Communities and Local Government

Improving the use and discharge of planning conditions

Consultation

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December 2009
Department for Communities and Local Government

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Consultation summary

Topic of consultation	Improving the use and discharge of planning conditions.
Scope of the consultation	The consultation is to consider proposals to improve the use and discharge of planning conditions.
Geographical scope	England.
Impact assessment	A consultation stage impact assessment is attached to this consultation document.
To	This is a public consultation and is open to anyone to respond. We would however particularly welcome responses from: • local planning authorities • civic and community groups • developers and applicants • agents
Body responsible for the consultation	Communities and Local Government (Planning System Improvement Division).
Duration	12 weeks ending 19 March 2010
Enquiries	Tammy Adams 0303 444 1710
How to respond	By email to: planningconditions@communities.gsi.gov.uk Postal communication should be sent to: Planning Conditions Consultation Communities and Local Government Floor 1, Zone A2 Eland House Bressenden Place London SW1 5DU
Additional ways to become involved	This will be a largely written exercise, through we do intend to hold meetings with interested groups.

After the consultation	A summary of responses to the consultation, and a statement on the Government's next steps on this matter, will be published on the Department's website within four months of the end of the consultation period.
Compliance with the code of practice on consultation	The consultation complies with the code.
Getting to this stage	This consultation sets out the Government's response to Recommendation 6 of the Killian Pretty Review, which urged the Government to comprehensively improve the approach to planning conditions to ensure that conditions are only imposed when justified, and to ensure that the processes for discharging conditions are made clearer and faster.
Previous engagement	Preliminary discussions with key stakeholders have been conducted both by CLG and indirectly by work undertaken by the Planning Advisory Service (PAS).

Contents

Part 1

Introduction and overview of proposals

1.1 This consultation paper sets out the Government's proposals for changes to the planning system in relation to:

- the use of planning conditions and
- processes for discharging planning conditions

1.2 This paper is the Government's response to the Killian Pretty recommendation that the approach to planning conditions should be comprehensively improved to ensure that conditions are only imposed when justified, and to ensure that the processes for discharging conditions are made clearer and faster.

1.3 The two key elements of our proposals are updated policy on the use of planning conditions, and a package of measures to improve the discharge of planning conditions. We have also provided replacement policy text on the fees that LPAs can charge for the discharging of conditions, to clarify current policy on this[1].

1.4 This document is structured as follows:

Part 1: Introduction, and overview of proposals

Part 2: Draft policy annex on use of planning conditions and on fees

Part 3: Proposed measures to improve the discharging of conditions

Part 4: About this consultation

Part 5: Summary of consultation questions

Part 6: Consultation stage impact assessment

1.5 In addition to developing these proposals, we have worked with the Planning Inspectorate (PINS) on an updated list of model conditions. This list is intended to replace the guidance on model conditions contained in Circular 11/95 and the supplementary note on model conditions produced by PINS in November 2008. Details of revised guidance on model conditions can be found at: http://www.planning-inspectorate.gov.uk

[1] This clarifies, but does not change current policy on this matter, and replaces paragraphs 123 to 131 of Circular 04/08 on planning-related fees.

Background and context for change

1.6 Making the planning system more effective, so that it works better from the start of the pre application stage until the discharge of the final planning conditions, was a key theme of the Killian Pretty Review.

1.7 The Killian Pretty Review identified the discharging of planning conditions as being a particularly problematic stage in the planning application process, with evidence that there is:

- inconsistency in the scope and use of conditions
- no clear system for discharging conditions or recording actions and
- an average of eight pre-commencement conditions attached to each planning permission, though there can be far more

1.8 Many stakeholders believe an increasing number of conditions are now attached to planning permissions. A number of contributory factors have been identified, including:

- lack of engagement at the pre application stage
- pressure on local planning authorities to issue decisions quickly, because of the time targets regime, resulting in a lack of time to resolve all issues
- preference on the part of applicants to leave matters of detail until the principle of development has been agreed
- local planning authorities choosing to minimise the risk of missing out important details by taking a 'belt-and-braces' approach to the use of conditions
- the increasing complexity and inclusive nature of the planning process and
- specialist conditions routinely requested by statutory consultees and local authority in house experts

1.9 The effects of the increasing use of conditions, and the breadth of issues that they can address, are keenly felt at the discharge of conditions stage, when they can lead to delays to the start of development and additional demands on local planning authority (LPA) resources. This problem is compounded by inconsistencies in the use and scope of conditions and the lack of a clear system for discharging conditions or recording outcomes, as identified by Killian Pretty case study research.

1.10 Recommendation 6 of the Killian Pretty Review urged the Government to comprehensively improve the approach to planning conditions to ensure that conditions are only imposed when justified, and to ensure that the processes for discharging conditions are made clearer and faster, and proposed a range of measures designed to:

- result in a need for fewer conditions
- reduce demand on LPA resources and
- reduced delays associated with the discharge of conditions

1.11 The measures specifically suggested were as follows:

- comprehensively update national policy on conditions, including stronger guidance on the need to ensure conditions are necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects (the six tests)
- revise and update national guidance on model conditions, including clear examples of where conditions should not be imposed to avoid duplication with other statutory controls
- for major applications, require local planning authorities to provide applicants with draft conditions at least 10 days before a decision is expected and to consider responses from applicants before conditions are imposed
- to require local planning authorities to produce a structured decision notice, which groups the different types of condition into those that must be: discharged before commencement; discharged before occupation; or require action or monitoring after completion
- to require local planning authorities to place a copy of the decision notice and all conditions on their websites within two working days of formal planning permission being issued; develop workable proposals for speeding up the discharge of conditions involving, for example:
  - the use of approved contractors to assist local planning authorities to discharge and monitor conditions
  - the potential for a default approval of a condition, if not decided within a fixed time period
  - a fast-track appeal process for certain matters concerned with the conditions

1.12 There are strong links between the proposed changes on the use and discharging of planning conditions and a number of other workstreams underway in response to Killian Pretty Review recommendations. For example:

- pre-application discussions: Recommendation 4 of the Killian Pretty Review sought a substantial improvement to the pre application stages of the application process, in order to improve the quality of the application and to avoid problems and delays at later stages. A key part of improving the efficiency of the planning process should be a focus on identifying and addressing issues at the pre application stage, including any issues to be dealt with through conditions
- section 106 agreements: Killian Pretty Review research identified a lack of consistency in understanding over whether 'Grampian' type conditions can be used to require applicants to sign section 106 agreements. Recommendation 7 of the Killian Pretty Review urged the Government to reduce the time taken to agree planning obligations (section 106 agreements) by scaling back the use of planning obligations in the context of the introduction of the new community infrastructure levy (CIL) and for further improving the process leading to an agreement, including reviewing Government guidance on the use of planning conditions and section 106 agreements
- widening permitted development: Recommendation 1 of the Killian Pretty Report identified a number of steps that the Government should take to reduce the number of minor applications that require full planning permission. Included amongst these was *"ensuring that permitted development rights for new development are not restricted by condition at the time of the grant of planning permission, other than in exceptional circumstances"*. During the Killian Pretty Review a number of bodies representing applicants voiced concerns over an apparent increase in the number of planning permissions granted where conditions were used to restrict or withdraw permitted development rights. The Government has already widened permitted development rights for householder developments and recently consulted on proposals to widen permitted development rights for non-householder developments. The benefits which this widening aims to achieve should not be undermined or limited by the routine removal of permitted development rights for new developments. The Killian Pretty Review recommended that, in updating national policy on the use of planning conditions, the principle that conditions should not be imposed that limit or withdraw permitted development rights in relation to new development, other than in exceptional circumstances, should be clearly re-stated. This is included in the updated policy on planning conditions set out in Part 2 of this paper

- statutory and non-statutory consultees: Alongside this consultation paper we have also published a consultation paper setting out a package of measures to improve engagement by statutory and non-statutory consultees. We remind consultees of the need to have regard to policy on planning conditions, in particular the six tests, when advising local planning authorities on the need to impose planning conditions.

Summary of proposed policy changes

1.13 Current policy on the use of planning conditions is set out in Circular 11/95[2]. We propose to replace this circular with the draft policy set out in Part 2 of this document.

1.14 The new policy:

- retains the six tests for planning conditions
- reminds authorities of the need to assess conditions against these tests
- reinforces the need to avoid certain types of conditions (for example, conditions requiring a payment or other consideration in return for a grant of planning permission) and
- advises on the need to proceed with caution in relation to others, such as those that withdraw permitted development rights

1.15 The review of Circular 11/95 provides an opportunity to clarify the Government's approach to the use of conditions granting permission contingent on the completion of a section 106 agreement.

1.16 Implementation of major development projects, including regeneration initiatives, often involves the assembly of sites under multiple land ownerships. A comprehensive approach to such developments is preferable, particularly where a site-wide master plan has been approved. This can be best achieved through a single planning application covering the whole site. If the party applying for planning permission has not yet secured control of the entire site, they may not be in a position, at that time, to deliver a section 106 obligation covering the entire application site, or all of those parts of the application site which need to be bound by an obligation.

1.17 It is not desirable, particularly in times of economic difficulty, to put at risk the delivery of important development projects, including major regeneration schemes, just because at the time of the grant of planning permission it is not possible to complete a section 106 obligation binding all of the relevant parts of the application site.

[2] Circular 11/95: The Use of Conditions in Planning Permission; DoE; July 1995: http://www.communities.gov.uk/publications/planningandbuilding/circularuse

1.18 In such circumstances, it may be appropriate to grant permission subject to a condition precedent that must be satisfied before the development can be lawfully implemented.

1.19 These types of conditions however need to be used in exceptional circumstances only, and must meet all of the six tests for conditions. The consultation paper sets out two options for policy wording on this matter.

1.20 We have also included policy text to replace paragraphs 123 to 131 of Circular 04/2008 – *Planning-related fees*. This clarifies the current position, which is that LPAs can charge fees for:

a. written confirmation of consent, agreement or approval required by a condition attached to a planning application (i.e. for the discharge of conditions) and/or

b. written confirmation of that one or more of the conditions imposed on a grant of planning permission have been complied with (i.e. for confirmation of the discharge of conditions)

Improving the discharge of conditions: Summary of proposed measures

1.21 In response to the Killian Pretty recommendation that the process for discharging conditions should be made clearer and faster the Government commissioned White Young Green Planning and Design (WYG) to identify and test potential options, including those specifically suggested in the Killian Pretty Report. A range of preferred options have been recommended by WYG.

1.22 Many of the measures proposed, such as those on pre applications discussions and providing draft decision notices, would help to improve performance on the use of conditions, as well as making the discharging of conditions more efficient and less of an administrative burden for local authorities.

1.23 In summary, the measures proposed and on which we are now seeking views are:

1. discussion of conditions to be a key component of pre applications engagement
2. structuring decision notices
3. sharing draft decision notices for major applications with applicants before decisions are taken
4. shortening the time limits for LPAs to determine applications made for consent, agreement or approval required by a condition attached to a planning permission
5. a planning services key performance indicator to include the use and discharging of conditions

6. a fast-track conditions appeals service
7. developer to notify LPA prior to starting development
8. developer to display decision notices and conditions on site
9. default approval for applications made for consent, agreement, or approval required by a condition attached to a grant of planning permission

1.24 Measures (7), (8) and (9) would require primary legislation.

1.25 Alongside this consultation paper, we have published in full the WYG research report *Improving the Process of Discharging Planning Conditions*. We have at this stage given priority to consulting upon the changes we believe offer the greatest potential for making the discharging of conditions clearer, fairer and more efficient for all parties.

