



PLANNING BULLETIN

CROWN IMMUNITY

The Crown's immunity from the need for planning permission disappeared on 7th June 2006. This was heralded in the 2004 Planning and Compulsory Purchase Act. There is a new Circular 02/2006 called "Crown Application of the Planning Acts".

The Crown has hitherto been immune from the planning system although most government departments have adopted a non-statutory planning process which has paralleled the statutory one.

There are, however, still to be some fundamental changes to the way in which development by, or on behalf of, the Crown is to be dealt with within the statutory planning process. Set out below are some of the key proposals which the current draft Circular and Consultation Paper sets out:

General

All development by or on behalf of, the Crown, which would normally require planning permission (or listed building consent) will now have to comply with the usual statutory planning process.

National Security

If there are issues of national security, the Crown may decline to disclose some details of the development. Details of how this could effect both the application and appeal process are set out in the Circular.

Urgent Development

A special procedure under Section 293A of the 2004 Act is set up to speed through the planning process for Urgent Crown Development. The Crown body has to certify that the development is both urgent and of national importance. The application is made directly to the Secretary of State. It is most likely to be used where it is likely that the LPA would refuse the application. An EIA is still required if it would normally have been required. Both the applicant and the LPA have the right to be heard at a local inquiry. The Secretary of State's decision is final, there is no legal challenge.

Permitted Development Rights

As well as applying the statutory PD rights to the Crown, there are additional PD rights on the Crown's operational sites. These include new small ancillary buildings, small extensions, minor improvements. Certain development for national security purposes will also be allowed under PD e.g. means of enclosure up to 4.5m and CCTV and associated lighting.

Use Classes Order

This is amended:

- **New Class CS2** for secure residential institutions enabling changes between the types of premises without the need for planning permission for a change of use. These include all the secure facilities of the criminal justice and immigration service. Two non-Crown uses have been included (secure local authority accommodation and secure hospitals). There are two types of institutions, first those that are concerned with preventing residents from leaving (prisons etc.), and secondly, those where security is concerned with preventing unauthorised entry e.g. military premises. It would therefore be possible to convert a barracks into a low category prison or detention centre.
- **Addition to DI Use Class.** Law Courts are added.

Enforcement

The Crown has hitherto been immune from enforcement action since it does not require permission. Under the new procedures the Crown will require planning permission but the Crown's 'immunity' from enforcement will still apply but by a different means. A LPA can serve an enforcement notice on the Crown (whether as owner or occupier) of the land. However, the LPA has no right to enter the land. The LPA also has to obtain the Crown's consent before taking any action to enforce a notice. This effectively means that there is no 'bite' in any enforcement proceedings.

Conclusions

There are numerous other detailed matters in the Circular and in the SI/282 (Application of Subordinate Legislation to the Crown) Order 2006.

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