



## City of Westminster

# Planning & City Development Committee

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**Classification: General Release**

**Title: Development Planning, Trends and Issues**

**Report of: John Walker - Director of Planning (GPH)**

**Financial Summary: N/A**

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## **1. Executive Summary**

1.1 This report presents a summary of the key current trends and issues facing the service:

- The review of the service by the Planning Advisory Service (PAS) and Local Government Association (LGA);
- The recent changes to legislation surrounding pre-commencement conditions, namely the requirement for the local planning authority to seek the agreement of applicants and the implications thereof for the determination of applications;
- The current planning enforcement position on the unauthorised installation of telephone kiosks and associated advertising;
- The decline in the number of planning applications being received; and
- Consultation on planning changes proposed by the Government.

## **2. Recommendation**

2.1 Members are asked to note the contents of this report.

## **3. Background**

### **Planning Advisory Service Review**

3.1 The Planning Advisory Service and Local Government Association were asked earlier this year to look at all aspects of the decision-making process in planning to ensure it is an independent and impartial process. The report of the PAS peer review team, which was tasked with analysing the service in the context of the following key themes: an effective and professional development management service; hospitality; committees; delivering corporate outcomes and strategic management, was finalised on 19 September 2018.

The recommendations of the peer review team are as follows:

- Development Management, Planning Policy, Delivery and Regeneration need to be more closely aligned.
- The Development Management service should publicly promote and deliver 'distance' between the regulatory service and applicants, agents, formal community organisations and the public.
- Committee practices and procedures need to be reviewed to focus resources on the right types of development and creating a platform for a more open and engaging experience for the public (including the introduction of 'public speaking').
- Delegate decision-making among a greater number of staff.
- The service needs to review the roles of its highways planning team and the corporate Highways function.
- Continue to use all available measures to address recruitment and retention issues.
- Review communications on Planning Performance Agreements (PPAs).

The PAS report was presented to Cabinet on 25 October 2018 as an appendix to a report prepared by the Chief Executive and Executive Director for Growth Planning and Housing outlining a series of recommendations for improvements to the planning service:

2.1. To endorse the findings and recommendations of the report submitted by the Planning Advisory Service (PAS) and to take the following steps to:

a) Improve the openness and transparency of the planning system:

- We will record Planning Sub-Committee meetings and make the coverage available post-meeting;
- We will live stream Planning Sub-Committee meetings once an appropriate technological solution has been identified and sourced;

b) Make it easier for residents to engage with the planning system:

- We will introduce "public speaking rights" at Planning Sub-Committee meetings;
- We will review all our digital content on the planning process and planning decisions, particularly that included on the council's website to improve accessibility for the general public;
- We will improve the way we explain planning policies and decisions to make them easier to understand.

2.2. To support resident and ward Councillor participation at an earlier stage of the process, for example in the pre-application stage of major applications, we will adopt a new approach to communicating and engaging their views in proposals.

2.3. To direct the Chief Executive, in consultation with the Cabinet Member for Place-Shaping and Planning, to recommend to the Planning and City Development Committee to increase delegation and review the call-in procedures, empowering officers to take more delegated decisions, in consultation with ward Members as

appropriate without the need for escalation to Sub-Committee, thereby speeding up the process. The details of the revised delegation and call in procedures be reviewed and recommended for decision at the next Planning and City Development Committee.

2.4. To direct the Executive Director of Growth Planning and Housing and the Executive Director of Policy Performance and Communications to submit a joint report to the next Planning and City Development Committee setting out the detailed proposals for the introduction of public speaking rights. A target date for the introduction of public speaking rights is set for 1 December 2018.

2.5. To direct the Chief Executive to restate to both officers and members their responsibilities in terms of the Council's gifts and hospitality policies. This will include emphasising the importance of exercising sound judgement in dealing with all offers of gifts and hospitality. To note that in terms of the planning service, this will build on the guidance issued in February 2017 regarding Councillor meetings with developers on particular schemes. Council officers and elected members involved in the planning process must retain a distance from land owners, applicants, agents and community stakeholders, other than at formally arranged visits and recorded meetings linked directly and specifically to the consideration of planning applications, pre applications, or the development of the local plan.