Part 2

Draft policy annex on conditions

Introduction

2.1 This policy annex concerns the use of planning conditions. The approach described reflects the Government's expectation that local planning authorities (LPAs) will be rigorous in ensuring that all conditions used meet the key tests, the number of conditions used is minimised, and unnecessary conditions are avoided. It also confirms how the powers available to LPAs to charge fees for the discharging of conditions are intended to be used.

Application of this policy annex

2.2 This policy annex supplements the planning policy statement on development management and should be read in conjunction with it and its other policy annexes, and with other national policy, where relevant.

2.3 The policies in this policy annex should be taken into account by local planning authorities in England in exercising their development management responsibilities, and they are material considerations which must be taken into account in development management decisions, where relevant[3].

2.4 In its final form, this document will replace the following Planning Circulars and 'Dear Chief Planning Officer' letters:

Planning Circulars:

- Circular 11/ 95: *The Use of Conditions in Planning Permissions*[4]
- Paragraphs 19 to 33 of Circular 08/2005: *Guidance on Changes to the Development Control System*[5]
- Paragraphs 123 to 131 of Circular 04/2008: *Planning-Related Fees*[6]

'Dear Chief Planning Officer' Letters

- 25 November 2002 Letter to Chief Planning Officers: Circular 11/95 Use of Negative Conditions[7]

[3] See section 38(6) of the Planning and Compulsory Purchase Act 2004.

[4] http://www.communities.gov.uk/publications/planningandbuilding/circularuse

[5] http://www.communities.gov.uk/publications/planningandbuilding/circularguidance

[6] http://www.communities.gov.uk/publications/planningandbuilding/743603

[7] http://www.communities.gov.uk/publications/planningandbuilding/letternegativeconditions

- 30 May 2008 Letter to Chief Planning Officers: Model conditions for land affected by contamination[8]

Use of conditions powers

2.5 Conditions may only be imposed within the powers available. The principal powers are in Sections 70, 72, 73, 73A, and Schedule 5 to the Town and Country Planning Act 1990 (the Act). Powers to impose conditions are also conferred on the Secretaries of State or their Inspectors by sections 77, 79 and 177 of, and Schedule 6 to, the Act. In some areas there may also be powers under local Acts which complement or vary the powers in the 1990 Act.

2.6 Section 70(l)(a) of the Act enables the local planning authority in granting planning permission to impose *"such conditions as they think fit"*.

2.7 Section 72(l)(a) makes clear that the local planning authority may impose conditions regulating the development or use of land under the control of the applicant even if it is outside the site which is the subject of the application, and that the local planning authority may grant planning permission for a specified period only.

2.8 Section 73 of the Act provides for applications for planning permission to develop land without complying with conditions previously imposed on a planning permission. Section 73A of the Act provides, among other things, for retrospective planning applications to be made in respect of development which has been carried out without complying with one or more of the planning conditions to which it was subject.

2.9 These powers must be interpreted in the light of court decisions

2.10 If used properly, conditions can enhance the quality of a development and enable many development proposals to proceed where it would otherwise have been necessary to refuse planning permission. The objectives of planning, however, are best served when this power is exercised in such a way that conditions are clearly seen to be fair, reasonable and practicable.

2.11 It is essential that the operation of the planning system should command public confidence. The sensitive use of conditions can improve development management and enhance that confidence. But the use of conditions in an unreasonable way, so that it proves impracticable or inexpedient to comply with them or enforce them, will damage such confidence and should be avoided.

2.12 Unless the permission otherwise provides, planning permission runs with the land and any conditions imposed on the permission will bind successors in title.

[8] http://www.communities.gov.uk/publications/planningandbuilding/letterconditionscontamination

Use of planning conditions policy

CO1 Key principles for the use of planning conditions

CO1.1 Conditions should normally be consistent with national planning policies. They should also normally accord with the provisions of development plans and other policies of local planning authorities.

CO1.2 Conditions should not duplicate matters regulated under other legislation.

CO1.3 Before an application is made, the applicant and the LPA should consider how to keep conditions to a minimum by, for example, agreeing the appropriate level of detail that should be included in the planning application.

CO1.4 It is for the LPA, in the first instance, to determine whether or not a particular development proposal should be approved subject to planning conditions. The full reasons for every condition imposed on a planning permission must be stated clearly and precisely in the decision notice. This is a statutory requirement under Article 22 of the Town and Country Planning (General Development Procedure) Order[9]. The basis for imposing each condition, each time it is used, should be fully explained, in order to provide sufficient guidance to the Planning Inspectorate should the issue arise in any future appeal.

CO2 The six tests for conditions

CO2.1 On a number of occasions the courts have laid down the general criteria for assessing the validity of planning conditions. In addition to satisfying the courts' criteria, the Secretary of State takes the view that conditions should not be imposed unless they are both necessary and effective, and do not place unjustifiable burdens on applicants. Conditions should also be tailored to tackle specific problems, rather than impose broad controls, the effect of which may be inappropriately restrictive.

CO2.2 Conditions should only be imposed where they satisfy all of the tests below. These are that the condition is:

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

[9] SI 1995 No. 419 (as amended)

CO2.3 The six tests apply to all conditions, including those taken from national or local standard conditions lists, and those requested by statutory consultees.

CO3 Necessary

CO3.1 Authorities should ask themselves whether or not planning permission would have to be refused if the requirements of the condition were not imposed. If it would not, then the condition needs special and precise justification to show that it is necessary to meet a relevant planning objective. A condition should not be imposed unless there is a definite planning need for it. If a condition is wider in its scope than is necessary to achieve the desired objective it will fail the test of need.

CO4 Relevant to planning

CO4.1 All conditions should relate to planning and the scope of the permission to which it is to be attached.

CO4.2 Some matters are the subject of specific control elsewhere in planning legislation, for example advertisement control, listed building consent or tree preservation. If these controls are relevant to the development in question, the planning authority should normally rely on them, and not impose conditions on a grant of planning permission to achieve the same purposes of a separate system of control. Specific controls outside of planning legislation may also provide existing means of managing certain matters, for example works affecting scheduled monuments are subject to the granting of scheduled monument consent by the Secretary of State for Culture, Media and Sport.

CO4.3 It is for the LPA to decide whether, on the facts of the case before it, a condition is still needed to control some aspect of a development even if this may be dealt with under other controls.

CO5 Relevant to the development to be permitted

CO5.1 A condition should fairly and reasonably relate to the development to be permitted. It is not sufficient that a condition is related to planning objectives; it must also be justified by the nature of the development permitted or its effect on the surroundings. Conditions can also be legitimate where the need for them arises out of the effects of the development rather than its own features.

CO6 Enforceable

C06.1 A condition should not be imposed if it cannot be enforced. Unenforceable conditions will include those for which it is, in practice, impossible to detect a contravention.

CO7 Precise

CO7.1 A condition must be sufficiently precise for the applicant to be able to ascertain what must be done to comply with it.

CO8 Reasonable in all other respects

CO8.1 It is unreasonable to impose a condition with which developers would be unable to comply, or with which they could comply only with the consent or authorisation of a third party. Similarly, conditions which require the applicant to obtain an authorisation from another body should not be imposed.

CO8.2 Although it would be *ultra vires* to require works which the developer has no power to carry out, or which would need the consent or authorisation of a third party, it may be possible to achieve a similar result by a condition worded in a negative form, prohibiting development until a specified action has been taken. Such conditions must also comply with the policy tests.

CO8.3 It is the policy of the Secretary of State that such a condition may be imposed on a planning permission. However, when there are no prospects at all of the action in question being performed within the time-limit being imposed by the permission, negative conditions should not be imposed. In other words, when the interested third party has said that they have no intention of carrying out the action or allowing it to be carried out, conditions prohibiting development until this specified action has been taken by the third party should not be imposed.

CO9 Time limit conditions

CO9.1 When granting detailed planning permission, listed building consent or conservation area consent, the LPA must grant that permission or consent subject to a condition imposing a time limit within which the development or works must start.

CO9.2 When granting outline planning permission, the LPA must grant that permission subject to conditions covering two separate time limits: the time limit within which the reserved matters should be submitted; and time limit within which the development or works must start.

CO9.3 The standard time limits are:

- for detailed planning permission, listed building consent or conservation area consent, the development or works to start within three years from the date on which the permission or consent was granted
- for outline planning permission, all reserved matters to be submitted for approval within three years of the date on which the outline permission was granted; and development or works to start within two years from the date on which the final reserved matters are approved

CO9.4 LPAs are not bound to use the standard time limits; they have powers to agree and substitute a longer or shorter period where appropriate, once they have considered any material considerations. For example, there may be developments where three years is unlikely to be long enough for the developer to complete all the necessary preparations before starting work. Uncertain economic conditions may also have an effect on the ability of developers to bring forward development. The timescales should be appropriate to the size and nature of the development or works.

CO9.5 Where development is to be carried out in distinct parts or phases, LPAs may wish to adopt a flexible approach to fixing time-limits. Outline permission may be granted subject to a series of time-limits, each relating to a separate part of the development. Such conditions must be imposed at the time outline planning permission is granted.

CO9.6 Failure to impose the required time limit conditions (either standard or a variation) will result in the permission or consent being deemed to be granted subject to the standard time limits as set out above in CO9.3.

CO9.7 Conditions requiring the developer to obtain approval of reserved matters within a stated period should not be used, since the timing of an approval is not within the developer's control.

CO9.8 The time limits for planning permission, listed building consent or conservation area consent cannot be extended by an application to vary a condition[10]. As a result, after the expiry of the time limit for the start of the development or works, it is not possible for development to be begun under that permission; a further application for planning permission must be made.

CO9.9 Once the time limit for submission of applications for approval of reserved matters has expired no applications for such an approval can be made. A further application for planning permission must be made.

CO10 Listing of approved plans

CO10.1 In order to facilitate the use of section 73[11] variations, LPAs should consider imposing a condition on a grant of permission or consent listing the plans and drawings forming the approved scheme.

[10] However, for a temporary period, the time limits can be extended by means of a new procedure introduced on 1 October 2009: http://www.communities.gov.uk/publications/planningandbuilding/greaterflexibilityguidance

[11] Section 73 of the Town and Country Planning Act 1990 makes provision for applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.

CO11 Structuring of decision notices

CO11.1 In order to facilitate the use of the decision notice as a project management tool by both the LPA and the developer, LPAs should consider structuring them so that they list the conditions in the order in which they need to be complied with or discharged. The standard time limit condition should come first, followed by pre-commencement conditions, pre-occupation/'stage' conditions, and then conditions relations to post occupation monitoring and management. This is particularly recommended for major or complex applications.

Conditions which should not be used

CO12 Policies which do not meet the six tests

CO12.1 LPAs should not use conditions which fail any of the six tests (set out at CO2 above, and as described in CO3 to CO8). This applies even if the applicant suggests it or consents to its terms in an attempt to secure planning permission. The condition will normally run with the land, and may therefore still be operative long after the original applicant has moved on. Every condition must always be justified on its planning merits.

CO13 Conditions reserving outline application details

CO13.1 Any information submitted as part of an outline application must be treated by the LPA as being part of the development for which the outline application is being made, unless the applicant has made it clear that any of the details are being submitted for illustrative purposes only and are not formally part of the application. The LPA cannot reserve any matters by condition for subsequent approval, unless the applicant is willing to amend the application by withdrawing the details.

