

Grand Designs?

Few will have missed the Channel Four programme "Grand Designs" in which the hapless self-build developer of a family house in the style of an American water mill on an Oxfordshire site found construction halted as a result of a threatened judicial review application by his neighbour. Planning practitioners will have spent much of the programme trying to work out where the problems lay as little was revealed, beyond references to agreeing levels verbally on site with the planning officer and procedural irregularity, seemingly at Planning Committee.

The recent case of "Buglife" (the invertebrate charity) also serves as a reminder of the importance for developers of seeking to avoid being in that position. Although Buglife ultimately lost in the Court of Appeal, the delay occasioned by its judicial review application frustrated the proposed redevelopment by Royal Mail of a brownfield site (a former power station). But it is the decision of the planning authority which is being challenged, so what can the developer do to prevent a judicial review? The answer, leaving aside the obvious requirement that the planning application and any supporting documents should be comprehensive, clearly presented and in full conformity with legislative requirements, is still plenty!

Suggestions would include:

- Check who the planning authority notifies of your application; if they miss anyone you consider relevant, ask them to consult, and if they do not, notify them yourself, ensuring you comply with the requirements;
- Check that the planning authority correctly advertises the application, if necessary;
- Read the Report to Committee once available; if it is prepared in advance of all consultation responses ensure it has not pre-judged the issues and that conclusions are "subject to" those responses, to be updated by a Supplemental Report or reported verbally at Committee;
- If the Report to Committee appears to omit key issues, or only a cursory consideration is given to an impact which bears more detailed reflection, raise the issue with the Report's author, even if the omission is in your favour and ask that the Report be supplemented by a further Report on this point or verbally expanded at Committee. The planning authority will want to avoid judicial review proceedings as much as you do;
- Consider consultation responses. If a neighbour indicates a desire to speak at Committee, check they have been invited to attend;
- Ensure standing orders are correctly followed at Committee; if it appears that someone who wishes to speak has been omitted, even if they are your opponents, speak up for them; if votes are not clear, seek clarification and a re-count if necessary;
- When (hopefully) agreeing the precise wording for the conditions on the planning permission do not ignore the "Reasons" part of the decision notice. Ask for sight of this and ensure that they are full and clear. Preferably these, and the draft conditions, will be clearly set out in the Committee Report, but planning officers are not always prepared to undertake this work in advance of the Committee decision. Encourage (and pester) them to do so wherever practicable!

Best of luck!

For further information please contact Andrea Bruce. Email: andrea.bruce@knightsllp.co.uk

Government Response to Killian Pretty report: a fuller picture

The Government published its response to the Killian Pretty report into improving the planning system on 5 March 2009. The emphasis in reporting has been on the proposals to extend permitted development rights including expanding the prior approval process for small scale commercial development.

However, the Killian Pretty report and the Government's response includes far more than this. The Response bears reading for an understanding of where the Government sees responsibility for improving the management of the development control process and for a reminder of where other guidance and projects impact on the Killian Pretty proposals.

For a summary of some principal matters included in the Response please visit our website at: www.knightsllp.co.uk/?? For those regularly engaged in planning matters a full reading of the Response is recommended.

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The Community Infrastructure Levy - update

Regulations to bring into force the Community Infrastructure Levy (“CIL”) have been delayed and the majority of local planning authorities say that they are unlikely to implement it.

The Planning Act 2008 (“the Act”), which received Royal Assent on 26 November 2008, includes powers to introduce the CIL. Section 206(1) of the Act says that “[a local planning authority] may charge CIL in respect of development of land in its area” (emphasis added). The introduction of the CIL by each LPA is therefore discretionary

The CIL would be set by local planning authorities (“LPAs”) in accordance with infrastructure plans, and would be an opportunity for them to recoup costs.

A recent survey of LPAs undertaken by Drivers Jonas has shown that at least 50% of the LPAs interviewed have no current plans to implement the CIL, and at least 10% say that they will definitely not be implementing a CIL. Some LPAs (at least 1%) denied having heard of the CIL.

