

## UK PLANNING SYSTEM ADJUSTS TO COVID-19

6 APRIL 2020 • ARTICLE



**The COVID-19 pandemic is a global crisis unprecedented in recent times, and presents the whole planning industry, from developers and local authorities to third parties, with a number of unique challenges. With the picture changing rapidly, there is a need for flexibility and foresight.**

In response to the developing crisis, the UK Government has made a number of announcements, including setting out guidance, to clarify certain planning matters. These relate to some permitted development rights and the wider issue of remote access and attendance at planning appeals and hearings. Notably, however, has been the absence of any guidance relating to the practical impact of COVID-19 on extant planning permissions, particularly those that are nearing their implementation date. We will address these outstanding issues in a separate article.

### GOVERNMENT POSITION

Following the Government's announcement on 23 March 2020 of strict new lockdown measures, with the possibility of more stringent measures to follow, a number of subsequent legislative amendments and policy announcements in relation to planning procedures have been made.

On 24 March 2020, the Ministry of Housing Communities and Local Government ("MHCLG") distributed a Planning Update Newsletter (the "Newsletter")<sup>[1]</sup>. The Newsletter requests Local Planning Authorities ("LPAs") to "*prioritise decision-making to ensure the planning system continues to function, especially where this will support the local economy*" and "*take an innovative approach, using all options available*" to facilitate this.

The Newsletter promotes pragmatism from LPAs and seeks that the relevant parties work proactively together. It recommends:

- Using technology to ensure that discussions and consultations can go ahead. The Newsletter foreshadows potential regulations under the Coronavirus Act 2020 to enable virtual attendance at council committee meetings;
- Delegating committee decisions where appropriate;
- Agreeing extended periods for making decisions, where appropriate; and
- Extending timescales in relation to prior approval applications for permitted development.

### LEGISLATIVE CHANGES

The Coronavirus Act 2020 ("the Act") came into force on 26 March. Section 78 of the Act permits the Secretary of State (or the Welsh Ministers, as the case may be) to enact regulations in relation to local authority meetings in order to address issues surrounding remote access and attendance.

"Local Planning Authorities are being asked to prioritise decision-making to ensure the planning system continues to function, especially where this will support the local economy"

Over the weekend, on 4 April 2020, pursuant to s78 of the Act, The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 ("the Regulations") came into force. These apply to local authority meetings (and police and crime panel meetings) that are required to be held before 7 May 2021.

The Regulations have broad application, as established in the wide definitions of "local authority" and "local authority meeting", which encompass a meeting of:

- a local authority;
- an executive of a local authority (within the meaning of Part 1A of the Local Government Act 2000)(10);
- a joint committee of two or more authorities; and
- a committee or sub-committee of anything within the above three bullets.

Part 2 of the Regulations deals with remote attendance. Regulation 4 enables local authorities to alter the frequency and occurrence of meetings without the requirement for further notice.

Regulation 5 addresses the mechanics of remote access. In particular, it broadens the scope of a meeting "place" to include "*digital or virtual locations...or conference call telephone numbers*". It also requires that any persons attending remotely are able to hear and be heard, and where practicable, see and be seen by other attendees.

The Regulations further empower local authorities to make additional provisions for remote access (for example, in relation to voting) through standing orders and rules.

## ***Permitted development rights and temporary changes of use***

Following social distancing guidance, pubs, restaurants, and cafes are no longer permitted to be open for on-site consumption. Secondary legislation came into force on 24 March 2020 temporarily permitting these premises to operate as takeaways, for up to a 12-month period. Amendments to the Town and Country Planning (General Permitted Development) (amendment) (Wales) Order 1995, which came into force on 30 March 2020, enable Welsh local authorities to carry out certain development in an emergency[2]. These temporary permitted development rights will, for example, allow for the repurposing of venues as temporary hospitals for a twelve-month period.

It is significant that, thus far, England has yet to introduce similar measures. The swift repurposing of the London ExCel Centre to the NHS Nightingale Hospital is proceeding through the usual procedure for temporary change of use with the Newham Council.

## **PLANNING INSPECTORATE (PINS) RESPONSE**

PINS has issued its own guidance on site visits, hearings, inquiries,[3] local plan examinations[4], and NSIP events[5] and has postponed all site visits, preliminary meetings, hearings and inquiries. PINS is considering whether there might be alternate means to undertake site visits (e.g. by drone) and it is further considering what virtual solutions could be employed in relation to hearings and enquiries. It is likely that more cases will proceed on a written representations basis.

The NSIP examination process is primarily a written one and the administrative side of cases should therefore not be too frustrated by the Covid-19 restrictions. PINS has indicated further discretion may be exercised to enlarge existing deadlines and make any other changes to timetables where necessary and appropriate

Regrettably, PINS has been slow to adapt, and is even lagging behind the Courts, which have already begun to continue proceedings virtually, despite the fact that, certainly in the case of NSIP events, the process is run largely remotely already by PINS. The statement in the Newsletter that *"PINS will keep its guidance under review, which could change at short notice to reflect the Government's wider advice"* appears to be a thinly veiled criticism that, in MHCLG's view, PINS is not yet doing enough. PINS has been quick to state that it needs to ensure that the principles of fairness and access are not circumscribed in the process of moving to virtual/remote processes.

**"there is a real absence of guidance for developers and LPAs in relation to extant planning permissions where pre-commencement conditions need to be discharged, details need approving, and actual physical works need to be undertaken to implement the permission"**

## LOOKING AHEAD: WHAT REMAINS TO BE CLARIFIED?

The announcements so far have shown that MHCLG and PINS are giving consideration to altering processes to enable certain planning work to continue through this uncertain period. However, outside the issue of meetings, hearings and appeals, there appears to be a distinct lack of consideration to the other aspects of the planning process that will also be undoubtedly impacted by the COVID-19 crisis. In particular, the current responses all appear to relate to applications that are in train; there is a real absence of guidance for developers and LPAs in relation to extant planning permissions where pre-commencement conditions need to be discharged, details need approving, and actual physical works need to be undertaken to implement the permission.

While the speed at which the Regulations were prepared and came into force may give some comfort that further regulations could be on their way, as things presently stand there is still a

significant amount of Covid-19 induced confusion in the planning world.

In our next article, we will consider the issues generated by Covid-19 in relation to the implementation of planning permissions.

Rachael Davidson, a former senior Associate in our London office, also contributed to this article.

[1] [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/875045/Chief\\_Planners\\_Newsletter\\_-\\_March\\_2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/875045/Chief_Planners_Newsletter_-_March_2020.pdf)

[2] <http://www.legislation.gov.uk/wsi/2020/367/made/data.xht>

[3] [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/875544/COVID-19\\_Guidance\\_for\\_site\\_visits\\_hearings\\_and\\_inquiries\\_v3\\_24\\_March\\_2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/875544/COVID-19_Guidance_for_site_visits_hearings_and_inquiries_v3_24_March_2020.pdf)

[4] [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/875472/240320\\_\\_Local\\_Plan\\_updated\\_advice\\_-\\_external.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/875472/240320__Local_Plan_updated_advice_-_external.pdf)

[5] [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/875476/240320\\_updated\\_advice\\_NSIP\\_-\\_external.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/875476/240320_updated_advice_NSIP_-_external.pdf)

## KEY CONTACTS



**NICK WALKER**

PARTNER • LONDON

T: +44 20 3036 9822

[nwalker@wfw.com](mailto:nwalker@wfw.com)

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