CO14 Conditions requiring completion

CO14.1 Conditions requiring the completion of the whole of a development should not normally be imposed.

CO15 Ceding of land

CO15.1 Conditions may not require that land is formally given up (or ceded) to other parties, such as the highway authority.

CO16 Conditions requiring a consideration for the grant of permission

CO16.1 No payment of money or other consideration can be required when granting permission or any other kind of consent required by a statute, except where there is specific statutory authority. Conditions requiring payment or other consideration cannot therefore be used.

CO17 Conditions unnecessarily delaying commencement

CO17.1 Conditions which would unnecessarily delay the commencement or full implementation of the development permitted should not be imposed. See 'conditions precedent' below.

Issues which merit particular care

CO18 Conditions granting permission contingent on the completion of a section 106 agreement

Two options for policy wording on this subject are set out below.
See consultation question 2, and paragraphs 1.15 to 1.18 of Part 1.

Option A

CO18.1 Permission should not be granted subject to a condition that the applicant enters into a planning obligation under section 106 of the Act or an agreement under other powers.

OR

Option B

CO18.2 Permission should not be granted subject to a condition that the applicant enters into a planning obligation under Section 106 of the Act or an agreement under other powers.

CO18.3 However, in very exceptional circumstances it may be acceptable to impose a condition restricting development from occurring until a planning obligation has been completed.

CO18.4 In judging whether such a condition may be appropriate, LPAs should have regard to whether:

a. there is an acknowledged need for comprehensive development (for example it may be a development plan site allocation, or the subject of a site-wide masterplan), and the site is in multiple ownership

b. delivery is at serious risk of delay because genuine attempts to complete the agreement before determination of the application have failed through no fault of the applicant, for example due to multiplicity of ownership. There must however be at least reasonable prospects that this can be rectified prior to the commencement of development

c. the applicant has a legal interest in a least part of the application site (for example an option or agreement for sale)

d. there is agreement on the requirement for a planning obligation

e. a draft planning obligation (or agreed heads of terms as an absolute minimum) has been agreed and annexed to the decision notice and

f. the proposed condition meets all of the six tests. The test of precision means that criterion e. must be satisfied

CO18.5 This type of condition must not be used if it is necessary to bind the whole of the application site, or a critical part of it which the applicant does not have a legal interest in, at the time of the decision.

CO18.6 Where conditions restricting development from occurring until a planning obligation has been completed are imposed, they must be negatively worded in the 'Grampian condition' form, i.e. prohibiting the development from occurring until the specified action has been taken. Positively worded conditions must be avoided.

CO18.7 In circumstances where a developer already has a legal interest in part of the application site, and so he can bind that part, it is reasonable to expect a section 106 obligation to be entered into in relation to that part of the site, with the condition operating in respect of those parts of the rest of the application site which are not under the developer's control and which will need to be bound by the obligation. This obligation could include a covenant prohibiting commencement of development until an obligation binding the remainder of the site has been delivered.

CO19 Conditions requiring further approvals

CO19.1 Authorities should seek to ensure, where possible, that conditions other than those relating to reserved matters are self-contained, and do not require further approvals to be obtained before development can begin.

CO20 Condition or planning obligation?

CO20.1 If, when seeking to overcome a planning objection to a development, there is a choice between imposing conditions and entering into a planning obligation under section 106 of the Act, the imposition of a condition which satisfies the policy tests is preferable. This is because it enables a developer to appeal to the Secretary of State regarding the imposition of the condition or to make an application under section 73 of the Act for planning permission to develop land without complying with a condition(s) previously imposed on a planning permission. Additionally, conditions can be enforced using a breach of conditions notice. These provide a more efficient tool than seeking a remedy under contract law for failure to meet the terms of a section 106 obligation.

CO20.2 Where conditions are imposed on a planning permission they should not be duplicated by a planning obligation.

CO21 Stage at which conditions should be imposed

CO21.1 Conditions relating to anything other than the reserved matters should only be imposed when outline permission is granted. The only conditions which can be imposed when the reserved matters are approved are conditions which directly relate to those matters. So, where certain aspects of the development are crucial to the decision, LPAs will wish to consider imposing relevant conditions when outline permission is granted.

CO22 Modifying proposed development

CO22.1 A condition modifying a proposed development cannot be imposed if it would make the development permitted substantially different from that set out in the application. Case law provides indicators of the matters LPAs should consider when imposing such conditions. The general principle is that the result must not be substantially different from the development applied for. It is for the LPA (or an Inspector on appeal) to exercise reasonable judgment as to whether there is a significant difference or not. The main (but not the only) criterion on which that judgment should be exercised is whether the development is so changed that to grant it would be to deprive those who should have been consulted on the changed development of the opportunity of such consultation[12]. The outcome of these considerations will depend on the circumstances of the case.

CO23 Conditions precedent

CO23:1 A condition precedent is one that expressly requires that development shall not begin until the condition has been complied with. This is a condition which says *"No development shall take place"* or *"Development shall not begin"*, or equivalent, until the condition in question has been complied with.

CO23.2 The LPA should be particularly careful when considering whether it is appropriate to impose a condition precedent, as this will affect the applicant's ability to begin the development. A condition precedent should only be used where the LPA is satisfied that it is essential that the required operation (for example, an archaeological investigation) is carried out before the development permitted is begun.

CO24 Conditions introducing delays at other stages

CO24.1 The LPA should also be careful when considering the use of conditions that would affect an applicant's ability to bring a permitted scheme into use, allow a permitted scheme to be occupied or which otherwise affects the proper implementation of a permission or consent.

[12] Bernard Wheatcroft Ltd -v- Secretary of State for the Environment

CO25 Restrictions on permitted development or use

CO25.1 Conditions should not be imposed that limit or withdraw permitted development rights in relation to new development, including those granted by development orders or future changes of use which the Use Classes Order would otherwise allow, other than in exceptional circumstances. Such conditions are unreasonable unless there is clear evidence that the uses excluded would have serious adverse effects on amenity or the environment, that there were no other forms of control, and that the condition would serve a clear planning purpose.

CO26 Fees for discharging planning conditions

CO26.1 The usual mechanism for seeking to clear a condition or limitation attached through a grant of planning permission is through an application to the local planning authority for the relevant consent, agreement, or approval.

Conditions-related fees[13]

CO26.2 Local authorities are entitled to charge a fee when they receive a written request for:

- written confirmation of consent, agreement or approval required by a condition attached to a planning application (i.e. for the discharge of conditions) and/or
- written confirmation of that one or more of the conditions imposed on a grant of planning permission have been complied with (i.e. for confirmation of the discharge of conditions)

CO26.3 The fees chargeable by the authority are set out in the Fees Regulations 1989 (as amended). For these purposes, it does not matter when the relevant planning permission was granted. The fee must be paid when the request is made, and cannot be required retrospectively.

Making the request

CO26.4 The request, identifying the relevant grant of permission, the relevant conditions, and the details which they would like the local planning authority to consider, can be made in any written form which is clear and legible. Applicants are recommended to use the standard application form (application for the approval of details reserved by a condition) when making a request of either type listed at CO26.2 (above).

Timescales for response from the local planning authority

CO26.5 The authority shall give notice to the applicant of its decision on the application within a period of eight weeks[14] from the date when the authority received the application, or any longer period agreed in writing by the applicant and the authority.

[13] This section is a clarification of existing policy and does not change any statutory arrangements in relation to fees

[14] Other than an application for approval under Part 24 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995(a)) (development by telecommunications code system operators) or if the request would be in respect of a reserved matter, which should be the subject of a reserved matters application.

CO26.6 In most cases the LPA will be able to respond in less than eight weeks. Indeed, authorities should endeavour to respond within 21 days for simple approvals, though a longer period may be justified if an authority has itself to obtain evidence or confirmation of compliance from a third party, such as a statutory consultee. Where confirmation, or indication that confirmation cannot be given, has not been supplied within twelve weeks of receipt of the request, the fee must be refunded. The period of twelve weeks is in order to provide sufficient time to the authority to confirm compliance, particularly where it needs to get confirmation from third parties.

When further information or subsequent requests are required

CO26.7 If the local planning authority considers that a condition has not yet been complied with, the authority should explain to the applicant what remains to be done. It is expected that there will be an exchange of information in either written or other form in order to provide evidence of compliance. Where the exchange of information to secure compliance of a condition is ongoing, it is not necessary for a new request to be made to the authority. The authority should issue confirmation of compliance when satisfied, unless it finds that enforcement action or a retrospective planning application would be more appropriate in the circumstances.

CO26.8 To confirm clearance of more conditions, a further request, and a further fee, would be required if the developer needs written confirmation. An additional request for confirmation that a revised detail achieves compliance with a condition would be charged as if it were the first such request; there is no discount or 'free go' in this context.

Conditions imposed on minerals or waste permission

CO26.9 The facility just described is not available if the request is in respect of conditions imposed on a minerals or waste permission under Fee Categories 9(a) or 11 for which the inspection arrangements provided for in Statutory Instrument 2006/994 and regulation 11B already cater.

Varying the terms of a condition

CO26.10 In order to vary the terms of a condition, it is necessary to make an application under section 73 or 73A of the Act. It is for the planning authority to decide which part of the Fees Regulations is applicable to an individual case.

LPA approach

CO26.11 LPAs may choose to 'confirm' some conditions informally without seeking the new fee, where they find it appropriate and more efficient to do so. It will be for the developer to decide whether any approval provided will suffice, or whether he or she should pay the fee and request a more formal statement of compliance.

CO26.12 Although administrative practices in one LPA may differ from those in another, planning department staff should make every effort to ensure that requests from different applicants within the same authority area are handled fairly and with similar attention to the timing and quality of outcome; inconsistency of treatment should be avoided.

Consultation questions on part 2

1 Please provide your comments on the proposed new policy on the use of planning conditions, as set out in Part 2 of this document.

2 In policy CO18 in Part 2 of this document, Option A repeats the general principle, established in Circular 11/95, that planning permission cannot be granted subject to a condition that the applicant enters into a planning obligation. Option B retains the general principle but provides additional policy guidance on the use of such conditions in exceptional circumstances, and on how they can be appropriately drafted.

2 (a) Which is the better policy approach to granting planning permission contingent to the completion of a s106 agreement? Option A or Option B?

2 (b) If you support Option B, do you agree with the 'exceptional circumstances' suggested, and is the additional policy interpretation guidance helpful?

Part 3

Proposed measures to improve the discharging of conditions

3.1 In response to the Killian Pretty recommendation that the processes for discharging conditions should be made clearer and faster, the Government commissioned WYG Planning and Design to identify and test potential options, including those suggested in the Killian Pretty Report. A range of preferred options have been recommended by WYG.

3.2 Alongside this consultation paper, we have published in full the WYG research report, entitled *Improving the Process of Discharging Planning Conditions*[15].

3.3 A number of the measures proposed, such as those on pre application discussions and providing draft and structured decision notices, concern the use of conditions rather than the actual process of discharging them. However, all these measures will help streamline the entire process of dealing with planning conditions for the benefit of applicants, LPAs and third parties.

3.4 Changes already introduced mean that requests to discharge planning conditions can now be made on the 'application for approval of details reserved by condition' standard application form, and that LPAs can apply a fee. This applies to all requests to discharge conditions regardless of when the planning permission was granted.

