Hewitsons Real Estate

LEGAL UPDATE

Absolute Client Focus

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Winds of Change in the City

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Senior Associate

Developers in the City of London who plan to construct buildings over 25 metres high will now need to show as part of their planning application that their development will not cause adverse wind conditions at ground level. In the first planning guidance of its kind in the UK the City of London Corporation has issued general guidance on what are considered acceptable wind speeds. The Wind Microclimate Guidelines published in August are aimed at ensuring that City public spaces are outstanding and can be fully enjoyed by all. Adverse wind effects can reduce the usability of outdoor areas and present safety issues in extreme cases. Developers are therefore encouraged to obtain specialist advice at an early stage and to engage in early discussions with officers of the City.

The guidance looks at the recommended approach for wind microclimate, general technical requirements and wind tunnel test requirements. The guidance provides information on what wind speeds are acceptable for different types of location. It also provides detailed guidance on the technical requirements that various situational evaluations

should include. Contact Carolynn Davies for further information or click here to read the guidance.

Renewable energy schemes are material considerations for planning

Amanda O'Mahony
Senior Solicitor

A recent case involved a farmer raising objection to a neighbour's planning application on the basis that if the application was granted, it would block out light to the farm's solar panels and impact on the ability for the solar panels to generate electricity.

Planning applications must fall within the prescribed development plan, unless a material consideration is present. Material considerations are matters that planning authorities must consider when reviewing a planning application. Initially the objection that the solar panels would be deprived of light was deemed to be reflective solely of a private interest and therefore not a material consideration, so planning permission was granted.

However, at judicial review, the mitigation of climate change – even through small scale schemes - was deemed to be a material consideration. Therefore, it was held that the local planning authority should have considered the farmer's objection to the development and the impact that the proposed development would have on the solar panels. There is no requirement as to the amount of weight which a planning authority must attach to the mitigation of climate change or the presence of solar panels so, each case will be decided individually.

Following from this case, it seems that schemes which assist in mitigation of climate change – regardless of scale - will be material considerations for the purposes of making decisions on planning permission in the future. For further information contact Amanda O'Mahony on 01604 463115 or click here to contact Amanda.

Solar panels: part of the furniture?

Sarah Baron
Solicitor

In a recent case, the High Court found that solar panels which were used to power property are fixtures and, upon sale, transfer with the property unless the contract specifies otherwise.

The seller of a commercial fishery was intending to sell the site of the business and the fish contained within the property in separate transactions to the same purchaser. Although negotiations broke down, an LPA receiver was subsequently appointed, who sold the property to the purchaser.

The contract for sale did not make reference to the solar panels although they were affixed to a wooden and concrete frame on the property and used to power the property. It also did not refer to the fish which resided within the lakes on the property. The seller therefore argued that it remained the owner of the fish and solar panels after the property was sold.

The Judge agreed in part with this claim. The fish were deemed to be qualified property, as their presence was due in large part to the hard work of the seller. There was no reference to their presence in the contract of sale, therefore they were deemed not to pass automatically with the property. However, the solar panels were affixed to the property with a purpose of powering the on-site restaurant, and therefore there was a clear intention that they were to be used to benefit the land on which they stood. As the Judge decided that these panels were fixtures, they passed automatically with the property.

For further information please contact Sarah Baron on 01223 461155 or click here to email Sarah.

High Court determines that Local Authority could not agree extension of time for prior approval application

Gemma Dudley
Senior Associate

In the recent case of *R. (on the application of Warren Farm (Wokingham) Ltd) v Wokingham Borough Council [2019],* the High Court determined that the local authority did not have jurisdiction to agree an extension of time for the determination of a prior approval application for the change of use of a barn to a dwelling house pursuant to Class Q of the Town and Country Planning (England) (General Permitted Development) Order 2015. The relevant statutory provisions allowed the development to proceed following the expiry of 56 days from the date of the application, so the Council's decision had to be made before that. Therefore, the Council's decision refusing prior approval beyond the 56 day period was quashed and the development could proceed. This case will have implications for other prior approval decisions made following an agreed extension of time.

For more information, contact Gemma Dudley on 01223 532747 or click here to email Gemma.

Amendments to Community Infrastructure Levy Regulations Come into Force

The Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019 came into force on the 1st September, resulting in various amendments to the Community Infrastructure Levy Regulations 2010. The Regulations remove regulation 123 which restricted the number of Section 106 Agreements which a charging authority could enter into in order to fund particular infrastructure (i.e. the pooling restriction). Local authorities will be required to publish an annual infrastructure funding statement setting out how much Community Infrastructure Levy ("CIL") is collected, how it is spent and what it is spent on, and there is similar provision in relation to Section 106 Agreement obligations.

There is new provision for the calculation of CIL in relation to cases where the granting of an amended permission under section 73 of the Town and Country Planning Act 1990 leads to an increase or decrease in CIL liability, and in relation to phase credits where a pre-CIL phased planning permission is amended once CIL is in effect in the area. The provisions which resulted in reliefs being lost if a commencement notice was not submitted before starting the development have also been replaced with provisions imposing a surcharge. There is also an amendment to regulation 122 to ensure that charging authorities can include provision for monitoring fees in Section 106 Agreements.

For more information click here or contact Gemma Dudley on 01223 532747 or click here to email Gemma.