

## Directorate of Planning and Infrastructure

### Guidance Note on consideration of request for relaxation of conditions limiting hours of work on construction sites

#### *Purpose*

The purpose of this guidance note is to explain how Malvern Hills and Wychavon district councils will deal with requests to relax conditions on planning permissions that limit hours of work on construction sites, following a Written Ministerial Statement made by the Secretary of State for the Ministry of Housing, Communities and Local Government (Robert Jenrick MP) which can be viewed on the [Parliament website](#).

Guidance on submitting a written request to the Councils can be found towards the end of this note.

#### *Background*

The Secretary of State for the Ministry of Housing, Communities and Local Government MP Robert Jenrick made a statement on 13 May 2020 in relation to his intention of relaxing planning related conditions pertaining to construction operating times that may well be restricted by conditions on planning permissions.

On Monday 11 May the Government made it clear that construction work can be undertaken across England providing sites are able to operate safely in line with the new COVID-19 Secure guidelines. A number of developers have already announced plans to restart work on sites. The Government recognises that the construction industry needs to be able to adapt its normal practices. As part of this, temporary extensions to working hours may be required on some sites to facilitate safe working and allow tasks to be completed where social distancing can be challenging. Longer working hours may also be needed to facilitate social distancing in the wider community, for instance by reducing pressure on public transport. **It might be necessary to start work earlier in the day or work until later in the evenings.**

However, many construction sites in England are subject to controls which restrict their hours of operation. These controls include planning conditions, which might directly restrict working hours or which might restrict working hours through a Construction Environmental Management Plan (CEMP). These conditions may be necessary, for example, to make the development acceptable to local residents and businesses who might otherwise suffer from traffic, noise and other local amenity issues.

The purpose of Robert Jenrick's Written Ministerial Statement and subsequent guidance from Government can be viewed on the [GOV.UK coronavirus update page](#).

The changes are to be implemented with immediate effect. Local planning authorities are expected to take a swift and positive approach to requests from developers and site operators for greater flexibility around construction site working hours. This is to ensure that, where appropriate, planning conditions are not a barrier to allowing developers the flexibility

necessary to facilitate the safe operation of construction sites during the response to the COVID-19 pandemic and to proceed at pace with work otherwise delayed as a result of COVID-19.

The National Planning Policy Framework already emphasises that planning enforcement is a discretionary activity and local planning authorities should act proportionately in responding to suspected breaches of planning control. The Enforcement Plans that have been adopted by Malvern Hills and Wychavon district councils already reflect this approach.

Where only a short term or very modest increase to working hours is required, the Government expects local planning authorities to have regard to the reason for the condition and to their legal obligations but not seek to undertake enforcement action unless it is absolutely necessary.

Where developers require longer term or more significant changes to working hours, they should approach the local planning authority to seek agreement on relaxations and where necessary temporarily amend a condition or a construction environmental management plan in the usual way. In doing so, it will be important for applicants to consider potential impacts and, where necessary, to put forward brief plans to manage concerns, drawing on existing good practice. In return, local planning authorities should respond speedily and sympathetically and engage positively with applicants to find solutions. Local authorities are expected to prioritise these written requests/ applications and give early clarity on the acceptability of extended hours to developers. They should ensure that decisions are issued quickly and wherever possible provide a decision within 10 working days.

In allowing greater flexibility, the Government recognises the need to mitigate the impact that any temporary relaxation of working hours could have on local residents and businesses. Requests to extend working hours should be proportionate and should **not** involve working on Sundays or bank holidays.

Government guidance suggests that local authorities should not refuse requests to extend working hours until 9pm, Monday to Saturday **without very compelling reasons** for rejection. 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.

Lastly, the Government has said that any informal agreement between the local planning authority and developers or temporary changes to construction working hours conditions granted by local planning authorities should **not** extend beyond 13 May 2021.

