

# MAYOR OF LONDON

**Rt Hon Robert Jenrick MP**

Secretary of State for Housing, Communities  
and Local Government  
Ministry of Housing, Communities and Local Government  
2 Marsham Street  
London SW1P 4DF

**Date:** 11 May 2020

Dear Robert,

**Re: Responding to the coronavirus crisis to support the delivery of development**

I am writing in relation to the impact of the COVID-19 crisis on the development industry and the implementation of planning functions and powers during these challenging times.

The early and robust recovery of the development industry is vital to the wider economic recovery. Based on discussions with industry, local government and other partners to understand the challenges they are facing, I am writing to you about a range of practical measures to support the development industry as lockdown restrictions are eased. These include extensions to statutory timescales in planning legislation, consideration of how best to approach permitted development and the need to deliver good growth. Further detail on these measures is set out in the annex to this letter, but a summary is provided below.

**Planning timescales**

I know you are being called on by the industry to introduce legislative changes with a view to getting London – and other parts of the UK – building as soon as possible. Within this context, flexibility will be needed in relation to numerous timescales set out in planning legislation to ensure existing permissions and consents can be built out. I believe it is necessary to extend planning-related timescales and provide flexibility for payments and variations to conditions to take account of the impact the current situation is having on the industry and future issues that are likely to arise such as building material supply challenges or changes in ownership. Individual applications to extend timescales or vary conditions would represent an unnecessary bureaucratic burden for applicants and local authorities in having to deal with them, both of which would slow development further. The most effective way to quickly address these issues is through urgent legislative change.

To ensure consistency across the country, I therefore ask that you give immediate consideration to introducing legislative measures to extend statutory time limits set out in planning legislation, to ensure development comes forward in a timely way. To provide clarity

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to the sector, any time that elapses during any lockdown period should be discounted from the prescribed statutory time limit without the need for further administrative requirements or consents (i.e. from 23 March to a future date to be defined by government, and any subsequent lockdown period).

Further detail on the matters and statutory time limits to address, as well as potential exclusions, are set out in the annex. These measures would help to provide certainty to the industry and additional time for financial payments during a period when its ability to deliver development is constrained. Looking to the future, such measures would also allow for planning consents to be taken forward by other parties where there are difficulties in completing the developments.

## **Ensuring Good Growth**

In increasing flexibility to support the development industry, we must not lose sight of the need to deliver high-quality places and homes that benefit people's health and well-being and support the transition to a more sustainable future. It is crucial that any short-term measures do not lead to significant long-term costs and negative impacts through opportunity loss, poor design and function, or harmful social and environmental costs.

With this in mind, I strongly caution against measures which allow the renegotiation of affordable housing commitments. Such measures would delay delivery as well as increasing market risk and impacting on developer cash flow, at a time when the need for affordable housing is greater than ever.

As we emerge from the COVID-19 crisis and look towards recovery, it is more important than ever that we can meet the growing need for affordable housing. I am therefore keen for our teams to work together to agree a new affordable housing settlement for London as soon as possible which better reflects levels of need and the role that the public sector must play in supporting delivery through grant, particularly given the growing challenges with the cross-subsidy model. I also ask for urgent action to extend the current Affordable Homes Programme by one year to 2023, to provide much needed certainty to the council and housing association sectors.

It is also critical that supply chain and cash flow issues do not result in a downgrading of the quality of development, in line with the findings of the Building Better, Building Beautiful Commission. Practical measures are, however, needed to address the inevitable shortages in supply chains for building materials, particularly those sourced from overseas. Such measures should look to create a schedule of agreed substitutes not requiring further consents where this does not affect heritage assets.

## **Changes to permitted development**

In the past, the Government has used changes to permitted development rights to increase flexibility in the planning system. I have previously expressed my concerns about the conversion of offices to residential without planning controls. I reiterate these concerns in the strongest possible terms at this point. For those Londoners trapped in sub-standard accommodation during this period of social distancing, the impact on their health and well-being is significant,

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so I believe it is important to introduce standards and controls to ensure future conversions are fit for purpose.

I also believe that any further liberalisation of permitted development rights would undermine the ability of high streets and town centres to recover from the crisis. I would, however, welcome specific flexibilities including in relation to use classes to support the cultural and hospitality sector. More detail on these is set out in the annex.

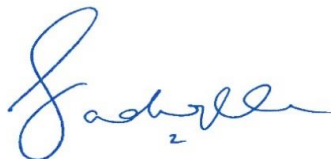
## **Other matters**

As we discussed on our call on 25 March, the Mayoral Development Corporations need to be able to hold planning committee meetings virtually. It is disappointing that they, and Transport for London, were omitted from Section 78 of the Coronavirus Act. My office has been following up with your office about this, but I am concerned that it is still not properly resolved. Further detail on our concerns about Section 78 is set out in the annex.

