
**Decision Session - Executive
Member for Economy and Strategic
Planning**

1 September 2020

Report of the Corporate Director, Economy and Place

**Recent and Proposed changes to Planning and Licensing –
including the Business and Planning Act 2020**

Summary

By Autumn 2020 there will have been a number of significant permanent and temporary changes to planning and licensing legislation and proposals for further planning reforms, which have recently been published by Government for consultation. The purpose of this report is to provide the Executive Member with an update on these changes and when/how they will come into force, and to advise on the scope and content of the recent Government consultation on reforms to the national planning system.

The proposed changes would have a significant impact on all councillors in their representative role, and amend/delete many of the features that the public have come to expect in terms of being able to comment and challenge planning applications.

The report is split into two sections; the first outlines the two planning consultations that have recently been released by the Government, Planning For Future (White paper) and Changes To The Current Planning System, along with the questions that form part of the consultation. The second part outlines the recent changes to Planning and Licensing legislation and the associated impacts/implications.

Recommendations

1. The Executive Member refer part one of the report along with the Council's draft response to the Customer and Corporate Services Scrutiny Management Committee (CSMC) for consideration and recommendations.

2. That the Assistant Director for Planning and Public Protection having regard to the views and recommendations of CSMC be delegated responsibility to submit the Council's response to the consultations referred to in part 1 of this report in consultation with the Executive Member for Finance and Performance and Executive Member for Economy and Strategic Planning
3. The Executive Member to note part two of the report and confirm the Council's is required to give significant weight to the ministerial statement in terms of Construction Hours and has limited alternatives to the process that has been taken.

PART 1 – Planning Consultations

- Planning for the Future
- Changes to the current planning system

Planning for the Future

The Government published the White Paper on 6 August 2020 and is out to consultation until 11:45pm on 29 October 2020. The Government has outlined that:

The Planning for the future consultation proposes reforms of the planning system to streamline and modernise the planning process, bring a new focus to design and sustainability, improve the system of developer contributions to infrastructure, and ensure more land is available for development where it is needed.

The consultation is seeking views on each part of the proposal which covers a package of reforms of the Planning System covering plan-making, development management, development contributions and other related policy proposals.

The Government has stated in the supporting information with the paper outlining the following:

The reforms will mean:

- *Local communities will be consulted from the very beginning of the planning process. By harnessing the latest technology through online maps and data, the whole system will be made more accessible*
- *Valued green spaces will be protected for future generations by allowing for more building on brownfield land and all new streets to be tree lined*
- *Much-needed homes will be built quicker by ensuring local housing plans are developed and agreed in 30 months – down from the current 7 years*
- *Every area to have a local plan in place – currently only 50% of local areas has a plan to build more homes*
- *The planning process to be overhauled and replaced with a clearer, rules-based system. Currently around a third of planning cases that go to appeal are overturned at appeal*

- *A new simpler national levy to replace the current system of developer contributions which often causes delay*
- *The creation of a fast-track system for beautiful buildings and establishing local design guidance for developers to build and preserve beautiful communities*
- *All new homes to be 'zero carbon ready', with no new homes delivered under the new system needed to be retrofitted as we achieve our commitment to net zero carbon emissions by 2050*

Categorisation of land

Under the 3 categories:

- *Land suitable for growth will be approved for development at the same time that plans are prepared, meaning new homes, schools, shops and business space can be built quickly and efficiently, as long as local design standards are met.*
- *Renewal areas will enable much quicker development where it is well-designed in a way which reflects community preferences.*
- *Development on Green Belt land will continue to be restricted as it is now with policy remaining a decision for Local Authorities as they prepare their plans.*

Clearly the points raised above are wide reaching and comprehensive. The consultation outlines 27 questions that are included in Annex 1 of this report.

Officers in consultation with the relevant Executive members will formulate answers to these questions.

[Changes to the current planning system](#)

The consultation sets out 4 main proposals which the Government considers are measures to improve the effectiveness of the current planning system. The consultation opened on 6 August 2020 and is out to consultation until 1 October 2020.

The supporting information outlines:

- *The standard method for assessing housing for local plans: Proposals to revise the standard method to increase the overall*

number of homes being planned for, and achieve a more appropriate distribution.

