

# Business and Planning Bill

## Second Reading- House of Lords

Monday 6 July 2020



### Key messages:

- Local government's delivery of important public services during the COVID-19 pandemic highlights the value of place-based leadership. It has demonstrated how national policies are best achieved with local flexibilities and councils as democratically elected leaders should be free to shape priorities locally as they work best in their communities.
- Councils want to work with the Government to develop post COVID-19 recovery options. The economic, social and environmental recovery our communities need will look different in different areas of the country and only a locally coordinated response will be effective. As the economy is being re-opened, businesses that were forced to close have looked to local government for guidance and support about how they can reopen safely.
- The Business and Planning Bill is a positive step in the journey towards economic recovery, supporting the reopening of hospitality businesses as well as setting out measures to boost construction.

### *Licensing*

- Councils have already been working hard on measures that can be put in place to help hospitality businesses to reopen, including relaxing requirements and considering how town centres can be used differently to enable businesses to operate outside. The Bill will help ensure a consistent approach can be taken across the country.
- Councils need to have the power to both refuse applications where these cannot be managed safely and to act if any issues arise following the re-opening of premises. The full responsibility, and cost, for making this policy work successfully does not sit with local authorities alone. With the initial burden falling on them it is crucial that councils are supported financially to meet the costs of processing an expected large number of applications in a short period of time.
- We would welcome the alignment of the new pavement licensing framework with other licensing regimes in being designated as a non-executive function. This would mean decisions could be made more efficiently by existing Regulatory Committees, reducing the burden on local government.
- It is also important that local government and businesses are supported by clear and comprehensive guidance from national government as councils will need to process a potentially large number of applications in a short period of time.
- It is right that the proposed licensing measures in the Bill are only temporary. In the long term there needs to be a comprehensive review of our outdated licensing legislation to ensure it is fit for the future. We have long called for this review and want to work with the Government on this vital programme once the proposed relaxations in this legislation have ended.
- The Bill is clear that an expedited review process may require a licensing hearing to be held. Since March 2020, licensing hearings, in common with other council meetings, have been held virtually. With Parliamentary business now being conducted in Westminster,

# Briefing

and licensed premises themselves reopening, it is the right time for council meetings (including licensing meetings) to take place in person or in hybrid form if councils wish and where social distancing can be maintained. As there is some legal uncertainty about whether the regulations preclude this, the Government could helpfully use the passage of this legislation to confirm that councils can return to meeting in person, should they wish to do so.

- In our view the Bill should be amended to give councils greater flexibility to authorise the licensing of a range of different spaces, including roads, parking spaces, and car parks where it is safe to do so as well as pavements.
- Government should also clarify whether new pavement licences are exempt from Public Space Protection Orders (PSPOs) in the same way as licences under the Highways Act 1980 are.

### *Planning*

- Councils have already been working with the development industry to get developments moving again as safely as is possible. The temporary measures set out in the Bill to help encourage the construction and building industry to resume its work are therefore timely. This industry will have an important role to play in the economic recovery, providing jobs, infrastructure and new investment to our communities.
- We are pleased that the Government has listened to calls to extend planning permission deadlines, so that permissions due to expire by 31 December 2020 and those that have expired since 23 March will be automatically extended to 1 April 2021. This is something the LGA has called for and will prevent councils and developers from having to begin the planning process all over again.
- Flexibility on construction site working hours needs to be negotiated on a site by site basis with councils so that they can consider the impact on local residents. This is particularly important at a time when many residents will be at home all day, and are required to work from home, due to the current lockdown measures.
- It will also be important that councils can recover the costs of processing applications through the new deemed consent route and applications for additional environmental approval and therefore should be able to charge an appropriate fee.
- As we look to the future, a genuine renaissance in council housebuilding which delivers 100,000 social homes a year should be a central part of the national recovery. It is important that councils are given the powers and tools to build more of the affordable homes the country needs, with the right infrastructure, that reduces homelessness, supports people's wellbeing and is climate friendly.

## **Part One: consumption of food and drink outdoors**

### **Pavement licences**

The Bill introduces a new legal framework for issuing pavement licences, which will enable food and drink businesses to put removable furniture on the pavement adjacent to their premises in order to sell or serve food and drink, or for people to sit at to consume food and drink. The framework supersedes the existing framework for pavement licensing set out in the Highways Act 1980, but does not impact licences already issued under that Act.

Councils will be required to process applications for pavement licences within two weeks, and a maximum fee of £100 will be payable. Each application will be subject to a seven-day consultation period, with any representations required to be considered in determining the application. Licences must be for a minimum of three months and can run for any period up to an end date of 30 September 2021. Where a council does not respond to an application within two weeks, a licence will be deemed to have been granted to 30 September 2021. Both councils and the Secretary of State may issue conditions in relation to pavement licences: where licence conditions are breached, the council can serve an improvement notice or revoke the licence.

