

## Use of Planning Conditions

1. Why and how are conditions imposed? (<http://planningguidance.planningportal.gov.uk/blog/guidance/use-of-planning-conditions/why-and-how-are-conditions-imposed/>)

### Why and how are conditions imposed?

#### Why are conditions imposed on a planning permission?

When used properly, conditions can enhance the quality of development and enable development proposals to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects of the development. The objectives of planning are best served when the power to attach conditions to a planning permission is exercised in a way that is clearly seen to be fair, reasonable and practicable. It is important to ensure that conditions are tailored to tackle specific problems, rather than standardised or used to impose broad unnecessary controls.

ID 21a-001-20140306 Last updated 06 03 2014

#### What are the main legal powers relating to use of conditions?

The main powers relating to local planning authority use of conditions are in Sections 70, 72, 73, 73A, and Schedule 5 of the Town and Country Planning Act 1990 [\[a\]](http://www.legislation.gov.uk/ukpga/1990/8/section/70) (<http://www.legislation.gov.uk/ukpga/1990/8/section/70>). Powers to impose conditions on appeal are also given to the Secretaries of State or their Inspectors by sections 77, 79, 177, and Schedule 6 of the Act [\[a\]](http://www.legislation.gov.uk/ukpga/1990/8/section/77) (<http://www.legislation.gov.uk/ukpga/1990/8/section/77>). In some areas there may also be powers under local Acts which complement or vary the powers in the 1990 Act.

Section 70(1)(a) of the Act [\[a\]](http://www.legislation.gov.uk/ukpga/1990/8/section/70) (<http://www.legislation.gov.uk/ukpga/1990/8/section/70>) enables the local planning authority in granting planning permission to impose “such conditions as they think fit”. This power must be interpreted in light of material factors such as the National Planning Policy Framework, this supporting guidance on the use of conditions, and relevant case law.

ID 21a-002-20140306 Last updated 06 03 2014

2. Application of the six tests in National Planning Policy Framework policy (<http://planningguidance.planningportal.gov.uk/blog/guidance/use-of-planning-conditions/application-of-the-six-tests-in-nppf-policy/>)

### Application of the six tests in National Planning Policy Framework policy

#### What is the Government’s policy on the use of conditions in planning permissions?

Paragraph 203 of the National Planning Policy Framework ([http://planningguidance.planningportal.gov.uk/blog/policy/achieving-sustainable-development/decision-taking/#paragraph\\_203](http://planningguidance.planningportal.gov.uk/blog/policy/achieving-sustainable-development/decision-taking/#paragraph_203)) states “Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions”

Paragraph 206 of the National Planning Policy Framework ([http://planningguidance.planningportal.gov.uk/blog/policy/achieving-sustainable-development/decision-taking/#paragraph\\_206](http://planningguidance.planningportal.gov.uk/blog/policy/achieving-sustainable-development/decision-taking/#paragraph_206)) states “Planning conditions should only be imposed where they are:

- **necessary;**
- **relevant to planning and;**
- **to the development to be permitted;**
- **enforceable;**
- **precise and;**
- **reasonable in all other respects.”**

The policy requirement above is referred to in this guidance as the **six tests**.

ID 21a-003-20140306 Last updated 06 03 2014

## Related policy

### National Planning Policy Framework

- Paragraph 203 ([http://planningguidance.planningportal.gov.uk/blog/policy/achieving-sustainable-development/decision-taking/#paragraph\\_203](http://planningguidance.planningportal.gov.uk/blog/policy/achieving-sustainable-development/decision-taking/#paragraph_203))
- Paragraph 206 ([http://planningguidance.planningportal.gov.uk/blog/policy/achieving-sustainable-development/decision-taking/#paragraph\\_206](http://planningguidance.planningportal.gov.uk/blog/policy/achieving-sustainable-development/decision-taking/#paragraph_206))

## How does the Local Planning Authority ensure that the six tests in paragraph 206 of the National Planning Policy Framework have been met?

Whether it is appropriate for the Local Planning Authority to impose a condition on a grant of planning permission will depend on the specifics of the case. Conditions should help to deliver development plan policy and accord with the requirements of the National Planning Policy Framework, including satisfying the six tests for conditions.