2.6. To create a new Place-Shaping and Planning directorate which reflects the ambitious agenda set by the Leader and Cabinet to deliver a City for All, and for the new service to deliver the direction of travel which will be set out in the emerging City Plan.

The general direction of travel outlined in the report were agreed by Cabinet however Members considered that more work needs to be done to outline the details of how public speaking at Committee might be facilitated and how the local community and Ward Councillors will be more involved at an earlier stage of the planning process. Members also considered that there should be engagement with key stakeholders on these proposals. As such, these details are not reported to this Committee for agreement.

### **Pre-commencement conditions and the consent of applicants**

- 3.2 In recent years the Government has sought to reduce delays and uncertainty from the development industry, in particular to aid the delivery of housing, and as such a raft of measures to 'speed up' the planning process have been introduced. One such measure relates to the use of 'pre-commencement' conditions, namely conditions attached to planning permissions which require the developer to provide details for approval by the local planning authority before work can commence on site.
- 3.3 From 01 October 2018, The Town and Country Planning (Pre-Commencement Conditions) Regulations 2018 came into effect. These new regulations provide that planning permission for the development of land may not be granted subject to a pre-commencement condition without the local authority first seeking the written agreement of the applicant to the terms of the condition, with the aim that building work can commence as soon as possible after the grant of permission.
- 3.4 The procedure set out in the legislation advises that local planning authorities may notify applicants of proposed pre-commencement conditions, setting out their reasons for them 'clearly and precisely', and giving applicants ten working days to respond. Applicants must provide a 'substantive response' within that period (stating that they do not agree to the imposition of the proposed condition, or providing comments on it);

if they do not provide such a response, planning permission may be granted with the proposed pre-commencement conditions in place, and without the applicant's consent. Where a substantive response has been provided, the local planning authority can amend the condition, remove it, make it a post-commencement condition, or refuse the application.

- 3.5 Whilst the benefits of allowing work to start on site as soon as possible are acknowledged and indeed we have reviewed our use of pre-commencement conditions to ensure no unnecessary hurdles stand in the way of development, the requirement to seek the applicant's agreement to the imposition of pre-commencement conditions raises significant concerns for planning decisions.
- 3.6 There are a number of cases where pre-commencement conditions are justified in order to ensure the impacts of a development will be adequately mitigated. For example, for large-scale and major schemes and basement proposals, the applicant is required to commit, via a pre-commencement condition, to signing up to the City Council's Code of Construction Practice before any work commences on site (including demolition or excavation). The purpose of the City Council's Code of Construction Practice ([COCP](#)) is to monitor, control and manage construction impacts in order to assist with managing the environmental impacts. The Code also seeks to identify the main responsibilities and requirements of developers and contractors in constructing their projects. It is essential that this commitment is secured before work starts as it relates to the works themselves. The City Council and statutory consultees also rely on pre-commencement conditions to deal with other detailed and technical matters such as, for example, tree protection, land contamination, digging archaeological trial pits for investigation, protection of protected species and habitats; and foundation/piling details in relation to underground infrastructure (eg London Underground/Crossrail/sewerage). In these cases it is critical that the further details and investigations required by the condition are carried out to our satisfaction before any work starts on site in the interests of protecting the trees in question, preventing contamination and preventing disruption to important biodiversity or archaeological assets.
- 3.7 The likely practical implications for the determination of applications are as follows:

#### Increase in refusals

The likelihood of planning permission being refused will be increased where the applicant fails to agree to a condition being a pre-commencement condition despite justification being provided by the City Council. As a result the applicant will be forced to appeal against the complete refusal of permission rather than against a condition. This will result in greater uncertainty and a longer time in the planning process for the applicant.

