

Approved inspectors – a tough gig



I imagine that approved inspectors across England and Wales collectively sighed in relief when Waksman J in the Court of Appeal ruled that:

“... an Approved Inspector ... has no statutory power to influence the design or construction of a building in any way, save to stipulate that it must comply with the law. In certifying, or refusing to certify, plans and works, the Approved Inspector is not engaged in the positive role of the provision or creation of the relevant building, but performs the essentially negative regulatory role of checking for compliance against prescribed criteria.”

This case (*The Lessees and Management Company of Herons Court v NHBC Building Control Services Ltd (Court of Appeal)* [2019] EWCA Civ 1423) decided that a claim could not be made against an approved inspector for breach of section 1(1) of the Defective Premises Act 1972 (thereby further widening their potential liabilities on developments).

It caught my attention as I've had difficulties with approved inspectors on two of my projects recently and so I've been looking more closely at the current climate for approved inspectors and whether the pressures facing them is industry-wide (and what those pressures are).

Insurance is make or break

As I understand it, as of this summer, there is currently now only one insurer in the market willing to insure approved inspectors. This dearth in competition means that, contractually, this insurer can now call the shots (by, for example, refusing to give collateral warranties to third parties such as funders).

It also means, unfortunately for some smaller and medium-sized businesses, that if this insurer declines to insure



an approved inspector who previously went elsewhere for its insurance that, as a matter of law, this approved inspector must cease trading.

This is not only causing serious concerns for the health of the approved inspector industry, but is also causing unease for developers (particularly those with projects which are mid-way through and who then cannot find an approved inspector to issue a buildings regulations certificate).

With a lack of adequate handover by the previous approved inspector, issuing certificates by a new inspector has become a slow and (understandably) difficult process and this is leading to delays in completion.

A delayed solution will slow down projects

There are justifiable concerns about approved inspectors and the approval system that is currently in place (Dame Judith Hackitt in her post Grenfell review of building regulations has said that the subjectivity of allowing developers to choose their own approved inspectors has led to a 'race to the bottom').

So yes, something urgently needs to be done to address these concerns.

However, at a time when political interests are very much elsewhere, it is easy to see that there will be a delay in providing any solution to this issue and that many projects will continue to be delayed as a result of the status quo.

At a time when the industry is already concerned about the knock-on effects of a deal/no deal Brexit and the potential impact of costs of materials, lead times for ordering materials and shortages in manpower, this is another potential hurdle which is unwelcome for an industry that has enough on its plate to deal with already.

How we can help

From developers, investors and contractors to high net worth individuals, our construction lawyers offer clients a wealth of expertise, ensuring construction contracts are well drafted and watertight, and disputes skillfully handled.

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