

## POLICY NOTE

### THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND) REGULATIONS 2013

SSI 2013/155

#### Introduction

1. The above instrument was made in exercise of the powers conferred by sections 27A(1), 27C, 30(1) and (3), 32, 34, 35, 35A, 35B(4) and (5), 35C(2), 36, 36A, 38(2)(b), 38A(1), 43, 43A, 59, 152 and 275 of the Town and Country Planning (Scotland) Act 1997 (“the 1997 Act”) and all other powers enabling them to do so. The instrument is subject to negative procedure.

#### Policy Objectives

2. The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 (“the 2013 Regulations”) deal with the detailed requirements around the processing of applications for planning permission and certificates of lawful use or development (CLUD). The 2013 Regulations are mainly a consolidation of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 (“the 2008 Regulations”) and the subsequent amendments to those regulations. An outline of what the 2013 Regulations cover is included at the end of this policy note.
3. In addition, the 2013 Regulations make the following changes to the procedures for applications relating to planning permission and CLUD:
  - i) Changes to requirements to advertise planning applications in newspapers where there are no premises on neighbouring land to which neighbour notification can be sent;
  - ii) Add a requirement for consultation with Network Rail on development proposals within 10 metres of a railway line;
  - iii) The introduction of provisions on information requirements regarding Crown development and national security issues;
  - iv) Extend the list of regulations in the 2013 Regulations which apply to a person appointed to determine an application for local development; and
  - v) Several amendments upon consolidation :
    - using a single definition for references to “householder development” in the 2013 Regulations;
    - bringing the requirement to publish newspaper notices and consider representations before granting permission for

- development plan departures (previously specified in a 1996 direction) within the 2013 Regulations;
  - bringing the requirements to consult **sportscotland** on certain applications (currently specified in a 2007 direction) within the 2013 Regulations;
  - reducing the discretion for statutory consultees to reduce consultation requirements in relation to developments involving or near major accident hazards; and
  - adding a requirement for decision notices to indicate where applicants can find more information on appeals and local reviews.
4. The aim of the consolidation and changes is to ensure planning procedural requirements are transparent, efficient and proportionate.

### ***The Changes***

#### *Neighbour Notification and Advertising of Applications*

5. The 2008 Regulations require neighbour notification to be served on premises on “neighbouring land”. The latter term is defined as “...an area or plot of land which, or part of which, is conterminous with or within 20 metres of the boundary of the land for which the development is proposed”. Where there are no premises to which notification can be sent, then notice in a local newspaper is required.
6. This approach has led to a number of anomalies: newspaper notices triggered where neighbouring land is a road or is owned by the applicant or the planning authority. In addition, having considered the impact of householder developments (extensions, sheds, window replacement etc.), we have concluded that where neighbouring land has no premises to which notification can be sent, a newspaper notice is not justified.
7. Regulation 3 on “interpretation” is therefore amended regarding “neighbouring land” to exclude a road (as defined in the Roads (Scotland) Act 1984).
8. Regulation 20 on the publication of an application by the planning authority is amended so that at regulation 20(3) there is an exemption from the need for a newspaper notice where the neighbouring land has no premises to which neighbour notification can be sent. This exemption applies where the neighbouring land is owned by the applicant or the planning authority or the development is a householder development. Householder development can be alterations and improvements to dwellings, development in the garden incidental to the enjoyment of the dwelling and boundary walls, fences or similar. Other triggers for newspaper notices may still apply in such cases, e.g. where development is contrary to the development plan or of a type specified in the regulations as likely to have wider impacts on amenity.
9. Regulations 9-11 are amended so that an application is required to be accompanied by a plan showing neighbouring land owned by the applicant.

### *Consultation Requirements*

10. The Rail Accident Investigation Branch recommended a requirement to consult rail undertakers in their report on a derailment at Moy in 2005. A requirement to consult Network Rail on proposals within 10 metres of a railway line forming part of the national rail network is added to the existing requirement to consult them on development affecting level crossings at paragraph 9 of Schedule 5 to the 2013 Regulations.
11. Paragraph 16 of Schedule 5 also contains requirements to consult **sportscotland** on developments affecting playing fields. These consultation requirements are currently contained in the Town and Country Planning (Consultation on Applications) (Scotland) Direction 2007, which will be revoked in due course.
12. Regulation 25 allows statutory consultees to write to planning authorities indicating certain types of development do not require consultation, despite being covered by the criterion in the regulations. This does not currently apply to consultation with HSE on development near major accident hazards. This restriction is being extended to another consultation requirement with HSE, SEPA and SNH on development involving major accident hazard sites and specific development near them. These consultation requirements are part of the implementation of the European Directive on minimising the risks and implications of major accidents involving certain specified dangerous substances.

