



City of Westminster

Planning & City Development Committee

Date: 25 October 2021

Classification: General Release

Title: Update on Temporary Covid-19 Related Legislation & Regulations

Report of: Director of Place Shaping and Town Planning

Financial Summary: None.

**Report Author and Contact Details: Oliver Gibson (ogibson@westminster.gov.uk/
07971026919)**

1. Executive Summary

1.1 This report provides an update on the temporary changes to planning legislation that have been introduced since the beginning of the Coronavirus pandemic in March 2020. Where the temporary legislation or regulations have been extended or replaced by a permanent alternative the report considers the impacts this may have on the operation of the planning service and for future planning decisions in Westminster.

2. Recommendation

2.1 Members are asked to consider the contents of this report and to note the ongoing impacts that changes to planning legislation and regulations related to the pandemic has on the planning service and planning decision making.

3. Background

3.1 Changes were made by Government through secondary legislation to certain aspects of the planning system in the period following the beginning of the first Coronavirus lockdown in March 2020. Some of these changes were temporary (seeking to assist 'business as usual' activities during the pandemic and the recovery in the immediate aftermath), whilst others were permanent, seeking to support the longer-term recovery, address the decline in traditional high street retailing that began before the pandemic, but was accelerated by it, and promote the delivery of more housing.

3.2 Table 1 below summarises the temporary changes to the planning legislation and regulations and provides an update on whether they have lapsed following the expiry of the temporary period or been replaced.

Table 1 – Summary of Temporary Changes to Planning Legislation and Regulations During the Pandemic

Temporary Legislation/ Regulations	Date Came into Force	Purpose	Current Position
The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020	2 April 2020	Allowed local authorities to hold virtual planning committee meetings up to 7 May 2021.	Not extended. Fully virtual meetings can no longer be held after 6 May 2021.
Town and Country Planning (Development Management Procedure, Listed Buildings and Environmental Impact Assessment) (England) (Coronavirus) (Amendment) Regulations 2020	14 May 2020	New regulations to support 'business as usual' activities during the pandemic and ensure continuation of timely decision-making. Regulations include measures to relax requirements for site notices, publication of notices in newspaper and physical inspection of documents.	Regulations were extended in December 2020 until 31 December 2021.
The Town and Country Planning (General Permitted Development) (Coronavirus) (England) (Amendment) Order 2020	9 April 2020	Introduced time limited emergency permitted development right until 31 December 2020. Allowed local authorities to carry out development to respond to the spread of coronavirus.	Extended to 31 December 2021 by the Town and Country Planning (General Permitted Development) (England) (Amendment) Regulations 2020 ('Amendment Regs 2020').
The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2020	24 March 2020	Allowed restaurants and cafes and drinking establishments to provide takeaway food without the need for planning permission for a temporary period of 12 months	Extended to 23 March 2022 by the Amendment Regs 2020.
The Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020	1 August 2020	Allowed additional 28 days for temporary use of land between 25 June 2020 and 31 December 2020 and allowed local authorities to hold markets at any time until 23 March 2021.	Extended to 31 December 2021 and 23 March 2022 respectively by the Amendment Regs 2020.
The Business and Planning Act 2020	22 July 2020	<u>Pavement Licences</u> Introduced a temporary licensing regime to enable food and drink establishments to apply to place tables and chairs on the highway until 30 September 2021. A pavement licence constitutes deemed planning permission.	Relevant period for pavement licences extended to 30 September 2022 by the Business and Planning Act 2020 (Pavement Licences) (Coronavirus) (Amendment) Regulations 2021.
		<u>Extended Construction Hours</u> For a temporary period until 1 April 2021. Developers must apply to the Council to seek approval for extended construction hours.	Extended until 30 September 2021 by written ministerial statement dated 25 March 2021.
		<u>Extension of Existing Permissions/Consents</u> Extended period for implementation of planning	Expired on 1 May 2021 without extension.

		permissions and listed building consents that expired between 23 March 2020 and 31 December 2020. They were extended until 1 May 2021.	
The Town and Country Planning (General Permitted Development) (England) (Amendment) (Coronavirus) Order 2021	21 April 2021	Enables the provision of moveable structures within the curtilage of pubs and bars, restaurants/cafes and listed historic buildings operating as visitor attractions. The permitted development right is temporary until 1 January 2022.	Not extended to date. Consultation ongoing on whether to convert to a permanent permitted development right.

