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Planning e-briefing: beyond the description of development - High Court rules on the role of approved drawings in defining the development permitted

A landmark High Court ruling this week has offered landowners the possibility of increased rental values from their estates and will set alarm bells ringing for local planning authorities, whose retail planning policies may now lie in tatters.

The case involved a challenge brought by Stevenage Borough Council to the decision of the Secretary of State on appeal to grant a lawful development certificate to the owners of an out of town retail park in the borough. Eversheds acted for the landowner in the case.

The retail park had originally been permitted by a planning permission granted in 1987, which was subject to a bulky goods condition restricting the types of goods that could be sold from the retail units. As with so many retail and business parks of this sort there had been many different planning permissions granted since 1987 for various changes and alterations to the park but the crucial one in the case was granted in 2006.

The 2006 planning application had sought permission for various works including, crucially, external works to one of the retail units. The works consisted of replacing the frontage cladding and installing a second set of entrance doors. Whilst no mention was made in the description of the development to the subdivision of the unit, the plans accompanying the application, which were subsequently approved as part of the planning permission, clearly showed an internal partition of the unit and referred to the new entrances as entrances to two separate units.

The legal issue at the heart of the case was simply whether, in a full planning application, the description of development was conclusive of the totality of the works permitted or whether the approved plans and drawings could supplement that description. In short, the High Court held that the plans formed part of the planning permission so that details shown on them but not referred to in the description of development can constitute part of the approved works, in some circumstances.

Whilst on the face of it this decision is uncontroversial, its significance lies in the fact that the impact of the planning permission was therefore to create a new "building" for the purposes of the planning legislation. The local planning authority had treated the application as being an amendment or alteration of the building permitted by the 1987 planning permission and so had not re-imposed the original conditions, including the bulky goods restriction.

But once the principle that a new "building" had been created was established, the old planning permissions fell away so that the units were only governed by the 2006 planning permission. As a result, the lawful development certificate that had been granted on appeal and has now been upheld by the High Court confirms that the unit is no longer bound by the bulky goods restriction.

This outcome can have a substantial impact on values for any landowner who finds that their premises can now be let for unencumbered retail. The impact for local planning authorities is equally significant, as suddenly finding that they have inadvertently granted unencumbered retail permissions at out of town locations could critically undermine local retail policies focusing on town centre developments.

Whilst landowners would be well advised to consider carrying out an audit of their portfolios to identify any opportunities to make use of this judgment to increase rental values, local planning authorities should make sure that they are always alive to the need to consider the plans as well as the description of development when granting planning permissions and also ought to think about when they should be re-imposing conditions on new planning permissions.

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