- *Delivering First Homes: Following a consultation on the First Homes proposals in February 2020, we have published the Government's response and are now consulting on the detail of the planning proposals. This includes setting a requirement that 25% of all affordable housing secured through developer contributions should be First Homes. We are consulting on options for the remaining 75% of affordable housing secured through developer contributions, and seeking views on transitional arrangements, level of discount, interaction with the Community Infrastructure Levy and how we propose First Homes would be delivered through exception sites.*
- *S106 and small sites: Proposals to temporarily raise the threshold below which developers do not need to contribute to affordable housing, to up to 40 or 50 units for an 18-month period. In designated rural areas, the consultation proposes to maintain the current threshold. It also seeks views on whether there are any other barriers for SMEs to access and progress sites.*
- *Permission in Principle: Proposals to increase the threshold for Permission in Principle by application, to cover sites suitable for major housing-led development, rather than being restricted to just minor housing development.*

The 4 points outlined are complex and have far reaching implications for the City of York. The consultation is accompanied with 35 questions which are attached in Annex 2 of this report.

Officers in consultation with the relevant Executive members will formulate answers to these questions.

PART 2 - RECENT AND PROPOSED CHANGES TO PLANNING AND LICENSING

Background

Since March 2020, due to the coronavirus pandemic, there has been the need to change and adapt a number of elements of the planning and licensing system to react to the change in circumstances that the pandemic has brought about. The Business and Planning Bill had its first reading on 26 June 2020, and less than one month later – on 22 July – it had become the Business and Planning Act 2020. It was concerned with a number of things which are not relevant to this particular paper including ‘Bounce back loans’ and Heavy Goods Vehicle licences. This section of the report focuses on the aspects concerned with:

- Planning
- Pavement Café Licences
- Sale of alcohol

Changes to Planning Legislation

The changes that have taken place have been done via a number of routes, including changes to national planning guidance, issuing national planning updates for amendments to permitted development rights, implementation of the Business and Planning Act 2020 and changes to the Use Classes Order.

Temporarily allow restaurants and cafés to provide take away food

Due the closure of restaurants, the relaxation was allowed until 23 March 2021.

Emergency development by Local Authority or Health Service Body

A new time limited emergency permitted development right came into force from 9 April 2020 until 31 December 2020. The right supports health service bodies’ and Local Authorities’ immediate response to coronavirus. The right is wide ranging, allowing for development by, or on behalf of, a local authority or health authority body for the purposes of preventing an emergency; reducing, controlling or mitigating the effects of an emergency; and taking other action in connection with an emergency.

The right enables development including, but not limited to, change of use for existing buildings and new temporary modular buildings. The rights could be suitable to provide permission for a range of uses, including use as hospitals, health facilities, testing centres, coroner facilities, mortuaries, additional residential accommodation and storage and distribution, including for community food hubs.

Flexibility to use more than one planning appeal procedure

The Business and Planning Act amends the Town and Country Planning Act 1990 (determination of procedure for certain proceedings) to provide the Planning Inspectorate with the flexibility to use more than one procedure type when dealing with a planning appeal (local inquiry, hearing, or written representations), enabling appeals to progress at a faster pace.

Came into force on 22 July 2020.

Temporary pavement licences

The new licences will provide deemed planning permission for anything done by the licence-holder which would previously have required planning permission under Part 3 of the Town and Country Planning Act 1990. This provision is in place until 30 September 2021.

Extension to construction hours

A written ministerial statement was issued on 13 May 2020 which outlined the expectation of how Local Planning Authorities were expected to consider extensions to working hours until March 2021. The Statement was clear that local authorities should not refuse requests to extend working hours until 9pm, Monday to Saturday without very compelling reasons for rejection.

This was subsequently followed by the Business and Planning Act, which introduced a new route for developers to vary planning conditions dealing with construction site working hours to temporarily allow extended working hours for a set period of time. This is to ensure that planning conditions are not a barrier to allowing developers the flexibility necessary to facilitate the safe operation of construction sites during the COVID-19 pandemic. This provision is in place until 1 April 2021.

There is no fee for the application, and decisions must be made within 14 days, starting the day after the application is sent to the local authority. There is no provision for public consultation as part of this process. If no decision is made within that time, the application will be deemed to have been approved.

Any extension to working hours would remain in place until 1 April 2021 at the latest. After this date, the original conditions relating to construction hours would resume.

CYC Planning Department have to date received 14 enquires of which 11 requests that would fall within the remit outline of the statement. (The other 3 were not with regard to construction work).

