



# Town and Country Planning Act 1990

## 1990 CHAPTER 8

### PART III

#### CONTROL OVER DEVELOPMENT

##### Modifications etc. (not altering text)

- C1** Pt. 3 (ss. 55-106) except ss. 76, 90(2)(5) applied (with modifications) (17.7.1992) by S.I. 1992/1492, **regs. 2(1)(b), 3-11**
- Pt. 3 (ss. 55-106): power to modify conferred (10.11.1993) by 1993 c. 28, **s. 171(1)(a)**; S.I. 1993/2762, **art. 3**
- Pt. 3 (ss. 55-106) applied (5.11.1993) by 1993 c. 42, **s. 24(1)** (with ss. 2, 30(1), Sch. 2 para.9)
- Pt. 3 (ss. 55-106) extended (1.11.1995) by 1995 c. 25, **s. 96(2)** (with ss. 7(6), 115, 117); S.I. 1995/2765, **art. 2**
- Pt. 3 (ss. 55-106) modified (1.4.1996) by 1994 c. 19, s. 20(3), Sch. 5 Pt. III paras. 15(1), **20** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1995/3198, art. 4, **Sch. 2**
- Pt. 3 (ss. 55-106) modified (18.12.1996) by 1996 c. 61, **s. 9(1)(2)**
- Pt. 3 (ss. 55-106) modified (18.12.1996) by 1996 c. 61, **s. 51**
- Pt. 3 (ss. 55-106) modified (2.4.2004) by The Docklands Light Railway (Woolwich Arsenal Extension) Order 2004 (S.I. 2004/757), **art. 20(1)**
- Pt. 3 (ss. 55-106) modified (31.10.2005) by The London Thames Gateway Development Corporation (Planning Functions) Order 2005 (S.I. 2005/2721), **art. 4**
- Pt. 3 (ss. 55-106) modified (25.11.2005) by The Docklands Light Railway (Capacity Enhancement) Order 2005 (S.I. 2005/3105), **art. 21(1)** (with arts. 3(5), 15(3))
- Pt. 3 (ss. 55-106) applied (7.6.2006) by Planning and Compulsory Purchase Act 2004 (c. 5), ss. 89, 121, **Sch. 4 para. 3(2)** (with s. 111); S.I. 2006/1281, **art. 2**
- Pt. 3 (ss. 55-106) modified (22.11.2006) by The Docklands Light Railway (Stratford International Extension) Order 2006 (S.I. 2006/2905), **art. 17(1)** (with art. 43)
- Pt. 3 (ss. 55-106) modified (13.12.2006) by The Luton Dunstable Translink Order 2006 (S.I. 2006/3118), **art. 18(1)**
- C2** Pt. 3 (ss. 55-106) modified (4.5.2005) by The Telford Railfreight Terminal (Donnington) Order 2005 (S.I. 2005/1163), **art. 25(2)** (with art. 30)
- Pt. 3 modified (23.8.2007) by The Docklands Light Railway (Capacity Enhancement and 2012 Games Preparation) Order 2007 (S.I. 2007/2297), **art. 17(1)** (with arts. 3(6), 12(3))

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- C3** Pt. 3 modified (28.9.2007) by [The London Gateway Logistics and Commercial Centre Order 2007 \(S.I. 2007/2657\)](#), **art. 27(1)** (with art. 19, Sch. 3 para. 13(2))
- C4** Pt. 3 modified (22.7.2008) by [Crossrail Act 2008 \(c. 18\)](#), **s. 10(1)**
- C5** Pt. 3 modified (14.10.2008) by [The Felixstowe Branch Line and Ipswich Yard Improvement Order 2008 \(S.I. 2008/2512\)](#), **art. 34(1)** (with art. 36(3))
- C6** Pt. 3 modified (20.7.2010) by [The Network Rail \(Nuneaton North Chord\) Order 2010 \(S.I. 2010/1721\)](#), **art. 28(1)**
- C7** Pt. 3 modified (27.8.2010) by [The Llangollen and Corwen Railway Order 2010 \(S.I. 2010/2136\)](#), **art. 11(1)**
- C8** Pt. 3 applied (1.2.2011) by [The River Mersey \(Mersey Gateway Bridge\) Order 2011 \(S.I. 2011/41\)](#), arts. 1, **47(1)** (with art. 51, Sch. 10 paras. 68, 85)
- C9** Pt. 3 modified (21.4.2011) by [The Network Rail \(Hitchin \(Cambridge Junction\)\) Order 2011 \(S.I. 2011/1072\)](#), arts. 1, **36(2)**

### *Meaning of development*

#### **55 Meaning of “development” and “new development”.**

- (1) Subject to the following provisions of this section, in this Act, except where the context otherwise requires, “development,” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

<sup>F1</sup>[(1A) For the purposes of this Act “building operations” includes—

- (a) demolition of buildings;
- (b) rebuilding;
- (c) structural alterations of or additions to buildings; and
- (d) other operations normally undertaken by a person carrying on business as a builder.]

- (2) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—

- (a) the carrying out for the maintenance, improvement or other alteration of any building of works which—
  - (i) affect only the interior of the building, or
  - (ii) do not materially affect the external appearance of the building,
 and are not works for making good war damage or works begun after 5th December 1968 for the alteration of a building by providing additional space in it underground;
- (b) the carrying out on land within the boundaries of a road by a <sup>F2</sup>. . . highway authority of any works required for the maintenance or improvement of the road [<sup>F3</sup>but, in the case of any such works which are not exclusively for the maintenance of the road, not including any works which may have significant adverse effects on the environment];
- (c) the carrying out by a local authority or statutory undertakers of any works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus, including the breaking open of any street or other land for that purpose;
- (d) the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such;

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- (e) the use of any land for the purposes of agriculture or forestry (including afforestation) and the use for any of those purposes of any building occupied together with land so used;
  - (f) in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class.
  - <sup>F4</sup>[(g) the demolition of any description of building specified in a direction given by the Secretary of State to local planning authorities generally or to a particular local planning authority.]
- <sup>F5</sup>(2A) The Secretary of State may in a development order specify any circumstances or description of circumstances in which subsection (2) does not apply to operations mentioned in paragraph (a) of that subsection which have the effect of increasing the gross floor space of the building by such amount or percentage amount as is so specified.
- (2B) The development order may make different provision for different purposes.]
- (3) For the avoidance of doubt it is hereby declared that for the purposes of this section—
    - (a) the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used;
    - (b) the deposit of refuse or waste materials on land involves a material change in its use, notwithstanding that the land is comprised in a site already used for that purpose, if—
      - (i) the superficial area of the deposit is extended, or
      - (ii) the height of the deposit is extended and exceeds the level of the land adjoining the site.
  - (4) For the purposes of this Act mining operations include—
    - (a) the removal of material of any description—
      - (i) from a mineral-working deposit;
      - (ii) from a deposit of pulverised fuel ash or other furnace ash or clinker; or
      - (iii) from a deposit of iron, steel or other metallic slags; and
    - (b) the extraction of minerals from a disused railway embankment.
- <sup>F6</sup>[(4A) Where the placing or assembly of any tank in any part of any inland waters for the purpose of fish farming there would not, apart from this subsection, involve development of the land below, this Act shall have effect as if the tank resulted from carrying out engineering operations over that land; and in this subsection—
- “fish farming” means the breeding, rearing or keeping of fish or shellfish (which includes any kind of crustacean and mollusc);
  - “inland waters” means waters which do not form part of the sea or of any creek, bay or estuary or of any river as far as the tide flows; and
  - “tank” includes any cage and any other structure for use in fish farming.]
- (5) Without prejudice to any regulations made under the provisions of this Act relating to the control of advertisements, the use for the display of advertisements of any external part of a building which is not normally used for that purpose shall be treated for the purposes of this section as involving a material change in the use of that part of the building.

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<sup>F7</sup>(6) .....

#### Subordinate Legislation Made

**P1** S. 55(2)(f); s. 55(2)(f) (with s. 333(7)) power exercised (5.7.1991) by [S.I. 1991/1567](#)

#### Textual Amendments

- F1** S. 55(1A) inserted (27.7.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), **s. 13(1)** (with [s. 84\(5\)](#)); [S.I. 1992/1279](#), **art. 2** (with [art. 3](#))
- F2** Word in s. 55(2)(b) repealed (7.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), **ss. 118, 120, 121, Sch. 6 para. 1, Sch. 9** {with [s. 111](#)}; [S.I. 2006/1281](#), **art. 2**
- F3** Words in s. 55(2)(b) inserted (14.3.1999) by [S.I. 1999/293](#), **reg. 35(1)7**
- F4** S. 55(2)(g) inserted (25.11.1991 for certain purposes and otherwise 27.7.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), **s. 13(2)** (with [s. 84\(5\)](#)); [S.I. 1991/2728](#), **art. 2**; [S.I. 1992/1279](#), **art. 2** (with [art. 3](#))
- F5** S. 55(2A)(2B) inserted (6.8.2004 for certain purposes, 10.5.2006 for E. and otherwise prosp.) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), **ss. 49(1)**, 121 (with **ss. 49(4)**, 111); [S.I. 2004/2097](#), **art. 2**; [S.I. 2006/1061](#), **art. 2**
- F6** S. 55(4A) inserted (2.1.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), **s. 14(1)(2)** (with [s. 84\(5\)](#)); [S.I. 1991/2905](#), **art. 3** (subject to [art. 4](#))
- F7** S. 55(6) repealed (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), **ss. 31(4), 84(6), Sch. 6 para. 9, Sch. 19**, **Pts. I, II** (with [s. 84\(5\)](#)); [S.I. 1991/2067](#), **art. 3, Sch. 1**

#### Modifications etc. (not altering text)

**C10** S. 55(2)(b) modified (24.9.2014) by [The Thames Water Utilities Limited \(Thames Tideway Tunnel\) Order 2014 \(S.I. 2014/2384\)](#), **arts. 1, 51(2)**

## 56 Time when development begun.

- (1) Subject to the following provisions of this section, for the purposes of this Act development of land shall be taken to be initiated—
- if the development consists of the carrying out of operations, at the time when those operations are begun;
  - if the development consists of a change in use, at the time when the new use is instituted;
  - if the development consists both of the carrying out of operations and of a change in use, at the earlier of the times mentioned in paragraphs (a) and (b).
- (2) For the purposes of the provisions of this Part mentioned in subsection (3) development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out.
- (3) The provisions referred to in subsection (2) are sections [<sup>F8</sup>61L(5) and (7),] 85(2), 86(6), 87(4), [<sup>F9</sup>89] 91, 92 [<sup>F10</sup>, 94 and 108(3E)(c)(i)].
- (4) In subsection (2) “material operation” means—
- any work of construction in the course of the erection of a building;
  - <sup>F11</sup>[(aa) any work of demolition of a building;]
  - the digging of a trench which is to contain the foundations, or part of the foundations, of a building;

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- (c) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (b);
  - (d) any operation in the course of laying out or constructing a road or part of a road;
  - (e) any change in the use of any land which constitutes material development.
- (5) In subsection (4)(e) “material development” means any development other than—
- (a) development for which planning permission is granted by a general development order [<sup>F12</sup>, a local development order or a Mayoral development order] for the time being in force and which is carried out so as to comply with any condition or limitation subject to which planning permission is so granted;
  - [<sup>F13</sup>(b) development of a class specified in paragraph 1 or 2 of Schedule 3;] and
  - (c) development of any class prescribed for the purposes of this subsection.
- (6) In subsection (5) “general development order” means a development order (within the meaning of section 59) made as a general order applicable (subject to such exceptions as may be specified in it) to all land in England and Wales.