#### Extra expense for the applicant at application stage

Pre-commencement conditions generally cover matters that a householder/developer may not want to spend a huge amount of time and money (and consequent risk) on before getting a planning permission and commissioning expensive reports. In order to avoid the potential for the applicant to fail to agree to a pre-commencement condition, we may have to consider obtaining the information at validation stage. As a result more applications might be made invalid and the applicant will be required to prepare detailed and costly reports/drawings at a stage in the process where they will have less certainty over the likelihood of permission being granted.

### Practical issues for officers and Members at Planning Committee

The serving of a 10 working day notice period will build in time delays to processing applications and add an extra layer of administration for officers. This process takes up a quarter of the statutory eight week period for processing planning applications and seems disproportionate but the Council has no discretion to reduce the notification period. There may also be cases where, for example, a notice has been served proposing a pre-commencement condition and it has been agreed by a developer, then a late consultation response asks for another pre-commencement condition which the LPA considers to meet the statutory tests, then the 10 day notice procedure has to start all over again. Although relatively unlikely, there could be a situation where multiple notices are running, adding significant delay.

The procedure will mean that Members deciding applications at planning committee will not be able to impose pre-commencement conditions. The Committee resolution constitutes the formal decision and as such there is no opportunity to seek the applicant's agreement to the conditions. To comply with the proposed regulations, Members will have to resolve to grant consent with the additional condition subject to a notice being served to get the agreement of the applicant before being signed off via delegated powers if the applicant agrees to it. If the applicant does not consent it will have to be reported back to committee.

### **Unauthorised installation of telephone kiosks and associated advertising**

- 3.8 In the last few years, the City Council has received a large number of applications for prior approval for new telephone kiosks with advertising. The Council's primary concern is that these applications for new kiosks are being made for the revenue that can be obtained from the display of advertisements on the kiosks themselves rather than for their primary purpose, which should be to enable the public to make telephone calls.
- 3.9 Between the 1<sup>st</sup> January 2016 and the beginning of August 2018 (two and a half years), the City Council received approximately 350 applications for new telephone kiosks to be placed in Westminster. In almost all of these kiosks it is proposed to have advertising. For those proposed to be located outside of designated conservation areas, advertisement consent would not be required but for those located within conservation areas, express advertisement consent would be required from the City Council as Local Planning Authority. Almost every refusal which has been the subject of an appeal, has been allowed by the Planning Inspectorate which demonstrates the difficulty we face in preventing the proliferation of these telephone boxes on our streets.
- 3.10 Notwithstanding the influx of applications for additional kiosks, there are a large number of existing boxes in Westminster that are in very poor condition. Many do not have working handsets and are not being maintained. It would seem many are only in situ for the advertising opportunity. Following legal advice on what could be done to potentially seek removal of the redundant kiosks, pioneering survey work was undertaken by the Planning Enforcement Team on a number of kiosks spread throughout the borough as well as a small geographic area comprising Oxford Street and any kiosks immediately visible on any of the side streets off Oxford Street.
- 3.11 The kiosks were monitored for a period of approximately six months with repeated visits and at the end of the monitoring period, Counsel advised that Planning Contravention Notices (PCNs) should be served on the owners of each telephone kiosk that had been the subject of the monitoring exercise. Following correspondence with

the owners of the kiosks, it was determined that formal enforcement action would be justified in relation to eight particular kiosks where the telephones had rarely been used and in some instances not at all for the six months prior to the service of the PCN's. The owners of those particular kiosks subsequently agreed to remove seven of the kiosks, claiming that the final kiosk had been serviced and was in use.

- 3.12 Whilst this ground-breaking action did result in removal of seven telephone kiosks, it was time and resource intensive taking the best part of 12 months to achieve and could have taken longer had the owners not agreed voluntarily to remove the kiosks. Now that the pilot action has run its course, options for other pro-active enforcement action in other geographical parts of Westminster is being looked at.
- 3.13 The Government has also announced very recently it intends to make changes so all proposed new kiosks will require planning permission and the rights to display advertisements on these structures without the need for consent from the Council will also be removed. These proposed changes are welcomed.

