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UPDATE ON CHANGES TO THE PLANNING SYSTEM – AUGUST 2020

The Government has committed to an ambitious programme of updating the planning system with the aim that it meets the requirements of the development industry and residents more effectively. Over July and into this month, a series of changes have been introduced which will have an impact on how applications are processed and decisions made.

RECOMMENDATION

That the report be noted.

Key Issues

This report has been split into two parts. The new powers enabled by amendments to existing legislation and wider changes to the planning system proposed about through the new White Paper.

NEW POWERS FOR 2020

Three key amendments have been made this summer to the planning system namely:

- The Business and Planning Act 2020,
- The Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020 and
- The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020.

Details on each of these aspects of legislation is set out below:

The Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020

These regulation offers property owners more opportunities to extend their properties without the need to apply for a full planning application.

A new Part 20 class A permits development consisting of works for construction of up to two additional storeys of flats on top of purpose-built detached blocks of flats, together with certain associated works. The PDR will not be available where the existing building was not originally built and remains as a block of flats.

The existing building must have been constructed between 1st July 1948 and 5th March 2018. There are various other limitations, including limitations on floor to ceiling heights of additional stories, the height of the roof of the extended building, the overall height of the

extended building and the height of the existing building, which cannot be more than three stories above ground.

The right is not available within conservation areas, for listed buildings or scheduled monuments, or on land within three kilometres of the perimeter of an aerodrome.

Prior approval must be applied for (and obtained) before any development can commence. The prior approval matters are transport and highways impacts, air traffic and defence asset impacts, contamination and flooding risks, external appearance, provision of adequate natural light, impact on amenity of the existing and neighbouring buildings and on protected views.

The development must be completed within three years of the prior approval date and a construction management report must be submitted.

There is a bespoke application process. The local planning authority can refuse an application if conditions or limitations are not clearly complied with. The authority must refuse if adequate natural light is not provided and it has relatively broad scope to request further information to help it determine an application.

Applications must be determined within eight weeks but there is no deemed approval if that timescale is not met, simply a right of appeal for non-determination.

CIL (community infrastructure levy) will be payable and local planning authorities can require planning obligations, but these should be limited to matters requiring prior approval.

<u>The Business and Planning Act 2020</u>

In summary, the Business and Planning Act 2020 received Royal Assent on the 22 July. It allows for the following:

- Reviving planning permissions that have expired since 23 March and providing an automatic extension to the expiry of certain planning permissions ensuring planned developments are given more time to be implemented;
- A way for developers to modify conditions relating to construction working hours;
- Provisions allowing the Planning Inspectorate to use hybrid planning appeals in place of using only one type of procedure;
- A temporary pavement licences process introducing a streamlined consent route to allow businesses to obtain a licence to place temporary furniture, such as tables and chairs outside of cafes, bars and restaurants quickly, and for no more than £100.
- Additionally, the Act provides measures relating to the London Plan.

Reviving and Extending the Life Time of Planning Permissions

The power to extend the life-time of a permission reflects similar powers introduced nearly ten years ago in response to the global financial crises. Depending on when an application may reach its expiry date, normally three years from the day of approval, the applicant may request to extend the life of the permission by writing to the LPA for approval or, if expiring

after the 19th August, obtain an automatic extension to the life of the application to May 2021.

Modification Of Conditions Relating To Construction Working Hours

These reforms allow developers to apply to the local planning authority to extend working hours temporarily on construction sites. The "fast track" application provisions enable flexibility and will be welcomed by the construction industry, but they also create an additional administrative burden for local authority planning departments, which will be required to scrutinise any application in a 14-day short window of time.

It is open to the local planning authority to approve, refuse or amend the modification, and they must do so within 14 days of the application being sent, otherwise the application is deemed to be approved.

Any temporary extension of hours will cease on 1 April 2021.

Hybrid Planning Appeals

As a result of this change, the procedural structures which the Planning Inspectorate can utilise in determining an appeal are no longer exclusive; it is now possible for the Planning Inspectorate to implement hybrid procedures, whereby (for example) an appeal can be partially dealt with by written representations and partially by a hearing or inquiry.

This change should result in potentially new flexible approaches on the part of the Planning Inspectorate, which in turn should have the effect of expediting appeal timetables. However, care will need to be taken in ensuring the procedural fairness of mixed/hybrid proceedings, and it remains to be seen precisely how this power will be deployed in practice.

Measures Relating To The London Plan

These changes allow the Mayor of London to consult on the current spatial development strategy for London by digital means only

<u>The Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020</u>

Permitted Development Right For The Construction Of New Homes On Detached Blocks Of Flats

This right allows the construction of two additional storeys of new homes on the topmost residential storey of existing, detached, purpose-built blocks of flats of 3 storeys or more above ground level, together with engineering operations, replacement or installation of additional plant, construction of safe access and egress and construction of ancillary facilities, if necessary. The right does not allow for these additional works to be undertaken without the construction of the new storeys and homes.

