

Legal Alert

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Goodbye to Pre-Commencement Conditions?

Establishing whether a planning permission has been implemented, or is capable of being implemented, will always involve an analysis of any pre-commencement conditions that have been attached to the permission and establishing whether or not those conditions have been complied with.

A pre-commencement condition (also sometimes referred to as a 'Grampian' condition) is a condition imposed on a planning permission, which must be complied with before the development permitted by the planning permission begins. Pre-commencement conditions are useful for local planning authorities ("LPAs") to impose, because it means that planning permission can be granted without all of the necessary details having been seen or approved. However, their effect is to prevent works on site starting until they are discharged: attempting to commence development without complying with these conditions will normally mean that the commencement (and any development works) is unlawful. Therefore, it is important that they are only imposed where it is genuinely justified, in order to prevent unnecessary delays to the delivery of development.

On 1 October 2018 subsections 100ZA (4) to (13) of the Town and Country Planning Act 1990 were brought into effect. These changes mean that local planning authorities can no longer simply impose pre-commencement planning conditions when granting planning permission. Instead, LPAs must obtain the written agreement of the applicant before imposing pre-commencement conditions on a planning permission. From now on, if the LPA wishes to impose a pre-commencement condition it must first give notice in writing to the applicant. The notice must state:

- the text of the pre-commencement condition
- the full reasons for the condition
- the full reasons for the condition to be a pre-commencement condition

If the applicant agrees to the conditions or does not respond to the notice within 10 working days then the LPA may proceed to impose the pre-commencement condition.

These provisions allow developers to refuse the imposition of pre-commencement conditions when they consider that they are unwarranted or impractical. While this will give developers an opportunity to negotiate the draft permission from a commercial perspective it also means that potentially protracted discussions and negotiations may be necessary before permission can be granted. In addition, applicants will need to be careful that any notices from the LPA are dealt with quickly to avoid deemed consent to the pre-commencement condition being given. A side effect may be that developers may feel forced to accept the proposed pre-commencement conditions immediately to avoid refusal of the application where the LPA disagrees with the developers' view.

The Government's intention was that these changes would reduce the time lag between planning permission being granted and work starting on-site. If it becomes common practice for applicants to disagree to the imposition of pre-commencement conditions, we may find that there are significant delays to the grant of planning permissions, an increase in refusals and consequently more appeals. On the other hand, developers who are eager to obtain planning permission will be likely to give their consent to the grant of permission in the old format, leading to the continued use of these conditions.