
STATUTORY INSTRUMENTS

2010 No. 2184

The Town and Country Planning (Development Management Procedure) (England) Order 2010

PART 3

Consultation

Consultations before the grant of permission

16.—(1) Before granting planning permission for development which, in their opinion, falls within a category set out in the Table in Schedule 5, a local planning authority shall consult the authority or person mentioned in relation to that category, except where—

- (a) the local planning authority are the authority so mentioned;
- (b) the local planning authority are required to consult the authority so mentioned under paragraph 7 of Schedule 1 to the 1990 Act (local planning authorities: distribution of functions)⁽¹⁾ or article 22;
- (c) the authority or person so mentioned has advised the local planning authority that they do not wish to be consulted;
- (d) the development is subject to any standing advice provided by the authority or person so mentioned to the local planning authority in relation to the category of development; or
- (e) the development is not EIA development and is the subject of an application in relation to which article 18 applies.

(2) The exception in paragraph (1)(c) shall not apply where, in the opinion of the local planning authority, development falls within paragraph (zc) of the table in Schedule 5.

(3) The exception in paragraph (1)(d) shall not apply where—

- (a) the development is an EIA development; or
- (b) the standing advice was issued more than 2 years before the date of the application for planning permission for the development and the guidance has not been amended or confirmed as being extant by the authority or person within that period.

(4) The Secretary of State may give directions to a local planning authority requiring that authority to consult any person or body named in the directions, in any case or class of case specified in the directions.

(5) Where, by or under this article or article 18, a local planning authority are required to consult any person or body (“the consultee”) before granting planning permission—

- (a) they shall, unless an applicant has served a copy of an application for planning permission on the consultee, give notice of the application to the consultee; and

⁽¹⁾ Paragraph 7 of Schedule 1 was substituted by section 118(1) of, and paragraphs 1 and 16 of Schedule 6 to, the 2004 Act, and was amended by paragraph 3 of Schedule 5 to the Local Democracy, Economic Development and Construction Act 2009 (c. 20).

- (b) subject to paragraph (6), they shall not determine the application until at least 21 days after the date on which notice is given under sub-paragraph (a) or, if earlier, 21 days after the date of service of a copy of the application on the consultee by the applicant.
- (6) Sub-paragraph (b) of paragraph (5) does not apply if before the end of the period referred to in that sub-paragraph—
 - (a) the local planning authority have received representations concerning the application from the consultee; or
 - (b) the consultee gives notice that it does not intend to make representations.
- (7) The local planning authority shall, in determining the application, take into account any representations received from a consultee.

Consultations before the grant of planning permission: urgent Crown development

17.—(1) This article applies in relation to applications made to the Secretary of State under section 293A of the 1990 Act (urgent Crown development: application).

(2) Before granting planning permission for development which, in the opinion of the Secretary of State, falls within a category set out in the Table in Schedule 5, the Secretary of State shall consult the authority or person mentioned in relation to that category, except where—

- (a) the Secretary of State is required to consult the authority so mentioned under section 293A(9)(a) of the 1990 Act;
- (b) the authority or person so mentioned has advised the Secretary of State that they do not wish to be consulted; or
- (c) the development is subject to any standing advice provided by the authority or person so mentioned to the Secretary of State in relation to the category of development.

(3) The exception in paragraph (2)(b) shall not apply where, in the opinion of the Secretary of State, development falls within paragraph (zc) of the table in Schedule 5.

(4) The exception in paragraph (2)(c) shall not apply where—

- (a) the development is an EIA development; or
- (b) the standing advice was issued more than 2 years before the date of the application for planning permission for the development and the guidance has not been amended or confirmed as being extant by the authority or person within that period.

(5) Where, by or under this article, the Secretary of State is required to consult any person or body (“the consultee”) before granting planning permission—

- (a) the Secretary of State shall, unless an applicant has served a copy of an application for planning permission on the consultee, give notice of the application to the consultee; and
- (b) subject to paragraph (6), the Secretary of State shall not determine the application until at least 21 days after the date on which notice is given under sub-paragraph (a) or, if earlier, 21 days after the date of service of a copy of the application on the consultee by the applicant.

(6) Sub-paragraph (b) of paragraph (5) does not apply if before the end of the period referred to in that sub-paragraph—

- (a) the Secretary of State has received representations concerning the application from the consultee; or
- (b) the consultee gives notice that it does not intend to make representations.