The six tests must all be satisfied each time a decision to grant planning permission subject to conditions is made. The tests are set out below, alongside key considerations:

TEST	KEY QUESTIONS
<b>Necessary</b>	<p><b>Will it be appropriate to refuse planning permission without the requirements imposed by the condition?</b></p> <ul style="list-style-type: none"> <li>• A condition must not be imposed unless there is a definite planning reason for it, ie it is needed to make the development acceptable in planning terms.</li> <li>• If a condition is wider in scope than is necessary to achieve the desired objective it will fail the test of necessity.</li> </ul>
<b>Relevant to planning</b>	<p><b>Does the condition relate to planning objectives and is it within the scope of the permission to which it is to be attached?</b></p> <ul style="list-style-type: none"> <li>• A condition must not be used to control matters that are subject to specific control elsewhere in planning legislation (for example, advertisement control, listed building consents, or tree preservation).</li> <li>• Specific controls outside planning legislation may provide an alternative means of managing certain matters (for example, works on public highways often require highways' consent).</li> </ul>
	<p><b>Does the condition fairly and reasonably relate to the development to be permitted?</b></p>

<b>Relevant to the development to be permitted</b>	<ul style="list-style-type: none"> <li>• It is not sufficient that a condition is related to planning objectives: it must also be justified by the nature or impact of the development permitted.</li> <li>• A condition cannot be imposed in order to remedy a pre-existing problem or issue not created by the proposed development.</li> </ul>
<b>Enforceable</b>	<p><b>Would it be practicably possible to enforce the condition?</b></p> <ul style="list-style-type: none"> <li>• Unenforceable conditions include those for which it would, in practice, be impossible to detect a contravention or remedy any breach of the condition, or those concerned with matters over which the applicant has no control.</li> </ul>
<b>Precise</b>	<p><b>Is the condition written in a way that makes it clear to the applicant and others what must be done to comply with it?</b></p> <ul style="list-style-type: none"> <li>• Poorly worded conditions are those that do not clearly state what is required and when must not be used.</li> </ul>
<b>Reasonable in all other respects</b>	<p><b>Is the condition reasonable?</b></p> <ul style="list-style-type: none"> <li>• Conditions which place unjustifiable and disproportionate burdens on an applicant will fail the test of reasonableness.</li> <li>• Unreasonable conditions cannot be used to make development that is unacceptable in planning terms acceptable.</li> </ul>

ID 21a-004-20140306 Last updated 06 03 2014

3. What approach should be taken to imposing conditions? (<http://planningguidance.planningportal.gov.uk/blog/guidance/use-of-planning-conditions/what-approach-should-be-taken-to-imposing-conditions/>)

### **What approach should be taken to imposing conditions?**

#### **Are there any circumstances where planning conditions should not be used?**

Any proposed condition that fails to meet any of the six tests (<http://planningguidance.planningportal.gov.uk/blog/guidance/use-of-planning-conditions/application-of-the-six-tests-in-nppf-policy/>) should not be used. This applies even if the applicant suggests it or agrees on its terms or it is suggested by the members of a planning committee or a third party. Every condition must always be justified by the local planning authority on its own planning merits on a case by case basis. Specific circumstances where conditions should not be used include:

- **Conditions which unreasonably impact on the deliverability of a development:** Conditions which place unjustifiable and disproportionate financial burdens on an applicant will fail the test of reasonableness. In considering issues around viability, local planning authorities should consider policies in the National Planning Policy Framework and supporting guidance on viability (<http://planningguidance.planningportal.gov.uk/blog/guidance/viability-guidance/>).
- **Conditions reserving outline application details:** Where details have been submitted as part of an outline application, they must be treated by the local planning authority as forming part of the development for which the application is being made. Conditions cannot be used to reserve these

details for subsequent approval. The exception is where the applicant has made it clear that the details have been submitted for illustration purposes only.

- **Conditions requiring the development to be carried out in its entirety:** Conditions requiring a development to be carried out in its entirety will fail the test of necessity by requiring more than is needed to deal with the problem they are designed to solve. Such a condition is also likely to be difficult to enforce due to the range of external factors that can influence a decision whether or not to carry out and complete a development.
- **Conditions requiring compliance with other regulatory requirements (e.g. Building Regulations, Environmental Protection Act):** Conditions requiring compliance with other regulatory regimes will not meet the test of necessity and may not be relevant to planning,
- **Conditions requiring land to be given up:** Conditions cannot require that land is formally given up (or ceded) to other parties, such as the Highway Authority.
- **Positively worded conditions requiring payment of money or other consideration:** No payment of money or other consideration can be positively required when granting planning permission. However, where the six tests (<http://planningguidance.planningportal.gov.uk/blog/guidance/use-of-planning-conditions/application-of-the-six-tests-in-nppf-policy/>) will be met, it may be possible use a negatively worded condition to prohibit development authorised by the planning permission until a specified action has been taken (for example, the entering into of a planning obligation requiring the payment of a financial contribution towards the provision of supporting infrastructure).