3.5 The table below lists the proposed measures identified as preferred options by WYG, and on which we are seeking views. The remainder of this section describes the proposed new measures in detail.

[15] Improving the Process of Discharging Planning Conditions; WYG Planning and Design; December 2009: http://www.communities.gov.uk/planningandbuilding/planning/planningpolicy/implementation/reformplanningsystem/killianprettyreview

Pre-application stage measures
(1) Discussion of potential conditions to be a key component of pre application engagement Stage Measures
Determination Stage Measures
(2) Structuring decision notices
(3) Sharing draft decision notices for major applications with applicants before decisions are taken
Discharge of Conditions Stage Measures
(4) Shortening the time limits for LPAs to deal with applications for consent, agreement or approval required by a condition attached to a grant of planning permission
(5) A planning services Key Performance Indicator to include the use and discharging of conditions.
Post Condition Stage Measures
(6) A fast-track conditions appeals service
Measures requiring primary legislation
(7) Developer to notify LPA prior to starting development
(8) Developer to display of decision notices and conditions on site
(9) Default approval for applications made for consent, agreement, or approval required by a condition attached to a grant of planning permission

Pre-application stage measures

MEASURE (1): DISCUSSION OF POTENTIAL CONDITIONS TO BE A KEY COMPONENT OF PRE-APPLICATIONS ENGAGEMENT

3.6 Effective pre-application engagement can yield a number of benefits in terms of the potential use and discharge of planning conditions.

3.7 First, pre-application discussions may lessen the need for planning conditions, as the parties can agree to deal with matters at the determination of the application stage, rather than making them subject to condition.

3.8 Second, discussions about possible conditions can help applicants further develop or refine their proposals and supporting information for the application, which may remove the need for a condition or make the framing of a condition simpler.

3.9 Third, such discussions may help reveal issues that could have a significant impact on the development or the prospects of achieving a satisfactory planning permission, at an early stage.

3.10 Given the increasing prevalence of pre application discussions, and other work underway to improve their effectiveness, this proposal should not be onerous for either party.

Implementation

3.11 A specific reference to this matter has been included in draft policy on improving the effectiveness of the pre application stage, particularly in relation to major developments. See separate consultation paper *'Development Management: Proactive Planning from Pre-Application to Delivery'*.

Determination stage measures

MEASURE (2): STRUCTURING DECISION NOTICES

3.12 Decision notices currently follow a basic framework including key details of a development (e.g. site address, reference, description of development) followed by conditions and reasons. Conditions attached to a decision notice do not currently, necessarily, appear in any particular order, excepting that a time limiting condition commonly appears first.

3.13 The Killian Pretty Review considered that it would be easier for applicants and third parties to understand the terms of any conditions if they were grouped by type on the decision notice. Planning conditions generally fall into one of four types:

- the standard (time limit) condition
- pre commencement conditions (those that need action pre-commencement in order to implement the development lawfully);
- pre-occupation of site/stage conditions and
- regulatory conditions i.e. those affecting the use of the development and that need monitoring after the development becomes operational (often imposed to protect amenity or other issues but not normally requiring any direct or specific action by applicants)

3.14 The Killian Pretty Review suggested that it would be helpful to all users of the service if conditions on decision notices were set out under these four headings.

3.15 The WYG report also supports this proposal, suggesting that explicitly setting out pre-commencement conditions, and pre-occupation conditions, would be of significant benefit to applicants and local planning authorities alike by ensuring that the milestones for the discharge of conditions are clear.

Implementation

3.16 Policy CO.11 in the draft policy annex set out in Part 2 seeks to encourage the listing of conditions in the order they are to be discharged.

3.17 Due to the potential need to update existing software, we accept that there may be a period of adjustment for local planning authorities. However, information from LPA software suppliers indicates that it will be possible to adjust current software packages to cater for this change. We would expect all local planning authorities to be able to implement this measure by the end of 2011.

MEASURE (3) SHARING DRAFT DECISION NOTICES FOR MAJOR APPLICATIONS WITH APPLICANTS BEFORE DECISIONS ARE TAKEN

3.18 Both the Killian Pretty Review and the subsequent research undertaken by WYG supported the introduction of a scheme for LPAs to produce and share with the applicant a draft decision notice, including a list of proposed conditions, a number of days prior to the formal determination of the application.

3.19 It was considered that such a proposal would allow an opportunity for other parties, principally the applicant, to consider and comment on whether the conditions proposed are appropriate in nature, extent and content, and that unnecessary, inappropriate or unreasonable conditions are avoided.

3.20 WYG considered that of all the measures they considered, this was the one most likely to reduce the number of planning conditions attached to planning permissions.

3.21 If such a measure were to be introduced, there are a number of practical considerations which would need to be addressed:

- **What types of application should be covered by this measure?** Killian Pretty and WYG both focused on major applications, although it was suggested by WYG that it should be open for applicants for both minor and major applications to request a draft notice
- **How much advance notice should be given before determination of the application?** Killian Pretty proposed that a list of draft conditions should be produced 10 days before the application is determined. WYG suggested five days, having regard to the existing requirement that all committee reports must be made available five days in advance of the committee, which enables third parties to register a wish to speak on the relevant item.

- **Who should be informed about the draft decision notice and how?** Clearly the applicant will want to have an opportunity to comment, but should the council be required to formally notify them and what steps should be taken in relation to third parties?

3.22 We agree with Killian Pretty and WYG that this is a useful measure, but we are also mindful of the need to avoid imposing unduly onerous requirements on LPAs or unnecessarily lengthening the decision-making process. For these reasons we would propose a scheme of advance notification of a draft decision notice with the following key characteristics:

- it applies in relation to major applications only
- the draft notice is made available five working days before determination
- the draft notice is made available on the council website and is forwarded to the applicant
- the LPA should take into account any representations received, however, the final decision on what conditions are imposed remains with the LPA

Implementation

3.23 Implementation of this measure would require an amendment to article 22 of the GDPO.

Discharge of conditions stage measures

MEASURE (4) SHORTENING THE TIME LIMITS FOR LPAs TO DEAL WITH APPLICATIONS FOR CONSENT AGREEMENT OR APPROVAL REQUIRED BY A CONDITION ATTACHED TO A GRANT OF PLANNING PERMISSION

3.24 The timescales for dealing with requests for written confirmation of consent, agreement or confirmation required by a condition are currently set out in CLG Circular 04/2008. LPAs have eight weeks from the date when they received the application, or any longer period agreed in writing by the applicant and the authority. The circular encourages LPAs to deal with these applications with 21 days. If the LPA has not provided confirmation that the condition has been complied with, or has not indicated that confirmation cannot be given, within 12 weeks of receiving the request, they must refund the fee. This longer timescale takes into account the possible need to for the LPA to seek advice from third parties. The research by WYG reveals that the 12 week deadline for the refund of fees has, in effect, become the de facto timescale for some local authorities dealing with planning conditions.

3.25 We believe there is scope for more efficiency in discharging conditions, and for tighter time periods that those currently in place. WYG's research indicated that around half of all conditions are currently discharged within six weeks,

and that around a quarter are discharged within 21 days, demonstrating that such timescales can be achieved. We also believe that, as with planning applications themselves, there should be a shorter timescale for conditions relating to householder applications than for those relating to major and other applications.

3.26 It is important that any time limits imposed on LPAs are clear, including the targets and requirements for approving details relating to conditions, and for any necessary appeals or refunding of fees. It is also important that conditions are discharged in a timely manner that does not result in unnecessary delays to the commencement or full implementation of a permitted development.

3.27 The role of statutory and non-statutory consultees can be an important consideration where third party consultation is necessary, as the LPA will only be able to make their decisions on time if those they consult provide responses promptly. We are consulting separately on measures to improve the engagement of statutory and non statutory consultees in the planning system.

3.28 In order to drive up performance on the discharge of conditions we propose that the time limits for determination of such applications be reduced to:

- four weeks for conditions on householder permissions
- six weeks in all other cases

3.29 We also propose to reduce the time period after which the applicant can have a refund of fees if the LPA has failed to discharge conditions. We propose to reduce this time limit in line with the above changes, i.e. from 12 weeks to four weeks for householder conditions and to six weeks in all other cases.

Implementation

3.30 Implementation of this measure would require an amendment to Article 21 of the GDPO.

3.31 In addition, the Fees Regulations 2008 would need to be amended to change the period prescribed for a refund of fees in respect of discharge of conditions.

3.32 Any changes to time limits would not apply to section 73 variations.

MEASURE (5) A PLANNING SERVICES KEY PERFORMANCE INDICATOR TO INCLUDE THE USE AND DISCHARGING OF CONDITIONS

3.33 The linking of national performance indicator (NI) 157 to the housing and planning delivery grant has been widely credited with recent improvements

in the performance of LPAs in meeting their time targets for major, minor and other applications, by focussing planning departments' resources on the determination of planning applications. This has, however, often been at the expense of the pre application and post determination phases. Furthermore, respondents to the Killian Pretty Review 'call for solutions' were clear that the time-target based culture had exacerbated the tendency to impose numerous conditions.

3.34 The Government is committed to reviewing the current approach to time targets, and has recently sought views on a discussion paper on potential revisions to the current NI 157 on the time taken to determine planning applications. The paper raised the issue of including a measure of quality of the overall planning service.

3.35 An option we sought initial views on would be to measure performance on the basis of the quality of the end-to-end service provided. This could embrace the use and discharge of conditions, for example by looking at whether any conditions used were clear and relevant to the development proposed, and whether the discharging stage was dealt with efficiently.

Implementation

3.36 Work on reviewing NI 157 is under way and more detailed consideration of this issue will be taken forward as part of that project. A new national indicator set is due to become operational in April 2011.

Post condition stage measures

MEASURE (6) A FAST-TRACK CONDITIONS APPEALS SERVICE

3.37 A further measure could be the introduction of a fast-track conditions appeal service, provided by the Planning Inspectorate when dealing with appeals relating to conditions.

3.38 This measure could apply to appeals in the following circumstances:

- appeal against a conditional grant of permission (i.e. against one or more of the conditions that have been imposed); or
- appeal against a refusal to vary conditions (i.e. refusal of a section 73 application to develop land without complying with a condition attached to a previous planning permission); or
- appeal against a refusal of any application for approval, consent or confirmation required by a condition.

3.39 The new householder appeals service[16] has demonstrated that such a process can work successfully, and lessons that are being learnt from that example would help to inform implementation of the conditions appeal service.

3.40 A fast-track appeal system would not apply to:

- appeals relating to reserved matters applications or
- appeals against non determination of any application for approval required by condition (as it is unlikely sufficient information would be held on the planning case file for the inspector to make a decision).

Implementation

3.41 Implementation of this measure would require an amendment to Article 23 of the GDPO.

DETAILED PROPOSALS

3.42 For the types of appeal eligible for the fast-track conditions appeal service, i.e. those listed at paragraph 3.38 above, the period for lodging an appeal would be reduced from six months to eight weeks.

3.43 For those conditions related appeals which proceed via written representations, a compressed appeal timetable would apply, so that the planning inspector would determine them within eight weeks.

3.44 The significant shortening of timetables would mean that in most cases there would be no material change in circumstances between the application and appeal stages, so any original representations made to the LPA would remain relevant.

3.45 Third parties would not be given the opportunity to comment again at the appeal stage. Any representations made at the application stage would be taken into account at the appeal stage.