(7) The Secretary of State shall, in determining the application, take into account any representations received from a consultee.

Consultations before the grant of planning permission pursuant to section 73 or the grant of a replacement planning permission subject to a new time limit

18.—(1) This article applies in relation to—

- (a) an application made pursuant to section 73 of the 1990 Act (determination of applications to develop land without conditions previously attached);
- (b) an application for planning permission where the development that is the subject of the application—
 - (i) has not yet begun; and
 - (ii) was granted planning permission on or before 1st October 2009 subject to a time limit imposed by or under section 91 (general condition limiting duration of planning permission) or 92 (outline planning permission) of the 1990 Act⁽²⁾ which has not expired; or
- (c) an application for outline planning permission where the development that is the subject of the application—
 - (i) has begun in accordance with the terms of, and any reserved matters approved under, an outline planning permission which is required or expressly permitted to be implemented in phases, other than a permission granted on an application made under paragraph (b); and
 - (ii) was granted that outline planning permission on or before 1st October 2009 subject to a time limit imposed by or under section 91 or 92 of the 1990 Act which has not expired.

(2) Before granting planning permission on an application in relation to which this article applies, the local planning authority must consult such authorities or persons falling within a category set out in the table in Schedule 5 as the local planning authority consider appropriate.

Consultation with county planning authority

19. The period prescribed for the purposes of paragraph 7(7)(c) of Schedule 1 to the 1990 Act (local planning authorities: distribution of functions) is 21 days.

Duty to respond to consultation

20.—(1) The requirements to consult which are prescribed for the purposes of section 54(2)(b) of the 2004 Act (duty to respond to consultation) are those contained in—

- (a) articles 16 and 17 and Schedule 5;
- (b) article 18;
- (c) article 22;
- (d) paragraph (5)(a) of condition A.3 in Part 24 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (development by electronic communications code operators)⁽³⁾;
- (e) section 71(3) of the 1990 Act (consultations in connection with determinations under section 70);
- (f) paragraph 4(2) of Schedule 1 to the 1990 Act⁽⁴⁾;

(2) Section 91 was amended by section 51(1) of the 2004 Act and there have been other amendments not relevant to this instrument.

(3) [S.I. 1995/418](#); Part 24 of Schedule 2 was substituted by [S.I. 2001/2718](#).

(4) Paragraph 4(2) of Schedule 1 was amended by sections 19(2) and 84 of, and paragraph 53 of Schedule 7 and Part I of Schedule 19 to, the Planning and Compensation Act 1991 (c. 34).

- (g) paragraph 7 of Schedule 1 to the 1990 Act; and
- (h) paragraph 3(b) of Schedule 4 to the Planning (Listed Buildings and Conservation Areas) Act 1990 (further provisions as to exercise of functions by different authorities)(5).

(2) The period prescribed for the purposes of section 54(4)(a) of the 2004 Act is the period of 21 days beginning with the day on which—

- (a) the document on which the views of consultees are sought; or
- (b) where there is more than one such document and they are sent on different days, the last of those documents,

is received by the consultee, or such other period as may be agreed in writing between the consultee and the consultor.

(3) The information to be provided to the consultee for the purposes of the consultation, pursuant to section 54(5)(b) of the 2004 Act, is such information as will enable that person to provide a substantive response.

(4) For the purposes of this article and article 21, and pursuant to section 54(5)(c) of the 2004 Act, a substantive response is one which—

- (a) states that the consultee has no comment to make;
- (b) states that, on the basis of the information available, the consultee is content with the development proposed;
- (c) refers the consultor to current standing advice by the consultee on the subject of the consultation; or
- (d) provides advice to the consultor.

Duty to respond to consultation: annual reports

21.—(1) Each consultee who is, by virtue of section 54 of the 2004 Act and article 20, under a duty to respond to consultation shall give to the Secretary of State, not later than 1st July in each year, a report as to that consultee's compliance with section 54(4) of the 2004 Act.

(2) The report shall relate to the period of 12 months commencing on 1st April in the preceding year ("the report year").

(3) The report shall contain, in respect of the relevant report year—

- (a) a statement as to the number of occasions on which the consultee was consulted by a person other than a local planning authority;
- (b) a statement as to the number of occasions on which a substantive response was given to a person other than a local planning authority within the period referred to in section 54(4) of the 2004 Act;
- (c) a statement as to the number of occasions on which the consultee was consulted by a local planning authority;
- (d) a statement as to the number of occasions on which a substantive response was given to a local planning authority within the period referred to in section 54(4) of the 2004 Act; and
- (e) in relation to occasions on which the consultee has given a substantive response outside the period referred to in section 54(4) of the 2004 Act, a summary of the reasons why the consultee failed to comply with the duty to respond within that period.