#### Textual Amendments

- F8** Words in s. 56(3) inserted (15.11.2011 for specified purposes, 15.1.2012 for specified purposes, 6.4.2012 for specified purposes, 3.8.2012 for specified purposes, 6.4.2013 in so far as not already in force) by [Localism Act 2011 \(c. 20\)](#), s. 240(5)(j), [Sch. 12 para. 2\(a\)](#); [S.I. 2012/57](#), art. 4(1)(h) (with arts. 6, 7, 9-11); [S.I. 2012/628](#), art. 8(a) (with arts. 9, 12, 13, 16, 18-20) (as amended (3.8.2012) by [S.I. 2012/2029](#), arts. 2, 4); [S.I. 2012/2029](#), arts. 2, 3(a) (with art. 5) (as amended (6.4.2013) by [S.I. 2013/797](#), art. 4); [S.I. 2013/797](#), arts. 1(2), 2
- F9** Word in s. 56(3) inserted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), ss. 32, 84(2)-(4), [Sch. 7 para. 10\(1\)](#) (with s. 84(5)); [S.I. 1991/2067](#), art. 3 (subject to art. 4)
- F10** Words in s. 56(3) substituted (15.11.2011 for specified purposes, 15.1.2012 for specified purposes, 6.4.2012 for specified purposes, 3.8.2012 for specified purposes, 6.4.2013 in so far as not already in force) by [Localism Act 2011 \(c. 20\)](#), s. 240(5)(j), [Sch. 12 para. 2\(b\)](#); [S.I. 2012/57](#), art. 4(1)(h) (with arts. 6, 7, 9-11); [S.I. 2012/628](#), art. 8(a) (with arts. 9, 12, 13, 16, 18-20) (as amended (3.8.2012) by [S.I. 2012/2029](#), arts. 2, 4); [S.I. 2012/2029](#), arts. 2, 3(a) (with art. 5) (as amended (6.4.2013) by [S.I. 2013/797](#), art. 4); [S.I. 2013/797](#), arts. 1(2), 2
- F11** S. 56(4)(aa) inserted (27.7.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 32, [Sch. 7 para. 10\(2\)](#) (with s. 84(5)); [S.I. 1992/1279](#), art. 2 (with art. 3)
- F12** Words in s. 56(5)(a) substituted (12.2.2015 for specified purposes, otherwise prosp.) by [Infrastructure Act 2015 \(c. 7\)](#), s. 57(5)(d), [Sch. 4 para. 3](#)
- F13** S. 56(5)(b) substituted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), ss. 31(4), 84(2)-(4), [Sch. 6 para. 10](#); [S.I. 1991/2067](#), art. 3 (subject to art. 4)

#### Modifications etc. (not altering text)

- C11** S. 56 applied (with modifications) (3.11.1995) by [S.I. 1995/2863](#), reg. 3, [Sch.](#)

### *Requirement for planning permission*

#### 57 Planning permission required for development.

- (1) Subject to the following provisions of this section, planning permission is required for the carrying out of any development of land.

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- [<sup>F14</sup>(1A) Subsection (1) is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for planning permission etc. for development for which development consent required).]
- (2) Where planning permission to develop land has been granted for a limited period, planning permission is not required for the resumption, at the end of that period, of its use for the purpose for which it was normally used before the permission was granted.
  - (3) Where by a development order [<sup>F15</sup>, a local development order or a neighbourhood development order] planning permission to develop land has been granted subject to limitations, planning permission is not required for the use of that land which (apart from its use in accordance with that permission) is its normal use.
  - (4) Where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which (in accordance with the provisions of this Part of this Act) it could lawfully have been used if that development had not been carried out.
  - (5) In determining for the purposes of subsections (2) and (3) what is or was the normal use of land, no account shall be taken of any use begun in contravention of this Part or of previous planning control.
  - (6) For the purposes of this section a use of land shall be taken to have been begun in contravention of previous planning control if it was begun in contravention of Part III of the 1947 Act, Part III of the 1962 Act or Part III of the 1971 Act.
  - (7) Subsection (1) has effect subject to Schedule 4 (which makes special provision about use of land on 1st July 1948).

#### Textual Amendments

- F14** S. 57(1A) inserted (1.3.2010) by [Planning Act 2008 \(c. 29\)](#), ss. 36, 241, **Sch. 2 para. 35** (with s. 226); [S.I. 2010/101](#), **art. 2** (with **art. 6**)
- F15** Words in s. 57(3) substituted (15.11.2011 for specified purposes, 15.1.2012 for specified purposes, 6.4.2012 for specified purposes, 3.8.2012 for specified purposes) by [Localism Act 2011 \(c. 20\)](#), s. 240(5)(j), **Sch. 12 para. 3**; [S.I. 2012/57](#), **art. 4(1)(h)** (with **arts. 6, 7, 9-11**); [S.I. 2012/628](#), **art. 8(a)** (with **arts. 9, 12, 13, 16, 18-20**) (as amended (3.8.2012) by [S.I. 2012/2029](#), **arts. 2, 4**); [S.I. 2012/2029](#), **arts. 2, 3(a)** (with **art. 5**) (as amended (6.4.2013) by [S.I. 2013/797](#), **art. 4**)

#### Modifications etc. (not altering text)

- C12** S. 57(2) applied (with modifications) (9.4.2013) by [The Hinkley Point C \(Nuclear Generating Station\) Order 2013 \(S.I. 2013/648\)](#), **arts. 1, 10(2)** (with **arts. 48, 68, 79**)

## 58 Granting of planning permission: general.

- (1) Planning permission may be granted—
  - (a) by a development order [<sup>F16</sup>, a local development order or a neighbourhood development order];
  - (b) by the local planning authority (or, in the cases provided in this Part, by the Secretary of State) on application to the authority [<sup>F17</sup>(or, in the cases provided in this Part, on application to the Secretary of State)] in accordance with a development order;

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- (c) on the adoption or approval of a simplified planning zone scheme or alterations to such a scheme in accordance with section 82 or, as the case may be, section 86; or
  - (d) on the designation of an enterprise zone or the approval of a modified scheme under Schedule 32 to the <sup>M1</sup>Local Government, Planning and Land Act 1980 in accordance with section 88 of this Act.
- (2) Planning permission may also be deemed to be granted under section 90 (development with government authorisation).
- (3) This section is without prejudice to any other provisions of this Act providing for the granting of permission.

#### Textual Amendments

**F16** Words in s. 58(1)(a) substituted (15.11.2011 for specified purposes, 15.1.2012 for specified purposes, 6.4.2012 for specified purposes, 3.8.2012 for specified purposes, 6.4.2013 in so far as not already in force) by [Localism Act 2011 \(c. 20\)](#), s. 240(5)(j), **Sch. 12 para. 4**; [S.I. 2012/57](#), art. 4(1)(h) (with arts. 6, 7, 9-11); [S.I. 2012/628](#), art. 8(a) (with arts. 9, 12, 13, 16, 18-20) (as amended (3.8.2012) by [S.I. 2012/2029](#), arts. 2, 4); [S.I. 2012/2029](#), arts. 2, 3(a) (with art. 5) (as amended (6.4.2013) by [S.I. 2013/797](#), art. 4); [S.I. 2013/797](#), arts. 1(2), 2

**F17** Words in s. 58(1)(b) inserted (9.5.2013 for E. for specified purposes, 1.10.2013 for specified purposes, 1.10.2014 in so far as not already in force) by [Growth and Infrastructure Act 2013 \(c. 27\)](#), s. 35(1), **Sch. 1 para. 3**; [S.I. 2013/1124](#), art. 2; [S.I. 2013/2143](#), art. 2(1)(a); [S.I. 2014/1531](#), art. 2

#### Modifications etc. (not altering text)

**C13** S. 58(1)(b) excluded (17.12.1996) by [1996 c. ix](#), s. 10(d)

#### Marginal Citations

**M1** [1980 c. 65](#).

### Development orders

#### 59 Development orders: general.

- (1) The Secretary of State shall by order (in this Act referred to as a “development order”) provide for the granting of planning permission.
- (2) A development order may either—
- (a) itself grant planning permission for development specified in the order or for development of any class specified; or
  - (b) in respect of development for which planning permission is not granted by the order itself, provide for the granting of planning permission by the local planning authority (or, in the cases provided in the following provisions, by the Secretary of State) on application to the authority [<sup>F18</sup>(or, in the cases provided in the following provisions, on application to the Secretary of State)] in accordance with the provisions of the order.
- (3) A development order may be made either—
- (a) as a general order applicable, except so far as the order otherwise provides, to all land, or

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- (b) as a special order applicable only to such land or descriptions of land as may be specified in the order.

#### Subordinate Legislation Made

**P2** S. 59: power previously exercised by [S.I. 1990/2032](#)

**P3** S. 59: s. 59 (with ss. 60(1), 61(1) and 333(7)) power exercised by [S.I. 1991/1536](#)

#### Textual Amendments

**F18** Words in s. 59(2)(b) inserted (9.5.2013 for E. for specified purposes, 1.10.2013 for specified purposes, 1.10.2014 in so far as not already in force) by [Growth and Infrastructure Act 2013 \(c. 27\), s. 35\(1\), Sch. 1 para. 4](#); [S.I. 2013/1124, art. 2](#); [S.I. 2013/2143, art. 2\(1\)\(a\)](#); [S.I. 2014/1531, art. 2](#)

## 60 Permission granted by development order.

- (1) Planning permission granted by a development order may be granted either unconditionally or subject to such conditions or limitations as may be specified in the order.
- (2) Without prejudice to the generality of subsection (1), where planning permission is granted by a development order for the erection, extension or alteration of any buildings, the order may require the approval of the local planning authority to be obtained with respect to the design or external appearance of the buildings.
- [<sup>F19</sup>(2A) Without prejudice to the generality of subsection (1), where planning permission is granted by a development order for development consisting of a change in the use of land in England, the order may require the approval of the local planning authority, or of the Secretary of State, to be obtained—
- (a) for the use of the land for the new use;
  - (b) with respect to matters that relate to the new use and are specified in the order.
- (2B) Without prejudice to the generality of subsection (1), a development order may include provision for ensuring—
- (a) that, before a person in reliance on planning permission granted by the order carries out development of land in England that is a dwelling house or is within the curtilage of a dwelling house—
    - (i) a written description, and a plan, of the proposed development are given to the local planning authority,
    - (ii) notice of the proposed development, and of the period during which representations about it may be made to the local planning authority, is served by the local planning authority on the owner or occupier of any adjoining premises, and
    - (iii) that period has ended, and
  - (b) that, where within that period an owner or occupier of any adjoining premises objects to the proposed development, it may be carried out in reliance on the permission only if the local planning authority consider that it would not have an unacceptable impact on the amenity of adjoining premises.
- (2C) In subsection (2B) “adjoining premises” includes any land adjoining—
- (a) the dwelling house concerned, or
  - (b) the boundary of its curtilage.]