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The right applies to blocks built since 1st July 1948 (being those granted planning title under the current planning system) and 5th March 2018 when the intention to introduce a permitted development right to build upwards was first announced. Allowing an additional 2 storeys on top of purpose-built detached blocks of flats of 3 or more storeys is considered to provide more certainty for developers and local authorities, and so encourage take up, while protecting local amenity.

The Government is of the view that adding additional storeys to purpose-built blocks of flats will generally be more practical to deliver as, for example, they may already have separate internal means of access and escape, such as separate lift shafts and staircases. They do though acknowledge that older properties may not be able to meet building and fire safety requirements, which are covered by separate regimes.

The right is subject to a maximum height limit for the newly extended building of 30 metres. This height limit recognises sensitivities around local amenity and is considered to be practical in terms of carrying out the building works. All development, whether granted permission following a planning application or through a national permitted development right is legally required to comply with the Building Regulations 2010 (S.I. 2010/2214), as amended ("the Building Regulations"). Where additional storeys and homes are added to a building some aspects of the building as a whole may also be required to be upgraded under Building Regulations.

Given the potential impact on neighbours during the construction of the additional storeys and any engineering works to strengthen the building, the developer must prepare a report setting out the proposed hours of operation and how they intend to minimise any adverse impacts of noise, dust, vibration and traffic movements during the building works on occupiers of the building and neighbouring premises.

The right is subject to obtaining prior approval from the local planning authority, which will consider certain matters relating to the proposal. In line with the existing permitted development rights for change of use to residential, these allow for the consideration of potential transport and highways impacts as well as contamination and flood risks. Prior approval is also needed on the appearance of the proposal. The right does not apply in Conservation Areas, National Parks and the Broads, areas of outstanding natural beauty, or sites of special scientific interest. The right does not apply if the building is a listed building or scheduled monument, or if the land on which the building is sited is within the curtilage of a listed building or scheduled monument.

The right requires prior approval consideration in respect of the provision of adequate natural light in all habitable rooms. The application for prior approval must therefore be accompanied by detailed floor plans indicating the dimensions and proposed use of each room, the position and dimensions of windows, doors and walls, and the proposed elevations of the homes. Local planning authorities are expected to exercise their planning judgement when considering the detailed floor plans and elevations in their assessment of adequate natural light in habitable rooms. Notably, Local planning authorities are required to refuse prior approval applications where inadequate natural light is provided.

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The local planning authority is required to make a decision on an application for prior approval under the right within 8 weeks. The right does not provide a default deemed consent if the local planning authority fails to make a decision within this time, reflecting the significance of the matters under consideration including the potential impacts of the proposed development on the amenity of neighbours. If a decision has not been made within 8 weeks there is a right of appeal to the Secretary of State for non-determination of the prior approval application.

Natural Light

Legislative changes are being made to the General Permitted Development Order in response to concerns raised about the quality of homes delivered in some developments under existing permitted development rights for changes of use to housing. The Government is of the view that these measures will improve the quality of new homes delivered under permitted development rights by requiring that adequate natural light is provided in all habitable rooms.

The Amendment Regulations introduce a new matter for prior approval consideration in respect of the provision of adequate natural light in all habitable rooms. This requirement will apply to developments to be delivered by Class M, N, O, PA and Q in Part 3 of Schedule 2 the General Permitted Development Order and also in the new Class A of Part 20 of Schedule 2.

Detailed floor plans indicating the dimensions and proposed use of each room, the position and dimensions of windows, doors and walls, and the elevations of the homes are required to be submitted as part of the prior approval application under paragraph W of Part 3 of Schedule 2 to the General Permitted Development Order to enable the local planning authority to consider the provision of adequate natural light. Local planning authorities are expected to exercise their planning judgement when considering the detailed floor plans in their assessment of adequate light in habitable rooms. The definition of "habitable rooms" is set out in regulation 19. Local planning authorities are required to refuse prior approval applications where inadequate natural light is provided.

Whilst the aim of this change is welcomed, it will introduce an additional technical assessment process into the determination of prior approval applications. The introduction of flexibility into the process too could also create a degree of uncertainty about how the standards should be applied with developers and neighbours potentially seeking differing interpretations of the regulations leading to additional challenges to the Council decision making powers.

