

The Business and Planning Bill – some relief for the development industry

July 2020



Published by
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Better late than never it's good to see that the Government is finally responding to a number of serious Covid-19 related concerns raised by the development industry in the form of the Business and Planning Bill, which received its first reading on 25 June.

It's far from everything on the industry's wish list but let's not be curmudgeonly. The government has asked Parliament to expedite the Bill so that the measures can become law before the summer recess. As at 30 June 2020, the Bill had completed all its stages in the House of Commons and was due to go to the House of Lords for consideration.

What does the Bill do? The purpose of the Bill is to try to prevent developments from stalling due to COVID-19, and it has four main provisions.

1. Extending the commencement period for planning permissions

One of the most pressing concerns facing the development industry is the expiration of planning permissions which developers are currently not in a position to implement. It has been estimated that over 400 planning permissions, providing more than 24,000 new homes, will have expired between March and the end of June 2020.

Planning permissions which expire between the coming into force of the Act and 31 December 2020 will automatically have their implementation deadline extended to 1 April 2021. This also applies for listed building consents with an expiry date between 23 March and 31 December 2020. The Act will also enable these important dates to be extended if necessary, through the making of new regulations rather than requiring additional primary legislation.

For planning permissions which expired between 23 March 2020 and the date that the Act takes effect, there is a regulatory hurdle to overcome. The expiry date will only be extended to 1 April 2021 for these permissions if an "additional environmental approval" is granted, or deemed to be granted, by the local planning authority (LPA).

The LPA can only grant such an approval if certain environmental impact assessment and habitat assessment requirements are met; essentially, if such an assessment is required the LPA must be satisfied that the information it has is up to date. The LPA has 28 days to determine an application for an additional environmental approval, and if it doesn't notify the applicant of its decision within this period, the approval is deemed to be granted.

The flaw with this process is that it is only likely to be needed where permissions themselves are at least three years old, and the relevant assessments will be older than that, perhaps by 12-18 months. Is information that is over 4 years old up to date? LPAs will have a ready-made excuse to refuse these applications if they want to. Presumably this protection is a nod in favour of EU environmental protection requirements, but in this case the automatic approval in the absence of a decision is a bit of a surprise. Let's see if this mechanism is sorted out during the Bill's swift passage through Parliament.

2. Extra time for Reserved Matters

The automatic extension of time has also been applied to the deadline for securing reserved matters approvals, where that deadline falls between 23 March and the end of 2020. This gives those affected time to prepare the necessary details to ensure that the most appropriate form of development is coming forward. The provisions relating to the extension of the implementation deadline also apply to phases of outline permissions.

3. Construction hours planning conditions

For most sites, developers will be given a simplified process to temporarily amend any planning condition or approved construction management plan (or similar document) restricting the hours during which construction activities can be carried out on site. This dovetails with the new policy encouraging such relaxations. Any altered hours that are approved will only remain in place for a temporary period and not beyond 1 April 2021 – although there is a power for regulations to be made to extend this period.

The simplified procedure is that the LPA has 14 days within which to notify the applicant of its approval, refusal or modification of any requested amendments. If it fails to do so the modifications are deemed to be approved.

4. Procedural flexibility for planning appeals

The Government is introducing some flexibility to the way that planning appeals are determined. Until now planning appeals must be determined by one of three clearly defined routes – written representations, hearing or public inquiry. When the Act comes into force, a "mix and match" approach can be adopted, meaning that the manner in which a particular topic is dealt with can vary depending on the complexity of the issue. This may well help speed up the planning appeal process, with only the most complex of topics needing to be dealt with by way of an inquiry.

If the intention is to build our way out of this unforeseen crisis then these measures are indeed welcome. We suspect that more short-term flexibility may yet be required – particularly in respect of viability issues which are threatened by high CIL payments and onerous section 106 obligations.

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