ID 21a-005-20140306 Last updated 06 03 2014

## **Can conditions be used to require the applicant to submit further details after permission has been granted?**

For non outline applications, other than where it will clearly assist with the efficient and effective delivery of development, it is important that the local planning authority limits the use of conditions requiring their approval of further matters after permission has been granted. Where it is justified, the ability to impose conditions requiring submission and approval of further details extends to aspects of the development that are not fully described in the application (e.g. provision of car parking spaces).

Where it is practicable to do so, such conditions should be discussed with the applicant before permission is granted to ensure that unreasonable burdens are not being imposed. The local planning authority should ensure that the timing of submission of any further details meets with the planned sequence for developing the site. Conditions that unnecessarily affect an applicant's ability to bring a development into use, allow a development to be occupied or otherwise impact on the proper implementation of the planning permission should not be used. A condition requiring the re-submission and approval of details that have already been submitted as part of the planning application is unlikely to pass the test of necessity.

ID 21a-006-20140306 Last updated 06 03 2014

## **When can conditions be used that prevent any development until the requirements of the condition have been met (conditions precedent)?**

Care should be taken when considering using conditions that prevent **any** development authorised by the planning permission from beginning until the condition has been complied with. This includes conditions stating that 'no development shall take place until...' or 'prior to any works starting on site...'

Such conditions should only be used where the local planning authority is satisfied that the requirements of the condition (including the timing of compliance) are so fundamental to the development permitted that it would have been otherwise necessary to refuse the whole permission. A condition precedent that does not meet the legal and policy tests may be found to be unlawful by the courts and therefore cannot be enforced by the local planning authority if it is breached. Development carried out without having complied with a condition precedent would be unlawful and may be the subject of enforcement action.

ID 21a-007-20140306 Last updated 06 03 2014

## **Can conditions be used to stipulate the sequence that development should be carried out in (phasing)?**

Where the circumstances of the application make this necessary and the six tests (<http://planningguidance.planningportal.gov.uk/blog/guidance/use-of-planning-conditions/application-of-the-six-tests-in-nppf-policy/>) will be met, conditions can be imposed to ensure that development proceeds in a certain sequence. Conditions may also be used to ensure that a particular element in a scheme is provided by/at a particular stage or before the scheme is brought into use.

It is important that the local planning authority and the applicant discuss and seek to agree any such conditions before planning permission is granted. This is in order to understand how the requirements would fit into the planned sequence for developing the site, impacts on viability, and whether the tests of reasonableness and necessity will be met.

Guidance on multi-stage consents and Environmental Impact Assessment can be found here (<http://planningguidance.planningportal.gov.uk/blog/guidance/environmental-impact-assessment/considering-and-determining-planning-applications-that-have-been-subject-to-an-environmental-impact-assessment/multi-stage-consents/>).

ID 21a-008-20140306 Last updated 06 03 2014

## **When can conditions be used relating to land not in control of the applicant?**

Conditions requiring works on land that is not controlled by the applicant, or that requires the consent or authorisation of another person or body often fail the tests of reasonableness and enforceability. It may be possible to achieve a similar result using a condition worded in a negative form (a *Grampian* condition) – i.e. prohibiting development authorised by the planning permission or other aspects linked to the planning permission (e.g. occupation of premises) until a specified action has been taken (such as the provision of supporting infrastructure). Such conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission.

Where the land or specified action in question is within the control of the local authority determining the application (for example, as highway authority where supporting infrastructure is required) the authority should be able to present clear evidence that this test will be met before the condition is imposed.

ID 21a-009-20140306 Last updated 06 03 2014

## **Is it possible to use a condition to require an applicant to enter into a planning obligation or an agreement under other powers?**

Planning permission should not be granted subject to a positively worded condition that requires the applicant to enter into a planning obligation under Section 106 of the Town and Country Planning Act 1990  (<http://www.legislation.gov.uk/ukpga/1990/8/section/106>) or an agreement under other powers. Such a condition is unlikely to pass the test of enforceability.

A negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. Ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed. It encourages the parties to finalise the planning obligation or other agreement in a timely manner and is important in the interests of maintaining transparency.

However, in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk. In such cases the six tests (<http://planningguidance.planningportal.gov.uk/blog/guidance/use-of-planning-conditions/application-of-the-six-tests-in-nppf-policy/>) must also be met.

Where consideration is given to using a negatively worded condition, it is important that the local planning authority discusses with the applicant before planning permission is granted the need for a planning obligation or other agreement and the appropriateness of using a condition. The heads of terms or principal terms need to be agreed prior to planning permission being granted to ensure that the test of necessity is met and in the interests of transparency.

ID 21a-010-20140306 Last updated 06 03 2014

## **What about cases where the same objective can be met using either a condition or a planning obligation?**

It may be possible to overcome a planning objection to a development proposal equally well by imposing a condition on the planning permission or by entering into a planning obligation under section 106 of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/106) (<http://www.legislation.gov.uk/ukpga/1990/8/section/106>). In such cases the local planning authority should use a condition rather than seeking to deal with the matter by means of a planning obligation.

ID 21a-011-20140306 Last updated 06 03 2014

## **Can conditions be used to modify plans and other details submitted with an application?**

If a detail in a proposed development, or the lack of it, is unacceptable in planning terms the best course of action will often be for the applicant to be invited to revise the application. Where this involves significant changes this may result in the need for a fresh planning application.

Depending on the case, it may be possible for the local planning authority to impose a condition making a minor modification to the development permitted. A condition that modifies the development in such a way as to make it substantially different from that set out in the application should not be used.

ID 21a-012-20140306 Last updated 06 03 2014

## **Can conditions be used to limit the grant of planning permission to only part of the development proposed (a split decision)?**

Express powers to issue split decisions are given to the Secretary of State and Inspectors in Section 79 of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/79) (<http://www.legislation.gov.uk/ukpga/1990/8/section/79>).

In cases where the local planning authority considers part of the development to be unacceptable, it will normally be best to seek amended details from the applicant prior to a decision being made. In exceptional circumstances it may be appropriate to use a condition to grant permission for only part of the development. Such conditions should only be used where the acceptable and unacceptable parts of the proposal are clearly distinguishable and with the agreement of the applicant.

ID 21a-013-20140306 Last updated 06 03 2014

## **When can conditions be used to grant planning permission for a use for a temporary period only?**

Under section 72 of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/72) (<http://www.legislation.gov.uk/ukpga/1990/8/section/72>) the local planning authority may grant planning permission for a specified temporary period only. A condition limiting use to a temporary period only where the proposed development complies with the development plan, or where material considerations indicate otherwise that planning permission should be granted, will rarely pass the test of necessity.

Circumstances where a temporary permission may be appropriate include where a trial run is needed in order to assess the effect of the development on the area or where it is expected that the planning circumstances will change in a particular way at the end of that period.

A temporary planning permission may also be appropriate on vacant land/buildings to enable use for a temporary period prior to any longer term regeneration plans coming forward (a meanwhile use) or more generally to encourage empty property to be brought back into use. This can benefit an area by increasing activity.

It will rarely be justifiable to grant a second temporary permission – further permissions should normally be granted permanently or refused if there is clear justification for doing so. There is no presumption that a temporary grant of planning permission should be granted permanently.

A condition requiring the demolition after a stated period of a building that is clearly intended to be permanent is unlikely to pass the test of reasonableness. Conditions requiring demolition of buildings which are imposed on planning permissions for change of use are unlikely to relate fairly and reasonably to the development permitted.

ID 21a-014-20140306 Last updated 06 03 2014

## **Is it appropriate to use conditions to limit the benefits of the planning permission to a particular person or group of people?**

Unless the permission otherwise provides, planning permission runs with the land and it is rarely appropriate to provide otherwise. There may be exceptional occasions where granting planning permission for development that would not normally be permitted on the site could be justified on planning grounds because of who would benefit from the permission. For example, conditions limiting benefits to a particular class of people, such as new residential accommodation in the open countryside for agricultural or forestry workers, may be justified on the grounds that an applicant has successfully demonstrated an exceptional need.

A condition used to grant planning permission solely on grounds of an individual's personal circumstances will scarcely ever be justified in the case of permission for the erection of a permanent building, but might, for example, result from enforcement action which would otherwise cause individual hardship.