### **LGA view**

- Councils will be supporting local hospitality businesses to reopen safely and have already been looking at how to remove barriers. This includes freeing up town centre space for businesses to operate in safely. We therefore welcome the creation of a clear legal basis for outdoor tables and chairs, which will help to ensure consistency.
- It is important for councils to be able to retain local oversight and decision making in relation to pavement licences. In implementing the new framework, councils will need to manage a number of potentially conflicting objectives including the need for businesses to reopen and the desire of customers to begin socialising again; the need to maintain accessibility of the highways for all users, and the possible concerns of local residents living in areas that may be affected by the extension in businesses operating outside.
- We therefore support the fact that councils will have the opportunity to review applications and apply any relevant conditions, as well as determining the appropriate licence length for specific parts of their areas. It is also helpful that councils can reject licence applications or revoke licences if circumstances mean that this cannot be managed safely or without causing significant detriment to residents. The relaxation of these rules will require individual business owners, local trade groups and the police to work together alongside councils, as well as responsible behaviour by customers. The full responsibility, and cost, for making this work successfully does not sit councils alone.
- It is important that councils are supported by clear and comprehensive guidance from Government, particularly for some councils which do not ordinarily issue these licences. It is also important that councils are supported financially to meet the costs of processing an expected large number of applications in a short period of time.
- We support the fact that these are temporary measures which will end in September 2021. This work has highlighted to Government some of the complexities involved for both businesses and councils alike in managing our outdated licensing system. The LGA has repeatedly called on the Government to undertake a comprehensive review

of all licensing legislation to bring it into the 21<sup>st</sup> century and it is vital the Government to work with us to do so once the proposed relaxations have ended.

## **Alcohol licensing**

This section of the Bill will amend the Licensing Act 2003 so that any premises with licences which currently only permit drinks to be consumed on the premises will be permitted to allow sales for consumption off the premises. The default extension will not however apply to premises which in the last three years have been refused permission for an off-sales licence, or have had this permission revoked.

Businesses will be authorised for off-sales during the licensed hours for sale for consumption on the premises; this also will extend to premises that already have an off-sales licence, even if the existing off-sales licence is currently for shorter hours than the on-sales hours.

Clause 11 creates an expedited off-sales review process which will enable responsible authorities under the Licensing Act to apply for a review of an off-sales licence if they believe one or more of the Act's objectives are being contravened. In the event of an application for a review, the licensing authority can consider whether any interim steps should be taken within 48 hours and must review the off-sales licence within 28 days. Interim steps could include modifying conditions linked to the off sales licence or revoking it altogether (this may not alter the pre-existing conditions on the premises licence).

## **LGA view**

- We support the policy of permitting licensed premises to open for off sales where they are not currently licensed to do so. We agree that this should not apply to premises that have previously had an application for off-sales refused, or permission for this revoked.
- As this default extension is a permissive one, it is important that councils can promptly tackle any issues arising from the addition of off-sales to premises licences, and we are therefore pleased that there is an expedited review process that can be invoked in relation to the off-sales licence without impacting pre-existing licence conditions. Individual businesses, the police and other responsible authorities must all work collaboratively with councils to ensure the new policy can be implemented as smoothly as possible.
- The guidance on this new policy should encourage businesses to engage with their local licensing authority to make them aware of their plans to utilise the licence extension and discuss any issues or concerns.
- The Bill is clear that an expedited review process may require a licensing hearing to be held. Since March 2020, licensing hearings, in common with other council meetings, have been held virtually in line with measures introduced under the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) Regulations 2020. With Parliamentary business now being conducted in Westminster, and licensed premises themselves reopening, it is the right time for council meetings to take place in hybrid form, if councils wish for members to meet remotely and in person where social distancing can be maintained. As there is some legal uncertainty about whether the regulations preclude this, the passage of this Bill through Parliament is an opportunity to ensure that councils have the legal basis to resume these meetings. This would mean amending the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 to add a new exemption under regulation 7(2) to include Councillors meetings for purposes of conducting council business.

## **Part Three: planning**

### **Construction working hours**

Clause 16 introduces a new, temporary fast track deemed consent route for developers to apply to local planning authorities to change construction working hours to support safe construction, working in line with the Government's social distancing guidance on construction and other outdoor work.

Councils will be required to decide on applications for extended construction hours within 14 days. If an application is approved, this will amend the construction working hours until 1 April 2021, unless another earlier date has been agreed. Where a council does not respond to an application within 14 days, the revised working hours are deemed to have been consented to until 1 April 2021. There is no application fee associated with the new deemed consent route.