Requests to work between the hours of 0700 and 19:30 were considered to be acceptable. Some requests sought consent to work longer hours. (Start time of 06:00 and finish time of 2100) However these hours were resisted by officers due to the additional potential for disturbance to neighbours during the early morning and evening periods.

The Ministerial Statement gave the Local Planning Authority the scope to allow extensions to working hours until the 13th May 2021, upon responding to developers it has been advised that all time extensions are for a period of 3 months only. This was considered to allow for an assessment of the wider impact of the small changes to working hours that have been permitted.

Developers were also advised that the works within these hours should adhere to the following measures which were intended to mitigate the impacts of any additional working hours:

- The noise associated with any works should not be audible beyond the perimeter of the site.
- There should be no heavy plant movements during these extended hours.
- The extended hours should only allow trades working on and within plots.
- There should be no excessive noise, dust or vibration caused during this period

Finally developers were requested to ensure that changes to the original working hours are communicated to neighbouring properties in a proportionate manner.

Given clear guidance from the Ministerial Statement and the Act it is considered that the approach outlined above is a reasonable as it allows the construction industry to continue whilst also protecting existing residents. It should be noted that each request is considered on a case by case basis.

Extension of permission which would have expired in lockdown (if not implemented)

Temporarily modifies the Town and Country Planning Act 1990 and the Planning (Listed Buildings and Conservation Areas) Act 1990 to enable certain planning permissions and listed building consents in England which have expired, or are set to expire, between the beginning of lockdown period and the end of this year, to be extended to 1 May 2021 - only expired permissions would follow an approval process. This measure comes into effect on 20 August 2020. This is in recognition of the effect coronavirus has had on the planning system and the construction sector, and in particular the delays it has caused to the commencement of new development. This extension will allow the commencement of the planning permissions and listed building consents without the need for a new application.

Extensions to flats (subject to prior approval)

The Permitted Development Rights will apply to purpose-built, detached blocks of flats, built on or after 1 July 1948 and on or before 5 March 2018. The Order expressly excludes buildings converted to residential via certain Permitted Development Rights, but 'purpose-built' is defined – so buildings converted from the use for which they were built, whether with planning permission or not, do not benefit.

New Part 20 Class A grants planning permission for self-contained flats to be constructed on top of certain existing, purpose-built blocks of flats, together with limited associated works, subject to conditions, limitations and restrictions.

The existing flats must not be or form part of a Listed Building or scheduled monument or land within its curtilage, and they must not lie in a conservation area.

Buildings must be at least three storeys measured from ground level, and the finished extended building must not be more than 30 metres high (not

including plant). New storeys, measured internally, must be no higher than any of the existing storeys, and in any circumstance no higher than three metres.

The following eight prior approval matters will be applicable:

- a) transport and highways impacts of the development;
- b) air traffic and defence asset impacts of the development;
- c) contamination risks in relation to the building;
- d) flooding risks in relation to the building;
- e) the external appearance of the building;
- f) the provision of adequate natural light in all habitable rooms of the new dwellinghouses;
- g) impact on the amenity of the existing building and neighbouring premises, including overlooking, privacy and the loss of light
- h) whether because of the siting of the building, the development will impact on a protected view

Came into force on 1 August 2020.

Householder's extensions up to 2 storeys

Expected September 2020

The full details of this element are yet to be released, but it is anticipated that it will form part of a prior approval process similar to that of the existing larger extensions approvals.

Changes to use classes

From 1, September 2020

The following use classes will be subsumed into a new single Use Class F2 (Local community):

- Shops (A1) shop not more than 280sqm, mostly selling essential goods, including food, and at least 1km from another similar shop
- Hall or meeting place for the principal use of the local community (D2)
- Indoor/outdoor swimming pools, skating rinks and outdoor sports or recreating (D2)

The following will be subsumed into a new single Use Class E (Commercial, business and service):

- Shops (A1)
- Financial/professional services (A2)
- Cafés/restaurants (A3)
- Indoor sports/fitness (D2 part)
- Medical health facilities (D1 part)
- Crèche/nurseries and office/business uses (B1)

Class F.1 (Learning and non-residential institutions) changes from D1

The use class of a dwelling house remain the same.

The changes will allow uses within the same use to change without the need for planning permission. The new use class E is significant as it will allow retail to change to offices, or vice versa, without the need for planning permission.

