

# Planning Act 2008

# **2008 CHAPTER 29**

#### PART 5

APPLICATIONS FOR ORDERS GRANTING DEVELOPMENT CONSENT

## **CHAPTER 2**

PRE-APPLICATION PROCEDURE

# 41 Chapter applies before application is made

- (1) This Chapter applies where a person ("the applicant") proposes to make an application for an order granting development consent.
- (2) In the following provisions of this Chapter—
  - "the proposed application" means the proposed application mentioned in subsection (1);
  - "the land" means the land to which the proposed application relates or any part of that land;
  - "the proposed development" means the development for which the proposed application (if made) would seek development consent.

## **Commencement Information**

II S. 41 in force at 1.10.2009 by S.I. 2009/2260, art. 2(b)

# 42 Duty to consult

- [F1(1)] The applicant must consult the following about the proposed application—
  - (a) such persons as may be prescribed,

Changes to legislation: Planning Act 2008, Chapter 2 is up to date with all changes known to be in force on or before 25 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- [F2(aa) the Marine Management Organisation, in any case where the proposed development would affect, or would be likely to affect, any of the areas specified in subsection (2),]
  - (b) each local authority that is within section 43,
  - (c) the Greater London Authority if the land is in Greater London, and
  - (d) each person who is within one or more of the categories set out in section 44.

# $[^{F3}(2)]$ The areas are—

- (a) waters in or adjacent to England up to the seaward limits of the territorial sea;
- (b) an exclusive economic zone, except any part of an exclusive economic zone in relation to which the Scottish Ministers have functions;
- (c) a Renewable Energy Zone, except any part of a Renewable Energy Zone in relation to which the Scottish Ministers have functions;
- (d) an area designated under section 1(7) of the Continental Shelf Act 1964, except any part of that area which is within a part of an exclusive economic zone or Renewable Energy Zone in relation to which the Scottish Ministers have functions.]

#### **Textual Amendments**

- F1 S. 42(1): s. 42 renumbered as s. 42(1) (1.4.2010) by Marine and Coastal Access Act 2009 (c. 23), ss. 23(2)(a), 324(3); S.I. 2010/298, art. 2, Sch. para. 6
- F2 S. 42(1)(aa) inserted (1.4.2010) by Marine and Coastal Access Act 2009 (c. 23), ss. 23(2)(b), 324(3); S.I. 2010/298, art. 2, Sch. para. 6
- F3 S. 42(2) inserted (1.4.2010) by Marine and Coastal Access Act 2009 (c. 23), ss. 23(2)(c), 324(3); S.I. 2010/298, art. 2, Sch. para. 6

# **Commencement Information**

- I2 S. 42 partly in force; s. 42 in force for certain purposes at Royal Assent see s. 241
- I3 S. 42 in force at 1.10.2009 by S.I. 2009/2260, art. 2(b)

# 43 [F4Local authorities for purposes of section 42(1)(b)]

- (1) A local authority is within this section if the land is in the authority's area.
- (2) A local authority ("A") is within this section if—
  - (a) the land is in the area of another local authority ("B"),
  - [F5(aa) B is a unitary council or a lower-tier district council,] and
    - (b) any part of the boundary of A's area is also a part of the boundary of B's area.
- [F6(2A) If the land is in the area of an upper-tier county council ("C"), a local authority ("D") is within this section if—
  - (a) D is not a lower-tier district council, and
  - (b) any part of the boundary of D's area is also part of the boundary of C's area.

### I<sup>F7</sup>(3) In this section—

"local authority" means—

- (a) a county council, or district council, in England;
- (b) a London borough council;
- (c) the Common Council of the City of London;

Part 5 - Applications for orders granting development consent

Chapter 2 – Pre-application procedure

Document Generated: 2024-05-25

Changes to legislation: Planning Act 2008, Chapter 2 is up to date with all changes known to be in force on or before 25 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (d) the Council of the Isles of Scilly;
- (e) a county council, or county borough council, in Wales:
- (f) a council constituted under section 2 of the Local Government etc (Scotland) Act 1994;
- (g) a National Park authority;
- (h) the Broads Authority;

"lower-tier district council" means a district council in England for an area for which there is a county council;

"unitary council" means a local authority that is not an upper-tier county council, a lower-tier district council, a National Park authority or the Broads Authority;

"upper-tier county council" means a county council in England for each part of whose area there is a district council.]

