

Changing a planning condition for delivery times

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Retiming deliveries and collections to avoid the busiest times of the day can bring significant safety, environmental and social benefits. Changes should be planned with minimal disruption to local residents.

Sometimes you may not be able to deliver at the best time for your business due to a planning condition.

This guide provides the information needed for businesses to apply to change or remove planning conditions.



Restriction types

It is important to identify the type of restriction placed on premises. In many cases the original reasons for the restriction may not be known or documented.

In July 2013, Transport for London (TfL) reviewed the full range of legal restrictions that can affect when delivery and servicing activity can take place.

The three most common reasons for restrictions are outlined below. The subtle differences between them are not always clear and dealing with each one calls for a different approach.

In addition to restrictions on the building, there may also be local road restrictions that affect the delivery window.

Land-use Planning conditions

These are implemented by a local planning authority under planning law. Conditions can limit the opening or operating hours of a business and the hours during which deliveries or servicing can take place.

Environmental health noise abatement notice

This is a statutory enforcement to immediately stop or amend noisy activity from taking place. Failure to do so will result in the business no longer being permitted to receive deliveries at that time. The notice will arise from complaints by members of the public or the Environmental Health Officer (EHO). Breaches may result in a £20,000 fine and the business must meet the requirements set by the EHO.

Local voluntary agreement

This is an informal agreement with the business and local authority which may be used by the business to demonstrate good neighbour relationships. The business is free to amend or terminate the agreement at any time without any legal or financial penalty.

Planning conditions

Planning conditions are subject to Section 72(1) of the Town & Country Planning Act. Conditions imposed on a planning permission could include a requirement to control activities, whether redevelopment of a site or arising from the change of use of all or part of a site.

Where premises are located near residential properties it is important to carry out delivery and servicing activity in a sensitive way.

Restrictive conditions setting out permitted servicing hours apply to many sites across London. Local authorities usually impose these conditions to protect residents. Servicing hours near residential premises often prohibit deliveries between 23:00 and 07:00. These hours are considered to be 'night-time', as defined by the World Health Organization. During these hours noise levels are lower than daytime and therefore local residents can reasonably expect to be protected against any unacceptable noise.

There is often no standard approach to enforcing or applying planning conditions as each development proposal is assessed on a case-by-case basis. The scale, mix of use and location are likely to be different for each site. Two adjacent sites may have different servicing restrictions.

This doesn't mean that if a planning condition specifies these times, it can't be varied or removed. Conditions must be necessary, relevant to the development, enforceable, precise and reasonable in all other respects. With proper reasoned justification and supporting evidence, some conditions can be varied or removed under the Section 73 process.





Policy

Paragraph 109 in the National Planning Policy Framework identifies noise pollution as an environmental risk to all developments, and according to paragraph 123, planning policies and decisions should aim to:

- Avoid, mitigate and reduce adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions
- Recognise that development will often create some noise and existing businesses should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established; and
- Identify and protect areas of tranquillity which are prized for their recreational and amenity value

The Government's Planning Practice Guidance (PPG) that accompanies the National Planning Policy Framework is a 'material consideration' and provides detailed advice on the use of conditions, including tests that conditions must meet. One of the tests is consideration of the 'necessity' of imposing a condition. This ensures that conditions are not imposed without good reason.

Breach of a planning condition

If a breach is deemed to cause serious environmental harm, or is detrimental to amenity or public safety, a Breach of Conditions Notice may be served (in addition to an Enforcement Notice) where a local authority considers it needs to stop the breach quickly.

