

SCOTTISH GOVERNMENT GUIDANCE: COVID 19 EMERGENCY AND PRE-APPLICATION CONSULTATION AND REQUIREMENTS FOR A PUBLIC EVENT.

1. The COVID-19 emergency means it is not currently possible to hold public meetings without unacceptably posing a significant risk to public health. So that the development management system can continue to function and that planning applications can continue to be submitted, we have put in place legislation to temporarily suspend the requirement for a public event in relation to Pre-Application Consultation (PAC).
2. This note provides guidance on both the effect of the Town and Country Planning (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2020, which makes that temporary suspension, and on alternative online consultation.

Temporary suspension of the requirement for a ‘public event’

3. The existing legislation relating to Pre-Application Consultation (PAC) on proposals for major and national developments require that a ‘public event’ is undertaken as part of the developer’s engagement with the community. An application for planning permission for such developments cannot be made to the planning authority until the PAC requirements, including the public event, have been complied with. In light of the current ban on public gatherings and advice on social distancing, we recognise that it is not possible for such events to take place in person at present.
4. It is important that the planning system continues to function during this period. Where it is possible to submit and to assess and determine applications, keeping projects on track will be important to supporting our future economic and societal recovery, businesses and jobs and avoiding delays to necessary infrastructure, housing and other developments.
5. The Town and Country Planning (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2020 therefore suspend temporarily the requirement for a public event. They come into effect on 24 April 2020.
6. This suspension will apply where:
 - the Proposal of Application Notice (PAN) relating to an application was or is submitted prior to the end of the emergency period¹ (including if it was submitted before the emergency period began), and
 - the application for planning permission itself is made within 6 months following the end of the emergency period.
7. Those who served a PAN including the statutorily required public event, or other voluntary consultation steps that would now no longer be viable in light of the COVID 19 public health policy, prior to the amendment regulations

¹ The Coronavirus (Scotland) Act 2020 currently specifies this as 30 September 2020, although this can be made earlier or later by virtue of regulations.

coming into force, do not need to serve a new PAN specifying alternative approaches. Those prospective applicants should instead conduct alternative means of online engagement (see paragraphs 17 - 25 below).

8. The change to the regulations removing the requirement for a public event does not in itself suspend or alter any additional step, beyond the statutory minimum, that has already been required by the planning authority in response to a PAN². Where, however, such an additional requirement could not be complied with due to the current public health policy on public gatherings and social distancing it would, in the circumstances, be open to a planning authority to consider withdrawing that requirement. This could be done without the service of a new PAN, though the prospective applicant and planning authority are advised to keep a written record of any such change.
9. In relation to any new PAN, the planning authority still has 21 days from receipt of the PAN to require any additional consultation steps beyond the new statutory requirements. In doing so, careful consideration must be given to what additional steps are possible given the current public health policy requirements.
10. The temporary suspension of the requirement for a public event does not reduce the Government's commitment to early engagement in relation to major development proposals. We expect prospective applicants to replace this requirement with alternative consultation measures instead, using web based approaches – see further guidance below. We have committed within our planning reform programme to enhance community engagement in planning; including improvements to the pre-application process, such as the introduction of a mandatory second public event. That commitment remains and we will continue to make progress on this for future implementation.

Remaining PAC Requirements and changes

Proposal of Application Notice (PAN)

11. Other than the public event, the other PAC requirements still apply during this current emergency. That is, the prospective applicants will still be required to:
 - place a newspaper notice indicating how to engage with the pre-application process (see paragraphs 13 - 15 below)
 - serve a PAN³ on the planning authority; and,
 - serve a PAN on the community councils whose area covers or adjoins the proposal site (as part of the requirement to consult such community councils)
12. That PAN must contain:

² Section 35B(7) of the Town and Country Planning (Scotland) Act 1997 allows the planning authority to respond to a PAN within 21 days of receipt requiring additional pre-application consultation steps.

³ In the current emergency, where possible, prospective applicants should look to serve these on planning authorities, community councils or other parties electronically.

- (a) a description in general terms of the development to be carried out,
- (b) if the site at which the development is to be carried out has a postal address, that address,
- (c) a plan showing the outline of the site at which the development is to be carried out and sufficient to identify that site,
- (d) details as to how the prospective applicant may be contacted and corresponded with, and
- (e) an account of what consultation the applicant intends to undertake, when such consultation is to take place, with whom and what form it will take.

Newspaper Notice

13. A newspaper notice will still be required, though the required content during the emergency will be:

- (i) a description of, and the location of, the proposed development;
- (ii) details as to where further information may be obtained concerning the proposed development (including online⁴);
- (iii) a statement explaining how, and by when, persons wishing to make comments to the prospective applicant relating to the proposal may do so; and
- (iv) a statement that comments made to the prospective applicant are not representations to the planning authority and if the prospective applicant submits an application there will be an opportunity to make representations on that application to the planning authority.

14. **In addition to this**, and instead of the details of the public event, this notice needs to give an indication of the alternative consultation arrangements and how and when they will operate, and how to find out more information in that regard, including online.

15. With regard to items ii) and iii) in paragraph 13, these requirements, around accessing information and allowing comments to be made by a specified date, still apply **in addition** to any online alternative to a public event (see paragraph 21 - 24). This 'one way' submission of comments, is intended to run for a longer period for those not attending a public event – running from the date of the newspaper notice.

