

PRESS RELEASE

July 2020

BCM'S WEBINAR SERIES CONTINUES WITH "PLANNING - UPDATE"



On 8 July 2020, David Long, Partner and Planning Consultant at BCM Rural Property Specialists in Merstone, Winchester and Oxford, hosted a webinar discussing 'Planning – Updates': S.73 and S.93a also covering also covering planning legislation updates following the recent government announcement of 'build, build, build'.

David was joined by Matt Gilks, Associated Solicitor at Things Solicitors. The webinar was well attended with 46 registrations and a Q&A session followed the discussion with accompanying slides.

S.73 & 96a

Although a seemingly dry topic, the legislation surrounding the variation/removal of planning conditions and the operative part of a development description is now becoming an essential ingredient to manage a project and its risks; thus allowing applicants a degree of flexibility to revise or amend their proposals without the need to restructure the whole original planning application, which can be expensive, time consuming and unnecessary.

The key highlights (although not exclusive) of S.73 (which allows applicants to revise or remove planning conditions) are as follows:

- Evolved from Circular 19/86
- It is only a 'Limited Exercise' and cannot be a fundamental alteration; although neither term is defined in statute
- It cannot extend the time limit of the consent
- It cannot revise the operative part (Development Description) of the decision notice
- The Local Authority have the ability to impose new conditions but...
- Only if those conditions should have been imposed on the original grant

Finney v. Welsh Ministers has established that the operative part of the developments description (as taken from the title of the decision notice/application form) cannot be amended. Therefore is it critically important that a



development description is definitive (providing comfort to the Local Authority as to what is being applied for*) but installing suitable flexibility for applicants to use S.73 in the future, if details contained within specific condition(s) need to be varied/removed.

*In order to provide comfort for Local Authorities, but still installing flexibility so that the development description (being the operative part) is not unreasonably tightly bound, the planning submission (inclusive of background reports and plans) can seek to demonstrate clearly what is being applied for. In some instances, draft planning conditions can be submitted in advance (and forming part of the suite of submission documents) so that the applicant can clearly demonstrate what is being controlled by condition; thus setting the parameters of the proposal. If a Local Authority seeks to change the operative part of the development description this this must be agreed prior to the proposals formal validation.

However, if the operative part of the development description is causing a hinderance and includes, for example, non-material considerations or matters which can be controlled by condition then one can seek to use S.96a. The key parameters (although not exclusive) of S.96a run as follows:

- It seeks to allow a change to the development description (or operative part) so long as it is not material (thus asking a core question as to 'what is the effect of the change')
- The applicant must have an interest in the land
- It is not capable of amending conditions (as that is devoted to S.73)
- Offers a discretion of consultation
- A decision must be made within 28 days
- It will not amend the original decision notice. Acceptance via S.98a will likely come by way of a formal letter
- There is no right of appeal. A challenge would be structured by a Judicial Review

The above highlights the importance to first avoid S.96a by ensuring that the original development description is definitive but flexible; thus allowing S.73 to be used if necessary. This can be a skilful art, which seeks to de-risk future unknown events. Of course, unknown events cannot always be mitigated, but the use of S.73 and S.96a can provide a powerful tool; if deployed correctly.

Planning Legislation Updates

We live in a fast paced 'planning world'; which continually seeks to catch up with reactionary global and local influences. This 'catch up' invariably means that we have a complicated blend of legislation, guidance and policies, which seek to mitigate against those changes and to allow development to proceed. However, that blend is often confusing and poorly deployed; leading to time delay and expense.



It is a well-established concern of the government that the current planning system is not fit for purpose. This is often no fault of Local Authorities who cannot react to real time change. The introduction of, for example, the Housing Delivery Tests, has done little to speed up delivery.

The raft of measures soon to be deployed are broadly encapsulated within various papers including:

- Planning for the Future
- Business and Planning Bill
- Revisions to Permitted Development Rights. This is evolving, and we so await a new raft of rights to be released
- Planning White Paper (to be released shortly)

The key soundbites that we are focussing on at present include:

- The deployment of development zoning and the administration by Development Corporations
- How this will be integrated into the Localism Act; noting that any new Neighbourhood Plan referendums have been temporarily suspended
- The emphasis on starter homes and discounted sales to stimulate the affordable market and housing delivery
- Planning fees being directly linked to Local Authority performance and the automatic recovery of appeal costs if appellants are successful
- The obligation to have all Local Plans to be adopted by March 2023
- Permitted and/or streamlined rights to permit residential development on vacant or brownfield sites
- The review of the methodology behind calculating Housing Needs
- The potential conflict between the desire to build densely (and upwards) whilst still respecting context and character

We will keep you posted as events unfold. Please do not hesitate to contact us if you have any questions or queries.

For more information please contact David Long on 01983 828800 or dlong@bcm.co.uk.

BCM hosted a webinar on Planning on 8 July 2020, where David was joined by Matt Gilks of Thrings Solicitors. Please use the following link to view the webinar recording:

[BCM Planning Webinar July 2020.mp4](#)

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If you have any queries, please contact David Long

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