**Draft Guidance – Construction Site Hours deemed consent**

**What is the purpose of the new fast track deemed consent route to amend planning restrictions on construction working hours?**

The aim of the new temporary fast track deemed consent route under section 74B of the Town and Country Planning Act 1990 is to enable urgent changes to construction working hours to support safe construction working in line with the Government’s latest social distancing guidance on construction and other outdoor work. For many construction sites, implementation of this guidance will require changes to working practices, including staggered starts and finishes, requiring different hours of operation to those which are currently permitted for the site through planning conditions.

**How does the new fast track deemed consent for construction hours work?**

Section 74B of the Town and Country Planning Act 1990 provides a temporary, fast track deemed consent route for developers to apply to local planning authorities to vary existing conditions, or the details submitted under a condition, that limit construction site working hours. Local authorities have 14 calendar days to consider such applications.

If an application is approved, this will temporarily amend planning restrictions on construction working hours until 1st April 2021, unless another earlier date has been requested by the applicant or decided upon by the local planning authority, with the agreement of the applicant.

If the local planning authority does not determine the application within 14 days (excluding public holidays), the revised working hours are deemed to have been consented to and construction can take place in accordance with these new hours.

**Can a local planning authority propose alternative hours to those requested?**

Local planning authorities should not refuse applications to extend working hours until 9pm, Monday to Saturday without very compelling reasons. In some cases, such as in areas without residential properties, extending working hours beyond this, including allowing 24-hour working where appropriate, may be justified. In all cases, sympathetic site management should be demonstrated to mitigate local impacts and local authorities should use their best endeavours to facilitate such requests.

However, the authority may wish to propose minor changes to the proposed hours. Any such changes will need to have been agreed in writing by the applicant.

In particular, authorities may wish to consider whether to specifically prohibit working on particular days e.g. Christmas Day, or Sundays, and may therefore determine that alternative extended hours are appropriate. They may also consent to a different start or end date for temporary working hour changes (but the end date can be no later than 1 April 2021). Before an authority makes an alternative determination, it must have the agreement of the applicant to the alternative extended hours, prohibited days, start or end date.

**What information does an applicant need to provide?**

Applicants will need to provide details of:

* the planning permission to which the application relates
* the existing agreed construction working hours
* details to identify the condition or approved document such as construction management plan which details the working hours
* the proposed revised construction working hours
* the date the revised construction working hours should take effect
* the date on which the application is sent
* the date on which the revised construction working hours should cease to have effect (no later than 1st April 2021)

To aid swift decision making, applicants should also provide:

* a short justification on why extended hours are necessary to enable safe working practices on site
* details of their mitigation plan as set out below.

Note that applications can only be made online.

**What steps should an applicant take to engage with their community?**

Applicants are encouraged 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. This may include planning to limit noisy works to within usual working hours and agreeing to undertake quieter activities in the morning and evening or agreeing alternative parking provisions. In densely populated areas, where proposals for extended hours may have an impact on residential and other noise sensitive uses, such plans may be important for local planning authorities, who may want to be satisfied that there will not be extended unacceptable impacts on communities.

Applicants should ensure their contractors work positively and collaboratively with local communities, and follow good working practice at all times. They should also provide, in the usual way, a contact point for their local community to use if they have any questions or problems with the site or associated issues.

Previously agreed plans to control working activities other than construction working hours will continue to apply, for example any mitigation strategy, adherence to a Considerate Contractor scheme or similar. Other environmental controls over matters such as light, air quality or dust will continue to apply.

**What will a local planning authority need to consider when assessing any application for temporary extended working hours?**

Local planning authorities will need to prioritise any applications under this route. Swift decisions are important given authorities have 14 days to consider these applications before they are deemed to be consented.

Local Planning Authorities must have regard to this guidance when determining an application under this new route. Reasonable and proportionate changes to construction hours should be accepted where they support safe construction working in line with social distancing guidance and enable construction sites to operate, unless there are other compelling reasons against the change. In deciding this, local planning authorities should consider:

* any justification provided which sets out the need for proposed extended working hours as a result of social distancing;
* any mitigating measures to be put in place to reduce local disturbance;
* the original reasons for any existing limits on construction working hours, including whether limitations were relied upon as either mitigation measures or as the basis of assessment for either an Environmental Impact Assessment (EIA, including screening) or a Habitats Regulation Assessment;
* the extent of additional working, compared to current permitted hours, and degree to which this variation is expected to result in local impacts that cannot be mitigated.

Under the Environmental Protection Act 1990, local authorities are required to investigate complaints about impacts, including noise, vibration, dust or light, which could constitute a statutory nuisance – this is separate from the controls under the planning regime. Where an authority concludes that a nuisance has occurred or will occur in future it must issue an abatement notice requiring whoever is responsible to stop or restrict the noise or other nuisance. In order to minimise the risk of a statutory nuisance arising, when assessing applications authorities should take careful account of any mitigation proposed and plans to engage the local community. Authorities will also need to consider air quality impacts especially if the site is situated within an Air Quality Management Area.

