

Discharging conditions on a planning permission

Obtaining a planning permission should not be viewed as the end of your involvement with the Planning Department. Rather it is a further step in the development process.

Conditions are often imposed to regulate certain aspects of an approved scheme and are an important element in the process. If it were not for the conditions, it is possible that planning permission could have been refused. Conditions can also add the finishing touches to a scheme by making it more attractive, adding value and making it more saleable so everyone (you and the wider community) benefits.

Your planning application has been approved – what you need to do now

Check your planning permission carefully to ensure that there are no errors in it. If there are, contact the Planning Department immediately quoting the reference number and setting out clearly what you think is wrong. Identify which conditions require you to submit further details or information, and when these have to be complied with.

Some conditions must be complied with before a development is started, some regulate how the work is undertaken, others require actions before a building is occupied or a use commences whilst certain conditions will seek to regulate how the completed development is to be used or control possible changes in the future. Consult with your advisers how best to comply with those conditions.

If you are unhappy about any of the conditions imposed you can lodge an appeal with the Planning Inspectorate but you must do so within 6 months of the date of the decision. Talk to the Case Officer who dealt with your specific scheme if you want to explore this further as any commencement during the appeal process may invalidate the consent.

Complying with conditions

The first condition will limit the length of time that the permission is valid, if work is not started within that time the permission will lapse.

Before starting work you must discharge (that is provide the Council with the information required and gain written approval) all conditions that specify 'prior to commencement details are to be submitted...' or are similarly worded. These are known as 'pre-conditions'.

How to discharge a condition

When applying for a condition to be discharged ensure that the information, details and/or drawings submitted are comprehensive and meets the condition requirement. A condition is only discharged when written approval is given by the Council by formal letter.

The Council will reject applications for condition compliance where the details are inadequate. To understand exactly what is required you should read the condition and reason carefully and in full.

When to submit the information

Do not leave the discharge of conditions until the last moment. Allow adequate time for the Council to respond to your request to discharge conditions, as the Council may need to seek specialist advice. Submitted information should clearly identify the condition number it relates to.

How to vary an approved scheme

Condition discharge does not grant consent to vary the original approved drawings. If you want, or need, to vary the permitted scheme seek the advice of the Council first. A further planning application is required for a variation or removal of a condition.

Where to get advice on what to submit

The council can only offer general advice and cannot be regarded as a free consultancy service. You are urged to seek advice from your agent or other specialist where appropriate.

Although you may anticipate the need for the planners to seek a view on the details from another department such as Highways or Environmental Health, you should always direct your condition compliance details to the Compliance Officer in the Planning Department.

If you consult any other person or agency directly, for example the Highway Authority or the Environment Agency, seeking pre-discharge advice, be advised that until the council's Planning Department has been formally notified by you and has subsequently provided written approval of the details concerned, the planning condition is not discharged.

Whilst all pre-conditions are important some have a particular significance such as resolving contaminated land issues, submitting archaeological assessments and the adequate protection of trees. If works start in the absence of these details having been agreed, irrevocable damage may occur or remedial works could be required that could involve a partial or total demolition of the development. Special care should be taken when dealing with a Listed Building as any works outside the consent or conditions is not only unauthorised but is actually a criminal offence.

Failure to comply

Failure to discharge conditions at the correct time can invalidate a planning permission, rendering the site without benefit of consent. For example, starting work on site without complying with the pre-conditions, may render your permission null and void leading to enforcement action and possible criminal sanctions. As a result you would have to reapply for planning permission, possibly incurring a further planning fee and potentially other financial penalties, such as a contribution to a new Section 106 Agreement.

Depending on the planning policy context, it is possible that the development may not be approved a second time round. The delay could result in lost sales as the absence of a formal consent would be declared on any search. By following the correct procedure and complying with all the conditions at the right time within the development process, any search or enquiry by a solicitor will be satisfactorily answered as the file will contain the exchanges of correspondence.

The Council can check if conditions have been discharged and also inspect sites to ensure development is in compliance with the permission granted. Failure to have a

valid planning permission by not complying with the approved drawings or planning conditions may have some of the following consequences, including:

- The service of a Temporary Stop Notice closing down any works on the site;
- The issue of a Breach of Condition Notice;
- The issue of an Enforcement Notice;
- A need to re-submit a full planning application to the Council if the consent is invalidated;
- A record on Land Charge Searches that the development is unauthorised (and possibly subject to enforcement);
- Potential difficulties in raising funds against or selling of the land or building;
- Prosecution if subsequent enforcement notices are not complied with;
- Undertaking works to a listed building in breach of conditions is a criminal offence.

Fees payable

There are fees for applications to discharge conditions. As you will know, new national requirements were introduced in April this year for a fee payment to the council for applications to discharge the conditions of a planning permission. A fee of £85 (or £25 for householder planning permissions) is payable per request for confirmation that the requirements of a planning condition have been satisfied. The application needs to be made on the appropriate forms available on the council web site.

As an example, a condition of a planning permission for an industrial building might require details of a landscaping scheme to be submitted for approval. A fee of £85 would be payable when the landscaping details were formally submitted to the council for approval. This fee could also cover other details submitted for approval at the same time, so if the same permission also included a condition for details of bricks to be agreed, these could be covered by the same fee if submitted simultaneously with the landscaping scheme. If the brick details were submitted for approval at a later date, accompanied by the appropriate application form, a further £85 fee would be payable.

If the Council fails to give notice of its decision within 12 weeks the fee will be refunded. Any details submitted after 1 December 2008 will not be considered unless accompanied by the appropriate fee.

For further information please contact the Compliance officer on the details below:

Built Environment
Cheltenham Borough Council
Municipal Offices
Promenade
Cheltenham
GL50 9SA

Tel: 01242 264122

Email: planningcompliance@cheltenham.gov.uk