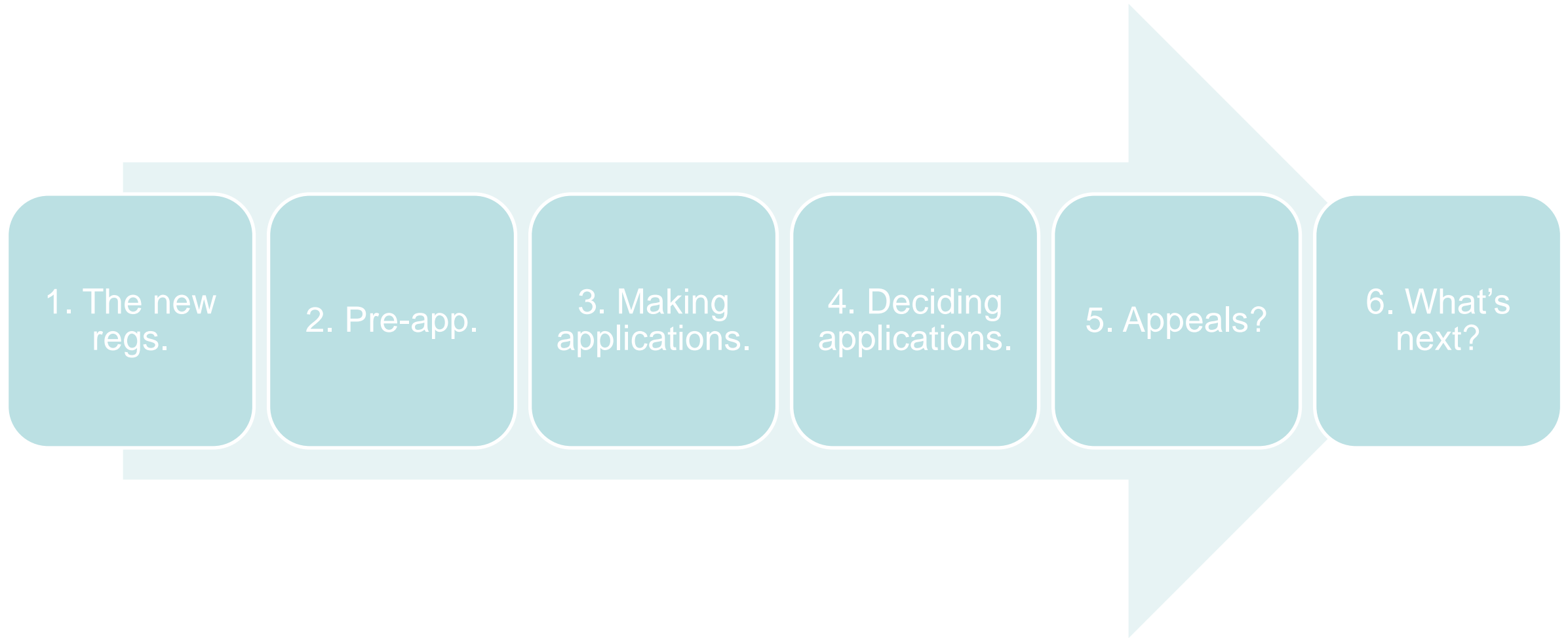


LPA powers and decision-making during the COVID-19 lockdown



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Planning decisions under the Coronavirus Regs 2020



(1) The new regulations – headlines

- **Title:**

“Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020”

- **Came into force:** 4th April 2020.

- **Covers LPA meetings:** Before 7th May 2021.

- **Scope:** England only (re LPA meetings).

(1) The new regulations – key changes

- **C'tee Members:** - Can attend meetings “**remotely**” (defined in later slide).
- **Public/press:**
 - Can attend and access meetings “**remotely**”.
 - Meetings can be “**open**” to the public virtually.
- **Documents:**
 - “Open to inspection” includes:
“being published on the website of the council”
- Regs on virtual meetings **override** “*any prohibition or other restriction contained in the standing orders or any other rules of the authority*”.
- **NB** as we’ll see, regs are **not compulsory**. They allow. They don’t require.

(1) The new regulations

What has not (yet) changed:

- Legal requirements for making, notifying and consulting on valid applications, and nothing on appeals.
- So no new law yet addressing e.g.
 - *site visits,*
 - *officer meetings,*
 - *need for physical site notices,*
 - *officer delegation,*
 - *CIL,*
 - *appeals,*
 - *preserving expiring consents.....*

(2) Pre-app

- Face-to-face meetings at a standstill.
- But most LPAs still offering pre-app meetings over e.g. video call.
- But can the officer visit site.....?

