

Planning & Development Newsletter

Planning Act 2008 – UPDATE



the planning process, these include:

- The right for planning inspectors to charge developers fees for planning appeals
- The power for local planning officers to determine some planning appeals
- The power for local planning authorities to make non-material changes to planning permissions
- A new requirement for policies addressing climate change to be included within Regional Spatial Strategies and Local Development Frameworks
- The power for the Planning Inspectorate to decide the means by which all Appeals will be processed
- The simplification of the Tree Preservation Order system

The intention of the Government in making these changes is to create a more open and efficient planning system. This in turn should lead to the delivery of key national and local infrastructure projects as efficiently as possible and enables the Government's housing targets to be met.

For further information on how the implementation of the Planning Act may affect you or your business please contact any member of our Planning Team and we will be more than happy to help.

Since our last Planning Newsletter and Autumn Seminar updates the Planning Act received Royal Assent on 26 November 2008. The Act will deliver two new planning regimes and make changes to the existing planning system.

Nationally Significant Infrastructure Projects

This relates to nationally significant development and construction projects regarding for example nuclear power stations and airports. Applications for Development Consent Orders will be decided by the newly created Infrastructure Planning Commission in accordance with policy documents known as National Planning Statements. National Planning Statements will establish the need for and requirements of the relevant type of infrastructure and can prescribe locations for certain infrastructure development. The first tranche of National Planning Statements are expected to be released in 2010. The intention is that the new regime will enable the Government to make major decisions in under a year. Whether any of this will see the light of day is up in the air as we approach a general election (see our article on page 2 titled *Turning the clock back*).

Community Infrastructure Levy

The aim is that the majority of development should contribute to local infrastructure through the payment of the Levy. The Levy will complement Section 106 Agreements, which will still be required for dealing with issues such as affordable housing.

Currently the Planning Act only provides an outline of how the Levy should work. Further regulations from the Government are not expected until October 2009, but are quite likely to be delayed. In the April Budget the Chancellor announced that the introduction of the Community Infrastructure Levy will be delayed until April 2010. Guidance has meanwhile been published relating to the definition of "infrastructure" and the requirements on the planning authority.

Changes to the existing planning regime

The remaining reforms within the Planning Act are aimed at streamlining

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April Budget and Planning

Chancellor Alistair Darling has announced measures within the Budget to stimulate housing development and boost capacity in the house building industry. The expectation is that such measures will deliver an additional 10,000 new homes.

£600 million in funding will bankroll the project, £400 million of which will be used to kick-start stalled housing developments through a mix of reducing up front costs and leveraging private finance. The funding for affordable housing will be increased, providing some £100 million for local authorities to deliver new social housing at higher energy efficiency standards.

A further £100 million has also been made available to support efforts to reduce carbon emissions by providing cavity wall insulation for existing social housing and community energy schemes which support housing development.

More protection for vulnerable households facing repossession has also been put forward through the extension of the Mortgage Rescue Scheme, which will now be available for those in negative equity who would be eligible for assistance from councils.

The Government is also working on a housing strategy that will be published later this year. The strategy

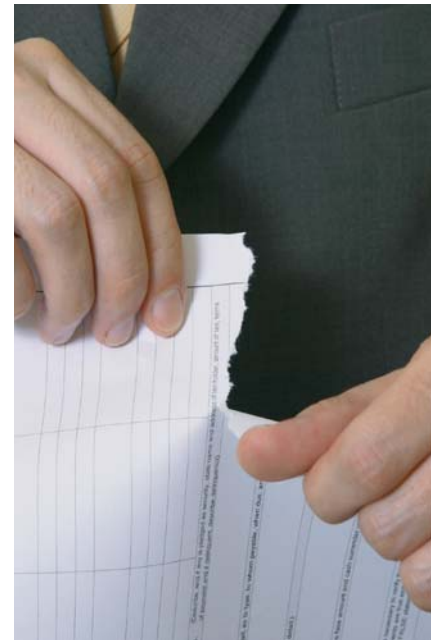
will focus on ensuring that there is sufficient land for development through housing allocations in local plans, and deal with other matters such as infrastructure and the supply of social and affordable housing.

Of more local interest were proposals contained in the Budget for two pilot schemes which will give councils in Greater Manchester and Leeds new powers to unlock potential for economic growth. Devolved powers will enable the councils to make strategic and economic decisions to increase jobs and skills training, and deliver more on housing and infrastructure.

Finally, the introduction of the Community Infrastructure Levy, detailed in the Planning Act 2008 Update article above, will be delayed until April 2010.