**In what circumstances might a local planning authority consider refusing an application for temporary extended working hours?**

Changes to working hours may lead to additional disruption. While a degree of additional disturbance may be considered reasonable for many sites, certain sites may be particularly sensitive due to their location or proximity to other uses which will be sensitive to additional noise and disruption. Careful consideration will need to be given to applications which are:

* made in relation to sites in proximity to businesses or community uses which are particularly sensitive to noise, dust and vibration – and particularly so where such uses are seeking to recover from the impacts of coronavirus, and extended working hours could have a negative impact. Examples include hospitals, hospices, care homes, places of worship, broadcasting or recording studios, theatres and cinemas
* made in relation to sites in close proximity to residential areas where the request for changing hours is likely to have a significant impact on health, taking into account the requirements of s.79 of Environmental Protection Act 1990 and the duty on local authorities to protect persons in the locality from the effects of noise under s.60(4)(d) Control of Pollution Act 1974
* made in relation to EIA development or development which was subject to EIA screening, and where limitations were put in place to restrict the hours of construction either to reduce adverse impacts to a level which was acceptable, or where these formed the parameters of development against which harm was previously assessed (see question below)
* made in relation to development which was subject to a Habitats Regulations Assessment and either screened out as not likely to have a significant effect on a habitats site, or subject to appropriate assessment and mitigation measures were put in in order to ensure that the development would not have an adverse effect on the integrity of a habitats site. (see question below)
* for development adjacent to Sites of Special Scientific Interest and where mitigation measures were put in place to restrict the hours of construction.

**What specific considerations need to be made for applications subject to an EIA or a habitats site?**

Local planning authorities need to give careful consideration to development which affects a habitats site or is EIA development.

For EIA development or development which was subject to EIA screening, local planning authorities should pay particularly attention to whether applications would lead to developments having significant environmental impacts which have not been assessed or to developments which had been now wrongly screened out of needing an environmental statement.

For development affecting a habitats site, local planning authorities should pay particular attention to whether applications would lead to developments having significant environmental impacts which have not been assessed or to developments which had been now wrongly screened out of needing further assessment. Local planning authorities should satisfy themselves that:

* there is no doubt or real risk of significant effects on a habitats site (providing it is not directly connected with or necessary to the site’s management) whether in combination with other plans or projects or alone, and without reliance on mitigation measures; or
* any appropriate assessment remains free of lacunae and contains complete, precise and definitive findings and conclusions capable of dispelling all reasonable scientific doubt as to the effects of the proposed works on protected habitats sites (including in relation to both the baseline for the development to be assessed, and the effectiveness of mitigation measures).

**How does the new fast track deemed consent relate to the recent Written Ministerial Statement on construction hours?**

The written ministerial statement and the policy set out in that statement will continue to apply. This new deemed consent application process will provide a new legislative fast track route to approval for amended working hours.

**What types of site are covered by the new route?**

The new application route applies where planning permission has been granted for the development of land, subject to a condition restricting site working hours, or a condition requiring the submission of a construction management plan (which limits working hours).

It does not apply to mining operations or householder development. This means applications cannot be made under this route to extend working hours for proposals to alter or enlarge a single house (including works within the curtilage (boundary/garden).

**How long will the new fast track deemed consent route be in place?**

The provisions will be in place so that any extended working hours can remain up until 1st April 2021. After 1st April 2021, the original conditions over construction hours will resume.

**Is there a fee to apply?**

There is no application fee associated with this deemed consent route to amend construction working hours.

**Is there a right to appeal?**

There will be a right for applicants to appeal a refusal under new section 78(1)(ab) of the TCPA 1990. Note that if local planning authorities have agreed alternative hours, days, or dates in writing with the applicant there is no right of appeal.

**Can an applicant re-apply if their application is refused?**

Applicants are welcome to re-apply if their application is refused, having regard to the reason for refusal. We recommend that a discussion with the local planning authority takes place to understand what amended hours may be suitable.

**Do local planning authorities need to consult local communities?**

Local planning authorities will need to make a decision within 14 days. Local planning authorities may choose to engage relevant ward councillors, environmental health officers and others who they consider will have an interest during this period.

**Is there a requirement for publicity?**

Similar to a discharge of condition under article 27 of the Town and Country Planning (Development Management Procedure) (England) (Order) 2015 or a section 96A TCPA 1990 application for a non-material amendment, there is no requirement to publicise applications for revised working hours.

**Can requests to amend planning conditions which limit construction site working hours meet the test of being ‘reasonable in all other respects’ set out in National Planning Policy?**

Yes. The National Planning Policy Framework makes clear that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. In this case, provided the amended construction hours are considered reasonable and proportionate, they may be considered ‘reasonable in all other respects’ given the effect of the coronavirus, and the need for social distancing and safe construction working.

**How does this interact with other regulatory regimes?**

Other regulatory regimes which may affect construction working remain in force, and are not affected by this change. Applicants should be mindful of their responsibilities with regards to health and safety, the environment, and the local community, separate to the planning considerations.

**How can communities register their concerns regarding noise?**

Legislation covering the control of noise is to be found in the Environmental Protection Act 1990 and the Control of Pollution Act 1974.

In the usual way, communities may contact their local authority and register concerns over excessive noise, vibration, light or dust. The local authority has a duty to investigate complaints and is required to issue an abatement notice if it concludes that a ‘statutory nuisance is occurring or is likely to occur’. Further information on how local authorities deal with such complaints can be found at <https://www.gov.uk/guidance/noise-nuisances-how-councils-deal-with-complaints>.

Before complaining to the local authority, communities and constructors should work together to find solutions which are suitable for both sides. All sites should have a designated contact phone number, staffed during hours of site operation, for local residents or businesses to contact, and this should be displayed prominently