

## CORONAVIRUS: IMPACTS ON THE UK PLANNING SYSTEM

Over the past few weeks, all areas of Government, business and daily life have experienced unprecedented disruption in response to the Coronavirus outbreak (Covid-19). At both central and local government level, the Town and Country planning system is faced with significant challenges and is coming under great pressure to identify solutions in order to keep democratic processes going and to ensure key planning services continue to be delivered to business, local communities and applicants.

This briefing looks at the ways in which local authorities and applicants have been affected by the Coronavirus outbreak and the solutions that are being put in place to reduce business interruption in the interim. This briefing will be updated on a regular basis to keep abreast of the changing circumstances.

### LOCAL GOVERNMENT SERVICES

Given the public-facing nature of local authorities, the need for social distancing and other Coronavirus measures presents particular difficulties in how they can continue delivering council services and discharging statutory obligations. Local authorities are having to urgently troubleshoot solutions in order to reduce disruption to the delivery of key services and to ensure that normal democratic processes continue.

#### Planning services

With face-to-face planning services being suspended and the majority of council officers now working from home, the continued provision of planning services and the functioning of the planning system are being impacted. In particular:

- **Pre-application Meetings:** Pre-application meetings, which are critical in the development of a planning application, are largely being suspended. Councils will need to adopt video and telephone conferencing in order to continue discussions with applicants and consultants. Local councils should be able to adapt easily to this way of holding pre-application meetings.
- **Application documents:** Although application documents are submitted electronically, where the local council receives hard copy documents, these will need to be scanned and uploaded onto the planning register. Council officers working from home are unlikely to have access to the usual

*Note: This briefing is up-to-date as of 17 April 2020.*

#### Key Points

- Current issues with the delivery of local government services will need to be resolved through technological solutions, secondary legislation and ad hoc solutions.
- Council meetings will largely be conducted remotely, with decisions delegated to council officers where appropriate.
- Statutory requirements relating to council meetings have been waived pursuant to the Coronavirus Act.
- Local government elections have been postponed until May 2021.
- The Planning Inspectorate has suspended all scheduled site visits, hearings, inquiries and events in relation to planning appeals, NSIP applications and Local Plan Examinations. Technological solutions are being considered and trialled in order to resume these events.
- Local authorities have been urged not to enforce planning conditions which hinder Coronavirus measures.
- Permitted development rights have been extended to enable pubs, cafes and restaurants to operate takeaway facilities and to enable local authorities and health authorities to convert facilities to hospitals without the need to obtain planning permission.

resources and so will need to find technological solutions to ensure this information is publicly available.

- **Consultation:** The Coronavirus restrictions mean that consultation cannot be carried out in the usual way; however, local authorities are still being encouraged to continue with consultation on local plans etc. Given public consultation events are no longer permitted, we anticipate that applicants will look to shift consultations onto online platforms or through email newsletters. However, for those in the community that do not have access (or good access) to online resources, this may create an inequity which applicants will need to consider how best to resolve. Consultation deadlines may need to be extended in order to facilitate participation.
- **Meeting statutory deadlines:** With officers working from home and Committee meetings being postponed, it is likely there will be delays in determining planning applications, completing Section 106 Agreements and then issuing planning permissions. Industry groups are already campaigning for the relaxation of time limits for determining planning applications and increased delegation of decision-making powers to council officers.

Particular issues for developers include:

- **Planning Applications:** Following lock-down measures, it will be harder for developers to undertake the necessary assessment and survey work to inform their planning applications and assessments. Developers who are looking to submit an application will need to work closely with their advisers to work out a way of undertaking the necessary assessments or appropriate workarounds.
- **Compliance with Planning Permissions:** Whilst construction work continues for the time being, developers will still be able to implement permissions. However, it is unlikely that they will be able to arrange for council officers to attend site visits in order to confirm implementation. In the circumstances, video or photographic evidence should suffice in most cases. If tighter restrictions do come into force or construction is suspended, developers run the risk of losing their permissions if they are unable to implement them in time. There is no concept of *force majeure* in planning permissions and the loss of unimplemented planning permissions will have serious funding implications. Local authorities will need to work with developers to agree what material operations can be undertaken in order to keep planning permissions alive or whether they will not seek to enforce these timeframes for a specified period.

As timeframes cannot currently be amended via Section 73 or 96A applications in England, the Government is coming under pressure to introduce changes to enable planning permissions to be extended to preserve the ability to implement and/or submit reserved matters approvals. The Government implemented similar regulations during the 2008 financial crisis which allowed three year permissions to be easily extended and so we expect something similar to be rolled out in response to Coronavirus. Scotland has already introduced legislation to extend planning permissions by an additional year.

