

A More Flexible Planning System?

Introduction

On 1st October 2009 some significant changes to planning legislation will come into force in England. These changes are designed to help kick-start the property and construction industry and remove some of the more frustrating aspects of the planning system.

The 2004 Planning Act reduced the life of a planning permission from five years to three, and removed the ability to extend an existing permission. Since then, many developers have struggled to implement schemes, especially in the current climate.



The Government has responded by introducing new provisions to two key areas of the planning system as identified below. Earlier this year, it also reminded all local planning authorities (LPAs) of their powers to allow a longer implementation period.

Extensions to Time Limits

The new rules would allow planning permissions for all developments permitted prior to 1st October 2009 and that are still live to be replaced by a new permission.

- An application for the extension of the time limit will not need to include either a Design and Access Statement or the approved plans or drawings
- Currently the fee for an application would be the same as the original submission
- New fee regulations are proposed, however. These have been the subject of limited but ongoing consultation, and a fee of £500 has been suggested for major applications (generally 10 or more dwellings or over 1,000 m² of new floorspace)
- Only one extension of time can be applied for with the expectation, if successful, that the LPA will give a further three year period to implement the replacement permission
- This is not a 'rubber stamping' exercise – LPAs will be examining material changes in circumstances which could include environmental issues, compliance with climate change policies, increased levels of affordable housing or financial planning obligations.

Amendments to Permitted Schemes

The legislation also introduces the ability to seek '*minor material*' amendments to schemes already granted permission where there is a condition that identifies the approved plans. Clearly this is not universal and in order to benefit from this developers and consultants should ensure that such conditions are in place on all new consents to be issued.

- This will be through an application to vary a planning condition. In order to seek approval a condition listing the plans must be attached to the planning permission
- The application would, in effect, seek to substitute the approved plans
- An initial fee of £170 will be payable until new fee regulations are issued
- The LPA has a statutory 8 week period to issue a decision
- Consultation will be undertaken in a similar manner to standard planning applications
- Again, LPAs are able to consider material changes in circumstances





DPP's view

On the whole we welcome the new proposals as they should help consented schemes, particularly those which are about to expire. Furthermore, the new rules could permit scheme amendments which are necessary to allow clients to respond flexibly to changes in the market.

These new provisions should therefore introduce some much needed proportionality back into the planning system following the ill-conceived changes brought about by the 2004 Planning Act.

There does however remain uncertainty over a number of the details, including the fee levels; the lack of definition of what constitutes a 'non-material' change; and the scope for different local authority interpretations of 'minor material' changes. The Government guidance note to accompany these changes will not be available until the at least the end of October.

In addition the ability to submit a request for the approval of 'non-material' amendments has been introduced.

- The term 'non-material' has not been defined and the Government is unlikely to clarify this within its forthcoming guidance note
- It will therefore be for the LPA to decide if the changes are non-material
- A fee of £170 will be required although no fee will be payable until the regulations have been made (anticipated later this year)
- The LPA will be expected to make its decision within 28 days
- Within that period a 14 day consultation exercise will be undertaken. The LPA will have to consult with statutory consultees although there is no formal requirement to consult local residents
- No new planning permission will be issued
- An appeal can be lodged against the non determination or refusal of any submission

DPP can provide advice and guidance on these issues and will negotiate with the LPA in order to establish the most appropriate mechanism for amending permitted schemes. We can also assist in ensuring that LPAs include a condition listing the plans on any decision notice and that they factor in sufficient flexibility in planning agreements to allow for future changes.

In this way DPP can help our clients by progressing any necessary amendments to existing permissions as expediently as possible, in accordance with the spirit of the legislation.

For more information and background to these changes, please speak to your usual DPP contact or call Mark Buxton:

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About DPP

DPP is a large independent town planning consultancy working in all development sectors. We have a comprehensive range of core planning skills, with specialisms in sustainability, urban design and masterplanning, together with heritage and conservation planning advice.

DPP has 35 years of experience and operates from a network of 10 regional offices throughout the UK and Ireland.

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