(2) Pre-app: site visits

- **Are they legal?**

Health Protection (Coronavirus, Restrictions) (England) Regulations 2020

- You can leave home “*to travel for the purposes of work [...] where it is not reasonably possible for that person to work, or to provide those services, from the place where they are living*”: Reg 6(f).

- **In reality?**

Depends on the LPA.

- For now: many are not allowing site visits – either at all, or only in exceptional cases.
- Increased importance on e.g. Google Maps, including pictures in application.

(3) Making an application

- Most procedures unaffected by lock-down

(e.g. online submission, storage of and access to documents, notification / consultation over email / post...). Include lots of site pictures!

- Site notices?

1. **Not always required** - i.e. if no EIA + accords with dev plan + no PROW affected: Art 15(5) DMPO 2015.
2. **Legal position** - LPA officers can post site notices: Reg 6 Health Protection (Coronavirus, Restrictions) (England) Regulations 2020.
3. **In reality** – many are currently asking applicants to post them, and to provide evidence that they've been posted.

(3) Making an application

Legal risk: Statements of Community Involvement

- Many SCIs go further than the DMPO requires on e.g. notification/publicity/consultation requirements.
- SCIs set a legally enforceable “procedural legitimate expectation”:
R (Majed) v. LB Camden [2009] EWCA Civ 1029
- So – unless / until we have new regs / protocols on this issue – follow the SCI.

(4) Deciding applications

Emergency Delegations

- Pre-lockdown, several LPAs already had
 - emergency delegations (e.g. Royal Borough of Windsor and Maidenhead, East Suffolk and Manchester City) or
 - schemes for a quorum to meet at the Council with others taking part online (e.g. LB Waltham Forest and Luton Borough Council).
 - Some schemes delegate “in consultation” with planning c’tee members over video-con.
- Officers - remember to **give reasons**:

R. (Shasha) v Westminster City Council [2016] EWHC 3283 (Admin)

(4) Deciding applications

Committee meetings: members

- 3 tests – under the new regs, members “*attend*” / are “*present*” if:
 1. They can hear, and where practicable see, and be so heard and, where practicable, be seen by, the other members in attendance,
 2. They can hear, and where practicable see, and be so heard and, where practicable, be seen by, any members of the public entitled to attend the meeting in order to exercise a right to speak at the meeting, and
 3. They can be so heard and, where practicable, be seen by any other members of the public attending the meeting.

(4) Deciding applications

Committee meetings: public / press

- “Public access” to LPA meetings now includes “**remote access**” =
“to enable them to attend or participate in that meeting by electronic means, including by telephone conference, video conference, live webcasts, and live interactive streaming”
- LPA meetings being “open to the public” now includes open via:
“video conferencing, live webcast, and live interactive streaming and where a meeting is accessible to the public through such remote means the meeting is open to the public whether or not members of the public are able to attend the meeting in person”

(4) Deciding applications

What's actually happening?

- RBKC held a virtual c'tee meeting on 9th April – 5 days after the new regs came into force! A success – watch it here <https://bit.ly/2USnjOR>.
- On the same night, virtual meetings in Melton and South Somerset (the latter was a meeting that won't be forgotten!).
- **Many** have / are soon to follow suit, e.g. *Bristol, Westminster, Birmingham, Milton Keynes, Charnwood, Cannock, Harborough, Melton, Newcastle under Lyme, Cambridge City....* (thanks to Alastair Bird & Charlotte Cook at Barton Willmore for their very helpful LPA-by-LPA list).
- Other LPAs have cancelled April / May c'tee meetings & most (but not all) are exploring virtual procedures under new regs, often in tandem with emergency delegations.

(5) Appeals?

- Appeals can be lodged. But no site visits (virtual visits being trialled – so pause on Written Reps).
- And currently no hearings or inquiries:
 1. PINS' key concern = **fairness / public participation** re MS Teams (albeit **NB** now both LPAs and the planning court are already there).
 2. Pilot remote hearings/inquiries – albeit only uncontroversial single-issue cases – in late April / May.
 3. Is the law on “fairness” really such a barrier to remote decision-making? See my 11th April post on planoraks.com. A case for MHCLG assisting PINS with some new regs?

(6) What's next?

- Already of change in a short time:
 - LPAs continuing to adopt virtual c'tee meetings at pace;
 - Planning court already running virtually - I did a planning court virtual hearing in mid-March, well before lockdown.
- To get the wheels moving, 2 points of urgent focus:
 1. **LPAs:** Rolling out virtual c'tee meetings to more and more LPAs (regs now in place, but some may need constitutional/SO/SCI changes + new protocols), and
 2. **PINS:** Adopting a procedure for virtual hearings / inquiries.
- Beyond those, MHCLG-led reforms / regs are needed quick on matters outside the 4 corners of this talk, i.e. expiring consents and CIL.