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- (3) Without prejudice to the generality of subsection (1), where planning permission is granted by a development order for development of a specified class, the order may enable the Secretary of State or the local planning authority to direct that the permission shall not apply either—
- (a) in relation to development in a particular area, or
  - (b) in relation to any particular development.
- (4) Any provision of a development order by which permission is granted for the use of land for any purpose on a limited number of days in a period specified in that provision shall (without prejudice to the generality of references in this Act to limitations) be taken to be a provision granting permission for the use of land for any purpose subject to the limitation that the land shall not be used for any one purpose in pursuance of that provision on more than that number of days in that period.

#### Subordinate Legislation Made

**P4** S. 60 power previously exercised by [S.I. 1990/2032](#)

**P5** S. 60(1): s. 59 (with ss. 60(1), 61(1) and 333(7)) power exercised by [S.I. 1991/1536](#)

#### Textual Amendments

**F19** S. 60(2A)-(2C) inserted (25.4.2013) by [Growth and Infrastructure Act 2013 \(c. 27\)](#), **ss. 4(1), 35(2)**

## 61 Development orders: supplementary provisions.

- (1) A general development order may make different provision with respect to different descriptions of land.
- (2) For the purpose of enabling development to be carried out in accordance with planning permission, or otherwise for the purpose of promoting proper development in accordance with the development plan, a development order may direct that any pre 1947 Act enactment, or any regulations, orders or byelaws made at any time under any such enactment—
- (a) shall not apply to any development specified in the order, or
  - (b) shall apply to it subject to such modifications as may be so specified.
- (3) In subsection (2) “pre 1947 Act enactment” means—
- (a) any enactment passed before 6th August 1947 (the date of the passing of the 1947 Act), and
  - (b) any enactment contained in the <sup>M2</sup>Highways Act 1980 which—
    - (i) is an enactment derived from the <sup>M3</sup>Highways Act 1959, and
    - (ii) re-enacts (with or without modifications) any such enactment as is mentioned in paragraph (a).

#### Subordinate Legislation Made

**P6** S. 61(1): s. 59 (with ss. 60(1), 61(1) and 333(7)) power exercised by [S.I. 1991/1536](#)

#### Marginal Citations

**M2** [1980 c. 66.](#)

**M3** [1959 c. 25.](#)

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## <sup>F20</sup>Local development orders

### Textual Amendments

- F20** Ss. 61A-61C and preceding cross-heading inserted (6.8.2004 for certain purposes, 10.5.2006 for E. and otherwise prosp.) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), **ss. 40(1)**, 121 (with s. 111); [S.I. 2004/2097, art. 2](#); S.I. 2006/ 1061, {art. 2}

## 61A Local development orders

- (1) <sup>F21</sup>A local planning authority may by order (a local development order) make provision to implement policies—
  - (a) in one or more development plan documents (within the meaning of Part 2 of the Planning and Compulsory Purchase Act 2004);
  - (b) in a local development plan (within the meaning of Part 6 of that Act).]
- (2) <sup>F22</sup>A local planning authority may by order (a local development order)] grant planning permission—
  - (a) for development specified in the order;
  - (b) for development of any class so specified.
- (3) A local development order may relate to—
  - (a) all land in the area of the relevant authority;
  - (b) any part of that land;
  - (c) a site specified in the order.
- (4) A local development order may make different provision for different descriptions of land.
- (5) But a development order may specify any area or class of development in respect of which a local development order must not be made.
- (6) A local planning authority may revoke a local development order at any time.
- (7) Schedule 4A makes provision in connection with local development orders.

### Textual Amendments

- F21** S. 61A(1) repealed (23.6.2009 for E. and otherwise prosp.) by [Planning Act 2008 \(c. 29\)](#), **ss. 188(2)**, 238, 241, **Sch. 13** (with s. 226); [S.I. 2009/1303, art. 2](#), Sch.
- F22** Words in s. 61A(2) substituted (23.6.2009 for E. and otherwise prosp.) by [Planning Act 2008 \(c. 29\)](#), **ss. 188(3)**, 241 (with s. 226); [S.I. 2009/1303, art. 2](#)

## 61B Intervention by Secretary of State or National Assembly

- (1) At any time before a local development order is adopted by a local planning authority <sup>F23</sup>in Wales,] the appropriate authority may direct that the order (or any part of it) is submitted to it for its approval.
- (2) If the appropriate authority gives a direction under subsection (1)—
  - (a) the authority must not take any step in connection with the adoption of the order until the appropriate authority gives its decision;

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- (b) the order has no effect unless it (or, if the direction relates to only part of an order, the part) has been approved by the appropriate authority.
  - (3) In considering an order or part of an order submitted under subsection (1) the appropriate authority may take account of any matter which it thinks is relevant.
  - (4) It is immaterial whether any such matter was taken account of by the local planning authority.
  - (5) The appropriate authority—
    - (a) may approve or reject an order or part of an order submitted to it under subsection (1);
    - (b) must give reasons for its decision under paragraph (a).
  - (6) If the appropriate authority thinks that a local development order [<sup>F24</sup>being prepared by a local planning authority in Wales] is unsatisfactory—
    - (a) it may at any time before the order is adopted by the local planning authority direct them to modify it in accordance with the direction;
    - (b) if it gives such a direction it must state its reasons for doing so.
  - (7) The local planning authority—
    - (a) must comply with the direction;
    - (b) must not adopt the order unless the appropriate authority gives notice that it is satisfied that they have complied with the direction.
- [ Where a local development order is adopted by a local planning authority in England,  
<sup>F25</sup>(7A) that authority must submit a copy of the order to the appropriate authority as soon after the order's adoption as is reasonably practicable.]
- (8) The appropriate authority—
    - (a) may at any time by order revoke a local development order if it thinks it is expedient to do so;
    - (b) must, if it revokes a local development order, state its reasons for doing so.
  - (9) Subsections (3) to (6) of section 100 apply to an order under subsection (8) above as they apply to an order under subsection (1) of that section and for that purpose references to the Secretary of State must be construed as references to the appropriate authority.
  - (10) The appropriate authority is—
    - (a) the Secretary of State in relation to England;
    - (b) the National Assembly for Wales in relation to Wales.

#### Textual Amendments

- F23** Words in s. 61B(1) inserted (9.12.2013) by [Growth and Infrastructure Act 2013 \(c. 27\)](#), **ss. 5(3)(a)**, 35(1); [S.I. 2013/2878](#), **art. 2** (with **art. 3**)
- F24** Words in s. 61B(6) inserted (9.12.2013) by [Growth and Infrastructure Act 2013 \(c. 27\)](#), **ss. 5(3)(b)**, 35(1); [S.I. 2013/2878](#), **art. 2** (with **art. 3**)
- F25** S. 61B(7A) inserted (9.12.2013) by [Growth and Infrastructure Act 2013 \(c. 27\)](#), **ss. 5(4)**, 35(1); [S.I. 2013/2878](#), **art. 2** (with **art. 3**)

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#### **Modifications etc. (not altering text)**

**C14** Ss. 61B(1)-(7) excluded (E.) (9.12.2013) by [Growth and Infrastructure Act 2013 \(c. 27\), ss. 5\(2\), 35\(1\); S.I. 2013/2878, art. 2](#) (with art. 3)

### **61C Permission granted by local development order**

- (1) Planning permission granted by a local development order may be granted—
  - (a) unconditionally, or
  - (b) subject to such conditions or limitations as are specified in the order.
- (2) If the permission is granted for development of a specified description the order may enable the local planning authority to direct that the permission does not apply in relation to—
  - (a) development in a particular area, or
  - (b) any particular development.]

### **[<sup>F26</sup>61D Effect of revision or revocation of development order on incomplete development**

- (1) A development order or local development order may include provision permitting the completion of development if —
  - (a) planning permission is granted by the order in respect of the development, and
  - (b) the planning permission is withdrawn at a time after the development is started but before it is completed.
- (2) Planning permission granted by a development order is withdrawn—
  - (a) if the order is revoked;
  - (b) if the order is amended so that it ceases to grant planning permission in respect of the development or materially changes any condition or limitation to which the grant of permission is subject;
  - (c) by the issue of a direction under powers conferred by the order.
- (3) Planning permission granted by a local development order is withdrawn—
  - (a) if the order is revoked under section 61A(6) or 61B(8);
  - (b) if the order is revised in pursuance of paragraph 2 of Schedule 4A so that it ceases to grant planning permission in respect of the development or materially changes any condition or limitation to which the grant of permission is subject;
  - (c) by the issue of a direction under powers conferred by the order.
- (4) The power under this section to include provision in a development order or a local development order may be exercised differently for different purposes.]

#### **Textual Amendments**

**F26** S. 61D inserted (6.8.2004 for specified purposes, 10.5.2006 for E. so far as not already in force, 30.4.2012 for W. so far as not already in force) by [Planning and Compulsory Purchase Act 2004 \(c. 5\), s. 41](#) (with s. 111); [S.I. 2004/2097, art. 2](#); [S.I. 2006/1061, art. 2\(a\)](#); [S.I. 2012/1100, art. 2](#)

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## <sup>F27</sup>Mayoral development orders

### Textual Amendments

**F27** Ss. 61DA-61DE inserted (12.2.2015 for specified purposes) by [Infrastructure Act 2015 \(c. 7\), s. 57\(5\)](#) (d), [Sch. 4 para. 1](#)

### 61DA Mayoral development orders

- (1) The Mayor of London may by order (a Mayoral development order) grant planning permission for development specified in the order on one or more sites specified in the order.
- (2) The site or sites must fall within—
  - (a) the area of a local planning authority in Greater London, or
  - (b) the areas of two or more local planning authorities in Greater London.
- (3) The Secretary of State may by development order specify an area or class of development in respect of which a Mayoral development order must not be made.

### 61DB Permission granted by Mayoral development order

- (1) Planning permission granted by a Mayoral development order may be granted—
  - (a) unconditionally, or
  - (b) subject to such conditions or limitations as are specified in the order.
- (2) A condition imposed by a Mayoral development order may provide for the consent, agreement or approval to a matter specified in the condition to be given by one or more persons specified in the condition.
- (3) A person specified in a condition must be the Mayor of London or a relevant local planning authority.
- (4) The Secretary of State may by development order provide that, if the consent, agreement or approval of a person required by a condition imposed by a Mayoral development order is not given within a specified period, that consent, agreement or approval may be sought from a specified person.
- (5) In subsection (4) “specified” means specified, or of a description specified, in the development order.
- (6) The Secretary of State may by development order make provision for a person to apply for planning permission for the development of land without complying with a condition imposed on the grant of planning permission by a Mayoral development order.
- (7) A development order under subsection (6) may, in particular make provision similar to that made by section 73, subject to such modifications as the Secretary of State thinks appropriate.
- (8) So far as the context requires, in relation to—
  - (a) an application for the consent, agreement or approval of the Mayor of London to a matter specified in a condition imposed by a Mayoral development order, or

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- (b) the determination of such an application,  
any reference in an enactment to a local planning authority (however expressed) includes a reference to the Mayor.
- (9) For the purposes of this Act a local planning authority is a relevant local planning authority in relation to a Mayoral development order or proposed Mayoral development order if a site or part of a site to which the order or proposed order relates is within the authority's area.

