

# PRE-COMMENCEMENT CONDITIONS

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## BACKGROUND

In recent years there has been significant discussion about the impact of pre-commencement conditions on the planning and development process. As Local Planning Authorities have been mandated by central government to decide on planning applications within pre-determined timeframes, and in the context of significant reductions in local government spending power, there has been a move towards planning permissions being granted with increasing numbers of conditions attached. Furthermore, the burgeoning number of conditions have overwhelmingly been frontloaded in the development process, imposed by planning authorities as *pre-commencement* conditions.

Recognising the problem and the consequences this trend was having on the speed of housing supply, the Coalition Government legislated to introduce a 'deemed discharge' process through which developers can give notice of the intention to pursue an automatic discharge of the conditions in question. However, by introducing exceptions for certain categories of condition and allowing authorities to simply refuse before the deemed discharge can take effect its impact has been mixed.

The Neighbourhood Planning Bill, currently under consideration by Parliament, will create a requirement for planning authorities to obtain the applicant's agreement to the terms of any pre-commencement conditions and empower the Secretary of State to make regulations about the kinds of conditions which may or may not be imposed on a grant of planning permission.

## The problem

Developers have been constrained in recent years both by a vast increase in the volume of pre-commencement conditions imposed on planning consents and also the nature and appropriateness of conditions. This is typically manifested through the imposition of **pre-commencement conditions** which could, and should, be dealt with through **pre-occupation conditions**. That is, in many cases there is no reason why confirmation that a builder has met the conditions should prevent the commencement of construction. Where LPAs do provide a reason for the use of a condition it invariably fails to explain why such a condition is imposed at a pre-commencement stage.

Another frequent frustration for house builders is for extensive discussions and reporting to take place on a matter during the planning application process only then for the same issues and details to be the subject of pre-commencement conditions.

On large sites it is common for local planning authorities to impose a pre-commencement condition on the entire site that relates purely to later phases of the scheme. This prevents any work starting on any of the homes and makes the financial considerations more challenging.

In addition to examples of conditions that are inappropriate and the volume of conditions currently being attached to permissions, the time taken to discharge conditions slows housing supply. For example, one builder has reported that it has a site on which the average time taken to discharge an individual condition is 25 weeks; another where one inappropriate condition relating to highways took 9 months to resolve.

### Examples of inappropriate pre-commencement conditions

| Pre-commencement condition  | Region     | Commentary  | HBF Ref |
|---|------------|---|---------|
| <b>Full details of play area, with a plan at '1:200 scale showing the siting of design of play equipment, refuse bins, picnic tables and seating'</b>   | South East | Inappropriate as pre-commencement condition for a development of 1400 homes, 66 bed care home, new roundabout, new road, primary school extension | 9.1.1   |
| <b>Details of all lighting on the development including siting, design and lux levels</b>   | South East | Could be pre-occupation. Holding up development of 1400 homes + infrastructure  | 9.1.2   |
| <b>Installation of superfast broadband infrastructure</b>   | South East | Not fully in the control of the developer. No need to be a pre-commencement condition.  | 9.1.3   |
| <b>Public Art Statement approved by LPA before any work can start. To include details of locations of all public art, 'a brief explaining how artists are to be involved describing the potential recruitment process' and 'the proposed process for community liaison and engagement'</b>  | East       | Unnecessary as pre-commencement condition   | 12.1    |
| <b>Full details of the layout, plans and equipment to be installed in the play area are required before any groundworks can begin</b>   | South East | Not necessary as a pre-commencement condition – phased development  | 3.1     |
| <b>Undertaking works to a sports pitch which was not part of the development</b>  | South West | Unenforceable. Not part of the application  | 6.2.1   |
| <b>Approval of <u>all</u> materials prior to construction commencing</b>  | East Mids  | This requires approval of roof tiles before any roads, sewers, foundations can be built   | 1.3     |
| <b>Full details of soft landscaping must be approved before commencement</b>  | East Mids  | Unnecessary   | 1.2     |
| <b>Full details of the width, alignment, drainage, gradient, type of construction, tactile paving, barriers and signing proposed for the cycle route, including all relevant horizontal cross sections and longitudinal sections plus a programme for their implementation have been submitted to and approved by the Local Planning Authority in writing; in consultation with the highway authority</b> | South East | Unnecessary and replicates requirements of Section 38 highway adoption  | 2.1     |
| <b>Full details of the solar panels to be installed on homes</b>  | South East | Could be a pre-occupation condition   | 2.2     |
| <b>Approval of bat boxes</b>  | London     | Contaminated brownfield site with zero ecology issues. Unnecessary as pre-commencement  | 13.1    |

