SQUIRE SANDERS

PLANNING INSIGHT

April 2013

Renegotiating Section 106 Agreements

Last Autumn, the Department for Communities and Local Government (DCLG) published a consultation paper: Renegotiation of Section 106 planning obligations. The paper was intended to deal with the problem of a high number of stalled schemes in the residential development sector where planning permission had been granted subject to S106 of the Town and Country Planning Act (TCPA) 1990 requirements, but the permission had not been implemented. The onerous nature of S106 obligations, agreed in times when the property market was more buoyant, was seen as the main reason for many of the schemes stalling.

Acting on that consultation, the Town and Country Planning (Modification and Discharge of Planning Obligations) (Amendment) (England) Regulations 2013 (SI 2013/147) (operating by way of an amendment to the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992) came into force on 28 February 2013.

This provides that from 28 March 2013, applications can be made to the LPA to modify or discharge planning obligations entered into on or before 6 April 2010. The result of these regulations means there is no need to wait for the expiry of the usual five year period from the date of the obligation under section 106A of the Town and Country Planning Act 1990.

Planning obligations that were entered into before 28 March 2008 are not within these amending regulations and remain subject to the original rules found in section 106A and the 1992 regulations.

For planning obligations entered into after 6 April 2010, the relevant period continues to be five years.

Permitted Development Rights

DCLG announced four changes to the permitted development rights, which are intended to make it easier to bring previously developed land back into use.

The main focus of the new permitted development rights has been on the change of use of Office B1 (a) to Residential C3. The Government believes that this will make the best use of developed sites by allowing them to be quickly brought back into use, subject to seeking prior approval from the LPA. This also provides homes that the Government believes are badly needed to contribute to easing the national housing shortage. However, any associated physical development that would have previously required planning permission will still require permission.

A number of other proposals aimed at promoting regeneration are also proposed, including:

- **Bringing redundant agricultural buildings back into use**

  The changes permitted will be subject to size restrictions and the prior approval process, but would allow uses that benefit rural locations such as shops, restaurants, leisure facilities, small hotels and offices, but excludes residential.

- **Greater flexibility for business uses**

  Changes between business use under permitted development for B1 to B8 and B2 to B1 and B8 are subject to a size limit of 235 square metres, this will be increased to 500 square metres.

- **Bringing empty town centre buildings back into use**

  A range of temporary changes in use will be permitted for up to 2 years to contribute to the regeneration of town centres. The alternative uses available will included: shops A1, financial and professional services A2, restaurants and cafes A3 and offices B1.

Tewksbury Borough Council v Secretary of State for Communities & Local Government (28.02.2013) (Queens Bench Division) Administrative Court

The Administrative Court has upheld the decision of the Secretary of State to grant planning permission on two appeals for 1,000 new dwellings in Gloucestershire. Appeal A comprised a mixed use development including 450 dwellings. Appeal B was another mixed use development including 550 dwellings. The council argued that the Localism Act 2011 had placed the local community, acting by its planning authority, in the 'driving seat' when making decisions about the provision of housing and that the Secretary of State's decision was contrary to this policy change. The court held that although the Localism Act 2011 had made significant changes to the planning system, it had not brought about a fundamental change in the proper approach to planning applications so as to eliminate the role of the Secretary of State in determining such applications.

The court agreed with the Secretary of State that the most significant material consideration in the case was the housing land supply, where the requirement for a five year supply could not be demonstrated. The court expressly acknowledged the finding in the Inspector's report to the Secretary of State that even if both appeals were allowed and the developments carried out, there would still be a shortfall in the identified housing need for the area.

The court found no legal basis for a finding that the Secretary of State's decision was unlawful and further rejected the Council's claim that the grant of permission would prejudice the Council's emerging core strategy – indeed the original Inspector's report had criticised the Council's own delay in bringing the strategy forward.

Telford and Wrekin Council v the Secretary of State for Communities & Local Government and Growing Enterprises Limited (interested party) (29.01.2013) (Queens Bench Division) Administrative Court.

In 2002, Telford and Wrekin Council granted planning permission for a garden centre near Newport in Shropshire. Condition 19 of the permission stated that prior to the opening of the garden centre for trading, details of the proposed types of products to be sold should be submitted to and agreed in writing by the Council. The interested parties subsequently submitted the list but formal approval was never given by the Council.

In 2010, the interested party applied to the Council for a certificate of lawful use of development, to seek confirmation that the use of the site for any retail purpose within Class A1 was lawful. The Council refused the application. On appeal the Inspector held that, when properly construed, Condition 19 did not limit the retail use of the premises to that of a garden centre, nor that it would require the operator to only sell the products on the submitted list.

The Council appealed. It was held that the condition did not contain a prohibition on selling goods other than those in the list submitted by the interested party, it only required a list of products intended to be sold to be submitted to the Council. It was also commented that the Council were fully aware of the wording required in order to restrict the use of the site to a garden centre.

Nationally Significant Infrastructure Projects - Consents

Following consultation the DCLG is now proposing to establish a 'Consents Service Unit' within the Planning Inspectorate and to make the changes to streamline two sets of relevant regulations. This Unit would help applicants coordinate and negotiate the separate consents that will still be required. The intention is the relevant changes to regulations will come into effect and the new Unit will be operational from April 2013. The department has published a report on the responses to the consultation, containing these plans and intentions.

Note: amendments to the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010 will also come into effect on 6 April 2013.

Nationally Significant Infrastructure Projects - Consultees

The Infrastructure Planning (Prescribed Consultees and Interested Parties etc.) (Amendment) Regulations 2013 (SI 2013/522)

The purpose of this instrument is to amend the lists of bodies contained in five statutory instruments relating to the nationally significant infrastructure regime under the Planning Act 2008: (1) Infrastructure Planning (National Policy Statement Consultation) Regulations 2009 (2) Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (3) Infrastructure Planning (Interested Parties) Regulations 2010 (4) Infrastructure Planning (Compulsory Acquisition) Regulations 2010 and (5) Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011.

The lists prescribe bodies to be consulted or notified in a variety of circumstances during the process of applying for development consent under the Planning Act 2008.

At the same time changes to the Infrastructure Planning (Fees) Regulations 2010 come into effect, amending the definition of 'relevant day' in the context of the final determination of fees that an applicant must pay to the Planning Inspectorate.

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