The impact of these measures remains to be seen. However, the Government's intention to stimulate development and increase both energy standards and the supply of affordable housing seem clear.

Turning the clock back under the Tories



All the betting is that we will have a Tory Government before the summer of 2010. In a recent policy paper (*No 9: Control Shift – Returning Power to Local Communities*) the Tories have indicated that they will turn the clock back on a number of recent reforms.

Most significantly the Tories promise to abolish all planning and housing powers exercised by Regional Authorities. That means no more Regional Spatial strategies. Also to be replaced, even before it has got off the ground is the accelerated procedure for major projects, the Infrastructure Planning Commission. Also to go are local plan inspectors' powers to impose decisions on local plans – reverting to the previous advisory system where the final authority rests with the local authority subject to National Policy Statements which will continue to apply. These are major reforms aimed at restoring local decision making taken away progressively by the current government. What effect it will have on housing land supply, particularly in areas of pressure can only be guessed.



The house within the barn

A Local Planning Authority has recently taken enforcement action over the construction of a two-storey house inside a barn at an isolated location in (the suitably named!) Whatstandswell, Derbyshire.

The owner of the land did in fact have planning consent for the erection of the barn, but no permission had been sought for the house. The house itself

was so well hidden that it was only through an anonymous tip off that Enforcement Officers become aware of the property.



It appears that the owner intended to occupy the house for a period of four years and then subsequently remove the outer barn and apply for a Certificate of Lawful Use. The owner would accordingly be taking advantage of legislation where no enforcement action can be taken by the Local Planning Authority if there has been an ongoing breach of planning control for four years consisting, as in this case, in the change of use of any building to that of a single dwelling house.

Unfortunately for the owner, a recent ruling regarding the well publicised case of the erection and occupation of a mock castle concealed behind plastic sheeting and straw bales has confirmed that the four-year period for planning exemption only starts when any shielding construction has been removed.

Unsurprisingly the owner has been ordered to demolish the house and barn.

This case highlights the dangers involved in commencing any form of development without obtaining guidance from either the Local Planning Authority or specialist professionals.

Renewing a planning permission that has got stuck in the credit crunch

One of the reforms of the planning system in 1994 was to remove the use of Section 73 of the Act to renew a consent that was running up to its time limit. If that is not done, the Permission lapses. Section 73 provided a straightforward route to replace the time limit condition. Now the intention is that the developer must make a full new application to secure a renewal, which will entail the preparing the full range of supporting documents. On top of that the default life of a planning permission was reduced to three years. The clock is ticking on many planning permissions where the market has fallen away. There is speculation that

the government may reverse some of these changes as a way of assisting the property industry. But there is a little known procedure which may be available under the Planning Applications Regulations of 1988 which were not amended in line with the changes to section 73. As long as the Authority agree the use of the procedure and the planning policies are essentially unchanged, this provides a simple cost effective procedure for renewal.

If you have an unimplemented consent coming up to its drop dead date, contact a member of the Rollits Planning and Development team.



Size does not matter for Tree definition

A recent High Court decision has provided a new legal definition of what constitutes a tree and what this means for tree preservation orders (TPOs).



The case focused on whether scrub, shrubs and saplings were protected by a TPO.

It was concluded that the TPO covered saplings and trees at all stages of their development. Mr Justice Cranston stated that "with TPOs there are no limitations in terms of size for what is to be treated as a tree. In other words, saplings are trees."

He added: "Moreover, a TPO for woodland extends to all trees in the woodland, even if not in existence at the time the order is made."

It was conceded within the judgment that there is no current statutory definition of a tree. This has accordingly led to various interpretations of the legislation which have suggested that size matters. However, this recent ruling confirms that there are no limitations in terms of size for what is to be treated as a tree.

Information

If you have any queries on any issues raised in this Newsletter, or any planning or development matters in general please contact: Mark Dixon on +44 (0) 1482 337286

This newsletter is for the use of clients and will be supplied to others on request. It is for general guidance only. It provides useful information in a concise form. Action should not be taken without obtaining specific advice. We hope you have found this newsletter useful. If, however, you do not wish to receive further mailings from us, please write to Pat Coyle, Rollits, Wilberforce Court, High Street, Hull HU1 1YJ.

The law is stated as at 1 May 2009.

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Planning for success

Rollits Planning Group comprising Mark Dixon, David Myers and John Downing have a wealth of experience in advising landowners and developers on all aspects of planning law and policy. From initial land appraisals, advice on the development control system through to conducting planning appeals and advising on enforcement action and CPOs, the team caters for the needs of regional and national house builders, public authorities, and private landowners.



Mark Dixon and David Myers