



UPDATE REGARDING THE USE OF PLANNING CONDITIONS TO COVER THE DURATION OF PLANNING PERMISSIONS.

Report by Chief Officer Place

1 PURPOSE OF REPORT

- 1.1 The purpose of this report is to advise the Committee of new regulations which implement sections of the Town and Country Planning (Scotland) Act 2019 in relation to the requirement to use planning conditions to limit the duration of planning permissions (based on commencement of development, not completion of development).
- 1.2 This report will also provide advice to the Committee in relation to the determination of planning applications in respect to timescales limiting the duration of planning permissions and will recommend a procedure in relation to applications for planning permission which have already been considered by the Committee but have not yet been issued (as they are subject to the legal processes associated with securing developer contributions).

2 BACKGROUND

- 2.1 The Town and Country Planning (Scotland) Act 1997 set out a requirement for development secured through the grant of planning permission (both in detail and principle) to be commenced within a prescribed timescale. This time scale was to be secured through the use of planning conditions.
- 2.2 The Town and Country Planning (Scotland) Act 2006 subsequently removed the requirement to use planning conditions to specify the duration of the planning permission. The legislation set out a direction in respect to the time periods within which development was to commence before the permission would lapse and, as such, planning conditions were not necessary.
- 2.3 The 2006 Act made the situation less clear for applicants/developers and members of the public, who were not always aware of the date by which a development was meant to commence given that it was not specified within the conditions attached to the decision notice.

- 2.4 The Town and Country Planning (Scotland) Act 2019 sets out a requirement for conditions to again be used in order to cover the duration of a planning permission. The legislation states that applications for (detailed) planning permission have three years within which development must be commenced and five years for applications for planning permission in principle. Should a condition not be attached to a planning decision the legislation requires the development to comply with those timescales.
- 2.5 Aside from the change to the requirement to now use planning conditions to limit the duration of planning permissions one other change is to the actual time within which development approved through an application for planning permission in principle is to be commenced. The 2019 Act simplifies the position in that, irrespective of the submission of any applications in relation to discharging matters specified in conditions, development must start on the scheme approved through the planning application in principle within five years of the original decision notice.
- 2.6 The Council can agree to alternative durations for the planning permission through the use of the planning conditions. In order for alternative timescales for the commencement of development to be considered justification needs to be submitted by the applicant for assessment. There may be specific circumstances that justify shorter or longer periods before a planning permission lapses.
- 2.7 In addition, the 2019 Act allows planning authorities to attach conditions with regard to the timing of making applications for approval of detailed matters, and as to the phasing of development.
- 2.8 The clarity provided in relation to the duration of a planning permission in relation to a planning permission in principle may be welcomed by local communities. However, it is the case that applicants can apply to modify or remove a planning condition through section 42 of the Act. Despite this, there may be material considerations which could result in a section 42 application not being approved.
- 2.9 The abovementioned changes came in to effect on 1 October 2022.

3 PROCEDURE

- 3.1 Standard planning conditions covering the duration of planning permission have been revised and reintroduced. Unless an alternative time period has been assessed as being appropriate all planning applications which are approved are subject to the conditions below:

Application for planning permission

Condition: The development to which this permission relates shall commence not later than the expiration of three years beginning with the date of this permission.

Reason: To accord with the provisions of Section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning (Scotland) Act 2019).

Application for planning permission in principle

Condition: The development to which this permission relates shall commence not later than the expiration of five years beginning with the date of this permission.

Reason: To accord with the provisions of Section 59(2) of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning (Scotland) Act 2019).

- 3.2 When considering future development proposals at the Committee, members may wish to consider whether it is the Council's view that development should commence within a particular timescale. However it would be necessary to carefully justify any change from the position set out in the legislation.
- 3.3 There are a small number of planning applications which have been considered by the Committee which are still to have a decision issued. This could be due to various reasons, but it is usually as a result of ongoing discussions regarding developer contributions. When these applications were originally considered by the Committee it was not a requirement to attach planning conditions in relation to limiting the duration of the planning permission. For any planning decisions issued after the 1 October 2022 it will be necessary to attach the conditions which appear in paragraph 3.1 above.

4 RECOMMENDATION

- 4.1 It is recommended that the Committee:
- a) notes that planning conditions relating to the duration of planning permission will be attached to planning decisions from the 1 October 2022; and,
 - b) agrees that planning applications which have been considered by the Committee at previous meetings and are to be approved, but the decision notice not yet issued, are to be subject to the planning conditions stated in paragraph 3.1 of this report.

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date: 30 September 2022
Contact Person: Duncan Robertson, Lead Officer Local Developments
duncan.robertson@midlothian.gov.uk