I hope that we can continue to work constructively together to support the recovery from the coronavirus crisis, including by taking forwards the measures outlined in this letter and accompanying annex. My officers would be happy to engage further in the detail of these issues with MHCLG officials.

The content of this letter has been endorsed by the Planning Officers Society.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Sadiq Khan', with a small number '2' written below the name.

**Sadiq Khan**  
Mayor of London

Appx.

Cc: Paul Scully MP, Minister for London  
Sir Edward Lister, 10 Downing Street  
Mike Kiely, Chair of the Board, Planning Officers Society

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## Annex

### Planning timescales

#### Legislation and statutory time limits within scope

To ensure consistency across the country, legislative measures should be introduced to extend the timescales set out in planning legislation, in particular, the following legislation except where specifically exempt (such as those timescales set out below under 'Potential exclusions'):

- Town and Country Planning Act 1990 (as amended)
- Mayor of London Order 2008
- Planning Act 2008
- Planning and Compulsory Purchase Act 2004; or
- Any other primary or secondary legislation relating to planning requirements or consents.

The extension of prescribed planning statutory time limits needs to provide sufficient flexibility and clarity across the country to support the development pipeline coming forward. Any time that elapses during any lockdown period should be discounted from the prescribed statutory time limit without the need for further administrative requirements or consents.

The matters and prescribed statutory time limits to address include:

- Expiration of planning permission.
- Expiration of prior approvals or notifications, advertisement controls, telecommunications and similar planning consents.
- Expiration of time limits in conditions.
- Reserved matters.
- CIL payments, late payment penalties and CIL calculations relating to vacant premises (see below for more detail).
- Blight notices.
- The period for exercising Compulsory Purchase Orders.
- Housing Delivery Test.
- Making documents available (hard copies).

In recognition of the pressures on local authorities, consideration should be given to flexibilities for them, for example in relation to the performance expectations associated with PS1 and PS2 returns.

#### Potential exclusions

It is important to ensure that there is no added delay to the determination or implementation of planning consents. As such the prescribed time limits relating to the following should be specifically excluded from these provisions:

- Determination of planning applications, non-material amendments, permission in principle, prior approvals or notifications, advertisement controls.

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- Stage 1 and Stage 2 responses from the Mayor of London.
- National Strategic Infrastructure Project applications.
- The period of evidence for Certificates of Existing Lawful Development.
- Applications for relief and exemption from CIL.

There are also some critical areas where a more nuanced approach will be required to avoid unintended consequences, including:

- Telecommunications and other areas with fixed timescales for consideration by a local authority, where expiry is a deemed consent. Given the pressures on local authorities and an apparent increase in these types of application during the lockdown period, local authorities need to be given some flexibility to ensure only appropriate development is allowed.
- While it may be difficult to get building work completed to meet the requirements of enforcement action, local authorities cannot let unlawful activity continue particularly where this impacts on others or results in irrevocable damage.
- Statutory consultation on Development Plan Documents, Supplementary Planning Documents, CIL Charging Schedules, Strategic Environmental Assessments including the scoping stage, Habitat Regulations Assessments, Statements of Community Involvement, Neighbourhood Plans and any Development Consent Orders. This may be better covered by guidance to ensure that late-stage consultations such as modifications prior to submission, where participants are already well known, are not unnecessarily delayed.

Consideration also needs to be given to what flexibilities can be applied to timescales for obligations within legal agreements.

## **Community Infrastructure Levy (CIL) payments during the coronavirus pandemic**

In London, the 35 Collecting Authorities collect Mayoral CIL on the Mayor's behalf with funds collected contributing to Crossrail. While the majority of Collecting Authorities have a local CIL in place to help fund infrastructure, they are facing mounting pressure from developers to defer CIL payments and to waive late payment interest as a means to aid cash flow and ease hardship during these unprecedented times.

The CIL Regulations set out that CIL becomes payable on commencement of development, with payment due within 60 days following commencement (with any further payments in accordance with an adopted CIL instalment policy and the phasing of payments for phased development). Where payment is not forthcoming Collecting Authorities must levy late payment interest. While a resilient development industry is crucial for a swift economic recovery, the inflexible nature of payment deadlines and accrual of late payment interest within the regulations may hinder this. This is due to the constraints these place upon developer cash flow – particularly where work has commenced at a development site before the pandemic and has now halted but payment is still due. These are legislative matters that are beyond the control of Charging Authorities across the country.

There is concern that Charging Authorities may be agreeing to payment terms that are beyond the scope of the Regulations and therefore open to challenge. While a pragmatic approach is required during the crisis, consistency backed by a change to legislation would provide the

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necessary support both to developers and those authorities levying a charge. The CIL Regulations should, therefore, be amended during the lockdown period and any subsequent lockdown period(s), and apply retrospectively from the 23 March 2020 as follows:

- CIL Demand Notices (CIL Regulation 70) – that the lockdown period (and any subsequent lockdown periods) as defined by the Government are excluded from the period in which a CIL payment and any subsequent instalment payments become due.
- Late Payment Interest (CIL Regulation 85) – that late payment interest is waived during the lockdown period and any subsequent lockdown period(s).