### **Carlton Tavern**

- 3.14 The public house was demolished without planning permission in April 2015. An enforcement notice was served in June 2015 requiring the building to be rebuilt. An appeal was lodged against this notice, and an injunction was issued, prohibiting further demolition of the building in July 2015. Following a public inquiry, the enforcement notice was upheld, with a two-year compliance period running from the date of the appeal decision. The compliance period of the notice expired on 8 July 2018, by which time the public house should be completely rebuilt.
- 3.15 Following long delays, architects and associated contractors have been commissioned and works are finally under way to rebuild the pub. The works are being closely monitored and prosecution interviews being prepared for non-compliance with the Council's deadline.

### **Decline in the number of planning applications**

- 3.16 There has been a reduction in the number of applications received so far this year (approximately 5% reduction in total). It is thought the initial drop in application numbers at the beginning of the year was down partially to the election in May when developers shy away from submitting major/controversial applications, the residential market falling away and the uncertainties of Brexit. Numbers of applications have subsequently increased, but there are still significantly less major applications with Planning Performance Agreements (42% reduction on last year).

### **Planning changes proposed by the Government**

- 3.17 The Government has recently published a consultation document entitled "Planning Reform: Supporting the high street and increasing the delivery of new homes" which sets out proposed changes to the planning system. Some of the proposed changes, which includes the changes to regulations on phone kiosks, include the following;
- a new permitted development right to allow shops (A1) financial and professional services (A2), hot food takeaways (A5), betting shops, pay day loan shop and launderettes to change to office use (B1)?
  - a new permitted development right to allow hot food takeaways (A5) to change to residential use (C3)

- There is currently a right for the temporary change of use from shops (A1) financial and professional services (A2), restaurants and cafes (A3), hot food takeaways (A5), offices (B1), non-residential institutions (D1), assembly and leisure uses (D2), betting shops and pay day loan shops to change to shops (A1) financial and professional services (A2), restaurants and cafes (A3) or offices (B1). The Government proposes that these premises should also be allowed to change to certain community uses: public library, exhibition hall, museum, clinic or health centre and to extend the period of the temporary use from 2 years to 3 years.
- that the A1 use class should be simplified to ensure it captures current and future retail models
- that the A1, A2 and A3 use classes be merged to create a single use class
- a new permitted development right, subject to prior approval by the local planning authority, to allow additional storeys to be built up to 5 storeys, in particular those in commercial or residential (C3) use. The Government would either allow premises to extend up to the roofline of the highest building in a terrace or allow building up to the prevailing roof height in the locality.
- a right for additional storeys on purpose built free standing blocks of flats
- Increase the height for recharging electric vehicle upstand in an off-street parking space from 1.6ms to 2.3ms
- that the existing time-limited permitted development right for change of use from storage or distribution to residential is made permanent?
- that the time-limited permitted development right for larger extensions to dwellinghouses is made permanent?
- a permitted development right for the “high quality redevelopment” of commercial sites, including demolition and replacement build as residential, which retained the existing developer contributions?

The above list highlights the main/most relevant changes that are being proposed. The implications are currently being looked at before a response is made.

#### **4. Financial Implications**

4.1 None

#### **5. Legal Implications**

5.1 None

#### **6. Conclusion**

6.1 The review of the planning service by the Planning Advisory Service has been completed and the recommendations to Cabinet are outlined above, with further details and recommendations to be reported in due course. The requirement to seek the consent of applicants to the imposition of pre-commencement conditions when granting planning permission raises concerns in terms of the practical implications for the

determination of applications. The Planning Enforcement Team have successfully secured the removal of a number of redundant telephone kiosks in the Oxford Street area and thereby prevented their use for advertising purposes and the Carlton Tavern is finally being rebuilt. The number of planning applications being received has reduced since last year. Total number of applications has started to improve but there is still a significant decrease in numbers of major applications.

**If you have any questions about this report, or wish to inspect one of the background papers, please contact: Claragh Mulhern on x2535**

1. Report to Cabinet on Planning Review, 25 October 2018 with attached PAS Review Feedback Report.