



<b>REPORT TO:</b>	Overview
<b>DATE:</b>	23 <sup>rd</sup> January 2024
<b>SUBJECT:</b>	Review of the use of planning conditions
<b>PURPOSE:</b>	To report the actions and outcomes arising from the Ombudsman's request for review of use of planning conditions in the grant of planning permission.
<b>KEY DECISION:</b>	<i>N/A</i>
<b>PORTFOLIO HOLDER:</b>	Councillor Tom Ashton
<b>REPORT OF:</b>	Mike Gildersleeves – Assistant Director Planning & Strategic Infrastructure
<b>REPORT AUTHOR:</b>	Andy Booth – Development Manager Lead
<b>WARD(S) AFFECTED:</b>	All
<b>EXEMPT REPORT?</b>	<i>No</i>

## SUMMARY

Planning conditions can enhance the quality of development and enable development to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects. National guidance further advises that the objectives of planning are best served when the power to attach conditions to a planning permission is exercised in a way that is clearly seen to be fair, reasonable and practicable. To do that, it is important to ensure that conditions are tailored to tackle specific problems.

Pursuant to the findings of the Ombudsman in respect of the particular requirements of a planning condition, a service review of practice and procedure for the use of conditions was required.

That review has now been completed and is being actioned. This report therefore seeks to inform this Committee of the findings of the review and actions being implemented.

## RECOMMENDATIONS

To note the content of the review carried out by the planning department relating to the use of planning conditions.

## REASONS FOR RECOMMENDATIONS

To comply with the requirements of the Ombudsman

## OTHER OPTIONS CONSIDERED

*(Outline any alternative options that have been considered, including 'do nothing'.)*

### 1. BACKGROUND

- 1.1** The Council responded to a complaint made by a neighbour to a proposed development (S/213/01962/21) for Change of use, conversion of and alterations to the existing stables to provide a holiday let.
- 1.2** Planning permission was granted subject to a number of conditions, including one requiring *'The development hereby permitted shall be carried out in strict accordance with the recommendations of the Preliminary Ecological Appraisal forming part of the approved application'*.
- 1.3** The reason for the condition was: *'To ensure conservation of local biodiversity in accordance with SP24 of the East Lindsey Local Plan and paragraph 180 of the National Planning Policy Framework'*.
- 1.4** The neighbour raised a number of concerns in relation to the planning decision made and the quality of the submitted detail.
- 1.5** Those concerns related to errors on the drawings, errors with the submitted ownership certificate and an associated suggestion that the development included land in their ownership.
- 1.6** Those concerns were partially addressed through the Councils complaints process, but the complainant progressed the matter through the Ombudsman, particularly in respect of a further complaint that requirements of an ecology condition had not been complied with.
- 1.7** Through investigation of allegations of breach of the condition and non-compliance with approved drawing details, the Councils enforcement officer advised the neighbour that the condition was not enforceable as it required adherence with recommendations only in the ecology report which were not precise enough in their requirements.
  - 1.7.1** It should be noted that whether or not enforcement action is taken is considered against our Enforcement Policy, that enforcement powers are discretionary and that formal action is always last resort

- 1.8** The Ombudsman’s decision found no fault with the application process in respect of the accuracy of the drawings or the appropriate completion of an ownership certificate, but did find fault with the Council’s decision not to take planning enforcement action in relation to her neighbour’s development. More specifically, the Council was found at fault because it approved a planning condition which was unenforceable.
- 1.9** The Council’s inability to enforce the condition was considered by the Ombudsman to cause the neighbour’s disappointment, confusion and frustration’.
- 1.10** The Ombudsman therefore required the Council to:
- apologise to the neighbour (this was actioned swiftly)
  - recommended a service review of practice and procedure to avoid recurrence of the fault.
  - report the findings of its review and any changes it makes as a result to the Ombudsman and to the relevant Council scrutiny committee

