and potentially harmful development which would otherwise have been prevented.

Uncertainty as to the enforcement of the resultant development is also an important issue. This could potentially generate a significant amount of work for enforcement, possibly with legal implications.

Some of the measures set out above require legislation and therefore we trust that further consultation on these measures would be undertaken.