

Pre-commencement conditions changes – November 2018

On 1 October, provisions of the Neighbourhood Planning Act 2017 (*note: this legislation is for England only*) came into force, requiring planning authorities to seek prior agreement from developers for pre-commencement conditions. This briefing responds to concern over implications for the securing of archaeological work through the use of planning conditions and communicates ClfA and ALGAO's guidance on these changes.

Summary:

- Pre-commencement conditions are still permissible and archaeological recommendations for pre-commencement conditions which are necessary should not be restricted as a result of the above changes to regulation
- Government ministers have provided verbal and written assurances that changes will not impact the use of archaeological conditions which are necessary to be signed off prior to the commencement of works
- It may be useful for archaeological advisors to reflect language in new NPPG guidance in their responses to planning applications to emphasise that conditions recommended are 'so fundamental to the development permitted that without them it would be necessary to refuse the whole permission'
- Archaeological pre-commencement conditions are necessary because they secure schemes which regulate the mitigation of harm to archaeological interest over the course of development
- ClfA and ALGAO would like to be kept informed if you experience any change in freedom to recommend necessary pre-commencement conditions, or if encounter any adverse pressure resulting from this change, whether from planning colleagues or from applicants.

The changes:

As of 1 October 2018, local planning authorities are required to obtain written agreement of applicants prior to the granting of planning permission.

For information on detailed application of this policy please see the [government regulations \(March 2018\)](#) and [National Planning Practice Guidance advice on the use of pre-commencement conditions \(June 2018\)](#).

Both of the above documents provide insight into government's desire to ensure development progresses quickly and efficiently. To reinforce this agenda the guidance includes language which strongly encourages LPAs to adopt a minimal approach to the use pre-commencement conditions.

However, ultimately, pre-commencement conditions remain an important part of ensuring the planning system functions to deliver sustainable development, and may still be used where

“...the local planning authority is satisfied that the requirements of the condition (including the timing of compliance) are so fundamental to the development permitted that it would have been otherwise necessary to refuse the whole permission (and from 1 October 2018 the applicant has given written consent to such a condition – see below).”¹

Assurance of no impact to archaeology:

During the passage of the Neighbourhood Planning Act, ClfA and ALGAO lobbied government on the proposals relating to pre-commencement conditions. Throughout the process, government Ministers assured us that archaeology was not intended to be hampered as a result of the reforms.

For example, in the Government’s consultation on Improving the use of Planning Conditions (September 2016) it was stated that;

[The process of prohibiting pre-commencement conditions from being imposed without the prior written agreement of the applicant] **will not restrict the ability of local planning authority to propose pre-commencement conditions that may be necessary – for example, conditions in relation to archaeological investigations or wildlife surveys’** (*Improving the use of planning conditions consultation, DCLG, para 11²*).

This was confirmed in the response to that consultation:

‘24. The requirement to agree pre-commencement conditions before they are imposed ***builds on existing best practice***, where applicants and local planning authorities discuss potential planning conditions early in the process. Effective engagement is likely to reduce delays and uncertainty and lead to fewer refusals and appeals. Furthermore, the need to agree pre-commencement conditions with applicants will not prevent local planning authorities seeking to impose conditions that are necessary. ***In the unlikely event that an applicant refuses to agree to a pre-commencement condition that is necessary (e.g. to ensure the protection of areas or features of natural or heritage importance) then the local planning authority can refuse permission.***³

The intention of the policy is therefore explained as being to;

- Encourage greater use of pre-application discussion
- Reduce delays and appeals

It is confirmed that;

- Archaeological/heritage protection conditions are explicitly recognized as being ‘necessary’ to undertake pre-commencement,
- LPAs will not be prevented from attaching these conditions,
- LPAs can refuse permission if applicants refuse to agree.

¹ NPPG, 2018, Paragraph: 007 Reference ID: 21a-007-20180615

² DCLG, 2016, [Improving the use of planning conditions: Public consultation](#)

³ DCLG, 2017, [Government response to the consultation on improving the use of planning conditions](#)

Archaeological pre-commencement conditions remain the key mechanism by which to secure a developer's responsibility to understand and mitigate impacts on the historic environment, via agreement of a written scheme of investigation. Their use is therefore in accordance with Paragraph 199 of the NPPF, which states that

'Local planning authorities should require developers to record and advance understanding of the significance of any heritage assets to be lost (wholly or in part) in a manner proportionate to their importance and the impact, and to make this evidence (and any archive generated) publicly accessible...'

Keeping us informed:

Part of the CifA/ALGAO argument to government was that without an explicit exemption from the rules restricting or discouraging the use of pre-commencement conditions, there would be the potential for archaeological advisors to come under pressure from planning colleagues, council bosses, or applicants to weaken or refrain from conditions in order to remove the potential for developers to object.

We believe that any such effect would demonstrate a failure to deliver intended outcomes from the policy change and would be to the detriment of the ability of the planning system to deliver sustainable development.

We would therefore like to be kept informed of any of the following:

- Planning authorities not willing to refuse applications if developers object to PCCs
- Planning officers putting pressure on archaeological advisors to not add conditions
- Developers objecting to archaeological conditions

Please contact rob.lennox@archaeologists.net or call the CifA office on 0118 966 2841. Any reports will be treated in confidence.

Please contact rob.lennox@archaeologists.net if you have anything information which might help to monitor the implementation and effect of this policy.