As outline above the changes to the Use Class Order will also now allow for the change of use from retail to office use without the requirement for planning permission. Existing legislation allows for permitted development rights to be used which facilitate the conversion of existing offices to residential units, however the legislation is clear that one of the conditions of this is that the building use as an office must predate 29th May 2013.

As an example of this a retail site under the new Use Class Order will be able to change to an Office use without requiring planning permission however it would not be possible to use permitted development rights to then convert the office to residential.

The above changes raise a potential risks to fee income for the planning department. Based on the applications submitted to CYC during 2019 and which were categorised as a change of use planning application type a total of 164 applications were received (it should be noted this is not exhaustive as others may have been received and not specifically categorised).

Of these a total of 21 based upon their development descriptions may not in future be required under the new use classes order to submit a planning application. Based on these 21 cases, assuming each were liable for the full application fee (£462) would mean a loss of £9702 in fees.

Written ministerial statement - preventing loss of cultural venues and planning conditions for holiday parks

14 July 2020

Outlines that Local Planning Authorities should have due regard to the current circumstances when considering whether to grant planning permission for a change of use or demolition of a theatre, concert hall or live music performance venue that has been made temporarily vacant by Covid-19 business disruption.

The statement also outlines that Local Planning Authorities should not seek to undertake planning enforcement action which would unnecessarily restrict the ability of caravan, campsites and holiday parks to extend their open season. It goes on to state that where Local Planning Authorities consider it appropriate to require an application to vary relevant planning conditions (where for instance there is a risk of flooding or where parks are situated close to protected sites) they should prioritise the application and make an early decision to provide certainty to caravan, campsites and holiday park operators. In doing so, they should consider the benefits of longer opening season times to the local economy as it recovers from the impact of Covid-19.

In place until 31 December 2022.

Changes to licensing legislation

Pavement Café Licences

The Act helps businesses selling food and drink such as cafés, pubs and restaurants, by introducing a fast-track process for the placement of furniture such as tables and chairs on the pavement outside their premises. This enables businesses to create more space and ensure social distancing can be observed. The Act also slashed the cost to a maximum of £100 (the Council previously charged over £600) and reduced the time to determine the applications down to 14 days - there was previously a 28 day consultation period alone. Furthermore, there is no longer planning permission as part of the process. The licence must be granted for at least 3 months and can run up to 30 September 2021. If the application has not been determined within the time frame, the licence is deemed to be granted for one year or until 30 September 2021, whichever is the earlier.

The Council has set up a new process to deal with these applications, and, whilst each application is considered on its merits, a set of 'standard

conditions' have been devised and which will be applied if it is appropriate, necessary and proportionate to do so. These include that only approved street furniture is allowed and that patio heaters and music are not. Additional specific conditions can be applied if necessary.

The new café licence provisions will not be available to every business as the pavement must be sufficiently wide enough to enable people to pass by safely i.e. up to 3 meters in areas of high foot fall. The Council is receiving a number of applications, including in the newly extended pedestrian zone.

A pavement café licence is either granted, part granted or refused.

There is no appeal/complaint by the Applicant after determination. There is no appeal process, instead dissatisfied applicants are directed to the CYC Complaints Team.

Sale of Alcohol

The Act modified provisions in the Licensing Act 2003 to provide automatic extensions to the terms of on-sales alcohol licences to allow for off-sales (up to 11pm at night). The provisions mean that people can take their drink away to consume elsewhere. The Act also automatically extends on-licences to include deliveries, so that pubs etc can deliver drinks to customers wherever they are around the city. This is all aimed at helping businesses keep social distancing measures in place inside their premises.

The Act also allows the sale of alcohol in open containers, and any restriction in an existing licence that only enables sales in sealed containers is lifted. There is guidance accompanying the Act which states that the glasses should be made of reusable plastic and that Licensees should make provision for litter and toilets (if they are open for customers drinking inside the premises).

All other aspects of the Act remain in place, therefore the premises are required to comply with their opening hours, keep CCTV and security where necessary, prevent nuisance and ensure that measures are in place to prevent underage sales and serving drunks.

The provisions remove the need for any application to be made, therefore no fee will need to be paid. It also reduces the burden on Local Authorities and the police, as we do not need to scrutinise any applications for licence variations from the premises affected by these

measures. Again, this is a temporary measure up to the end of September 2021. If a Licensee wishes to change any of the other aspects of their licence such as opening hours, etc which are not covered by the Act, there is then a need to apply for a variation.

