

CORONAVIRUS: ADVICE FOR DEVELOPERS

We look at the main effects the coronavirus outbreak is having on commercial and residential development.

The property sector, like the rest of the economy, is currently defined by uncertainty surrounding the coronavirus outbreak. Although nobody can say with absolute confidence what is coming, the development team at Thrings can help make sure you are in the best possible position for the future.

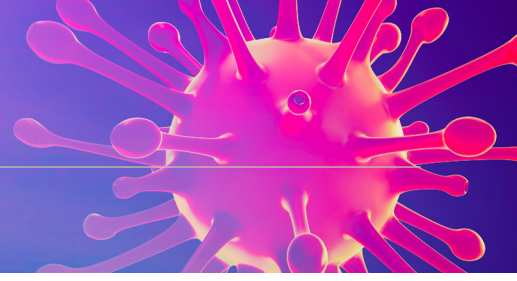
PLANNING

Planning applications and development processes are facing delays, with local authority planning committees being postponed and workforce disruption due to planning officers working from home or self-isolating.

England's chief planner, Steve Quartermain, has made it clear that the government expects local authorities to adapt the planning process to meet the challenges of coronavirus and keep to statutory timescales. This includes an encouragement to make more decisions by delegated authority.

To keep the planning system moving, the Coronavirus Act 2020 empowers the Secretary of State to make regulations to relax the existing requirement for committee meetings to be held in person. These regulations allowing virtual planning committees are expected to follow next week.

The planning provisions to date give a clear message that, while developers should expect delays in the short-term, local planning authorities will need to outline what they will do to move forward.



CONSTRUCTION SITES

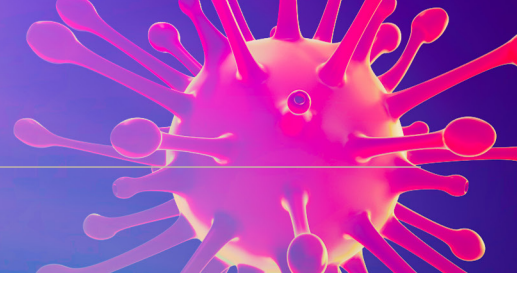
Construction sites across the country have seen a slowdown in activity, and there are calls for the government to stop all but essential infrastructure projects. Many contractors have stopped supplying workers as a way to protect their employees. This, and the fact that many workers are moving to agricultural and food production, means construction sites may find it difficult to operate even though the government has not asked them to close.

The variety of contracts used across the UK construction sector creates a number of potential ways contractors could seek project extensions or additions to the contract sum. It is clear that the vast majority of building contracts will be affected in some way by coronavirus, as the outbreak could qualify as a force majeure event that may entitle contractors to seek an extension of time. But, while suspensions are more desirable, it is also possible contracts will be terminated using force majeure clauses. However, this may depend on the timings of when the contract was signed and whether a coronavirus outbreak was foreseeable to parties at the time.

EXTENDING CONTRACTS

For developers, any delays could have significant impacts. You may have already invested in planning or you may need to complete your purchase within a set timescale. If you have entered into option or promotion agreements or conditional contracts, the development team at Things can review the contractual position to assess if it can accommodate any potential delays.

Both contractors and developers should look closely at their contracts to see what options they have. We can make sure you are taking full advantage of all the relevant provisions open to you. For example, in a JCT DB 2016 form of construction (which is used widely in the industry on larger projects), a force majeure event could entitle a contractor to request more time but not money. However, while a pandemic may be covered, force majeure events are not defined in the JCT itself. Government intervention in a construction project, such as lockdown, may have different ramifications.



NEC, FIDIC and PFI contracts will all take different approaches. Other provisions may entitle contractors to extensions or additional payment in the event that labour, materials or equipment is in short supply due to the outbreak, or if their access to a site is restricted due to government intervention. The Coronavirus Act 2020 gives the Secretary of State the power to introduce secondary legislation to suspend port operations, which if used will have an impact on overseas supply lines.

ECOLOGICAL MANAGEMENT

With fewer people out and about in the countryside and with less availability from hedging and agricultural contractors, optioned sites may well experience ecological gain. In addition, the restrictions on movement and non-essential travel may make ecological monitoring and studies unfeasible. This will have an impact on the planning process itself and the likely ecological requirements in planning permissions. Developers should review their option agreements to consider whether additional time will be needed to steer a new development through the planning system, including accommodating new ecology studies and measures. Dialogue with landowners about how sites can be managed over the summer may also assist.

PUTTING YOU IN THE BEST POSITION

The coming months are going to be hugely important for the entire property sector, and land developers and planners need to be as prepared as possible. Although nobody can predict exactly what the future holds, at Thrings we are here to support you by looking at your options and formulating the best strategy possible.