(5) 1990 c. 9; paragraph 3 of Schedule 4 was substituted by paragraph 61 of Schedule 7 to the Planning and Compensation Act 1991 and amended by sections 78 and 120 of, and paragraph 33(7) of Schedule 10 and Schedule 24 to, the Environment Act 1995 (c. 25).

Recommendations by district planning authority before determination of county matters application

- 22.—(1) Subject to paragraph (2), a county planning authority shall, before determining—
- (a) an application for planning permission under Part 3 of the 1990 Act (control over development);
 - (b) an application for a certificate of lawful use or development under section 191 or 192 of the 1990 Act (certificates of lawfulness of existing or proposed use or development)(6); or
 - (c) an application for approval of reserved matters,

give the district planning authority, if any, for the area in which the relevant land lies a period of at least 21 days, from the date of receipt of the application by the district authority, within which to make recommendations about the manner in which the application shall be determined; and shall take any such recommendations into account.

(2) Paragraph (1) does not prevent a county planning authority determining an application if before the end of the period referred to in that paragraph—

- (a) the authority have received recommendations concerning the application from the district planning authority; or
 - (b) the district planning authority give notice that they do not intend to make recommendations.
- (3) A county planning authority shall—
- (a) on determining an application of a kind mentioned in paragraph (1), as soon as reasonably practicable notify the district planning authority, if any, of the terms of their decision; or
 - (b) if any such application is referred to the Secretary of State, inform the district planning authority, if any, of the date when it was so referred and, when notified to them, of the terms of the decision.

Representations by parish council before determination of application

23.—(1) Where the council of a parish are given information in relation to an application pursuant to paragraph 8(1) of Schedule 1 to the 1990 Act (local planning authorities: distribution of functions)(7), they shall, as soon as practicable, notify the local planning authority who are determining the application whether they propose to make any representations about the manner in which the application should be determined, and shall make any representations to that authority within 21 days of the notification to them of the application.

(2) A local planning authority shall not determine any application in respect of which a parish are required to be given information before—

- (a) the council of the parish inform them that they do not propose to make any representations;
- (b) representations are made by that council; or
- (c) the period of 21 days mentioned in paragraph (1) has elapsed,

whichever shall first occur; and in determining the application the authority shall take into account any representations received from the council of the parish.

- (3) The appropriate authority shall notify the council of the parish of—
- (a) the terms of the decision on any such application; or
 - (b) where the application is referred to the Secretary of State—

(6) Sections 191 and 192 were substituted by section 10(1) of the Planning and Compensation Act 1991 (c. 34).

(7) Paragraph 8(1) of Schedule 1 was substituted by paragraph 53 of Schedule 7 to the Planning and Compensation Act 1991. There are amendments to paragraph 8 which are not relevant to this Order.

- (i) the date when it was so referred; and
 - (ii) when notified to the appropriate authority, the terms of the Secretary of State's decision.
- (4) For the purposes of paragraph (3), the “appropriate authority” is—
- (a) where the parish is situated in a National Park, the National Park authority;
 - (b) where the parish is situated in Greater London or a metropolitan county, and is not situated in a National Park, the local planning authority;
 - (c) where the parish is situated in a district which has no district council, and is not situated in a National Park, the county planning authority;
 - (d) in any other case, the district planning authority.

Notification of mineral applications

24.—(1) Where notice has been given for the purposes of this article to a mineral planning authority as respects land which is in their area and specified in the notice—

- (a) by the Coal Authority that the land contains coal;
- (b) by the Secretary of State for Energy and Climate Change that it contains gas or oil; or
- (c) by the Crown Estate Commissioners that it contains silver or gold,

the mineral planning authority shall not determine any application for planning permission to win and work any mineral on that land, without first notifying the body or person who gave the notice that an application has been made.

- (2) In this article, “coal” means coal other than that—
- (a) won or worked during the course of operations which are carried on exclusively for the purpose of exploring for coal; or
 - (b) which it is necessary to dig or carry away in the course of activities carried on for purposes which do not include the getting of coal or any product of coal.