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Dear Mr Prescott,

Consultation on improving the use of planning conditions¹

Thank you for the opportunity to comment on these proposals. This response is submitted on behalf of the Chartered Institute for Archaeologists (CIfA) a professional body representing archaeologists working across the UK and overseas, the Council for British Archaeology (CBA) representing the public voice for archaeology, and the Federation of Archaeological Managers and Employers (FAME) the trade association for commercial archaeological organisations. Details of these bodies are provided in a separate appendix.

Improving the use of planning conditions

General

Our concern in responding to these proposals is their effect upon the historic environment and, in particular, their effect upon the management and protection of heritage assets with archaeological interest in the planning process.

The planning system has a key role to play in managing and safeguarding the nation's archaeological resource, much of which is undesignated and some of which has yet to be discovered. This role is implicit in the concept of sustainable development.

For the system to work effectively in this regard it is important that

- there is effective pre-application engagement to identify and (so far as is possible at that stage) address issues relating to the historic environment and where possible promote preservation in situ and also to reduce both programme and cost risk to development

- conditions are formulated clearly, recognising the nature of archaeological evidence and the multi-staged nature of most programmes of archaeological work (including post-excavation analysis, archiving and dissemination)
- conditions are effective to secure the carrying out of all stages of necessary archaeological work
- the early discharge of conditions does not undermine the local planning authority's ability to ensure that all stages of necessary archaeological work are carried out.

Planning conditions provide a crucial mechanism by which public benefit in relation to the historic environment is secured and timely sustainable development is delivered. Indeed, the use of appropriate conditions facilitates permission for development that would otherwise have to be refused because of unacceptable impact upon the historic environment.

Pre-commencement conditions in particular, and the early engagement that they entail, are crucial not only to avoid irreversible harm to heritage assets and their significance but also to provide advance clarity about archaeological requirements which might otherwise affect the viability of development and avoid unexpected discoveries which are likely to involve additional costs and delay.

This is clearly recognised in the consultation document² and was most recently reiterated in the House of Commons by the Secretary of State for Communities and Local Government on the second reading of the Neighbourhood Planning Bill:

'Of course, conditions can play a vital role. They ensure that important issues such as flood mitigation and archaeological investigation are undertaken at the right time. That is not going to change ...'

Such recognition and assurances are most welcome, but concerns remain in the archaeological sector that the proposed changes may inadvertently undermine that key role to the detriment of the historic environment and sustainable development.

Specific Questions

Question 1 – Do you have any comments about the proposed process for prohibiting pre-commencement conditions from being imposed where the local authority do not have the written agreement of the applicant?

1.1 Pre-commencement conditions are integral to the management and protection of heritage assets with archaeological interest and to the delivery of sustainable development. Their use with regard to archaeology is not in issue as Government

accepts (see above) and has been widely embraced over the years facilitating the early delivery of development at the same time as providing enormous benefits for the historic environment.

1.2 That being the case, there is no basis to allow applicants potentially to undermine the securing of public benefit simply by refusing to accept such conditions in an archaeological context. It is not sufficient to say that a local authority can refuse to grant permission if applicants decline to accept archaeological conditions³. This is true but overlooks

- (1) the increased pressure that such a procedure would bring for local planning authorities to grant permission without contentious conditions. Local councils are already under intense pressure to 'bring forward' development, although in truth it is not councils which are, for the most part, responsible for delivering development
- (2) the risk of 'planning by appeal' which such a procedure would bring to the detriment of local decision-making and the democratic process.

1.3 Clause 7 of the Neighbourhood Planning Bill (as introduced to Parliament) seeks to introduce this reform by inserting a new section 100ZA(5) into the Town and Country Planning Act 1990. It would be accompanied by section 100ZA(6) which provides as follows:

'But the requirement under subsection (5) for the applicant to agree to the terms of a pre-commencement condition does not apply in such circumstances as may be prescribed.'

Since the focus of this Government reform is explicitly not archaeological pre-commencement, the simplest way to allay the above concerns would be to prescribe archaeological pre-commencement conditions as conditions to which the requirement in section 100ZA(5) does not apply and to expressly confirm this in Parliament before the enactment of the Bill. This could be supplemented by clearer and stronger guidance on the use of such conditions.

