

Planning & Development Newsletter

Proposals for an overhaul of the Judicial Review Process

The Prime Minister David Cameron announced on 19 November 2012 at the annual conference of the Confederation of British Industry proposals to reform the procedures for claims in judicial review.



Judicial review currently represents the only route of a third party challenge within the planning process to a decision of a Local Planning Authority. Such a challenge must be filed "promptly" and in any event not later than three months from the date of the planning decision.

A judicial review claim can only be brought if the court is satisfied that there are reasonable grounds for challenge and only then will the claim proceed to a substantive hearing. It is however possible to appeal the decision of the court if permission to proceed is not granted.

Judicial review proceedings often take a significant amount of time to conclude leading to high professional fees and delays and uncertainties in development.

Following the Prime Minister's announcement a Public Consultation has commenced which proposes to reduce the time period in which a judicial review claim can be brought to six weeks instead of three months. The Consultation also proposes reducing the number of appeals available if permission to proceed to a substantive hearing is not granted. The Consultation also refers to an increase in the cost of making a judicial review application.

An application for judicial review can be made under any of the following grounds:

Illegality

Where the decision-maker has not followed the law correctly and generally acted beyond what is permitted by law.

Irrationality

Where the decision is so unreasonable that no reasonable authority could ever have come to it.

Procedural unfairness

Where statutory procedures have not been followed.

The Consultation runs until 24 January 2013, although the effect of these proposals, within the planning system, is still open to debate. Of the 11,200 judicial review applications made in 2011 only 191 were planning related applications. The Government has referred to a 34.5% increase since 2006 in planning related judicial review applications but the numbers clearly remain low.

The real benefit could be in providing reduced time periods under contracts conditional on planning where the completion date cannot occur until after the notional judicial review period has expired and in reducing the potential for parties to use judicial review proceedings as a delaying tactic.

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The 2012 Autumn Statement

On 5 December 2012, the Chancellor of the Exchequer, George Osborne, delivered the Autumn Statement. Despite the rather bleak forecast for the economy and the slower than expected growth, a significant investment of £5.5 billion to support long-term private investment including new roads, science infrastructure and free schools was proposed. This includes the investment of £474 million in local infrastructure on a recoverable basis with around £60 million of this being made available to support infrastructure in a limited number of Enterprise Zones.

Approximately £225 million will be used to accelerate the delivery of large housing sites, supporting around 50,000 homes. Also, around £190 million of the funding will be used to “de-risk” public sector land and enable the quicker disposal of surplus sites for new homes. £100 million will also be provided to bring forward public sector sites for development.

The Statement also focusses on the progress made to date within the construction and development industries. Interestingly the Beverley Integrated Transport Scheme (with work noted to commence in 2013) is highlighted within the Statement as an example of progress in the provision of infrastructure.

The Statement referred to the Growth and Infrastructure Bill as well as the proposed changes to the permitted development rights (noted on page 3) as examples of measures intending to boost house building and the economy.

The Statement also noted that the publication of the National Planning Policy Framework in March 2012 has consolidated planning policy into a single document with a presumption in favour of sustainable development now at the heart of planning policy.

Proposals to extend the Nationally Significant Planning Regime and in turn increase the efficiency of the process (which was the subject of Public Consultation that closed on 7 January 2013) were also referred to in the Statement as was a new consultation on raising the screening thresholds on conducting environmental impact assessments.

The Government also reiterated its support for local authorities in using local development orders as a means of stimulating development and in creating locally funded Enterprise Zones.

The overall structure of the Statement focusses on protecting the economy, growth and fairness with the reform of the planning process representing a key element of “growth” within the economy.

Any positive stance in relation to development by the Government is obviously beneficial but whether the significant amount of changes lead to more confusion than actual confidence in the system is still open to debate.



Permitted Development Rights – changes and proposals

The Government has made it quite clear that there is a need for greater flexibility within the planning process and that the number of types of development requiring planning applications needs to be reduced to decrease the administrative burden on already stretched Local Planning Authorities.

The Government has accordingly introduced, and proposed a number of, changes to the permitted development regime which sets out types of development that does not require a planning application.

One such change came into effect on 1 October 2012 where it is now possible to change buildings used as shops, or for financial and professional services, to a mixed use incorporating up to two flats, and to revert back to non-residential uses, without the need to apply for planning permission. The intent is to provide greater incentives to building owners to convert vacant space above retail units into residential use.



