



Out of Time?

June 2009

In the current economic climate many developers are delaying starting developments and in so doing, running the risk that their planning consents will expire. The current system gives developers some options to keep their consents alive, but these are not without pitfalls. The Government has just announced proposals to extend the lifetime of planning consents, although only for a limited period.

The Current System

Unless otherwise agreed with a local planning authority ("LPA"), a full planning permission will normally expire three years from the date of grant if it is not implemented. For outline consents, the default expiry period is the later of three years, or two years from the submission of the last reserved matters application. A developer with an expired consent must reapply for planning permission.

For planning permissions that have not yet been granted, it may be possible to negotiate with an LPA to extend the lifetime of the permission to, say, five years. Whilst an LPA may accommodate this, it may require that viability is revisited periodically during the extended lifetime period. If market conditions should improve between grant of the consent and its implementation, there may be additional obligations that crystallize, increasing the cost of planning obligations for the developer.

For planning permissions that have been granted, as it is no longer possible to vary a condition that relates to the expiry date of a planning consent, a variation requires a new application to be made. This will be assessed against current policies and may be subject to more onerous conditions and/or increased s.106 obligations, including (where applicable) the Crossrail levy.

Implementation is not simply a case of moving bulldozers on to the site; a raft of pre-conditions must first be met. A developer must consider carefully the cost of implementation and whether all pre-conditions can be met in time. Developers should also be aware of any s.106 obligations, such as financial payments, that may be triggered as a result of implementing a planning consent. In some cases, it may be possible to renegotiate payment schedules and other terms with the LPA in order to redefine the cash flow profile of a development.

There is a mechanism for extension in the Town and Country Planning (Applications) Regulations 1988, which predates the Town and Country Planning Act 1990, but the validity of a decision based on these regulations is questionable.

The Proposals for Change Under Consultation

John Healey, the housing minister, announced consultation on "Greater flexibility for planning permissions" in a speech to the RTPI on 18 June 2009 which considers the time expiry of planning consents amongst other proposed changes. The proposals relating to the expiry date of planning consents are, briefly:

- LPA's are to have the power to extend the time limits for existing planning permissions for major developments, e.g. for schemes over 10 houses or more than 1000sq.m. floorspace.

- The measures will be implemented not by amending the TCPA but by introducing a new form of planning application through secondary legislation - effectively an extension of time granted by means of granting a new application with only the time expiry condition varied.
- The measure is to be effective for a limited period only and will only apply to consents granted on or before the date when the measures come into force (1 October 2009).
- The measure will operate for a period which will be determined by the amount of time the existing consent has left to run: for example, it will operate for three years for a three-year consent granted just before 1 October 2009 but only for one year for a three-year consent granted in September 2007.
- It will only be possible to extend the lifetime of an existing consent once, as the effect of the measure is to grant a new consent which will have occurred after 1 October 2009.
- Planning permissions granted after 1 October 2009 will not benefit from these measures, as the existing powers to agree longer lifetimes for consents prior to grant can be used.
- The length of the extension to the lifetime of the planning permission will be considered in the same way as any other application, with a default of three years for a full consent and three years plus two years for an outline consent with the LPA's discretion to agree a longer period.
- A supplementary s.106 agreement or undertaking may be required to apply any existing agreement to the new permission.
- As the extension is, in effect, a new permission, the LPA will be required to conduct a screening exercise for Environmental Impact Assessment purposes, and may require additional information (for example, if a flood risk assessment was not previously required but would now be for the same development).
- The guidance in the consultation document states that extension applications will not be required to submit a design and access statement on the basis that no changes to the scheme are envisaged as only the time limiting condition is changed in such an application. Again, a LPA may request further information if appropriate.
- The measures do not appear to apply to listed building, conservation area or other related consents, although this is a specific consultation question. This could leave some developers in a position where their planning consent can be extended but a new application for listed building (or other) consent is required at the same time.

What Next?

Consultation ends on 13 August 2009 and it is envisaged that the proposals will be implemented by 1 October 2009. Whilst this opens the door, for a short time at least, to give developers some much needed breathing space, those whose planning permissions are due to expire before the proposals come into effect should consider carefully their optimum strategy for developments.

The consultation document is available at:

<http://www.communities.gov.uk/publications/planningandbuilding/flexibilitypermissions>

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