

Planning flexibility – some baby steps

May 2020



Published by
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The Government has announced a number of relaxations and changes to the planning system to address concerns arising from the Covid-19 lockdown. These are some of the main changes:

Determination of applications for planning permission

The timescales for determining planning applications remain unchanged. However, developers are encouraged to agree extensions of the period for determination. Local authorities in turn have been urged to give priority to validating urgent COVID-19 related applications for planning permission and associated consents.

Publicity for planning applications

Temporary regulations which expire at the end of 2020 came into force on 14 May to supplement existing publicity arrangements for planning and related types of applications. There is now flexibility to take other reasonable steps to publicise applications and environmental statements if the usual requirements relating to site notices, neighbour notifications, newspaper publicity or availability of hard copy documents cannot be complied with. Steps can include the use of social media and electronic communications and they must be “proportionate to the scale and nature of the development”.

Planning Conditions

The Government has made it clear that hours of use planning conditions should not be a barrier to allowing developers and site operators the flexibility to operate safe working practices. Where only short term or modest increases in permitted working hours are required, Councils are encouraged to use their discretion not to enforce against a breach of working hours conditions. Where more significant changes are required formal applications to amend conditions should be made, which Councils should prioritise and turn around in 10 days. Requests to work up to 9 pm from Monday to Saturday should not be refused without very compelling reasons and in appropriate locations, 24 hour working should be permitted.

Community infrastructure levy

The current CIL regulations already allow charging authorities some flexibility to defer CIL liability. Amendments are to be made to the regulations "in due course" to increase this flexibility, but only if charging authorities decide to use the new discretion available to them. Authorities will be able to defer payments, temporarily disapply late payment interest and provide a discretion to return interest already charged. However, these changes will only apply to small and medium-sized developers with an annual turnover of less than £45 million. Furthermore, the new instalment policies will only apply to chargeable development starting after the changes come into effect, but they are anticipated to apply to "phases" of the development starting after that date.

Section 106 planning obligations

New policy advice encourages local planning authorities to consider the deferral of section 106 obligations involving financial payments. This will require variations to existing section agreements and undertakings. Local planning authorities are generally asked to take a "pragmatic and proportionate" approach to the enforcement of section 106 planning obligations.

What's missing?

Whilst these changes are welcome there is still plenty more that could be done. Automatically extending the life of unimplemented planning permissions would be one, and making it easier to apply to renew planning permissions would be another. And to provide some teeth to the warm words about deferring planning obligation requirements would be the right to apply for a variation and to be able appeal it, immediately after a section 106 agreement has been completed. Then there is the comprehensive overhaul of the community infrastructure regulations....

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