



## ENGLISH HERITAGE

planningconditions@communities.gsi.gov.uk

Our ref: Your  
ref:

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19 March 2010

Dear Sirs

### Subject: Consultation on the Use and Discharge of Planning Conditions

English Heritage welcomes the opportunity to respond to the consultation on the use and discharge of planning conditions.

English Heritage is an Executive Non-Departmental Public Body sponsored by the Department for Culture, Media and Sport, with our funding agreement signed by CLG and DEFRA. We work in partnership with central government departments, local authorities, voluntary bodies and the private sector to conserve and enhance the historic environment, broaden public access to our cultural heritage, and increase people's understanding and appreciation of the past.

We are the UK Government's statutory advisor and a statutory consultee on all aspects of the historic environment and its heritage assets. This includes archaeology on land and under water, historic buildings sites and areas, designated landscapes and the historic elements of the wider landscape. *Conservation Principles* <http://www.english-heritage.org.uk/server/show/nav.9181> sets out the guidelines for engagement with the historic environment which have informed the consultation draft of Planning Policy Statement 15 (PPS15).

We are fully supportive of the general approach to reduce the number of conditions on planning permissions through effective use of pre-application and pre-determination discussions. We consider that proposals for development should be understood as fully as possible prior to determination and that the scope of any investigative works and details of methodology and materials should as far as possible be agreed with the local planning authority and submitted with the application. This reduces the burden for local authorities, manages risk for developers, and is likely to be more effective in securing conservation objectives.

The acknowledgement that the limited circumstances in which a condition precedent would be acceptable include the requirement for an archaeological investigation is also welcomed. We consider it may also be necessary for an undertaking to be secured through a S106 where the publication of the results of such investigative works is programmed to take place after a development has been completed and in those circumstances it would be appropriate to impose a condition requiring the completion of such an agreement.

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[www.english-heritage.org.uk](http://www.english-heritage.org.uk)

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We have responded to the consultation by the Planning Inspectorate on their model conditions suggesting redrafting which improves consistency in the way they are worded, meets the 6 tests and improves the wording so they are easier to discharge. We have also suggested the deletion of some conditions which do not meet the tests of the Circular in that they are imprecise and/or unenforceable or because they duplicate the requirements of other conditions relating to specified designations such as conservation areas or Listed Buildings.

The proposal to require local planning authorities to publish decision notices on their web site within 2 days and structure decision notices would improve the transparency of the system, and a requirement for the developer to notify the local planning authority of the intention to commence development is particularly important to ensure conditions relating to the protection of the historic environment are complied with.

However, we consider the proposal that a condition should be approved by default if the local planning authority do not discharge it within a specified time could have severe impact on the significance of heritage assets and the integrity of the historic environment.

A full response to the consultation questions is attached.

Yours faithfully

Pat Aird  
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### Conditions Consultation: Response to Consultation Questions by English Heritage

COI.1 conditions should be consistent with national planning policies

**Agree**

COI.2 conditions should not duplicate other controls

**Agree**

COI.3 conditions should be discussed and as far as possible agreed at pre-app stage

**Agree**

COI.4 reasons should be given for conditions

**Agree**

CO2 conditions should comply with the 6 tests

**Agree** *We have responded to the consultation by the Planning Inspectorate on their model conditions suggesting redrafting which improves consistency in the way they are worded, meets the 6 tests and improves the wording so they are easier to discharge. We have also suggested the deletion of some conditions which do not meet the tests of the Circular in that they are imprecise and/or unenforceable or because they duplicate the requirements of other conditions relating to specified designations such as conservation areas or Listed Buildings.*

CO9 development should be time limited

**Agree**

CO10 Decision Notices should list approved plans

**Agree**

CO11 the decision notice should be structured with conditions grouped according to the timing of their implementation

**Agree**

CO12 conditions which do not meet 6 tests should not be used

**Agree**

CO13 details with outline must be considered but illustrative details must not

**Agree**

CO14 conditions requiring completion should not be used

**DISAGREE** *in some circumstances the development needs to be completed to mitigate any impact on a heritage asset eg if part of a building is to be removed and rebuilt*

CO15 conditions requiring the ceding of land should not be used

**Agree**

CO16 conditions requiring payment

**Agree**

CO17 conditions delaying commencement

**Agree**

CO18.1 option A conditions should not require completion of a S106

**DISAGREE**

CO18.2 option B conditions could require completion of S106 in exceptional circumstances eg re publication of archaeological report.

**Agree** *Option B is the better policy approach and the extra guidance is helpful. An additional circumstance might be securing the publication of an archaeological report of response to C20*

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CO19 conditions requiring further approvals should not be used

**Agree**

CO20 conditions should be used rather than a S106 because of the enforcement powers of a Breach of Condition Notice (BOCN)

**DISAGREE** A S106 may be more effective in securing the publication of archaeological report as it would be more appropriate to deal with as a breach of contract rather than a BOCN as the enforcement would not relate to activity on the site and also involves 3<sup>rd</sup> party contractors therefore the person responsible would not necessarily be the landowner or the developer

CO21 conditions should be placed on the outline consent

**Agree**

CO22 conditions modifying the proposed development should not be used

**Agree**

CO23 conditions precedent should be used sparingly except for specific requirements such as archaeological investigation

**Agree**

CO24 occupation should only be prevented in exceptional circumstances

**Agree** – a good example is when archaeological investigation needs to take place currently with building programme eg survey of a listed building; archaeological excavation of building foundations

CO25 conditions which remove PD rights should be used sparingly

**No comment**

CO26 fees

**No comment**

## Consultation questions on Part 2

We are fully supportive of the general approach to reduce the number of conditions on planning permissions through effective use of pre-application and pre-determination discussions. We consider that proposals for development should be understood as fully as possible prior to determination and that the scope of any investigative works and details of methodology and materials should as far as possible be agreed with the local planning authority and submitted with the application. This reduces the burden for local authorities, manages risk for developers, and is likely to be more effective in securing conservation objectives.

The proposal to require local planning authorities to publish decision notices on their web site within 2 days and structure decision notices would improve the transparency of the system. A requirement for the developer to notify the local planning authority of the intention to commence development is particularly important to ensure conditions relating to the protection of the historic environment are complied with.

We consider these three proposals are more likely to be implemented through the dissemination of good practice than through enforcement measures, or through incorporating such good practice into a performance indicator for local planning authorities.

We consider these measures should apply to all applications other than householder as some relatively small applications have complex issues.

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However, we consider the proposal that a condition should be approved by default if the local planning authority does not discharge it within a specified time could have severe impact on the significance of heritage assets and the integrity of the historic environment.



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