4. Consideration of Extensions to Temporary Changes

Virtual Planning Committee Meetings

- 4.1 The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 enabled the holding of fully virtual planning committee meetings between 2 April 2020 and 7 May 2021. This legislation was instrumental in enabling public meetings to operate throughout the period impacted by pandemic restrictions and ensured that the determination of large and complex planning applications could continue without significant interruption or delay.
- 4.2 As has been report to this committee previously, the Council was quick to utilise this change in legislation and the first virtual meeting was held on 14 April 2020 with virtual committee meetings continuing until the beginning of May 2021 when the temporary legislation expired.
- 4.3 Despite significant lobbying from across local government and the development industry, the Government declined to extend the temporary legislation. It instead issued a call for evidence in March 2021, to seek views on the use of the temporary arrangements which had provided express provision for local authorities to hold meetings remotely or in a hybrid format during the coronavirus pandemic. To date there has been no further update from the Government on this issue since the end of the call for evidence in June 2021.
- 4.4 In light of the Government's position, the Association of Democratic Services Officers, Lawyers in Local Government and Hertfordshire County Council sought to judicially review the Government's decision not to extend the temporary regulations. They argued that in any event current legislation within the Local Government Act 1972 could be relied upon to permit virtual public meetings. However, in its judgement given on 28 April 2021 the High Court dismissed this argument and agreed with the Government that new primary legislation was required to permit fully virtual meetings.
- 4.5 Following the cessation of the temporary legislation and the High Court judgement, the Council reviewed its planning and other committee meeting procedures in late April/early May 2021 and developed the current hybrid model, which is compliant with the requirements of the Local Government Act 1972 and other permanent legislation, whilst also offering contributors and viewers of the committee greater flexibility to enable their attendance. The hybrid model also affords the benefits of in person meetings, such as clearer discussion and deliberation between committee members and principal officers.

- 4.6 The virtual and hybrid models for holding planning committees have driven up attendances at committee meetings. Typically, these were circa 20-30 prior to the pandemic and this has risen to an average of 71 for fully virtual meetings and 50 for hybrid meetings (note the total for hybrid meetings does not include any attendees viewing the meeting in person). Importantly the improved accessibility to meeting, allied to public speaking and the provision of committee recordings online, has contributed to a significant increase in the transparency and understanding of the planning decision making process. The latest planning committee meeting attendance data is provided in Appendix 1.

Temporary Arrangements to Support 'Business as Usual' through the Pandemic

- 4.7 The Town and Country Planning (Development Management Procedure, Listed Buildings and Environmental Impact Assessment) (England) (Coronavirus) (Amendment) Regulations 2020 introduced emergency provisions to relax requirements for site notices, publication of notices in newspaper and physical inspection of documents. This legislation has been extended by Government until 31 December 2021 but has not needed to be used in Westminster. Officers have been able to work flexibly, using new methods of working where necessary throughout the pandemic and the Council's site notice contractor has been able to continue to operate throughout the pandemic. Consequently, whilst the provision of these emergency provisions has been a welcome 'safety net', they have not been required to enable the planning service to operate throughout the pandemic without interruption.

Temporary Permitted Development in response to the Pandemic

- 4.8 The Town and Country Planning (General Permitted Development) (Coronavirus) (England) (Amendment) Order 2020 introduced a new temporary permitted development right for emergency development by a local authority or health service body for use where buildings or structures were required to help address an emergency which threatens serious damage to human welfare. This was extended until 31 December 2021. Bodies that utilised this permitted development right are required to notify the Council of their actions as soon as possible after they have used their permitted development rights. To date we have only received one notification for the erection of a structure under this temporary permitted development right at 18 Westmoreland Street in May 2020 (20/03288/APA).

Temporary Permitted Development for Take Away Food

- 4.9 Changes to the General Permitted Development Order in March 2020 introduced a temporary permitted development right to allow Class A3 (restaurants and cafes) and Class A4 (drinking establishments) uses to provide takeaway food for 12 months until 23 March 2021. Pubs and restaurants seeking to serve take away food are required to notify the Council. This permitted development right was extended by the Town and Country Planning (General Permitted Development) (England) (Amendment) Regulations 2020 until 23 March 2022.
- 4.10 The Council has only received 3 notifications to date, all of which were received at the beginning of the pandemic. These were at 198 Edgware Road, W2 (20/03701/APA) (which was withdrawn), 10 - 14 Knightsbridge Green, SW1 (20/03616/APA) and 43 Chandos Place, WC2 (20/02992/APA). It is likely that a significant proportion of businesses offering takeaway during the pandemic did so without notifying the Council as required by the temporary changes to the GPDO. It should also be noted that a small proportion of restaurant sales can be derived from a takeaway service without this changing the primary use of the premises. Therefore, many businesses may have

simply expanded this existing capability during the pandemic and subsequently contracted their takeaway offer following the relaxation of restrictions in July 2021.

