

# COVID-19 (UK) GOVERNMENT MEASURES ANNOUNCED TO SUPPORT THE PLANNING SYSTEM

Summary and insights into the temporary measures  
announced by the Government

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The Government's immediate planning response to the coronavirus pandemic taking hold in the UK focussed on ensuring that planning committee meetings could continue and take place remotely and on the introduction of some emergency permitted development rights.

After a brief hiatus, a further round of planning measures were announced by MHCLG on 13 May 2020, followed by a Written Ministerial Statement ("WMS") setting out the Government's expectations for how the planning system should be operating and kept moving during the emergency period. Additional guidance was also issued to local planning authorities and acquiring authorities.

The measures announced and introduced will provide a welcome boost for many, but some will be disappointed and concerned that the measures do not go nearly far enough to help the struggling sector facing multiple challenges.

## COMMUNITY INFRASTRUCTURE LEVY (CIL)

Small and medium sized developers (with a turnover of less than £45m) ("SME developers") are the target for Government support, with temporary amendments to the CIL Regulations 2010 to be introduced "*in due course*" which will enable charging authorities to defer CIL payments, to temporarily disapply late payment interest and to provide a discretion to return interest already charged.

Disappointingly for larger developers, they will not benefit from these forthcoming relaxations to the CIL regime. However, there are limited flexibilities and discretions that already exist within the regime that allow charging authorities to introduce installment policies, a discretion to waive surcharges and in the enforcement of unpaid CIL liabilities. The new guidance encourages charging authorities to apply these steps to ease the burden for developers. However, larger developers will still be required to pay interest on late payments.

Many, especially larger developers, will feel that these measures don't go nearly far enough to make a real difference to the deliverability of their schemes, especially where CIL payments are phased. Where development commenced before the lock-down and CIL was triggered, even if construction has now stalled, there is no ability to delay further payments, unless the charging schedules expressly provides for "exceptional circumstances relief". The very nature of the CIL regime means that the amount of CIL due is also non-negotiable. This remains unchanged and will play a pivotal role in scheme viability going forward.

## S106 AGREEMENTS

Providing more welcome relief for the spectrum of developers, planning authorities are encouraged to consider deferring the delivery of s106 obligations through deeds of variation,

using time-limited deferral and to take a pragmatic and proportionate approach to the enforcement of s106 obligations.

This opportunity to delay s106 payments or deliver obligations, often required to be paid before commencement of development, until much later in the development program could make a significant difference to developers and their cash flow.

## COMPULSORY PURCHASE ORDERS (CPO)

Schemes that involve the compulsory acquisition of land have experienced a specific set of challenges in terms of complying with the statutory process of making and confirming CPOs. The new guidance addresses this and encourages CPOs to continue to be progressed, with acquiring authorities being urged to consider pragmatic ways of adhering to the process.

Importantly for those on the receiving end of a CPO, acquiring authorities are reminded to act responsibly to businesses and residential claimants when implementing CPOs, particularly in terms of the timing of vesting orders and compensation payments, and residents should not be unduly evicted. Advance payments of compensation should not be delayed given the potential impact on claimants' cash flow burdens at this time.

However, no measures are proposed to extend the period within which CPO powers must be exercised pursuant to a confirmed CPO, which could jeopardise some schemes that are not in a position to make progress and commit to land acquisition costs in the current economic climate.

## PLANNING PROCESS

Critical to successful planning delivery is a robust decision making process. However, social distancing and restrictions on the movement of people exposed an immediate incompatibility with the statutory process for submitting, processing and deciding applications. Non-compliance with the statutory requirements exposes resulting planning decisions to potential judicial challenge and undermines confidence in the system. For the planning system to continue, amendments to the statutory process is a necessity.

The Coronavirus Act 2020 (and resulting regulations) which came into force on 4 April 2020 allowed planning committee meetings to be held remotely during the coronavirus pandemic.

New temporary regulations (in the form of The Town and Country Planning (Development Management Procedure, Listed Buildings and Environmental Impact Assessment) (England) (Coronavirus) (Amendment) Regulations 2020<sup>1</sup>) were announced and came into force on 14 May 2020. These regulations:

- allow more flexibility in how planning and listed building applications are publicised if the specific requirements for site notices, neighbour notifications or newspaper publicity cannot be discharged and allow notifications by electronic means (including online news portals and social media);
- allow a longer period for representations to be made to applications is also introduced, extending the period from 14 to 21 days.
- expire on 31 December 2020.

Further detail on planning casework is included in the guidance which goes further than the regulations and covers site visits, virtual planning meetings and an expectation that virtual planning committee meetings will be the norm rather than committee dates deferred. Remote processing of planning applications should continue but with arrangements in place to ensure paper applications can still be validated and urgent COVID-19-related applications should be prioritised.

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<sup>1</sup> These Regulations amend the Town and Country Planning (Development Management Procedure) (England) Order 2015, the Planning (Listed Building and Conservation Areas) Regulations and Town and Country Planning (Environmental Impact Assessment) Regulations 2017

Whilst these measures in the guidance and regulations are expressed to be temporary, the WMS says that the Government's expectation is that virtual hearings and emerging practice will inform policy and process in the longer term.

## OTHER MEASURES

Other planning measures covered in the guidance include local plans, preparations for which should continue and neighbourhood plans. A light touch is given to Nationally Significant Infrastructure Projects, in that the Government expresses support for continued decision-making and to housebuilding. More flexible working hours on construction sites are permitted with varied start and finish times. However, there is no corresponding express guidance to planning authorities on the approach to enforcing the inevitable breaches of planning conditions.

## WHAT HAS NOT CHANGED?

Despite lobbying by a number of parties within the development industry (including BCLP), the new measures are silent on extensions to planning permissions that will lapse during this period. However, we understand that MHCLG has not yet concluded its deliberations on this point and it is still being actively considered.

Even though construction has re-opened, implementing a planning permission is far from straightforward with significant time and cost implications that some developers will not be in a position to make in the immediate economic climate. The concern that valuable consents will lapse during this period remains real.

The time period within which planning applications must be determined has also not changed. This is probably of less concern as the option to appeal for non-determination still exists, but the guidance encourages developers to agree extensions of time where necessary.

We are sure that this is not the end of the story in terms of Government support for the planning and development sector and we will continue to keep you informed of further announcements and measures as and when they happen.

### Getting in touch

When you need a practical legal solution for your next business opportunity or challenge, please get in touch.

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