## **Procedures**

All written requests for relaxations to working hours conditions should be submitted in writing to [developmentcontrol@malvern hills.gov.uk](mailto:developmentcontrol@malvern hills.gov.uk) for sites within Malvern Hills district and [planning@wychavon.gov.uk](mailto:planning@wychavon.gov.uk) for sites within Wychavon district.

A written request should include the following:-

- The reference number of the planning permission issued by the LPA or appeal decision
- The number of the condition the request relates to
- The nature and extent of the relaxation being requested, including end date.
- Details of any additional mitigation measures that will be put in place if the request is agreed.

- The reason for the request having regard to the reasons the Sec. of State issued his Ministerial Statement. You should clearly explain why the request is necessary to facilitate safe working , allow tasks to be completed where social distancing can be challenging and / or how coronavirus has impacted on the delivery of a site and therefore why the buildout rate needs now to be stepped up.
- The communication arrangements that will be put in place to ensure that there is an open dialogue between the developer/site manager and local residents and businesses including whether the developer is a member of the considerate constructor scheme or similar.

On receipt of the written request it will be allocated to a planning officer for consideration and the case officer will consult the relevant local ward member(s), seeking their views within 5 working days. The councils will endeavour to provide a written response to the developer within 10 working days.

Will the councils consult the public?

Because the LPA will be able to withdraw any informal agreement if problems do arise and it is considered reasonable and necessary to do so, the LPA will not consult the public on requests to relax working hours conditions that are being dealt with informally as opposed to by way of a s73 planning application. Given that the Government expects LPAs to make decisions within 10 working days it would be impractical to notify/consult the public and the delay this could cause may undermine the Government's purpose in issuing the Written Ministerial Statement and related guidance.

In most cases, requests for relaxations allowing for working on site later than 9pm will need to be dealt with as a formal planning application under s73 of the T&CPA.

Where a request is for a short term relaxation (less than 6 months) and a very modest increase to working hours (incl requests that do not involve start times earlier than 7am or finish times after 9pm) the council will where appropriate deal with these by way of informal agreement by letter.

Where a request is approved, the letter from the council will advise the following:-

1. The informal agreement end date (This will not go beyond 13 May 2021)
2. That if the council receives complaints about extended working hours and the issues raised cannot be resolved quickly to the satisfaction of the LPA, the informal agreement may be ended
3. If the council intends to end any informal agreement, the council will endeavor to give the developer at least 48 hours notice. Where informal agreement is withdrawn, enforcement action may be taken against any future breaches of the condition(s).
4. The developer will be expected to communicate directly with local residents and/or businesses that might be affected by extended working hours to establish open lines of communication so that if any problems do arise, the developer can respond and resolve the issues quickly.

Where a request for a relaxation to a working hours condition is declined, the LPA will explain the reason(s) for this. In such cases, a developer may still choose to submit a s73 application.

## **Worcestershire Regulatory Services (WRS)**

Please be aware that WRS already operate a method of controlling unsociable working activities through its Construction and Demolition Guide where a consenting process can be initiated with a developer, agreeing working methodologies and noise/light impact controls which may be put in place on a temporary basis (see site variation consent form at the end of the guide). Some developers will already be familiar with this document. WRS has used this method of control for many years now where development takes place next to sensitive receptors, and this may be a means of accommodating the wishes of government and industry whilst maintaining a balance of control and amenity to local residents without the need to modify existing planning consents. Working example of a consent can be seen here : -

<https://worcsregservices.gov.uk/pollution/national-infrastructure.aspx>

<https://worcsregservices.gov.uk/pollution/planning-and-pollution.aspx>

*Please note:- If you are an developer implementing a planning permission that contains a planning condition restricting working hours or requiring a CEMP, you are still encouraged to contact Planning Services at the relevant district council with details of the relaxations to the condition(s) you wish to be considered.*

I trust this advice is clear, but if you have any questions about the way the councils are dealing with such requests, please contact Planning Services tel. 01684 862221 or email [developmentcontrol@malvern hills.gov.uk](mailto:developmentcontrol@malvern hills.gov.uk) or [planning@wychavon.gov.uk](mailto:planning@wychavon.gov.uk)

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