Again, it is not for everyone. There are exemptions for Licensees who have had an application for an off-sales permission refused or had their off-sales permission excluded by. Any licensee who wished to open for longer hours could apply for a licence variation. Furthermore, many businesses already have licences which enable off sales to take place.

If there are problems of crime and disorder, public nuisance, public safety or the protection of children arising from how the premises operate using the new permission, any responsible authority, including the police or environmental health, could apply for a review of the licence in this respect. It is possible for a licence to be reviewed if the problems are being caused away from the premises, however there may be challenges in evidencing that anti-social problems or other issues are being caused as a result of the alcohol being purchased from the premises being considered for review. This is a new provision, previously only the police could apply for an emergency review on the grounds that the premises were undermining the Licensing Act's objective against crime and disorder.

The Council has issued 'Let's be York' guidance for the hospitality sector in York, which gives details on how to reopen safely and make use of the provisions on this Act, which can be found at <https://www.york.gov.uk/LetsBeYork>.

It should be noted that the Council's has an ongoing commitment to "Purple Flag" in order to provide an excellent standard for managing the evening and night time economy along with providing a family friendly city centre.

Conclusion

As can be seen illustrated above, there are ongoing changes to the Planning system which will have significant implications to all forms of development and the City.

Council Plan

The following Council priorities are relevant:

- Good health and wellbeing
- A greener and cleaner city
- An open and effective Council

Implications

- **Financial** – changes to planning applications may result in changes to income, however this will need to be reviewed.

- **Equalities** There are no equalities implications.

- **Legal.**

The Business and Planning Act 2020

All of the planning provisions in the Business and Planning Act 2020 are temporary save for a permanent provision which gives the Secretary of State discretion to determine which planning procedure should be adopted in a planning appeal.

The Authority should be mindful when considering applications, that the changes to legislation (including changes to the Use Classes Order 1987 and permitted development), come into force (and end, where applicable) on varying dates as set out in the report.

Planning Consultations

Any responses must be submitted within the relevant deadlines to guarantee comments will be considered.

Pavement Licences

The Authority is required to decide on an appropriate fee to charge subject to a cap of £100. The Authority can decide how long the license should last for or leave it open ended, in which case it will expire at the end of September 2021.

The Equality Act 2010

Section 149 of the Equality Act 2010 requires the Authority to have due regard to the need to: eliminate discrimination, harassment and victimisation and other prohibited conduct; advance equality of opportunity between those sharing a relevant protected characteristic such as age, sex, disability, and sexual orientation, and those who do not; foster good relations between those sharing a protected characteristic and those who do not. This requires the Authority, have regard to the need to remove or minimise disadvantages suffered by persons sharing a protected characteristic that are connected to that characteristic, to take steps to meet the needs of those sharing protected characteristics which are different to those who do not share it, and to encourage those sharing a protected characteristic to participate in public life or such other activity where the participation by such persons is disproportionately low.

The Pavement Café Licence guidance (Para 1.10) states: *Local authorities will also need to have regard to the Public Sector Equality Duty, under the Equality Act 2010 when devising and implementing the new licensing regime, which includes the need to have due regard to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act. Any businesses which apply for a pavement licence will also need to have regard to their own duties under the Equality Act 2010, such as their duty under s.29 of the Act not to discriminate in providing their service.*

The Business and Planning Act 2020 (Para 4.1) states: *Where a local authority is considering for any purpose of this group of sections whether furniture put on a relevant highway by a licence-holder pursuant to a pavement licence has or would have the effect referred to in subsection (6)(a), the authority must have regard in particular to—*

*(a) the needs of disabled people, and
(b) the recommended distances required for access by disabled people as set out in guidance issued by the Secretary of State.*

The Act requires consultation by the Local Authority with “*such other persons as the Local Authority considers appropriate*”.

Consideration should therefore be given to consulting with disability groups (or other persons) where appropriate.

- **Crime and Disorder** implications outlined above
- **Human Resources (HR)** There are no HR implications.

- **Information Technology (IT)** There are no IT implications.
- **Property** There are no property implications.
- **Other** There are no other implications.

Risk Management

There are no known risks.

Contact Details

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Report **Date 21/08/2020**
Approved

Wards Affected:

All

For further information please contact the author of the report

Background Papers:

Annex 1 White Paper: Planning for the Future

Annex 2 Changes to the current planning system