- **Compliance with Planning Agreements:** Similar issues may arise in respect of compliance with Section 106 obligations that are time-specific. Developers should review Section 106 agreements and determine whether they can avoid triggering payment obligations. Councils will also need to consider whether they are willing to provide extensions of time so that

developers do not fall foul of these obligations. Developers will also need to consider the impacts of Coronavirus on payments of Community Infrastructure Levy ("CIL") which is triggered on commencement of development. We anticipate that the Government will release guidance or further regulations to assist developers with the renegotiation or extensions of time required in respect of Section 106 agreements and CIL payments.

## Council Meetings

Following the publication by the Government of guidance to exercise social distancing, a large proportion of local authorities moved to cancel upcoming committee meetings. Some local authorities have sought to impose social distancing measures so that essential meetings can continue, whereas others have adopted telephone or video-conferencing so that councillors can continue attend meetings remotely.

However, moving to remote committee meetings poses issues as to how local authorities can ensure compliance with statutory requirements. Under the Local Government Act 1972 ("**LGA**"), councillors must be physically present at a planning committee in order to vote on applications. There is no provision for remote participation or voting. The LGA also includes a six month rule, whereby a vacancy will be declared if any local councillor fails to attend a meeting at least once in every six month period.

This issue has now been resolved through the Coronavirus Act 2020 (the "**Coronavirus Act**"), which came into force on 25 March 2020. The Coronavirus Act provides that the relevant national authorities (in England, the Secretary of State) may make regulations regarding how council meetings will be undertaken over the next year, including frequency, public access, voting and participation arrangements. Regulations to enable address these matters were introduced on 4 April 2020.

Following MHCLG guidance, a number of local authorities have been delegating decisions on planning applications to their Chief Executive Officer under emergency powers, with input from councillors via virtual meetings. We anticipate that these delegations will be reviewed now that Councils are starting to hold meetings remotely. In the meantime, local authorities will need to exercise their discretion as to what gets delegated and they may choose not to delegate large, controversial or complex applications away from council committees until teething issues with remote meetings are resolved. These have reportedly included abusive third parties interrupting a virtual meeting.

Local authorities are seeking to develop solutions to resolve the above issues, although the approach will vary from council to council. We recommend that all developers liaise with their planning officer to mutually agree solutions to issues as they arise in order to keep applications moving through the system and to ensure that planning permissions can be implemented within defined timeframes.

The Government has tried to help local authorities by listing local government staff as "critical workers" who are able to access schools and nurseries, although local authorities have the discretion to decide whether this extends to planning officers. While this inclusion may go some way to ensuring officers are available, it does not resolve the practical and technological issues that arise with remote working arrangements or prevent local authorities deploying council staff to other areas of council if other council services are considered more critical (which we are aware is occurring in some local authorities in Central London).

## **Local Government elections**

English local government elections (set to be held 7 May 2020) have been postponed by a year pursuant to the Coronavirus Act, following initial recommendations by the Electoral Commission for a postponement to be put in place until Autumn 2020. England was scheduled to hold 309 local elections, including elections for the London Assembly and for seven English regional mayors (including the Mayor of London). The 2001 foot and mouth outbreak was the last time local government elections were postponed, although they ended up taking place one month later. The Coronavirus Act also includes powers for the Secretary of State to suspend other elections and referenda (for example, by-elections and neighbourhood plan referenda) where required.

## **Local Government funding**

The Local Government Secretary Rt Hon Robert Jenrick MP has confirmed the Government's commitment to supporting local authorities in their response to Coronavirus, and the Chancellor Rishi Sunak has advised that local authorities will be fully compensated for any new measures put in place during this time.

Of the additional support made available to local authorities, a statement published by the Department of Health and Social Care and MHCLG on 19 March 2020 stated that £1.6 billion would be allocated to local authorities to help them respond to Coronavirus pressures across all the services they deliver. According to a further statement published by MHCLG on 30 March 2020 which contains details of the allocation of funding for local authorities, of this £1.6 billion of additional funding, at least £253 million has been allocated to local authorities within Greater London.

Mr Jenrick has urged local authorities not to defer spending, and the Government has issued updated guidance on procurement processes and the eligibility and delivery of new funding packages available including hardship funds, council tax relief and business rates exemptions. The deadline for local government financial audits will also be extended to 30 September 2020, however this was not included within the Coronavirus Act.

## **CENTRAL GOVERNMENT SERVICES**

### **Planning Inspectorate Activities**

The Planning Inspectorate (PINS) issued [updated guidance](#) on postponing all scheduled site visits, hearings, inquiries and events in relation to planning appeals, Nationally Significant Infrastructure Project ("NSIP") Applications and Local Plan Examinations until further notice. PINS had originally proceeded on the basis that events could continue provided certain measures were adopted; however, in light of the developing circumstances, the decision was made to postpone all events.