#### **Textual Amendments**

- S. 43 heading substituted (1.4.2010) by Marine and Coastal Access Act 2009 (c. 23), ss. 23(3)(a), 324(3); S.I. 2010/298, art. 2, Sch. para. 6
- F5 S. 43(2)(aa) inserted (1.4.2012) by Localism Act 2011 (c. 20), ss. 133(2), 240(2) (with s. 144); S.I. 2012/628, art. 7(a)
- **F6** S. 43(2A) inserted (1.4.2012) by Localism Act 2011 (c. 20), ss. 133(3), 240(2) (with s. 144); S.I. 2012/628, art. 7(a)
- F7S. 43(3) substituted (1.4.2012) by Localism Act 2011 (c. 20), ss. 133(4), 240(2) (with s. 144); S.I. 2012/628, art. 7(a)

# **Commencement Information**

S. 43 in force at 1.10.2009 by S.I. 2009/2260, art. 2(b)

#### [F8 Categories for purposes of section 42(1)(d)] 44

- (1) A person is within Category 1 if the applicant, after making diligent inquiry, knows that the person is an owner, lessee, tenant (whatever the tenancy period) or occupier of the land.
- (2) A person is within Category 2 if the applicant, after making diligent inquiry, knows that the person
  - is interested in the land, or (a)
  - has power—
    - (i) to sell and convey the land, or
    - (ii) to release the land.
- (3) An expression, other than "the land", that appears in subsection (2) of this section and also in section 5(1) of the Compulsory Purchase Act 1965 (c. 56) has in subsection (2) the meaning that it has in section 5(1) of that Act.
- (4) A person is within Category 3 if the applicant thinks that, if the order sought by the proposed application were to be made and fully implemented, the person would or might be entitled
  - as a result of the implementing of the order,
  - as a result of the order having been implemented, or

Changes to legislation: Planning Act 2008, Chapter 2 is up to date with all changes known to be in force on or before 25 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

(c) as a result of use of the land once the order has been implemented, to make a relevant claim.

This is subject to subsection (5).

- (5) A person is within Category 3 only if the person is known to the applicant after making diligent inquiry.
- (6) In subsection (4) "relevant claim" means—
  - (a) a claim under section 10 of the Compulsory Purchase Act 1965 (c. 56) (compensation where satisfaction not made for the taking, or injurious affection, of land subject to compulsory purchase);
  - (b) a claim under Part 1 of the Land Compensation Act 1973 (c. 26) (compensation for depreciation of land value by physical factors caused by use of public works)[F9];
  - (c) a claim under section 152(3)].

#### **Textual Amendments**

- F8 S. 44 heading substituted (1.4.2010) by Marine and Coastal Access Act 2009 (c. 23), ss. 23(3)(b), 324(3); S.I. 2010/298, art. 2, Sch. para. 6
- F9 S. 44(6)(c) inserted (1.4.2012) by Localism Act 2011 (c. 20), ss. 135(8), 240(2) (with s. 144); S.I. 2012/628, art. 7(a)

#### **Commencement Information**

I5 S. 44 in force at 1.10.2009 by S.I. 2009/2260, art. 2(b)

# 45 Timetable for consultation under section 42

- (1) The applicant must, when consulting a person under section 42, notify the person of the deadline for the receipt by the applicant of the person's response to the consultation.
- (2) A deadline notified under subsection (1) must not be earlier than the end of the period of 28 days that begins with the day after the day on which the person receives the consultation documents.
- (3) In subsection (2) "the consultation documents" means the documents supplied to the person by the applicant for the purpose of consulting the person.

