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Proposed changes to permitted non householder development

Background

The Department of Communities and Local Government (DCLG) have published for consultation until 23 October a paper entitled 'Improving Permitted Development'. This consultation paper proposes to reduce the need to apply for planning permission for minor non residential development where there is no significant adverse impact on the amenity of the immediate surroundings.

The proposals in this consultation paper are based upon the Government's response in March 2009 to the Killian Pretty Review - see our CgMs spring 2009 newsletter. The Review highlighted that "obtaining planning permission for some minor non-domestic development can place burdens on business out of proportion with potential impacts." The review therefore recommended, and largely accepted by the Government, a series of planning related measures aimed to help business - especially in light of the recession.

The proposals in this consultation paper apply to England only and would be incorporated in an amendment to secondary planning legislation - namely the Town and Country Planning (General Permitted Development) Order 1995 (GDPO).

What changes to permitted development does the Government propose?

The Government proposes the following inter-related measures to help remove more minor non domestic planning applications from the planning system. The principal changes are highlighted below:

Changes to General Permitted Development Order to allow minor extensions /alterations to the following non residential land uses:

- Shops and A2 uses; to allow alterations and extensions to existing buildings of up to 50 sq metres, subject to a maximum of 25% of the existing floorspace, (whichever is the lower).
- Offices; to allow the extension of an existing office building of up to 50 sq metres, subject to a maximum of 25% of the existing floorspace and which ever is the lower.
- Universities/Colleges/Hospitals; new permitted development rights of up to 100 sq m for extensions to existing buildings and /or one new building per existing building and
- Schools and residential schools - to allow the extension and/or creation of one new building per existing building of up to 50 sq m - but not on playing fields.
- Industry and warehousing, research and development (B1, B2 and B8 uses); permission to extend existing buildings by up to 1,000 sq m up to a maximum of 25% extra floorspace and also the construction of one new building per existing building up to 100 sq m.
- Air conditioning units - to assess whether they should also be permitted development subject to defined limitations.

Prior approval regime

This is an intermediate planning tier of control and lies between the permitted development as given by the GDPO and the need for a full planning application. The process is that applicants notify the Local Planning Authority of the proposed development accompanied by limited information and then if the Local Planning Authority do not object with a prescribed period - for example 28 days, then consent is deemed to be granted.

The Government is proposing the adoption of this approach for the determination of:

- Shopfronts alterations which are not within conservation areas.

- Installation of external Automated Teller Machines (ATM'S).

Permitted development rights for hard surfacing

New permitted development rights of up to 50 sq m of permeable hard surfacing for shops, offices and institutional uses in response to mitigate flooding.

Assessment

These measures, if implemented, will help business by removing the need for having to spend time, cost and uncertainty for obtaining planning permission for minor developments where there will be no adverse impact on the environment and where it is in the public interest for them to proceed.

They should therefore to be welcomed and supported by developers, investors, landowners and occupiers in the commercial property sector.

However, the devil lies in the detail and, in particular, the interpretation of the proposed limitations to the permitted development. For example:

- There could still remain uncertainty as to whether the sought development does comply with the regulations and if unsure, applicants might either have to apply for a "Certificate of Proposed use or Development" or be informed by the Local Planning Authority that permission is still required - because they have interpreted the limitations in a different manner from the applicant.
- Similarly, third parties might press for enforcement action where they consider that the owner has wrongfully interpreted of the regulations and, if so, they might this could result in the Local Planning Authority for enforcement action.

The measures also cannot be looked at isolation. For example,

- The development might still require planning permission even though it complies with the new permitted development rights because the extensions/alterations (say to the external appearance of the industrial building by cladding, new entrance/windows) are "materially different" in their external appearance compared to the approved plans for the permitted development.

This issue is trying to be resolved by the Government by introducing complimentary

measures so as to make planning permissions more flexible - see our separate bulletin published in July.

There is then the overall problem of seeking to use amended GDPO so that "one size" fits all circumstances. However, there is the need to take into account site specific circumstances and local impacts when assessing all development proposals.

This problem is acknowledged by Government and therefore seeks to promote the take up of more "Local Development Orders" - where within a defined area (such as a large industrial estate or large hospital/university campus site) specified forms of development are locally as permitted.

Perhaps there could also be the wider use of the "prior approvals" regime to not just shop fronts and ATMs but also to other uses and in specific locations.

Contact

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