Drivers Jonas say that it is not surprising that the majority of LPAs have no current plans to implement a CIL, taking into account that the secondary legislation has not yet been published, and has been delayed until the autumn. In the current economic climate, LPAs are unlikely to have the time or inclination to consider a levy when the regulations that would provide the crucial details are not yet available.

22% of LPAs who were surveyed indicated that they would implement a CIL now or in the future. Drivers Jonas comment that these LPAs could be either taking a positive approach and appreciating the benefits that the CIL would bring when the economic climate improves, or they could be desperate to raise monies by any possible means in the current downturn.

The 10% of LPAs who were surveyed and expressed no intention to introduce a CIL, are probably taking the view that the CIL is a tax too far on developers who are already struggling to cope in the economic downturn. Drivers Jonas note that imprudent implementation of a CIL would simply discourage development in particular localities, and have a detrimental effect on regeneration and economic growth.

The reluctance to adopt a CIL may also be attributable to confusion within LPAs about how the CIL would be incorporated into policy frameworks, and whether the LPAs could opt to continue to use section 106 agreements instead of a CIL if they so chose. There is also a view amongst LPAs that the CIL is another unwelcome layer of complexity to a planning system that is already complicated.

Although the government is indicating at present that the introduction of a CIL will be optional for LPAs, those who fail to adopt it could find that its introduction is indirectly imposed if their funding from central government is cut or restricted.

In the meantime, the DCLG says that it will consult on draft regulations in spring 2009, with a view to bringing in powers to charge the CIL in the autumn (October 2009 at the earliest). The DCLG says that more time for consultation and consideration will be required due to the current economic downturn. Originally, the DCLG had planned to introduce the CIL powers in spring 2009. In the meantime practitioners will be interested in the advice note published in early March by the Planning Officers Society “Infrastructure Planning and the Community Infrastructure Levy”.

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Heritage Bill put on ice in cold economic climate

The Heritage Protection Bill (“the Bill”) is one of a number which have been put on hold following the economic downturn.

The draft Heritage Protection Bill (“the Bill”) was published by the Department for Culture, Media and Sport in April 2008 and was based on the proposals set out in the Government White Paper, Heritage Protection for the 21st Century.

The Bill was intended to reform and to unify the terrestrial and marine heritage protection systems in England and Wales, and to replace provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990, the Historic Buildings and Ancient Monuments Act 1953 and the Ancient Monuments and Archaeological Areas Act 1979. It was also intended to replace the provisions in the Protection of Wrecks Act 1973 dealing with the protection of sites of historic wrecks.

The Bill was not included in the Queen’s Speech, which set out the Governments forthcoming legislative programme for 2009.

A joint ministerial statement made by Andy Burnham (Secretary of State for Culture, Media & Sport), Barbara Follett (Minister for Culture) and Baroness Kay Andrews (Parliamentary Under Secretary of State for Communities and Local Government) however stressed the Government’s ongoing commitment to preserving and protecting the historic environment, and to maintaining “the momentum built up since the publication of the White Paper in March [2007]”, promising a new draft Policy Planning Statement on the historic environment will be produced for consultation before Easter. This is intended to cover all aspects of the historic environment – the built environment, archaeology and landscape.

The government decision has disappointed building conservation experts. Dave Chetwyn, Chair of the Institute of Historic Building Conservation (“IHBC”), said that “We understand the gravity of the credit crisis, but after nearly a decade of hard work across the sector, we are hugely disappointed that the reforms contained in the Bill are, at least for now, on hold.”

English Heritage also expressed disappointment, saying that “It is disappointing, but understandable in the current economic climate, that Parliamentary time has not been found to take forward the Heritage Protection Bill at this time. However, we welcome the Government’s firm commitment to the Heritage Protection Reform programme already underway and to introducing legislation at the earliest opportunity”.

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