#### **61DC Preparation and making of Mayoral development order**

- (1) The Secretary of State may by development order make provision about the procedure for the preparation and making of a Mayoral development order.
- (2) A development order under subsection (1) may in particular make provision about—
  - (a) notice, publicity and inspection by the public;
  - (b) consultation with and consideration of views of such persons and for such purposes as are specified in the order;
  - (c) the making and consideration of representations.
- (3) A Mayoral development order may be made only in response to an application to the Mayor of London by each relevant local planning authority.
- (4) A proposed Mayoral development order may be consulted on only with the consent of each relevant local planning authority.
- (5) A Mayoral development order may not be made unless the order has been approved, in the form in which it is made, by each relevant local planning authority.
- (6) If the Mayor of London makes a Mayoral development order, the Mayor must send a copy to the Secretary of State as soon as is reasonably practicable after the order is made.

#### **61DD Revision or revocation of Mayoral development order**

- (1) The Mayor of London may at any time revise or revoke a Mayoral development order with the approval of each relevant local planning authority.
- (2) The Mayor of London must revise a Mayoral development order if the Secretary of State directs the Mayor to do so (and the requirement for the approval of each relevant local planning authority does not apply in those circumstances).
- (3) The Secretary of State may at any time revoke a Mayoral development order if the Secretary of State thinks it is expedient to do so.
- (4) The power under subsection (3) is to be exercised by order made by the Secretary of State.
- (5) If the Secretary of State revokes a Mayoral development order the Secretary of State must state the reasons for doing so.
- (6) The Secretary of State may by development order make provision about—
  - (a) the steps to be taken by the Secretary of State before giving a direction or making an order under this section;
  - (b) the procedure for the revision or revocation of a Mayoral development order.

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- (7) A development order under subsection (6) may in particular make provision about—
- (a) notice, publicity and inspection by the public;
  - (b) consultation with and consideration of views of such persons and for such purposes as are specified in the order;
  - (c) the making and consideration of representations.

#### **61DE Effect of revision or revocation on incomplete development**

- (1) This section applies if planning permission for development granted by a Mayoral development order is withdrawn at a time when the development has been started but not completed.
- (2) For this purpose planning permission for development granted by a Mayoral development order is withdrawn—
  - (a) if the order is revoked under section 61DD, or
  - (b) if the order is revised under that section so that it ceases to grant planning permission for the development or materially changes any condition or limitation to which the grant of permission is subject.
- (3) The development may, despite the withdrawal of the permission, be completed, subject as follows.
- (4) If the permission is withdrawn because the Mayoral development order is revoked by the Mayor of London, the Mayor may make a determination that subsection (3) is not to apply in relation to development specified in the determination.
- (5) A determination under subsection (4) must be published in such manner as the Mayor of London thinks appropriate.
- (6) If the permission is withdrawn because the Mayoral development order is revoked by an order made by the Secretary of State under section 61DD, the order under that section may provide that subsection (3) is not to apply in relation to development specified in that order.
- (7) If the permission is withdrawn because the order is revised as mentioned in subsection (2)(b), the revised order may provide that subsection (3) is not to apply in relation to development specified in the order.
- (8) The power under this section to include provision in an order under section 61DD or a Mayoral development order may be exercised differently for different purposes.]

#### *f<sup>28</sup>Neighbourhood development orders*

##### **Textual Amendments**

- F28** Ss. 61E-61Q and cross-heading inserted (15.11.2011 for specified purposes, 6.4.2012 for specified purposes) by [Localism Act 2011 \(c. 20\)](#), s. 240(2)(5)(j), [Sch. 9 para. 2](#); S.I. 2012/628, art. 8(a) (with arts. 9, 12, 13, 16, 18-20) (as amended (3.8.2012) by S.I. 2012/2029, arts. 2, 4)

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## **61E Neighbourhood development orders**

- (1) Any qualifying body is entitled to initiate a process for the purpose of requiring a local planning authority in England to make a neighbourhood development order.
- (2) A “neighbourhood development order” is an order which grants planning permission in relation to a particular neighbourhood area specified in the order—
  - (a) for development specified in the order, or
  - (b) for development of any class specified in the order.
- (3) Schedule 4B makes provision about the process for the making of neighbourhood development orders, including—
  - (a) provision for independent examination of orders proposed by qualifying bodies, and
  - (b) provision for the holding of referendums on orders proposed by those bodies.
- (4) A local planning authority to whom a proposal for the making of a neighbourhood development order has been made—
  - (a) must make a neighbourhood development order to which the proposal relates if in each applicable referendum under that Schedule more than half of those voting have voted in favour of the order, and
  - (b) if paragraph (a) applies, must make the order as soon as reasonably practicable after the referendum is held.
- (5) If—
  - (a) there are two applicable referendums under that Schedule (because the order relates to a neighbourhood area designated as a business area under section 61H), and
  - (b) in one of those referendums (but not the other) more than half of those voting have voted in favour of the order,
 the authority may (but need not) make a neighbourhood development order to which the proposal relates.
- (6) A “qualifying body” means a parish council, or an organisation or body designated as a neighbourhood forum, authorised for the purposes of a neighbourhood development order to act in relation to a neighbourhood area as a result of section 61F.
- (7) For the meaning of “neighbourhood area”, see sections 61G and 61I(1).
- (8) The authority are not to be subject to the duty under subsection (4)(a) if they consider that the making of the order would breach, or would otherwise be incompatible with, any EU obligation or any of the Convention rights (within the meaning of the Human Rights Act 1998).
- (9) Regulations may make provision as to the procedure to be followed by local planning authorities in cases where they act under subsection (8).
- (10) The regulations may in particular make provision—
  - (a) for the holding of an examination,
  - (b) as to the payment by a local planning authority of remuneration and expenses of the examiner,
  - (c) as to the award of costs by the examiner,
  - (d) as to the giving of notice and publicity,
  - (e) as to the information and documents that are to be made available to the public,



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- (f) as to the making of reasonable charges for anything provided as a result of the regulations,
  - (g) as to consultation with and participation by the public, and
  - (h) as to the making and consideration of representations (including the time by which representations must be made).
- (11) The authority must publish in such manner as may be prescribed—
- (a) their decision to act under subsection (4) or (8),
  - (b) their reasons for making that decision, and
  - (c) such other matters relating to that decision as may be prescribed.
- (12) The authority must send a copy of the matters required to be published to—
- (a) the qualifying body that initiated the process for the making of the order, and
  - (b) such other persons as may be prescribed.
- (13) A local planning authority must publish each neighbourhood development order that they make in such manner as may be prescribed.

#### **61F Authorisation to act in relation to neighbourhood areas**

- (1) For the purposes of a neighbourhood development order, a parish council are authorised to act in relation to a neighbourhood area if that area consists of or includes the whole or any part of the area of the council.
- (2) If that neighbourhood area also includes the whole or any part of the area of another parish council, the parish council is authorised for those purposes to act in relation to that neighbourhood area only if the other parish council have given their consent.
- (3) For the purposes of a neighbourhood development order, an organisation or body is authorised to act in relation to a neighbourhood area if it is designated by a local planning authority as a neighbourhood forum for that area.
- (4) An organisation or body may be designated for a neighbourhood area only if that area does not consist of or include the whole or any part of the area of a parish council.
- (5) A local planning authority may designate an organisation or body as a neighbourhood forum if the authority are satisfied that it meets the following conditions—
- (a) it is established for the express purpose of promoting or improving the social, economic and environmental well-being of an area that consists of or includes the neighbourhood area concerned (whether or not it is also established for the express purpose of promoting the carrying on of trades, professions or other businesses in such an area),
  - (b) its membership is open to—
    - (i) individuals who live in the neighbourhood area concerned,
    - (ii) individuals who work there (whether for businesses carried on there or otherwise), and
    - (iii) individuals who are elected members of a county council, district council or London borough council any of whose area falls within the neighbourhood area concerned,
  - (c) its membership includes a minimum of 21 individuals each of whom—
    - (i) lives in the neighbourhood area concerned,
    - (ii) works there (whether for a business carried on there or otherwise), or

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- (iii) is an elected member of a county council, district council or London borough council any of whose area falls within the neighbourhood area concerned,
  - (d) it has a written constitution, and
  - (e) such other conditions as may be prescribed.
- (6) A local planning authority may also designate an organisation or body as a neighbourhood forum if they are satisfied that the organisation or body meets prescribed conditions.
- (7) A local planning authority—
- (a) must, in determining under subsection (5) whether to designate an organisation or body as a neighbourhood forum for a neighbourhood area, have regard to the desirability of designating an organisation or body—
    - (i) which has secured (or taken reasonable steps to attempt to secure) that its membership includes at least one individual falling within each of sub-paragraphs (i) to (iii) of subsection (5)(b),
    - (ii) whose membership is drawn from different places in the neighbourhood area concerned and from different sections of the community in that area, and
    - (iii) whose purpose reflects (in general terms) the character of that area,
  - (b) may designate only one organisation or body as a neighbourhood forum for each neighbourhood area,
  - (c) may designate an organisation or body as a neighbourhood forum only if the organisation or body has made an application to be designated, and
  - (d) must give reasons to an organisation or body applying to be designated as a neighbourhood forum where the authority refuse the application.
- (8) A designation—
- (a) ceases to have effect at the end of the period of 5 years beginning with the day on which it is made but without affecting the validity of any proposal for a neighbourhood development order made before the end of that period, and
  - (b) in the case of the designation of an unincorporated association, is not to be affected merely because of a change in the membership of the association.
- (9) A local planning authority may withdraw an organisation or body's designation as a neighbourhood forum if they consider that the organisation or body is no longer meeting—
- (a) the conditions by reference to which it was designated, or
  - (b) any other criteria to which the authority were required to have regard in making the designation;
- and, where an organisation or body's designation is withdrawn, the authority must give reasons to the organisation or body.
- (10) A proposal for a neighbourhood development order by a parish council or neighbourhood forum may not be made at any time in relation to a neighbourhood area if there is at that time another proposal by the council or forum in relation to that area that is outstanding.
- (11) Each local planning authority must make such arrangements as they consider appropriate for making people aware as to the times when organisations or bodies

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could make applications to be designated as neighbourhood forums for neighbourhood areas.

(12) Regulations—

- (a) may make provision in connection with proposals made by qualifying bodies for neighbourhood development orders, and
- (b) may make provision in connection with designations (or withdrawals of designations) of organisations or bodies as neighbourhood forums (including provision of a kind mentioned in section 61G(11)(a) to (g)).

(13) The regulations may in particular make provision—

- (a) as to the consequences of the creation of a new parish council, or a change in the area of a parish council, on any proposal made for a neighbourhood development order,
- (b) as to the consequences of the dissolution of a neighbourhood forum on any proposal for a neighbourhood development order made by it,
- (c) suspending the operation of any duty of a local planning authority under paragraph 6 or 7 of Schedule 4B in cases where they are considering the withdrawal of the designation of an organisation or body as a neighbourhood forum,
- (d) for determining when a proposal for a neighbourhood development order is to be regarded as outstanding, and
- (e) requiring a local planning authority to have regard (in addition, where relevant, to the matters set out in subsection (7)(a)) to prescribed matters in determining whether to designate an organisation or body as a neighbourhood forum.

