



Legal Indemnities

A guide to
Pre/Post Planning
Insurance

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WHERE THE EXPERIENCE MATTERS

In our experience there can be confusion around what Insurers mean when they refer to pre and post planning cover, how long cover lasts and what is covered at the different stages. There is no industry standard, so we suggest the following:

Pre-planning: Refers to incepting cover for the use or development currently under consideration prior to submitting a planning application.

Post-planning: Refers to incepting cover once planning permission has been obtained for the use or development currently under consideration.

Once a planning application has been submitted Insurers are likely to want to wait until the public consultation is closed or planning permission granted.

What does this mean?

For the Insured this is relevant because insurers charge a higher rate of premium for cover on a pre-planning basis. Insurers believe that pre-planning cover carries more risk for them.

For Insurers, the issue really revolves around the publicity generated through the planning process. For many of the risks on which we arrange cover, our experience is that it will often be nearby owners who instigate a claim as they may have the benefit of restrictive covenants, or own land over which access is to be created.

Thus, Insurers will be interested to see who has objected and on what basis.

What should you consider?

It might be useful to think in terms of pre and post publicity. We say that because in the context of considering objections, Insurers are inclined to assess a new scheme in light of objections to recent planning applications even when those are for a scheme which is/was different from that under consideration. If the old scheme and new scheme fall foul of the risk, Insurers might be more willing to provide cover pre-planning on the basis of having examined objections to an earlier planning application. Premiums could be lower too.

When you insure pre-planning the application of coverage changes over time. If Insurers consider that a claim has materialised during the planning process, they are likely to look at abortive costs and diminution in market value as the heads of loss under which they must indemnify. Once planning is in place and contracts are entered into, or works commenced, then additional heads of loss operate. Arguably this means that claims arising through the planning process are financially less harmful to the Insurer than claims which are brought during the construction phase. Either way, cover is in perpetuity.

Some Insurers have been willing to structure cover in two phases in order to reflect the perceived exposure at the different stages. Premiums are paid in phases and a lower level of cover is taken at inception. Cover is enhanced once planning is obtained without material planning objection (to the Insurer).

It is worth bearing in mind that if cover is taken pre-planning the premium is likely to be forfeited should planning permission be refused.

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A final note; if you are seeking post-planning cover it might be prudent to ensure your contract is subject to planning permission and a policy. You would want to avoid a situation whereby planning consent has been obtained but there is an inability to insure due to material objections through the planning process.

Should you wish to discuss any potential risk please contact Adrian Fisher ACII, Director, at JWL.
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