### **Commencement Information**

I6 S. 45 in force at 1.10.2009 by S.I. 2009/2260, art. 2(b)

# 46 Duty to notify [F10Secretary of State] of proposed application

- (1) The applicant must supply the [FII Secretary of State] with such information in relation to the proposed application as the applicant would supply to the [FII Secretary of State] for the purpose of complying with section 42 if the applicant were required by that section to consult the [FII Secretary of State] about the proposed application.
- (2) The applicant must comply with subsection (1) on or before commencing consultation under section 42.

Part 5 – Applications for orders granting development consent

Chapter 2 – Pre-application procedure

Document Generated: 2024-05-25

Changes to legislation: Planning Act 2008, Chapter 2 is up to date with all changes known to be in force on or before 25 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

#### **Textual Amendments**

- **F10** Words in s. 46 heading substituted (1.4.2012) by Localism Act 2011 (c. 20), s. 240(2), **Sch. 13 para. 8(3)**; S.I. 2012/628, art. 7(a)
- **F11** Words in s. 46(1) substituted (1.4.2012) by Localism Act 2011 (c. 20), s. 240(2), **Sch. 13 para. 8(2)**; S.I. 2012/628, art. 7(a)

#### **Commencement Information**

I7 S. 46 in force at 1.10.2009 by S.I. 2009/2260, art. 2(b)

# 47 Duty to consult local community

- (1) The applicant must prepare a statement setting out how the applicant proposes to consult, about the proposed application, people living in the vicinity of the land.
- (2) Before preparing the statement, the applicant must consult each local authority that is within section 43(1) about what is to be in the statement.
- (3) The deadline for the receipt by the applicant of a local authority's response to consultation under subsection (2) is the end of the period of 28 days that begins with the day after the day on which the local authority receives the consultation documents.
- (4) In subsection (3) "the consultation documents" means the documents supplied to the local authority by the applicant for the purpose of consulting the local authority under subsection (2).
- (5) In preparing the statement, the applicant must have regard to any response to consultation under subsection (2) that is received by the applicant before the deadline imposed by subsection (3).
- (6) Once the applicant has prepared the statement, the applicant [F12must—
  - (za) make the statement available for inspection by the public in a way that is reasonably convenient for people living in the vicinity of the land,]
  - (a) [F13 publish,] in a newspaper circulating in the vicinity of the land[F14, a notice stating where and when the statement can be inspected], and
  - (b) [F15publish the statement in such manner] as may be prescribed.
- (7) The applicant must carry out consultation in accordance with the proposals set out in the statement.

#### **Textual Amendments**

- **F12** Words in s. 47(6) substituted (1.4.2012) by Localism Act 2011 (c. 20), **ss. 134(a)**, 240(2) (with s. 144); S.I. 2012/628, art. 7(a)
- **F13** Word in s. 47(6)(a) inserted (1.4.2012) by Localism Act 2011 (c. 20), **ss. 134(b)(i)**, 240(2) (with s. 144); S.I. 2012/628, art. 7(a)
- **F14** Words in s. 47(6)(a) inserted (1.4.2012) by Localism Act 2011 (c. 20), **ss. 134(b)(ii)**, 240(2) (with s. 144); S.I. 2012/628, art. 7(a)
- **F15** Words in s. 47(6)(b) substituted (1.4.2012) by Localism Act 2011 (c. 20), **ss. 134(c)**, 240(2) (with s. 144); S.I. 2012/628, art. 7(a)

#### **Commencement Information**

I8 S. 47 partly in force; s. 47 in force for certain purposes at Royal Assent see s. 241

Part 5 – Applications for orders granting development consent Chapter 2 – Pre-application procedure Document Generated: 2024-05-25

Changes to legislation: Planning Act 2008, Chapter 2 is up to date with all changes known to be in force on or before 25 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

I9 S. 47 in force at 1.10.2009 by S.I. 2009/2260, art. 2(b)

# 48 Duty to publicise

- (1) The applicant must publicise the proposed application in the prescribed manner.
- (2) Regulations made for the purposes of subsection (1) must, in particular, make provision for publicity under subsection (1) to include a deadline for receipt by the applicant of responses to the publicity.