The updated guidance advises that decisions on how to proceed will be made by the individual inspector, taking into account the following principles:

- the feasibility of using technological solutions to allow events to proceed, provided fairness for all parties is ensured;
- whether parties consider the case can be decided purely on the basis of written submissions in response to questions; and
- whether a site inspection is needed, and if so, whether that site visit can be unaccompanied, and if transport and access can be arranged that avoids social contact.

PINS is continuing to provide updated statements outlining the range of options that are being explored to ensure that hearings can resume as quickly as possible, including piloting virtual site visits and telephone and video conferencing. The guidance is under review and will be updated and pilots and other matters progress.

Although PINS has encouraged parties to prepare information and written submissions "where it is possible and safe to do so", PINS is yet to issue guidance addressing whether, and if so how, applicants should comply with their various statutory obligations during examination which may be otherwise impaired as a result of Coronavirus. For example, the obligation to give notice of specific matters and ensuring documents are made available for public inspection. We expect that some applicants might struggle or be slow to meet their statutory obligations in the coming weeks while they find appropriate work-arounds.

## **SOLUTIONS TO ASSIST BUSINESS**

Alongside the £350 billion economic package promised, planning rules are also being relaxed to ensure that local businesses to continue operate (albeit in a modified way), disruption within the supply chain is minimised to the greatest extent possible, and the public can continue to access essential products and services.

### **Non-enforcement of planning conditions**

The [first relaxation](#) to be announced is that local councils have been requested to exercise their discretion to not enforce planning conditions which restrict the operational and delivery hours of supermarkets, retailers and distribution centres. The Housing Secretary, the Rt Hon Robert Jenrick, has acknowledged that, while these conditions are necessary to protect local residents, given these exceptional circumstances, additional flexibility is needed to enable retailers to accept deliveries through the day and night and to extend operational hours to meet increased demand. The Scottish and Welsh Governments have also issued the same instructions.

The updated MHCLG guidance reiterated this request but went a step further by stating that local authorities should also use their discretion on the enforcement of other planning conditions which hinder the effective response to Coronavirus.

These extended operational and delivery hours for supermarkets will be further bolstered by temporary waivers under the Competition Act to allow cooperation between retailers to secure supply and distribution and easing of restrictions on delivery drivers' working hours during the crisis.

### **Extension of Permitted Development Rights**

#### *Takeaway facilities*

The second relaxation is to [extend permitted development rights](#) ("PDRs") to allow restaurants, cafes and pubs (Use Class A3 and A4) to be operated as takeaways (Use Class A5) for up to 12 months without the need for planning permission to be obtained. The Scottish and Welsh Governments have also extended PDRs in this way.

This extension, which is clearly aimed at saving these businesses from collapse due to the lockdown conditions imposed by the Government, was implemented on 24 March 2020 via the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2020 (Si 2020 No. 330)

("Amendment Order"). The Amendment Order introduces a new Use Class 'DA' specifically for those converting to temporary takeaway services and goes beyond the services originally reported to include "any use for the provision of hot or cold food that has been prepared for consumers for collection or delivery to be consumed, reheated or cooked by consumers off the premises". This expansion widens the types of businesses that can take advantage of the new PDRs and will no doubt be welcomed by the business community.

Under the Amendment Order, businesses are only required to notify their local council of their intention to operate as Use Class DA; however, they should also check their lease allow such activities, and if not, obtain landlord consent prior to notifying the local council.

#### *Temporary emergency measures*

The most recent relaxation is to introduce new PDRs enabling English local councils and health authorities to temporarily create new facilities and convert existing buildings on land owned, leased, occupied or maintained by them for emergency measures. These PDRs, introduced via the [Town and Country Planning \(General Permitted Development\) \(Coronavirus\) \(England\) \(Amendment\) Order 2020](#), will be withdrawn on 31 December 2020. Where development is undertaken on behalf of the local council or health authority, the developer is required to notify the local planning authority as soon as practicable after commencing development. We note that the new ExCeL Nightingale Hospital is one of the first facilities to benefit from this PDR having now withdrawn its previous planning application.

## **CONCLUSION**

Solutions to the issues presented by Coronavirus are developing by the day as local authorities and MHCLG get to grips with the new world order. However, what we are seeing is the increasing roll-out of technological solutions in order to keep local government in business, even if it is just an interim measure. Councils will have to balance the use of these technological solutions with the need for all parties to be able to participate in democratic processes in a fair and equal manner.

We will continue to update this briefing as new announcements are released.

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