3.46 At the planning application consultation stage, the LPA would advise that any representations received would be forwarded to the Planning Inspectorate should there subsequently be an appeal in relation to any conditions imposed on the application (if the application is approved).

3.47 Accordingly, the planning inspector would determine the appeal on the basis of the information that was before the LPA when they determined the application, with limited opportunity for the submission of additional material beyond that, although the appellant would be asked to explain their grounds of appeal.

[16] The Householder Appeals Service commence on 6 April 2009, following a successful pilot period.

3.48 The fast-track approach could be further strengthened by granting the Planning Inspectorate the ability to determine, on behalf of the Secretary of State, the appeal method. This would help to ensure that all appeals that were suitable for the fast-track service were dealt with in this way. Additionally, the Planning Inspectorate could be enabled to exclude an appeal from fast-track service where necessary, for example if there was insufficient information available for them to handle the appeal without recourse to external advice, if there were a need for detailed technical testing, or if the appeal raised issues of considerable public interest. Only appeals that could reasonably be dealt with through written representations would be eligible.

3.49 As with the householder appeals service, the fast-tracked process for determining written representation conditions related appeals could be made subject to a target that, by the end of 2011/12, 80 per cent of these appeals are to be decided within eight weeks.

3.50 In these cases, just as is the case now, there would be a right of challenge to the High Court by any person aggrieved by the decision.

3.51 In instances where there is a conditions related appeal at the same time as there is an enforcement appeal for the same development, the fast-tracked process would not be applied, if the appeals were suitable for linking. If the appeals were linked, the enforcement appeal timetable would be used.

Measures requiring primary legislative change

3.52 Introducing measures (7), (8) and (9) would be outside the scope of the GDPO and would need to be implemented through primary legislation. At this stage, therefore, we are seeking initial views on whether, when the next suitable legislative opportunity arises, we should seek the introduction of any or all of these measures.

MEASURE (7) DEVELOPER TO NOTIFY LPA PRIOR TO STARTING DEVELOPMENT

3.53 WYG recommended imposing a statutory requirement on those implementing a planning permission to provide the LPA with a commencement notice, in writing, stating the anticipated date of commencement of development. This will:

- place an onus on developers to make sure that all requirements of their planning consent have been met; and
- ensure that the LPA is aware of the commencement of development so that they can review their files to check that the necessary conditions have been discharged, and, where this is not the case, inform the developer before development commences.

3.54 Introduction of such a measure should not introduce a significant additional burden on developers, as they are already normally required to notify the LPA of their intention to commence for building control and planning obligation purposes, and potentially in the future for CIL purposes[17].

3.55 To ensure that LPAs are aware of when development commences, the developer implementing the planning permission would be required to submit a commencement notice before development commences. Parties not complying with this procedure could gain an unfair advantage. To dissuade such behaviour and any accompanying disputes over when development commenced, the LPA could be given enforcement powers to deal with any failure to submit a commencement notice.

MEASURE (8) DEVELOPER TO DISPLAY DECISION NOTICES AND CONDITIONS ON SITE

3.56 This measure, would, if introduced, require those implementing a planning permission to post on site, on public display, a copy of the relevant planning permission and all pre-commencement approvals required by condition.

3.57 This measure is intended to help ensure pre-commencement conditions are fully discharged before work starts and to inform third parties about the approved development and the nature of any planning conditions imposed.

MEASURE (9) DEFAULT APPROVAL FOR APPLICATIONS MADE FOR CONSENT, AGREEMENT, OR APPROVAL REQUIRED BY A CONDITION ATTACHED TO A GRANT OF PLANNING PERMISSION

3.58 This proposal would involve the introduction of a procedure where consent, agreement or approval required by a condition is deemed granted, by default, if the LPA does not respond to an application within a certain time period.

3.59 It would operate in a similar manner to the 'prior approval' procedures which are available for certain types of development and which are, in essence, an intermediate planning tier between permitted development and full planning application. Under prior approval, consent is deemed granted if the LPA does not object within a given time-period. Prior approval procedures already exist for certain telecommunication or agricultural developments, and in July 2009 the Government consulted on the possible introduction of prior approval procedures for hole-in-the-wall ATMs and shopfront alterations.

3.60 Default approval for planning conditions would mean that the consent, agreement or approval required would be deemed granted if the LPA did not object with a certain time.

[17] http://www.communities.gov.uk/publications/planningandbuilding/communitylevyconsultation

3.61 WYG research found this Killian Pretty proposal was strongly supported by developers, but was only supported by about a quarter of the LPAs who responded. The proposal would greatly improve the certainty for developers that they will have a decision by a certain date, though there may be a risk of more matters being refused where LPAs were unable to consider the matter within the timescale. A further risk is that, with such a process in place, LPAs may be less willing to deal with issues through a planning condition, thus increasing the amount of detailed information that must be submitted with the application.

Consultation questions on part 3

Measure (1): Discussion of potential conditions to be a key component of pre application engagement

3 Other than new policy references, are there other measures which could be used to encourage pre application discussions, and including matters relating to the use of planning conditions within these discussions?

Measure (2) Structuring decision notices

4 Do you agree we should commend the use of structured decision notices along the lines recommended above?

5 If yes, what would be your preferred method of implementation?

5(a) Encourage LPAs to structure their decision notices as good practice?

5(b) Include the structuring of decision notices within policy as a specific requirement?

5(c) Make this a statutory requirement through an appropriate legislative change?

6 To which kinds of applications should this apply?

Measure (3) Sharing draft decision notices for major applications with applicants before decisions are taken

7 Do you agree that sharing draft decision notices with applicants in advance of making a decision (in the case of delegated applications) or of the planning committee meeting would help to ensure that conditions imposed accord with national policy and meet the six policy tests?

8 If this measure is taken forward, do you believe this should be made a statutory requirement, rather than encouraged as good practice?

9 If this requirement or recommendation were introduced, would the proposed five day timescale be reasonable and achievable?

9 (a) If not, would that alternative proposal of 10 days be reasonable and achievable?

9 (b) If not, what timescale do you think would be reasonable and achievable?

10 Besides the LPA and the applicant, should other parties be able to access and comment on the draft decision notice? In what circumstances would this be appropriate?

Consultation questions on part 3 *(continued)*

Measure (4) Shortening the time limits for discharging conditions

11 Do you agree that time limits for dealing with an application for written consent, agreement or confirmation required by a condition should be tightened?

12 Do you think the time limits proposed here are reasonable and achievable, namely four weeks for applications related to householder development and six weeks for all other development?

13 If not, what alternative limits would you suggest and why?

14 Would you support an equivalent change to the timescales for decision on section 73 variations?

15 Do you think that we should amend the Fees Regulations 2008 to require that where an application of the types listed above has not been determined within the relevant timescale the full fee should be refunded?

Measure (5) A planning services key performance indicator to include the use and discharging of conditions

16 Do you agree that the performance of local planning authorities in handling applications to approve details required by a condition should be monitored and taken into account in a new performance indicator?

17 Have you any specific suggestions about how best this matter could be monitored, in an efficient and effective way?

Measure (6) A fast-track conditions appeals service

18 Do you think a conditions appeals service, as described, could work for the types of appeals proposed? If not what amendments do you suggest?

19 Other than those already suggested, are there any types of appeals which should be excluded from a fast-track conditions appeals service?

20 If refusal of section 73 applications were made eligible for the potential fast-track conditions appeal service, should those section 73 applications which only seek to vary approved plans be excluded?

Consultation questions on part 3 *(continued)*

21 Third party involvement has been excluded from the proposed conditions appeals service as comments on the original application will have been taken into account when that application was determined, and reflected where appropriate in the conditions attached to it, and the initial consultation on that application will have referred to the fact that that this is the case and their representations will be taken into account in the event of any subsequent conditions-related appeals. Is this a reasonable assumption?

22 If third parties were for be included in the proposed conditions appeals service, how could this be managed effectively in order to ensure an appropriate balance between inclusiveness and efficiency?

Measure (7) Developer to notify LPA prior to starting development

23 Should we seek legislative powers to require those implementing a permission to inform the LPA when they commence development?

24 If you agree this measure should be introduced: (i) how much, if any, advance notice should be given before works start; and (ii) should this requirement apply to major applications only, or all schemes?

Measure (8) Developer to display of decision notices and conditions on site

25 Should we seek legislative powers to require those implementing a permission to put up a notice displaying the planning permission and all pre commencement approvals required by condition?

26 Should this requirement apply to major applications only, or all schemes?

27 Are there further steps that should be taken to make information about decision notices and conditions publicly available?

Measure (9) Default approval for applications made for consent, agreement, or approval required by a condition attached to a grant of planning permission.

28 Should we seek legislative powers to allow for default approval of applications required to discharge planning conditions?

29 If default approval were introduced, how much time would it be reasonable to give local planning authorities to consider such applications?

30 Are there any matters that should not be subject to a default approval method?

Part 4

About this consultation

4.1 This consultation document and consultation process have been planned to adhere to the code of practice on consultation issued by the Department for Business, Innovation and Skills and is in line with the seven consultation criteria, which are:

- formal consultation should take place at a stage when there is scope to influence the policy outcome
- consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible
- consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals
- consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach
- keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained
- consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation
- officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience

4.2 Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

4.3 Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

4.4 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

4.5 The Department for Communities and Local Government will process your personal data in accordance with DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. Individual responses will not be acknowledged unless specifically requested.

4.6 Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

4.7 Are you satisfied that this consultation has followed these criteria? If not or you have any other observations about how we can improve the process please contact:

CLG Consultation Co-ordinator
Zone 6/H10
Eland House
London SW1E 5 DU
or by e-mail to: consultationcoordinator@communities.gsi.gov.uk

Part 5

Summary of consultation questions

Questions on proposed policy annex (Part 2)

1 Please provide your comments on the proposed new policy on the use of planning conditions, as set out in Part 2 of this document.

2 In policy CO18 in Part 2 of this document, Option A repeats the general principle established in Circular 11/95, that planning permission cannot be granted subject to a condition that the applicant enters into a planning obligation. Option B retains the general principle but provides additional policy guidance on the use of such conditions in exceptional circumstances, and on how they can be appropriately drafted.

2 (a) Which is the better policy approach to granting planning permission contingent to the completion of a s106 agreement? Option A or Option B?

2 (b) If you support Option 3, do you agree with the 'exceptional circumstances' suggested, and is the additional policy interpretation guidance helpful?

Questions on proposed measures (Part 3)

Measure (1): Discussion of potential conditions to be a key component of pre application engagement

3 Other that new policy references, are there other measures which could be used to encourage pre application discussions, and including matters relating to the use of planning conditions within these discussions?

Measure (2) Structuring decision notices

4 Do you agree we should commend the use of structured decision notices along the lines recommended above?

5 If yes, what would be your preferred method of implementation?

5(a) Encourage LPAs to structure their decision notices as good practice?

5(b) Include the structuring of decision notices within policy as a specific requirement?

5(c) Make this a statutory requirement through an appropriate legislative change?

Questions on proposed measures (Part 3) *(continued)*

6 To which kinds of applications should this apply?

Measure (3) Sharing draft decision notices for major applications with applicants before decisions are taken

7 Do you agree that sharing draft decision notices with applicants in advance of making a decision (in the case of delegated applications) or of the planning committee meeting would help to ensure that conditions imposed accord with national policy and meet the six policy tests?

