



Department for  
Communities and  
Local Government

# Improving the use of planning conditions

Government response to consultation



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# Introduction

1. In July 2014, the Government published the consultation paper 'Technical Consultation on Planning'<sup>1</sup>, which included a section that sought views on a package of measures designed to address two key issues that are causing unnecessary delays in the development process and the delivery of new homes and other critical development. These issues are a tendency of local authorities to impose too many planning conditions at the decision making stage and, after planning permission is granted, delays in getting those conditions cleared, which prevent development from commencing.
2. The consultation paper sought views on the procedural detail of the deemed discharge measure and the Government published its response to these proposals in November 2014. In addition, the consultation paper proposed the following measures:
  - Reducing the time limit for return of the fee for applications in respect of confirmation of compliance with conditions attached to planning permissions;
  - Requiring that draft conditions are shared with applicants for major development before planning permission is granted; and
  - Adding a further requirement for local authorities to justify the use of pre-commencement conditions.
3. A total of 478 responses to the consultation were received. Local authorities represented the largest group of respondents (205), prospective applicants and those that represent other development interests accounted for 57 responses and the remainder (216) came from a broad range of groups including parish councils, businesses, voluntary organisations and members of the public.
4. This document provides a summary of the responses received to each of the substantive proposals and the Government's response to them.

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<sup>1</sup> <https://www.gov.uk/government/consultations/technical-consultation-on-planning>

# Improving the use of planning conditions

## Reducing the time limit for return of fees on applications to discharge conditions

5. The consultation proposed a reduction from 12 weeks to 8 weeks in the time period after which an applicant for confirmation of compliance with conditions attached to a planning permission becomes entitled to a fee refund if the local authority has not notified them of their decision.

### Summary of responses

6. A minority of respondents (43%) favoured reducing the time limit for the fee refund from 12 weeks to 8 weeks with 57% against the proposal.
7. General comments of support indicated that, whilst the fee refund did not provide significant financial compensation for applicants who have experienced costs from delay in getting conditions discharged, it was right that a fee refund should be more closely aligned with the 8 week point at which appeal becomes possible and the minimum point at which a deemed discharge could take effect in the future
8. Responses against the proposal came primarily from local authorities. Many highlighted that some conditions could be quite complex in nature, particularly those attached to major planning applications, and that decision making could take longer for these cases. A number of local authorities said that a return of the fee after 8 weeks in such cases would be inappropriate. A number of prospective applicants and those that represent other development interests, local authorities and other respondent groups commented that a fee refund after 8 weeks would not be appropriate where the applicant and local authority have agreed an alternative timing.

### Government response

9. The Government notes that there is not overall support for reducing the time limit for the fee refund from 12 weeks to 8 weeks and the comments made by those who do not favour the idea. However, a fee refund after 8 weeks would be more closely aligned with the existing timings around discharge of conditions and provide further incentive to ensure that this work is given appropriate priority. It is also considered that many of the points raised about lack of flexibility and delay not being the fault of the local authority could be addressed by making provision for an applicant and local authority to agree in writing an alternative time period as suggested by respondents. The Government intends to take forward the proposed fee refund change from 12 weeks to 8 weeks, subject to this additional flexibility.
10. Whilst this change will be made to secondary legislation at the earliest opportunity, it is recognised that this will need to be made after any enactment of a deemed discharge power to ensure that the deemed discharge and fee refund processes are joined up.

# Sharing draft conditions with applicants for major development before a decision is made

The consultation proposed introducing a new regulatory requirement for local authorities to share a draft of the proposed conditions with an applicant before making a decision for all major planning applications.

## Summary of responses

11. The majority of respondents (72%) were in favour of a requirement for local authorities to share draft conditions with an applicant for major development.
12. The value of sharing conditions was recognised by many local authorities, prospective applicants and those that represent other development interests, and others. Views on the need for a regulatory requirement to compel sharing were more split, particularly amongst local authority respondents. Some felt that this could be useful and others pointed out that regulation in this area could unhelpfully reduce the flexibility for a local authority and applicant to do what is sensible in the specific context of the case, potentially slowing down the decision making process.
13. The majority of respondents (64%) agreed that a requirement to share conditions should be limited to applications for major development. The question of when during the planning application process would be the best time to require sharing of conditions attracted a mix of responses across all respondent groups. In total 38% of respondents favoured 10 days before a planning permission is granted, 25% thought that five days before planning permission is granted would be the best time, whilst 37% preferred another time.
14. Generally local authorities favoured timing that would best synchronise with their own procedures for producing committee reports. As committee procedures vary between local authorities, this contributed to the mix of views on timing.
15. Some respondents suggested alternative times for sharing draft conditions, generally on a range between 7 and 28 days. However, many who felt that another time should be used favoured a more flexible approach whereby the timing could be agreed on a case by case basis or at the discretion of the local authority.
16. When asked what approach should be taken where a local authority needs to change, or add to, the draft conditions after they have been shared with the applicant, most (55%) respondents said that they favoured Option A, which was to allow these changes without requiring them to be shared with the applicant.

## Government response

17. The broad support for sharing draft conditions is noted. It is also recognised that sharing draft conditions is already an increasing part of local authority practice. The Government is committed to ensuring that this practice becomes embedded in all local authorities and recognises that a new regulatory requirement to share conditions would help to secure this. However, it is also recognised that new regulation in this area has the potential to reduce flexibility for applicants and local authorities and, if not done correctly, could slow down decision making.

18. Listening to some of the specific comments raised by respondents, the Government wishes to discuss these detailed issues further with local authorities, prospective applicants, and others (including small house builders). These proposals will therefore not be taken forward immediately, pending further exploration of the best way to take forward a strengthened approach to sharing planning conditions.

## Additional requirement to justify the use of pre-commencement conditions

19. The consultation paper sought views on whether there should be an additional requirement for local authorities to justify the use of pre-commencement conditions. In addition, views were sought on whether this additional requirement should be expanded to apply to all conditions that require further action to be undertaken by the applicant before an aspect of the development can go ahead.

### Summary of responses

20. A small majority of respondents (57%) did not favour the introduction of an additional requirement for local authorities to justify the use of pre-commencement conditions. But there was a clear divergence of views between respondent groups.

21. Respondents who supported the measure made comments about the overuse of such conditions and agreed that given the critical impact that pre-commencement conditions can have, local authorities need to provide greater levels of justification for their inclusion. Some of those who did not favour the proposal felt that the requirement was unnecessary because the existing statutory requirement to provide reasons for the imposition of conditions was considered sufficient.

22. The views of respondents were broadly similar in relation to the proposal that the additional requirement should be expanded to apply to all conditions that require further action to be undertaken by the applicant before an aspect of the development can go ahead, albeit with a slightly larger proportion (63%) of respondents opposed.

### Government response

23. Having carefully considered the responses, the Government intends to introduce amendments to secondary legislation to require additional justification of all pre commencement conditions. Whilst the Government accepts there is already an existing statutory requirement to justify the imposition of all conditions, we agree with the majority of those respondents who represent development interests that additional justification should be required for these conditions. The Government intends to make justification a requirement for pre-commencement conditions initially, and to keep under review whether there is a case to apply the measure more broadly.

### Further comments on conditions

24. Relatively few respondents (22%) made comments on what further steps might be taken to ensure that conditions which require further action by the applicant are well framed

and justified. Most respondents either made additional points in relation to the main consultation proposals or raised a diverse range of general points about the use of planning conditions, the need for further guidance on conditions or the planning application process overall.