

Is Your Planning Permission in Good Condition?

Part of an occasional series of planning hints, tips and advice notes by Ian Butter FRICS MRTPI

There you are, still nursing a mild hangover from the post ‘planning committee success’ party and lo and behold the decision notice lands on the mat a few days later. Here are a few things you should do to make sure that what has been granted actually suits your requirements – what you should NOT do is file the decision and phone the builders.

The wealth of pencil lead expended on the subject of planning conditions in the courts and elsewhere would make even Samuel Pepys blanch so I will refrain from a detailed overview, but here are a few key thoughts and suggestions to get you through the next stage in your progress toward that much sought-after scheme.

There are few planning decision notices today that are not issued with an array of accompanying planning conditions. There are some standard ones (like the time limit) that always appear and then a series of others that are often drawn from a standard list, or are bespoke to your particular scheme. These conditions can run on to several pages and will include a justification of why the condition has been applied and there may also be some accompanying ‘Informatives’. I will come back to these later.

Planning Conditions are just that. They define and control the scope of the development that has been permitted and the manner in which it is to be undertaken. On simple applications there may be very few (occasionally none at all), although the ubiquitous landscaping conditions seem to creep into even the most modest of development proposals these days.

In order to properly implement your planning permission - so that it is lawful - you must satisfy the requirements of the conditions. Failure to do so could invalidate your consent and may lead to enforcement issues in the future. I had a call only last week from a householder who had just bought a newly built house but been served with an enforcement notice with respect to conditions that the predecessor owner/builder had failed to comply with. And the builder had emigrated to Australia! Don’t forget, caveat emptor (the buyer beware) applies: the planning permission runs with the land not the individual.

Job 1: READ THE DECISION THOROUGHLY

This is vital. You need to make sure that there are no nasty surprises. Is the description correct? Does it match the title of your application properly? The planning authority may have re-written it slightly (which is not a problem) but you need to ensure it is for the development you actually applied for in the first place. I know what you’re thinking, but you’d be surprised.

Job 2: SORT THE CONDITIONS

There are generally three types of condition. Those that are simply there to provide information, or set out the terms of the permission, generally require no direct action. However there are others that require certain activities to be undertaken or prior approval secured and these fall into two types; condition that requires works or actions to be undertaken as part of the scheme and Conditions Precedent.

Now, it is generally the latter (conditions precedent) that give people the most trouble – not least because they can be tricky little devils to identify correctly – but essentially any condition that starts with words like, “*Before any development commences....*” should be regarded as VERY IMPORTANT. The clue is in the word ANY. If you start work on the development before such conditions are properly fulfilled your permission may have just been instantly invalidated. Do not pass Go, do not collect £200.

Job 3: MAKE A SINGLE CONDITIONS APPLICATION (IF YOU CAN)

As is the way in town planning nowadays there is a charge for having conditions signed off. However the Regulations are clear that the charge is per submission not per condition, so if you make one submission for all the conditions it is just one fee – simples!

Job 4: IMPLEMENT THE PERMISSION

Once you have all the conditions signed off by the local authority you can implement your permission by commencing the development. And it is well worth doing so too, as permissions are hard enough and expensive enough to obtain in the first place and all that effort and money shouldn't go to waste because the permission runs out of time before you get cracking.

A note of caution though. I am assuming you have also obtained any other approvals necessary, such as Building Regulation approval; Section 278 Approval under the Highways Act for works in the public highway; discharge licences; public health and other operating licences etc etc.

MODIFICATIONS

No sooner have you secured your consent but you come up with a cunning plan to modify part of the scheme. What can you do? Some changes are considered so minor that they can be approved by the local authority as a minor modification without needing to adjust the consent and an exchange of letters will suffice. Others may require a minor modifications application or a wholesale planning application for a variation of the relevant condition. The motto of this story is to try and get it right in the first place. You will remain friends with your Architect as well.

APPEALS

What happens if your decision notice contains a raft of unsavory and unworkable conditions (well one at least) that make the permission all but worthless – I exaggerate perhaps, but here again, you'd be surprised.

Think very carefully before you go rushing off to Appeal. If you appeal the decision on the grounds of an unacceptable condition you may be OK, but equally the Inspectorate could reconsider the whole permission. It wouldn't be the first time an appellant has walked away with a dismissal for the whole scheme, which is then very hard to overcome.

Perhaps the condition is fundamental to the consent and without it the local authority would not have approved permission, but you feel it can be changed or removed. My advice is to submit an application for a variation of the offending condition and then appeal THAT decision if it is subsequently refused. In that way you at least protect the original decision.

ENFORCEMENT

If for some unfathomable reason you decide not to comply with a planning condition you could be served with a breach of condition notice to put the matter right. Just to make your day, there is no right of appeal against such a notice. Go directly to Jail, do not pass Go etc...

If you have carried out building works without consent you might be OK if they have been completed for more than 4 years and you can prove it. A breach of condition though must survive a long and testing 10 years before any sort of defense against the dark arts of enforcement can be brought to bear. My advice? Don't tempt fate.

INFORMATIVES

Cunningly hanging around at the very end of the conditions (like the neighbours' barky dog) there may be another round of what appear to be conditions, but under a separate Informatives heading (no one said that development was going to be easy). You will also need to consider the requirements set out in this section. Often they relate to other matters that are not the province of the planning department but are fundamental to the development nonetheless. Please don't overlook them. They have a way of biting back when you least expect them too.

AND FINALLY

With the development market being so uncertain at the moment it is tempting to obtain permission and then sit on it (not literally you understand) until the market improves. Do keep a weather eye on the expiry date. Like fresh produce, planning permissions can go off



(so to speak) and you could find yourself right back to square one if the permission is allowed to lapse by effluxion of time.

Most full permissions generally have a deadline date for implementation of three years (it used to be five) or three years from the date of an outline approval to submit for any detailed permission and then two years for development to commence after that.

If you are running out of time you can now apply for an extension of time. This provision was removed for some time by the previous Government who wanted to force developers to get on with things, but reinstated when a lot of us planners had a go at the Secretary of State for failing to recognise there was a national recession out there.

I hope this thumbnail overview of the word on planning conditions is of help and if you require any further detail then there is a planning document library available at:

www.ruralurbanplanning.co.uk

Or do please email me on:

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