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Town Planning & the Law

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Meaning of Development

The Town and Country Planning Act 1990 defines development as “the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or land.

For the purposes of the Act “building operations” includes:

- (a) demolition of buildings;
- (b) rebuilding;
- (c) structural alterations of or additions to buildings; and
- (d) other operations normally undertaken by a person carrying on business as a builder

The following operations or uses of land are not development:

- (a) the carrying out for the maintenance, improvement or other alteration of any building or works which
 - (i) affect only the interior of the building, or
 - (ii) do not materially affect the external appearance of the building
- (b) the carrying out on land within the boundaries of a road by a highway authority of any works for the maintenance of the road;
- (c) the carrying out by a local authority or statutory undertakers of any works for the purpose of repairing or renewing any sewers, pipes etc;
- (d) the use of any buildings or other land within the curtilage of a dwelling house for any purpose incidental to the enjoyment of the dwelling house as such;
- (e) the use of any land for the purposes of agriculture or forestry;
- (f) in the case of buildings or other land, which are used for a purpose, can be used for any other purpose within the same class;

What is “Permitted Development”?

Permitted Development rights are basically a right to make certain changes to a building or even change the use of a building without the need to apply for planning permission.

The T&CP (GPD) (Amendment) Order 2013 introduced sweeping changes to the permitted development rights for householders and businesses from 30 May 2013.

What do the changes mean?

There are six key changes as follows

- Premises in a B1 (a) office use are able to change to a C3 residential use, subject to prior approval covering issues such as flooding, highways and transport issues and contamination.
- Premises in B1 (business), C1 (hotels), C2 (residential institutions), C2 a (secure residential institutions), and D2 (assembly and leisure) uses are able to change to use permanently to state funded schools subject to prior approval covering highways and transport impacts and noise. (prior approval application fee £80.00)
- There are increased limits for home and business extensions for a period of three years. These include:

Home owners being able to extend their properties, subject to certain conditions, in the case of a detached dwelling up to 8m and in the case of all other dwellings up to 6m from the rear wall of the original dwelling house without the need to apply for planning permission.

There are other limitations including the height of any extension, the amount the development can cover of the curtilage of the property and the positioning of the proposal within the site itself, i.e. it will not be allowed on a primary elevation or side elevation fronting onto a highway. There is no fee for this application but details must be submitted to the Council who consult neighbours. If neighbour objects the Council has to decide whether the impact in terms of residential amenity is sufficient to refuse the application. If no neighbour objections permission is given.

With regard to commercial premises industrial and office premises are allowed to undertake larger extensions, including office extensions up to 100sq metres and for an industrial premises an extension up to 200 sq. metres.

In both cases, household and industrial/office extensions, the development must be completed no later 30 May 2016 and the developer has a duty to inform the local planning authority once development is complete.

- Agricultural buildings under 500sq metres can change to a number of other uses A1 (shops), A2 (financial and professional services), A3 (restaurants and cafes), B1 (business), B8 (storage or distribution), C1 (hotels) and D2 (assembly and leisure). If the building is between 150sq metres and 500sq metres prior approval is required covering flooding, highways and transport impacts, and noise implications. (£80.00 fee) **You cannot apply under this procedure if the building has not been solely in agricultural use since 3 July 2012.**
- Non listed buildings that are currently A1 (shops, A2 (financial and professional services), A3 (restaurants and cafes), A4 (drinking establishments), A5 (hot food takeaways), B1 (business), B8 (storage and distribution), C1 (hotels) and D2 (assembly and leisure) uses can change use for a period of two years to A1, A2, A3 and B1 uses, where the floor area is no more than 150sq metres in order to help new start-up businesses.
- There is also an increased threshold for changes of use between business uses. The threshold has changed from 235sq metres to 500sq metre whereby you can move between B1 (business) or B2 (industrial) to B8 (storage and distribution) and from B2 or B8 to B1.

Material and Non-Material Considerations

A material consideration is a process in Planning Law in which the decision maker when assessing an application for development must consider in deciding the outcome of an application.

Under Section 38 of the Planning and Compulsory Purchase Act 2004 decisions on planning applications “must be made in accordance with the development plan unless other material consideration indicate otherwise”.