## **2. REPORT**

- 2.1 Notwithstanding the circumstances of the complaint and findings of the Ombudsman the planning service had already committed to a wider joint a service review along with the other councils of the South and East Lincolnshire Partnership.
- 2.2 Amongst other things that review was committed to the updating of model planning conditions to ensure adherence to best practice and consistency across the Partnership.
- 2.3 However, that review was to be a lengthy process and required critical assessment of the model condition formats of each authority (including recognition that different development pressures necessitated a requirement for different conditions as well as ensuring that conditions were duly recognisant of the different policy positions for the authorities).
- 2.4 Because that project was likely to take time to complete, mindful of the Ombudsman’s findings, an interim review, bespoke to East Lindsey has been undertaken aimed at reducing the likelihood of future fault, as found by the Ombudsman.
- 2.5 The review has been led by the Development Management Lead Officer for the Council and identified two principle matters to be addressed.
- 2.6 Firstly, there was need to ensure that the current legislative background to the use of planning conditions was fully understood by planning officers as well as relevant best practice guidance for their use and construction.
- 2.7 The main legislative powers are in [sections 70, 72, 73, 73A, and Schedule 5 of the Town and Country Planning Act 1990](#).
- 2.8 [Section 70\(1\)\(a\) of the Act](#) enables the local planning authority in granting planning permission to impose “such conditions as they think fit”. This power needs to be interpreted in light of material considerations such as the National Planning Policy Framework, this supporting guidance on the use of conditions, and relevant case law.
- 2.9 [Paragraph 55](#) of the National Planning Policy Framework makes clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests:

1. necessary;
2. relevant to planning;
3. relevant to the development to be permitted;
4. enforceable;
5. precise; and
6. reasonable in all other respects.

These are referred to in guidance as the 6 tests, and each of them need to be satisfied for each condition which an authority intends to apply. It was in the context of these 6 tests, that the Ombudsman considered the ecology condition as imposed failed.

2.10 The initial review response therefore, has been to provide Continuing Professional Development (CPD) on use of conditions to the planning team.

2.11 That has been done through requiring review of legislation and audited viewing of an RTPi webinar (see link below) presented by legal and experienced planning professionals.

Link

<https://www.bigmarker.com/rtpi-enterprise/Determining-Planning-Applications-Part-2-Draft-Conditions-Reasons-for-Refusal?bmid=q>

[WATCH THE RECORDING](#)

2.12 All team members undertook that training and provided feedback. Anecdotally, that feedback acknowledged the value in the training and need to consider use and construction of conditions carefully.

2.13 Other actions taken and also reported back to the Ombudsman included

- the particular circumstances for the Case Application were discussed at Team Meeting 27<sup>th</sup> June 2023 together with need to view webinar and undertake CPD.
- Specific focus at Team Meetings on use of conditions relating to Ecological mitigation requirements and need to ensure identification of precise, clear, specific steps, methods or requirements that would be needed as opposed to generalised recommendations. Necessity to ensure that the 6 tests could be satisfied including that the Council could enforce if required i.e. that only planning conditions that are precise and enforceable should be considered.
- Officers were instructed to review Planning Practice Guidance advice and also commitment to discuss condition necessity and wordings informally (on a case-by-case basis as queries arose) at weekly, collaborative team 'drop in' sessions or directly with the Development Management Lead Officer or the Deputy Development Manager as required.

- The Development Management Lead Officer and the Deputy Development Manager discussed and agreed revised protocols relating to 'sign off' process for the issue of delegated decisions. In essence, as the officers with appropriate authority to authorise use of delegated decisions, protocol agreed that additional focus be given with 'second opinion' obtained between the two of them, or with the Principal Officer when either was not available.
  - Adoption of a protocol to now return draft decisions for review/amendment to the individual case officers when changes are considered necessary, or suggested conditions inappropriate. Previous regimes and established process had simply relied on amendment by those 'signing off' decisions. Return of draft was considered necessary and beneficial in maintaining profile and awareness of condition issues and need to satisfy legal requirements. Effectively establishes a programme of CPD in relation to condition drafting and responsible 'ownership' by the case officer.
  - Commitment to discuss as a 'standing item' at informal monthly Planning Service Manager meetings, to ensure that any awareness by the enforcement team of enforcement difficulties associated with conditions imposed on planning permissions would be shared. Learning outcomes to be shared with Planning officers accordingly.
  - Commitment to review any observations arising from appeal decisions in respect of variance or comment by an Inspector about draft planning conditions suggested for consideration.
- 2.14 As referenced earlier in this report, as is common practice across local planning authorities, model conditions are often used. The use of model conditions is encouraged in part by national guidance, albeit with a need to ensure compliance with the 6 tests.
- 2.15 The model conditions used by East Lindsey were nominally reviewed in 2018, but essentially retained use of earlier formats, including from the time of the previous Local Plan. The current review, therefore confirmed that they were not fully 'fit for purpose' as guidance and policy considerations had changed over time.
- 2.16 A direct review of the model conditions, bespoke to East Lindsey has therefore been undertaken with specific reference to the incorporation of relevant conditions as confirmed as being appropriately worded in Circular 11/95 (Use of Conditions in Planning Permission) and in a version of the Planning Inspectorates Suite of Planning Conditions as referenced in their training manual. Reference was also made to the more recently prepared model conditions of other authorities in seeking best practice examples.
- 2.17 Those 'new' model conditions are to be subject to legal critique, but the intention is that they can be made available for use swiftly and also uploaded to the Uniform system as it is presently being brought forward for use.
- 2.18 A copy of the proposed 'new' model conditions can be made available to view if required.
- 2.19 Other outcomes and observations arising from the interim review include:
- Observational, but general awareness by Officers in the importance of ensuring suitable wording/requirements has been raised. It is now not unusual for condition review to be asked of the case officer, but when done, the protocol expectation is for the review to be

