

Heads of Planning (Northern Ireland)

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Dear Colleague

CHIEF PLANNER'S UPDATE 6

Further to the last Chief Planner's Update (CPU5) of 27 March 2020, this letter provides further information and advice on the planning response to the COVID-19 situation. I would firstly like to express my sincere thanks to the councils and other stakeholders who have provided a great deal of information and assistance over the past few weeks and for supporting the proactive measures being pursued to try to 'keep the wheels turning' at this challenging time.

The Minister has asked me to convey her view that land use planning has a crucial part to play within and, particularly, beyond the immediate emergency as we hopefully enter the recovery phase of the crisis. The performance of the planning system will have a critical role in supporting our future economic and societal recovery. It is important that those of us involved in planning do what we can to keep plans and projects moving through the system, avoiding unnecessary delays to infrastructure, housing and other developments. Of course, we must do this while also adhering to the latest public health advice to keep staff and the wider community safe.

More broadly, the Department is doing everything it can to ensure essential services and connections are maintained for those using and reliant on our infrastructure network. We must all continue to work together and support each other to ensure we continue to deliver for all of those who rely on our public services.

Emergency Legislation and Guidance for Pre-application Community Consultation

You will be aware that the Planning (Development Management) (Temporary Modifications) (Coronavirus) Regulations (Northern Ireland) 2020 come into operation

today. Also published today is accompanying practice guidance which provides an overview of the Regulations, setting out the temporary changes in terms of the suspension of the requirement for a Pre-application Community Consultation (PACC) public event. It also provides details of those requirements which remain in place during the emergency period and advice on appropriate measures to replace face to face public events. This will ensure that active pre-application public engagement in the absence of the PACC public event remains an important part of our planning system, will support longer term economic recovery and will facilitate a consistent approach across all council areas.

The Department expects prospective applicants to propose reasonable and appropriate alternatives based on the information outlined in the guidance document. The intention should be to find alternative ways to enable the exchange of views that would otherwise be achieved by face to face interaction. Local councils also retain the ability through the Planning Act NI 2011 to require additional consultation steps. However, when using these powers, councils should take into account the prevailing public health advice and the constraints this may put on a prospective applicant's ability to comply with any additional requirements. The published guidance is available to download at:

- <https://www.planningni.gov.uk/index/advice/practice-notes/covid19-epg-pacc.pdf>

Development Management System

Despite the extreme difficulties presented by the lock-down I am encouraged by councils' efforts to operate pragmatic contingency arrangements for the delivery of local planning services. This has meant adopting new and flexible ways of working to seek to ensure planning applications continue to be processed, taking account of the latest public health guidance. Examples include: providing planning staff with remote access to the planning portal; advising users of the planning system to submit applications, amended plans, representations and other general correspondence by email; and operating a skeleton and/or rota staff presence in council offices (with social distancing in place) to ensure back room functions continue, albeit at a reduced capacity.

Implementing such proactive and flexible approaches is vital to enabling the continued delivery of key tasks in the planning process such as: receipt, validation and consultation of applications, uploading of information onto the planning portal; advertising and neighbour notifications; as well as issuing planning decisions. Recent interventions such as removing the requirement for a public event for applications for major development will have limited impact if the applications are not being received into the system, processed and decision notices issued.

I understand that site visits present a challenge to planning officers at this time, but they may be possible in certain cases provided current public health guidelines are followed. The person responsible for the site visit will need to ensure that social distancing requirements are maintained between people on any land or buildings where the site visit is to take place. All site visits should, therefore, be subject to a risk assessment and any that will involve physical interaction should be by appointment only, with arrangements made with applicants to ensure suitable protection measures can be put in place.

In some cases, assessment of site conditions may be achieved remotely to avoid the need for a site visit. This could include satellite imagery, photographs and video of the site which

could be provided through engagement with the applicant. However, planning officers should be satisfied that the information is sufficient for an adequate assessment of the site.

As regards determination timescales for planning applications, we should again work pragmatically with other stakeholders in these challenging times to consider and agree reasonable extended periods for submitting information or making decisions, as appropriate.

Planning Committees and decision making

I am aware that the operation of Planning Committees and the decision making process has been impacted during this period. I have been liaising with the Department for Communities (DfC) as they prepare Regulations in relation to local authority committee meetings and it is anticipated that the Regulations will be in operation by early next week.