1.4 Furthermore, there are other ways to tackle perceived problems with the operation of pre-commencement conditions. Although there is no suggestion that the operation of archaeological pre-commencement conditions is causing problems in practice, further consideration could be given to more precise wording of conditions and the greater use of phased discharge in relation to archaeological requirements. CBA and ClfA (along with other bodies in the sector such as the Association of Local Government Archaeological Officers) have long advocated such a discerning yet pragmatic approach to the use of conditions in order to ensure that sustainable development is delivered as promptly as possible whilst ensuring that the historic

environment is properly protected and managed. We would be happy to discuss this further.

Question 2 – Do you think it would be necessary to set out a default period, after which an applicant’s agreement would be deemed to be given? If so, what do you think the default period should be?

2.1 Subject to the comments under question 1 above, yes.

2.2 A relatively short period should be stipulated, perhaps 21 days.

Question 3 – Do you consider that any of the conditions referred to in Table 1 should be expressly prohibited in legislation? Please specify which type of conditions you are referring to and give reasons for your views.

3.1 No. There is already clear guidance in the National Planning Policy Framework (paragraphs 203-206) and National Planning Policy Guidance. A broad list of proscribed conditions such as that contained in Table 1 of the consultation document is still open to interpretation when applied to specific cases and would ultimately have to be scrutinized by the Courts (as occurs at present).

3.2 Furthermore, care needs to be taken to avoid any implication that permission has to be granted where a proscribed condition cannot be applied. Where a requirement is necessary to overcome a legitimate and substantial planning objection, but a condition or obligation cannot be secured, permission should be refused. Thus, for instance, where the measures necessary to overcome a legitimate planning objection call into doubt the viability of a project (see the first type of condition identified in Table 1 - ‘*Conditions which unreasonably impact on the deliverability of a development – eg disproportionate financial burden*’) that should not invalidate the objection.

Question 4 – Are there other types of conditions, beyond those listed in Table 1, that should be prohibited? Please provide reasons for your views.

4.1 No. It is not suggested (and rightly so) that the conditions frequently used in relation to archaeological issues are objectionable.

Question 5 – (i) Do you have any views about the impact of our proposed changes on people with protected characteristics as defined in section 149 of the Equality Act 2010?

(ii) What evidence do you have on this matter?

(iii) If any such impact is negative, is there anything that could be done to mitigate it?

5.1 No comment.

Question 6 – (i) Do you have any views about the impact of our proposed changes on businesses or local planning authorities?

(ii) What evidence do you have on this matter?

(iii) If any such impact is negative, is there anything that could be done to mitigate it?

6.1 No, save that any perceived cost-saving through reducing the number of conditions can only be justified where the conditions in question do not contribute to the delivery of sustainable development.

We would be happy further to discuss the issues raised in this consultation insofar as they affect the historic environment. In the meantime, if there is anything further that we can do to assist please do not hesitate to contact us.

Yours sincerely,

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¹ <https://www.gov.uk/government/consultations/improving-the-use-of-planning-conditions>

² See paragraphs 3, 11, 13 and 19 of the consultation document

³ See paragraph 13 of the consultation document

APPENDIX

The Council for British Archaeology (CBA)

CBA is the national amenity society concerned with protection of the archaeological interest in heritage assets. CBA has a membership of 620 heritage organisations who, together with our thousands of members, represent national and local bodies encompassing state, local government, professional, academic, museum and voluntary sectors.

The Chartered Institute for Archaeologists

The Chartered Institute for Archaeologists (CIfA) is the leading professional body representing archaeologists working in the UK and overseas. CIfA promotes high professional standards and strong ethics in archaeological practice, to maximise the benefits that archaeologists bring to society, and provides a self-regulatory quality assurance framework for the sector and those it serves.

CIfA has over 3,200 members and more than 70 registered practices across the United Kingdom. Its members work in all branches of the discipline: heritage management, planning advice, excavation, finds and environmental study, buildings recording, underwater and aerial archaeology, museums, conservation, survey, research and development, teaching and liaison with the community, industry and the commercial and financial sectors.

Federation of Archaeological Managers and Employers (FAME)

FAME is the trade association for archaeological employers and managers. FAME represents one in three archaeological practitioners, employing the majority of archaeologists across the UK. Its membership includes over 50 archaeological practices, from small consultancies to all the largest contractors, from commercial companies, universities and local authorities across England, Scotland and Wales. In addition to representing its members' interests in matters of policy, its aims are to foster an understanding of archaeology across the construction and development sector and promote best professional practice, training and development, and a safe and healthy work environment.