



Historic England

Historic England Response to ‘Improving the Use of Planning Conditions’

Historic England is the Government’s statutory adviser on all matters relating to the historic environment in England. We are a non-departmental public body established under the National Heritage Act 1983 and sponsored by the Department for Culture, Media and Sport (DCMS). We champion and protect England’s historic places, providing expert advice to local planning authorities, developers, owners and communities to help ensure our historic environment is properly understood, enjoyed and cared for.

General comments

- Historic England recognises the need for effective and proportionate use of planning conditions, and the discouragement of excessive or inappropriate conditions. We have some concern, though, that this proposal will result in harm to the historic environment, and would appreciate assurances that the proposed approach to pre-commencement conditions will not reduce heritage protection, and specifically that conditions relating to necessary up-front archaeology will not be affected.
- The references to heritage (paragraph 3), archaeology (paragraph 11), and the historic environment (paragraph 19) are welcomed, as is the reference at paragraph 4 to the positive value of conditions in ensuring that development can go ahead which might otherwise have been refused.
- Paragraph 3 of the consultation states that the proposals ‘will not restrict the ability of LPAs to seek to impose conditions that are necessary to achieve sustainable development, in line with the NPPF’. There is a tacit assumption within the consultation that the NPPF retains its current content and approach, but that is not yet known to be the case. Historic England remains concerned at the lack of clarity regarding the cumulative effect of the emerging changes to the planning system, particularly as so much of the detail is not yet available. If the policies relating to the protection of the historic environment are weakened – as Historic England believes will be the case if the changes to the NPPF which were consulted on in December 2015 are implemented as proposed – that will affect the impact of the current proposals, too, particularly as the proposal articulated in Clause 7 of the Neighbourhood Planning Bill (as introduced) is so reliant on the NPPF for its successful implementation.
- Paragraph 4 of the consultation refers to conditions also offering ‘flexibility that allows applicants to carry out further work on matters of detail after planning permission has been granted’: whilst this can certainly be the case, it should not be assumed that it is always appropriate to resolve details or to address concerns after permission has been granted.
- Overall, there remains a tension in the current proposals between the recognition of the need for certain pre-commencement conditions in relation to the historic environment, and the requirement for the applicant to agree to those conditions.

Whilst local planning authorities may sometimes propose inappropriately onerous conditions, so applicants may sometimes resist entirely appropriate ones.

The process of prohibiting pre-commencement conditions from being imposed without the prior written agreement of the applicant

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?

- Paragraph 12 suggests that the local planning authority (LPA) would be able to choose the most appropriate time to seek agreement, but in reality, this time would effectively choose itself, given the narrow window of opportunity between assessing the application (including reflecting on any consultation responses received) and the deadlines for determining applications on time, and could usefully be defined to give the maximum clarity and certainty to both LPA and applicant.
- No reference is currently made to the possible need for statutory consultees to be involved in the discussions around conditions, e.g. Historic England in terms of archaeology and other heritage conditions. Conditions may have been suggested in response to statutory consultations, and any subsequent discussion of those conditions could usefully involve the statutory consultee.
- Paragraph 13 identifies three options for the LPA where the applicant does not agree to the imposition of a pre-commencement condition, and also notes a fourth, namely for LPAs to refuse consent. It will be important for any regulations and/or policy and guidance to ensure that removing the condition altogether is not unduly encouraged, and refusing the application unduly discouraged, particularly at a time when LPAs do not always have access to specialist heritage expertise, and may feel under some pressure to approve an application where the only reason for refusal is a heritage-related pre-commencement condition.

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?

- Yes. The rationale behind the restriction on pre-commencement conditions is reducing inappropriate burdens on developers, and delays to development, and it is entirely appropriate that applicants support the delivery of these same objectives by not themselves causing delays.
- The default period should be such that it fits appropriately in the window of opportunity referred to above, between assessing the application and the deadline for determining the application on time.

Impact assessment

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?

- Historic England recognises the need for the appropriate use of conditions, and understands and supports the intention behind the current proposals. A legislative solution is certainly one way to address the issues identified, but actually introduces an additional degree of regulation in its attempt to streamline practice. As conditions are already required by policy to be reasonable, the additional regulation of a measure in primary legislation could in fact be avoided altogether, and the clause deleted from the Bill.

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