

Changes to the planning system as a result of the COVID-19 pandemic

June 2020



Summary

Local government continues to play a critical role in supporting residents and businesses through the current COVID-19 pandemic. This has meant that some council run services have had to be closed, postponed or delivered differently during this time.

The planning system continues to operate with councils still considering planning applications and engaging with local communities. COVID-19 has, however, had implications for how local authorities manage their usual ways of working and planning teams have required additional flexibility in carrying out their duties. Councils have found it difficult, for example, to facilitate planning committees and undertake planning practice in the traditional form, particularly given the current social distancing measures.

A local, plan-led system continues to be vital in ensuring that councils and the communities they represent have a say over the way places develop. This includes the delivery of homes, where locally required, and the supporting infrastructure needed to create sustainable, resilient places. This will be even more critical as we move towards recovery after COVID-19.

The LGA is pleased that the Government has listened to its calls by introducing a range of temporary measures to make it easier to operate the planning system, especially the development management process, within current public health guidelines. However, [probity in planning](#) and public participation remain important in ensuring that decisions on plan-making and planning applications are undertaken in a fair, impartial and transparent way and that the public have meaningful input into the decision-making process.

Local authorities have been using innovative approaches to improve planning processes during this time. Through a proactive response in the wake of the pandemic, government can be instrumental in delivering to councils the tools, powers and flexibilities required to deliver the homes and infrastructure their communities need.

Updated planning practice and guidance since COVID-19

We have advocated for new approaches and updated guidance to support effective planning services during COVID-19. Below includes new or updated government guidance to planning regulations and guidance. This is followed by areas of improvement and changes the LGA continues to advocate for in response to COVID-19 and the long-term. The Planning Advisory Service (PAS) have put together a number of resources and [Frequently Asked Questions](#) to share good practice and answer common questions.

Virtual planning committees

To ensure planning decisions continue to be made, and in response to calls from the LGA and councils, local planning authorities have been given the powers to hold virtual planning committees. The [new regulations](#) apply to all local authority meetings up to 7 May 2021. The Planning Advisory Service (PAS) is working with the Government to provide online guidance and web-based training on how to manage planning committees and continue decision making during this time. This support is vital in helping councils to continue their planning decision processes without significant delay.

Publicity and consultation for planning applications

Local planning authorities now have the flexibility to take other reasonable steps to [publicise applications](#) if they cannot discharge the specific requirements for site notices, neighbour notifications or newspaper publicity. This can include the use of social media and other electronic communications. We have been calling for the system of delivering statutory notices to be reformed and hope that these changes will provide easier and more cost-effective ways for people to find out more about planning applications.

Community Infrastructure Levy

In response to calls from a number of councils, the Government published new guidance that makes clear their intention to amend the Community Infrastructure Levy (CIL) regulations to give authorities more discretion to defer payment for small and medium sized developers. In the meantime, the guidance sets out how the existing regulations allow for some flexibility including discretion over means of enforcement, application of surcharges and policies on instalments.

New time-limited permitted development rights

Following LGA lobbying, a new time limited emergency permitted development right is now in force until 31 December 2020 to support health service bodies and local authorities' immediate response to coronavirus. This allows for development by or on behalf of a local authority or health authority body for the purposes of preventing an emergency; reducing, controlling or mitigating the effects of an emergency; and taking other action in connection with an emergency. Examples include hospitals, health facilities, testing centres, coroner facilities, mortuaries, additional residential accommodation and storage and distribution, including for community food hubs.

Construction working hours

The Government published a [Written Ministerial Statement](#) on 13 May to make clear that local planning authorities should take a swift and positive approach to request for developers and site operators for greater flexibility around construction site working hours. Any proposals to allow working hours on construction sites to be extended need to be negotiated with the relevant local authority, so that they can take into account any impact on local residents and businesses.

Neighbourhood Plans and referendums

We are pleased that the Government listened to our calls and swiftly cancelled the local, Mayoral and Police and Crime Commissioner elections due to take place in May, to enable councils to put their efforts into supporting their local communities as the nation tackles COVID-19. Several councils have Neighbourhood Plans which were going to referendum at the same time as the May elections and the Government regulations have also postponed these.

Giving councils the powers to plan for and deliver much needed housing

The number of homes granted planning permission has far outpaced the number of homes being built. The number of planning permissions granted for new homes has almost doubled since 2012/13 with councils approving 9 in 10 applications. Latest figures show that 2,564,600 units have been granted planning permission by councils since 2009/10 while only 1,530,680 have been completed. Councils need powers to tackle our housing backlog and step in where a site with planning permission lies dormant and house

building has stalled.¹ This could be achieved in a number of ways including: councils having more powers to direct developers to diversify the homes constructed on sites to cater to different markets; a streamlined Compulsory Purchase Order process and the introduction of financial penalties in cases where developers do not build out to the rate agreed with a local planning authority.

Planning should be locally-led and support all types of tenure to deliver mixed and balanced communities, so that all local housing needs - to rent and buy - are available and affordable to people that need them. Protecting a local, plan-led planning process will also ensure homes are built to a high standard, with the necessary infrastructure, and affordable housing provided. Taxpayers are [currently subsidising a £178 million annual bill](#) to cover funding shortfalls.² Planning departments need to be properly resourced and allowed to set their own planning fees.

