

Grampian conditions – what they are, how they can be used and their benefits

What are planning conditions: Section 70 of the Town and Country Planning Act 1990 states that a local planning authority “...*may grant planning permission, either unconditionally or subject to such conditions as they think fit.*”

Planning conditions are often applied when planning permission is granted. They limit and control the way that permission may be implemented. Their purpose is to make acceptable a development proposal that would otherwise be unacceptable.

Para 55 of the National Planning Policy Framework (NPPF) states: “*Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition*”.

Para 56 of the NPPF states that “*planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects*”.

When considering whether to apply a condition, the following ‘tests’ must be met:

- Is the condition necessary?
- Is it relevant to planning?
- Is it relevant to the development permitted?
- Is it enforceable?
- Is the condition worded precisely?
- Is it reasonable in all other respects?

When used properly, 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.

Further guidance on planning conditions can be found here:

<https://www.gov.uk/guidance/use-of-planning-conditions>

Pre-commencement conditions: A pre-commencement condition is a condition imposed on a planning permission which must be complied with before the development permitted by the planning permission begins. It is sometimes referred to as a ‘Grampian’ condition, derived from the case of Grampian Regional Council v City of Aberdeen (1984).

Pre-commencement conditions are negative conditions which preclude the implementation of development permitted by a planning permission until some step required by the condition has been undertaken. They often relate to work on 3rd

party land, e.g. highway improvements. There must be a reasonable chance of the works happening.

Planning Policy Guidance states that pre-commencement conditions should only be used where there is a clear justification, which is likely to mean that the requirements of the condition (including the timing of compliance) are so fundamental to the development permitted that it would otherwise be necessary to refuse the whole permission.

A pre-commencement condition that does not meet the legal and policy tests may be found to be unlawful by the courts and therefore cannot be enforced by the local planning authority if it is breached. Development carried out without having complied with a pre-commencement condition would be unlawful and may be the subject of enforcement action.

Examples of pre-commencement (Grampian) conditions in practice:

The following examples demonstrate real-life examples of how pre-commencement conditions are considered in the planning system:

- **Pre-commencement conditions advice embedded in a Local Plan:**

East Hampshire Local Plan (Regulation 18): Draft Policy DGC1 (Infrastructure) includes the clause: *If appropriate, the imposition of Grampian conditions will be considered to secure the provision of infrastructure when it is needed*". The supporting text states:

"Through the planning system, the Local Planning Authority is able to ensure that there is adequate infrastructure in place to support new development.

For instance, where applicable, developers will be required to demonstrate that there is adequate wastewater capacity and surface water drainage both on and off the site to serve the development, and that it would not lead to problems for existing or new users.

Where there is an infrastructure capacity constraint, the Local Planning Authority will require the developer to set out what appropriate improvements are necessary and how they will be delivered and may use the planning system to ensure timely provision, for example through the imposition of Grampian-style conditions of appropriate phasing".

- **General advice provided by planning authorities to developers concerning Grampian conditions:**

Arun District Council's (ADC) approach to pre-commencement conditions:

On its website, ADC provides a list of the standard pre-commencement conditions

which may be applied to an approval – [website link](#). An example is provided below in relation to waste water disposal:

Prior to the commencement of construction works details of a proposed foul drainage system shall be submitted to and approved in writing by the Local Planning Authority (including details of its siting, design and subsequent management / maintenance) and no dwelling shall be occupied until works for the disposal of sewage have been fully implemented in accordance with the approved details.

Reason: To ensure that the proposed development has a satisfactory means of disposing of foul sewerage in accordance with policies W DM1 and W DM3 of the Arun Local Plan. This is required to be a pre-commencement condition because it is necessary to implement the foul water drainage system prior to commencing any building works.

- **Example of the legal position relating to the imposition of a ‘Grampian’ condition**

Landmark Chambers opinion, 2023: In October 2023, Landmark Chambers were instructed to provide an opinion on the lawfulness or otherwise of the imposition of a ‘Grampian’ condition on a planning permission restricting the commencement or occupation of a development until under-capacity sewerage infrastructure is improved.

The full advice note can be read [here](#).

It concluded that:

“In conclusion, the exact terms of any condition (and whether such a condition is appropriate) will depend on the circumstances and evidence in any particular case. But what is clear is (1) evidence of harm likely to be caused by sewage discharges from a proposed development will be a material consideration in a planning determination, and (2) the imposition of a Grampian condition preventing development from proceeding or being occupied before a satisfactory solution is found and implemented is one lawful way of dealing with the situation.”

- **Government consideration of land drainage and sewerage Grampian conditions**

Question for Department for Environment, Food and Rural Affairs: Land Drainage and Sewage: Property Development, February 2022: Emma Hardy MP tabled the following question: To ask the Secretary of State for Environment, Food and Rural Affairs, whether he has made an assessment of the potential

merits of requiring offsite infrastructure investment to be secured through Grampian conditions for property developments with respect to drainage and sewerage prior to commencement.

Response from Rebecca Powell MP: Defra has not yet made an assessment of the potential merits of requiring infrastructure investment to be secured through Grampian conditions.

Conditions requiring works on land that is not controlled by the applicant, or that requires the consent or authorisation of another person or body often fail the tests of reasonableness and enforceability. It may be possible to achieve a similar result using a condition worded in a negative form (a Grampian condition) i.e. prohibiting development authorised by the planning permission or other aspects linked to the planning permission until a specified action has been taken. Such conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission.

Local Planning Authorities are responsible for attaching conditions to planning applications so it would be for them to determine whether a Grampian condition would be appropriate on a case by case basis.

Example of a Neighbourhood Plan consideration of Grampian conditions:

Old Windsor Neighbourhood Plan: The Neighbourhood Plan identified and evidenced issues relating to sewerage capacity in the area. The Plan states: *“the use of Grampian-style planning conditions are considered to be vital in Old Windsor, given the limited capacity of the Windsor Sewage Treatment Works. Their use by RBWM is therefore welcomed. In order to inform the justification and application of such conditions, Old Windsor Parish Council will continue to work with Thames Water and RBWM to review the capacity of the STW and assess whether applications, on an individual basis, require such a condition.”*

It included the following non-policy action:

“USE OF GRAMPIAN-STYLE CONDITIONS: Old Windsor Parish Council will work with Thames Water and RBWM to understand the capacity of the Windsor STW and the need to use Grampian-style planning conditions in respect of any planning application for built development.”

Link to the Neighbourhood Plan: <https://www.rbwm.gov.uk/home/planning-and-building-control/planning-policy/old-windsor-neighbourhood-plan>

CPRE Sussex wants:

1. Pre-commencement “Grampian conditions” to be considered for use within the planning process to ensure that sewerage deficiencies are resolved before development is allowed to proceed.
2. DEFRA and the Department of Health to review the extent of diffuse sewage flooding and its threats to public health, and provide advice to local authorities.
3. The Government to establish a cross-party committee to consider the conflict between sewerage infrastructure and new home building policies.
4. The National Planning Policy Framework to support the principle that sewerage deficiencies must be resolved before new home developments are allowed to be built or occupied.
5. Local councils to objectively monitor sewage flooding in their area, via a flood watch system, if it is known to occur.