A condition limiting the benefit of the permission to a company is inappropriate because its shares can be transferred to other persons without affecting the legal personality of the company.

ID 21a-015-20140306 Last updated 06 03 2014

## **What about conditions that are requested by third parties?**

Third parties such as statutory consultees can suggest conditions to mitigate potential impacts and make a development acceptable in planning terms. The decision as to whether it is appropriate to impose such conditions rests with the local planning authority. As with any condition, the local planning authority should consider whether the six tests (<http://planningguidance.planningportal.gov.uk/blog/guidance/use-of-planning-conditions/application-of-the-six-tests-in-nppf-policy/>) will be met. Where third parties suggest conditions it is essential for them to first consider whether the six tests (<http://planningguidance.planningportal.gov.uk/blog/guidance/use-of-planning-conditions/application-of-the-six-tests-in-nppf-policy/>) will be met on a case by case basis with reference to the facts of the proposal under consideration. Blanket standard conditions should not be used without proper consideration of whether they are necessary, and if so, how they would apply to the case in question.

It is not appropriate to require in a condition that a development/requirement should be carried out to the satisfaction of a third party as this decision rests with the local planning authority.

ID 21a-016-20140306 Last updated 06 03 2014

## **Is it appropriate to use conditions to restrict the future use of permitted development rights or changes of use?**

Conditions restricting the future use of permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances. The scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the Town and Country Planning

(General Permitted Development) Order 1995 [☒](http://www.legislation.gov.uk/uksi/1995/418/contents/made) (http://www.legislation.gov.uk/uksi/1995/418/contents/made) (as amended), so that it is clear exactly which rights have been limited or withdrawn. Area wide or blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity. The local planning authority also has powers under Article 4 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) [☒](http://www.legislation.gov.uk/uksi/1995/418/article/4/made) (http://www.legislation.gov.uk/uksi/1995/418/article/4/made) to enable them to withdraw permitted development rights across a defined area.

ID 21a-017-20140306 Last updated 06 03 2014

## **How can both the local planning authority and the applicant reduce the need for conditions?**

Rigorous application of the six tests (<http://planningguidance.planningportal.gov.uk/blog/guidance/use-of-planning-conditions/application-of-the-six-tests-in-nppf-policy/>) can reduce the need for conditions and it is good practice to keep the number of conditions to a minimum wherever possible. Front loading and positive dialogue between the local planning authority and the applicant can also result in planning permission being granted with fewer conditions attached. Effective pre-application discussions can help to establish early in the process what may need to be the subject of conditions. An applicant may, where it is feasible to do so, seek approval at the application stage for matters which may otherwise have been the subject of conditions. This can reduce potential delays between the decision being taken and development taking place on site.

ID 21a-018-20140306 Last updated 06 03 2014

## **Should the local planning authority agree conditions with an applicant before imposing them?**

It is best practice for a local planning authority to agree proposed conditions with an applicant before a decision is taken, and as early in the planning application process as possible. It is equally open to both the local planning authority and the applicant to initiate discussions about conditions. Agreeing conditions early is beneficial to all parties involved in the process. It can increase the certainty of what is proposed and how it is to be controlled, including highlighting any condition requirements that may impact on the implementation of the development.

A Planning Performance Agreement can also be used to set a timetable for when discussions about conditions should take place.

ID 21a-019-20140306 Last updated 06 03 2014

## **Is it acceptable for a local planning authority to explain in their Local Plan where conditions may be used?**

Identifying the circumstances in the Local Plan where consideration will be given to using conditions can add certainty to the process. However, it is still necessary to consider whether conditions would be justified in the particular circumstances of each proposed development, as a Local Plan policy cannot be used to justify a condition that does not meet the six tests (<http://planningguidance.planningportal.gov.uk/blog/guidance/use-of-planning-conditions/application-of-the-six-tests-in-nppf-policy/>).

ID 21a-020-20140306 Last updated 06 03 2014

## **Can a local planning authority use model conditions?**

Model conditions can improve the efficiency of the planning process. Such conditions should not be applied in a rigid way and without regard to whether the six tests (<http://planningguidance.planningportal.gov.uk/blog/guidance/use-of-planning-conditions/application-of-the-six-tests-in-nppf-policy/>) will be met. It is recommended

that local planning authorities use national model conditions where appropriate in the interests of maintaining consistency. [Note – a link to national model conditions will be provided when the present PINs/DCLG models have been updated].

