

Regional Planning Directorate

Heads of Planning (Northern Ireland)

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Dear Colleague

CHIEF PLANNER'S UPDATE 7

Further to the last Chief Planner's Update (CPU6) of 01 May 2020, this letter provides information on planning matters of importance at this time.

Battery Energy Storage Systems ('BESS')

Various terms including battery energy storage systems (BESS), energy storage and electricity storage are often used interchangeably, however the term electricity storage is used in this CPU to encompass all. In the interest of clarity, please note that although the comments in this CPU may have been prompted by a number of BESS applications, the scope of this CPU is intended to cover electricity storage in more general terms, not just BESS.

Following correspondence from several parties on this subject matter, the Department has been reviewing these types of developments and how they are processed in the planning system both here in Northern Ireland (NI) and across the other administrations. In particular, a query arose over whether such developments should be considered '*electricity generating*'.

You will be aware that the Planning Appeals Commission (PAC) recently granted planning permission for a BESS after concluding that it was not electricity generating and did not require EIA.

In England, Scotland and Wales the government has confirmed the position that, in relation to planning, electricity storage facilities are a form of generating station. The Department has reviewed this position for NI in consultation with the Department for the

Economy (DfE) who have advised that, for the purposes of their licensing/consenting regime, electricity storage systems are a form of generating station. We also note the position of the Utility Regulator that electricity storage is a form of generating station under the terms of the Electricity (NI) Order 1992.

I wish to formally confirm that, for the purposes of planning in Northern Ireland the Department considers that electricity storage development falls within the meaning of an “electricity generating station”. This position is based on several factors including the operation of electricity storage systems; their classification in other jurisdictions; pre-existing Northern Ireland Legislation; and the legislative history of the Planning (Development Management) Regulations (NI) 2015 and consistency with the Electricity (NI) Order 1992.

I recognise that this is an unusual step and that the position involves a departure from the PAC decision which turned on the facts and evidential context of that particular case. However, the Department considers that there is a legitimate public interest in taking this approach and providing clarity for both councils and developers.

I should highlight that this is not a legislative or policy change and is instead provided as clarification from the Department.

Local Planning Authorities (LPAs) are, therefore, advised to adopt this position when processing applications for electricity storage facilities (such as battery energy storage systems). The practical effects of this are that proposals for electricity storage should be considered ‘electricity generation’ when considering the hierarchy of development and associated provisions of the Planning Act (Northern Ireland) 2011 and the Planning (Development Management) Regulations (Northern Ireland) 2015 (as amended).

I am also aware of electricity storage being co-located with other types of electricity generating developments and the issue of accumulation of capacity has been raised. While these are judgements that a planning authority will have to make based on the characteristics and features of the development, there is helpful guidance already published by the Energy Institute:- <https://publishing.energyinst.org/topics/power-generation>

Also, while the decision on whether a development proposal constitutes ‘EIA development’ is ultimately a matter for each local planning authority on a case by case basis, the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 contain a Schedule 2 category with the description: *‘industrial installations for the production of electricity’*. In keeping with the Department’s opinion that electricity storage systems are a form of electricity generation, it would appear appropriate that electricity storage is considered to fit within this description. This is the approach being adopted in other administrations.

In order to consider and assess relevant material considerations and the associated risks appropriately, LPAs should seek details of the batteries including numbers, the substances contained, and the capacity of the system from potential developers. LPAs should also note the consultation requirements under Schedule 3 of the Planning (General Development Procedure) Order (Northern Ireland) 2015 (as amended) in respect of planning applications for energy generation.

Pre-Application Community Consultation

The Planning (Development Management) (Temporary Modifications) (Coronavirus) Regulations (Northern Ireland) 2020 suspended the requirement to hold a public event as part of the pre-application community consultation process for major planning applications. The Department reviewed the emergency period at the end of July and concluded that the emergency period should continue to remain in place until the end of September 2020. Following a further review, these temporary arrangements have now been extended to 31 March 2021.

Local Development Plan (LDP) – Timetable

Previously the Department advised that councils should consider their own timetable and Statement of Community Involvement (SCI) in light on the ongoing pandemic, and committed to prioritise agreement of those received. Further to the Department's advice and extension to flexibility to timetables up to 6 months as set out in CPU6, councils should consider the need to update timetables prior to submission to the Department for Independent Examination (IE). This will assist in the plan process being efficiently and effectively managed by key stakeholders and the Planning Appeals Commission (PAC). It is a statutory requirement that the LDP must be prepared in accordance with the timetable and also a requirement of producing a sound plan. It is recommended that councils discuss any proposed changes to timetables with the Department and the PAC.

Planning Portal and the New Planning IT System

The Northern Ireland Planning Portal continues to be operational to the public and to planning staff in their offices and those working from home who have secure remote access. A number of upgrades and fixes are also being applied to the system in order to improve its resilience in the final 18 months of the contract.

You will be aware that we have awarded a contract to TerraQuest for the provision of a new planning IT system. This will replace the existing portal and provide a new more modern system for eleven planning authorities (the Department and 10 councils). You will also know that Mid Ulster District Council decided not to continue to participate in the joint project and instead they will procure their own solution.

As part of the work to configure and implement the new Regional IT System, the joint project team will continue to liaise with each planning authority and indeed they will need their input as we move the project forward. I appreciate that in these challenging times it may not always be easy for all planning authorities to support the project team but it is important that we continue to work together and where possible provide the information and staff input requested in order to deliver the best possible IT system.

Review of the Planning Act

Department officials briefed the Infrastructure Committee on the Planning Act 2011 (Review) Regulations (NI) 2020 on 30 September 2020. The Regulations were laid before the Assembly on 13th October and came into operation on 2 November. The aim is to complete the review and publish the associated review report as soon as is possible.

