Permitted Development, Environmental Impact Assessment and the Habitat Regulations

The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) sets out provisions for the implementation of development in England that does not require submission and approval of planning permission. Many statutory undertakers such as water companies and Highways England benefit from extensive permitted development rights that assist in the fulfilment of their statutory duties.

Schedule 3 of the GPDO confirms that permitted rights do not apply where a proposed or implemented development constitutes EIA development, and should therefore be subject to the EIA Regulations.

On this basis permitted development rights should not be ‘assumed’ until the development has been confirmed as non-EIA, following receipt of a negative screening opinion from a Local Planning Authority or screening direction from the Secretary of State. For all developments identified in Schedule 1 and 2 of the EIA Regulations where permitted developments rights may apply, it is recommended that formal confirmation of non-EIA status is achieved before proceeding with the development or submitting a Certificate of Lawfulness application.

As part of an EIA screening exercise it is normal for concerns to be raised about the likelihood for potential significant effects where a development site is located within or in close proximity to a European protected site. In these instances, the provisions of the Habitat Regulations (The Conservation of Habitats and Species Regulations 2010) may apply.

In these cases, it is important to note that the GPDO does not preclude permitted development where it may have a significant effect on a protected European site. The Habitat Regulations provide for a written approval process administered by the Local Planning Authority following consultation with the appropriate nature conservation body (Natural England).

The process effectively allows permitted development rights to be implemented where written approval has been obtained from the Local Planning Authority in accordance with Regulation 75 of the Habitat Regulations and where in all other respects EIA is not required, and the development is confirmed as lawful in accordance with the GPDO.

Savills Planning recently delivered a solar array as permitted development at the Widnes Waste Water Treatment Works. The development was progressed on behalf of a statutory sewerage and water undertaker in accordance with the above process. A timeline case study is provided below as an illustration of how these issues are dealt with in practice:

**Widnes Waste Water Treatment Works: Case Study**

**March 2015** – the Local Planning Authority issued an EIA Screening Opinion stating that the proposed solar array would constitute EIA development for ecological reasons relating to the site’s proximity to the Mersey Estuary RAMSAR/SPA.

**September 2015** - Savills Planning submitted a revised EIA screening request with additional supporting ecological information in response to the previously issued EIA Screening Opinion.

**October 2015** - With the EIA screening request pending determination, an application for a Certificate of Lawfulness was submitted to the Local Planning Authority to confirm the proposed solar array as lawful in accordance with the GPDO.

**November 2015** – the Local Planning Authority issued an EIA Screening Opinion stating that the proposed solar array would not constitute EIA development following receipt of the revised EIA screening request with supporting ecological information.
However, the Local Planning Authority advised in separate correspondence that due to the site’s proximity to the Mersey Estuary, a Habitat Regulation Assessment (HRA) would be required in accordance with the Habitat Regulations before the submitted Certificate of Lawfulness could be approved.

**January 2016** - Savills Planning submitted a ‘Shadow HRA Screening Report’ and supporting information to accompany a formal request under Regulation 75 of the Habitat Regulations. This was followed in May by the submission of a Stage 1: Screening assessment in accordance with the Habitat Regulations and supporting ecological information to Natural England and the Local Planning Authority.

**May 2016** - Written approval in accordance with Regulation 75 was received from the Local Planning Authority (following consultation with Natural England) confirming that the solar array would not have a significant effect on a European site within the meaning of the Habitat Regulations.

**June 2016** - Formal approval of a Certificate of Lawfulness confirming the solar array as lawful permitted development in accordance with the GPDO.

**Conclusion**

The case study above demonstrates that in appropriate circumstances, development can be delivered as permitted development in proximity to sensitive locations where concerns are raised initially about potential ecological impacts. The Habitat Regulation 75 written approval method allows for the submission of a focused assessment which can deliver significant time and cost savings when compared with the preparation of a planning application for EIA development.

*David Palmer, Savills Planning, November 2016*

David Palmer is an Associate Director of Savills. Savills’ planning team has extensive experience of advising on permitted development rights and progressing Certificate of Lawfulness applications to formally confirm permitted development as lawful in accordance with the GPDO.

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