

Discharge of Conditions

Purpose

The purpose of this guidance is to set out the process to discharge a planning condition authorised by a planning permission (or other consent) and appeal decisions.

Legislative Background

Planning legislation, specifically Section 45 of the Planning Act (Northern Ireland) 2011 allows planning permissions to be granted either unconditionally or subject to conditions as the Council (or Department) thinks fit. Most planning conditions, while specifying a particular action, do not require specific verification by the Planning Department. Examples of this include:

- the requirement to provide an access in accordance with approved plans
- retention of existing vegetation on site boundaries
- a limit on the extent of net retail floorspace
- provision of specific windows with obscure glazing

However, other planning conditions require some matter to be undertaken that requires specific verification by the Planning Department. This process of verification is referred to as “discharge of conditions”.

Purpose and Types of Discharge of Condition Applications

Where the principle of development is considered acceptable, a condition can be imposed requiring submission of a particular report or details after the decision stage but before development starts. Such a condition is referred to as a “negative condition”. A “negative condition” cannot be imposed where the principle of the use of the site is in question. “Negative conditions” are useful as they allow the processing time on the planning application to be shorter than would be the case if the report or details were provided before the application was decided. Examples of this include:

- details of construction of a retaining wall where the wall is in proximity to a public road
- archaeological survey and evaluation reports
- remediation measures on contaminated land
- samples of materials



It is imperative to comply with these requirements before starting development. Not to do so may result in an unlawful start which could forfeit the planning permission.

Planning permissions are subject to a timeframe condition in which work must be started if the planning permission is to be taken up. Ordinarily, this is five years from the date of the granting of full or outline permission (or 2 years from the grant of reserved matters if this is later than the 5 years from the granting of the associated outline permission). Developers should be mindful of this timeframe as the requirements of “negative conditions” must be addressed before development is started.

Other conditions which require some matter to be undertaken that requires specific verification by the Planning Department have the purpose of ensuring ongoing regulation of the development. Such conditions apply to the operational stage of the approved development and are often associated with applications subject to Environmental Impact Assessment (EIA). Examples of this type of condition are:

- submission of bat monitoring surveys on a windfarm scheme
- submission of a noise report on a quarry development

Disagreement on a Condition

If a developer disagrees with any condition, they can appeal the condition to the Planning Appeals Commission (PAC) within four months of the date of the decision. Alternatively, they can submit a removal or variation of condition application to the Planning Department, known as a Section 54 planning application.

Non-Compliance with a Condition

If a developer carries out development not in compliance with a condition that requires a specific matter to be verified by the Planning Department, the development could be subject to enforcement action. As set out above, in the case of “negative conditions”, this could result in a forfeit of the planning permission that would render any further development unlawful.

Processing of Discharge of Conditions

How do I apply to discharge a condition?

You can apply to discharge a condition by completing an application using the form on Public Access at <https://planningregister.planningsystemni.gov.uk>

You will need to accompany your application with the necessary information required by the condition.

How does the Planning Department process my discharge of condition application?

The Planning Department will assign a reference to your discharge of condition application, acknowledge receipt and allocate it to a case officer for processing. If necessary, the Planning Department shall carry out consultation with a specific consultee whose remit is relevant to the specific condition. This is particularly the case where a consultee has requested the condition during the processing of the application. If further or amended information is required, the Planning Department shall contact you. At the end of the process you shall receive a letter from the Planning Department advising that either the condition has been discharged, partially discharged, or not discharged.

Will my discharge of condition application be subject to public consultation?

Unlike a planning application, a discharge of condition application is not subject to public consultation. Therefore, it is not advertised in a newspaper, listed on the Council's website or subject to the neighbour notification scheme. However, discharge of condition applications are available to view on Public Access.

Can I make a representation on a discharge of condition application?

There is no mechanism for the Planning Department to consider representations on discharge of condition applications.

Will my discharge of condition application be considered by the Planning Committee?

The Scheme of Delegation for the Planning Department sets out that discharge of condition applications are delegated to planning officers. Therefore, this type of application is not presented to the Planning Committee.



How long will it take for my discharge of condition application to be considered?

Article 12 of The Planning (General Development Procedure) Order (Northern Ireland) 2015 requires the Planning Department to give notice to the applicant of its decision on this type of application within a period of 8 weeks from the date when the application was received. The legislation allows a longer period to be agreed in writing. Some discharge of condition applications require consultation with a specific consultee or the submission of amendments. This can extend the processing time on such an application. However, if the processing timescale is likely to exceed 8 weeks, the Planning Department shall contact you.

Is there a fee for my discharge of condition application?

There is no fee for this type of application.

What happens if my discharge of condition application is refused?

If your application is refused, you may, depending on the specific circumstances, submit a fresh discharge of condition application with the necessary information. If you disagree with a decision to refuse, you can submit an appeal to the Planning Appeals Commission (PAC) under Section 58 of the Planning Act (Northern Ireland) 2011 within four months of the date of the decision.