- 4.11 Enforcement action can be considered should any continuing take away provision that is not ancillary to the lawful primary use of any premises be brought to the Council's attention. However, during the period during which the temporary changes to the GPDO are in force, the Council is taking a more pragmatic approach to enforcement of this issue in view of the ongoing need to support the hospitality industry in its post pandemic recovery.

Extended Permitted Development for Temporary Use of Land

- 4.12 The Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020 expanded permitted development for temporary use of land by a further additional 28 days for temporary use of land between 25 June 2020 and 31 December 2020, in addition to the 28 days already provided for in the permanent parts of the GPDO. It also allowed local authorities to hold markets at any time until 23 March 2021. These regulations were extended by the Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020 31 December 2021 and 23 March 2022 respectively. The Government is currently consulting until 14 November 2021 on whether the permitted development rights for local authorities to hold markets at any time should be made permanent beyond 23 March 2022.

- 4.13 As the permitted development right relating to the temporary use of land does not require the local planning authority to be notified, the Council does not have data to demonstrate the level of usage of this temporary permitted development right. However, it is reasonable to assume that usage has been limited given opportunities for temporary use of land in Westminster is limited due to the relatively densely developed townscape of the city.

- 4.14 To date the Council has not needed to utilise the temporary permitted development rights allowing local authorities to hold markets at any time to support its existing permanent or seasonal markets.

Pavement Licences for Consumption of Food and Drink Outside

- 4.15 Pavement Licences were introduced by the Business and Planning Act from 22 July 2020, initially until 30 September 2021. This has now been extended to 30 September 2022 by the Business and Planning Act 2020 (Pavement Licences) (Coronavirus) (Amendment) Regulations 2021.

- 4.16 The granting of a Pavement Licence (which can only relate to highway land) provides deemed planning permission for the tables and chairs during the temporary period the legislation is in place, thereby reducing the cost and administrative burden on food and drink businesses. Up until 31 March 2021 the Licensing Service had received 1215 applications. Of these applications 930 were granted and a pavement licence issued. (Note that pavement licences were initially granted for a 6-month period and therefore this number does not represent the number of separate premises with a pavement licence).

- 4.17 Whilst the introduction of pavement licences has reduced applications for planning permission for tables and chairs, there remains a significant number of applications annually. The number of tables and chairs planning applications totalled 364 during 2019 (pre-pandemic), 219 in 2020 and 138 to the end of September 2020 (pro rata this

equates to 184 for 2021 as a whole). The relatively significant numbers of planning applications still being made relate to placement of tables and chairs fully or partially on private forecourts and where applicants are keen to retain the planning permission they have traditionally had for tables and chairs in front of their premises, for example as a fall back in the event that extended alfresco dining areas can no longer be facilitated on street, such as has begun to occur in some locations from early October 2021.

- 4.18 Given that the number of temporary alfresco dining schemes are now being reduced, it is expected that there will be gradual increase in tables and chairs planning applications during 2022. The numbers of applications could even exceed 2019 levels, should the Government not decide to introduce a permanent replacement for the pavement licensing process from September 2022, given that the public appetite for alfresco dining appears to have increased as a result of the pandemic.

Extension of Construction Working Hours

- 4.19 The Business and Planning Act introduced the opportunity for developers to extend construction working hours to mitigate the impact of 'Covid Secure' measures on the speed of construction work. This measure was extended by ministerial statement until 30 September 2021 and has therefore now expired.
- 4.20 To extend construction working hours developers were required to make an application to the Council setting out the hours proposed and any noise mitigation measures. Given the proximity of neighbouring residents to many construction sites officers took a cautious approach to the determination of extended construction hours applications and required developers to provide full details of what works would be carried out during the extended hours (to enable assessment of their potential noise generation) and what mitigation measures are proposed where appropriate.
- 4.21 During its period of operation the Council only received three applications. These were an application at 60 Grove End Road, NW8 (20/05023/FULL) and two applications at the site at 117-125 Bayswater Road, 2-6 Queensway and 7 Fosbury Mews, W2 (20/05999/FULL). All three applications were refused due to their potential impact on the amenity of neighbouring occupiers. There is no indication that the approach taken has significantly inhibited development in Westminster during the pandemic and developers have been quick to embrace innovative approaches to on site working to maintain development schedules whilst embedding Covid secure working practices.

