DISCHARGING CONDITIONS ON A PLANNING PERMISSION

BACKGROUND

Obtaining a planning permission should not be viewed as the end of your involvement with the Development Control Department. Rather this should be viewed as a further step in the ongoing development process.

Conditions are often imposed to regulate certain aspects of an approved scheme and are an essential element in the process. Were it not for the conditions it, is probable that planning permission would have been refused.

Conditions can also add the finishing touches to a scheme by making it more attractive, adding value and making it more marketable so everyone (you and the wider community) benefits.

NOW THAT YOUR PLANNING APPLICATION HAS BEEN APPROVED...

Q. What do I need to do now?

A. Check your planning permission carefully to ensure that there are no errors in it.

If there are errors, contact Development Control 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 regulate how the completed development is to be used or control possible changes in the future.

Consult your advisors as to what action you need to take to ensure you comply with those conditions.

If you are unhappy about any of the conditions imposed you can apply through a planning application to vary or remove the condition or you can challenge it at appeal, but in the case of an appeal, you must do so within 6 months of the date of the decision. Contact the Case Officer who dealt with your application if you want to explore this further, as any commencement during the appeal process may invalidate the consent.

Q. Which conditions do I need to comply with?

A. All of them.
The first condition will limit the length of time that the permission is valid. If work is not started within this time the permission will lapse.

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

Q. How do I discharge the condition?

A. You should use the "Application for approval of details reserved by condition" form attached (or found online at www.gateshead.gov.uk) and should ensure that the information submitted is comprehensive and meets the condition requirement. You are required to provide 3 full sets of documents/plans relating to the discharge of the conditions, and the submitted information should clearly identify the condition number it relates to. The application should include the appropriate fee as requests to discharge planning conditions or to confirm they have been complied with that are received without the appropriate fee will be returned unanswered.

A fee is payable where an application is made for the discharge of one or more conditions on the same permission in accordance with Statutory Instrument 958. The fee is payable per request and not per condition. The fee chargeable by the authority is £85 per request (or £25 where the related permission was for extending or altering a dwellinghouse or other development in the curtilage of a dwellinghouse). The fee must be paid when the request is made, and cannot be received retrospectively.

The Council will reject submissions for condition compliance where the details are considered inadequate/invalid. Therefore you should read the condition and reason carefully and in full prior to the submission. If you are unclear about what is required, please seek advice from your Agent or the Case Officer that dealt with your application. There is no right of appeal if your submission is considered inadequate (e.g. if insufficient detail is submitted) and an additional fee would be required should you wish to make a further submission with more information/details as this will be treated as a new request. Failure to discharge a condition satisfactorily could delay your development and ultimately lead to enforcement action. We will of course try and discharge your conditions as expediently as possible.

Q. How long does it take for the condition to be discharged?

A. Provided that the submission for condition compliance is considered adequate, it will be acknowledged and details of the Case Officer will be provided. The Government requires authorities to deal with all requests within 8 weeks of receipt and fees are refundable if no response is sent within 12 weeks from the date of receipt.

If you commence the development without having received written approval, you do so at your own risk and it could result in enforcement action.

Q. When should I submit the information?
A. 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 consult third parties or seek specialist advice. Remember there is a statutory period of 8 weeks to discharge planning conditions.

Q. How do I vary an approved scheme?

A. Condition discharge does not grant consent to vary the original approved drawings. Once your development has commenced it should be built in accordance with the approved plans and not deviate from them. If you do encounter problems once you have commenced or if your builder advises of changes that may be required you should check with the Development Control Section as amendments cannot be dealt with informally and a new planning application may be required. This also applies to changes you may be asked to make under Building Regulations. This is not the same as Planning Permission and you may still need a new planning approval for any changes as a result.

Q. Where will I get advice on what to submit?

A. The Council can only offer general advice on planning matters and you should 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 or agency such as Highways Authority or Environment Agency, you should always direct your condition compliance details to the Development Control Department in the first instance using the appropriate form. Failure to do so will lead to a delay in discharging the condition.

If you consult any other person or agency directly, for example, the Building Control Department, Highway Authority or the Environment Agency, seeking pre-discharge advice on whether your proposals to meet the terms of a condition would be acceptable, you are advised that until the Council's Development Control Department has been formally notified by you and has subsequently provided written approval of details concerned, the planning condition is not discharged.

Similarly, you may have to submit details relating to the construction of development to the Building Control Department and these details may be the same or similar to details required to comply with a planning condition, for example foul and surface water drainage details. You will need to submit such details to the Development Control Department in addition to the Building Control Department. The condition is not considered discharged until you have received written notification from the Development Control Department.

Whilst all pre-commencement 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 approved in writing, irrevocable damage may occur or remedial works could be required that could involve a partial or total demolition of the development. If you do not comply with these pre-commencement conditions you will invalidate your planning permission.
Special care should be taken when dealing with a Listed Building as any works outside the consent granted or planning conditions are not just unauthorised but criminal for which you, your builder and your agent may be prosecuted.

Q. What happens if I do not comply?

A. Failure to discharge conditions at the correct time can invalidate a planning permission rendering the site without the benefit of planning approval.

For example starting work on site without complying with the pre-commencement conditions may render your permission null and void and can lead to enforcement action and possible criminal sanctions.

This would then mean you would have to reapply for planning permission again, possibly attracting a further planning fee and potentially other financial penalties, such as a contribution to a new Section 106 Agreement. It is possible that depending on changes to the planning policy context and any other material changes in the planning circumstances that the development may not be approved a second time.

The delay may result in lost sales as the absence of a formal consent would be declared on any land charge search. By following the correct procedure and complying with all the conditions at the right time within the development process any land charge search or enquiry by a solicitor will be satisfactorily answered as the file will contain the exchanges of correspondence and confirm which conditions have been formally discharged.

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 or consent by not complying with the approved drawings or planning conditions may have some of the following consequences:-

- The service of a Breach of Condition Notice or Enforcement Notice, with potential Court action;
- The service of a Temporary Stop Notice immediately ceasing works on the site;
- A need to re-submit a full planning application to the Council if the consent is invalidated with no guarantee that planning permission will be granted a second time;
- 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 for which you may be prosecuted.

This list is not exhaustive and there could be other consequences.

Finally....

If you are unclear about the procedure, please seek the advice of your Agent or the Case Officer that dealt with your planning application.