



PINS NOTE 13/2018r1

To: All Inspectors (England) and All Casework Managers

Relevancy: Planning and Enforcement appeals and Secretary of State Casework (all England only)

Date of Issue: **28 September 2018**

Review date: 28 March 2019

Last updated: 03 October 2018 – footnote 2 amended to include s79 appeals against conditional grant of planning permission; footnote 3 updated to clarify the position when the appellant has suggested the condition(s); Paragraph 6 refers to conditions included in the signed statement of common ground; and the Annex A template has been revised to place the response option for agreement to the proposed conditions first.

PRE-COMMENCEMENT CONDITIONS: S100ZA, Town and Country Planning Act 1990

1. From **1 October 2018**¹ any planning permission² granted on or after that day with pre-commencement conditions imposed **must** have the written agreement of the applicant / appellant to the wording of those conditions³. A general agreement to the principle of conditions will not be sufficient. If there is no agreement and the conditions are attached the decision may be vulnerable to challenge through the Courts for not following the correct process.
2. Once agreement to pre-commencement conditions has been obtained, Inspectors may change obvious typographical and

¹ The Town and Country Planning (Pre-commencement Conditions) Regulations 2018

² These provisions apply to planning permissions granted or modifications to any such grant pursuant to s62A, 70, 73, 77 (called-in applications), 78, 79 and s177 after the coming into force of the Regulations. The provisions also apply to any permission granted on a ground (a) enforcement appeal.

³ Section 100ZA(5), and (6) of the 1990 Act. Where the appellant has suggested the condition in writing, provided there is no alteration to its terms, this is in effect the written agreement required by s.100ZA(5). However, if the appellant suggests it orally at a hearing, the Inspector will need to get the appellant to write down that they consent to the specific condition.

grammatical errors, but any change to the wording itself will require a new consent from the appellant.

3. These measures apply to **England only**⁴ and **do not apply to appeals for outline**⁵ **planning permission**.

Action – appeals casework

4. **Allowed appeal decisions awaiting despatch** – Case Officers will **not issue the decision** until the Inspector has confirmed whether or not any action is required. If pre-commencement conditions are being imposed on the grant of planning permission (and written agreement has not already been obtained) Inspectors will need to instruct⁶ the Case Officer to write out to the appellant with a **Regulation 2(4) Notice** (see Annex A) giving them an opportunity to respond within **10 working days**. [Appeals being **dismissed** contain no conditions and can therefore be **issued as usual**.]
5. **Written Representations, decisions not yet sent in for despatch** – Case Officers will **not** write out to the appellant on all cases. If Inspectors consider pre-commencement conditions are necessary for the grant of planning permission, and written agreement to an appropriately worded set of conditions has not already been provided, the Case Officer should be instructed to write out to the appellant with a **Regulation 2(4) Notice** see Annex A at the earliest possible date.
6. **Hearings & Inquiries** – where the statement of common ground includes a list of suggested conditions, if it is clear that the appellant is agreeing to the terms of those conditions being imposed on any planning permission granted, then this should be sufficient written agreement as required by s.100ZA(5).

However, where discussions regarding conditions are taking place between the parties at the event, Inspectors will need to make it clear that, while not pre-judging any decision, the appellant has to provide **written** agreement to any proposed pre-commencement conditions (even when verbally agreed at the event).

If agreement has not been reached by the close of the event, the Inspector should give the appellant **5 days** to respond. Where written agreement is not received, and the Inspector identifies the

⁴ Section 100ZA(4) of the 1990 Act.

⁵ A pre-commencement condition means a condition imposed on a grant of planning permission (other than a grant of outline planning permission within the meaning of s.92), as per S100ZA(8) "... (other than a grant of outline planning permission within the meaning of section 92)...".

⁶ Providing them with the text of the proposed pre-commencement condition; the full reasons for the proposed condition, set out clearly and precisely; and the full reasons for the proposed condition being a pre-commencement condition, set out clearly and precisely.

need for pre-commencement conditions, the Case Officer should be instructed to write to the appellant with a **Regulation 2(4) Notice** see Annex A.

7. Following the issue of the **Regulation 2(4) Notice** letter:
 - (i) If a response is received and the **developer does not agree** to some or all of the pre-commencement conditions proposed to be imposed, it will be necessary for the Inspector to decide whether the conditions in dispute do need to be pre-commencement conditions. In such circumstances there are a number of courses of action. The Inspector could:
 - a) grant planning permission without the pre-commencement condition(s);
 - b) retain the condition but not require it to be discharged before commencement;
 - c) seek written agreement to an alternative pre-commencement condition(s); or
 - d) **refuse** to grant permission (if it is considered that the disputed pre-commencement condition is necessary to make the development acceptable in planning terms).
 - (ii) Where the **appellant has already agreed** to pre-commencement conditions (from the LPA's list, for example), but the **Inspector does not consider that these conditions are necessary**, Inspectors are advised to clearly explain their reasons for not imposing the conditions in the decision letter.
 - (iii) Where the **appellant only provides comments** on the proposed condition(s) but **does not state that they agree** to the imposition of the proposed condition(s) (provided for in Regulation 1(3)(ii)), Inspectors are advised to consider the new comments and the options outlined in (i) b), c) and d) above.
 - (iv) If the appellant **does not provide a response** within 10 working days, permission may be granted subject to pre-commencement conditions without their permission⁷.