<u>The Town And Country Planning (Use Classes) (Amendment) (England) Regulations 2020</u>

These amendments were introduced by the government on 20 July, and take effect on 1 September 2020. The new Regulations make changes to the 1987 Use Classes Order. The changes sit alongside the recent additions to permitted development rights, forming part of the government's "Project Speed" which has the aim of supporting the high street revival and allow greater flexibility to change uses within town centres without the need for express planning permission. These new flexibilities however may also have unintended consequences which have not been foreseen.

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The Regulations introduce three new use classes:

- Class E (Commercial, business and service) – including retail, restaurant, office, financial/professional services, indoor sports, medical and nursery uses along with "any other services which it is appropriate to provide in a commercial, business or service locality";
- Class F.1 (Learning and non-residential institutions) – including non-residential educational uses, and use as a museum, art gallery, library, public hall, religious institution or law court; and
- Class F.2 (Local community) – including use as a shop of no more than 280 sqm mostly selling essential goods, including food and at least 1km from another similar shop, and use as a community hall, area for outdoor sport, swimming pool or skating rink.

The new class E now encompasses a wide range of uses common to the modern high street. What is notable, is that permitted development rights now allow a property owner far more freedom to change the use of their building without the need for planning permission.

For some of the less neighbourly uses e.g. bars and hot food takeaways these now find themselves in the sui generis class i.e. in a class all of their own which already includes uses like night clubs and larger HMO's. Properties in this group no longer have permitted development rights and any change needs planning permission.

Pubs, libraries, village shops and other buildings essential to communities will also not be covered by these changes.

To confirm, Parts A and D of the original Schedule to the Use Classes Order have been entirely deleted, with Use Classes A1, A2, A3, parts of D1 and D2 subsumed into new Use Class E along with Class B1.

Significantly, changes of use within the new Class E will not constitute development at all (as opposed to permitted development). This new flexibility is not linked to spatial considerations and therefore will apply both to high streets and all town centre uses located outside of centres. It thus has the potential to result in the introduction of non-office type activities (including retail) in traditional out of centre business parks, which runs contrary to current national and local planning policies designed to protect town centre retail.

It is anticipated by the commercial sector that some authorities will explore what powers they have to retain a greater level of control (similar to Article 4 Directions which removed permitted development rights allowing changes from offices to residential). It's clear that many will feel decisions on use and mix are still more appropriately determined at the local level. The legislation here however is more complex as a change within the same Use Class is not defined as development. Accordingly, an Article 4 Direction which looks at managing types of development may not prove to be an effective approach to protecting town centres from out of town development more traditionally seen in the high street..

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NEW POWERS PROPOSED

PLANNING WHITE PAPER

On the 6th August, the Government released the new Planning White Paper known as "Planning for the Future" It contains a raft of measures designed to cut red tape and make the planning process faster, simpler, and more focussed.

The government intends to reform the local plan system in three ways:

- significantly reducing the size, including the evidence base material that sits behind them;
- significantly reducing the time taken for draft plans to progress through the process to adoption, with sanctions applying if timescales are not adhered to; and
- changing the way in which local plans facilitate development, with the aim being to move away from a discretionary decision-making system to a rules-based one.

Some of the key points are as follows:

1. Zoning

Under the new system, local authorities will be expected to bring forward stripped back local plans zoning all land in their areas for "growth", "renewal" or "protection". Areas zoned for growth will accommodate "substantial development" and will benefit from outline permission, but developers will still need to secure reserved matters permission in accordance with a locally drawn up design codes – though councils won't be able to debate the principle of the scheme

The size of these zones have not been defined in the Paper but indications suggest they can range from a single site to large swathes of the Borough.

2. Renewal

Areas zoned for renewal will be seen as suitable for some development, such as densification and infill development, and will benefit from a statutory "presumption in favour" of development. Schemes that accord with locally-drawn up design codes will benefit from a "fast-track for beauty" recommended by the government's Building Better Building Beautiful Commission.

As the expectation is that protection areas will be of a special character e.g. the Green Belt, Conservation Areas or Areas of Outstanding Natural Beauty (AONB) it is not clear under what designation open countryside may fall. If it does not benefit from the safeguarding offered by the protection zones, would it be deemed to be a renewal area where there is a stronger presumption in favour of development than currently exists for some forms of development. It will be for the LPA to specify acceptable uses in renewal areas in the plan but in defining these areas, the expectation would be that any planning application would be approved unless specific reasons suggested otherwise.

In practice, such concerns may prove to be ill-founded and renewal zones are treated in a similar manner to areas of land unallocated in the current planning system, the 'white land'.

