



Title of Report:	Discharge of Conditions
Committee Report Submitted To:	Planning Committee
Date of Meeting:	28 August 2024
For Decision or For Information	For Decision
To be discussed In Committee YES/NO	No

Linkage to Council Strategy (2021-25)	
Strategic Theme	Cohesive Leadership Improvement and Innovation
Outcome	Note position on commencement of development
Lead Officer	Head of Planning

Budgetary Considerations	
Cost of Proposal	Planning Budget
Included in Current Year Estimates	YES
Capital/Revenue	As per budget
Code	5301
Staffing Costs	As per budget

Legal Considerations	
Input of Legal Services Required	NO
Legal Opinion Obtained	NO

Screening Requirements	Required for new or revised Policies, Plans, Strategies or Service Delivery Proposals.		
Section 75 Screening	Screening Completed:	No	Date:
	EQIA Required and Completed:	No	Date:
Rural Needs Assessment (RNA)	Screening Completed	No	Date:
	RNA Required and Completed:	No	Date:
Data Protection Impact Assessment (DPIA)	Screening Completed:	No	Date:
	DPIA Required and Completed:	No	Date:

1.0 Purpose of Report

- 1.1 This Report is to advise Members of the introduction of a further Development Management Information Note about Discharge of Conditions.

2.0 Background

- 2.1 Planning legislation, specifically Section 45 of the Planning Act (Northern Ireland) 2011 allows planning permissions to be granted either unconditionally or subject to conditions. Most planning conditions, while specifying a particular action, do not require specific verification by the Planning Department. 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”.
- 2.2 There are two main types of condition that need to be discharged. Most common, is the type that requires a matter to be verified before development starts. Such a condition is referred to as a “negative condition”. Often this requires the submission of specific information or a report. Use of “negative conditions” is helpful 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 type of condition are provided in the Information Note.
- 2.3 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 provided in the Information Note.

3.0 Content of the Information Note

- 3.1 The Information Note provides information on the following:
- Purpose of using conditions on a planning permission which require discharge.
 - What the process of discharge of conditions entails.
 - Types of discharge of condition applications.
 - Disagreement on a condition.
 - Non-compliance with a condition.
 - How to make an application to have a condition discharged.
 - How discharge of condition applications are processed.

- Public consultation arrangements on discharge of condition applications.
- Discharge of condition application processing time.
- Clarification on discharge of condition applications not attracting a fee.
- The appeal process for discharge of condition applications.

4.0 Proposals

- 4.1 To publish a Development Management Information Note on Discharge of Conditions (See Appendix 1).

5.0 Recommendation

It is recommended that the Committee considers the attached Information Note and agrees to its publication on the Planning Section of Council's website.

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.