Action – Secretary of State Casework

8. During Inquiries, Inspectors should attempt to gain the appellant's/applicant's written agreement to any pre-commencement conditions before the close of the Inquiry (as mentioned above), and refer to that agreement in their Report.

⁷ Regulation 2(1)(b) of the Town and Country Planning (Pre-commencement Conditions) Regulations 2018 provides that planning permission may be granted subject to a pre-commencement condition without the applicant's written agreement if the applicant has been notified of the intention to impose a pre-commencement condition and has not responded by the date specified in the notice.

9. Where Inquiries have already closed, prior to Reports being submitted to the Secretary of State, PINS will be responsible for the **Regulation 2(4) Notice** if the Inspector considers any pre-commencement conditions are necessary. Any queries about how to proceed in a particular case should be directed to the Major Casework Team.
10. From 1 October 2018, where the Report is already with the National Planning Casework Unit (NPCU), they will be responsible for seeking agreement to any pre-commencement conditions recommended by the Inspector before issuing the Secretary of State's decision.

Background

11. As part of the Neighbourhood Planning Act 2017, the Government introduced measures to improve the use of planning conditions.
12. As pre-commencement conditions prevent any start on the site being made until they are discharged, imposing such a constraint on development where it is not justified is seen by Government as unnecessarily delaying the delivery of development (and driving up costs).
13. Provisions in the Neighbourhood Planning Act inserted section 100ZA into the Town and Country Planning Act 1990 to prohibit the grant of planning permission subject to a pre-commencement condition without the written agreement of the applicant to the terms of the condition, except in prescribed circumstances.
14. The Town and Country Planning (Pre-commencement Conditions) Regulations 2018 enact the relevant provisions of the 1990 Act. They were laid before Parliament on 8 May 2018 and come into force on 1 October 2018.
15. "Pre-commencement condition"⁸ means a condition imposed on a grant of planning permission (other than a grant of outline planning permission within the meaning of section 92) which must be complied with—
 - (a) before any building or other operation comprised in the development is begun, or
 - (b) where the development consists of a material change in the use of any buildings or other land, before the change of use is begun.
16. In accordance with the Regulations, the requirement does not apply where the LPA or Secretary of State (Inspector) gives notice in writing to the applicant that, if planning permission is granted, the LPA or Secretary of State (Inspector) intends to grant that permission subject to the pre-commencement conditions(s)

⁸ Section 100ZA(8) of the 1990 Act.

specified in the notice **and** the applicant does not provide a substantive response to the notice before the expiry of 10 working days beginning with the day after the date on which the notice is given.

17. The **Regulation 2(4) Notice** must include:

The text of the proposed pre-commencement condition.

The full reasons for the proposed condition, set out clearly and precisely.

The full reasons for the proposed condition being a pre-commencement condition, set out clearly and precisely.

Notice that any substantive response must be received no later than the last day of the period of 10 working days⁹ beginning with the day **after** the date on which notice is given.

18. The revised NPPF is clear at paragraph 55:

*"Planning conditions should be kept to a minimum and only imposed where they are "necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects"¹⁰. Agreeing conditions early is beneficial to all parties involved in the process and can speed up decision making. **Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification.**"*

Contacts for further information

19. Please contact XXXX if you have any general queries on this Note.
20. Any requests or queries regarding writing out to the appellant on appeals casework please contact the Case Officer direct.
21. For Secretary of State casework queries contact XXXX.
22. Non-Salaried Inspectors may wish to approach XXXX with any other queries in the first instance, on which XXXX will liaise with XXXX.

⁹ A day which is not a Saturday, Sunday or Public Holiday (Regulation 1(3)).

¹⁰ The "6 tests".

Annex A

Regulation 2(4) Notice of The Town and Country Planning (Pre-commencement Conditions) Regulations 2018

I refer to the above appeal(s). In accordance with Section 100ZA(5) of the Town and Country Planning Act 1990, if the Inspector is minded to grant planning permission subject to pre-commencement condition(s) he/she may only do so with the written agreement of the appellant to the terms of the condition(s).

The Inspector has proposed in this case that any permission granted should include the following pre-commencement condition(s).

[INSPECTORS NEED TO PROVIDE THE FOLLOWING TEXT FOR EACH CONDITION:]

- The text of the proposed pre-commencement condition.
- The full reasons for the proposed condition, set out clearly and precisely.
- The full reasons for the proposed condition being a pre-commencement condition, set out clearly and precisely.

Can you please either:-

- i. Provide written confirmation that you accept the proposed conditions; or
- ii. State why you do not agree to the imposition of the proposed pre-commencement conditions; or
- iii. Provide comments on the proposed conditions.

If we do not receive a response within **10 working days** from the date of this letter in accordance with Regulation 2(1)(b) of the Town and Country Planning (Pre-commencement Conditions) Regulations 2018 you will be deemed to have given consent and the Inspector will be able to impose the proposed pre-commencement conditions without your express approval.

If you are not agreeable to some or all of the pre-commencement conditions, it will be a matter for the Inspector to decide whether the condition(s) in dispute need to be pre-commencement conditions. However, if the pre-commencement conditions are considered necessary to make the development acceptable in

planning terms, planning permission cannot be granted without them and the appeal may be dismissed.

Please note that the above is without prejudice to the Inspector's and/or Secretary of State's consideration of the case, or the final decision on the case.

I have copied this letter to the Local Planning Authority.