### *Crown Development and National Security*

13. In 2006, upon the removal of Crown immunity from planning control, we amended the then legislation on planning application procedures to make some accommodations for the Crown – using powers under the Planning and Compulsory Purchase Act 2004. When the system was modernised we did not include similar provisions in the 2008 Regulations. The priority at that time was to ensure we had procedures in place for the majority of applications. We are taking this opportunity to re-introduce such provisions.
14. Regulations 9, 10 and 11 on the content of applications for planning permission, planning permission in principle and further applications<sup>1</sup>, respectively, include a requirement to provide, where appropriate, a statement that the application is made in relation to Crown land.
15. The 1997 Act makes provision in relation to Crown land, for example in relation to enforcement, so it is useful for planning authorities to be aware they are dealing with applications involving the Crown.

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<sup>1</sup>subsequent applications for planning permission for the same development but with reduced information requirements on the basis that the planning authority will already have the detail of the proposals

16. Regulation 38 makes clear that an application will not be invalid if the applicant has withheld what he or she believes is national security sensitive information (Regulation 45 makes similar provisions for CLUD applications). Where the planning authority is unable to determine the application without this withheld information, then the applicant can appeal to the Scottish Ministers or the application can be called-in for determination by Scottish Ministers.
17. The 1997 Act contains powers for the Scottish Ministers, in conjunction with the UK Secretary of State, to direct that information must be withheld (“closed information”) from a public local inquiry on the grounds of national security. If a direction is made, the Town and Country Planning (Appeals) (Scotland) Regulations 2013 contain procedures for the holding of such an inquiry with open (i.e. excluding national security sensitive information) and closed sessions and evidence.
18. The Planning (National Security Directions and Appointed Representatives) (Scotland) Rules 2006 (SSI 2006/265) make provision for the procedure for making national security directions and the appointment and functions of appointed representatives to act on behalf of those parties prevented from viewing national security sensitive information.
19. Since the removal of Crown immunity in 2006, there have been no applications where the planning authority was unable to make a decision using the usual procedures because of concerns about national security sensitive information. The provisions in relation to the latter are to accommodate exceptional cases.

*Applying regulations to a person appointed to determine an application for local development.*

20. Regulation 29 of the 2013 Regulations applies a wider range of the regulations than previously to a person appointed to determine applications for local development. This is to ensure it is clear which powers and obligations apply to such a person, particularly as they need not necessarily be an officer of the planning authority. This follows on from the Planning etc. (Scotland) Act 2006 (Supplementary and Consequential Provisions) Order 2013 (SSI 2013/26) which similarly extended the list of provisions in the 1997 Act which apply to such persons.

## **Consultation**

21. Proposals for changes to the advertising of applications where neighbour notification cannot be carried out were the subject of public consultations in 2010 and 2012. Respondents were generally in favour of the change. The majority of responses were from planning authorities, developers and planning consultants. Some community groups were concerned about any reduction in publicity for applications, though the changes in this regard were aimed at notices intended for particular individuals.

22. The Network Rail consultation requirement was also included in these consultations. There was some concern about additional consultation causing delays to processing applications.
23. The analyses of responses to the two consultations can be viewed via the links below:

<http://www.scotland.gov.uk/Publications/2011/12/21145052/0> - Amendments to the Modernised Planning System 2010-11: Analysis of Responses

<http://www.scotland.gov.uk/Publications/2012/09/9618> - Analysis of Responses to the Consultation of Miscellaneous Amendments to the Planning System 2012

24. The transfer of the **sportscotland** consultation requirements, the application of additional regulations to persons appointed to determine applications and the amendments upon consolidation (paragraph 3, item v) above) are largely technical changes and were not consulted upon. The additional requirement on decision notices to indicate where information on appeals and local reviews can be found is considered a minor change which could have significant benefits for applicants not familiar with planning procedures. The re-introduction of provisions regarding Crown development and national security sensitive information was not consulted upon, as we are basically re-introducing previous provisions adapted slightly to fit with the modernised planning system.

