client - briefing

Growth and Infrastructure Act 2013

DLP BRIEFING NOTE 126

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Growth and Infrastructure Act 2013

The Growth and Infrastructure Bill received Royal Assent on 26th April 2013 and contains reforms designed to reduce the bureaucratic barriers to successfully creating economic growth and local jobs.

The main provisions of the Act with relevance to planning consist of the following:-

1. **Expansion of Permitted Development Rights**;
2. **A new formal process for the renegotiation of Section 106 affordable housing obligations;**
3. **Large-scale commercial applications to be determined by the Planning Inspectorate under the national infrastructure planning regime;**
4. **Applications for major schemes to be determined by the Planning Inspectorate where the local planning authority is poorly performing;**
5. **A limit to the amount of supporting information a local planning authority can require;**
6. **15,000 affordable homes from new capital funding and the infrastructure guarantee.**

(1) Expansion of Permitted Development Rights

New PD Rights come into force on 30 May 2013, the details of which are the subject of Client Briefing Note 127.

In respect of new PD Rights for householder extensions, which allow for a doubling in the size of single storey extensions, secondary legislation will be introduced shortly to provide for a 'neighbours' consultation scheme'. Homeowners who wish to use the new rights must inform the Council of their intent before development commences. The Council will then inform immediate neighbours who have 21 days in which to object. If neighbours do object, the Council will then decide whether the impact of the extension on neighbours' amenity is acceptable or not.

The new PD Rights will remain in force for 3 years.

(2) Renegotiation of S106 affordable housing obligations

The Growth and Infrastructure Act inserts a new Section 106BA, BB and BC into the 1990 Town and Country Planning Act, which introduces a new application and appeal procedure for the review of planning obligations for affordable housing. This is in order to unblock stalled housing developments which account for around 75,000 homes. Sections 106BA and BC prevent the outcome of an application or appeal being more onerous that the existing obligation.

Exemptions to the new procedure are affordable housing obligations granted in accordance with a Rural Exceptions Site policy.

Previously, developers had to wait 5 years before making a formal request to the local planning authority to vary planning obligations. The new regulations will allow a developer to formally apply to modify or discharge obligations, if to do so would make the development viable. No time restrictions are placed on such applications.

Local planning authorities will be able to consider making time-limited modifications or conditions when considering applications under Section 106BA and if an Inspector modifies an obligation under Section BC, it will be for 3 years.

An application made under Section 106BA of the Act to a local planning authority must contain a revised affordable housing proposal supported by relevant viability evidence. The proposal must take the form of an open-book review of the original viability appraisal and deliver the maximum level of affordable housing consistent with viability. Adjustments can be made to tenure, mix, phasing, timing and the level of off-site contributions. The local planning authority may prepare its own viability evidence or provide commentary on the developer's evidence.

At appeal developers will not be able to rely on new evidence, but if unwilling to proceed on an open book basis, will be able to submit general evidence of changes in costs and values since permission was granted. The local planning authority may undertake its own viability appraisal with supporting information and submit this as evidence at appeal.

The outcome of a successful appeal would be a revised affordable housing requirement in the S106 agreement for a period of 3 years. After 3 years any part of the development not commenced will revert to the original S106 agreement. However a new application under Section 106BA can then be made if developers remain concerned about viability.

A consultation on the legislative procedure for the appeal process under Section BC of the Act will take place shortly. Most appeals will follow the written representations procedure. Inquiries should be very rare.

The new procedures do not replace existing powers to renegotiate S106 agreements voluntarily.

If you require more information or would like to discuss the issues mentioned in further detail please contact:

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