

WHAT CONSTITUTES A PLANNING APPLICATION?

Castlebay v Asquith Properties Ltd (2006)

1. INTRODUCTION

It is interesting to note that there is no statutory definition of what constitutes a planning application. In the Town and Country Planning Act 1990 the phrase “application for planning permission,” has been taken in case law to mean an application for full planning permission or outline planning permission. R v Bradford Upon Avon Urban District Council ex parte Bolton.

However, in the case of Hargreaves Transport Ltd v Lynch (1969) Lord Denning ruled that a planning permission could only mean a full planning permission! The terms of the agreement in that case were important as it was a requirement that the development proceeded as soon as possible and, of course, an outline consent could not be implemented without reserved matters approval and thus could not be quickly implemented.

2. CASE FACTS

The recent case of Castlebay v Asquith Properties Ltd (2006) saw the Court of Appeal rule on what constituted a planning application under the terms of an Option Agreement made between the two parties

Asquith Properties had an option that was extendable in the event that a decision had not been reached on a planning application. Asquith argued that the option was extended because although outline consent had been obtained reserved matters approval had not. Castlebay said that there was a planning permission and that an “application for planning permission” could not mean an application for reserved matters approval.

3. THE DECISION

The Court of Appeal agreed with Castlebay. An “application for planning permission” could not mean an application for reserved matters approval

4. CONCLUSION

This is not a surprising decision but it highlights the importance in making sure that your purchase agreements, conditional contracts and option agreements are clear on what sort of application is sought and legal advice is obtained when planning strategy changes to ensure that the strategy fits in with existing agreements