

Client: Lewis Silkin LLP Yellow News
Source: Estates Gazette Online (Web)
Date: 20/04/2020
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The Law Society calls for urgent planning fixes

The Law Society has a number of specialist committees, and this month the planning committee for the City of London and the wider national planning committee joined forces to consider the legislative changes introduced since the outbreak of Covid-19. There was general widespread approval for how quickly the government has responded to the pandemic and, in particular, the changes to permitted development rights (PDRs) to allow food and drink establishments to make deliveries.

However, it was also recognised that there were a number of deficiencies in the new legislation and the working group split into teams to examine how drafting could be improved, as well as pooling together ideas for other changes.

Remote access

Following lockdown there was huge concern about how planning committees could continue to determine applications since legislation required meetings to be in person. As a result, the government introduced new regulations to enable local authorities to hold meetings remotely, including live interactive streaming. However, the change is only effective until 7 May 2021. Committee members felt that the introduction of technology to planning meetings should not be seen as just a short-term measure, as allowing more flexibility into how people “attend” meetings was attractive for the longer term.

Hot food permitted development rights

On 20 March the government announced that restaurants, cafes and pubs should close to reduce the spread of coronavirus. To support these businesses and ensure food supply to those self isolating, new legislation was subsequently introduced to change PDRs and allow takeaway or delivery service for hot and cold food. In its haste to expedite the necessary changes to the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO), the government overlooked the fact that a large number of planning consents had been granted with planning conditions excluding the right to rely on PDRs to change use.

To provide security for businesses caught by this restriction, the Law Society has recommended that the government provide express guidance to local authorities so that no enforcement action is taken during the relevant period.

Emergency development

Wales and England have both introduced amendments to their respective GPDOs to provide for new PDRs for any emergency development on land owned or controlled by local authorities or health services (England only for the latter). However, there is no equivalent right for private providers assisting the NHS. Furthermore, there are many privately owned healthcare businesses such as nursing homes that would benefit from the ability to expand capacity. Amendments to expand PDRs are therefore recommended.

Appeal process

The Planning Inspectorate is considering the use of technology to allow for remote access inquiries and hearings. Such use is generally endorsed. However, not everyone has online capabilities and accordingly there needs to be flexibility in the application of video linking or live streaming to ensure that no participant is unfairly prejudiced. Rather than a blanket approach, the preferred option is to have each matter considered on a case-by-case basis as to suitability.

Determination periods

Local authorities are going to struggle to process and determine planning applications during Covid-19. As such, there is an urgent need for amendments to be made to the Town and Country Planning (Development Management Procedure) (England) Order 2015 to provide for extensions of statutory determination periods. Ireland has already made legislative changes to extend timescales and it would be prudent to follow suit.



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Expiry of planning permissions

One of the main concerns arising out of the lockdown is the risk of permissions lapsing because developers cannot commence works. This was an issue that arose during the 2008 recession and, as a result, temporary changes in legislation allowed for replacement permissions. Some sort of similar 'fix' is required now. This could be a general extension of time for a temporary period or the removal of section 73(5) of the Town and Country Planning Act 1990 (the 1990 Act), which restricts the ability to vary time limits. Both of these would require changes to primary legislation which will have to wait while parliament is in recession. For the interim, one way forward might be to confirm that an extension of the time limit could be deemed to be a non-material amendment for the purposes of section 96A of the 1990 Act.

Consultation and deposit of documents

Current legislation requires site notices to be erected in respect of new planning applications as well as copies of relevant documents being made available within the "locality" for public inspection. The continued need for site notices is recognised but the requirement for the deposit of documents is problematic with so many premises being closed. It is accordingly suggested that legislation is amended so that deposits need not be a physical locality but a virtual location. For those individuals who do not have online access, requests could be made for hard copies.

Section 106 obligations

Many developers who commenced development before the lockdown are left with planning obligations which they cannot now satisfy. As a result, the Law Society has urged the government to issue guidance requiring local authorities "to be flexible in considering applications to vary section 106 obligations to defer current and future liabilities and to extend periods for viability review".

In respect of new planning permissions, one of the recommendations is for local authorities to be allowed to grant consent with a negatively worded condition limiting the development that can take place until a planning obligation has been entered into at a later date.

Community infrastructure levy (CIL)

Developers who have commenced permitted works face a similar problem during this this period with CIL payments. Since the Community Infrastructure Levy Regulations 2010 provide limited flexibility for reassessment, committee members advise amendments be made to allow for temporary deferral of unpaid payments.

Beating coronavirus

Whether the government will take on board the above recommendations remains to be seen, but in adopting these measures we can provide much needed flexibility to support the real estate sector and the wider economy. Collaboration will be important so that any temporary bandages to the planning system actually work during Covid-19 as well as delivering sustainable longer-term improvements.

Sara Hanrahan is head of planning at law firm Lewis Silkin and chaired the working group that was responsible for drafting the letter