

Progressing plans in a COVID-19 world



Stephen Morgan

The Procedural Problems

These problems:

- (1) Arise from the restrictions on movement and on gatherings with people outside of your own household as per:
The Health Protection (Coronavirus, Restrictions)(England) Regulations 2020 (S.I. 2020 No. 350)
Which came into force on 26th March 2020 (as amended for the third time on 1 June 2020 - S.I. 2020 No. 558).
- (2) For the development plan process, these restrictions impact on both:
 - (i) **Examination stage** of the plan process; and
 - (ii) **Preparation stages**

The Context

- PINS originally **cancelled all physical events** – appeal inquiries, hearings and Examinations
- Context - statement earlier in the year stating that all Councils must have an up-to-date plan **in place by December 2023** had to be in place by the end of 2023 (Planning for the Future (March 2020, para. 11)
- Context: concern in particular **over HLS** both from local authorities and the development industry
- **RTPI** Survey of planners in *Pragmatic and Prepared for the Recovery*:
 - a desire to maintain momentum the local plan making process
 - uncertainty arising from Covid-19 over the evidence base

Procedural Solutions

In terms of keeping Examinations moving forward:

- Using **virtual events** has been much encouraged by the Government – as per in particular Mr Jenrick’s WMS of 13 May – which was a busy day also producing new/amended PPG covering both local plans and NDPs.
- Also on that same day there was issued the **PINS statement on COVID-19 and Local Plan Examinations** referring to the WMS: working with two local authorities to explore with them how each current examination can best move forward ensuring fair participation; may mean virtual examinations in some case. PINS also said they were exploring with other local authorities.
- **PINS 28 May**: One Local Plan hearing is to take place via phone conference and one full local plan examination is to be conducted virtually in July.

Procedural Solutions for Ever?

PINS 28 May 2020: **Virtual events**

“.....We are learning from each event with the aim of making virtual events our standard option for the majority of events in future. This approach covers all hearings and inquiries for our different types of casework (including planning appeals, national infrastructure, local plans) that are currently held face to face. Our working definition of virtual includes the use of video technology and phone where necessary...”

NOTE: s.20(6) of the Planning and Compulsory Purchase Act 2004 provides that any person who makes representations seeking to change a development plan document **must (if he so requests) be given the opportunity to appear before and be heard by** the person carrying out the examination.

Legal requirements (1)

However what about carrying out consultations fairly and fully and compliant with the legislation?

See the requirement set out in the *Town and Country Planning (Local Planning) (England) Regulations 2012*

Two legal obstacles:

- (1) S.19(3) of *Planning and Compulsory Purchase Act 2004* – authority must comply with the **Statement of Community Involvement (SCI)** in preparing LDDs:
 - An SCI will often require documents being made available at Council Offices and local libraries, community halls etc.
 - Revised PPG (on 13 May) – amend SCIs – consultation not required unless possibly it was previously stated that it would be undertaken.

New PPG

- Where any of **the policies** in the **Statement of Community Involvement** cannot be complied with due to current guidance to help combat the spread of coronavirus (COVID-19), the local planning authority is encouraged to undertake **an immediate review** and update the policies where necessary so that plan-making can continue. (para. 077)
- Local planning authorities will need to assess their Statements of Community Involvement **to identify which policies are inconsistent with current current guidance on staying at home** and away from others or any superseding guidance. This could include, for example, holding face-to-face community consultation events or providing physical documents for inspection. (para. 078)
- **No statutory requirement for consultation** but where a local planning authority has made a **pledge** in their Statement of Community Involvement to consult on any changes, they may wish to take independent legal advice on how best to proceed.

Legal requirements (2)

- (2) Documents that have to be made available during the preparation, modification and adoption stages have to be so made in accordance with **reg. 35** of the *Local Planning Regulations 2012*

Availability of documents: generally

- 35(1) A document is to be taken to be made available by a local planning authority when—*
- (a) made available for inspection, at their principal office and at such other places within their area as the local planning authority consider appropriate, during normal office hours,*
and
 - (b) published on the local planning authority's website,....*

Neighbourhood Plans

- All neighbourhood planning **referendums** that have been recently cancelled, or are scheduled to take place, between 16 March 2020 and 5 May 2021 are postponed in line with the *Local Government and Police and Crime Commissioner (Coronavirus) (Postponement of Elections and Referendums) (England and Wales) Regulations 2020* until 6 May 2021) (PPG 107).
- **Examinations:** The general rule remains that examinations should be conducted by written representations. If an examiner considers that oral representations are necessary, these **should not take place in person**. Wherever possible, oral representations may still take place **using video conferencing or similar**.
- **Public participation:** It is **not mandatory** that the engagement required under the *Neighbourhood Planning (General) Regulations 2012* is undertaken using **face-to-face methods**. However, to demonstrate that all groups in the community have been sufficiently engaged, such as with those without internet access, more targeted methods may be needed including by telephone or in writing

Some Substantive Issues

There are potentially a whole range of issues over which there is currently much uncertainty which will impact on the evidence base, such as:

- (1) Viability – given the recession
- (2) Changes in how people can or are willing to travel, work, holiday, take leisure etc.
Working from home – decline of office demand.
- (3) Implications for Housing Delivery Test / 5 Yrs. HLS (in England) if housing completions stall for a period of time.
- (4) Retail trends – the High Street was already in decline – but what now planning for less demand for floorspace; what to do with existing empty floorspace.

Finally: Future Changes? – The Broader Context

- The current pandemic and the responses to it and implications that will flow, combined with current issues and trends, are likely to influence the planning system, including the development plan regime
- Virtual Examinations
- Housing need
- Assessment of new town settlements – whether to be taken away from the plan Examination system?
- Zoning – with much simpler plans as advocated in Policy Exchange’s *Rethinking the Planning System for the 21st Century*, which notes that a local authority spends on average £2.5 million producing a local plan, £1 million of which is spent on average on the evidence base.

Thank you for listening

© Copyright Landmark Chambers 2020

Disclaimer: The contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

London

180 Fleet Street
London, EC4A 2HG
+44 (0)20 7430 1221

Birmingham

4th Floor, 2 Cornwall Street
Birmingham, B3 2DL
+44 (0)121 752 0800

Contact us

✉ clerks@landmarkchambers.co.uk
🌐 www.landmarkchambers.co.uk

Follow us

🐦 @Landmark_LC
🌐 Landmark Chambers