These new Regulations will enable councils to put in place arrangements for holding Planning Committee meetings remotely, including by (but not limited to) telephone conferencing, video conferencing, live webcast and live interactive streaming, in order to allow council business to proceed during the COVID -19 emergency. The Regulations will apply to all councils and all council meetings including committee or sub-committee meetings, executive meetings and joint committees of 2 or more councils.

In addition, there remains an option for councils to consider holding face to face meetings with social distance measures in place, if the venue and arrangements are suitable.

As mentioned in my previous update, another avenue open to councils is to review their Schemes of Delegation in order to reduce the number of applications which would be required to go before planning committees for decision-making. A number of councils have already done this for local applications by submitting amended schemes to the Department for approval, and we will continue to review these without delay. I am also aware that several councils have taken additional steps and are preparing amended protocols to allow decisions for major (and other) planning applications to be taken by Chief Executives, under the Local Government Act (NI) 2014, during these unprecedented times.

Planning Portal

As advised in my last update, the Northern Ireland Planning Portal remains operational to both the public and to planning staff working from home, where remote access has been provided by their own council. We are also continuing to address operational issues with the portal as best we can, such as increasing the number of concurrent licences and the advertising functionality.

We are also making good progress to replace the portal with a new and more modern regional planning IT System. This is a good example of central and local government working together to deliver an enhanced planning service for staff and the wider public. This will include the ability to submit planning applications on-line as well as via the normal routes. You will be aware that we have completed the procurement process and that we want to award a contract to enable us to get on with the work of delivering this new system by early 2022. I appreciate that each of you are working hard to obtain your councils'

approval of the business case and funding proposals, and it is important that this work is completed as soon as possible and preferably before 8th May.

Expiration of planning permissions

In my last update I encouraged councils to validate, process and determine renewal applications for permissions which are due to expire as expeditiously as possible. I have also been exploring other options for dealing with such cases including legislative change to extend existing permissions, and have taken the opportunity to discuss possible approaches with colleagues in other jurisdictions.

In terms of a legislative option, whilst the current provisions in the Planning Act (NI) 2011 governing the timeframe for commencing development could be amended, this would need to be done through primary legislation. This is not straightforward in the current crisis and would take some considerable time, which would not help individuals whose permissions are due to expire in the near future. Scotland and the Republic of Ireland have been able to extend planning permissions quickly through a centrally sponsored emergency Coronavirus primary legislative vehicle. This is not, however, an option currently available to us.

The best option, therefore, remains for applicants to seek the renewal of a permission before it expires. Alternatively, some applicants may be in a position to affect the commencement of a permission before expiry, while complying with public health guidance. There is a broad body of case law on what constitutes the commencement of development which might include, for example, meeting pre-commencement conditions, digging and pouring foundations etc. The onus rests with the applicant in such circumstances to obtain proper advice and to maintain a record of all associated evidence, in order to support any future claim that the permission had been commenced within the necessary timeframe.

Advertising requirements

Statutory requirements in relation to both newspaper advertisement and neighbour notification remain in place, which may require some alteration to councils' normal processes and timings. A number of councils have advised that some local newspapers, are facing particular challenges in trying to maintain their circulation in local areas. In the current circumstances a council may choose to advertise in whichever paper, or papers, that continue to circulate in its area, whether a regional title or a more local paper.

Statutory Consultees

Statutory consultees play a fundamental role in the planning process and consultation, is an important element in an open, transparent and effective planning system. I have been liaising regularly with a number of key statutory consultees and they have advised that they are able to conduct business as usual activities, in terms of processing statutory planning consultations, albeit subject to the Covid-19 restrictions. All are available to participate in virtual or telephone meetings and address any planning queries.

You will be aware that we recently forwarded detailed operating positions on a number of the key consultees for information.

Enforcement

In my last update I encouraged councils to take a pragmatic approach to enforcement in relation to the delivery of essential goods and the provision of takeaway services during the crisis period. This remains the case and the approach of councils to this issue has been recognised and widely welcomed.

