

Planning & Development Newsletter

Option and overage periods

The maximum statutory period for an Option Agreement may soon be abolished with the implementation of the Perpetuities and Accumulations Act 2009, which gained royal assent on 12 November 2009.



Currently, an option period can not extend beyond 21 years under the rule against perpetuities. Generally, this 21 year period also applies to payments made under Overage Agreements, though there is no strict authority to impose such a limitation. The new Perpetuities and Accumulations Act 2009 abolishes the rule against perpetuities removing any specific time limits for most kinds of land interest including options, and by implication overage.

The main provisions of the new Act have not yet come into force. It is anticipated that this will be around the middle of 2010. As expected, Option and Overage Agreements created before the Act comes into force will remain subject to the existing perpetuity rules as noted above.

Undoubtedly, the changes will allow for the creation of longer term contractual

arrangements and may also provide greater landowner and developer co-operation in achieving a planning permission and land sales. Equally, the longer life span of such agreements will give the landowner the ongoing ability to farm or otherwise use the land.

However, when reviewing such proposed changes from a different perspective a longer option period could also have negative implications for the landowner where their land is burdened for an increased amount of time and the developer no longer has the incentive to obtain the necessary planning consent within a limited period.

The impact of these changes will provide greater flexibility in certain contractual arrangements. However, there will be the potential for land to be burdened for a much longer protracted period as is currently permitted.



Planning appeal fees

The Planning Act 2008 has brought in a number of changes to the planning appeal system over the course of 2009. The most recent relates to part of the Planning Act that came into force on 1 October 2009, which allows the Planning Inspectorate to charge a fee for a planning appeal.

The Planning Inspectorate has not decided to instantly start charging an appeal fee. New Regulations will deal with specific aspects such as how the fee will be calculated and circumstances when a fee will not be required.

A timetable for the expected commencement of appeal fees has not yet been agreed. However, the Department for Communities and Local Government, in conjunction with the Planning Inspectorate, is formulating proposals on charging and will consult publicly prior to introducing appeal fees.

We will keep you updated as further information comes to light.

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Planning permission time limit extension

New regulations came into effect on the 1 October 2009, which allows for the extension of the life of a planning permission.

Under a new simplified procedure an application can be made for an extension of up to three years provided:

- the permission is still extant both on 1 October 2009 and on the date of the time extension application; and
- the development has not yet commenced.

The new measure will apply to all eligible consents, not just major development, and will cover both listed building and conservation area consents as well as outline permissions.

While applicants will be required to submit an application form they will not need to submit a new design and access statement, plans or drawings.

A new fee regime is currently being considered by Parliament, which would result in a one off fee for such applications calculated in reference to the type of development. It is proposed that the fee will be £500 for major developments (this



includes for example developments of 10 or more dwellinghouses, or where the site is greater than half a hectare), £50 for

householder developments, and £170 for other sizes of development. The approval and subsequent implementation of these fees is expected very soon. Until that date the current standard fee for a new planning application will be charged.

Unfortunately, there is no guarantee that an extension will be granted as the application will still be dealt with in broadly the same manner as any new application for development with the ultimate decision being at the discretion of the Local Planning Authority. So, for example the application may be affected by changes in planning policy since permission was first obtained, which could now lead to refusal.

Overall, the impact of this time limit extension remains to be seen. Indeed, the general consensus seems to be that it would be preferable to wait to make the application until Parliament approves the new cost schedule as this may make such applications substantially cheaper than the cost that is currently imposed.

The real question is how the Local Planning Authority will deal with these applications, and only time will tell on this.

Commencement of development

The point when development has commenced can often be very important, as it is this that will implement the planning permission and in so doing retain a valuable asset.

Clearly, the point whenever any development starts must be after all pre-commencement conditions are satisfied with the Local Planning Authority. Failure to do this can result in enforcement action or even affect the validity of the planning permission.

A definition as to what constitutes the commencement of development is provided in statute. The development shall be taken to commence on the earliest date on which any "material operation" comprised in the development begins to be carried out.

The term "material operation" can mean any of the following:

- any work of construction in the course of the erection of a building;
- any work of demolition of a building;
- the digging of a trench which is to contain

the foundations, or part of the foundations, of a building;

- the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench;
- any operation in the course of laying out or constructing a road or part of a road; and
- any change in the use of any land which constitutes material development.

Case law has established a test to clarify the meaning of a "material operation". The test simply states that the amount of work carried out is not overly important, instead the operation must clearly relate to the planning permission involved. For example, in one notable case merely the pegging of an access road and the clearance of the topsoil was considered a "material operation". Accordingly, it is clear that the works don't always have to be extensive.

If you require any further assistance on what constitutes development or on the options available to the developer to show that the necessary works have been carried out then please don't hesitate to contact anyone from our Planning & Development Department.

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 01482 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.

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