**Modifications etc. (not altering text)**

**C15** S. 61F applied by 2004 c. 5, s. 38C(2)(a) (as inserted (15.11.2011 for specified purposes, 6.4.2012 for specified purposes) by [Localism Act 2011 \(c. 20\)](#), s. 240(2)(5)(j), [Sch. 9 para. 7](#); S.I. 2012/628, art. 8(a) (with arts. 9, 12, 13, 16, 18-20) (as amended (3.8.2012) by S.I. 2012/2029, arts. 2, 4))

**61G Meaning of “neighbourhood area”**

- (1) A “neighbourhood area” means an area within the area of a local planning authority in England which has been designated by the authority as a neighbourhood area; but that power to designate is exercisable only where—
  - (a) a relevant body has applied to the authority for an area specified in the application to be designated by the authority as a neighbourhood area, and
  - (b) the authority are determining the application (but see subsection (5)).
- (2) A “relevant body” means—
  - (a) a parish council, or
  - (b) an organisation or body which is, or is capable of being, designated as a neighbourhood forum (on the assumption that, for this purpose, the specified area is designated as a neighbourhood area).
- (3) The specified area—
  - (a) in the case of an application by a parish council, must be one that consists of or includes the whole or any part of the area of the council, and

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- (b) in the case of an application by an organisation or body, must not be one that consists of or includes the whole or any part of the area of a parish council.
- (4) In determining an application the authority must have regard to—
- (a) the desirability of designating the whole of the area of a parish council as a neighbourhood area, and
  - (b) the desirability of maintaining the existing boundaries of areas already designated as neighbourhood areas.
- (5) If—
- (a) a valid application is made to the authority,
  - (b) some or all of the specified area has not been designated as a neighbourhood area, and
  - (c) the authority refuse the application because they consider that the specified area is not an appropriate area to be designated as a neighbourhood area,
- the authority must exercise their power of designation so as to secure that some or all of the specified area forms part of one or more areas designated (or to be designated) as neighbourhood areas.
- (6) The authority may, in determining any application, modify designations already made; but if a modification relates to any extent to the area of a parish council, the modification may be made only with the council's consent.
- (7) The areas designated as neighbourhood areas must not overlap with each other.
- (8) A local planning authority must publish a map setting out the areas that are for the time being designated as neighbourhood areas.
- (9) If the authority refuse an application, they must give reasons to the applicant for refusing the application.
- (10) In this section “specified”, in relation to an application, means specified in the application.
- (11) Regulations may make provision in connection with the designation of areas as neighbourhood areas; and the regulations may in particular make provision—
- (a) as to the procedure to be followed in relation to designations,
  - (b) as to the giving of notice and publicity in connection with designations,
  - (c) as to consultation with and participation by the public in relation to designations,
  - (d) as to the making and consideration of representations about designations (including the time by which representations must be made),
  - (e) as to the form and content of applications for designations,
  - (f) requiring an application for a designation to be determined by a prescribed date,
  - (g) entitling or requiring a local planning authority in prescribed circumstances to decline to consider an application for a designation, and
  - (h) about the modification of designations (including provision about the consequences of modification on proposals for neighbourhood development orders, or on neighbourhood development orders, that have already been made).

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## **61H Neighbourhood areas designated as business areas**

- (1) Whenever a local planning authority exercise their powers under section 61G to designate an area as a neighbourhood area, they must consider whether they should designate the area concerned as a business area.
- (2) The reference here to the designation of an area as a neighbourhood area includes the modification under section 61G(6) of a designation already made.
- (3) The power of a local planning authority to designate a neighbourhood area as a business area is exercisable by the authority only if, having regard to such matters as may be prescribed, they consider that the area is wholly or predominantly business in nature.
- (4) The map published by a local planning authority under section 61G(8) must state which neighbourhood areas (if any) are for the time being designated as business areas.

## **61I Neighbourhood areas in areas of two or more local planning authorities**

- (1) The power to designate an area as a neighbourhood area under section 61G is exercisable by two or more local planning authorities in England if the area falls within the areas of those authorities.
- (2) Regulations may make provision in connection with—
  - (a) the operation of subsection (1), and
  - (b) the operation of other provisions relating to neighbourhood development orders (including sections 61F to 61H) in cases where an area is designated as a neighbourhood area as a result of that subsection.
- (3) The regulations may in particular make provision—
  - (a) modifying or supplementing the application of, or disapplying, any of the provisions mentioned in subsection (2)(b),
  - (b) applying (with or without modifications) any provision of Part 6 of the Local Government Act 1972 (discharge of functions) in cases where the provision would not otherwise apply,
  - (c) requiring local planning authorities to exercise, or not to exercise, any power conferred by any provision of that Part (including as applied by virtue of paragraph (b)), and
  - (d) conferring powers or imposing duties on local planning authorities.

### **Modifications etc. (not altering text)**

**C16** S. 61I(2)(3) applied by 2004 c. 5, s. 38C(2)(b) (as inserted (15.11.2011 for specified purposes, 6.4.2012 for specified purposes, 3.8.2012 for specified purposes, 6.4.2013 in so far as not already in force) by [Localism Act 2011 \(c. 20\)](#), ss., [240\(5\)\(j\)](#), [Sch. 9 para. 7](#); [S.I. 2012/628](#), art. 8(a) (with arts. [9](#), [12](#), [13](#), [16](#), [18-20](#)) (as amended (3.8.2012) by [S.I. 2012/2029](#), arts. 2, 4); [S.I. 2012/2029](#), arts. 2, 3(a) (with art. 5) (as amended (6.4.2013) by [S.I. 2013/797](#), art. 4); [S.I. 2013/797](#), arts. 1(2), 2)

## **61J Provision that may be made by neighbourhood development order**

- (1) A neighbourhood development order may make provision in relation to—
  - (a) all land in the neighbourhood area specified in the order,

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- (b) any part of that land, or
  - (c) a site in that area specified in the order.
- (2) A neighbourhood development order may not provide for the granting of planning permission for any development that is excluded development.
- (3) For the meaning of “excluded development”, see section 61K.
- (4) A neighbourhood development order may not grant planning permission for any development in any particular case where planning permission is already granted for that development in that case.
- (5) A neighbourhood development order may not relate to more than one neighbourhood area.
- (6) A neighbourhood development order may make different provision for different cases or circumstances.

#### **61K Meaning of “excluded development”**

The following development is excluded development for the purposes of section 61J—

- (a) development that consists of a county matter within paragraph 1(1)(a) to (h) of Schedule 1,
- (b) development that consists of the carrying out of any operation, or class of operation, prescribed under paragraph 1(j) of that Schedule (waste development) but that does not consist of development of a prescribed description,
- (c) development that falls within Annex 1 to Council Directive [85/337/EEC](#) on the assessment of the effects of certain public and private projects on the environment (as amended from time to time),
- (d) development that consists (whether wholly or partly) of a nationally significant infrastructure project (within the meaning of the Planning Act 2008),
- (e) prescribed development or development of a prescribed description, and
- (f) development in a prescribed area or an area of a prescribed description.

#### **Modifications etc. (not altering text)**

**C17** S. 61K applied by 2004 c. 5, s. 38B(6) (as inserted (15.11.2011 for specified purposes, 6.4.2012 for specified purposes) by [Localism Act 2011 \(c. 20\)](#), s. 240(2)(5)(j), [Sch. 9 para. 7](#); S.I. 2012/628, art. 8(a) (with arts. 9, 12, 13, 16, 18-20) (as amended (3.8.2012) by S.I. 2012/2029, arts. 2, 4))

#### **61L Permission granted by neighbourhood development orders**

- (1) Planning permission granted by a neighbourhood development order may be granted—
- (a) unconditionally, or
  - (b) subject to such conditions or limitations as are specified in the order.
- (2) The conditions that may be specified include—
- (a) obtaining the approval of the local planning authority who made the order but not of anyone else, and

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- (b) provision specifying the period within which applications must be made to a local planning authority for the approval of the authority of any matter specified in the order.
- (3) Regulations may make provision entitling a parish council in prescribed circumstances to require any application for approval under subsection (2) of a prescribed description to be determined by them instead of by a local planning authority.
- (4) The regulations may in particular make provision—
  - (a) as to the procedure to be followed by parish councils in deciding whether to determine applications for approvals (including the time by which the decisions must be made),
  - (b) requiring parish councils in prescribed circumstances to cease determining applications for approvals,
  - (c) conferring powers or imposing duties on local planning authorities,
  - (d) treating parish councils as local planning authorities (instead of, or in addition to, the authorities) for the purposes of the determination of applications for approvals (subject to such exceptions or modifications in the application of any enactment as may be prescribed),
  - (e) applying any enactment relating to principal councils within the meaning of section 270 of the Local Government Act 1972 for those purposes (with or without modifications), and
  - (f) disapplying, or modifying the application of, any enactment relating to parish councils for those purposes.
- (5) A neighbourhood development order may provide for the granting of planning permission to be subject to the condition that the development begins before the end of the period specified in the order.
- (6) Regulations may make provision as to the periods that may be specified in neighbourhood development orders under subsection (5).
- (7) If—
  - (a) planning permission granted by a neighbourhood development order for any development is withdrawn by the revocation of the order under section 61M, and
  - (b) the revocation is made after the development has begun but before it has been completed,the development may, despite the withdrawal of the permission, be completed.
- (8) But an order under section 61M revoking a neighbourhood development order may provide that subsection (7) is not to apply in relation to development specified in the order under that section.

#### **61M Revocation or modification of neighbourhood development orders**

- (1) The Secretary of State may by order revoke a neighbourhood development order.
- (2) A local planning authority may, with the consent of the Secretary of State, by order revoke a neighbourhood development order that they have made.
- (3) If a neighbourhood development order is revoked, the person revoking the order must state the reasons for the revocation.

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- (4) A local planning authority may at any time by order modify a neighbourhood development order that they have made for the purpose of correcting errors.
- (5) If the qualifying body that initiated the process for the making of that order is still authorised at that time to act for the purposes of a neighbourhood development order in relation to the neighbourhood area concerned, the power under subsection (4) is exercisable only with that body's consent.
- (6) A modification of a neighbourhood development order is to be done by replacing the order with a new one containing the modification.
- (7) Regulations may make provision in connection with the revocation or modification of a neighbourhood development order.
- (8) The regulations may in particular make provision—
  - (a) for the holding of an examination in relation to a revocation proposed to be made by the authority,
  - (b) as to the payment by a local planning authority of remuneration and expenses of the examiner,
  - (c) as to the award of costs by the examiner,
  - (d) as to the giving of notice and publicity in connection with a revocation or modification,
  - (e) as to the information and documents relating to a revocation or modification that are to be made available to the public,
  - (f) as to the making of reasonable charges for anything provided as a result of the regulations,
  - (g) as to consultation with and participation by the public in relation to a revocation, and
  - (h) as to the making and consideration of representations about a revocation (including the time by which representations must be made).