### **Impact Assessments**

25. A business regulatory impact assessment is attached to this policy note. The changes are about ensuring planning requirements are proportionate and streamlining where appropriate. While these changes are unlikely to impact significantly on individual applicants, we believe they will improve the efficiency and effectiveness of the planning application process.
26. An Equalities Impact Assessment is also attached, though there are not expected to be any implications for equalities groups arising from these amendments.

### **Content of the 2013 Regulations**

27. The 2013 Regulations cover the following main procedural matters:

#### Part 1 Introductory:-

- Citation and commencement, applications and interpretation.

#### Part 2 Pre-application consultation (PAC):-

- the classes of development (major and national developments) requiring statutory pre-application consultation;
- the content of proposal of application notices (PoAN - sent to the planning authority at the start of the 12 week PAC process);

- the minimum statutory requirements for PAC (consultation with community council, a public event, advertising of the event and providing an opportunity for written representations to be made to the prospective applicant) – the planning authority can require additional PAC in response to the PoAN.

Part 3 Procedure on applications for planning permission (including planning permission in principle): -

- the content of applications;
- requirements for design and access statements;
- notices to the owners and agricultural tenants of proposal sites;
- validation date (when an application is regarded as having been “made”).

Part 4 Procedures by the Planning Authority:-

- the content of planning registers;
- acknowledgement of applications;
- neighbour notification (requirements on content and service);
- newspaper advertising requirements;
- content of weekly lists and requirements to make these available in libraries, the planning office, on the internet and to send them to community councils;
- power to require further information to determine a planning application;
- statutory consultation requirements;
- time periods for decisions (which trigger the right to appeal or local review on the grounds of non-determination of the application);
- pre-determination hearings (specifying the classes of development to which this requirement applies and who has the opportunity to attend such a hearing);
- the content of decision notices.

Part 5 Directions:-

- Scottish Ministers direction making powers regarding planning applications (requiring information, requiring additional consultation, restricting the grant of planning permission, requiring the consideration of a planning condition);

Part 6 Particular cases:-

- special provision as to how the regulations apply to marine fish farm applications e.g. publicity, requirements for design and access statements;
- special provision in relation to Cairngorms National Park (the Park Authority has powers to call-in a planning application for its own determination);
- national security sensitive information;
- grant of planning permission for departures from the development plan is subject to the requirements on newspaper notices.

Part 7 Notification and display:-

- content of notices of initiation of development (sent by the developer to the planning authority prior to starting development granted planning permission);
- requirements for the display of notices during development and the categories of development to which they apply.

Part 8 Certificates of lawful use or development (CLUD):-

- content of applications;
- procedures upon receipt of an application: acknowledgement, power to require further information; time periods for determination; content of decision notices;
- national security sensitive information;
- revocation of a CLUD : notice to parties of intention and opportunity to make representations and notification of final decision.

Part 9 General:-

- provisions on the use of electronic communications when implementing the 2013 Regulations;
- application of section 271 of the 1997 Act on the service of notices.

Part 10 Transitional provisions and revocations and savings

- Schedule 1 — Notices under regulation 15 (to owners and agricultural tenants of proposal sites.)
- Schedule 2 — Registers under sections 36(1) to (4) (content of public planning registers including requirements for and content of reports on handling of applications.)
- Schedule 3 — Classes of development - regulations 20(2)(c) and 41(1)(b) (developments likely to have wider impacts on amenity and therefore requiring a newspaper notice.)
- Schedule 4 — Notice for publication in newspaper (format and content of notice.)
- Schedule 5 — Consultation by the planning authority (consultees and criteria for consultation.)
- Schedule 6 — Notice to accompany refusal etc. (format and content of notice e.g. notice of rights of appeal or local review of decision.)
- Schedule 7 — Form of notice to be displayed while development in progress
- Schedule 8 — Certificate of lawful use or development (format and content of certificate.)
- Schedule 9** – Revocations (a list of legislation revoked as a result of the consolidation of the 2008 Regulations)

Scottish Government  
 Planning and Architecture Division  
 May 2013