

## Recent Caselaw on Permitted Development Rights



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## Prior Approval

### What can be considered at prior approval?

- Only those matters specified in the order and not the whether the development comes within the description of the relevant class?
  - *Keenan v Woking Borough Council* [2017] EWCA Civ 438???
  - *R. (Marshall) v East Dorset DC* [2018] EWHC 226 (Admin)
- LPA bound to consider and determine whether development otherwise falls within definitional scope of the particular class of PD right
  - *Westminster City Council v Secretary of State of Housing, Communities and Local Government* [2019] EWCA Civ 2250 (aka *New World Payphones*)
- Unclear whether *Marshall* still good law – see *RSBS Developments Ltd v SSHCLG* [2020] EWHC 3077 (Admin)

## Prior Approval

### Time Limits

- Strict time limits apply to determination of prior approval applications
- Extensions of time may be agreed by the applicant and the authority in writing: Art.7(c) GPDO
  - Applies equally to time limits specified under Art.7(a) and (b)
  - “*in writing*” can include an oral agreement which can be evidenced in writing (e.g. by confirmatory email)
  - “*extension*” cannot be general in nature – it must be possible to identify the specific longer period
  - See *Gluck v SSHCLG* [2020] EWCA Civ 1756

## Prior Approval

### Challenging grants of prior approval

- *R (Coventry Gliding Club) v Harborough DC* [2020] EWHC 3059 (Admin)
  - Grant of prior approval is a decision “*under the planning acts*” therefore 6 week time limit for bringing JR applies (CPR 54.5)
  - Strict time limits on determination of prior approval applications are not incompatible with 3<sup>rd</sup> party rights under ECHR
  - What happens where a grant of prior approval is quashed after the deadline for determining prior approval applications has expired? Does the development become unconditional?

## Unlawful Development – Art.3(5)

### ***RSBS Developments Ltd v SSHCLG [2020] EWHC 3077 (Admin)***

- Art.3(5) Article 3(5) of the GPDO provides that any planning permission granted under the Order will not apply if:
  - (a) in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful;*
  - (b) in the case of permission granted in connection with an existing use, that use is unlawful.*
- Art.3(5) will apply to unlawful development undertaken after prior approval but before implementation of the PD right
- Art.3(5)(a) can apply to PD rights for changes of use where change of use sought is in connection with a building

## Curtilage

### ***R (Hampshire CC) v SSEFRA* [2020] EWHC 959 (Admin)**

- Series of helpful principles on curtilage set out in *Challenge Fencing v SSHCLG* [2019] EWHC 553 (Admin), §18
- Holgate J holds that where development control is concerned practitioners should take care to read *Challenge* as a whole and in particular to note that the correct question is not whether whether the land and building together comprised a unit, but rather whether whether the land was so intimately associated with a building that the land formed part and parcel of the building.

# Thank you for listening

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