

Improving the use of planning conditions- Consultation response

The Heritage Alliance

26 February 2018

The Heritage Alliance is England's largest coalition of independent heritage interests. We unite over a 115 organisations which together have over 7 million members, volunteers, trustees and staff. The vast majority of England's historic environment is owned, managed and cared for by Heritage Alliance members.

The Heritage Alliance welcomes this opportunity to respond to the consultation on [Improving the use of planning conditions](#). We agree with the consultation's preamble that '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'. This is especially true for the historic environment where planning conditions have long been used to ensure that heritage assets are properly dealt with during development and are able to enhance a redeveloped site.

The Alliance welcomes the proposals to enable local authorities to impose conditions where there has not been a response from an applicant. However, it is vital that the draft regulations should be amended to allow heritage related conditions to be imposed to ensure that the previous level of protection for heritage assets isn't eroded. The consultation states that 'imposing such a constraint on development, when it is not justified, unnecessarily delays the delivery of development and drives up costs'. There is no evidence, as far as we are aware, that pre-commencement conditions relating to heritage are 'unjustified'.

The consultation does not appear to have carried out a separate impact assessment of the proposals as the Governments stated at paragraph 41 of its [summary of impacts](#) of the Neighborhood Planning Act.

We have responded to the specific consultation questions below.

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?

We support a clear statement on why a condition is proposed but we suggest using 'clear reasons' rather than 'full reasons'. A requirement to give 'full' reasons opens the possibility that an applicant may appeal where permission is rejected because a pre-commencement condition could not be agreed, on the basis that the local authority did not give 'full' reasons for insisting on a pre-commencement condition being imposed. This could mean further delay for developments and increased costs for local authorities.

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

No, this sets the bar for a substantive response to prevent a condition imposed being too low. The Government should encourage applicants to be engaged with the process. (6)(a)(ii) ‘provides comments on the proposed condition’ will not provide enough information to easily identify what part of the proposal condition the developer objects to. This puts the onus on under resourced local authority staff to try and elicit information from the developer. This will slow the process down and add costs for local authorities. The information on why the applicant does not agree with the condition should be required to be included in the response itself.

A better alternative for (6)(a) would be:

- (a) “a substantive response” means a response which —
- (i) states that the applicant does not agree to the imposition of the proposed condition;
 - (ii) explains why the applicant does not agree to the proposed condition;
 - (iii) states how the proposed condition could be modified in order for the applicant to agree to it;
 - and
 - (iv) states whether any part of the current condition could be accepted on a standalone basis if other elements were removed.

This is similar to the requirements placed on local authorities at (5)(a)-(c).

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 comment.

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

As stated above, the draft regulations should be amended to allow local authorities to impose planning conditions in relation to heritage assets or archaeology to ensure that there is not an erosion of previous protections for heritage.

The Government has previously stated that it does not intend to reduce protection of archeological remains or other heritage assets by restricting the use of pre-commencement conditions. The best way to achieve this would be to allow local authorities to continue to make heritage conditions in the Town and Country Planning (Pre-commencement Conditions) Regulations 2018.

Without such an amendment the increased and growing pressure on local authorities to approve developments will mean that some are approved without heritage related conditions which previously would have had them.

The pressure on local authorities to approve applications comes from a number of sources, for example, the potential impact on stretched local authority finances of having to defend a developer's appeal against a rejection of planning permission. This pressure to approve plans will increase further if the Government pursues changes to the New Homes Bonus allocation mechanism to remove the bonus for homes allowed on appeal ([which we objected](#) to in our response to the 2018-19 Local Government Finance Settlement Technical Consultation)

These pressures to approve schemes will mean that local authorities are less likely to reject schemes solely on the basis that a developer has not agreed to a planning condition relating to a heritage asset. Some such conditions will incur significant expense for the applicant who, regardless of the positive impact, will seek to avoid this cost. This will mean that fewer pre-commencement planning conditions to protect heritage assets will be imposed than previously. Without evidence to show that heritage related pre-commencement planning conditions have been 'unjustified' the Government should include the ability to impose heritage within the regulation to maintain existing levels of heritage protection.

The impact statement for the proposals states that an 'impact assessment of the measures [was published](#) as part of the Impact Assessment for the Neighbourhood Planning Act'. Turning to this it says at para 41: 'Any regulations made under these provisions in the Bill will be subject to a separate impact assessment'. Therefore, this does not appear to have been carried out and we would urge the Government to carry out a through impact assessment on the heritage sector and assess whether there is in fact any evidence of 'unjustified' heritage conditions which is the rationale used to restrict their use.

We agree with the comments in the joint response submitted by Alliance members the Chartered Institute for Archaeologists, The Council for British Archaeology and the Society of Antiquaries and other bodies that failure to have a mechanism to impose pre-commencement heritage conditions would be contrary to the commitments in the recently-published 25-Year Environmental Plan and could undermine the Government's stated aims (at page 35) to:

- ensure that *'new development will happen in the right places'*,
- use the planning system *'positively'* to *'protect key natural and historic assets'*
- ensure that *'environmental protections already enshrined in law will be maintained and strengthened'*.

For further information, please contact The Heritage Alliance.

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