#### **Commencement Information**

I10 S. 48 partly in force; s. 48 in force for certain purposes at Royal Assent see s. 241

III S. 48 in force at 1.10.2009 by S.I. 2009/2260, art. 2(b)

# 49 Duty to take account of responses to consultation and publicity

- (1) Subsection (2) applies where the applicant—
  - (a) has complied with sections 42, 47 and 48, and
  - (b) proposes to go ahead with making an application for an order granting development consent (whether or not in the same terms as the proposed application).
- (2) The applicant must, when deciding whether the application that the applicant is actually to make should be in the same terms as the proposed application, have regard to any relevant responses.
- (3) In subsection (2) "relevant response" means—
  - (a) a response from a person consulted under section 42 that is received by the applicant before the deadline imposed by section 45 in that person's case,
  - (b) a response to consultation under section 47(7) that is received by the applicant before any applicable deadline imposed in accordance with the statement prepared under section 47, or
  - (c) a response to publicity under section 48 that is received by the applicant before the deadline imposed in accordance with section 48(2) in relation to that publicity.

## **Commencement Information**

I12 S. 49 in force at 1.10.2009 by S.I. 2009/2260, art. 2(b)

# 50 Guidance about pre-application procedure

- (1) Guidance may be issued about how to comply with the requirements of this Chapter.
- (2) Guidance under this section may be issued by F16... the Secretary of State.
- (3) The applicant must have regard to any guidance under this section.

Planning Act 2008 (c. 29)

7

Part 5 – Applications for orders granting development consent

Chapter 2 – Pre-application procedure Document Generated: 2024-05-25

Changes to legislation: Planning Act 2008, Chapter 2 is up to date with all changes known to be in force on or before 25 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

## **Textual Amendments**

**F16** Words in s. 50(2) repealed (1.4.2012) by Localism Act 2011 (c. 20), s. 240(2), Sch. 13 para. 9, Sch. 25 **Pt. 20**; S.I. 2012/628, art. 7

# **Commencement Information**

I13 S. 50 in force at 1.10.2009 by S.I. 2009/2260, art. 2(b)

## **Changes to legislation:**

Planning Act 2008, Chapter 2 is up to date with all changes known to be in force on or before 25 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

View outstanding changes

# Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

```
Pt. 10A inserted by 2023 c. 55 Sch. 12 para. 1
s. 37(3A) inserted by 2021 c. 30 Sch. 15 para. 7
s. 37(3A) inserted by 2021 c. 30 Sch. 15 para. 7
s. 103(1A) inserted by 2021 c. 30 Sch. 15 para. 2
s. 103(1A) inserted by 2021 c. 30 Sch. 15 para. 2
s. 104(3)-(3B) substituted for s. 104(3) by 2021 c. 30 Sch. 15 para. 3(2)
s. 104(3)-(3B) substituted for s. 104(3) by 2021 c. 30 Sch. 15 para. 3(2)
s. 105(3)(4) inserted by 2021 c. 30 Sch. 15 para. 4(1)
s. 105(3)(4) inserted by 2021 c. 30 Sch. 15 para. 4(1)
s. 120(2)(c) inserted by 2021 c. 30 Sch. 15 para. 8
s. 120(2)(c) inserted by 2021 c. 30 Sch. 15 para. 8
s. 223(1)(za) inserted by 2021 c. 30 Sch. 15 para. 8
s. 232(5)(f) inserted by 2021 c. 30 Sch. 15 para. 9(2)
Sch. 2A inserted by 2021 c. 30 Sch. 15 para. 9(2)
```

Sch. 2A inserted by 2021 c. 30 Sch. 15 para. 5