16. In the absence of a public event, and in the current circumstances, prospective applicants should check to see what advice or assistance planning authorities may be able to give in raising awareness of alternative consultation measures. Similarly, community councils may also be able to assist with this, and may have views, which prospective applicants can consider, on how information could best be conveyed to them as part of any

⁴ Added by the Town and Country Planning (Temporary Miscellaneous Modification) (Coronavirus) (Scotland) Regulations 2020.

consultation. Responsibility for conducting PAC rests, however, entirely with the prospective applicant.

Alternatives to a ‘Public Event’

17. There is no statutorily specified alternative to a public event during the period of the COVID 19 outbreak but Scottish Ministers expect prospective applicants to propose reasonable alternatives based on the information in this guidance (see paragraphs 18 – 20 and 25 below). Planning authorities retain their ability to require additional consultation steps to those specified in legislation (see paragraph 9).

First steps

18. As indicated in paragraph 16, it is recommended that prospective applicants, before serving a PAN, check to see whether planning authorities and community councils can advise on, or assist in, raising awareness of PAC in the absence of a public event. That may influence how they develop their consultation package.

Approaches

19. The intention is to find alternative ways to enable the exchange of views that would otherwise be achieved by face to face interaction. That is, it is not considered sufficient for alternative consultation to allow only ‘one way traffic’, with those submitting views not seeing a response until the application itself is made with a PAC report.

20. The following is what the Scottish Government would expect to see as a minimum temporary substitute for a face to face public event:

- Information hosted at a central, free, publicly accessible web location (the choice of additional platforms as routes into this location is for the applicant). This information must:
 - i) set out the pre-application consultation steps being undertaken, the location of information, how to engage and time limits;
 - ii) identify the location of the development site
 - iii) present the proposal for the site; and
 - iv) be as user friendly as possible.
- Live and interactive web-based consultation – for example, this could be at least one event of 2 – 3 hours duration with live question and answer session and link to other online opportunities for the public to make comment, ask questions and receive responses (in case they prefer not to comment during live events). It is expected that any such time-limited online sessions would need to be scheduled to facilitate public participation.

Notes

- (1) The central web location for the information in the first bullet and the details of the live event(s) in the second bullet should be referenced in the newspaper notice and in any other awareness raising measures.
- (2) It is expected that any online consultation undertaken by prospective applicants would comply with current Data Protection obligations.

In relation to the published information (first bullet above):

- (3) A member of the public must be able to access the information and engage in this minimum level consultation through one route, i.e. while different platforms and online tools could be used to raise awareness of the consultation, different elements of the information should not be scattered across platforms.
- (4) Ideally, members of the public should **not** be effectively required to join or sign-up to a particular website/forum to access the information (for example, a social media platform).
- (5) The information should be able to be read at whatever pace the person accessing it requires, downloaded and printed.
- (6) The public should be allowed a period of not less than seven days to submit questions or views electronically.
- (7) The prospective applicant must respond⁵ to questions or requests for clarification and allow for any further reply in that regard. This can either be during the consultation period mentioned in the previous bullet, or the prospective applicant should indicate a later date when such response will be made and a period thereafter (being not less than 48 hours) for any final comment.

The other requirements on making information available and allowing comments

21. It should be noted that paragraph 20 relates primarily⁶ to a replacement of the public event – the two way exchange described in paragraph 19. Prospective applicants are **also** still required to make information available to the public, which can be online, and allow comments to be submitted to them by a specified date - the ‘one way’ submission of views outlined in paragraph 15.
22. As both of these forms of engagement: i) the alternative to a public event and ii) the making available of information and ability to submit comments, will likely now be conducted online, there is a risk of a blurring of the two.
23. It is important however that there is still a longer period than the recommended minimum for the alternative to a public event, during which the

⁵ It is appreciated that some requests, as opposed to questions about alternatives considered or seeking clarification, will not necessarily be able to have a full response during PAC.

⁶ Notes (1) to (5) apply to any information online as part of PAC.

public can access information on the proposals and submit comments, albeit without necessarily getting a response in advance of the application and PAC report. Although we have not previously specified a period for this, having now done so for the alternative to a public event, during the emergency period that longer period should be at least 21 days from the placing of the newspaper notice.

24. It would be up to the prospective applicant whether they simply extended the period of the measures listed in paragraph 20 for at least 21 days, or ran distinct procedures in parallel or consecutively (i.e. information online and the ability to just submit comments for at least 21 days, and a separate process running for at least seven days in which there was a two way engagement).

Additional consultation

25. The following suggestions are ways in which prospective applicants could build on this minimum, depending on resources and capabilities of the parties involved:

- Have an online video presentation or hosted slideshow to help explain the proposals and support basic online content;
- Provide FAQ's and answers in addition to any individual responses.
- Have additional telephone access opportunities for Q&A, particularly with those who do not have internet access in mind. Any such contact numbers and timing should be indicated in the newspaper notice and other awareness raising measures. Calls should ideally be free but not more than local rate calls.
- Where these parties are able and willing to assist in raising awareness of the consultation, send links to the online material to planning authorities and community councils and other community groups.

Learning from Experience

26. It would be useful to have any feedback as regards the use of online approaches to pre-application consultation, as community engagement is one area we are looking at extending as part of the work in relation to implementation of The Planning (Scotland) Act 2019.

Scottish Government
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