

12. AMENDMENT TO STANDING ORDERS - PART 7 DELEGATION TO THE CHIEF EXECUTIVE (BUSINESS AND PLANNING ACT 2020) - JRS

1. Purpose of the report

The Authority's Standing Orders are periodically reviewed to make sure they incorporate legislative changes, changes to the organisation and to reflect on their operation. This report proposes additions to the Delegation to the Chief Executive in part 7 of Standing Orders following the coming into effect of certain provisions of the Business and Planning Act 2020 relating to planning permissions and in particular the process for obtaining extensions of time under existing permissions.

Key Issues

The Authority's Standing Orders are made up of 7 parts. This report proposes changes to part 7.

Part 7 sets out delegations to the Chief Executive under section 101 of the Local Government Act 1972. This report proposes officer delegation to determine applications under the recently enacted Business and Planning Act 2020 which contains provisions relating to economic recovery and growth following the Covid 19 outbreak. The Chief Executive may delegate this authority to another Officer providing any such delegation is recorded in writing. These are published in Part 7B of Standing Orders.

2. Recommendation(s)

To amend the Scheme of Delegation to the Chief Executive set out in part 7 of Standing Orders to authorise the Chief Executive:

A Modification of conditions relating to construction working hours

(1) To give written notice under s 74C TCPA 1990 upon an application under 74B (Modification of conditions relating to construction working hours) either to

(a) Modify conditions or the approved document in accordance with the application as applied for,

(b) Refuse to modify the conditions as applied for, or

(c) Make a determination under s74C (2) as to

- The times that construction activities may be carried out

- The dates date from which modifications are to take place

- The date at the end of which the modifications are to cease to have effect

And for the purposes of (c) to seek the agreement of the applicant to the terms of the determination.

B Matters relating to automatic extension of certain planning permissions: additional environmental approval applications under s93B(3) TCPA 1990

1 To grant, or refuse to grant the additional environmental approval in relation to the relevant planning permission

2 To agree in writing extensions of time for determining the application (not

exceeding 21 days)

3 Where the development to which the relevant planning permission relates is EIA development, to determine whether a reasoned conclusion on the significant effects of the proposed development on the environment was reached and integrated into the decision and is up to date.

4 To determine whether the Authority is satisfied that a previous assessment under regulation 63(1) of the Conservation of Habitats and Species Regulations 2017, of the implications of the development to which the permission relates for a European site, was carried out; that, in light of the assessment, the development to which the permission relates would not adversely affect the integrity of the European site and that the assessment remains up to date.

C Outline planning permission: extension of limits for beginning development with additional environmental approval: applications for additional environmental approval under s 93F(3) TCPA 1990

1 To grant, or refuse to grant the additional environmental approval in relation to the relevant planning permission

2 To agree in writing extensions of time for determining the application (not exceeding 21 days)

3 Where the development to which the relevant planning permission relates is EIA development, to determine whether a reasoned conclusion on the significant effects of the proposed development on the environment was reached and integrated into the decision and is up to date

4 To determine whether the Authority is satisfied that a previous assessment under regulation 63(1) of the Conservation of Habitats and Species Regulations 2017, of the implications of the development to which the permission relates for a European site, was carried out; that, in light of the assessment, the development to which the permission relates would not adversely affect the integrity of the European site and that the assessment remains up to date

How does this contribute to our policies and legal obligations?

3. The Authority has a duty to keep its constitutional documents up to date and agree appropriate delegations to Committees and Officers to make sure decisions are made efficiently and at the appropriate level. The Authority has not delegated its ability to update and amend Standing Orders.

Background Information

4. The Business and Planning Act 2020 was enacted on 22 July 2020. The relevant sections (see below) come into effect as follows:

Section 16 came into effect on 29 July 2020

Sections 17-19 come into effect on 20 August 2020

5. The Act includes a range of measures to help businesses adjust to new ways of working as the country recovers from disruption caused by Covid-19. The measures support the transition from immediate crisis response and lockdown into recovery and getting the economy moving again. In particular there are temporary changes to the law relating to planning in England. Lockdown has meant that, in particular, construction activities had to be halted. This has impacted on permissions which would otherwise

expire because of non-commencement, or planning conditions which otherwise impose a time limit on commencement of development.

6. It is important to note that the Act provides for a default decision in some cases – for example if an application is not determined with a certain time or only party determined.

Proposals

Planning restrictions on construction site working hours (Section 16 of the Act)

7. The Act introduces a new, fast track application process for the temporary variation of planning conditions relating to construction site working hours for developers to seek to temporarily allow extended working hours, for example work during the evening and at weekends. This is to ensure that, where appropriate, planning conditions are not a barrier to the safe operation of construction sites during the response to the Covid19 pandemic and to enable work to proceed at pace where otherwise delayed as a result of Covid-19.

8. An applicant may apply in writing, electronically, to modify the restrictions on the hours of construction activity, either to extend the permitted hours, or to allow construction activity to take place on a day that it is not presently permitted.

