



HOW IMPORTANT IS THE DESCRIPTION OF DEVELOPMENT WITHIN A PLANNING APPLICATION?

When preparing to submit a planning application, the focus is often on ensuring that all of the plans and supporting documentation have been prepared in line with relevant local and national planning policy requirements in order to facilitate a successful validation of an application. However, how much time is spent on carefully considering the description of development prior to submitting, and thereafter determining, a planning application? This is particularly important for Local Planning Authorities to consider when it comes to receiving applications and issuing decision notices in respect of those applications made.

ONCE AN APPLICATION IS RECEIVED

Before publicising and consulting on an application, a Local Planning Authority should be satisfied that the description of development provided by the applicant is accurate. If amendments to the description of the development are required, a Local Planning Authority should first discuss any revised wording with the applicant or their agent. However, checking the accuracy of the description of development should not delay validation of an application.

Local Planning Authorities should be aware of their statutory requirements insofar as they relate to the description of use or development when it comes to issuing decisions in respect of certain types of applications. For example, in respect of applications made pursuant to section 191 of the Town and Country Planning Act 1990 (as amended), for a Certificate of Lawfulness of an existing use or development, section 191(5)(b) provides that a Certificate's description should, in the case of any use falling within one of the classes specified in the Town and Country Planning (Use Classes) Order 1987 (as amended), identify it by reference to that class.

Therefore, if a Certificate were to be granted for the display or retail sale of goods (other than hot food) for use principally to visiting members of the public, the description within the Certificate should note Use Class E(a) of the Town and Country Planning (Use Classes) Order 1987 (as amended). By specifically referencing the use class, this should also assist in providing greater clarity when it comes to identifying if any unauthorised change of use/operational development has taken place on the development site following the grant of a Certificate.



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A recent Appeal Decision made by the Planning Inspectorate (Appeal Ref: 3285754) also highlights the critical importance of ensuring that the description of development reflects the approved plans attached to a planning permission. This Appeal Decision concerns an Enforcement Notice served by the Council of the London Borough of Barnet for contravention of listed building control, namely the internal works to incorporate an additional bathroom to the first floor without listed building consent. The description of development set out within the listed building consent states that it 'Approves listed building consent for: *"Replacement roof finish to the single storey rear roof"*'. Condition 1 attached to the listed building consent refers to a plan which details the works to be undertaken, which includes the installation of the new bathroom on the first floor alleged in the Enforcement Notice. Notwithstanding this, the Inspector determined that, whilst it is appreciated that the drawing included within Condition 1 includes details of the works to incorporate a first floor bathroom, there was no mention in the decision notice of authorisation of any works to incorporate a new bathroom. As such, the Inspector concluded that the works authorised by the Local Planning Authority and specified in the listed building consent were solely in relation to the works to the single storey rear roof and no works were authorised in relation to the incorporation of a bathroom. As such, the Inspector took the view that the internal works to incorporate the bathroom were not authorised.

This decision emphasises the importance placed on development descriptions and the need for Local Planning Authorities to carefully assess and re-consider the description during the lifetime of a planning application including, for example, at the point when revised plans may be submitted. The description at the point a decision is made may, owing to variations having been made to the proposed development since submission but the description remaining the same, represent a wider form of development to that which is intended to be granted by a Local Planning Authority.

ACCURACY & CLARITY

The description of development needs to be clear, accurate and precise as it can otherwise have wide-reaching implications during the lifetime of a planning permission, including the enforcement of planning conditions in years to come. In addition, it is a particularly important factor when considering the scope and interpretation of a planning permission pursuant to section 73 applications or otherwise.

If there is ambiguity that arises following grant of a planning permission, the starting-point- and usually the end-point- is to, *inter alia*, find the *"natural and ordinary meaning"* of the words used in their particular context and in light of common sense. Accordingly, ensuring that there is a precise and accurate description of the relevant development can assist in the case of any ambiguity of a permission which may not arise until long after the consent has been granted.

For example, in *Barton Park Estates v Secretary of State for Housing, Communities and Local Government [2022] EWCA Civ 833*, planning permission was granted in 1987 and amended in 2013 for the stationing of nine *"residential vans"*, 16 holiday chalets, 18 static caravans and 30 touring caravans. Conditions were imposed to prevent permanent residential occupation by limiting the number of months that the chalets, static caravans and touring caravans could be occupied. There was, however, no condition limiting the number of caravans and chalets to those listed in the description of the development. The Claimant had appealed against a decision upholding the Local Planning Authority's refusal to grant it a Certificate of Lawful Use or Development for *"the stationing of up to eighty caravans for the purposes of human habitation"*.

The Claimant had unsuccessfully argued that, in the absence of a condition restricting the number of caravans which could be in residential use on the site, the stationing of 80 residential caravans was permitted under the aforementioned existing planning permission for caravan use on the site. Notwithstanding the absence of a condition specifically restricting the number of residential caravans on the site, the Court ruled, amongst other matters, that it did not have the effect of altering the description of development in the grant itself. In plain terms, the planning permission was for the development described in the brief particulars (namely, the stationing of nine *"residential vans"*, 16 holiday chalets, 18 static caravans and 30 touring caravans) and, when constructed as a whole, the permission did not envisage that all caravans on the site would be used for permanent residential occupation. This case illustrates that the detail listed within a description of development is an integral part of the interpretation of a planning permission. Furthermore, this case reflects the importance for Local Planning Authorities to ensure that the

description of development is correct, both at the time of validation of an application but also at the time of issue of a decision notice, particularly given that there may have been amendments to the scheme during the lifetime of the application prior to determination which may be reflected better with a revised planning description.

CONCLUSION

In simple terms, the description of development is a vital component of the extent of a planning permission granted and is often something that is overlooked. As summarised above, there are various consequences that can ensue if the description of development is not clear. For example, any ambiguity within the description may lead to a wider use being granted than originally anticipated or intended.

This article intends to demonstrate that the description of development is definitive of the development permitted by the planning permission and that the description could be a factor which has the effect of limiting development unintentionally or unnecessarily or reducing the flexibility of planning permissions, which may be particularly important in the context of a future s73 application made to vary an original planning permission granted.

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