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Patron HRH The Prince of Wales KG KT PC GCB

2 November 2016

Dear Sir/Madam,

RESPONSE TO CONSULTATION: Improving the use of planning conditions.

The Royal Town Planning Institute champions the power of planning in creating prosperous places and vibrant communities. Our 23,000 members are from the private, public, academic and voluntary sectors. Using our expertise and research we bring evidence and thought leadership to shape planning policies and thinking, putting the profession at the heart of society's big debates. We set the standards of planning education and professional behaviour that give our, wherever they work in the world, a unique ability to meet complex economic, social and environmental challenges. We are the only body in the United Kingdom that confers Chartered status to planners, the highest professional qualification sought after by employers in both private and public sectors.

Please see our response to the consultation attached.

Yours Faithfully,

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Improving the use of planning conditions RTPI response

1. The Neighbourhood Planning Bill provides at Clause 7 for "pre-commencement conditions" to require the written agreement of applicants for planning permission. We would agree that it is not appropriate for planning permissions to be burdened with unnecessary conditions. "Pre-commencement" conditions are those requiring the local authority to agree details of the scheme (e.g. brickwork) before construction commences. These have certain advantages to applicants, who may not be in a position to finalise details of a scheme but wish to secure a planning permission as soon as possible. They have advantages to local authorities because councils may have in practice limited legal ability to enforce conditions once a scheme is underway. Conditions are useful to the development industry in general because they enable schemes to be permitted which otherwise might have to be refused.

2. Concerns have been raised regarding delays to starts of schemes while such details are signed off ("discharged"). This could be the result of that fact that councils' planning departments are monitored very strictly on fairly limited measures of performance such as time from application to formal decision. The problems with one-measure performance regimes is that they can mask the wider consumer experience. We contend that this should not be a continuing problem because the Infrastructure Act 2015 S29 already makes such discharges automatic ("deemed discharges") in relation to all but a defined list[1] of condition types if the sign off is delayed too long. The Bill provides that if the applicant does not agree to a condition the council may then refuse the application (rather than stick with the condition). This seems unfortunate, as surely the refusal of planning permissions is something which in general should be avoided where at all possible.

3. Furthermore, good practice in planning departments involves discussion with applicants around conditions. The imposition of obligatory written consent from applicants means that in order to cure a problem in the worst cases and planning departments a system of extra red tape is being imposed on hard pressed local planning authorities (and indeed on applicants themselves) everywhere. We are not convinced this is not the best way to achieve improvements in planning practice.

Question 1: Do you have any comments about the Process for prohibiting pre-commencement conditions from being imposed where the local authority do not have written agreement of the applicant?

4. In principle we think it could work but urge caution. The requirement to get written clarification from an applicant will be an additional burden on local planning authorities. Whilst in principle this may seem like a simple measure, if it is to work properly, it would have significant implications in terms of service delivery, as explained below;

5. For the written agreement measure to work in line with the current frameworks that exist for determining planning applications, we agree as stated above that there

[1] Development subject to EIA; Flooding; Contaminated land; Archaeology; Highways; Reserved matters; Planning obligations

should be a cut-off response time for applicants. If a *statutory period* for response were to be imposed, reasonably we would suggest 21 days, in line with other consultation practices and to allow adequate time for consideration. This would require a planning authority to have fully assessed an application by week 5 of the application process. Whilst this may seem an adequate time for making a recommendation, it should also be noted that a minimum of 3 weeks has to be allowed at the beginning of the application process for public consultation, which, in a best case scenario leaves only 2 weeks for the officer to assess the application in the case of minor applications or 8 weeks in the case of major applications (which will include checking for accuracy, negotiating amendments, responding to consultee and neighbour comments, site visits, report writing). This does not take into local authority committee cycles. This increase pressure on the decision making assessment and process could unintentionally lead to more refusals of planning permission if agreements are not met.

Question 2 – Do you think it would be necessary to set out a default period, after which an applicant's agreement would be deemed to be given? If so, what you think the period should be?

6. If the measure is to be implemented, we think this is sensible. 21 days would be reasonable and fair to applicants (but see above).