Extensions of Planning Permissions, Outline Permissions and Listed Building Consents

- 4.22 The final temporary amendment to planning legislation made by the Business and Planning Act was the introduction of extensions to planning permissions and listed building consents expiring between 23 March 2020 and 31 December 2020. Whilst permissions and consents expiring after the date the Act came into force (22 July 2020) were automatically extended to 1 May 2021, those expiring between 23 March and the date of the Act required applicants to submit an 'additional environmental approval' application to the Council to demonstrate that the permission or consent would not cause any adverse environmental impact. This element of the Business and Planning Act 2020 has not been extended and has therefore now expired.
- 4.23 During the temporary period during which this provision was in place the Council only received three environmental approval applications relating to two properties: 26 Cavendish Avenue, NW8 (20/06063/FULL & 20/06064/LBC) and 23 Craven Hill, W2 (20/05627/FULL). All three applications were approved.

- 4.24 Based on the number of environmental approval applications relating to permissions and consents expiring between March and July 2020, it is unlikely that a significant number of permissions and/or consents were implemented during the extended implementation period (i.e. up to 1 May 2021), rather than a fresh application for permission/consent being made. However, as applicants are not required to notify the Council of when a permission or consent is being implemented, it is difficult to provide definitive evidence of the extent of impact this provision may have had on application numbers in early 2021. Notwithstanding this, the greater flexibility this temporary provision provided at a time when the construction industry required support through the pandemic outweighs any minor impact it may have had on the Council's planning income at that time.

Movable Structures in the Curtilage of Pubs, Restaurants and Listed Visitor Attractions

- 4.25 This was the most recently introduced temporary permitted development right, brought into force in April 2021 to support alfresco dining throughout the remainder of 2021. The current permitted development rights are not limited in terms of the size of the structures installed or the period they are installed for. The current rights expire on 1 January 2022 after which any structures installed under this right would need to be removed.
- 4.26 The Government is currently consulting on whether to make this permitted development right permanent beyond 1 January 2022. In their consultation they recognise that it is unlikely to be appropriate to make this right permanent without introducing controls on the size of the temporary structures and the time period they are erected for. The consultation suggests that structures should be limited to 4 metres in height and a footprint of not more than 50% of the footprint of the existing building on site. The consultation suggests a maximum period of 56 days per calendar year. The consultation ends on 14 November 2021.

5. Financial Implications

- 5.1 None.

6. Legal Implications

- 6.1 None.

7. Conclusion

- 7.1 Despite the apparently low uptake of some of the measures introduced on a temporary basis during the pandemic, the temporary changes to planning legislation and regulations have afforded businesses and the development industry within the city a 'safety net' during the pandemic, allowing them to adapt to the unique circumstances of the pandemic response without undue planning restriction. In this context the provisions afforded by Government are supported, including for the extended periods subsequently introduced. However, it is appropriate that planning control over development reverts to the pre-pandemic position at the end of the current temporary periods, given the gradual return towards pre-pandemic patterns of movement and consumer behaviour that are occurring.
- 7.2 Other temporary changes, to afford appropriate permitted development rights to the council and health care bodies to ensure that the effectiveness of the pandemic response, were also appropriate at that time and have ensured that there is suitable

flexibility for those organising the response to Covid-19 to deliver necessary temporary infrastructure (such as testing centres etc.), albeit, given Westminster's dense and established townscape there has been little use of these additional permitted development rights relative to in other parts of the country.

- 7.3 In terms of the operation of the planning service, the most significant temporary change was the ability for the service to provide virtual planning committee meetings. Whilst this ability has now ceased following the end of the temporary legislation in May, the experience this period has afforded has had a transformational impact on the format of committee meetings and facilitated a smooth transition to the current hybrid meeting format, which can be operated within the scope of pre-existing legislation governing the requirements of public meetings.

If you have any questions about this report, or wish to inspect one of the background papers, please contact: Oliver Gibson (ogibson@westminster.gov.uk / 07971026919)

Appendix

1. Planning Applications Committee Attendance Data 2020-2021.

Background Papers

N/A

