



Ministry of Housing,
Communities &
Local Government

Government response to the consultation on pre-commencement conditions Regulations



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Introduction

1. The Government published a consultation seeking views on draft Regulations (pre-commencement conditions) on 30th January 2018. The consultation was open for 4 weeks and closed on 27 February 2018. The consultation was designed to assist with the implementation of section 100ZA of the Town and Country Planning Act 1990. When brought into force, subsections 100ZA(4), (5) and (6) of the 1990 Act will prohibit the grant of planning permission subject to a pre-commencement condition without the written agreement of the applicant to the terms of the condition, except in the circumstances set out in the Regulations which were the subject of the consultation.
2. The consultation paper explained that pre-commencement conditions - that is, conditions which must be complied with before development can begin can, where they are not justified, delay the delivery of development and drive up costs.
3. The consultation sought views on draft Regulations prescribing the circumstances when a pre-commencement condition can be imposed without the written agreement of the applicant. Under the proposed Regulations, if the applicant is silent (i.e. does not respond) to a notice setting out the terms of a proposed pre-commencement condition within the prescribed period, the local planning authority or the Secretary of State (as the case may be) may decide to grant planning permission subject to the terms of the pre-commencement condition specified in the notice.
4. Responses were sought on the following:
 - The need to give reasons for imposing a condition
 - What is meant by 'substantive response'?
 - The time-limit for responding
 - Other comments

Consultation responses

Who responded?

5. The Government would like to thank everyone who responded to the consultation and for taking the time to share their views. We have carefully considered all of the responses received. This document provides a summary of the issues raised, alongside the Government's response.
6. 121 responses were received. A breakdown of the types of respondent is shown below:

Response by type of respondent	% breakdown
Local planning authorities	45%
Development sector	13%
Individuals	15%
Statutory Consultee	5%
Charity/Volunteer organisation	7%
Professional Associations	10%
Interest Group	1%
Other	4%
Total	100%

The need to give reasons for imposing a condition

Question 1 - 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?

7. 120 respondents to the consultation provided an answer to this question.
8. Overall there was strong support from respondents (75%) who were in favour of the proposal, with high levels of support across all sectors.

9. Points raised included:

- most respondents were in favour of local planning authorities being clear about why pre-commencement conditions were required
- there was recognition that this measure would encourage better engagement between applicants and local planning authorities
- those opposed thought the measure would add additional bureaucracy to the process and cause unintended delays to the determination of planning applications
- a number of respondents wanted greater clarity about the level of detail needed to meet the requirement to provide “full reasons” for the imposition of a pre-commencement condition

Government response

10. There is already a statutory requirement for local planning authorities to give full reasons for any condition imposed on a grant of planning permission and, if it is a pre-commencement condition, why that is the case. It is not necessary to issue a notice if written agreement can be reached between an applicant and the local planning authority. We note the strong cross sector support and agreement that reasons should be given. We will include the requirement for local planning authorities to give full reasons in the Regulations.

What is meant by substantive response?

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

11. 120 respondents to the consultation provided an answer to this question.

12. About half of respondents (46%) agreed with how “substantive response” was defined, with overwhelming support from the development sector (100%). 42% of respondents did not support the definition and 12% did not provide a response.

13. Points raised included:

- recognition that the proposal would support a more open relationship and improve dialogue between applicants and local planning authorities
- a suggestion that when applicants did not agree with a proposed pre-commencement condition, either in principle or on a matter of detail, they should be obliged to explain their reasons
- some respondents wanted a different or sharper definition of ‘substantive response’

Government response

14. Having regard to the responses to the consultation the Government will take forward the definition of 'substantive response' as set out in the consultation paper. On the issue of the applicant explaining their reasoning for their response, there are clear advantages to them doing so and we will encourage applicants to do this through guidance. We do not, however, propose to create a new statutory requirement on the applicant to do so – the onus should remain on the local planning authority to explain why a pre-commencement condition is necessary.

The time-limit for responding

Question 3 - 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?

15. 118 respondents to the consultation provided an answer to this question.
16. About half of respondents (52%) agreed with the proposal, with strong support from the development sector (83%) and more than half of local planning authorities (55%) agreeing. 38% of respondents did not support the proposal and 10% did not provide a response.
17. Points raised included:
- the proposal provided clarity and would avoid introducing variables to timescales that could impact on the ability of local planning authorities to issue prompt determination decisions
 - some respondents wanted a shorter time period to enable local planning authorities to meet relevant statutory determination targets
 - some respondents wanted a longer time period to support a more open relationship between local planning authorities and applicants
 - some suggested that more time for dialogue between applicants and local planning authorities was needed, for example, where complex issues arose or specialist input was required

Government response

18. The Government is keen to avoid undue delays or uncertainty in the planning application process. In the majority of cases we expect the applicant and local planning authority will agree any necessary pre-commencement conditions through a simple exchange of emails.
19. If an applicant who receives a notice setting out the terms of a proposed pre-commencement conditions needs a longer period than 10 working days to consider, they can indicate that more time is needed in the context of their comments on the proposed condition. Comments on the proposed condition would constitute a substantive response. A substantive response to a notice would prevent a local planning authority from imposing a pre-commencement condition. On the other

hand, where the local planning authority has given notice and has explained why a pre-commencement condition is necessary, and an applicant makes no substantive response to that notice within the prescribed period of 10 working days, then it is reasonable for the local planning authority to proceed to determine the application without further delay.

20. The Government proposes to set a fixed period of 10 working days, beginning with the day after the date on which the notice is given, for an applicant to provide a substantive response to the notice.

21. Though not the subject of this consultation, the range of timescales proposed by respondents (both shorter and longer than 10 days), suggests that the proposed period is a sensible compromise. This aligns with the results of the 2016 consultation where most respondents suggested a default period of between one week and a month, with the majority recommending 10 days.

Other comments

Question 4 - Do you have any other comments on the draft Regulations?

22. 121 respondents to the consultation provided an answer to this question.

23. Points raised included:

- there should be exemptions to the requirement for applicants to agree certain pre-commencement conditions such as those conditions concerned with heritage, nature conservation and environmental protection
- there was a risk of applicants not agreeing with the conditions, leading to process delays, a greater number of refusals and more appeals

Government response

24. The requirement to agree pre-commencement conditions before they are imposed builds on existing best practice, where applicants and local planning authorities discuss potential planning conditions early in the process. Effective engagement is likely to reduce delays and uncertainty and lead to fewer refusals and appeals. Furthermore, the need to agree pre-commencement conditions with applicants will not prevent local planning authorities seeking to impose conditions that are necessary. In the unlikely event that an applicant refuses to agree to a pre-commencement condition that is necessary (e.g. to ensure the protection of areas or features of natural or heritage importance) then the local planning authority can refuse permission.

Equalities Considerations

Question 5 - 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?

25. No impacts were identified in relation to people with protected characteristics.