



Deemed Discharge of Planning Conditions

The Town and Country Planning (Development Management Procedure) (England) Order 2015 (“DMPO”) came into force on 15 April 2015. It is to a large extent a consolidation of the previous legislation, however, there are some significant differences. One of the key changes is the introduction of “deemed discharge” of planning conditions. This is designed to combat unnecessary delays caused by a local authority’s failure to discharge planning conditions.

Under the new provisions, if an applicant has submitted an application to discharge planning conditions which remains undetermined by a local authority, the applicant can seek to have the condition deemed to be discharged. The procedure and exemptions are set out in more detail below.

The procedure

The applicant must apply to the local authority under s.27 of the DMPO to discharge the relevant condition. The local authority is then required to determine the application within 8 weeks of the day following receipt of it.

In order to trigger the deemed discharge provisions, the applicant must send a notice to the local authority. This can be done 6 weeks after the day following receipt of the application. The notice must specify the following:

- The planning condition it relates to along with details of the discharge application; and
- The date on which deemed discharge is to take effect, which must be a date after the 8 week time-period has expired and at least 14 days after the local authority receives the notice.

The notice must also confirm, if the period of 8 weeks has elapsed, that the applicant has not submitted an appeal against non-determination under s.78(2) Town and Country Planning Act 1990 (“TCPA”).

If the specified date arrives without the local authority informing the applicant of their decision, then the condition is deemed to have been discharged.

Exceptions

It is important to note that there are various exceptions to the provisions in the form of specific types of sites or conditions for which the deemed discharge procedure cannot be used. In summary, the exemptions are as follows:

Exempt Sites

- Environmental Impact Assessment (EIA) – all conditions relating to EIA development and sites with protected status under EU law;
- Sites of Special Scientific Interest (SSSI) – all conditions relating to a planning permission which is likely to have a significant effect on a SSSI or would be likely to if the site did not have the protection of the condition being discharged;
- Simplified Planning Zones and Enterprise Zones – all conditions attached to planning permissions for development on land in these zones;
- Crown Development or Government Authorisation – any conditions attached to grants of planning permission for urgent Crown development or government authorisation.

Exempt Conditions

- Flooding – conditions designed to mitigate the risk of flooding;
- Contaminated Land – any conditions relating to the assessment or remediation of contaminated land;
- Archaeology – any conditions relating to archaeological plans or mitigation;
- Highways – any conditions relating to the access between the development and the highway or requiring a s.278 Agreement;
- Reserved Matters – any condition relating to the approval of a reserved matter in an outline planning permission;
- Planning Obligations – any condition which requires a s.106 planning obligation to be entered into;

- Development Orders – any condition relating to a development order (s.59 TCPA), special development order (s.264 TCPA), local development order (s.61A TCPA) or neighbourhood development order (s.61E TCPA). These remove the need to apply for planning permission for certain types of specified development.

Conclusion

Provided none of the above exemptions apply, an applicant can seek deemed discharge of conditions by giving the local authority a deemed discharge notice, 6 weeks or more after submission of the application to discharge. After the specified date (a window of at least 14 days from the notice), the condition will be deemed to be discharged. This provides a mechanism to combat delays caused by a local authority failing to determine an application within the 8 week period, which may become particularly critical in the case of pre-commencement conditions.

The DMPO is silent on whether the provisions apply to conditions attached to applications submitted before 15 April 2015. In the absence of any indication otherwise, the provisions may be capable of applying to applications which pre-date 15 April 2015 and are pending determination. However, given that the provisions are new, there is no commentary on this yet and we will monitor how the provisions are used in practice.

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