



Francis Taylor Building

## Planning and Business Bill 2019 - 21

### An Overview of Part 3: Planning

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## Overview of Planning Provisions

- Modification of construction working hours conditions (cl. 16);
- Extension of certain permissions and consents (i.e. planning permissions, listed building consents, outline planning permissions) (cl. 17 - 19);
- Provisions relating to the holding of 'hybrid appeals' (cl. 20);
- Electronic inspection of the London Plan (cl. 21).

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## Modification of Construction Working Hours (1)

- What is the problem?
  - planning permission often subject either to a condition which restricts construction working hours or a condition requiring the approval of a construction management plan which then contains restrictions on working hours – good reasons for these restrictions (i.e. amenity and environment)
  - but due to Covid-19, a lot of time has been lost already (i.e. downing of tools for weeks) and will be lost in the future (i.e. social distancing reducing capacity) and that time needs to be made back up again, with viability concerns and a desire to kick start the economy etc.

## Modification of Construction Working Hours (2)

- Ordinarily, the solution would be to make a s. 73 application – but, that has downsides (e.g. cost, length of time, potential consultation with statutory bodies)
- Written Ministerial Statement on Construction Hours (13 May 2020) urged a sensible approach, with the aim of determining applications within ten days
- But ultimately felt that there was a need for *‘swifter, streamlined route to requesting temporary amendments to construction working hours’*, in order to *‘provide greater certainty’* to the benefit of *‘developers and housebuilders of all sizes’* (Analysis in Support of Bill, p. 8)

## Modification of Construction Working Hours (3)

- Cl. 16 inserts new provisions (s. 74B - 74D) in the TCPA 1990 which provide for a streamlined application process for modifying construction working hours in certain permissions.
- Procedure applies to permissions which contain:
  - a condition which specifies the times during which construction activity can be carried out (s. 74B(1));
  - a condition requiring approval of a document relating to development, which is then approved, and which specifies the times during which construction activity can be carried out (e.g. CMP) (s. 74B(2)).
- Does not apply to '*mining operations*' (s. 74D(1)) or '*relevant development of a dwelling house*' (s. 74A(9))

## Modification of Construction Working Hours (4)

- Person with an '*interest in the land or a person acting on behalf of such a person*' (s. 74A(3)) applies to the local planning authority for increase in hours on particular days (s. 74A(4)(a)) or increase in days (s. 74A(4)(b))
- Application must be made electronically (s. 74A(5)), with specified information (s. 74A(6)) which includes the following:
  - current (s. 74A(6)(e)) and proposed (s. 74A(6)(b)) hours;
  - date when proposed hours should take effect ((s. 74A(6)(c)), no earlier than 14 days later (s. 74A(7));
  - date when proposed hours should cease and revert (s. 74A(6)(d)), no later than 1 April 2021 (s. 74A(8)).

## Modification of Construction Working Hours (5)

- Planning authority can approve, reject or make a determination in respect of the application (s. 74C(1)) – determination about modification to hours, proposed start date or proposed end date (s. 74C(2))
- Determinations have some limitations (s. 74C(4) - (5)), crucially only takes effect if agreed by the applicant in writing (s. 74C(3))
- If there is no decision within fourteen days of the application being made, then it is deemed to be approved in accordance with the application (s. 74C(7))
- Right of appeal against refusal (s. 74D(3))

## Modification of Construction Working Hours (6)

- Local authorities must have regard to guidance issued by the Secretary of State (s. 74D(6))
- Draft guidance has been published:
  - *'should not refuse applications to extend working hours until 9pm, Monday to Saturday without very compelling reasons [ ... ] 24-hour working may be appropriate'*
  - applicants should include (i) short justification of the application; (ii) details of any mitigation; and, (iii) details of any engagement with neighbours;
  - important factors will include (i) nature of the locality; (ii) any sensitive receptors; (iii) reasons for initial restrictions; (iv) any EIA / Habitats points.

