Legal landscape

PLUS ÇA CHANGE...

Chad Sutton runs the rule over recent amendments to the planning system

The planning system in the United Kingdom is in a constant state of change, and keeping track of these changes is as much a part of the job as providing legal advice or drafting Section 106 agreements.

Like previous administrations, this government has sought to stamp its mark on the planning system by implementing what it states are much-needed reforms to make the system more efficient and to promote development.

In 2011, the government tried to tackle these issues under the guise of 'localism'. This was followed by further reforms introduced under the Growth and Infrastructure Act in 2013.

As housing increasingly dominates the political agenda, the government is coming under pressure to deliver solutions to the current shortfall. The most significant response to this has been the introduction of permitted development rights, allowing a change to residential use from offices and retail uses.

As with most legislative reform, the devil is in the detail, and it often falls to the planning lawyer to interpret the legislation and policy. Community infrastructure levy (CIL) is a prime example of a reform that, since it first became live in 2010, has proved complex in its interpretation and implementation. It is widely acknowledged that the original CIL Regulations published in 2010 were badly drafted and this has been evident from the amendments to the regulations, which have been introduced in every subsequent year.

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Permitted development rights present their own issues as these rights are typically subject to onerous conditions and exclusions that can prove a minefield to navigate. Anyone who has sought to utilise the office-to-residential permitted development rights will be aware of the many legal issues arising from the wording of Class J that contains these rights.

Although some government reforms have made the planning system more unwieldy despite best intentions, there are other reforms that have made a positive contribution to simplifying and improving the delivery of development through the planning system. The introduction of the National Planning Policy Framework and the accompanying National Planning Practice Guidance has been effective in simplifying what was previously an ever-growing library of planning policy documents for developers and local planning authorities to comply with. The reduction in the time period for judicial review claims against planning permissions to six weeks has also expedited many development projects.

No matter what political party is in power, or what reforms government proposes, the role of a planning lawyer will remain crucial to the success of any development. This could be as simple as ensuring that the red and blue lines on a development site plan are accurate or that notices of a planning application are served correctly on owners of a site to mitigate any judicial review risk. It could be as simple as ensuring that a Section 106 agreement is negotiated swiftly, or successfully obtaining planning permission at appeal in cases where there is opposition from a local planning authority.

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