

Planning Reform: Deemed Discharge of Planning Conditions to go ahead

The Government plans to introduce a regime for "deemed discharge" of certain planning conditions. In some cases, this should help to unblock delays in the planning process. It remains to be seen whether this will also result in more early refusals of applications for approval under planning conditions to avoid the deemed discharge occurring. The detailed drafting of regulations will need to be scrutinised to identify the extent to which there will be uncertainty over the operation of the deemed discharges and the potential for dispute.

In a response to consultation¹, the Government has confirmed that it intends to introduce its proposed concept of deemed discharge of planning conditions for matters that have to be approved under a condition².

Certain conditions will not be included within the deemed discharge regime due to their importance in regulating development. These comprise:

- All conditions attached to a permission for development subject to Environmental Impact Assessment (EIA), or assessment under the Habitats or Birds Directives, or involving Sites of Special Scientific Interest (SSSI);
- Conditions requiring a Section 106 Agreement or Section 278 (highways) agreement to be entered into;
- Conditions designed to manage flood risk;
- Conditions requiring the approval of details as reserved matters (i.e. access, appearance, landscaping, layout and scale); and
- Other conditions relating to contaminated land investigation and remediation, highway safety or archaeological investigation.

While the exempted conditions will make up a significant number of applications under conditions, a large number of more minor applications will qualify. These might include, for example, details of noise management measures, or details of waste management and recycling.

Deemed discharge will be subject to a new process: After 6 weeks has passed following an application to discharge a relevant condition without a decision having been issued, the applicant can serve notice on the local planning authority (LPA) that it intends to take advantage of the deemed discharge. The LPA then has a further 2 weeks to make a decision (the applicant could insert a longer period if appropriate), failing which, the condition is deemed discharged.

Currently, applicants can appeal where applications to discharge conditions remain undetermined after 8 weeks. There can be significant delays in getting LPAs to approve details under conditions but appeal is rarely an attractive route to follow given the resulting delay and impact on relationships with the LPA. The deemed discharge provision provides the applicant

¹ [Deemed discharge of planning conditions: Government response to consultation – DCLG – November 2014](#)

² This will apply to England only.

with another option of forcing the LPA to either refuse the application, or approve it / let it be approved by deemed discharge within the same 8 week period.

The Government is seeking to introduce the deemed discharge provisions through the Infrastructure Bill which is currently before Parliament.

Comment

This move has been welcomed by the development industry and could be useful in helping to unblock delays within some LPAs in respect of non-EIA development, in particular for the raft of more minor conditions often attached to planning permissions. It is open to question, however, if the deemed discharge regime will result in many more refusal decisions being issued simply to avoid the deemed discharge operating. This would be in no-one's interest.

We await the detailed drafting of the regulations needed to implement a deemed discharge regime. It remains to be seen if the provisions will leave uncertainty as to whether any particular condition is subject to the regime. For example, is it going to be clear whether a drainage condition should be an exempted condition on the basis of its relating to management of flood risk?

Stakeholders will need to rely on deemed discharge of conditions in various situations: for example buyers or funders considering a purchase, or financing, of new build properties. Often such parties will need evidence that conditions (especially "conditions precedent" to development) have been satisfied in order to be confident that construction of the building has commenced lawfully, and that the planning permission has therefore been lawfully implemented. The possibility will arise for dispute over service of notices relating to deemed discharge. Clarity will be needed in the regulations to minimise the risk of disputes but, inevitably, clear paper trails will also have to be kept by applicants for this reason.

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