## Modification of Construction Working Hours (7)

- Has the potential to be a swift procedure for securing modifications to construction working hours with benefits over the s. 73 process – in particular, free and no statutory consultation provisions
- In light of the Draft Guidance and the Written Ministerial Statement, local planning authorities will be slow to refuse applications – and power to modify subject to written agreement
- It is, of course, time limited to 1 April 2021 (subject to extension power)
- Little to no downsides for applicants – make use of it!

## Extension of Permissions and Consents

- Problem area, because s. 73 cannot be used to extend the life of a planning permission (s. 73(4)). For planning permissions which were coming to the end of their life during the lockdown period, the only real options were:
  - to try to carry out a '*material operation*' to keep the permission alive (s. 56);
  - to make a fresh application for planning permission, which has lots of downsides.
- The extent of the problem revealed in recent statistics: around 1,200 permissions with at least 10 residential units due to expire before or on 31 December 2020, covering 60,000 residential units; for end March 2021, rises to 83,000 units.

## Extension of Planning Permissions (1)

- Cl. 17 deals with extension of planning permissions, inserting new provisions in the TCPA 1990 (s. 93A - C).
- In short:
  - if the planning permission is due to expire between the day when the bill is passed and 31 December 2020, then it is automatically extended to 1 April 2021 (s. 93A);
  - if the planning permission has already expired and did so between 23 March 2020 (i.e. lockdown day) and the day when the bill is passed, then you can apply to the local planning authority for an extension until 1 April 2021 – there will be an additional environmental approval process to decide if the extension will be granted (s. 93B).

## Extension of Planning Permissions (2)

- So, automatic extension for planning permissions which are due to expire before the end of the year and in respect of planning permissions which have expired since lockdown, a process to revive them
- The revival process is particularly noteworthy, going further than the Scottish provisions which provides for the extension but not revival of permissions during the '*emergency period*' (Coronavirus (Scotland) Act 2020, Schedule 7)

## Extension of Outline Planning Permissions (1)

- Outline planning permission is dealt with differently:
  - if an outline planning permission contains a condition which requires an application for an approval of a reserved matter to be made not later than a time falling within the period 23 March 2020 (i.e. lockdown day) and 31 December, then an automatic extension is granted until 1 April 2021 (s. 93D)
  - if an outline planning permission contains a condition which requires works to be commenced not later than a time falling within the period 23 March 2020 (i.e. lockdown day) and 31 December 2020, then an automatic extension is granted until 1 April 2021 (s. 93E).

## Extension of Outline Planning Permissions (2)

- if an outline planning permission contains a condition which requires works to be commenced between 23 March 2020 (i.e. lockdown day) and the day when the bill is passed, then you can apply to the local planning authority for an extension until 1 April 2021 – there will be an additional environmental approval process to decide if the extension will be granted (s. 93F).
- Slightly more complex approach, depending on whether the time limit is in relation to the approval of reserved matters or the commencement of development

## Extension of Listed Building Consents

- Listed building consents are dealt with in the new s. 18A of the Planning (Listed Buildings and Conservation Areas) Act 1990
- In short:
  - if they contain a condition which requires works to be commenced not later than a time falling within the period 23 March 2020 (i.e. lockdown day) and 31 December 2020, then an automatic extension is granted until 1 April 2021.
- No distinction drawn here between consents which have already expired and those which are yet to expire: that is because there is no need for the environmental approval process. Automatic extension can be granted.