undertaken swiftly and , through discussion, to ensure that the case officer understands the reason/necessity for any change.

- That protocol is effectively an on-going monitoring and learning process
- Training needs for the service area are currently being considered. It is anticipated that 'use of conditions' will be identified as one of several 'core' CPD ' requirements. Delivery options are being considered, but in addition to any online or CPD event training opportunities, use of the Councils planning legal advisors is possible.
- No undue concerns have arisen from discussions with enforcement colleagues at informal monthly Planning Service Manger meetings.
- Observational, but appreciation that national guidance also encourages reduction in the reliance on conditions, and sometimes that will come with risks. Equally, in the context of the 1200+ applications determined each year, there will occasionally be mistakes, or mishaps. We need to ensure we have a generally effective and proportionate approach based on the resources we have available.

### **3. CONCLUSION**

- 3.1** Although disappointing that fault was found against the Council in the way in which a particular condition had been constructed and found to not satisfy the 6 tests, the required review has been beneficial to ensuring better practice is adopted through CPD initiatives and through the re-drafting of model conditions in particular.
- 3.2** The review undertaken has been notified to the Ombudsman who has confirmed the actions as acceptable. This report and consideration by this Committee will fully discharge the requirements of the Ombudsman.

### **EXPECTED BENEFITS TO THE PARTNERSHIP**

It is anticipated that adherence to the best practice 'revised model conditions and the commitment to ongoing CPD will ensure better quality planning decisions and reduce risk to the Council in challenge through planning appeal and the Ombudsman.

The learning outcomes can be shared across the Partnership to ensure similar benefits.

## **IMPLICATIONS**

### **SOUTH AND EAST LINCOLNSHIRE COUNCILS PARTNERSHIP**

*This could be developed and shared as aligned guidance for use of Model Conditions, so officers are working with more consistency to bring greater benefit for growth through new development.*

### **CORPORATE PRIORITIES**

*None*

### **STAFFING**

*None*

### **WORKFORCE CAPACITY IMPLICATIONS**

*Limited to input of Model Conditions to Uniform system*

### **CONSTITUTIONAL AND LEGAL IMPLICATIONS**

*No direct implications, but best practice outcomes will reduce opportunity for legal challenge.*

### **DATA PROTECTION**

*None*

### **FINANCIAL**

*None*

### **RISK MANAGEMENT**

*None*

### **STAKEHOLDER / CONSULTATION / TIMESCALES**

*Consultation with internal colleagues including Enforcement Manager*

### **REPUTATION**

There could be a potential reputational impact for failing to comply with the review findings and failing to ensure ongoing review/use of best practice in the use of conditions

### **CONTRACTS**

*None*

### **CRIME AND DISORDER**

*None*

## **EQUALITY AND DIVERSITY/ HUMAN RIGHTS/ SAFEGUARDING**

*None*

## **HEALTH AND WELL BEING**

*None*

## **CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS**

*None*

## **LINKS TO 12 MISSIONS IN THE LEVELLING UP WHITE PAPER**

*None*

## **ACRONYMS**

*None*

### **APPENDICES**

*None – other than as clarified in the report.*

### **BACKGROUND PAPERS**

*No background papers as defined in Section 100D of the Local Government Act 1972 were used in the production of this report other than as referenced in the body of the report.*

### **CHRONOLOGICAL HISTORY OF THIS REPORT**

*A report on this item has not been previously considered by a Council body.*

### **REPORT APPROVAL**

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