

The Rt. Hon. Keith Hill MP
Office of the Deputy Prime Minister
26 Whitehall
London
SW1A 2WH

17 February 2005

Dear Minister,

**SECTION 51(3) PLANNING AND COMPULSORY PURCHASE ACT 2004
PROPOSED CHANGES TO SECTION 73 OF THE TOWN AND COUNTRY
PLANNING ACT 1990: VARIATION OF TIME CONDITION ON PLANNING
CONSENT**

You will recall that at the recent Industry Forum at which you spoke I raised the serious issue of the proposed change to Section 73 of the T&CPA 1990.

Specifically this refers to the removal of the ability for applications to be made to vary a condition specifying the time period in which planning permission must be started or the period in which reserved matters must be made under an outline planning consent.

Our concern is not with your proposal to reduce the default duration of permissions from the current 5 years to the proposed 3 years. The guidance contained within the recently published consultation on the changes to the development control system (ODPM, November 2004) encourages local planning authorities to consider whether a longer (or shorter) period is appropriate having regard to the size and nature of development and to adopt a flexible approach to the fixing of time limits especially where they relate to development which will be carried out in distinct parts or phases. Developers will seek to negotiate appropriate time scales with local planning authorities with the safeguard of being able to appeal against unacceptable conditions if necessary. We will, as you suggested at the Industry Forum, "suck it and see".

However, your proposal to remove the ability to submit an application to extend the time within which a development must be started or the period in which an application for approval for reserved matters must be made has severe consequences regarding the certainty of establishing the principle of a particular land use on any piece of land.

The new proposal will mean that the requirement for the submission of a fresh application will allow the LPA to reconsider the issue of whether or not planning permission should be granted, in effect, reopening the debate over the principle of development of the application site. Indeed, the guidance goes

further, stating *“even where there has been no significant change in relevant considerations since the previous application was determined, the fact that permission was granted previously should not be a material consideration in determining the new application”*.

This reconsideration of the principle of development has very grave implications for the industry. In effect it means that extant consents are only valuable at residential land value within their conditioned time period. Any valuation beyond that timeframe cannot be assured to be at residential land value since there is no certainty that the LPA will renew the consent for residential development.

The consequences of this proposed change to the development control system are far reaching. Given the real uncertainty that will exist over whether it will be possible to obtain consents for the period judged commercially necessary, and the fact that there will no longer be any certainty over the establishment of the acceptability of a particular land use on any site in the future, the proposed change will negate the very point of retention of outline planning consent; a principle that HBF fought hard to retain and which you previously appeared to recognise performed an important function in establishing the necessary certainty of land use and value on which the private sector could invest for the future.

There are three possible courses of action that would avoid these potentially catastrophic consequences of removing any certainty of establishing land use within the planning system. They are:

- Not to commence Section 51(3) of the P&CP Act (to not implement the change to Section 73 of the T&CPA); or, failing that
- Retain the current consideration of a previous application as a material consideration in determining any new applications; or, failing that
- to apply Section 51(3) only to those applications granted consent after commencement of Section 51(3) (to allow renewal of all extant consents via an application to amend the time limit condition thereby allowing a newly negotiated time period for implementation with the local planning authority)

I would be grateful for an opportunity to discuss this matter in greater detail with both you and your officials. This is a most serious matter, the consequences of which erode the very heart of the planning system as establishing land use for future investment.

I look forward to hearing from you.

Yours sincerely

Andrew Whitaker
National Planning Adviser