It is vital that new government initiatives do not have the unintended consequence of reducing the general provision of social and affordable rented homes where they're needed. This will ensure that councils can ensure the right mix of homes – to rent and buy – are available and affordable to people that need them. For example, government proposals for First Homes could make a valuable contribution to the mix of housing options, but local planning authorities must maintain the levers to deliver them alongside other housing products in a way that addresses housing need identified locally as part of the planning process.

Rules around the Community Infrastructure Levy (CIL) should also be changed to allow councils to provide upfront investment for vital infrastructure to unlock housing growth. This would require a change to the CIL regulations to enable councils to borrow against future CIL receipts. This could then subsequently be clawed-back from associated developments.

To ensure that developers build high quality homes in the locations that people need them, permitted development rules enabling buildings to be converted to homes without going through the planning system need to be revoked permanently. These rules continue to create a vast range of issues for local places and communities because there is no way to ensure developers meet high quality standards, provide any affordable homes or ensure that supporting infrastructure such as roads, schools and health services are in place. LGA analysis earlier this year estimates that permitted development rights allowing offices to be converted into homes have led to the loss of more than 13,500 affordable homes since 2015.

In addition, incentivising use of Local Development Orders (LDOs) would allow councils to introduce new locally-determined permitted development rights for all projects related to public housing and public building projects, such as schools, health facilities, libraries and leisure centres.

Resilient infrastructure networks remain critical for supporting our communities. Infrastructure investment now has long-term consequences and will shape how well it functions in the future. As we emerge from the COVID-19 emergency measures into recovery, there is a real opportunity for councils to prime the local economy through bringing public investment projects, such as housing, forward. To do this the Government needs to confirm existing funding allocations, relax conditions on funding streams, provide planning and procurement freedoms and provide longer term funding visibility.

Five-year housing land supply and Housing Delivery Test

There is a potential prospect of a downturn in housebuilding and therefore planning applications. This will negatively impact councils who have been acting positively to ensure supply. Whilst many construction sites across the country have now reopened, many remain closed or are operating at reduced capacity, which will inevitably result in a fall in delivery rates over the coming months, and potentially beyond.

This could put councils and their communities at risk of being subject to the national presumption in favour penalty because they cannot meet national Housing Delivery Test requirements and/or their 5-year housing land supply is compromised, for example, if anticipated delivery rates fall on 'deliverable' sites. This leaves them exposed to speculative planning applications for development outside of the Local Plan. This could potentially result in homes that do not meet local needs, in places where they are not needed and undermine community trust in the planning system. We are therefore calling on the Government to suspend the presumption in favour of sanctions in relation to 5-year housing land supply and the Housing Delivery Test.

Three-year planning permission rule

By law, any planning permission granted expires after a certain period, usually three years from the date it is granted to begin the development. There are likely to be some sites where construction work was due to commence imminently but are placed on hold because of current restrictions or due to staff absences. In some cases, this will result in the planning permission expiring. To support the economy and the wider construction sector, the Government should introduce emergency powers to automatically extend planning permissions which are due to expire in the next few months by a fixed period of time, for example, six months.

Local Plans

It is important that the plan-making process continues to move forward so that councils can get up to date plans in place. This will ensure that councils are on a positive footing for the economic, social and environmental recovery our communities need. The Government should expedite the examination and adoption of Local Plans through a flexible, light-touch approach, and use of technology solutions which enable virtual discussion and document sharing. In particular where there has already been a hearing, completion through written representations should be allowed. The requirement for councils to make planning documents available at their principal office and other such places should also be removed through amendment of Reg 35 1(a) of the Town and Country Planning (Local Planning) (England) Regulations 2012.

Prior approvals notification procedure

The prior approvals notification procedure where a developer must notify the planning authority of proposals before exercising permitted development rights has a significant impact on resources within planning departments. In addition, if an applicant has not heard back from the council within a stated timeframe this means the applicant can go ahead as it is deemed approved. We would recommend that the Government temporarily suspend or extend deemed approval timescales for prior approval applications. Any action should be backdated as there will be implications for current applications as much as future applications.

Eight- and 13-week performance target measures

Local planning authorities aim to make decisions as quickly as possible and within statutory time limits. The current pandemic could mean councils find it increasingly difficult to meet the eight and 13-week performance target measures, or secure extensions of time with applicants, where previously they have been working hard to meet them.

Statutory consultees will also become less likely to respond within the statutory three weeks. There may be delays in site visits, Parish/Town Council meetings, validation, site notices being erected etc. Disruption to postal services will also delay public consultation. We are calling on the Government to suspend eight and 13-week performance target measures. The ability to appeal against non-determination should also be suspended to avoid pressure on the appeals process which adds additional burdens to councils and the Planning

Inspectorate. The Government should also provide reassurance and guidance on acceptable alternatives to full site visits, to avoid risk of future legal challenge or planning appeals.

Going forward, it is vital that the planning process is protected, so that councils and the communities they represent have a say over the way places develop. This is the best way to ensure that the planning system supports councils to cater for local needs and priorities while creating resilience, stability and certainty both during and after COVID-19 recovery.

¹ <https://www.local.gov.uk/housing-backlog-more-million-homes-planning-permission-not-yet-built>

² [MHCLG Revenue outturn cultural, environmental, regulatory and planning services \(RO5\) 2018 to 2019](#)