8 If this measure is taken forward, do you believe this should be made a statutory requirement, rather than encouraged as good practice?

9 If this requirement or recommendation were introduced, would the proposed five day timescale be reasonable and achievable?

9 (a) If not, would that alternative proposal of 10 days be reasonable and achievable?

9 (b) If not, what timescale do you think would be reasonable and achievable?

10 Besides the LPA and the applicant, should other parties be able to access and comment on the draft decision notice? In what circumstances would this be appropriate?

Measure (4) Shortening the time limits for discharging conditions

11 Do you agree that time limits for dealing with an application for written consent, agreement or confirmation required by a condition should be tightened?

12 Do you think the time limits proposed here are reasonable and achievable, namely four weeks for applications related to householder development and six weeks for all other development?

13 If not, what alternative limits would you suggest and why?

14 Would you support an equivalent change to the timescales for decision on section 73 variations?

15 Do you think that we should amend the Fees Regulations 2008 to require that where an application of the types listed above has not been determined within the relevant timescale the full fee should be refunded?

Questions on proposed measures (Part 3) *(continued)*

Measure (5) A planning services key performance indicator to include the use and discharging of conditions

16 Do you agree that the performance of local planning authorities in handling applications to approve details required by a condition should be monitored and taken into account in a new performance indicator?

17 Have you any specific suggestions about how best this matter could be monitored, in an efficient and effective way?

Measure (6) A fast-track conditions appeals service

18 Do you think a conditions appeals service, as described, could work for the types of appeals proposed? If not what amendments do you suggest?

19 Other than those already suggested, are there any types of appeals which should be excluded from a fast-track conditions appeals service?

20 If refusal of section 73 applications were made eligible for the potential fast-track conditions appeal service, should those section 73 applications which only seek to vary approved plans be excluded?

21 Third party involvement has been excluded from the proposed conditions appeals service as comments on the original application will have been taken into account when that application was determined, and reflected where appropriate in the conditions attached to it, and the initial consultation on that application will have referred to the fact that that this is the case and their representations will be taken into account in the event of any subsequent conditions-related appeals. Is this a reasonable assumption?

22 If third parties were for be included in the proposed conditions appeals service, how could this be managed effectively in order to ensure an appropriate balance between inclusiveness and efficiency?

Measure (7) Developer to notify LPA prior to starting development

23 Should we seek legislative powers to require those implementing a permission to inform the LPA when they commence development?

24 If you agree this measure should be introduced: (i) how much, if any, advance notice should be given before works start; and (ii) should this requirement apply to major applications only, or all schemes?

Questions on proposed measures (Part 3) *(continued)*

Measure (8) Developer to display of decision notices and conditions on site

25 Should we seek legislative powers to require those implementing a permission to put up a notice displaying the planning permission and all pre commencement approvals required by condition?

26 Should this requirement apply to major applications only, or all schemes?

27 Are there further steps that should be taken to make information about decision notices and conditions publicly available?

Measure (9) Default approval for applications made for consent, agreement, or approval required by a condition attached to a grant of planning permission.

28 Should we seek legislative powers to allow for default approval of applications required to discharge planning conditions?

29 If default approval were introduced, how much time would it be reasonable to give local planning authorities to consider such applications?

30 Are there any matters that should not be subject to a default approval method?

Questions on consultation stage impact assessment (Part 6)

31 Do you have any questions on the consultation stage impact assessment particulary the anticipated benefits for applicants?

Part 6

Consultation stage impact assessment

Summary: Intervention & Options		
Department /Agency: **Communities and Local Government**	**Title:** **Impact assessment of proposals to improve the use and discharge of planning conditions**	
Stage: Consultation	**Version:** 1	**Date:** 30 October 2009
Related Publications: Government Response to the Killian Pretty Review		

Available to view or download at:

http://www.communities.gov.uk/planningandbuilding/planning/planningpolicyimplementation/reformplanningsystem/killianprettyreview/

Contact for enquiries: Tammy Adams **Telephone:** 0303 444 1710

What is the problem under consideration? Why is government intervention necessary?

Planning applications are commonly granted subject to conditions. These conditions may restrict certain aspects of the development or its onward use, including operational requirements. LPAs differ in their approach to conditions. In some cases, conditions may impose unnecessary restrictions on developers. LPAs are responsible for deciding that conditions have been met to their satisfaction. This can be a significant administrative burden. Also, delays at this stage of the development process can increase the project costs and introduce additional risks for would-be developers.

What are the policy objectives and the intended effects?

The Government's objectives are:

- to increase the efficiency of the planning applications system by minimising the use of conditions and avoiding unnecessary delays to the implementation of developments which have been granted planning permission
- to reduce the administrative burden on local planning authorities in discharging conditions and remove delays from that part of the process.

What policy options have been considered? Please justify any preferred option.

Option A) do nothing.

Option B) encourage the streamlined use of conditions by revising policy to confirm the need for all conditions used to be necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects. Also provide a new range of measures which LPAs can use to make the discharging of conditions more efficient. Option B is preferred as it would introduce more consistency in the use and discharge of planning conditions across England, facilitate development once granted, reduce delays and result in administrative savings for LPAs.

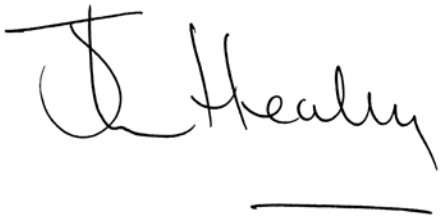
When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

If implemented the proposed policy would be reviewed approximately four years after commencement.

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible minister:



Date: 16 December 2009

To comment on the consultation stage impact assessment see Question 31 in the 'Summary of Consultation Questions' at Part 5 of this document.

Summary: Analysis & Evidence

Policy Option: B	**Description: Impact assessment of proposals to improve the use and discharge of planning conditions**

COSTS

ANNUAL COSTS		Description and scale of **key monetised costs** by 'main affected groups' At this stage no costs have been monetised. Consultees are asked to consider our assessment of the costs and benefits, and particularly provide information on any possible costs to local planning authorities of updating IT systems.	
One-off (Transition)	**Yrs**		
£			
Average Annual Cost (excluding one-off)			
£		**Total Cost** (PV)	**£**

Other **key non-monetised costs** by 'main affected groups'.
One off costs to local planning authorities of updating IT systems; resource costs for LPAs from allocating more resources to pre-application discussions (this should be a transfer of resources); small additional cost to developers of notifying local authorities of commencement of development.

BENEFITS

ANNUAL BENEFITS		Description and scale of **key monetised benefits** by 'main affected groups' Fee savings and administrative savings for applicants: £1.2m – £2.5m (average annual saving assuming 25 per cent of applications are made online – see evidence base for explanation) Annual savings for applicants from reduced delays: £3.8m	
One-off	**Yrs**		
£			
Average Annual Benefit (excluding one-off)			
£5m		**Total Benefit** (PV)	**£41m–£52m**

Other **key non-monetised benefits** by 'main affected groups'.
Improving the process should provide efficiency savings for planning authorities. Due to fewer conditions needing discharge, planning authorities will free up resources from the post-determination stage of the application process. Developers will benefit from more timely decisions being made and greater certainty about what conditions will be attached to planning permissions and the timescale in which conditions are discharged.

Key Assumptions/Sensitivities/Risks The key assumptions in this impact assessment relate to the proportion of conditions which are no longer attached to planning permissions leading to a reduction in applications related to conditions. The central scenario assumes a fall of 15 per cent and sensitivity analysis has been completed around a range of 10 per cent to 20 per cent. These assumptions are not based on any evidence and are intended to provide indicative figures of the costs and benefits Data on online applications is used to inform the analysis and has been grossed up under assumptions of numbers of applications made online.

Price Base Year 2009	**Time Period Years** 10	**Net Benefit Range** (NPV) **£41m–£52m**	**NET BENEFIT** (NPV Best estimate) **£47m**

What is the geographic coverage of the policy/option?			England	
On what date will the policy be implemented?			New Policy April	
Which organisation(s) will enforce the policy?			LPAs	
What is the total annual cost of enforcement for these organisations?			£0	
Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU requirements?			N/A	
What is the value of the proposed offsetting measure per year?			£ N/A	
What is the value of changes in greenhouse gas emissions?			£ N/A	
Will the proposal have a significant impact on competition?			Yes/No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices) (Increase – Decrease)

Increase of £0 Decrease of £0 **Net Impact £0**

Key:	**Annual costs and benefits: Constant Prices**	**(Net) Present Value**

Evidence Base (for summary sheets)

Background

Planning applications are commonly granted subject to conditions. These conditions are imposed by local planning authorities (LPAs) and may restrict certain aspects of the development or its onward use, including operational requirements. Developers may apply for any consent, agreement, or approval required by condition, or to remove or amend conditions, or to seek confirmation that all of the conditions attached to a particular planning application have been met. Dealing with all of these requests can be a significant administrative burden for LPAs. Also, delays to implementation that arise from work required by LPAs at this post-decision stage of the development process can increase the project costs and introduce additional risks for project delivery.

The Killian Pretty review[18] looked at the planning application process in order to identify possible improvements and consider ways to make the process more effective and swifter in order to benefit all users. The review identified some areas of the process as being particularly problematic: pre application discussions and the discharge of conditions following the grant of planning permission. The review recommended that the approach to planning conditions should be comprehensively improved to ensure that conditions are only imposed when justified, and that the processes for discharging conditions are made clearer and faster.

Within this recommendation, Killian Pretty made some specific suggestions as to potential measures to improve the discharge of conditions. These ideas have been worked up and included in the consultation paper, with the exception of the use of approved contractors to carry out the discharge, monitoring and enforcement of conditions on the LPA's behalf. This idea was explored, but during informal testing it was strongly opposed by most LPAs and received a mixed response from the private sector representatives, with some support from the consultant community, but also some wariness on the part of developers. The main concerns identified with this option were:

- it would not suit the new development management approach
- LPAs need to retain control over this part of the process
- quality of output and third party transparency could suffer
- consistent end to end management of application is preferred
- current condition discharge fees would not cover the costs
- current fees would not attract private sector interest

[18] The Killian Pretty Review: *Planning Applications – A faster and more responsive system: Final report* http://www.planningportal.gov.uk/uploads/kpr/kpr_final-report.pdf

Communities and Local Government then commissioned WYG Planning & Design to undertake a study to identify, test and recommend the best ways of improving the process of discharge of planning conditions[19]. This was done through consultation with stakeholders with experience of the discharge of conditions across different types of schemes. The outcome of this work has directly informed the identification of the preferred package of new measures, as proposed in the consultation paper.

The two key elements of our proposals are:

- updated policy on the use of planning conditions and
- a package of measures to improve the discharge of planning conditions

Rationale for intervention

The Killian Pretty review found evidence that there is:

- inconsistency in the scope and use of conditions
- no clear system for discharging conditions or recording actions and
- on average eight pre-commencement conditions attached to planning permissions, though there may be far more

The review found that stakeholders believed more planning conditions are being used now than in the past. This was for a number of reasons: insufficient engagement at the pre-application stage, the lack of time to resolve issues because of the time targets regime, and applicants' desire to leave matters of detail until after the principle has been agreed. The effects of the increasing use of conditions, and the breadth of issues that they can address, are keenly felt at the discharge of conditions stage when they can delay the start of development and place additional demands on LPA resources.