ID 21b-021-20140306 Last updated 06 03 2014

### **Can conditions be used to specify the application drawings and other details which form part of the permission?**

Specifying the application drawings and other details which form part of the permission is best practice and creates certainty for all parties, particularly where applications have been subject to a number of revisions.

ID 21a-022-20140306 Last updated 06 03 2014

### **Does the local planning authority need to give reasons for imposing conditions?**

Clear and precise reasons must be given by the local planning authority for the imposition of every condition.

ID 21a-023-20140306 Last updated 06 03 2014

### **How should a local planning authority order conditions on decision notices?**

In addition to precise drafting, clear ordering of conditions on a decision notice is essential to ensuring that they are understood. It is good practice to list the conditions in the order that they need to be satisfied. A good structure is:

- the standard time limit condition for commencement of development
- the details and drawings subject to which the planning permission is granted
- any pre-commencement conditions
- any pre-occupancy or other stage conditions
- any conditions relating to post occupancy monitoring and management.

ID 21a-024-20140306 Last updated 06 03 2014

### **Can conditions be attached to reserved matters applications relating to outline planning permissions?**

Conditions relating to anything other than the matters to be reserved can only be imposed when outline planning permission is granted. The only conditions which can be imposed when the reserved matters are approved are conditions which directly relate to those reserved matters.

ID 21a-025-20140306 Last updated 06 03 2014

### **What status do informative notes appended to decision notices have?**

Informative notes allow the local planning authority to draw an applicant's attention to other relevant matters – for example the requirement to seek additional consents under other regimes. Informative notes do not carry any legal weight and cannot be used in lieu of planning conditions or a legal obligation to try and ensure adequate means of control for planning purposes

ID 21a-026-20140306 Last updated 06 03 2014

4. Conditions relating to time limits (<http://planningguidance.planningportal.gov.uk/blog/guidance/use-of-planning-conditions/conditions-relating-to-time-limits/>)

### **Conditions relating to time limits**

## **Should conditions be used to specify the time limit within which development granted planning permission must begin?**

Under section 91 Town and Country Planning Act 1990 [\[A\]](http://www.legislation.gov.uk/ukpga/1990/8/section/91) (<http://www.legislation.gov.uk/ukpga/1990/8/section/91>) if the local planning authority grants planning permission it is subject to a condition that specifies the time limit within which the development must begin.

The relevant time limit for beginning the development is not later than the expiration of:

- three years beginning with the date on which the permission is granted, or;
- such other period (whether longer or shorter) as the local planning authority may impose.

The local planning authority may wish to consider whether a variation in the time period could assist in the delivery of development. For example, a shorter time period may be appropriate where it would encourage the commencement of development and non-commencement has previously had negative impacts. A longer time period may be justified for very complex projects where there is evidence that three years is not long enough to allow all the necessary preparations to be completed before development can start.

ID 21a-027-20140306 Last updated 06 03 2014

## **What about time limits for outline planning permissions?**

Under section 92 Town and Country Planning Act 1990 [\[A\]](http://www.legislation.gov.uk/ukpga/1990/8/section/92) (<http://www.legislation.gov.uk/ukpga/1990/8/section/92>), outline planning permission should be made subject to conditions imposing two types of time-limit, one within which applications must be made for the approval of reserved matters and a second within which the development itself must be started. If the local planning authority considers it appropriate on planning grounds they may use longer or shorter periods, but must clearly give their justification for doing so.

ID 21a-028-20140306 Last updated 06 03 2014

## **What happens if planning permission is granted but there is no condition specifying the time limit within which development must begin?**

Where planning permission is granted and the decision notice does not include a condition stating the time limit within which development must begin, it is deemed to be granted subject to the condition that the development to which it relates must be begun not later than the expiration of:

- **in the case of applications for planning permission:** three years from the date on which permission was granted
- **in the case of outline planning permission:** three years from the date on which permission was granted to submit all reserved matters, and development to begin within two years of the date on which the final reserved matters are approved.

ID 2a-029-20140306 Last updated 06 03 2014

5. Discharging and modifying conditions once planning permission is granted (<http://planningguidance.planningportal.gov.uk/blog/guidance/use-of-planning-conditions/discharging-and-modifying-conditions-once-planning-permission-is-granted/>)

## **Discharging and modifying conditions once planning permission is granted**

### **Will conditions on planning permissions affect future purchasers of the land?**

Unless the permission otherwise states, planning permission runs with the land and any conditions imposed on the permission will bind future owners.