Question 3 – Do you consider that any of the conditions referred to in Table 1 should be expressly prohibited in legislation? Please specify which type of conditions you are referring to and give reasons for your views

7. The proposal merely codifies in legislation, what should be good practice and is established in planning practice guidance. Therefore, we do not see a significant problem with the principle. However, it does bring into question the necessity for the SoS to use legislation for this purpose.

8. The examples given in the table would clearly fail current planning conditions tests but are still fairly general and could be open to wider than interpretation than intended.

9. We acknowledge that in some circumstances less-than-adequate conditions may slip through the net, that the sheer volume of conditions on some planning decision notices may seem excessive and that applicants may see the appeals process as unduly burdensome and costly.

10. However, we have seen little evidence, other than anecdotal, that the 6 tests established in planning practice guidance (PPG) and the mechanisms for challenging them are not working. In our view, the measures proposed in this consultation would not remove disagreements where they currently occur; e.g. on viability, adequate detailing, extent of duplication of other regulations. We have outlined further impacts in our answer to question 6.

Question 4 – Are there other types of conditions, beyond those listed in Table 1, that should be prohibited? Please provide reasons for your view.

11. We have no suggestions to be added to the table.

Question 5 –

- **Do you have any views about the impact of our proposed changes on people with protected characteristics as defined in s149 pf the Equality Act 2010?**
- **What evidence do you have on this matter?**
- **If any such impact is negative, is there anything that could be done to mitigate it?**

12. No views given

Question 6

- **Do you have any views about the impact of our proposed changes on businesses or local planning authorities?**
- **What evidence do you have on this matter?**
- **If any such impact is negative, is there anything that could be done about it?**

13. We have stated in our work on delivering the value of planning that 73% of our members constant changes to the planning system is hampering planners' ability to carry out their jobs effectively in both the public and private sectors.

Unintended consequences for applicants' businesses

14. Putting pressure on an applicant to agree in writing a condition, which they may miss a deadline for, could result in an unnecessary refusal of planning permission. There is also a risk that reducing the likelihood of planning permission to be granted subject to pre commencement conditions may deter developers from applying for planning permission in the first place as more of the development costs will need to be met upfront. If applicants do not agree conditions in writing, they could find decisions subject to conditions forcing arbitrary time periods to bet met (e.g. within one week of commencement of development). The applicant may well find themselves in the same predicament that they would find themselves in if a pre-commencement condition were imposed. There may also be a risk that authorities make more use of s106 agreements, which by their nature are more costly and resource intensive.

Alternative Solutions:

15. It is unlikely the measures proposed can reform the way conditions are *worded*, which is often the root of discrepancy as well as the *volume* of conditions imposed that are cited by some of our members as being unduly burdensome and costly. There are therefore other aspects of the conditions system that should be addressed if this issue is to be tackled at all.

16. In cases where the imposition of badly thought-through conditions are the fault of the decision maker, it would be far better addressed pre-emptively through the dissemination of good practice and training. However, this does require local planning authorities to retain expertise in house and/or to be able to send their staff and members to external training. It is highly likely that diminishing resources for planning departments has reduced these opportunities, which could well be

attributable to examples of bad practice. We therefore echo our calls for resourcing of planning authorities to be addressed.

17. We suggest further work with relevant bodies, including the RTPI, PAS and RIBA for officers, applicants and elected members, to help encourage good practice in all areas relating to planning conditions. To address reasons why councils see the need to impose stringent conditions, as well as resourcing, a review of applicant understanding practice may also be necessary if a solution to this identified problem is to be properly addressed. For example, although the consultation seems to suggest that problems surrounding conditions relates to how long it might take a Planning Authority to discharge a condition, we have seen little reported from DCLG about how long it takes an applicant to submit details pursuant to conditions, and how this impacts on the overall timeline of delivery.

18. There should also be efforts to engage and offer best practice to specialists who will often advise planning officers, to prevent duplication of requirements through conditions that might otherwise be required through other regulations.

19. Further, we are concerned as to why it is difficult for applicants to use the existing appeal process to challenge bad conditions. Work to improve the proper mechanisms by which applicants can impose conditions should be undertaken, perhaps exploring a fast-track condition appeal process.

20. Finally, we suggest that the relevant PPG paragraph is updated to show *specific examples* of the banned conditions, in order to provide more clarity to planning authorities and applicants' businesses, on what is meant by these examples.