

PLANNING AND RE-STARTING THE HOUSING MARKET

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Late on 12 May 2020, the Housing Secretary published a plan to re-start the housing market: <https://www.gov.uk/government/news/housing-secretary-sets-out-plan-to-re-start-housing-market>. The measures are intended to support the economy and make progress in an industry where much has been paused during the lockdown.

Most of the publicity around the announcement has focussed on those buying and selling houses, but there are also important implications for the construction of buildings both now and for the foreseeable future.

The plan announced changes to a variety of matters with planning implications. This article highlights and comments on three key points for planning:

- Publicity for planning applications.
- Deferred CIL (Community Infrastructure Levy) payments.
- Flexible construction site working hours.

Publicity for planning applications

What will change?

The announcement said there would be changes:

“Enabling planning authorities and developers to publicise planning applications through social media instead of having to rely on posters and leaflets, helping unblock the service and allowing it to support new development.”

The current position

Developers are required to give notice to the owner or agricultural tenant of the site and that notice cannot be served electronically (s.65 Town and Country Planning Act

1990; art.13 Town and Country Planning (Development Management Procedure) (England) Order 2015/595). Developers are not currently obliged to consult prior to making an application for planning permission, save in the case of wind turbines (s.61W TCPA 1990).

Local planning authorities (“LPAs”) are currently obliged to publicise an application for planning permission by (s.65 TCPA 1990 and art.15 Town and Country Planning (Development Management Procedure) (England) Order 2015/595):

- By site display on or near the land;
- By publication of a notice in a newspaper;
- By publication on the LPA’s website.

The current problems are two-fold: (1) It is practically more difficult for the developer or LPA to arrange paper notices during a lockdown, and (2) it is less likely that such publicity will come to people’s attention if they are not moving around as much.

Changes

The 2015 Order may be amended to give developers and LPAs more flexibility to use electronic communications, such as social media.

However, this raises questions about the practical implementation of the plans. How can the LPA or developer ensure that matters come to people’s attention on social media? Targetted advertising and information-sharing has recently been a hot topic and so it will be interesting to see the proposals.

Measures aiming to adapt and modernise these processes are to be welcomed. However, there must be certainty as to what can and cannot be done, in order to allow both developers and local authorities to make swift progress.

Deferred CIL (Community Infrastructure Levy) payments

What will change?

The announcement said there would be changes:

“Providing local councils with more flexibility to support smaller developers by allowing them to defer Community Infrastructure Levy payments. This will help smaller developers struggling with their cashflow due to the pandemic while ensuring communities still receive funding towards local infrastructure in the longer term.”

The current position

Liability to pay CIL arises on the commencement of a development (s.208 Planning Act 2008). The standard payment period is 60 days, however payment by instalments is permitted where the collecting authority has issued an instalment policy (reg.69B, reg.70 Community Infrastructure Levy Regulations 2010/948).

The authority has freedom to decide the number of payments, the amount of each payment and the time due. The authority may revise or withdraw the policy when appropriate. However, if instalment terms are broken, or payment is not made on or before the payment date where there is no instalment policy, the authority must issue a demand notice requiring the payment of the full CIL amount immediately.

Changes

The 2010 Regulations may be amended to mandate an instalment policy, allow collecting authorities to permit deferred payments or instalments even if they do not currently have a policy, or mandate deferred payments for a prescribed class of developers.

This raises several questions, such as whether there should or will be changes to other factors affecting the deliverability of a site, such as affordable housing contributions. No doubt both developers and local authorities will be astute to pick up on such issues.

The competing interests for both developers and local authorities are likely to come to the fore. Local authorities are likely to be reluctant to part with any income given the current financial pressures they are facing, and so may favour a case by case approach. However, developers may welcome guidance encouraging a blanket deferral of CIL payments approach across the country. This would provide them with

greater certainty and a quicker answer than relying on individual authorities to make decisions, which may take some time.

Flexible construction site working hours

What will change?

The announcement said there would be changes:

“Allowing builders to agree more flexible construction site working hours with their local council. This will make it easier to follow public health guidance onsite and stagger builders’ arrival times, making public transport less busy and so reducing the risk of infection.”

The current position

The Government’s initial guidance did not specifically refer to construction sites, leading to some confusion over whether they should remain open. It then appeared that sites could remain open, so long as Public Health England’s social distancing guidelines were followed. As a result, construction has continued on some projects (such as HS2) but paused on others.

Under ss60-61 Control of Pollution Act 1974, local authorities have power to restrict noise from construction sites. Therefore, the permitted hours differ across the country, but it is common for the working hours to be 8am to 6pm Monday to Friday, 8am to 1pm on Saturdays and for no work to be allowed on Sunday and bank holidays.

There may also be contractual restrictions on the working hours for particular construction sites.

Changes

The Government may simply provide guidance to local authorities as to its expectations for construction working hours. Alternatively, legislative changes may be made in order to mandate more flexible construction working hours.

However, this is likely to conflict with the public interest behind the existing hours. Members of the public are always unlikely to be happy if they are woken up by

construction work throughout the night. However, this may be particularly disruptive where the public are confined to their houses for considerably longer hours than usual. The new arrangements must be both certain and acceptable for all those involved, including contractors, developers, local authorities and the public.

Further information from the Government is continuing to emerge and so clarity is to be expected in the near future. Watch this space.

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13 May 2020

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