Consultation on the use of pre-commencement planning conditions – have your say

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One of the recurring themes in the government's approach to reforming the planning system is seeking to get developers on-site far more quickly – both by speeding up the planning process and removing barriers starting on-site once planning permission has been granted.

In respect of the latter issue, one of the government's main targets has been the use of local planning authorities of planning conditions which must be discharged before the commencement of works. Its concern is that developers are suffering from a "double whammy" effect, where conditions are attached to planning permissions by local planning authorities as standard without much consideration of the individual circumstances of the application, and that there are then delays in getting conditions discharged before a developer can get on-site and get building.

The attack commenced last year with the coming into force of the Infrastructure Act 2015 and the Town and Country Planning (Development Management Procedure) Order 2015, which between them provided a mechanism for the deemed discharge of certain types of planning conditions in given circumstances.

The offensive is now to be continued via the recently published Neighbourhood Planning Bill, which seeks for the first time to legislate the use of pre-commencement planning conditions. The publication of the Bill has itself triggered a consultation on the use of pre-commencement planning conditions, which expires on 3 November. It seeks views on two proposed legislative measures:

- Prohibiting the use of pre-commencement conditions unless the authority has the written agreement of the applicant; and
- Prohibiting the use of pre-commencement conditions altogether in certain circumstances – it is proposed that this applies to those conditions which national planning policy guidance makes clear are unacceptable and should not be used

Of the two proposed measures, LA's view is that the latter measure has the potential for a more significant

impact. The requirement for the applicant to agree on pre-commencement conditions prior to their imposition puts into legislation what commonly occurs in reality anyway, where the applicant and authority seek to agree on a set of conditions. It is proposed that in the event of disagreement as to a pre-commencement condition, the authority would retain the right to refuse an application if it considers that condition to be necessary. Again this reflects what happens in practice now, and it is, in reality, unlikely that a developer in those circumstances would take a refusal and resultant uncertainty/delay in the grant of planning permission, over such an issue.

In contrast, our view is that adopting legislation prohibiting those conditions which fail the national planning policy tests would be a more meaningful measure. We have seen that the coming into force of Regulation 122 of the CIL Regulations 2010, bringing what were national planning policy tests as to the use of planning obligations into legislation, has made local authorities think far more carefully as to request planning obligations and significantly improved the applicant's negotiating position. We would hope for a similar positive effect via the introduction of a similar approach as to the use of planning conditions.

The consultation runs until 3 November, and we would encourage the development industry to make representations.

The government could, in fact, do even more to ease the pain of the imposition of planning conditions generally in our view. As a starting point, the government could give some thought to introducing a template set of the most commonly used planning conditions, (the condition drafting having undergone appropriate prior consultation), in a similar vein to the Planning Inspectorate model conditions. This would give added certainty to and hopefully speed up planning condition negotiations.

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