## Hybrid Appeal Procedure (1)

- Currently, s. 319A TCPA 1990 requires a choice to be made between inquiry, hearing or written representations – no scope for a ‘hybrid’ or ‘pick-n-mix’ approach
- Proposals in cl. 20 now allow for such an approach – the Secretary of State can choose ‘*such one, or more*’ of an inquiry, hearing or written representations ‘*as appears appropriate*’ in any given case.
- Applies to all the standard planning and enforcement appeals, also listed building consent appeals (cl. 20(2)) and hazardous substance appeals (cl. 20(3))

## Hybrid Appeal Procedure (2)

- Rosewell Review, Recommendation 9 encouraged ‘*early consideration of how the main issues should be considered*’ – complementary of the approach (now widespread) of certain issues during an inquiry being dealt with at roundtable discussions, limiting cross-examination etc. but encouraged greater use of a hybrid approach where possible
- Proposals add a further layer of flexibility. Will now need to consider whether some issues can be dealt with solely in writing, with other issues being dealt with orally. Implications for costs and case presentation? Efficiency for PINs?
- Possible mix of virtual hearings too in the future?
- Brings English law into line with Welsh law (s. 319B)

## Electronic Inspection of London Plan (1)

- Currently, requirements to:
  - have a copy of the current London Plan available for physical inspection, free of charge, at reasonable hours at the ‘principal offices of the authority’ and other appropriate locations (s. 43(3) Greater London Authority Act 1999);
  - provide copy of the current London Plan to any person on request for a reasonable fee (s. 43(4) Greater London Authority Act 1999)
- But, new s. 43(4A) disapplies these requirements if ‘a copy of the spatial development strategy is available for inspection free of charge by appropriate electronic means’ (cl. 21).

## Electronic Inspection of London Plan (2)

- When will it be '*available for inspection by appropriate electronic means*' (s. 43(4A))
  - where '*arrangements have been made such that it is available for inspection by electronic means in a reasonably convenient way*' (s. 43(4B)).
- Guidance issued by the Secretary of State, which the Mayor must have regard to when making these arrangements. Guidance to include (s. 43(4C)):
  - how strategy should be made available by electronic means;
  - arrangements for mitigating effects on those who are unable to inspect electronically, or are finding it difficult to do so.

## Electronic Inspection of London Plan (3)

- Temporary disapplication until 31 December 2020 (cl. 21(2)) with power to extend (cl. 21(3))
- Relatively limited reform, as there are many examples of statutory requirements for physical deposit and inspection (e.g. EIA Regulations, regs. 20 & 23, Local Plan Regulations, Reg. 35(1)(a)). Potential missed opportunity?
- Concern seems to be about '*delay to the publication of the new SDS*' (ECHR Memorandum, [88]) and the consequential impact this could have on other local plans etc. Indication of progress?
- Validly raises concerns about involvement in decision-making too, but most have access online and most relevant documents now available online.



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**Thank You**

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**BUSINESS AND PLANNING BILL**  
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## Introduction

- Why is the AEA process needed?
- Applies only to permissions that have lapsed cf. planning permissions about to expire
- Effect is akin to grant of new planning permission
- Need to comply with EU obligations on UK government: Habitats Directive 92 /43/EEC EIA Directive 2011/92/EU
- Without AEA process, no means of complying with Directives

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## Overview of Section 93B/93F

- Which permissions does it apply to?
- What is the effect of grant?
- Who can apply?
- Procedural requirements
- When will LPA approve application for AEA?
- The EIA requirement
- The Habitats requirement
- Time limit for determination
- Conditions?
- Appeals

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## 1. Which permissions?

- Section 93B(1), 93F(1)
- Full and outline planning permissions in England
- Planning permissions subject to a condition which has the effect that [all or part of] the development to which the permission relates must be begun not later than a time falling within the period—
  - (i) beginning with 23 March 2020, and
  - (ii) ending with the day before that on which section 17/18 of the Business and Planning Act 2020 comes into force.
- Cf. planning permissions extended automatically under section 93A/93E that would otherwise expire between the coming into force of section 17/18 and 31 December 2020



## 2. Effect of Grant

- Section 93B(2), 93F(2)
- If an AEA is granted or deemed to be granted, the condition prescribing the time in which development must be begun is deemed to provide instead that development [or part] must be begun not later than 1 April 2021
- Note (2)(b): the time by which the development must be begun is not to be extended to a later time than that for the time being provided for in paragraph (a)



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### 3. Who can apply?