3. Stripped back local plans

Local authorities will have 30 months to produce a new-style stripped back local plan, down from a current average of seven years. While the new plans will be more powerful in that they will confer planning permission to "growth" sites, councils will lose the ability to set local policies. Instead, all planning policy will be set nationally with local plans restricted to development allocation and the specific codes and standards to be applied to projects in the development zones. The plan should include "an interactive web-based map of the administrative area where data and policies are easily searchable", with colour-coded maps reflecting the zoning, key and accompanying text setting out "suitable development uses, as well as limitations on height and/or density as relevant" within the zones

In principle, this change is welcomed as it offers the potential to remove unnecessary duplication of national policies at the local level and the potential for conflict to arise between the two plan layers should the national policies change e.g. through a review of the NPPF.

The White Paper does recognise the need for local character and needs to be accommodated for in the plan process. This is to be facilitates through the use of new design codes which are detailed in section 8 below.

4. Section 106 scrapped

The existing system of developer contributions is to end. Section 106 agreements will be scrapped, while the existing Community Infrastructure Levy will be morphed into a nationally-set levy on development value that the government says will bring in at least as more or more in the way of developer contributions as the existing system. The levy will be paid at the point of occupation, leaving councils to pay for and deliver any infrastructure needed up front. Councils will be allowed to borrow against future levy receipts to fund this.

For parts of the country where development values are strong or when the economy is in an uplift, there is potential for this new mechanism to deliver significant infrastructure provision however, in areas or at times when such opportunity is limited, there is a concern that infrastructure may not be forthcoming so readily resulting in additional pressure on educational service, flood defences or play space which will result in an extra burden on the public purse if the development proceeds.

5. Top down housing targets

It appears the government plans to re-impose top-down housing targets on local authorities, a decade after the coalition government's first removed them. The government now envisages that every local authority will be bound by targets set by a renewed "standard method" for calculating housing need. The standard method will be based on how many existing homes are in an area, the projected rise in households, and changes in affordability.

In terms of plan preparation, this process of working to a pre-defined figure has the potential to make the process quicker and more streamlined. In doing so though, there is expected to

be critics who feel the Council is imposing unnecessary development on local communities which may foster resentment.

There is a risk that the message around who is imposing the target is unclear and whilst its hands are ties by Government, this fact is wrapped in a series of associated arguments and measures around housing need and supply which form the background to a wider national discussion around the need for new housing within which local Councils are portrayed as key decision makers. Should such a scenario arise, it has the potential for local residents to come to a false conclusion that targets are set at the local, and not the national, level.

6. "Duty to co-operate" removed

Given the imposition of a top-down target, councils will no longer have a duty to co-operate with each other over the drawing up of local plans, as the numbers will be set by government. Numbers will take into account the presence of constraints on growth, such as green belt, but the White Paper didn't clarify how this will be done.

In principle, this change is welcomed. The duty to co-operate requirement is a complex process where neighbouring authorities need to ask each other if they can accommodate some of the host councils housing need.

In some areas, this process can work but for others it can be burdensome identifying excess need, asking another council to assess whether such need can be accommodated and, if the assessment concludes only part or none of the need can be accommodated, requiring the host authority to repeat it assessment on whether it can accommodate the residual demand.

7. Protection

Areas zoned as "protected" will essentially continue with the existing planning process, with all existing Green Belt and Area of Outstanding Natural Beauty and similar such designations remaining in force.

8. New design code body

A new body is to be set up to be given the role of supporting local authorities in the creation of local design codes, and each local authority will be expected to employ a chief officer for design and place-making to oversee quality. Local design codes must have community input to be valid.

This will be one of the key areas where neighbourhood plans will be able to engage in the new planning process.

It is possible for developers to engage in the design code process for example where a new growth area is planned. The code will need to be adopted by the Council but once in place, it will be possible for development that is fully in compliance with the code to proceed with little to no necessity for a full planning application to be submitted..

9. More permitted development

Within the "renewal" areas, certain pre-approved development types – such as the densification of suburban semis – will be given automatic pre-approval via new permitted development rights. These new PD rights will also have to take account of local design codes.

10. Digital planning

Public involvement in local planning is to be hugely expanded by digitising the service, to allow much easier public access to planning documents. This is referred to a PropTech. These will be published online line in standardised formats with "digitally consumable rules and data", allowing people to respond to consultations on their smartphones. Authorities will be asked to use an "open data" approach, with the aim being to move the system from one based on documents to one based on data.

It is envisaged that in future applicants will be able to submit their proposal to a local design portal on the internet to have their scheme considered against the embedded polices and in turn receive an automatic decision on their application thus speeding up the consideration process.

Summary

There are some positive changes proposed in the White Paper. Whilst the headline proposal is the coverage of the whole borough in one of the three zones, growth, renewal or protection, some of the other changes e.g. the use of design codes and wider permitted development rights may prove easier to deliver.

The Paper is currently out for consultation till the 31st October and the Government has invited response to a series of questions on the proposals.

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