### **LGA view**

- Councils want to do all that they can to help boost the economy and restart the construction for much needed housing and development and are already granting temporary changes to construction working hours. All proposals for extended working hours on construction sites need to be negotiated with the relevant council so that they can take into account any impact on local residents and businesses.
- Whilst councils will do what they can to process applications quickly, it must be recognised that there may be some challenges around this, particularly if there are a large number of requests or if the development affects a habitat site or is subject to an Environmental Impact Assessment (EIA). There should be flexibility for councils to agree with the applicant an extended period of time to decide on applications where more time is needed to make a decision.
- It will be important that councils can recover the costs of processing applications through the new deemed consent route and therefore should be able to charge an appropriate fee. Taxpayers currently subsidise the cost of processing planning applications at a rate of nearly £180 million a year.
- Fast tracking applications to allow extended construction hours means that there will be limited opportunity for councils to engage with communities on the potential impacts to their local environment. Due to the pandemic, many people may continue to spend more time at home, and work from home. Particularly for residential areas, councils should have the ability to refuse applications where there will be extended unacceptable impacts on communities.
- Applicants should be required to provide details of mitigation plans, setting out how they propose to liaise with neighbours and manage and mitigate any effects to local residents or businesses from working additional hours. Councils will also need the ability to revisit the hours allowed if the effects of extended construction hours result in unforeseen negative impacts on neighbours that cannot subsequently be mitigated to an acceptable level.

## **Extension of certain permissions and consents**

Clauses 17 to 19 allow for the extension of duration of certain planning permissions, extensions in connection with outline planning permission and extension of duration of certain listed building consents. This is to enable development to commence following delays caused by Covid-19 and ensure that relevant permissions and consents are still extant. The time limit for each of the extended types of permissions is 1 April 2021.

In cases where the time limit for commencement of development is due to expire between the date that clause 17 comes into force and 31 December 2020, the time limit for commencement will be automatically extended to 1 April 2021.

In cases where the time limit for commencement of a development expired between 23 March 2020 and the date on which clause 17 comes into force, an application for additional environmental approval will need to be submitted to the relevant council. Councils will be required to process the application within 28 days, or a longer period if agreed with the applicant. Where a council does not issue a decision within the 28 day period, it is deemed to have granted additional environmental approval.

## **LGA view**

- The LGA supports the temporary extension of planning permissions that are due to expire or have expired since 23 March, to both continue much needed development for housing, and to help reboot the economy. During the pandemic, sites where construction work was due to commence imminently were stopped or placed on hold. This means that some planning permissions may have lapsed and will require extensions to allow completions.
- It will be important that councils can recover the costs of processing the applications for additional environmental approval and therefore should be able to charge an appropriate fee.
- Whilst many construction sites across the country have now reopened, many remain closed or are operating at reduced capacity. This will inevitably result in a fall in delivery rates over the coming months, and potentially beyond. This could put councils and their communities at risk of being subject to the national presumption in favour penalty, because they cannot meet national Housing Delivery Test requirements and/or their five-year housing land supply is compromised (for example, if anticipated delivery rates fall on 'deliverable' sites). This leaves them exposed to speculative planning applications for development outside of the Local Plan. This could potentially result in homes that do not meet local needs, and undermine community trust in the planning system. We are therefore calling on the Government to suspend the presumption in favour of sanctions in relation to five-year housing land supply and the Housing Delivery Test.

## **Procedure for certain planning proceedings**

Clause 20 allows for the Planning Inspectorate (PINS) to have greater flexibility to use more than one approach (for example written representations, a hearing or a local inquiry) in proceedings for specific types of planning appeal. The amendments under this clause are permanent.

## LGA View

- We support the greater use of digital technology to support greater transparency and more inclusive participation for all in the planning process. Through the COVID-19 period there has already been a move by PINS towards undertaking virtual inquiries and hearings.
- This should continue to be supported where appropriate ensuring that the technology supports inclusive participation, and better, more streamlined planning processes. However, not everyone has the same access to technology, and this should be considered by PINS when deciding upon the most suitable approach.
- It is also important that the plan-making process continues to move forward so that councils can get up to date plans in place. This will ensure that councils are on a positive footing for the economic, social and environmental recovery our communities need. The Government should expedite the examination and adoption of Local Plans through a flexible, light-touch approach, and use of technology solutions which enable virtual discussion and document sharing. In particular where there has already been a hearing, completion through written representations should be allowed.
- The requirement for councils to make certain Local Development Documents planning documents available for inspection at their principal office, and other places that they consider appropriate, should also be temporarily removed through amendment of the Town and Country Planning (Local Planning) (England) Regulations 2012. They should continue to be made available on council websites.