

Expiry of Permissions - New Provisions



headlines

- Published today, 'Greater flexibility for planning permissions: Consultation' sets out the government's proposals for changes to the planning system to allow the time limits for implementation of extant planning permissions to be extended and proposes a more proportionate approach to minor material amendments to development proposals once permission has been granted.
- Together the package of measures proposed will prove useful in what are very difficult economic times.
- In summary the package consists of:
 - Extensions to the time limits for implementing existing planning permissions: available via a new category of planning application
 - Encouragement to use s.73 of the Town and Country Planning Act 1990 to pursue minor amendments
 - A new system to pursue non-material changes.



Extensions to the time limits for implementation

As part of the process of reform to the planning system the Government removed the ability to extend the life of unimplemented permissions. The intention was to add certainty and encourage developers to build out rather than bank permissions. These reforms were never popular and mindful of the current economic circumstances the Government has finally bowed to pressure and begun a consultation to ease matters.

Therefore, in light of the economic downturn and the dramatic slowdown in the take-up rate of major schemes, the government is consulting on proposals to introduce a temporary system which will give planning authorities the power to extend the time limits for extant planning permissions for major developments (i.e. more than 10 houses, or more than 1000sqm of floorspace).

Local planning authorities have recently been reminded by Government that they have discretion under ss.91 and 92 of the Town and Country Planning Act 1990 to grant planning permissions for longer than the default period of three years, or for longer than the two-year default period for approval of reserved matters, if they are satisfied that there are good planning reasons for doing so. Therefore, this new procedure will only apply to permissions which were granted on or before the date on which it comes into force (i.e. 1 October 2009) and should only be required for a temporary period.

The new measures will allow one extension to the time limit per permission. It will not be possible to seek any changes to the terms of the planning permission itself, the description of the development and all other conditions must remain the same. As most s.106 agreements/unilateral undertakings are linked to a named planning application, there may be a need to consider a new obligation so that the new permission will be bound by the same provisions.

An application to extend the life of a permission will be made on the standard 1APP form, which will be amended for this purpose. Local planning authorities will be urged in making their decisions, to focus their attention on national and development plan policies and other material considerations which may have changed significantly since the original grant of permission, in particular on climate change.

In order to bring about these changes, an amendment to the GDPO is required and work is underway to have this done by 1 October 2009. However, there will be a lag in changes to the fee regulations of 2-3 months, such that until they catch up a full fee will be required, instead of what will be a £170 flat rate.

Minor material amendments

Following the recommendations considered in the Killian Pretty Review regarding the need for a more proportionate approach to facilitating minor material changes to development proposals, options for introducing a new procedure for making minor material amendments, or for using or adapting existing procedures have been considered. The report, 'Minor material changes to planning permissions', is published alongside the consultation paper.

The favoured option is to streamline and clarify the existing route under s.73 of the Town and Country Planning Act 1990 to allow changes to the conditions applying to existing permissions.

As we have been advising for some time now, planning permissions should generally impose a condition listing the approved plans, which can then be changed through a s73 application. This method has now been endorsed by Government.



Applications involving EIA developments will be required to undertake a new screening exercise.

The question of information requirements more widely, including design and access statements, will form part of the package of government responses to the Killian Pretty Review being consulted on later in the summer

Non-material amendments

Section 190 of the 2008 Planning Act introduces a new s.96A into the Town and Country Planning Act 1990, which sets out a simple mechanism by which non-material changes to existing permissions can be permitted through an application for a minor non-material amendment, on the standard application form.

It is set out in primary legislation that the local planning authority is required to have regard to the effect of the change, together with any previous changes made under this section, on the planning permission as originally granted, and that an application can only be made by, or on behalf of a person with an interest in the land.

Further matters will be set out in secondary legislation, via an amendment to the GDPO which will specify that an application for a non-material amendment will be required via the standard application form, and that decisions must be issued in writing. Unhelpfully the government do not propose to provide a definition of 'non-material'; this is a matter for local authority discretion.

Whilst the introduction of a formal procedure for such amendments might be helpful in some instances the need for such a procedure at all must still be questionable given that by their nature such changes must not be material.

The consultation ends 13 August 2009.

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