The requirement to review and publish a report on the implementation of the Act is to ensure the Department monitors and reports on the coming into operation of the provisions within the Act, to provide a level of assurance that the legislative framework for the delivery of a reformed two-tier planning system has been implemented and in a timely fashion.

The review will also provide an opportunity to consider any improvements or 'fixes' which may be required to the way in which the Planning Act has been commenced and implemented in subordinate legislation. Issues with the planning system that have surfaced as a result of the Coronavirus pandemic will also be considered as part of this review.

Officials aim to undertake a targeted stakeholder engagement exercise with regard to the review, to include councils, statutory consultees and other community, business and environmental representatives.

Permitted Development

The Department has made the following Statutory Rule: The Planning (General Permitted Development) (Amendment) Order (Northern Ireland) 2020 which comes into operation on 21 December 2020 and can be viewed at the following link:

<http://www.legislation.gov.uk/id/nisr/2020/292>

This Statutory Rule amends the Planning (General Permitted Development) Order (Northern Ireland) 2015 (S.R. 2015 No. 70) by:

- adding new Classes of development to Part 3 (Minor Operations) of the Schedule to provide extended permitted development rights for electric vehicle charging points;
- substituting Part 16 (Mineral Exploration) of the Schedule to remove permitted development rights for petroleum exploration;
- substituting Part 18 (Development by electronic communications code operators) of the Schedule to expand permitted development rights for mobile network operators; and
- amending Part 34 (Shops, financial and professional services establishments) of the Schedule to allow the extension of premises.

The Order also includes a small number of technical amendments. An Advice Note will be issued to councils specifically in relation to development by electronic communication code operators to take account of safeguarded areas around airports and various technical sites.

Temporary use of Land

In previous CPUs and other correspondences with Councils, the Department encouraged a supportive, pragmatic and flexible approach to temporary developments and changes of use which would enable businesses to diversify or adjust the way they operate during the pandemic. This letter seeks to build on that guidance, with a specific reference to uses of land which can already happen in line with time-limited permitted development rights, and also in recognition of current interest in temporary outdoor uses such as the provision of outdoor seating by pubs, cafés and restaurants, including beer gardens.

Planning law already allows for the temporary use of land or buildings for up to 28 days in a calendar year without the need to make an application for planning permission – the '28 day rule'. This is set out in Part 5 Class B of the Schedule to the Planning (General Permitted Development) Order (Northern Ireland) 2015 (the GPDO). This means, as an example, the use of part of a public footpath for outdoor seating by a café for up to 28 days in a calendar year already has the benefit of planning permission. While physical distancing requirements remain, it is likely that many temporary uses will be needed for longer periods.

In line with the wider approach to relaxing planning control at this time, and for the avoidance of doubt, we do not expect the limits of the 28 day rule to be enforced against reasonable temporary outdoor uses, which may include temporary structures, should a longer period be appropriate and helpful to businesses. This however, does not obviate the need for businesses to operate in a responsible manner, and failure to do so could result in councils initiating enforcement action.

Status of Previous Advice on Planning Response to the COVID-19 Situation

I would like to take this opportunity to clarify that previous advice from the Department on the planning response to the Covid-19 pandemic, including from the Minister and in earlier CPUs, remains in place until the Department advises otherwise. The Department will keep this matter under review on a regular basis in the context of the continually evolving situation and provide advice on any changes as soon as possible.

Airport Public Safety Zones Consultation

The Civil Aviation Authority (CAA), with support from the UK's Department for Transport, are presently undertaking a consultation in relation to proposed amendments to the establishment and maintenance of Airport Public Safety Zones. The change is motivated by the latest accident data and flight performance of current commercial aircraft. Whilst aviation safety is a reserved matter, planning powers are devolved. The consultation will therefore be of particular interest to Belfast City Council (George Best Belfast City Airport) and Antrim Newtownabbey Borough Council (Belfast International Airport).

The consultation is open for comment until 23rd December 2020. You can read the full proposal and share your views on the CAA consultation portal by via the following link:
<http://skywise.caa.co.uk/public-safety-zones-consultation/>

Aviation Noise Management Consultation

The Independent Commission on Civil Aviation Noise (ICCAN) is an advisory non-departmental, non-statutory public body, sponsored by the Department for Transport. It was created to provide independent, impartial advice to government, regulators and the UK aviation industry. ICCAN has recently published its emerging view on the future of aviation noise management, regulation and enforcement and invites comments from stakeholders and interested parties on its vision and goals, which can be submitted online in the form of an online survey up to 18 December 2020.

You can access a copy of ICCAN's emerging view on the future of aviation noise management at: <https://iccan.gov.uk/future-aviation-noise-management/>

Planning Engagement Partnership

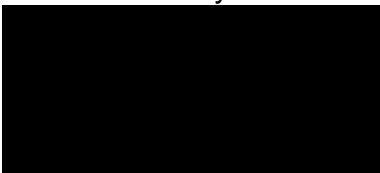
The Minister recently announced the establishment of a Planning Engagement Partnership to look at how to enhance the quality and depth of community engagement in the planning process at both the regional and local planning levels.

The Partnership brings together a cross-section of key planning stakeholders from local and central government, voluntary and community sectors, and practitioners in the private sector and other interested parties. This will allow the sharing of experience, good practice and learning gained through the operation of the planning system over the last 5 years since the introduction of the reformed planning system and transfer of planning to local government in 2015. Over a period of six to nine months the Partnership will prepare a report to include a series of key recommendations for improvement.

Further information is set out in the associated press release: <https://www.infrastructure-ni.gov.uk/news/mallon-launches-planning-engagement-partnership-improve-community-engagement-planning-process>

I hope you find this information helpful.

Yours faithfully



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& Director of Regional Planning