9. Such an extension of working hours may only be for a temporary period not extending beyond 1 April 2021.

10. Upon such an application the planning authority may:

- approve the proposed modifications to construction hours;
- refuse the proposed modifications to construction hours; or
- determine, with the agreement of the applicant, different modifications to construction hours (including dates)

11. If an LPA does not give notice of its decision within 14 days (beginning with the day after that on which the application is sent to the authority) then the condition is deemed to be modified as set out in the application and the applicant can implement the new working hours.

12. Where modifications are determined by the Authority in respect of only some of the matters in the application (e.g. the date on which the extended hours may start) then the condition is deemed to have been modified in respect of the other matters, in line with the application.

Extension of duration of certain planning permissions and listed building consents (section 17-19 of the Act)

13. Sections 17 to 19 make provision to allow the commencement period for certain unimplemented planning permissions and listed building consents to be extended. This is to ensure relevant permissions and consents are still extant, enabling development to commence following delays caused by Covid-19.

14. The Act also extends the expiration of certain planning permissions and listed building consents, providing certainty to the development industry where developments are delayed due to Covid-19.

15. There is an automatic modification to any planning condition that imposes a time limit for commencement of development pursuant where the time limit for commencement of development is due to expire between and 31 December 2020. The time limit for commencement of development pursuant to these permissions will be extended to 1 May 2021.

16. There will be a similar extension of the time limit for commencement of development to 1 May 2021 for a relevant planning permission where the time limit for commencement expired between 23 March 2020 and 20 August 2020, if an “additional environmental approval” is granted or deemed to be granted in relation to that permission.

17. An application for additional environmental approval has to be submitted using electronic communications in a manner specified by the LPA, and to include sufficient information to enable the application to be determined.

18. The local planning authority is to grant additional environmental approval (this is a straightforward “grant” or “refuse” – no conditions may be imposed) if it is satisfied that the EIA and Habitats requirements are met.

19. The EIA requirement is met if either:

- a. the development contains no development that would require an EIA, or
- b. the development remains the subject of an up-to-date Environmental Impact Assessment within the meaning of those Regulations.

20. The Habitats requirement is met if either:

- a. the development would not require a Habitats assessment, or
- b. the development was previously the subject of a Habitats assessment which ascertained that the development would not adversely affect the integrity of a European site or European offshore marine site, and which remains up-to-date;

20. The LPA must issue a decision to grant or refuse additional environmental approval within 28 days, or such longer period agreed in writing with the applicant (such longer period not to exceed an additional 21 days). If the local planning authority does not issue a decision within the 28-day period (or as extended), it is deemed to have granted additional environmental approval;

21. No additional environmental approval may be granted or deemed to be granted after 31 December 2020, unless the grant is on an appeal lodged on or before that date.

22. The provisions detailed above expire at the end of 1 May 2021.

Extensions in connection with outline planning permission (Section 18)

23. There is a modification to any condition that imposes a time limit for the submission of an application for the approval of a reserved matter for those outline permissions

- Where the time limit for submission of an application for approval expires between 23 March 2020 and 31 December 2020 the time limit for submission of such applications will be extended to 1 May 2021.
- For those outline permissions where a time limit for commencement of

development is due to expire between 20 August and 31 December 2020, the time limit for commencement of development pursuant to these permissions will be extended to 1 May 2021.

24. The time by which the development or (as the case may be) the part of the development must be begun cannot be further extended.

25. Where a time limit for commencement expired between 23 March 2020 and 20 August 2020 there is a requirement for an “additional environmental approval” in the same way as described above. These temporary modifications expire at the end of 1 May 2021.

Extension of duration of certain listed building consents (Section 19)

26. Section 19 provides for an extension of the duration of certain listed building consents, by temporarily modifying the effect of the Planning (Listed Buildings and Conservation Areas) Act 1990 which is to be read as if a new section 18A were inserted in it (see subsection (1)). New section 18A will modify any condition that imposes a time limit for the commencement of works pursuant to a listed building consent where the time limit for commencement of works expires between 23 March 2020 and 31 December 2020. The time limit for commencement in such cases will be extended to 1 May 2021.

Are there any corporate implications members should be concerned about?

Financial:

3. No significant financial implications.

Risk Management:

4. No significant risks.

Sustainability:

5. No significant issues

Equality:

6. Equality and human rights issues have been considered and addressed in preparing this report

7. **Climate Change:**

This report deals with the process for determining certain planning applications. As such there are no further climate change implications over and above current practice.

The temporary process for determining certain planning applications that would otherwise lapse or expire leaving development to come to standstill contains measures for, where necessary, reviewing environmental and habitat implications. However the time allowed for considering these safeguards is limited, and, as pointed out in the report, failure to meet these time limits will result in a deemed permission.

8. **Background papers (not previously published)**

None

9. **Report Author, Job Title and Publication Date**

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Solicitor (Planning and Minerals) 26 August 2020