- Section 93B(3), 93F(3)
- “A person with an interest in land or a person acting on behalf of such a person”
- Application made to the relevant local planning authority, in whose area the land is situated

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### 4. Procedural Requirements

- Section 93B(4), 93F(4)
- The application must:
  - Be made in writing to the LPA using electronic communications as the LPA may specify
  - Specify the date on which the application is sent
  - Give sufficient information to identify the planning permission
  - Give sufficient information to enable the LPA to identify the condition which would be affected if AEA is granted
  - Give “*sufficient information to enable the authority to determine whether the additional environmental approval should be granted.*”
- Note – no application fee applies.

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## 5. When should the LPA approve the AEA application?

- Section 93B(8), 93F(8)
- LPA is to grant the AEA “*if and only if*”
  - The EIA requirement is met, and
  - The Habitats requirement is met.

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## 6. EIA Requirement

- Section 93B(9), 93F(9)
- The EIA requirement is met if, either at the time the LPA is deciding the application no development to which the relevant planning permission relates is EIA development (within the meaning of the EIA Regulations 2017)
- Or, if any is:
  - a reasoned conclusion was reached and integrated, as mentioned in paragraph (1) of reg 26 of the EIA Regulations 2017, in relation to the permission, and
  - in relation to that reasoned conclusion the authority is satisfied as mentioned in paragraph (2) of that regulation

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## 6. EIA Requirement (Continued)

- Reg 26, EIA Regulations 2017: 'Consideration of whether planning permission or subsequent consent should be granted.'
- Subs (1) requires that, when determining an application/appeal where ES has been submitted, the relevant LPA, SoS or inspector examine the environmental information, reach a reasoned conclusion on the significant effects of the proposed development on the environment, integrate that conclusion into the decision as to whether PP should be granted or not, consider whether to impose monitoring measures.
- Subs (2) requires that the relevant LPA, SoS or inspector must not grant planning permission unless satisfied that the reasoned conclusion referred to in paragraph (1)(b) is up to date.
- When up to date? If in the opinion of the LPA, the SoS or the inspector, it addresses the significant effects of the proposed development on the environment that are likely to arise as a result of the proposed development.



## 6. EIA Requirement (Continued)

- Practical issue arising from change in EIA Regs between original application and AEA application
- Are the material requirements the same such that the EIA can be said to be up to date?
- Where there have been changes to requirements, EIA will not be up to date
- Fresh planning application may be required



## 8. Habitats Requirement

- Section 93B(10), 93F(10)
- The habitats requirement is met where, if a decision were being taken as to whether to grant planning permission at the time the LPA is deciding application an assessment would not be required under regulation 63(1) of the Habitats Regulations 2017
- Or an assessment under reg 63(1) would be required but:
  - An assessment was carried out;
  - It was ascertained that the development would not adversely affect the integrity of a European site/offshore marine site (in accordance with reg 63(5) and (6)) and
  - the authority is satisfied that the assessment **remains up to**



## 8. Habitats Requirement (Continued)

- Reg 63, Habitats Regulations 2017: 'Assessment of implications for European sites and European offshore marine sites'
- Subs (5): in light of conclusions of the assessment (subject to considerations of overriding public interest), competent authority may only agree to plan/project after having ascertained that it will not adversely affect the integrity of the European site
- Subs (6): In considering whether a plan/project will adversely affect the integrity of the site, the competent authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which it proposes that the consent, permission or other authorisation should be given.
- *"European site" and "European offshore marine site"* as defined in Regs (section 93B(16), 93F(16)).