ID 21a-030-20140306 Last updated 06 03 2014

## **What options are available to an owner who does not wish to comply with a condition?**

Following the decision of a local planning authority to grant planning permission subject to conditions, a developer may consider taking the following actions if they do not wish to be subject to a condition:

- Some or all of the conditions could be removed or changed by making an application to the local planning authority under section 73 of the Town and Country Planning Act 1990 [\[1\]](http://www.legislation.gov.uk/ukpga/1990/8/section/73) (file:///localhost/link%20-%20http://www.legislation.gov.uk/ukpga:1990:8:section:73). In deciding an application under section 73, the local planning authority must only consider the disputed condition/s that are the subject of the application – it is not a complete re-consideration of the application. A local planning authority decision to refuse an application under section 73 can be appealed to the Secretary of State, who will also only consider the condition/s in question.

It should be noted that the original planning permission will continue to exist whatever the outcome of the application under section 73. To assist with clarity, decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. In granting permission under section 73 the local planning authority may also impose new conditions – provided the conditions do not materially alter the development that was subject to the original permission and are conditions which could have been imposed on the earlier planning permission. Further guidance on section 73 can be found here (<http://planningguidance.planningportal.gov.uk/blog/guidance/flexible-options/>).

- Appeal to the Secretary of State against the decision of the local planning authority to grant planning permission subject to conditions. An appeal must be received within 12 weeks of the date on the decision notice for householder planning applications or 6 months for other planning decision types. A Planning Inspector on behalf of the Secretary of State will re-determine the whole application (not only the decision to impose the conditions) – so there is a risk that the Inspector could refuse planning permission and therefore reverse the decision of the local planning authority. Further guidance on appeals can be found here (<http://planningguidance.planningportal.gov.uk/blog/guidance/appeals/>).

Development that is taken forward in breach of the conditions may be subject to local authority enforcement action. It is also possible to apply for retrospective planning permission under section 73A of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/73A) (<http://www.legislation.gov.uk/ukpga/1990/8/section/73A>). Further guidance on enforcement (including section 73A) can be found here (<http://planningguidance.planningportal.gov.uk/blog/guidance/ensuring-effective-enforcement/>).

ID 21a-031-20140306 Last updated 06 03 2014

## **How can a developer seek to discharge conditions attached to a planning permission that require local planning authority approval of further details?**

Requests for approval of further details required by conditions must be made to the local planning authority in writing, enclosing any relevant details. The standard application form on the Planning Portal [\[3\]](http://www.planningportal.gov.uk/apply) (<http://www.planningportal.gov.uk/apply>) can also be used to make a request.

ID 21a-032-20140306 Last updated 06 03 2014

## **Is there a fee payable to a local planning authority to discharge a planning condition?**

The local planning authority will charge an application fee for written requests for both:

- written confirmation of the discharge of conditions; and
- written confirmation that one or more of the conditions imposed on a grant of planning permission have been satisfied

The fees are set out in the relevant Fee Regulations. More details on calculating the fee can be found on the Planning Portal [\[2\]](http://www.planningportal.gov.uk/planning/usefultools/#portaltools) (<http://www.planningportal.gov.uk/planning/usefultools/#portaltools>). The fee must be paid when the request is made, and cannot be paid retrospectively.

ID 21a-033-20140306 Last updated 06 03 2014

## **How long should it take for a local planning authority to discharge a planning condition?**

Development that is ready to proceed should not be held back by delays in discharging planning conditions. In most cases where the approval is straightforward it is expected that the local planning authority should respond to requests to discharge conditions without delay, and in any event within 21 days. Where the views of a third party such as a statutory consultee are required to discharge a condition, every effort should be made to ensure that the 21 day requirement can still be met.

The local planning authority must give notice to the applicant of its decision within a period of 8 weeks from the date the request was received, or any longer period agreed in writing between the applicant and local planning authority. If no extension of time is agreed for discharging the condition after 12 weeks, the local planning authority must return the fee to the applicant without further delay along with a decision on the request.

It should be noted that this timeframe and the return of fees does not apply to prior approval procedures under Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) [\[3\]](http://www.legislation.gov.uk/ukSI/1995/418/schedule/2/made) (<http://www.legislation.gov.uk/ukSI/1995/418/schedule/2/made>), or where the request relates to a reserved matter, which should be subject to a reserved matters application.

ID 21a-034-20140306 Last updated 06 03 2014