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By email: Maria.Stasiak@communities.gsi.gov.uk

Dear Maria

Re: Draft GDPO 2009 and LB Regulations 2009

Thank you for your email of 4 August to Sara Hanrahan with the above draft statutory instruments. It was useful to have the opportunity to review these and comment. In respect of the drafting, our only comments are:

1. We welcome the extension provisions to listed building/conservation area consents.
2. We would query the position of the extension permissions in respect of references to the Mayor (PSI applications in London), Secretary of State (where required by the Direction) and EH (in relation to Grade I / II* listed building applications in London). As drafted, applications for extensions of permissions falling into any of these categories would need to be re-referred to each of those bodies so that they can decide whether or not they want to call-in, take over or direct refusal of the application. This seems overly complicated given that the original application will already have been through the same procedures. It would be helpful if CLG could amend the relevant secondary legislation so that further references are not necessary on an extension. Section 73 applications are also referable to the Mayor where the original application post-dates the 2008 Order, so minor material amendments will be similarly caught.
2. The Consultation Paper states in the comparison table that 96A applications will have a S78 right of appeal. We note, however, that S96A as introduced under the Planning Act 2008 does not expressly alter S78 to allow appeals under 96A (as it does for S286 and S69 etc). On the basis that 96A applications are not applications for permission we do not see that S78 would apply. It would be useful to have this clarified.
3. We note that the time extensions are only for major development and would re-iterate our previous concerns about excluding minor applications.

4. Lastly, we take the opportunity to mention again the Midcounties case (as discussed with you and Graham when we met) and how it reinforces the need to consider a material amendments procedure (Option 6) given that it seriously reduces flexibility on existing permissions using the "unless otherwise agreed formula". It would be good if this could be picked up in the next round of Killian Pretty actions.

Yours sincerely

David McIntosh
Chair
City of London Law Society

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