**Modifications etc. (not altering text)**

**C18** S. 61M applied (with modifications) by 2004 c. 5, s. 38C(2)(c)(3) (as inserted (15.11.2011 for specified purposes, 6.4.2012 for specified purposes) by [Localism Act 2011 \(c. 20\), s. 240\(2\)\(5\)\(j\), Sch. 9 para. 7](#); S.I. 2012/628, art. 8(a) (with arts. 9, 12, 13, 16, 18-20) (as amended (3.8.2012) by S.I. 2012/2029, arts. 2, 4))

**61N Legal challenges in relation to neighbourhood development orders**

- (1) A court may entertain proceedings for questioning a decision to act under section 61E(4) or (8) only if—
  - (a) the proceedings are brought by a claim for judicial review, and
  - (b) the claim form is filed before the end of the period of 6 weeks beginning with [F<sup>29</sup>the day after] the day on which the decision is published.
- (2) A court may entertain proceedings for questioning a decision under paragraph 12 of Schedule 4B (consideration by local planning authority of recommendations made by examiner etc) only if—
  - (a) the proceedings are brought by a claim for judicial review, and



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- (b) the claim form is filed before the end of the period of 6 weeks beginning with <sup>F30</sup>the day after] the day on which the decision is published.
- (3) A court may entertain proceedings for questioning anything relating to a referendum under paragraph 14 or 15 of Schedule 4B only if—
  - (a) the proceedings are brought by a claim for judicial review, and
  - (b) the claim form is filed <sup>F31</sup>before the end of] the period of 6 weeks beginning with <sup>F32</sup>the day after] the day on which the result of the referendum is declared.

#### Textual Amendments

- F29** Words in s. 61N(1)(b) inserted (13.4.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\), ss. 92\(1\)\(a\), 95\(1\); S.I. 2015/778, art. 3, Sch. 1 para. 71](#)
- F30** Words in s. 61N(2)(b) inserted (13.4.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\), ss. 92\(1\)\(a\), 95\(1\); S.I. 2015/778, art. 3, Sch. 1 para. 71](#)
- F31** Words in s. 61N(3)(b) substituted (13.4.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\), ss. 92\(1\)\(b\)\(i\), 95\(1\); S.I. 2015/778, art. 3, Sch. 1 para. 71](#)
- F32** Words in s. 61N(3)(b) inserted (13.4.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\), ss. 92\(1\)\(b\)\(ii\), 95\(1\); S.I. 2015/778, art. 3, Sch. 1 para. 71](#)

#### Modifications etc. (not altering text)

- C19** S. 61N applied (with modifications) by 2004 c. 5, s. 38C(2)(d)(4) (as inserted (15.11.2011 for specified purposes, 6.4.2012 for specified purposes) by [Localism Act 2011 \(c. 20\), s. 240\(2\)\(5\)\(j\), Sch. 9 para. 7; S.I. 2012/628, art. 8\(a\) \(with arts. 9, 12, 13, 16, 18-20\) \(as amended \(3.8.2012\) by S.I. 2012/2029, arts. 2, 4\)](#))

## 61O Guidance

Local planning authorities must have regard to any guidance issued by the Secretary of State in the exercise of any function under any provision relating to neighbourhood development orders (including any function under any of sections 61F to 61H).

#### Modifications etc. (not altering text)

- C20** S. 61O applied by 2004 c. 5, s. 38C(2)(e) (as inserted (15.11.2011 for specified purposes, 6.4.2012 for specified purposes) by [Localism Act 2011 \(c. 20\), s. 240\(2\)\(5\)\(j\), Sch. 9 para. 7; S.I. 2012/628, art. 8\(a\) \(with arts. 9, 12, 13, 16, 18-20\) \(as amended \(3.8.2012\) by S.I. 2012/2029, arts. 2, 4\)](#))

## 61P Provision as to the making of certain decisions by local planning authorities

- (1) Regulations may make provision regulating the arrangements of a local planning authority for the making of any prescribed decision under any provision relating to neighbourhood development orders (including under any of sections 61F to 61H).
- (2) The provision made by the regulations is to have effect despite provision made by any enactment as to the arrangements of a local planning authority for the exercise of their functions (such as section 101 of the Local Government Act 1972 or section 13 of the Local Government Act 2000).

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#### Modifications etc. (not altering text)

- C21** S. 61P applied by 2004 c. 5, s. 38C(2)(f) (as inserted (15.11.2011 for specified purposes, 6.4.2012 for specified purposes) by [Localism Act 2011 \(c. 20\)](#), s. 240(2)(5)(j), [Sch. 9 para. 7](#); S.I. 2012/628, art. 8(a) (with arts. 9, 12, 13, 16, 18-20) (as amended (3.8.2012) by S.I. 2012/2029, arts. 2, 4))

### 61Q Community right to build orders

Schedule 4C makes provision in relation to a particular type of neighbourhood development order (a community right to build order).]

*[<sup>F33</sup> Consultation before applying for planning permission*

#### Textual Amendments

- F33** Ss. 61W-61Y and cross-heading inserted (15.11.2011 for specified purposes, 17.12.2013 in so far as not already in force) by [Localism Act 2011 \(c. 20\)](#), ss., [122\(1\)](#), [240\(5\)\(l\)](#) (with ss. [122\(3\)](#), [144](#)); S.I. [2013/2931](#), art. 2

### 61W Requirement to carry out pre-application consultation

- (1) Where—
  - (a) a person proposes to make an application for planning permission for the development of any land in England, and
  - (b) the proposed development is of a description specified in a development order, the person must carry out consultation on the proposed application in accordance with subsections (2) and (3).
- (2) The person must publicise the proposed application in such manner as the person reasonably considers is likely to bring the proposed application to the attention of a majority of the persons who live at, or otherwise occupy, premises in the vicinity of the land.
- (3) The person must consult each specified person about the proposed application.
- (4) Publicity under subsection (2) must—
  - (a) set out how the person (“P”) may be contacted by persons wishing to comment on, or collaborate with P on the design of, the proposed development, and
  - (b) give such information about the proposed timetable for the consultation as is sufficient to ensure that persons wishing to comment on the proposed development may do so in good time.
- (5) In subsection (3) “specified person” means a person specified in, or of a description specified in, a development order.
- (6) Subsection (1) does not apply—
  - (a) if the proposed application is an application under section 293A, or
  - (b) in cases specified in a development order.

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- (7) A person subject to the duty imposed by subsection (1) must, in complying with that subsection, have regard to the advice (if any) given by the local planning authority about local good practice.

#### **61X Duty to take account of responses to consultation**

- (1) Subsection (2) applies where a person—
- (a) has been required by section 61W(1) to carry out consultation on a proposed application for planning permission, and
  - (b) proposes to go ahead with making an application for planning permission (whether or not in the same terms as the proposed application).
- (2) The person must, when deciding whether the application that the person is actually to make should be in the same terms as the proposed application, have regard to any responses to the consultation that the person has received.

#### **61Y Power to make supplementary provision**

- (1) A development order may make provision about, or in connection with, consultation which section 61W(1) requires a person to carry out on a proposed application for planning permission.
- (2) The provision that may be made under subsection (1) includes (in particular)—
- (a) provision about, or in connection with, publicising the proposed application;
  - (b) provision about, or in connection with, the ways of responding to the publicity;
  - (c) provision about, or in connection with, consultation under section 61W(3);
  - (d) provision about, or in connection with, collaboration between the person and others on the design of the proposed development;
  - (e) provision as to the timetable (including deadlines) for—
    - (i) compliance with section 61W(1),
    - (ii) responding to publicity under section 61W(2), or
    - (iii) responding to consultation under section 61W(3);
  - (f) provision for the person to prepare a statement setting out how the person proposes to comply with section 61W(1);
  - (g) provision for the person to comply with section 61W(1) in accordance with a statement required by provision under paragraph (f).
- (3) Provision under subsection (1) may be different for different cases.]

#### *Applications for planning permission*

#### **[<sup>F34</sup>62 Applications for planning permission.**

- (1) A development order may make provision as to applications for planning permission made to a local planning authority.
- (2) Provision referred to in subsection (1) includes provision as to—
- (a) the form and manner in which the application must be made;
  - (b) particulars of such matters as are to be included in the application;
  - (c) documents or other materials as are to accompany the application.

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- [<sup>F35</sup>(2A) In subsections (1) and (2) references to applications for planning permission include references to [<sup>F36</sup>—
- (a) applications for consent, agreement or approval as mentioned in section 61DB(2), and
  - (b)] applications for approval under section 61L(2).]
- (3) The local planning authority may require that an application for planning permission must include—
- (a) such particulars as they think necessary;
  - (b) such evidence in support of anything in or relating to the application as they think necessary.
- (4) But a requirement under subsection (3) must not be inconsistent with provision made under subsection (1).
- [<sup>F37</sup>(4A) Also, a requirement under subsection (3) in respect of an application for planning permission for development of land in England—
- (a) must be reasonable having regard, in particular, to the nature and scale of the proposed development; and
  - (b) may require particulars of, or evidence about, a matter only if it is reasonable to think that the matter will be a material consideration in the determination of the application.]
- (5) A development order must require that an application for planning permission of such description as is specified in the order must be accompanied by such of the following as is so specified—
- (a) a statement about the design principles and concepts that have been applied to the development;
  - (b) a statement about how issues relating to access to the development have been dealt with.
- (6) The form and content of a statement mentioned in subsection (5) is such as is required by the development order.]
- [<sup>F38</sup>(7) In subsection (8) “a relevant application” means the application for planning permission in a case where a person—
- (a) has been required by section 61W(1) to carry out consultation on a proposed application for planning permission, and
  - (b) is going ahead with making an application for planning permission (whether or not in the same terms as the proposed application).
- (8) A development order must require that a relevant application be accompanied by particulars of—
- (a) how the person complied with section 61W(1),
  - (b) any responses to the consultation that were received by the person, and
  - (c) the account taken of those responses.]

#### Textual Amendments

**F34** S. 62 substituted (6.8.2004 for certain purposes, 10.8.2006 for E. and 30.6.2007 for W.) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), **ss. 42(1)**, 121 (with s. 111); S.I. 2004/2097, **art. 2**; S.I.

