Planning update

March 2015

Introduction

In this Planning Update we explain the important EIA Regulations changes that are coming in on 6 April 2015 in England, which are very important if you are a house-builder; we discuss the recent Supreme Court decision on whether a beach can be a village green, and mention the new CIL regulations.

If you have any comments or queries on the Update, please contact either the author Juliette Bradbury or a member of the Planning Team.

Changes to the Environmental Impact Assessment Regulations

The Regulations will change on 6 April 2015 in England only.

The new Town and Country Planning (Environmental Impact Assessment) (Amendment) Regulations 2015 have been made, and they raise the thresholds for when developers need to apply to the LPA or the Secretary of State for a screening decision on whether an EIA is needed for dwelling house development, other urban development not including dwelling houses, and industrial estate development.

The Government was concerned that for these types of projects the thresholds were set at a level that caught many schemes which were not likely to give rise to significant effects, but because of the thresholds these projects were subject to screening and in some cases were subject to an EIA. This meant that the workload was increased for developers, LPAs and the consultation bodies, thus adding cost and creating delays. This was seen as an unnecessary burden on developers and LPAs, but more importantly, the delay to the planning application process created difficulties.

Consequently the new regulations raise the screening thresholds for certain types of development. The aim is to reduce costs and provide more certainty for all interested parties.

The Government estimates that this will almost halve the number of screening decisions adopted by LPAs.

From 6 April 2015 screening will be required for dwelling house developments where:

i the development exceeds 5 hectares;

i includes more than 150 dwellings;

i or includes more than one hectare of urban development which is not a dwelling house development.

For other urban development (which does not involve dwelling houses) screening will be required where the area of the development exceeds one hectare.

And in the case of industrial estate development screening will be required where the area of the development exceeds five hectares.

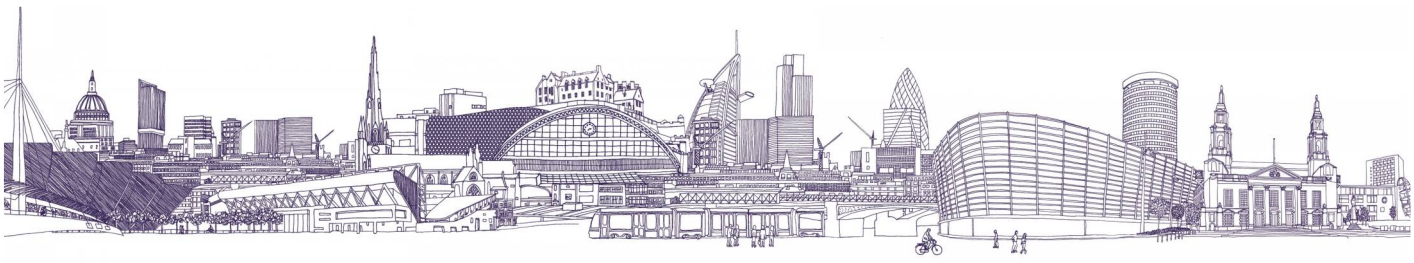
These changes are welcome, as there will be cost and time savings to developers.

Village Green – can a tidal beach be registered as a village green?

Cases on village greens come thick and fast and the majority of them go through the full court process to the Supreme Court.

Anyone can make an application to register land as a village green where a significant number of local inhabitants have used the land as of right for lawful sports and pastimes for at least 20 years and where certain circumstances apply. Recently there has been litigation on the meaning of ‘as of right’.

The Supreme Court has handed down a decision as to whether a beach within a harbour should be registered as a village green, in the case of ***R (Newhaven Port and Properties Ltd) -v- East Sussex County Council and another [2015] UKSC 7.***



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The case originated in the town of Newhaven which is a port town where a breakwater, built as part of the port development, caused an area of sand to build up, and this became a beach. The beach is reached by stone steps leading down from a promenade; it is a tidal beach and fully covered by the sea for 42% of the day. The harbour including the beach is owned by the harbour company Newhaven Port and Properties Ltd; the beach is part of its operational land, and is subject to byelaws made in 1931 under an act of 1847.

An application was made to East Sussex County Council to register the beach as a village green, and the County Council registered it, despite the owner of the beach saying that registration was incompatible with, and would conflict with, their statutory duties and powers as part of the port development.

The owners of the beach challenged the decision by way of judicial review, and the High Court quashed the decision to register the beach as a village green.

This decision was appealed to the Court of Appeal which allowed the appeal and said that the beach could be registered as a village green.

An appeal against this judgement was made to the Supreme Court, which held that the beach should not be registered as a village green. This was because the public had implied permission to use the beach under the harbour byelaws, and also registration as a village green was incompatible with the statutory powers and duties of the owners of the beach.

The Supreme Court noted that the harbour byelaws impliedly permitted the public to use the beach for leisure activities because they prohibited bathing in a specific area and also prohibited sports and games that might impede use of the harbour. This implied that bathing could take place elsewhere and that recreational activities could also take place if they did not impede use of the harbour. Consequently the byelaws operated as an effective licence that rendered the use of the beach by members of the public 'by right' rather than 'as of right'.

This decision turns on the fact that registration as a village green could not take place where it would be incompatible with the statutory duties and powers of the harbour company. It is therefore possible in other circumstances, such as where there is no harbour authority, that it may be possible for a beach used by members of the public to be registered as a village green, even if it is covered by water for parts of the day.

This would be particularly significant if the beach was privately owned and not a public beach.

Again it is essential for an owner of land to monitor their land ownership and to ensure no trespass takes place.

CIL Regulations

The original CIL Regulations were made in 2010 and have been amended every year since then. We did think the position had settled last year when the CIL position seemed to have been agreed with all parties. That has turned out not to be the case, and yet again the CIL regulations have been amended for the fifth year in a row.

Further amendments have been made in the CIL (Amendment) Regulations 2105 which come into force on 1 April. The changes relate to social housing and social housing relief. In certain circumstances a planning obligation may need to be entered into.

If you would like to discuss any of the issues raised in this update, please contact;

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