The Government has also completed a consultation on proposals to permit the expansion of both residential and commercial premises without the need for obtaining planning permission. These proposals included:

1. increasing the limits for a single-storey domestic extensions from 4 metres to 8 metres (in depth) for detached properties and from 3 metres to 6 metres for all other houses;
2. increasing the size limits for extensions to offices, shops and professional/financial services establishments to 100 sq metres from 50 sq metres;

3. increasing the size limits for new industrial buildings within the curtilage of existing industrial premises to 200 sq metres; and

4. removing some prior approval requirements for the installation of broadband infrastructure.

All of the above are subject to conditions, which must be complied with in order to rely upon the permitted development rights.

The consultation ended on 24 December 2012 and the Government are analysing the submitted responses with a view to preparing new regulations early this year.

Growth and Infrastructure Bill

The Growth and Infrastructure Bill 2012-2013 was presented to Parliament in October 2012 and proposes a raft of measures intended to stimulate development.

The measures include:

1. The ability for a planning application to be made directly to the Secretary of State (The Planning Inspectorate) where the Local Planning Authority is placed in "special measures". This refers to Local Planning Authorities which are under performing. Whether or not a Local Planning Authority does fall within this category will be dependent on their track record in matters such as deciding applications on time and the number of decisions that have been overturned on appeal.

2. Where the development is subject to a Section 106 Agreement which includes an affordable housing requirement and this requirement is considered not economically viable then an application can be made immediately

to modify or completely remove the affordable housing obligations. This is of significant importance given that current law dictates that such an application cannot be made until five years after the Section 106 Agreement was originally completed.

3. The prevention of the submission of an application to register a Village Green where a planning application has already been submitted and subsequently granted or where the land is allocated for development under a Local Plan or Neighbourhood Plan. Furthermore, the Bill also provides the ability for a landowner to issue a formal statement to the Local Authority confirming that the land in question does not fulfil the criteria for the creation of a Village Green which can then be used to rebut future claims.



There remain a number of issues yet to be resolved regarding the mechanics of these proposals. A significant example of this relates to the precise details that will be used to ascertain whether a Local Planning Authority should be placed in "special measures". Indeed, the Planning Minister Nick Boles has told Parliament that the number of Local Planning Authorities that will be put in "special measures" might be no more than ten, which certainly suggests that this measure will have a limited impact.

Rollits' Planning & Development Team

Rollits' Planning & Development Team has a wealth of experience in the planning and development industry and have been involved in major redevelopment projects throughout the region. We are actively involved in local planning development and contribute, in an advisory capacity, to development masterplans and frameworks. Equally, we have represented parties at every stage of the planning process from the submission of a planning application to a challenge under judicial review and frequently prepare planning and infrastructure agreements that are required in order to obtain the necessary planning consent.

We act for major developers and landowners on land acquisitions and sales as well as promotion agreements and options and are in a unique position within the region to understand the requirements of all parties within any transaction.

We are always happy to discuss any issue that you may have and always seek to share our knowledge by putting on regular seminars from our offices in York and Hull. We have over the course of the past few months also presented papers to the RICS CPD conferences in Leeds and Cambridge and at the "Renewing the Humber" Conference discussing planning issues within the renewable energy sector.

Our team is made up of:

Mark Dixon

Mark is a planning lawyer with over 12 years experience of advising clients in the public and private sectors on all aspects of planning and property developments. He acts for several landowners, house builders, and commercial developers, and has considerable experience in site assembly projects, dealing with the acquisition, planning, infrastructure, and construction aspects of transactions.

He specialises in planning promotion through Local Authority LDFs; planning appeals; legal agreements; infrastructure agreements; drafting options and conditional contracts.



Pictured left to right: John Downing, Mark Dixon and David Myers.

David Myers

David started at Rollits as a trainee and joined the planning & development team upon qualification in 2008. He specialises in pure planning matters such as preparing and submitting planning applications, appeals and objections as well as advising on the planning elements of residential, commercial and industrial developments on behalf of landowners and developers alike.

David also has extensive experience in dealing with construction projects on behalf of contractors, employers and funders, which can include the preparation of Building Contracts, Professional Team Appointments and Collateral Warranties.

John Downing

John is a specialist adviser in planning and development law with extensive experience in development and construction matters in particular for the implementation of larger development schemes.

He has a wealth of experience in infrastructure agreements, construction contracts and development agreements. He has particular expertise in planning agreements and public inquiries, and acts for both private and public sector clients.

Information

If you have any queries on any issues raised in this newsletter, or any education 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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A list of members' names is available for inspection at our offices. We use the term 'partner' to denote members of Rollits LLP.