

General Permitted Development Order

A case-law update

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(with thanks to Matthew Fraser)

Brief Outline

- Reminder of the Basics;
- PD rights in the ‘curtilage’ of buildings;
- Telecoms – is it for a dual purpose?
- When is a school not a school?
- When is one storey actually two storeys? Beware or demolish!
- Prior approval time limits – more fundamental than at first sight!

Reminder of the basics

- Deemed permission (i.e not exception under s.55 TCPA);
- Granted by article 3 of the development order;
- Subject to limitations and conditions stated in the Class;
- Remember exclusions in article 3;
- Be aware of Article 4 directions;

PD Rights in the Curtilage of Buildings

- *Challenge Fencing Ltd v. SSHCLG* [2019] EWHC 553 (Admin);
- Useful summary and update on the meaning of ‘curtilage’ for purposes of Sch 2, Pt 7, Class J (industrial)
- Principles can be read across to Sch 2, Pt1, Class E (pd rights in the curtilage of dwellinghouses);
- See para 18 of the Judgment.

Telecoms – is it for a dual purpose? (1)

- *Westminster CC v. SSHCLG* [2019] P.T.S.R 1510;
- PD rights under Class A, Pt 16 Schedule 2;
- *Development by or on behalf of an electronic communications code operator for the purpose of the operator's electronic communications network in, on, over or under land controlled by that operator or in accordance with the electronic communications code;*
- Challenge to prior approval decision as to siting and appearance under para A.3;

Telecoms – is it for a dual purpose? (2)

- Challenge to Inspector's prior approval decision as to siting and appearance under para A.3;
- Ouseley J quashed the Inspector's decision on the basis that the development proposed was not within Class A;
- It was for a dual purpose (including advertising), not just for the purpose of the operator's network;
- Appeal pending – also note: Reg 6 and Class 16 of Schedule 3 to the Town and Country Planning (Control of Advertisements) (England) Regulations 2007

When is a school not a school?

- *Bright Horizons Family Solutions Ltd v. SSHCLG* [2019] P.T.S.R 818;
- Schedule 2, Part 7, Class M;
- *“The erection, extension or alteration of a school, college, university or hospital building.”*
- Does not apply to a nursery school.

When is one storey actually two storeys? Beware or demolish!

- *Forest of Dean DC v. Wildin* [2018] EWHC 2811 QB;
- Schedule 2, Part 1, Class E – Buildings incidental to the enjoyment of the dwellinghouse;
- Not permitted if “E.1 (d) *the building would have more than a single storey*”
- Part of building was a very tall single storey but the rest was two storeys;
- Injunction to demolish granted under s.187B TCPA.

Prior Approval Determination – the fundamental issue of time limits

- *R (Warren Farm (Wokingham) Ltd v. Wokingham BC* [2019] EWHC 2007 (Admin);
- Interaction between Article 7 GPDO and Paragraph W(11) of Schedule
- Effect of default under Paragraph W(11)– see e.g *Keenan v Woking Borough Council* [2018] PTSR 697 at [36] and *Marshall v. East Dorset DC* [2018] EWHC 226;
- But what is effect on third parties? Potentially fundamental issues arise concerning human rights, ouster of jurisdiction and rule of law.

Thank you for listening

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