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- 2006/1061, **art. 3** (with **art. 4**) (as amended by S.I. 2010/321, **art. 3**); S.I. 2007/1369, **art. 2** (with **art. 3**) (as amended by S.I. 2010/321, **art. 4**)
- F35** S. 62(2A) inserted (15.11.2011 for specified purposes, 15.1.2012 for specified purposes, 6.4.2012 for specified purposes) by **Localism Act 2011** (c. 20), s. 240(2)(5)(j), **Sch. 12 para. 5**; S.I. 2012/57, **art. 4(1)(h)** (with arts. 6, 7, 9-11); S.I. 2012/628, **art. 8(a)** (with arts. 9, 12, 13, 16, 18-20) (as amended (3.8.2012) by S.I. 2012/2029, arts. 2, 4)
- F36** Words in s. 62(2A) inserted (12.2.2015 for specified purposes, otherwise prosp.) by **Infrastructure Act 2015** (c. 7), s. 57(5)(d), **Sch. 4 para. 6**
- F37** S. 62(4A) inserted (25.6.2013) by **Growth and Infrastructure Act 2013** (c. 27), **ss. 6, 35(1)**; S.I. 2013/1488, **art. 3(c)**
- F38** S. 62(7)(8) inserted (temp.) (15.11.2011 for specified purposes, 17.12.2013 in so far as not already in force) by **Localism Act 2011** (c. 20), **ss. 122(2), 240(5)(l)** (with **ss. 122(3), 144**); S.I. 2013/2931, **art. 2** (This amendment is extended (21.10.2020) and now ceases to have effect on 15.12.2025 by virtue of **The Town and Country Planning (Pre-application Consultation) Order 2020** (S.I. 2020/1051), arts. 1, 2)

### [<sup>F39</sup>62A When application may be made directly to Secretary of State

- (1) A relevant application that would otherwise have to be made to the local planning authority may (if the applicant so chooses) be made instead to the Secretary of State if the following conditions are met at the time it is made—
- (a) the local planning authority concerned is designated by the Secretary of State for the purposes of this section; and
  - (b) the development to which the application relates (where the application is within subsection (2)(b)(i)), or the development for which outline planning permission has been granted (where the application is within subsection (2)(b)(ii)), is major development.
- (2) In this section—
- (a) “major development” means development of a description prescribed by the Secretary of State;
  - (b) “relevant application” means—
    - (i) an application for planning permission for the development of land in England, other than an application of the kind described in section 73(1); or
    - (ii) an application for approval of a matter that, as defined by section 92, is a reserved matter in the case of an outline planning permission for the development of land in England.
- (3) Where a relevant application is made to the Secretary of State under this section, an application under the planning Acts—
- (a) that is—
    - (i) an application for listed building consent, or for conservation area consent, under the Planning (Listed Buildings and Conservation Areas) Act 1990, or
    - (ii) an application of a description prescribed by the Secretary of State,
  - (b) that is considered by the person making the application to be connected with the relevant application,
  - (c) that would otherwise have to be made to the local planning authority or hazardous substances authority,

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- (d) that is neither a relevant application nor an application of the kind described in section 73(1), and
  - (e) that relates to land in England,
- may (if the person so chooses) be made instead to the Secretary of State.
- (4) If an application (“the connected application”) is made to the Secretary of State under subsection (3) but the Secretary of State considers that it is not connected with the relevant application concerned, the Secretary of State may—
- (a) refer the connected application to the local planning authority, or hazardous substances authority, to whom it would otherwise have been made; and
  - (b) direct that the connected application—
    - (i) is to be treated as having been made to that authority (and not to the Secretary of State under this section), and
    - (ii) is to be determined by that authority accordingly.
- (5) The decision of the Secretary of State on an application made to the Secretary of State under this section shall be final.
- (6) The Secretary of State may give directions requiring a local planning authority or hazardous substances authority to do things in relation to an application made to the Secretary of State under this section that would otherwise have been made to the authority; and directions under this subsection—
- (a) may relate to a particular application or to applications more generally; and
  - (b) may be given to a particular authority or to authorities more generally.

#### Textual Amendments

**F39** Ss. 62A-62C inserted (9.5.2013 for E. for specified purposes, 1.10.2013 except in relation to s. 62A(3) (4), 25.4.2013, 1.10.2014 in so far as not already in force) by [Growth and Infrastructure Act 2013](#) (c. 27), [ss. 1\(1\), 35\(2\)](#); S.I. 2013/1124, [art. 2](#); S.I. 2013/2143, [art. 2\(1\)\(a\)](#); S.I. 2014/1531, [art. 2](#)

#### **62B Designation for the purposes of section 62A**

- (1) An authority may be designated for the purposes of section 62A only if—
- (a) the criteria that are to be applied in deciding whether to designate the authority are set out in a document to which subsection (2) applies,
  - (b) by reference to those criteria, the Secretary of State considers that there are respects in which the authority are not adequately performing their function of determining applications under this Part, and
  - (c) the criteria that are to be applied in deciding whether to revoke a designation are set out in a document to which subsection (2) applies.
- (2) This subsection applies to a document if—
- (a) the document has been laid before Parliament by the Secretary of State,
  - (b) the 40-day period for the document has ended without either House of Parliament having during that period resolved not to approve the document, and
  - (c) the document has been published (whether before, during or after the 40-day period for it) by the Secretary of State in such manner as the Secretary of State thinks fit.

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- (3) In this section “the 40-day period” for a document is the period of 40 days beginning with the day on which the document is laid before Parliament (or, if it is not laid before each House of Parliament on the same day, the later of the two days on which it is laid).
- (4) In calculating the 40-day period for a document, no account is to be taken of any period during which—
  - (a) Parliament is dissolved or prorogued, or
  - (b) both Houses of Parliament are adjourned for more than four days.
- (5) None of the following may be designated for the purposes of section 62A—
  - (a) the Homes and Communities Agency;
  - (b) the Mayor of London;
  - (c) a Mayoral development corporation;
  - (d) an urban development corporation.
- (6) The Secretary of State must publish (in such manner as the Secretary of State thinks fit)—
  - (a) any designation of an authority for the purposes of section 62A, and
  - (b) any revocation of such a designation.

#### Textual Amendments

**F39** Ss. 62A-62C inserted (9.5.2013 for E. for specified purposes, 1.10.2013 except in relation to s. 62A(3) (4), 25.4.2013, 1.10.2014 in so far as not already in force) by [Growth and Infrastructure Act 2013](#) (c. 27), **ss. 1(1), 35(2)**; S.I. 2013/1124, art. 2; S.I. 2013/2143, art. 2(1)(a); S.I. 2014/1531, art. 2

### 62C Notifying parish councils of applications under section 62A(1)

- (1) If an application is made to the Secretary of State under section 62A(1) and a parish council would be entitled under paragraph 8 of Schedule 1 to be notified of the application were it made to the local planning authority, the Secretary of State must notify the council of—
  - (a) the application, and
  - (b) any alteration to the application accepted by the Secretary of State.
- (2) Paragraph 8(4) and (5) of Schedule 1 apply in relation to duties of the Secretary of State under subsection (1) as they apply to duties of a local planning authority under paragraph 8(1) of that Schedule.
- (3) An authority designated for the purposes of section 62A must comply with requests from the Secretary of State for details of requests received by the authority under paragraph 8(1) of Schedule 1.]

#### Textual Amendments

**F39** Ss. 62A-62C inserted (9.5.2013 for E. for specified purposes, 1.10.2013 except in relation to s. 62A(3) (4), 25.4.2013, 1.10.2014 in so far as not already in force) by [Growth and Infrastructure Act 2013](#) (c. 27), **ss. 1(1), 35(2)**; S.I. 2013/1124, art. 2; S.I. 2013/2143, art. 2(1)(a); S.I. 2014/1531, art. 2

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<sup>F40</sup>63 .....

**Textual Amendments**

**F40** S. 63 repealed (2.1.1992) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), ss. 32, 84(6), Sch. 7 para. 11, **Sch. 19**, Pt.I (with s. 84(5)); S.I. 1991/2905, art.3, **Sch. 1** (subject to art. 5)

<sup>F41</sup>64 .....

**Textual Amendments**

**F41** S. 64 repealed (27.7.1992) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), ss. 32, 84(6), Sch. 7 para. 12, **Sch. 19**, Pt.I (with s. 84(5)); S.I. 1992/1630, art. 2, Schs. 1, 2 (with art. 3(1))

*Publicity for applications*

<sup>F42</sup>65 **Notice etc. of applications for planning permission.**

- (1) A development order may make provision requiring—
  - (a) notice to be given of any application for planning permission, and
  - (b) any applicant for such permission to issue a certificate as to the interests in the land to which the application relates or the purpose for which it is used, and provide for publicising such applications and for the form, content and service of such notices and certificates.
- (2) Provision shall be made by a development order for the purpose of securing that, in the case of any application for planning permission, any person (other than the applicant) who on such date as may be prescribed by the order is an owner of the land to which the application relates, or <sup>F43</sup>an agricultural tenant of that land], is given notice of the application in such manner as may be required by the order.
- (3) A development order may require an applicant for planning permission to certify, in such form as may be prescribed by the order, or to provide evidence, that any requirements of the order have been satisfied.

[ In subsections (1) and (3) references to <sup>F45</sup>—

- <sup>F44</sup>(3A) (a) any application for consent, agreement or approval as mentioned in section 61DB(2) or any applicant for such consent, agreement or approval, and
- (b)] any application for planning permission or any applicant for such permission include references to any application for approval under section 61L(2) or any applicant for such approval.]
- (4) A development order making any provision by virtue of this section may make different provision for different cases or different classes of development.
  - (5) A local planning authority shall not entertain an application for planning permission unless any requirements imposed by virtue of this section have been satisfied.
  - (6) If any person—



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- (a) issues a certificate which purports to comply with any requirement imposed by virtue of this section and contains a statement which he knows to be false or misleading in a material particular; or
- (b) recklessly issues a certificate which purports to comply with any such requirement and contains a statement which is false or misleading in a material particular,
- he shall be guilty of an offence.
- (7) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (8) In this section—
- [<sup>F46</sup> “agricultural tenant”, in relation to any land, means any person who—
- (a) is the tenant, under a tenancy in relation to which the Agricultural Holdings Act 1986 applies, of an agricultural holding within the meaning of that Act any part of which is comprised in that land; or
- (b) is the tenant, under a farm business tenancy (within the meaning of the Agricultural Tenancies Act 1995), of land any part of which is comprised in that land;]
- “owner” in relation to any land means any person who—
- (a) is the estate owner in respect of the fee simple;
- (b) is entitled to a tenancy granted or extended for a term of years certain of which not less than seven years remain unexpired; or
- (c) in the case of such applications as may be prescribed by a development order, is entitled to an interest in any mineral so prescribed,
- and the reference to the interests in the land to which an application for planning permission relates includes any interest in any mineral in, on or under the land.
- (9) Notwithstanding section 127 of the <sup>M4</sup>Magistrates’ Courts Act 1980, a magistrates’ court may try an information in respect of an offence under this section whenever laid.]

