Planning Insight
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1 DEMOLITION & ENVIRONMENTAL IMPACT ASSESSMENTS

The Court of Appeal case: Save Britain's Heritage has clarified the position regarding demolition as "development". The position now is that demolition of buildings, which are listed, or in a conservation area or classified as a scheduled monument or that are not a dwelling house or adjoining a dwelling house are "development". As a result permitted development regulations apply. Therefore, demolition as a stand alone project will entail an application being made to the LPA to ascertain whether prior approval is required for the method of demolition. A prudent developer when making an application to the LPA should request EIA screening to be done at the same time.

Once the application for prior approval is submitted then demolition works can only take place once confirmation had been received from the LPA that prior approval is not required, or the LPA confirm that prior approval is required and grant that approval, or the LPA do not determine or notify you regarding their determination of the application within 28 days of submission of the application for prior approval.

The SAVE case also brought demolition of buildings within the ambit of the Environmental Impact Assessment Regulations in the category of Urban Development Project in Schedule 2 (and therefore subject to the thresholds set out for that category) and so, as a result, where demolition works are likely to have a significant effect on the environment by virtue of factors such as size, nature of location then the LPA must issue an EIA screening decision. If the demolition is deemed to be EIA then PD rights are lost and express planning permission would be required.

2 LOCALISM BILL – AN UPDATE

The Localism Bill has now completed its passage through the House of Commons. It is currently in the House of Lords with a line by line examination of the Bill currently taking place in Committee.

Whilst the debate and amendments to the Bill continue, the Department for Communities and Local Government have produced an updated Plain English Guide to the Localism Bill which is available at: http://www.communities.gov.uk/publications/localgovernment/localismplainenglishguide

The main amendment to the Plain English Guide is the inclusion of Annex A (pages 20-22) which provides some questions and answers about the Bill.

We will keep monitoring the Bill as it progresses through Parliament and, in future editions of "Insight", will inform you of any significant issues that arise during this process.

3 NATIONAL POLICY STATEMENTS

On 23 June the Department of Energy and Climate Change finalised the suite of National Policy Statements (NPSs) on energy in order for them to be debated in Parliament. There are 6 energy NPSs including an overarching energy NPS. The energy NPSs will form the background for decision making on individual applications for development consent for nationally significant energy infrastructure projects.

The date for the debate on the energy NPSs has not yet been finalised by parliamentary authorities but, assuming that Parliament votes for their approval, then the Government plans to formally designate them as soon as possible thereafter.

4 CHANGES TO PPS3

Two announcements from the DCLG have emerged that will be of interest to residential developers. Firstly, there will be a reclassification of domestic gardens so that they are no longer previously developed land ("PDL" or "brownfield land"). Secondly, and also with immediate effect, the minimum housing densities in PPS3 are abolished.

Whilst it is comforting to see the government tackling some perceived failings of policy most domestic gardens are specifically addressed within the development framework so that their classification or otherwise as PDL may only be of marginal significance.

Lastly, one of the more important messages of the revised PPS3 is that we must make efficient use of land. Many will see the removal of density targets as a good thing and a clear indication that we will move back to the traditional family homes with decent sized gardens whilst others will see it as another question mark over whether we can achieve the growth in housing numbers required whilst keeping in mind environmental concerns and perhaps more controversially, not releasing green belt land to

development.

5 HEALTH AND SAFETY EXECUTIVE V WOLVERHAMPTON CITY COUNCIL

What is a material planning consideration is a key consideration for local planning authorities when making planning decisions.

In this case the Court of Appeal held that in deciding whether to revoke or modify a planning permission under section 97 of the Town and Country Planning Act 1990, the Council was entitled to consider the effect on its own finances of having to pay compensation to the disappointed developer.

By way of background, section 97 authorises an LPA to revoke or modify a planning permission if they consider it expedient, having regard to the development plan and to "any other material considerations"

The Council refused to exercise its power under section 97 of the 1990 Act to revoke or modify a planning permission granted for four blocks of student accommodation located just 95 metres from a liquefied petroleum gas facility. Three of the blocks had already been constructed but the fourth, closest to the LPG facility, had not.

The Court of Appeal held that the Council, having consulted the HSE, must in the circumstances consider exercising its power to revoke the permission for the fourth block. The majority concluded that the Council could take into account the requirement to pay compensation under section 107.

Lord Justice Sullivan agreed that "material considerations" in section 97 must be consistent with the meaning in other parts of the Act (i.e. it must relate to the development). However he distinguished the position by stating that the decision to revoke planning permission is initiated by the LPA and in considering whether it is "expedient" to make the order the LPA must be expected to be familiar with the content of the 1990 Act as a whole.

Lord Justice Pill dissented, adopting the approach in Alnwick District Council v SSETR, who held that under section 97 "payment of compensation enters the picture only after a decision to revoke or modify has been taken". Pill LJ continued to say that "the development value of land, over and above the value attributable to existing use of the land, should be taken into public ownership"; it would be both inconsistent with the primacy of the development plan and unfair on individual landowners were the availability of public finances for compensation to be a material factor in deciding whether to revoke a planning permission.

In conclusion, this decision leaves the law on the materiality of compensation (for decisions under sections 97 and 102 of the 1990 Act) somewhat uncertain; as Longmore LJ noted, the matter "divides the acknowledged experts". In light of the clear division of judicial opinion, permission to appeal to the Supreme Court has been granted.

6 R (RENAISSANCE HABITAT LTD) V WEST BERKSHIRE DISTRICT COUNCIL

This case has provided further clarity as to when a local planning authority has to decide whether to enforce a section 106 obligation and/or refuse to accept a request to modify it in circumstances where it was contended that the obligation was no longer necessary to make the development acceptable.

This case concerned a developer's liability to pay contributions under a section 106 Agreement. The developer, Renaissance, entered into a section 106 Agreement in 2005, agreeing to make contributions to local infrastructure based on formulae in the Council's SPG. The developer implemented the permission, and sold the completed flats. In the meantime, the developer had successfully argued on appeals relating to other properties that the Council's formulae contained errors or resulted in excessive charges, and the Council changed its formulae in consequence. The developer paid certain sums due, but resisted the balance of £47,000 on the ground that if its contributions were calculated in accordance with the SPG in force as at 2010, nothing more would be due. The developer sought to quash the Council's decision to sue for the sums due on the ground that it was unlawful for the Council to bring the claim because the sums due would not be payable under the current SPG, and the claim would therefore not serve a planning purpose.

The claim was dismissed by Ouseley J. He held that it was lawful for the Council to claim the sums due because they were contractually payable. There was no need for the sums payable to have any connection with the development. Even if the developer had applied to modify the Agreement under section 106A, there was no need for the Council to show that the contributions payable served the same purpose as originally intended, or any purpose connected with the development.

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