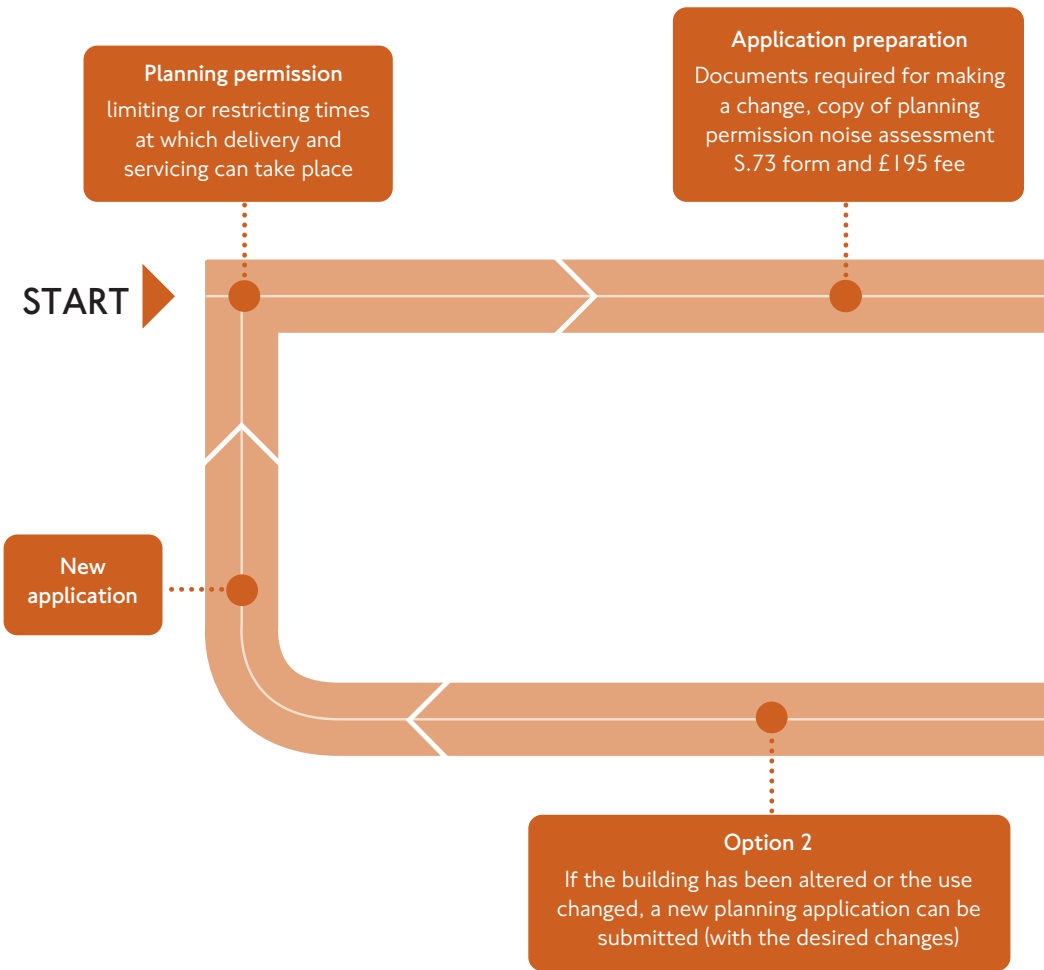
A breach carries no financial penalty, however it cannot be appealed against. If a breach of conditions is not complied with, the local authority may apply for a court injunction.

Applying for a change

Although there can be challenges when attempting to change delivery times, it is possible. The planning process is complicated and requires detailed technical knowledge to ensure the right steps are taken, in the right order.

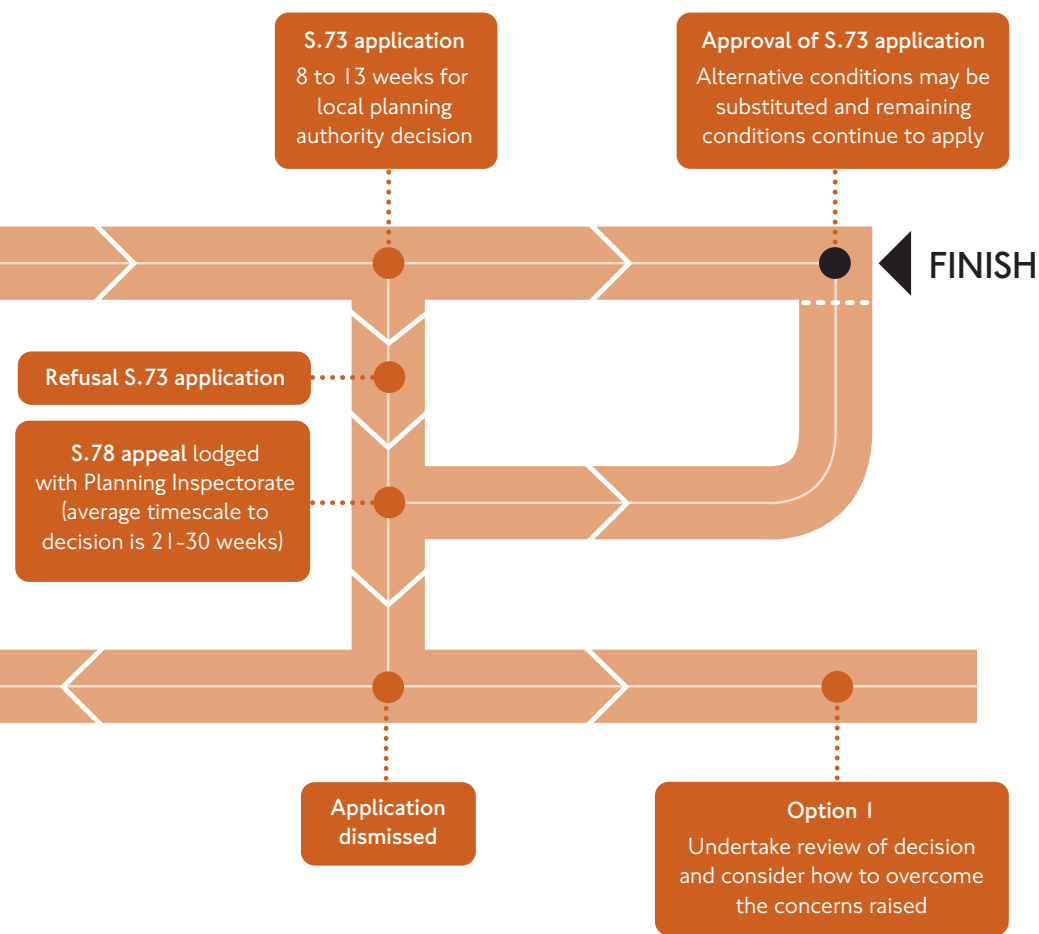
A planning condition can be amended or removed by applying to the local authority with proper reasoned justification and supporting evidence under Section 73 of the Town and Country Planning Act. The documents needed are:

- The appropriate planning application form (available from the local authority)
- An explanatory covering letter or statement (often including a noise assessment report prepared by an appropriate specialist and any highways evidence)
- An application fee of £195



A detailed noise assessment is normally required to support an application. This provides evidence and assurance that the proposed change to delivery times will not be detrimental to residents and occupiers. Highways evidence may also be required if the reason for the condition relates to highway and/or pedestrian safety. Following submission of an application, the decision may take up to 13 weeks.

The process for a Section 73 application is set out in Figure 1 below.

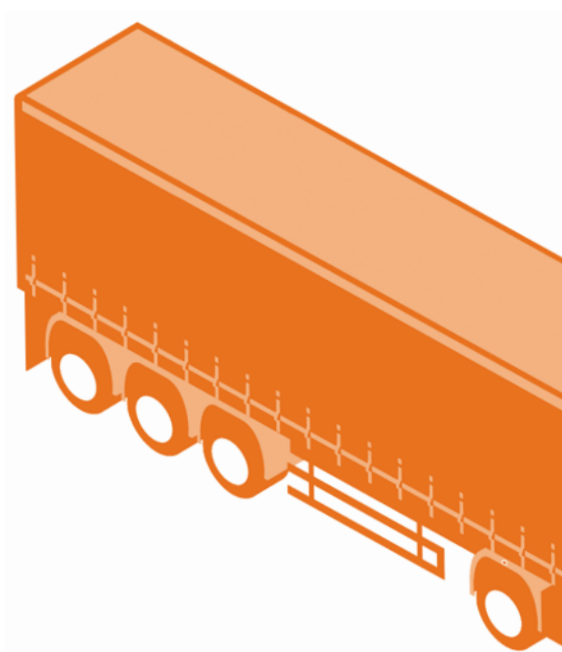


Consultations

A local authority has a statutory duty to notify local residents and businesses of all planning applications.

When applicable, notification is usually by letter and sometimes includes posting a notice near the site. Comments must be received in writing (or email) within 21 days of the consultation start date. However, local authorities are required to consider all comments received up to the point when an application is determined.

A Section 73 application is classified as a 'minor' application and it is not mandatory for applicants to consult local residents and businesses prior to submission.



Note

The law provides that authorities may apply more onerous conditions than previous if the authority considers these are justified.

Appealing against a refusal

If the application is refused, there is scope to appeal to the Planning Inspectorate.

Section 78 of the 1990 Act provides the right of appeal against the refusal or the failure to determine the application within the specified timescale. The average timescale to receive a decision following submission of an appeal to the Planning Inspectorate is between 21 and 30 weeks.

A statutory provision still allows conditions to be imposed by an inspector following the appeal. If a planning consultant or specialist has not been involved in the application process it is recommended that a suitable specialist is asked to review the background and provide advice on whether an appeal would be worthwhile.



Planning guidance

For more advice on planning matters, visit
www.planningportal.gov.uk





Changing delivery and servicing times

For more information about
retiming deliveries, visit:

tfl.gov.uk/retime
tfl.gov.uk/freight