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|---|---------------|---|--------|
| <b>Details of utility boxes</b>   | South East    | Unnecessarily prevents building from starting   | 15.1   |
| <b>Window and door details</b>  | Yorkshire     | Unnecessary   | 15.2   |
| <b>Approval of bat boxes</b>  | West Midlands | Unnecessary   | 15.3   |
| <b>Noise and dust management</b>  | West Midlands | Unnecessary – covered by Environmental Health   | 4.1.1  |
| <b>Details of all external finishes</b>   | West Midlands | Should not hold up ground works   | 4.1.2  |
| <b>Details of all external materials</b>  | Yorkshire     | Should not hold up construction   | 4.1.3  |
| <b>Details of materials to be used in car park</b>  |               | Unnecessary as pre-commencement   | 4.1.4  |
| <b>Trees to be planted and root mitigation</b>  | West Midlands | Unnecessary as pre-commencement   | 5.1    |
| <b>Full street lighting details</b>   | Yorkshire     | Unnecessary as pre-commencement   | 5.2    |
| <b>Full details of chimneys and flues replicating requests made during application process</b>  | London        | Duplication   | 6.1    |
| <b>Full details of play equipment and emergency access</b>  | South West    | Should be pre-occupation condition  | 6.2.2  |
| <b>Condition preventing deliveries being made to the site before 9.30am which then renders a separate condition preventing work beginning on site until after 8am effectively pointless</b> | South East    | Conflicting with other conditions   | 6.3    |
| <b>A full survey on Great Crested Newts required before each phase begins</b>   | North East    | Detailed study at application stage confirmed no presence (or 'risk') of newts  | 6.4    |
| <b>Full design of play area</b>   | South East    | Should be pre-occupation  | 6.5    |
| <b>Approval of exact location of electric car charging points in car park</b>   | South West    | Not necessary as pre-commencement condition   | 14.1   |
| <b>Bus routing strategy</b>   | South East    | Dealt with principles during application stage. Final details could be addressed pre-occupation                           | 14.2   |
| <b>Noise mitigation works relating to later phase of site prior to commencement of first phase</b>  |               | Brings no benefit but places a greater financial burden on the site   | 7.1    |
| <b>Sample panel showing all materials submitted to LPA and approved in writing</b>  | North East    | Two months of additional pre-construction time added to development   | 8.1.1  |
| <b>Full details and plans for refuse and recycling</b>  | North East    | Relates to functionality of dwellings rather than planning or design principles. Should be pre-occupation                 | 8.1.2  |
| <b>Full design and details of play area equipment</b>   | North East    | Play area is for later phase of large scheme  | 8.2    |
| <b>Full details of connections to all utilities and services required before construction can begin</b>   |               | Not a planning matter and LPA will have been satisfied that services and utilities are available at the application stage | 10.1.2 |
| <b>Full details of design, construction, building techniques and water use must be signed off in writing by the LPA</b>   |               | Dealt with through Building Regulations   | 10.1.1 |

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| <b>Full details of all street lighting</b>  | South East    | Unnecessary as pre-commencement condition  | 11.1 |
| <b>Details of types and colours of roofing materials</b>  | West Midlands | Could be dealt with prior to occupation  | 12.2 |
| <b>Precise location of bin collections points for specific plots to be signed off prior to commencement</b> | East          | Could be dealt with prior to occupation. Relates to functionality of development rather than design or planning issues | 12.3 |

### Examples of *volume* of conditions on sites

| Site # | Site size (dwellings)                         | Number of conditions     |
|--------|---|--------------------------|
| 1      | 80  | 11                       |
| 2      | 157 + secondary school phased development     | 54 (23 pre-commencement) |
| 3      | 1400  | 56                       |
| 4      | 70  | 35                       |
| 5      | 396   | 47 (25 pre-commencement) |
| 6      | 125 (35% affordable) + 500 sq m of commercial | 58 (30 pre-commencement) |