## 8. Habitats Requirement (Continued)

- Practical issue arising from People over Wind decision
- Recap: Mitigation measures cannot be taken into account when screening for likely significant effects
- What happens if PP granted prior to PoW and no AA provided in reliance on mitigation measures at screening stage?
  - Habitats condition will not be met – no AA
  - Fresh planning permission will be required



## 9. Time Limits and Deeming Provision

- Time limit on AEA process
  - Section 93B(12), 93F(12)
  - No AEA is to be granted or deemed to be granted after 31 December 2020 (unless granted on appeal)
- Time limit for determining AEA application
  - Section 93B(5), 93F(5)
  - LPA must, by notice in writing to the applicant, grant, or refuse to grant, the AEA in relation to the relevant planning permission before the end of the period of 28 days beginning with the day after that on which the application in accordance with subs (4) was sent.



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## 9. Time Limits and Deeming Provision

- Extension of time
  - Section 93B(7), 93F(7)
  - The applicant and LPA may agree in writing one or more extensions to the period mentioned in subs (5), but the period may not be extended by a total of more than 21 days.
- Deeming provision
  - Section 93B(6), 93F(6)
  - If the LPA fails to determine the application within the time period specified, the additional environmental approval is deemed to be granted in relation to the relevant planning permission.
  - But note s.327A TCPA 1990, section 93B(4), 93F(4)

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## 10. Conditions?

- Section 93B(11), 93F(11)
- An additional environmental approval may not be granted subject to any condition

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## 11. Other Matters

- Section 93B(14), 93F(14)
  - In discharging its functions under this section, a local planning authority must have regard to any guidance issued by the Secretary of State.
- Section 93B(15), 93F(15)
  - The reference in subsection (1) to relevant planning permission being granted, or deemed to be granted, subject to a condition which has the effect mentioned in paragraph (b) of that subsection [time for commencement of development] includes a reference to the permission being subject to a condition which has that effect by virtue of being subsequently modified (whether under section 91(3B) or otherwise).



## 12. Appeals

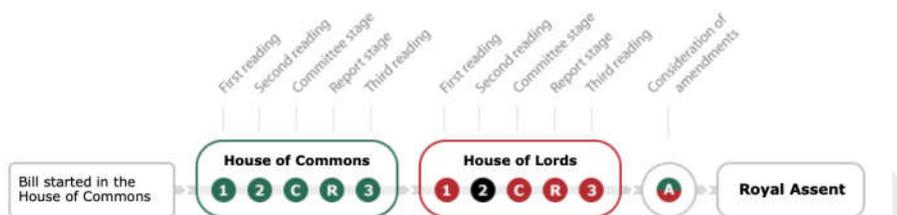
- Clause 17(3) inserts section 78(1)(ac), clause 18(3) inserts section 78(1)(ad) (outline permissions) into the Town and Country Planning Act 1990
- Creates right to appeal against refusal of AEA under section 78

## 13. Distribution of Functions

- Clause 17(4) inserts para 3(1)(azb), Schedule 1.  
Clause 18(4) inserts para 3(1)(azc), Schedule 1.
- Paragraph 3(1) of Schedule 1: 'Functions which are exercisable by district planning authority, subject to exceptions'
- Inserted wording: applications for AEA under section 93B and section 93F
- Confers power on district planning authority to determine AEA applications

## Practical Issues for Applicants and LPAs

### Progress of the Bill





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## 1. Practical Issues for Applicants

- What supporting information is required?
- Note – burden is on the applicant to provide sufficient information
- What to do if surveys and assessments out of date – scope for updating?
- Consultations of bodies like NE under paid-for scheme prior to submission of AEA application?
- Submission of a new unilateral s.106?
- Refusal of AEA: repeat application or appeal?

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## 2. Practical Issues for LPAs

- What is the scope of the question to be addressed?
- Need to assess the development as permitted
- Consultation?
- Production of information?
- Schemes of delegation
- No requirement to give reasons

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# BUSINESS AND PLANNING BILL

## Additional Environmental Approval

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