## **Ensuring Good Growth**

Measures should not be introduced which allow the renegotiation of affordable housing commitments. This would increase market risk, impact on developer cash flow and delay delivery at a time when the need for affordable housing is greater than ever. An economic downturn associated with the pandemic is, in fact, likely to increase the need for affordable housing. This should have a significant role to play in any recovery because it can be delivered counter-cyclically, offsetting any falls in market supply. The Government should, therefore, provide maximum flexibility on how existing funding programmes can be used, as well as significantly increasing the overall level of affordable housing funding available in London, especially for social rented homes.

It is critical that supply chain or cash flow issues do not result in a downgrading of the quality of development, in line with the findings of the Building Better, Building Beautiful Commission. Practical measures are, however, needed to address the inevitable shortages in supply chains for building materials, particularly those sourced from overseas. Such measures should look to support the use of more readily available materials of the same quality/ appearance without the need for Section 73 or non-material amendment applications. This would exclude heritage assets of any significance (including local listings).

## **Changes to permitted development**

In the past, the Government has utilised changes to permitted development rights to increase flexibility in the planning system. I have previously expressed my concerns regarding the conversion of offices to residential without planning controls. I reiterate these concerns in the strongest possible terms at this point. For those Londoners trapped in sub-standard accommodation during this period of social distancing, the impact on their health and well-being is significant, so I believe it is important to introduce standards and controls to ensure future conversions are fit for purpose.

As you know, the retail sector has been facing many challenges for several years. We expect that the COVID-19 crisis will only increase these challenges and are concerned that any relaxation in planning regulations would have a detrimental impact on the ability to achieve a vibrant mix and balances of uses to enable high streets to recover and thrive. London's town centres and high streets are truly varied places, each with their own strengths and challenges, and tailored approaches will be required to support their recovery. I believe that this can be undertaken most effectively at the local level using town centre strategies as advocated in the NPPF. Permitted development rights and the use class orders already allow a good deal of flexibility between

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commercial uses, and I am concerned that further liberalisation could undermine the vitality of London's high streets if businesses are priced out by those that can generate a higher land value.

The cultural sector has been hit particularly hard by the pandemic and associated lockdown measures, so measures are needed to support its recovery and mitigate against any potential increase in the loss of cultural venues and institutions. The provisions of The Town & Country Planning (General Permitted Development) (England) Order 2015 Schedule 2 Part 4(D) allow for the flexible use of premises for a period of two years. Further flexibility could be provided by allowing premises to be used for more than one purpose concurrently during this period and including theatres within these provisions (*sui generis*). Current provisions only allow flexible uses to be applied consecutively, however, if these uses are acceptable individually, they should be allowed concurrently. This type of approach is already exemplified in Soho and Ireland for example e.g. a bar, radio station and sale of vinyl all functioning from the same space. Such flexibility would allow businesses to respond and evolve in real time without needing to provide documentation back to the local authority.

Urgent consideration should also be given to flexibility for hotels (C1 Use Class) as some are currently moth-balling floors that could usefully be re-purposed. For example, chains such as the Marriott are closing about 25 per cent of their hotels and closing floors in those that remain open in an effort to maintain their cash position. Greater London Authority officers would be happy to discuss this in more detail to ensure that the re-purposing of these floors does not give rise to unintended consequences.

Further flexibility would also be welcomed in order to allow any non-residential ancillary use to become the main use for a period not exceeding 12 months from when the last period of social restrictions ends. This would provide many businesses with the income streams they need to recover, for example allowing theatres to open their bars to generate cash flow while they get their programme back in place, without the threat of enforcement action.

## **Other matters**

Section 78 of the Coronavirus Act 2020 should be extended to Transport for London (TfL) and the Mayoral Development Corporations (MDCs). Failing that, the Government should at least use its powers under section 40 of the Local Audit and Accountability Act 2014 to make regulations to amend the application of Part 5A of the 1972 Act to meetings of TfL and MDCs' boards, committees and subcommittees so as to replicate the flexibilities contained in the Local Authority Meetings Regulations to allow for virtual meetings.

In addition, in relation to Section 78 of the Coronavirus Act 2020 and the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings)(England and Wales) Regulations 2020 ("the Local Authority Meetings Regulations"), while it is clear that Mayoral Representation Hearings can take place entirely virtually under those regulations it would nonetheless be helpful if the right to make an oral representation to the hearing under section 2F of the Town and Country Planning Act 1990 (which would have to be exercised by means of a live video-link or pre-recorded video) became a right to make written representation instead. National clarification of this would also help Local Planning Authorities.