

24th April 2020

THE TOWN AND COUNTRY PLANNING (MISCELLANEOUS TEMPORARY MODIFICATIONS) (CORONAVIRUS) (SCOTLAND) REGULATIONS 2020
(“the CV Regulations”)

Dear Members of the Local Government and Communities Committee

Thank you for inviting Planning Democracy to comment on these temporary modifications to planning regulations.

Planning Democracy is a national charity, established in 2009 with the aim of strengthening democracy by promoting a stronger public voice in the Scottish land-use planning system.

Our comments are as follows:

General comments

We understand too well the pressures that the current lockdown places on people and businesses. However, the situation can be considered an opportunity to build on what is already happening around the country with regard to greater understanding and use of online tools and applications allowing remote participation in meetings and events. Many people have embraced technology to overcome the constraints placed on them. We understand that some planning consultants are conducting public consultations using video-conferencing software to interact with a wide variety of users, and we welcome their proactive approach. The Government have spoken about their commitment to “pioneer digital transformation in public services” with regard to planning. The current situation can be helpful in driving forward this transformation.

The CV Regulations, as laid before Parliament, are a missed opportunity to grow public engagement and improve its quality. Instead, the Government appears to have taken the easy option to reduce public engagement, albeit temporarily, and renege on democratic commitments. We believe our specific comments below illustrate this.

We understand that the CV Regulations come into force today, and that, if members of the LGCC agree with our comments below, your only option is to move to annul them, rather than amend them. Understandably this puts the members of the LGCC in a very difficult position. This could have been avoided if Planning Democracy, or Planning Aid for Scotland, or indeed any third sector organisation had been consulted in advance by the Government.

We understand that the urgency of the situation made a full public consultation impractical, but we are disappointed to read, on page 4 of the accompanying policy note that you kindly sent us, that the Government found time to consult bodies representing the development and construction industry, such as Homes for Scotland and the Scottish Property Federation, but no third sector or community

organisations. This once again emphasises the power and closeness of the industry to Government. Maybe it was thought that the community sector might be too pushed to respond at such a time, particularly as it seems the community sector is very much stepping up to the mark in responding to community needs in the current climate. However, including the community sector in initial discussions might have gone some way to dispelling the inevitable public suspicion surrounding new regulations or relaxations of rules, whether warranted or not.

The policy note states: "*With a longer timescale, and in normal circumstances, it might have been possible to develop and consult upon an alternative statutory requirement which works for applicants and the public.*" This is a tacit admission that the route chosen works for applicants – as no doubt encouraged by the housing industry representatives – but does not work for the public.

Specific Comments

1. Pre-application consultation with communities

Regulation 2 of the CV Regulations removes the duty on applicants for major and national developments to hold a public event, before submitting their planning application, for the benefit of the local community - not just during the emergency period, but for the 6 months following it too.

The Government expects "*prospective applicants to carry out alternative online engagement*" and has now issued guidance on what it expects developers to do instead, using web-based approaches. The guidance also alludes to planned future "*improvements to the pre-application process, such as the introduction of a mandatory second public event*". As stated above, Planning Democracy fully supports the use of technology to broaden public engagement and, going forward, might support use of web-based approaches for the proposed second public event.

However, we object to the replacement of a statutory requirement with a mere 'expectation' to conduct alternative online engagement. An expectation is not enforceable, and is therefore open to abuse by unscrupulous developers, creating a risk that no pre-application consultation event will be held at all.

It would be far preferable, in our view, to **leave the requirement in place and provide (through regulations or guidance) that it must be fulfilled, during the emergency period, by holding the public event online.**

We acknowledge, as the policy note implies, that an online event will not be accessible to all, but it is better than no public event at all.

The policy note hints that such an approach to the problem of avoiding face-to-face gatherings was possible. It says: "*A requirement to hold a public event runs contrary to the current ban on public gatherings. It is not clear that the current planning legislation would extend to holding an alternative that would avoid such contact, such as a 'virtual' public event*" (emphasis added). What the CV Regulations could have done was to clarify that it does, in the way we suggest above.

This would have provided the regulatory pressure for developers to use easily available, widely used technology to deliver public engagement, making the best of a very bad situation. Instead, developers will effectively be free to ignore government expectations, with no fear of reprisal.

2. Local review bodies

Regulation 3 of the CV Regulations removes the duty on local review bodies (LRBs) to meet in public.

We understand that the public may only watch, but not participate in LRB meetings, so the impact of this amendment could be less significant for public engagement. However, the purpose of the existing rule is to guarantee transparency of LRB proceedings, which is also an extremely important democratic principle. In our view, again, what the CV Regulations could and should have done was to **clarify that the requirement for LRBs to meet in public could be fulfilled, at least during the emergency period (if not afterwards too) by broadcasting their meetings online.**

The DPEA now webcast public local inquiries and Reporters have found this to be of use, and it also allows members of the public to attend when normally they would not. The process was not particularly problematic and is a good example for local authorities to copy.

Additional potential changes

Planning Democracy also has concerns about some of the other proposals put forward in the Chief Planner's letter to Heads of Planning of 3 April 2020, particularly regarding changes to local authorities' schemes of delegation, to rules on neighbour notification, and to rules that allow public attendance at local government meetings (the last of which have already been altered by the Coronavirus (Scotland) Act 2020), but we understand the LGCC needs to focus on the CV Regulations in the immediate term. We will write directly to the Chief Planner to raise these separate concerns (and repeat the concerns above).