I would also stress the importance of prioritising enforcement action. Priority at this time should focus on unauthorised activity which could result in significant environmental harm and on cases where a lack of enforcement action could result in the unauthorised development becoming 'immune'.

Local Development Plans

In light of the impact of COVID 19 pandemic, councils should consider how best to progress their LDPs. This will vary depending on what stage an emerging LDP has reached. The Department would encourage councils to liaise with statutory consultees and continue with any further technical work required to update or enhance the evidence base.

Statement of Community Involvement

The purpose of the Statement of Community Involvement (SCI) is to outline how a council proposes to engage the community and stakeholders in exercising its planning functions. It is a statutory requirement that both the Plan Strategy and Local Policies Plan must be prepared in accordance with the SCI and it is also a requirement of producing a sound plan.

The clear impact of Covid-19 that restricts, among other things, peoples movement and access, may mean that councils are unable to meet existing commitments in relation to public participation. Therefore, SCIs may require revision. The Department's emerging guidance in relation to pre-application community consultation may be of assistance in suggesting some possible alternative methods of engagement.

Local Development Plan timetable

The LDP timetable is a public statement of a council's programme for the production of its LDP. It ensures that the plan process is 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.

Current difficulties in fulfilling certain requirements of legislation and obligations of SCIs may mean that new LDPs will be unable to adhere to the agreed timetables. The Department acknowledges that this is beyond the control of councils. When the situation changes, there will be a need to review LDP timetables with adjusted timings to reflect the impacts.

At this time, the Department will allow greater flexibility to existing agreed LDP timetables providing a further 3 months flexibility from that already permitted in my letter of November

2019. This will allow for a maximum of 6 months until such times that a Council is in a position to formally revise their timetables. It is recommended that Councils discuss any proposed changes to timetables with the Department and the PAC.

The Department will undertake to prioritise the consideration of any revised SCIs or timetables and will endeavour to respond within a shorter period than the 4 weeks identified in the legislation.

DfI Planning casework

We continue to progress our present range of cases, including regionally significant and called in applications. All our casework officers have full access to the Planning Portal allowing them to continue a wide range of work from home.

Our offices are currently closed to the public, however, staff attend when necessary to check on things and progress matters while complying with current government advice. We will continue to work with the public, applicants, agents and consultees as best we can by using e-mail and teleconferencing facilities. This has been working well. Where information needs to be submitted, we suggest contacting us first to see how best this can be facilitated.

Planning Appeals Commission (PAC)

The Commission's offices and phone lines remain closed, but they are preparing guidance on how they intend to take the work of PACWAC forward during COVID-19 restrictions. We understand that they are setting up a small engagement group to take this work forward and have asked for volunteers from councils to help with this. This work will also inform how the Commission's hear and report functions can be undertaken. The PAC hope to be in a position to publish updated guidance on their website shortly.

NIEA Regulatory Position Statements – Authorised Waste Management Facilities

Continuing to regulate essential services such as the waste industry during this COVID-19 crisis is vitally important to protecting public health and the environment. NIEA has recently published a number of COVID-19 Regulatory Position Statements (RPSs) to give guidance on potential flexibility in the regulation of waste facilities for a defined period during the current COVID-19 emergency. This will be where it can be demonstrated that the requirement to operate outside the normal planning and/or environmental regulatory conditions (e.g. waste storage) is as a direct consequence of disruption caused by Covid-19.

The two most relevant RPSs for planning authorities are:-

- Authorised Waste Facilities – temporary variation of licence/permit conditions; and
- Waste Storage - temporary storage and/or treatment of waste at a site that does not hold a waste management licence or permit.

Full details of these and other RPSs are available to download at:-

- <https://www.daera-ni.gov.uk/publications/waste-regulations-temporary-covid-19-waste-regulatory-positions>

I would ask councils to familiarise themselves with the RPSs and work with NIEA colleagues to ensure a consistent approach in dealing with the waste industry, particularly where waste management licence/permit conditions are common to, or linked to planning permissions. These RPSs are designed to ensure continued protection of human health and the environment, whilst enabling authorised waste management facilities to continue operating during the COVID-19 emergency period. For further information, contact Jim Wright (jim.wright@daera-ni.gov.uk) or Theresa Kearney (theresa.kearney@daera-ni.gov.uk) at NIEA.

Yours faithfully



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