The following is a list of material considerations that can be taken into consideration in determining planning applications:

- National Planning Policy or Guidance
- Developer Contributions
- Representations by Statutory Consultees such as HA, EA, EH, Sport England as such bodies can ask for an application to be referred to the SoS for consideration if a LPA wishes to approve a proposal against their wishes

- New Homes bonus – the government has made it clear that such schemes whereby a Council will receive increase council tax incentives for delivering new homes in their area can be a material consideration.
- General Amenity - appearance and design, loss of trees, landscape or townscape character.
- Environmental Considerations - noise, dust, fumes
- Residential Amenity including loss of light/sunlight, privacy, overdominance, character of the area
- Archaeology
- Sustainability
- Nature Conservation
- Effect on setting of a listed building/conservation area – legal duty to preserve or enhance
- Previous planning decisions (including appeal decisions)

Other Material Considerations that Council's have to consider

- When policies in the Development Plan conflict and pull against each other a judgement has to taken on which should prevail.
- A fall-back position: such as a lawful use where a development is worse than the proposal, an extant planning permission which has a similar or worse effect than the proposed development, permitted development which could have the same or worse effect than the proposed development. These matters have to be considered against the facts as to whether they are reasonably likely to take place or continue.
- Planning policies may have to be sacrificed to secure site redevelopment in the public interest.

The following is a list of non-material considerations:

- Business competition
- Objections based on moral, racial or religious views
- Too many already
- Loss of views
- Damage to property fears
- Where other controls exist
- Devaluation of property
- Rights of way
- Covenants
- Other private rights
- Personal issues
- Disturbance during development
- Maintenance of property

Case Study

The case study is to demonstrate the consideration and determination of an Outline planning application for residential development for up to 32 dwellings.

The site is located in a village called Wymeswold situated at the northern boundary of Leicestershire mid-way between Nottingham and Leicester with a population of 1200 residents.

Development Plan

As discussed earlier this is the starting point for the consideration of a planning application. The adopted Local Plan is the saved policies of the Borough of Charnwood Local Plan 2004. These policies confirm that the application site is outside the defined limits to development for the village and therefore in open countryside where development should be strictly controlled.

The Council is in the process of preparing a Core Strategy for the Borough. This emerging development strategy identified two sustainable urban extensions as a way of dealing with housing need. The Core Strategy, at the time of the consideration of the application, due to the stage it had reached in its preparation, but the evidence base used to inform the preparation of the emerging core strategy was a material consideration.

Part of the evidence base was a Settlement Hierarchy Review 2011 that concluded that Wymeswold, with its modest service and facility base was put into the category of an 'Other' rural settlements where residential will only be permitted where it is within the limits to development and small scale appropriate to the size of the settlement. Whilst the document carried little weight at the time of the consideration of the application it was a material consideration.

Under Section 38 of the Planning and Compulsory Purchase Act 2004 decisions on planning applications "must be made in accordance with the development plan unless other material consideration indicate otherwise".

Other Material Considerations

At the time of the consideration of the application the Council was unable to demonstrate it had a five year supply of deliverable housing sites as it only 3.27 years supply. The National Planning Policy Framework (the Framework) under paragraph 14 advises that Councils are required to give significant weight to development in sustainable locations where the adopted local plan is either silent or outdated. The lack of a five-year supply of deliverable housing sites meant that the Council, in order to refuse the application, had to conclude that the proposed development would represent an unsustainable development and/or result in adverse impacts that significantly and demonstrably outweigh the benefits of providing this much needed housing.

Decision

The Council resolved to refuse the application on grounds of:

- Unsustainable development in a settlement with only limited services and facilities and no transport services to neighbouring key settlements.
- The development would result in unwarranted harm to the character and appearance of the landscape at this important entry to the village.
- The submitted design information pays little regard to the character and appearance of the Conservation Area.

The applicant appealed against the refusal of planning permission and the Inspector made the following decision:

“I conclude that on balance the proposal is at least neutral in the context of sustainable development within the overall meaning as set out in paragraph 7 of the Framework. The Council does not have a five year supply of housing land and irrespective of the adopted development plan housing supply policies, in such circumstances paragraph 14 of the Framework makes a presumption in favour of granting planning permission unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

“Any potential harm to the character and appearance of the local countryside and the setting of the Wymeswold Conservation Area could be resolved by conditions requiring a different design approach to that which accompanied the application.”

“I do not consider the disadvantages of the scheme carry sufficient weight to outweigh the presumption in favour of sustainable development provided by the Framework, when considered alongside the benefits provided by the supply of affordable and market housing in Charnwood at an early date and the other material consideration considered above. I therefore find for the reasons discussed above and having to take account of all of the other matters raised that the appeal should be allowed subject to conditions”.