

A new tax on property?

The Government's much heralded reform of the planning system has finally received Royal Assent in the shape of the Planning and Compulsory Purchase Act 2004. But what's in it for property owners, investors and developers? Increased speed of decision making? Certainty over development costs? Or more bureaucracy and cost?

The Act fundamentally reforms the forward planning system with regional bodies taking over key roles and allowing local planning authorities much greater flexibility to amend their local plans, renamed "local development documents".

Other reforms affect the development control system. In future, the standard length of a planning permission will be 3 years. Local authorities will have the power to reject applications made within 2 years of those previously refused if the application is, in the view of the authority, substantially the same.

However, for the time being at least, outline planning permissions have been left in place.

Planning gain

A key feature of the Act is the fundamental revision of the planning gain system. In the past, the ability of an authority to extract planning gain to fund social and physical infrastructure has been entirely a matter for negotiation between the authority and the developer, with the developer having a right of appeal against the refusal of planning permission if agreement cannot be reached.

The new Act creates what is in effect a compulsory requirement to make payments under the contribution scheme, or alternatively, enter into a planning agreement on a negotiated basis, or do both. Confusingly, in Government releases, the requirement to make contributions masquerades under the title "optional charge". It may be that developers will opt to pay the charge where they can get out of a lengthy negotiation with the authorities, but the "option" is likely to be "under what heading to pay" rather than whether a payment has to be made.

As with all enabling legislation, we do not, as yet, know the details of how a contribution scheme will operate and how soon it will be introduced, but the following is clear:

- planning authorities will be able to adopt schemes, as part of their local development document, which set out details of contributions required from developers, including the type of development requiring a contribution; where a contribution will not be sought; the proposed uses for the funds; and how contributions will be calculated

- local authorities do not have to introduce a contribution scheme, but clearly most will, as it automatically leads to contributions from developers. The policies may contain thresholds, below which no contribution is payable. Maximum and minimum amounts can be set by Government regulations. Contributions will be index-linked and payments can be staged

- developers will have the choice of entering into an agreement based on the current s106 of the Town and Country Planning Act 1990 (which is to be replaced) as an alternative to making contributions

- local authorities will be able to demand both contributions in respect of certain types of infrastructure, and, at the same time, oblige the developer to enter into a planning agreement to cover areas not included within their scheme. In some cases, benefits in kind will meet the requirements of the local authority scheme (eg land for affordable housing).

In theory, a developer could still have a right of appeal if an authority refused to issue permission because he is not willing to pay the contributions. However, since contributions will be fixed by the local development documents, such an appeal would have little chance of success, and could well result in an award of costs against the appellant.

Summary of changes in the Act

- planning gain is effectively made mandatory for the first time

- refusal to pay the contribution will entail going down the negotiated route. Local authorities are likely to regard the amount of the contribution as a starting point

- all developments falling within the scheme are likely to have to make pro-rata payments, depending on the size of the development

- monies which the local authority receives can be applied to areas which have no direct benefit to the developer

- large developments will still need planning agreements

It appears the only benefit of the Act for developers is that they will know in advance how much planning gain they are likely to have to pay an authority if they carry out a certain type of development in its area. They can then elect to make the payment and receive planning permission (if the scheme is otherwise acceptable) without the delays inherent in negotiating

a planning agreement. However, if contributions do not cover matters which an authority considers relevant to a development, the developer will still have to enter into a planning agreement.

Will this speed up the system in practice, or will the bureaucratic mire become even more complex? Only time will tell.

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