Intervention is needed to ensure that LPAs are using conditions appropriately and effectively and in line with policy, to reduce unnecessary and disadvantageous demands on LPA resources and to reduce the delays to implementing developments that are associated with the discharge of conditions.

Objectives

There are two key objectives:

- to increase the efficiency of the planning application system by improving the approach to the use of planning conditions
- to reduce unnecessary delay to the commencement of new development arising from inefficiencies in the discharging of conditions

[19] WYG Planning & Design, *Discharging Planning Conditions – Final Report*

Options

(A) Do nothing

(B) Make changes to the policy to improve the use and discharge of planning conditions

We propose a new policy to improve the use of conditions. This will revise and replace Circular 11/95. The new policy will:

- retain the six key tests for planning conditions (that conditions must be: necessary; relevant to planning; relevant to the development proposed; enforceable; precise and reasonable in all other respects)
- remind authorities of the need to assess conditions against these tests
- reinforce the need to avoid certain types of conditions (for example conditions requiring a payment or other consideration in return for a grant of planning permission) and
- advise on the need to proceed with caution in relation to others, such as those that withdraw permitted development rights

We propose the following new measures to improve the discharge of planning conditions:

- *Measure 1: Encourage greater discussion of conditions at pre-application stage* – such discussions can resolve certain issues prior to the submission of the application, which can improve the quality of the development proposal and reduce the need for conditions to be attached to the decision notice.
- *Measure 2: Structured decision notices* – introducing a standard format for the decision notice using 4 standard headings relating to the relevant stage in the development process (time limit; pre-commencement; pre-occupation; regulatory or ongoing). This would allow it to be use a project management tool. This would require an amendment to the GDPO.
- *Measure 3: Draft decision notices to be shared with applicants for major applications several days in advance of the determination date* – to allow the applicant to consider and comment on whether the conditions proposed are appropriate in nature, extent and content, and that unnecessary, inappropriate or unreasonable conditions are avoided (White Young Green considered that of all the measures they considered, this was the one most likely to reduce the number of planning conditions attached to planning permissions). This would require an amendment to the GDPO.

- *Measure 4: Changes to time limits for discharging conditions* – in order to drive up performance on the discharge of conditions we propose that the time limits for determination of such applications be reduced to four weeks for conditions on householder permissions and six weeks in all other cases. Currently the applicant can appeal on non-determination at eight weeks, and the LPA has to refund the fee at 12 weeks in practice, and LPAs are urged to endeavour to deal with simple requests within 21 days.
- *Measure 5: Reflect conditions in key performance indicators* – An end to end quality of planning service indicator could include consideration of how conditions are used and whether the discharging stage was dealt with efficiently. This would be implemented via the next revision of the local area agreement performance framework, which will take place from 2011.
- *Measure 6: Fast-track appeals* – this new provision would operate if a LPA refused an application for approval of details reserved by condition, or if a decision on such an application was not forthcoming within the statutory timescales. It is similar to the Householder Appeals Service that commenced in April 2009.

The following measures are also proposed but would require primary legislative change, so would not be implemented as quickly as measures A-F. We are seeking views on whether, when the next suitable legislative opportunity arises, we should seek the introduction of any or all of these measures:

- *Measure 7: Notification of commencement to be given by developers* – the introduction of such a measure would place an onus on developers to make sure that all requirements of their planning consent have been met, and stimulate local planning authorities to review their files to confirm that the necessary conditions have been discharged.
- *Measure 8: Display planning decision, conditions and discharge confirmations on site* – applicants would be required to display a copy of the relevant planning permission and all pre-commencement approvals required by condition on the site (this is intended to help ensure that all pre-commencement conditions are met before work starts, and to alert third parties to the proposed development and any associated conditions).
- *Measure 9: Default approvals* – applications for the approval of planning conditions would be deemed to be granted unless the LPA objected within a certain timescale (this would increase certainty for developers but would place further pressure on LPAs to consider these applications within the necessary timescale).

Cost benefit analysis

Parties affected by the changes

- local planning authorities will be affected in their role in imposing and discharging conditions. The proposals may not lead to a net benefit for LPAs in terms of saved resources, but instead will encourage LPAs to shift resources in order to ensure greater efficiency in the planning process
- applicants (developers and householders) who have to comply with planning conditions attached to planning permissions will also be affected by the proposals. Overall, we expect they will face more certainty about what conditions are likely to be attached to the permission and where fewer conditions are imposed there should be less risk of delay in the construction and occupation timetable. There are likely to be differential impacts on applicants. It is likely that applicants for major schemes will gain the most benefit from the proposed changes due to the greater number of conditions attached to bigger schemes

Qualitative assessment of the costs and benefits

The table below lays out the actions that are expected to arise from each of the measures proposed and the associated impacts on different parties. Overall, these proposed changes are expected to:

- reduce the number of conditions that LPAs put on permissions
- encourage faster decisions on the discharge of conditions and increase the efficiency of the planning system

Table 1: Qualitative assessment of proposed measures A to J			
Measure	**Actions**	**Costs**	**Benefits**
1) Discussion of likely conditions and confirmation of matters to be dealt with as part of the planning application itself, to be a key component of pre application discussions.	Meeting(s) between applicants and LPA officers.	The proposal does not create a new process but makes better use of existing pre application discussions. It is assumed that the proposals mean that local authorities and developers are able to re-allocate resources to earlier stages of the planning application process as pre application discussions lead to fewer conditions being imposed and better quality applications being submitted.	Greater focus on the pre application discussions leads to fewer conditions being imposed by LPAs as information pertinent to the development is identified and submitted earlier. This will lead to savings for developers in reduced fees and administrative burdens associated with making an application to have a condition removed, varied or discharged.
2) Decision notices to be structured under four standard headings.	LPA to amend internal procedures.	Decision notices are already produced and some local authorities already structure them. However, some local authorities will need to make changes to their IT systems in order to meet these requirements.	Structuring decision notices will help local authorities to keep better records and reduce the administrative cost of confirming discharge of conditions later in the process.
3) Draft decision notice is made available for major applications before a decision is taken.	Correspondence between LPA officers and applicant.	This measure would lead to increased administrative work for LPAs at the determination stage of the application. The WYG report found that 55% of LPAs already do this so this will not have the same impact across LPAs.	The proposed conditions would be subject to scrutiny prior to a decision being made on an application and this may reduce the need for developers to apply to amend or remove conditions at a later stage. It may also lead to fewer conditions being imposed.

Table 1: Qualitative assessment of proposed measures A to J *(continued)*			
Measure	**Actions**	**Costs**	**Benefits**
4) Reduction in time limits for discharging conditions from 8-12 weeks in practice now to four weeks for householder applications and six weeks for all other applications.	LPA officers to review applications and discharge conditions within shorter period.	The WYG report found that currently 26% of applications for discharge of conditions are made within 21 days, and 49% within six weeks. This suggests that about half of all applications for discharge of conditions will need to be decided more quickly. This may have resource implications for LPAs but these should be minimised by the reduction in the number of conditions attached to planning permissions. For major and complex applications, where discharge of conditions might be a longer process, the use of planning performance agreements is being encouraged which allow the LPA and the applicant to agree their own timescales for dealing with applications, including discharge of planning conditions.	Developers will benefit from greater certainty about decision dates which will reduce financial risks for developers associated with delays. Knowing there is a reduced time limit for making decisions would provide an incentive for LPAs to consider more carefully conditions that they attach to planning permissions and should lead to a reduction in unnecessary conditions for developers to comply with.
5) Reflect use of conditions in key performance indicator.	Applicant to provide feedback to LPA; LPA officers to record feedback and report on KPI.	Applicants would face a small administrative cost in providing feedback to an LPA. There will be no extra burden on LPAs collecting this information as it would replace an existing KPI 157. Any costs of this proposal will be considered in a separate impact assessment on possible KPI changes.	This should encourage overall increases in efficiency in relation to planning conditions through recognition of development management processes which are working well.

Table 1: Qualitative assessment of proposed measures A to J *(continued)*			
Measure	**Actions**	**Costs**	**Benefits**
6) Fast-track appeals process for applications made for consent, agreement or approval required by a condition attached to the grant of planning permission.	Applicant to appeal to the Planning Inspectorate; PINS to consider and determine the appeal. Detailed propositions for how a fast-track appeal system for matters required by conditions would need to be worked up carefully to ensure practicality and that the nature of the matters eligible for fast-track appeal treatment are suitable. Options to be explored through consultation will include allowing PINS to decide whether or not to allow each appeal to take the fast-track route, and whether to limit eligibility for the fast-track route to simple matters which PINS can deal with without recourse to technical experts or LPA consultees.	This proposal may lead to some increased costs for the Planning Inspectorate. If this measure is taken forward, there would be further consultation on the detail of the process. At this stage, no account has been taken of the costs and benefits.	Incentive to LPA to determine within the new time limit.

Table 1: Qualitative assessment of proposed measures A to J *(continued)*			
Measure	**Actions**	**Costs**	**Benefits**
7) Developer to notify LPA prior to commencement of development.	Applicant to serve notice on LPA; LPA to check that all necessary conditions have been met.	There should not be any significant extra cost imposed on developers as they already notify other parties before commencement of development, for example, in relation to building control. Local authorities should not face any extra costs due to this measure as they will already check that conditions have been met on development. With other proposed measures the system should be more efficient and it should be less of a burden for LPAs to check.	The measure will allow LPAs to check that all the necessary conditions have been fulfilled before commencement, as receipt by the LPA of the developer's notice of their proposed start of development date will trigger the LPA to check that all pre commencement conditions have been complied with. There are also benefits to third parties from the greater transparency that this measure would bring.
8) Display conditions on site.	Applicant to print off and display all relevant notices on site.	This would lead to a negligible additional cost for the applicant as there are existing requirements for other certificates to be displayed on site.	There are benefits to third parties from the greater transparency that this measure would bring. Those living or working near the site would be able to see what conditions were attached to the planning permission.

Table 1: Qualitative assessment of proposed measures A to J *(continued)*

Measure	Actions	Costs	Benefits
9) Default approval for applications made for consent, agreement or approval required by a condition attached to a grant of planning permission. This would require primary legislation and so would this measure would be subject to a full impact assessment at that stage.	LPA to commit the necessary resources to reviewing and where necessary commenting on (or refusing) applications to approve conditions.	Staff time in considering applications (LPA); potential staff time in pre-application discussions if LPA keen to minimise overall number of conditions to avoid the risk of default approval (LPA and applicant).	This measure will provide certainty for an applicant that a decision will be made (or deemed approved) within a certain time period.

Summary of costs and benefits

Local planning authorities

Costs: LPAs who do not already structure their decision notices may need to update their IT systems in order to do this. This would be a one-off cost and this consultation asks stakeholders about the practicalities of introducing this requirement. There may be the potential for LPAs to make updates to their systems at a point where they make other routine or planned updates.

LPAs will also face costs from allocating more resources to the pre-application stage of the process. However, as the proposals should lead to fewer conditions being attached to grants of planning permission, LPAs will need to dedicate fewer resources to dealing with applications related to the discharge of conditions. Essentially this is a transfer of resources for LPAs though there should also be additional benefits from the greater efficiency of the system (see summary of benefits below).

Benefits: LPAs will benefit from the greater efficiency. Evidence on the benefits to LPAs of a more efficient system is found in the report *Transforming Local Planning Services*[20] Although this provides a basis for monetising the benefits claimed, the report has also been used to inform analysis of the new PPS on development management. In order to avoid double counting of the benefits of creating a more efficient planning application process, with a greater focus on pre-application discussions, these figures have not been used to monetise these benefits.

