



Improving the use of planning conditions: Consultation on draft regulations

February 2018

Wildlife and Countryside Link (Link) brings together 47 voluntary organisations concerned with the conservation and protection of wildlife and the countryside. Our members practice and advocate environmentally sensitive land management, and encourage respect for and enjoyment of natural landscapes and features, the historic and marine environment and biodiversity. Taken together our members have the support of over 8 million people in the UK and manage over 750,000 hectares of land. This response has been produced by members of Link's Land Use Planning Group.

This response is supported by the following organisations:

- Bat Conservation Trust
- Buglife
- Council for British Archaeology
- CPRE
- Friends of the Earth England
- Open Spaces Society
- People's Trust for Endangered Species
- RSPB
- The Wildlife Trusts
- Wildfowl & Wetlands Trust
- Wildlife Gardening Forum
- Woodland Trust

We highlighted [our concerns](#) regarding pre-commencement conditions during the passage of the Neighbourhood Planning Bill. We are disappointed that our concerns have not been addressed and remain concerned with these proposals. There has been a great deal of rhetoric but little solid evidence that pre-commencement conditions slow down the delivery of development. Whilst recognising that early negotiation between applicants and Local Planning Authorities (LPAs) is important, we believe the requirement to secure written consent for pre-commencement conditions will have a number of adverse consequences:

- It will place further pressure on already overstretched Local Planning Authorities (LPAs) and technical specialists such as ecologists and archaeologists
- It will lead to an erosion of development quality. Applicants will be able to 'barter' to reduce or remove conditions they perceive to be unacceptable – particularly in terms of biodiversity surveys and monitoring, tree surveys, ecological mitigation, flood risk and archaeological investigation
- It could cause important points and documents, such as the need for relevant species licences, to be lost amongst other papers, whereas currently applicants are required to submit such licences to a LPA prior to commencing a development
- LPAs, pressed to deliver more homes and approve planning applications, will be under significant pressure not to refuse applications – and are therefore more likely to grant



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applications without the pre-commencement conditions necessary to minimise development harm and ensure it is truly sustainable

- It is likely to result in delays to planning decisions whilst applicants and LPAs dispute conditions
- It will constrain the ability of LPAs to introduce adequate conditions to safeguard our communities and our natural and historic environment
- The proposals could undermine recent commitments and actions in the 25 Year Plan for the Environment:
 - To “..become the first generation to leave the environment in a better state than we found it and to pass on to the next generation a natural environment protected and enhanced for the future..” (Defra 25 Year Environment Plan Foreword by the Prime Minister, page 5).
 - “... Environmental protections already enshrined in national planning policy will be maintained and strengthened..” (Defra 25 Year Environment Plan, page 35).
 - To embed an ‘environmental net gain principle’ for development (Defra 25 Year Environment Plan, see pages 12, 32 and 33 by way of example)

We also refer to the Secretary of State for Housing, Communities and Local Government’s foreword in the “Homes in the Right Places” consultation in which he says “It’s about putting the right resources into local planning authorities so their plans can be delivered and communities can see the benefit of high quality, well-planned homes”. The planning system has in place a process to ensure that development meets vital standards for health and well-being and does not damage the environment. The current proposals look to over-ride this and will result in developers being able to cut corners. The proposed approach to pre-commencement conditions fundamentally ignores the ambition to build high quality, well planned homes in an effort to remove any perceived barrier to development. As the All Party Parliamentary Group for Excellence in the Built Environment state in their report More Homes, Fewer Complaints (2016) it is imperative that increasing the quantity of new homes must not be achieved at the expense of their quality.

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?

If these proposals proceed, we agree that LPAs should be required to set out full reasons for their proposed conditions, and why it is necessary to make it a pre-commencement condition – as is the case in existing legislation. This is particularly important where a pre-commencement condition is needed to avoid or mitigate impacts on habitats or species in advance of development proceeding.

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

It is not clear from this consultation what constitutes a ‘substantive response’. We would appreciate further guidance from MHCLG on what form a ‘substantive response’ might take. Without such clarity, responses are likely to be varying in detail and in turn not consistent in their approach.

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?



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We disagree with this proposal. Local Authorities require pre-commencement conditions for a whole range of reasons, some of which can be highly complex and technical. This is particularly true on larger developments. We remain concerned that where LPAs believe pre-commencement conditions are necessary and an applicant disagrees, the LPA's only recourse is to refuse development altogether – at a time when they are under considerable pressure to boost planning approvals and housing delivery. The alternative is accepting a sub-adequate development. We note the argument that agreement can be secured outside the response period, before a notice is issued, but the flexibility to extend this according to the Planning Officer's discretion is important.

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

The imposition of these regulations should be re-considered in light of the publication of the Government's 25 Year Plan for the Environment, which includes commitments to maintain and strengthen environmental protections and to leave the environment in a better state than we found it. The 25 Year Plan also includes a commitment to embed a 'net gain' principle for development in local and national planning policy. The Government is due to consult on making this mandatory, with some appropriate exemptions. Pre-commencement conditions are an important tool in enabling LPAs to secure biodiversity improvements or ecological mitigation. For instance, pre-commencement conditions allow LPAs to require mitigation and compensation measures to be in place before development activities that may disturb protected species start.

Pre-commencement conditions can also allow LPAs to specify requirements for long-term monitoring, which will become increasingly significant as we seek to monitor net gains for nature. It is unclear whether such conditions seeking to achieve an environmental net gain would meet the threshold for pre-commencement conditions established by legislation and case law: the conditions have been imposed for a 'planning purpose' and 'fairly and reasonably relate to the proposed development'. The proposed regulations should be delayed until the environmental net gain consultation has concluded, so that it is clear LPAs have a range of tools at their disposal to achieve an environmental net gain other than imposed pre-commencement conditions. Even so, pre-commencement conditions are vital for ensuring other aspects of development meet NPPF criteria such as regarding archaeological interest.

Whilst recognising that pre-commencement conditions could still be used, we are concerned that developers and applicants could enter into a 'bartering' process and refuse to consent to conditions unless the gains are reduced or removed entirely. Such an approach would represent a watering down of the aim to deliver sustainable development in the National Planning Policy Framework, as well as the goal to deliver the largest possible gains for nature, and we urge Ministers across Government to consider this aspect.

