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# Keeping planning permissions alive: what constitutes commencement of development?

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The States of Guernsey Development and Planning Authority ("the DPA") has published new guidance setting out its position on what is required to establish that a planning permission has been started on site, in order to keep that permission 'alive' and enable work to continue after the standard three year expiry date attached to most permissions.

Provided that any conditions have been discharged as required and the permission is not subsequently abandoned, a 'commenced' permission may be kept alive indefinitely.

## The new guidance

Amongst other things, the new guidance states that:

*Once a development has started the work can continue without the requirement for further permissions to be sought, even if this is over a significant period, providing that there is an intention to complete the development.*

It goes on to clarify that:

*Generally, commencement of approved works will involve building out of the ground such as starting to build walls off the foundations. On larger schemes construction of access roads or the formation of new accesses or demolition of substantial existing built structures necessary to carry out approved works may amount to commencement. Internal works to a protected building, where planning permission was required could also be sufficient to determine that development has commenced.*

Before caveating this by saying:

*However, preparing or clearing the ground for development, or the digging of foundation trenches does not constitute commencement in terms of Planning.*

This guidance carries no statutory weight, but will likely be referred to by the DPA when carrying out enforcement investigations or issuing Immunity Certificates

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## Comparison with the UK and Jersey

Unlike in the UK and Jersey, there is no statutory definition of what constitutes commencement of development under Guernsey's 2005 Planning Law, although provisions exists for that to be clarified by way of Ordinance.

In Jersey, the 2002 Planning Law (as amended) provides that where planning permission has been granted for physical development, this will be treated as being commenced when any material operation comprised in the development begins to be carried out.

Closely following UK statutes, 'material operations' are specified as including:

a. any work of construction in the course of the erection of a building;
b. any work of demolition of a building;
c. the digging of a trench which is to contain the foundations or part of the foundations of a building;
d. the laying of an underground main or pipe to the foundations, or part of the foundations, of a building or to a trench such as mentioned in sub-paragraph (c)

## Issues and concerns

Given similarities between Guernsey's planning system and those of Jersey and the UK, and absent any statutory definition of 'commencement' on which the DPA could base its position, aspects of the new guidance are surprisingly at odds with those jurisdictions.

The DPA's suggestion that there must be, "an intention to complete the development", will likely result in individual cases being treated differently, and is wholly at odds with established UK case law. There, the courts have held that an objective approach must be adopted and that there is nothing to justify the, “imposition of an ill-defined requirement that the specified operations should be carried out with some particular intention.” *East Dunbartonshire Council v SoS for Scotland and MacTaggart and Mickel Ltd, 1998.*

Similarly, the suggestion that substantial physical works must be carried out, "such as starting to build walls off the foundations", and that, "the digging of foundation trenches does not constitute commencement", is at odds with leading and many subsequent judgments. In particular, in *Pioneer Aggregates (UK) Ltd v SoS for the Environment, 1984*, Lord Scarman stated that planning permissions with only a meagre part implemented were hardy beasts with a great capacity for survival. All that is required is that the works must comprise part of the development authorised by the planning permission and be more than de minimis.

Against this backdrop, and given that UK case law can be persuasive in the absence of any relevant local decisions, the DPA may find itself on shaky ground if it attempts to take action on the basis of the guidance as published.

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## Conclusion

Given that keeping planning permissions alive is often a matter of great concern to individual applicants and developers alike, where the time taken to obtain permission, changing personal or financial circumstances, or other external factors may mean that a development must be put on hold before proceeding at a later date, it is disappointing that the DPA's new guidance raises more questions than it answers.

This is compounded by the fact that this aspect of the planning system has the potential to generate considerable controversy, where the resumption of work on an elderly planning permission might be perceived as circumventing more recent, and potentially more restrictive, policies, or where neighbouring property owners may have moved in long after, and be unaware of, the grant of the original permission.

Notwithstanding the DPA's undoubted good intentions in publishing this guidance, it is no substitute for an Ordinance confirming a statutory definition of 'commencement', which would remove any lingering uncertainty and greatly reduce the risk of inconsistent decision making on the DPA's part.

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