A report by Arup[21] suggests that LPAs spend 1.2 per cent of their time, and 1.4 per cent of the cost of the planning system on approval and discharge of conditions. The estimated labour costs including overheads related to planning conditions for the whole planning service is £16.2m.

Applicants

Costs: Any new costs for applicants will be negligible and will involve actions that they already perform in other contexts being extended to their role in complying with planning conditions, such as serving notice of commencement and displaying a list of conditions on site. No costs for applicants have been monetised.

Benefits: The key benefits for applicants, whether they are a major developer or a small business, will stem from:

(a) The reduced number of conditions which are attached to a grant of planning permission due to the greater focus on addressing issues in pre-application discussions. This reduced number of conditions will lead to a reduction in the fees and administrative costs that an applicant incurs when they apply for a condition to be removed, varied or discharged. The fee and administrative savings have been monetised below.

[20] *Transforming Local Planning Services: Using Business Process Improvement Techniques* http://www.pas.gov.uk/pas/core/page.do?pageId=112246

[21] *Planning Costs and Fees*, Arup (2007)

(b) A more efficient system for the discharge of planning conditions with shorter time limits for local authorities to make decisions on applications to discharge conditions. This should again lead to reduced delays for developers with benefits of greater certainty and reduced financial risk, as well as less waste of productive staff time. The Barker Review of Land Use Planning[22] identified as one of the benefits to investment associated with timely decision making in planning that the cost of capital is reduced, as the longer a planning decision takes, the greater the cost of capital tied up in loans relating to the development. This benefit has not been quantified due to the difficulties in aggregating possible benefits across proposed developments with loans of different sizes and different borrowing rates. However, estimated savings for applicants based on reduced staff costs relating to delays have been quantified below.

Quantitative assessment of the proposed measures

The following impacts have been quantified:

- fewer conditions being imposed leads to savings for applicants related to fee and administrative costs that are incurred making applications to have conditions removed, amended or discharged
- applicants also benefit from reduced delays through the reduction in unproductive staff time while waiting for a decision on a planning application

Fee and administrative savings stemming from the reduction in conditions

The Planning Portal provides figures showing the number of applications to remove/vary conditions or to get approval of details reserved by condition that were submitted online in England in the past 12 months[23]:

- Online applications to remove or vary a condition following grant of planning permission: 2,144
- Online applications for approval of details reserved by condition: 3,337

This is a very small percentage of overall online submissions during this period (approximately 1-2 per cent). This may be partially due to the fact that there is no statutory requirement for these types of applications to be made online, or even to be made on a standard application form. This means it is necessary to make an assumption about the proportion of total applications of this type that are made online. The average across all application types is 37 per cent[24]. This proportion applies to a wide range of applications, some of which are more commonly submitted online than others. For the purposes of estimating the total number of applications made in relation to planning conditions we

[22] *Barker Review of Land Use Planning Interim Report – Analysis* http://www.communities.gov.uk/planningandbuilding/planning/planningpolicyimplementation/reformplanningsystem/barkerreviewplanning/barkerreview/

[23] Source: correspondence from IBM on behalf of the Planning Portal, 13 October 2009

[24] Planning Portal presentation

have used a central scenario which assumes that 25 per cent of these applications are made online. This is less than the 37 per cent average for all types of application (and therefore leads to a larger estimate of the total number of applications related to conditions) but it is thought that this type of application is not typically made online. Sensitivity analysis has been done around this figure, with the assumptions made and their effect on the number of applications affected by the proposals shown in Table 2 below.

Table 2: Number of applications affected by proposals under different assumptions

Scenario	Low	Central	High
% of applications relating to conditions submitted online	37%	25%	15%
Estimated number of applications related to conditions	14,800	21,900	36,500

Assumptions made in estimating savings

It has been assumed that 20 per cent of these applications are submitted by householders and as conditions related to householder development are less likely to be affected by the proposals here, no reduction in these applications has been assumed.

There is no evidence which provides any clear indication of the impact of the proposals in terms of the reduction in the number of conditions attached to grants of planning permission. To provide indicative estimates of benefits for this impact assessment, it has been assumed that as a central estimate, there is a reduction of 15 per cent in planning conditions attached to grant of planning permission. Due to lack of certainty a range of estimated benefits has been produced assuming a lower reduction of 10 per cent and a higher reduction of 20 per cent.

Details of planning fees for (i) removal or variation of a planning condition or (ii) approval of details reserved by condition have been taken from the Planning Portal guide to planning fees[25]. The fee for removal or variation of conditions is £170 while the fee for approval of details reserved by condition is £85.

There is no evidence related to the administrative burden associated with making an application for removal or variation of a planning condition or approval of details reserved by condition. The administrative cost of making a minor planning application is usually assumed to be £1450[26]. As the fee for removal or variation of a planning condition is half that of a small minor planning application, it is assumed that the administrative cost is also half, £725. The fee for approval of details reserved by condition is half of that for removal or variation of a condition, and therefore it is assumed that the administrative cost of making such an application is half again, £363.

[25] http://www.planningportal.gov.uk/uploads/new_fees-oct_2009.pdf

[26] PwC Administrative Burdens Measurement Project

Table 3: Annual and 10 year savings under different assumptions about reduction in number of planning conditions – central estimate of number of applications affected			
Reduction in planning conditions	**Number of reduced planning conditions**	**Annual savings from both fees and admin costs**	**10 year savings (PV)**
10%	1,900	£1,200,000	£10,000,000
15%	2,900	£1,900,000	£16,000,000
20%	3,900	£2,500,000	£21,000,000

Savings for applicants from reduced delays

The numbers of applications made in relation to conditions has been estimated as outlined above using a central scenario which assumes that 25 per cent of applications relating to conditions are made online via the Planning Portal. Table 6 in the sensitivity analysis below shows how the benefits change when this assumption is varied.

Other assumptions made in estimating savings

It has already been assumed that there will be a reduction in the number of conditions attached to permissions and a subsequent fall in the number of applications. Any savings from reduced delays will only apply to the remaining applications: just over 9,000 in the scenario where there is a 15 per cent reduction in overall applications.

The WYG report found that 26 per cent of decisions on applications for discharge of conditions are made within 21 days, 49 per cent within six weeks, 64 per cent within eight weeks, 77 per cent within 10 weeks and 89 per cent within 12 weeks. This suggests about half of decisions take longer than six weeks to decide i.e. a quarter of the remaining applications. In estimating the savings from reduced delays, it has been assumed that half of the decisions which are currently made outside the six week limit will now be made within that timeframe. The reduction in delay is assumed to affect those decisions currently made within eight to12 weeks. This is because it is not clear how long it currently takes to make decisions on applications outside the 12 week limit and it is more likely that the policy will be able to have an impact on decisions which are currently being made within a few weeks of the proposed time limit.

There is information available on hourly staff costs at different management levels in a 'typical' firm[27]. Savings have been estimated assuming that a middle manager on an hourly rate of £42.33 has responsibility for the planning process for a particular development and would be unable to work at full productivity due to a delay in the planning decision. It is possible to calculate the opportunity costs of that staff time to the firm depending on how much time can be productively reallocated to other tasks.

[27] Supplied by BIS for another CLG IA

If 75 per cent of the manager's time is employed elsewhere whilst waiting for a planning decision, only 25 per cent is not employed productively during the period of delay. Given the hourly costs associated with that manager's time and the reduction in number of days taken for a decision to be given on the planning application, the saving for the applicant can be calculated. This suggests a saving of between £850 and £2,500 per application decided in a more timely fashion (two to six week reduction in time for a decision to be made).

Table 4: Savings from reduced delays in decisions on applications to discharge conditions

Number of applications made by business (not including householder applications)	Number of applications now decided within time limit (rounded)	Annual savings	10 year savings (PV)
9000	2300	£3,800,000	£31,000,000

Sensitivity analysis – varying the baseline number of applications relating to conditions

Tables 5 and 6 summarise the results of a sensitivity analysis showing how the estimated benefits vary when different assumptions are made to estimate the baseline number of applications related to planning conditions. Table 5 gives results assuming both a low baseline number of applications affected, and a low (10 per cent) reduction in numbers of planning conditions; a central estimate of applications affected and a central (15 per cent) reduction in numbers of planning conditions; and a high estimate of the baseline number of applications and a high (20%) reduction in numbers of planning conditions. Table 6 shows the savings from reduced delays given different assumptions about the baseline number of applications.

Table 5: Fee and administrative cost savings under varying assumptions of the baseline number of applications and the proportion of applications saved

Scenario	Baseline number of applications	Reduced number of applications	Annual savings from both fees and admin costs	10 year savings (PV)
Low	14,800	3,200	£800,000	£7,000,000
Central	21,900	4,800	£1,900,000	£15,500,000
High	36,500	6,400	£4,200,000	£34,500,000

Table 6: Savings from reduced delays under varying assumptions of the baseline number of applications				
Scenario	**Baseline number of applications**	**Number of applications with reduced delays**	**Annual savings**	**10 year savings (PV)**
Low	14,800	1,500	£2,500,000	£21,000,000
Central	21,900	2,300	£3,800,000	£31,000,000
High	36,500	3,800	£6,200,000	£52,000,000

Risks

The key risk around the proposal is associated with reduced numbers of conditions being applied to planning permissions. As conditions are applied where it is thought necessary to restrict certain aspects of the development or its onward use, if they are removed inappropriately this may lead to development going ahead which has some adverse impacts on its surroundings. However, this risk should be minimal as the policy retains the six key tests for planning conditions. The proposal is only intended to reduce the number of conditions which do not currently meet these tests, and are therefore unnecessary in development terms.

Monitoring and review

Another Killian Pretty implementation project, a new key performance indicator, looking at end-to-end development management service quality, is being considered. This would replace the current indicator on time targets for determining planning applications. If this was introduced it would be when the new set of KPIs came out in 2011. There would then be a period of two years to let the new performance monitoring regime look at the implementation of the development management process by LPAs.

Specific impact tests

Competition assessment

The increased emphasis on transparency of the application process is likely to have a beneficial impact on competition through reducing 'insider power' of incumbent developers.

Small firms' impact test

We have considered if the measures proposed will impact disproportionately on small firms in their role as applicants. Any new requirements for firms in their role as applicants in the planning process would be likely to have a greater impact on small firms. Although there are some additional requirements for developers proposed, such as the need to display on site a notice detailing the planning conditions attached, and to inform the LPA of the commencement of development, these are considered to have relatively little impact, particularly as these actions are undertaken already in relation to other policies. Therefore it is not thought that these proposals place any disproportionate impact on small firms. In addition there will be general benefits to all applicants of improving the efficiency and transparency of the planning application process and minimising delays to the implementation of sustainable development.

Legal aid impact test

There is no anticipated impact on legal aid.

Sustainable development, carbon assessment, other environment

The proposals will help to deliver sustainable development in a timely fashion by removing delays from the planning process.

Health impact assessment

There are no anticipated direct impacts for health.

Race, disability and gender equality

There is no anticipated impact on race, disability or gender equality.

Human rights

These proposals are not expected to impact negatively on human rights.

Rural proofing

The policy applies to LPAs and applicants in both urban and rural areas. It is not anticipated that there would be negative impacts on rural areas.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	Results in Evidence Base?	Results annexed?
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

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