#### Textual Amendments

- F42** S. 65 substituted for ss. 65-68 (25.11.1991 for certain purposes and otherwise 17.7.1992) by [Planning and Compensation Act 1991 \(c. 34\), s. 16\(1\)](#) (with s. 84(5)); S.I. 1991/2728, [art. 2](#); S.I. 1992/1491, [art. 2](#)
- F43** Words in s. 65(2) substituted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), [Sch. para. 35\(2\)](#) (with s. 37)
- F44** S. 65(3A) inserted (15.11.2011 for specified purposes, 15.1.2012 for specified purposes, 6.4.2012 for specified purposes, 3.8.2012 for specified purposes) by [Localism Act 2011 \(c. 20\), s. 240\(5\)\(j\)](#), [Sch. 12 para. 6](#); S.I. 2012/57, [art. 4\(1\)\(h\)](#) (with arts. 6, 7, 9-11); S.I. 2012/628, [art. 8\(a\)](#) (with arts. 9, 12, 13, 16, 18-20) (as amended (3.8.2012) by S.I. 2012/2029, arts. 2, 4); S.I. 2012/2029, arts. 2, [3\(a\)](#) (with art. 5) (as amended (6.4.2013) by S.I. 2013/797, [art. 4](#))
- F45** Words in s. 65(3A) inserted (12.2.2015 for specified purposes, otherwise prosp.) by [Infrastructure Act 2015 \(c. 7\), s. 57\(5\)\(d\)](#), [Sch. 4 para. 7](#)
- F46** Definition of "agricultural tenant" substituted (1.9.1995) for definition of "agricultural holding" in s. 65(8) by 1995 c. 8, ss. 40, 41(2), [Sch. para. 35\(3\)](#) (with s. 37)

#### Modifications etc. (not altering text)

- C22** S. 65 applied (1.11.1995) by 1995 c. 25, s. 96(1), [Sch. 13 para. 7\(5\)\(a\)](#) (with ss. 7(6), 115, 117); S.I. 1995/2765, [art. 2](#)

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S. 65 applied (1.11.1995) by 1995 c. 25, s. 96(1), **Sch. 13 para. 9(3)(a)** (with ss. 7(6), 115, 117); S.I. 1995/2765, **art. 2**

S. 65 extended (1.11.1995) by 1995 c. 25, s. 96(1), **Sch. 13 para. 9(5)** (with ss. 7(6), 115, 117); S.I. 1995/2765, **art. 2**

S. 65 applied (1.11.1995) by 1995 c. 25, s. 96(1), **Sch. 14 para. 6(3)(a)** (with ss. 7(6), 115, 117); S.I. 1995/2765, **art. 2**

**C23** S. 65(6) extended (1.11.1995) by 1995 c. 25, s. 96(1), **Sch. 13 para. 7(5)** (with ss. 7(6), 115, 117); S.I. 1995/2765, **art. 2**

S. 65(6) extended (1.11.1995) by 1995 c. 25, s. 96(1), **Sch. 13 para. 9(3)** (with ss. 54(5)(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1995/2765, **art. 2**

S. 65(6) extended (1.11.1995) by 1995 c. 25, s. 96(1), **Sch. 14 para. 6(3)** (with ss. 54(5)(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1995/2765, **art. 2**

#### Marginal Citations

**M4** 1980 c. 43.

### [<sup>F50</sup>69 Register of applications etc

(1) The local planning authority must keep a register containing such information as is prescribed as to—

(a) applications for planning permission;

[<sup>F51</sup>(aa) applications for non-material changes to planning permission under section 96A;]

<sup>F52</sup>(b) .....

(c) local development orders;

[<sup>F53</sup>(cza) Mayoral development orders;]

[<sup>F54</sup>(ca) neighbourhood planning matters;]

(d) simplified planning zone schemes.

(2) The register must contain—

(a) information as to the manner in which applications mentioned in subsection (1)(a) [<sup>F55</sup>and (aa)] and requests mentioned in subsection (1)(b) have been dealt with;

(b) such information as is prescribed with respect to any local development order [<sup>F56</sup>, [<sup>F57</sup>Mayoral development order,] neighbourhood planning matter] or simplified planning zone scheme in relation to the authority's area.

[<sup>F58</sup>(2A) For the purposes of subsections (1) and (2) “neighbourhood planning matters” means—

(a) neighbourhood development orders;

(b) neighbourhood development plans (made under section 38A of the Planning and Compulsory Purchase Act 2004); and

(c) proposals for such orders or plans.]

(3) A development order may require the register to be kept in two or more parts.

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- (4) Each part must contain such information as is prescribed relating to the matters mentioned in subsection (1)(a) [F59, (aa)] and (b).
- (5) A development order may also make provision—
- (a) for a specified part of the register to contain copies of applications or requests and of any other documents or material submitted with them;
  - (b) for the entry relating to an application or request (and everything relating to it) to be removed from that part of the register when the application (including any appeal arising out of it) or the request (as the case may be) has been finally disposed of.
- (6) Provision made under subsection (5)(b) does not prevent the inclusion of a different entry relating to the application or request in another part of the register.
- (7) The register must be kept in such manner as is prescribed.
- (8) The register must be kept available for inspection by the public at all reasonable hours.
- (9) Anything prescribed under this section must be prescribed by development order.]

#### Textual Amendments

- F50** S. 69 substituted (6.8.2004 for certain purposes and otherwise 22.2.2010) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), ss. 118, 121, [Sch. 6 para. 3](#) (with s. 111); S.I. 2004/2097, [art. 2](#); S.I. 2010/321, [art. 2](#)
- F51** S. 69(1)(aa) inserted (6.4.2010) by [Planning Act 2008 \(c. 29\)](#), [ss. 190\(4\)\(a\)](#), 241 (with s. 226); S.I. 2010/566, [art. 3\(b\)](#)
- F52** S. 69(1)(b) repealed (6.4.2012) by [Localism Act 2011 \(c. 20\)](#), s. 240(2), [Sch. 25 Pt. 18](#); S.I. 2012/628, [art. 8\(e\)](#) (with arts. 9, 12, 13, 16, 18-20) (as amended (3.8.2012) by S.I. 2012/2029, arts. 2, 4)
- F53** S. 69(1)(cza) inserted (12.2.2015 for specified purposes, otherwise prosp.) by [Infrastructure Act 2015 \(c. 7\)](#), s. 57(5)(d), [Sch. 4 para. 8\(2\)](#)
- F54** S. 69(1)(ca) inserted (15.11.2011 for specified purposes, 15.1.2012 for specified purposes, 6.4.2012 for specified purposes) by [Localism Act 2011 \(c. 20\)](#), s. 240(2)(5)(j), [Sch. 12 para. 7\(2\)](#); S.I. 2012/57, [art. 4\(1\)\(h\)](#) (with arts. 6, 7, 9-11); S.I. 2012/628, [art. 8\(a\)](#) (with arts. 9, 12, 13, 16, 18-20) (as amended (3.8.2012) by S.I. 2012/2029, arts. 2, 4)
- F55** Words in s. 69(2)(a) inserted (6.4.2010) by [Planning Act 2008 \(c. 29\)](#), [ss. 190\(4\)\(b\)](#), 241 (with s. 226); S.I. 2010/566, [art. 3\(b\)](#)
- F56** Words in s. 69(2)(b) inserted (15.11.2011 for specified purposes, 15.1.2012 for specified purposes, 6.4.2012 for specified purposes) by [Localism Act 2011 \(c. 20\)](#), s. 240(2)(5)(j), [Sch. 12 para. 7\(3\)](#); S.I. 2012/57, [art. 4\(1\)\(h\)](#) (with arts. 6, 7, 9-11); S.I. 2012/628, [art. 8\(a\)](#) (with arts. 9, 12, 13, 16, 18-20) (as amended (3.8.2012) by S.I. 2012/2029, arts. 2, 4)
- F57** Words in s. 69(2)(b) inserted (12.2.2015 for specified purposes, otherwise prosp.) by [Infrastructure Act 2015 \(c. 7\)](#), s. 57(5)(d), [Sch. 4 para. 8\(3\)](#)
- F58** S. 69(2A) inserted (15.11.2011 for specified purposes, 15.1.2012 for specified purposes, 6.4.2012 for specified purposes) by [Localism Act 2011 \(c. 20\)](#), s. 240(2)(5)(j), [Sch. 12 para. 7\(4\)](#); S.I. 2012/57, [art. 4\(1\)\(h\)](#) (with arts. 6, 7, 9-11); S.I. 2012/628, [art. 8\(a\)](#) (with arts. 9, 12, 13, 16, 18-20) (as amended (3.8.2012) by S.I. 2012/2029, arts. 2, 4)
- F59** Words in s. 69(4) inserted (6.4.2010) by [Planning Act 2008 \(c. 29\)](#), [ss. 190\(4\)\(c\)](#), 241 (with s. 226); S.I. 2010/566, [art. 3\(b\)](#)

#### Modifications etc. (not altering text)

- C24** S. 69 extended (with modifications) (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34\)](#), SIF 123:1, s. 22, [Sch. 2 para. 9\(1\)\(2\)](#) (with s. 84(5)); S.I. 1991/2067, [art. 3](#) (subject to art. 4)

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- S. 69 applied (with modifications) (2.8.1999) by S.I. 1999/1892, reg. 2(1), Sch. art. 7, **Sch. 2 Pt. I**
- S. 69 applied (with modifications) (2.8.1999) by S.I. 1999/1892, reg. 2(1), Sch. art. 7, **Sch. 2 Pt. II**
- C25** S. 69: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of S.I. 2000/2853, reg. 2(1), **Sch. 1**
- C26** S. 69 applied (with modifications) (W.) (8.1.2010) by **The Town and Country Planning (Environmental Impact Assessment) (Undetermined Reviews of Old Mineral Permissions) (Wales) Regulations 2009** (S.I. 2009/3342), **reg. 47(1)**
- C27** S. 69 applied (with modifications) (E.) (24.8.2011) by **The Town and Country Planning (Environmental Impact Assessment) Regulations 2011** (S.I. 2011/1824), **regs. 1(1)(2), 50(1)(b)**

### *Determination of applications*

#### **70 Determination of applications: general considerations.**

- (1) Where an application is made to a local planning authority for planning permission—
- <sup>F60</sup>(a) subject to sections 91 and 92, they may grant planning permission, either unconditionally or subject to such conditions as they think fit; or
- <sup>F60</sup>(b) they may refuse planning permission.
- (2) In dealing with such an application the authority shall have regard [<sup>F61</sup>to—
- (a) the provisions of the development plan, so far as material to the application,
- (b) any local finance considerations, so far as material to the application, and
- (c) any other material considerations.]
- [<sup>F62</sup>(2A) Subsection (2)(b) does not apply in relation to Wales.]
- (3) Subsection (1) has effect subject to [<sup>F63</sup>section 65] and to the following provisions of this Act, to sections 66, 67, 72 and 73 of the <sup>M6</sup>Planning (Listed Buildings and Conservation Areas) Act 1990 and to section 15 of the <sup>M7</sup>Health Services Act 1976.
- [<sup>F64</sup>(4) In this section—
- “local finance consideration” means—
- (a) a grant or other financial assistance that has been, or will or could be, provided to a relevant authority by a Minister of the Crown, or
- (b) sums that a relevant authority has received, or will or could receive, in payment of Community Infrastructure Levy;
- “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975;
- “relevant authority” means—
- (a) a district council;
- (b) a county council in England;
- (c) the Mayor of London;
- (d) the council of a London borough;
- (e) a Mayoral development corporation;
- (f) an urban development corporation;
- (g) a housing action trust;
- (h) the Council of the Isles of Scilly;
- (i) the Broads Authority;
- (j) a National Park authority in England;

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- (k) the Homes and Communities Agency; or
- (l) a joint committee established under section 29 of the Planning and Compulsory Purchase Act 2004.]

#### Textual Amendments

- F60** S. 70(1)(a)(b): functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of [S.I. 2000/2853, reg. 2\(1\)](#), [Sch. 1](#)
- F61** Words in s. 70(2) substituted (15.1.2012) by [Localism Act 2011 \(c. 20\)](#), [ss. 143\(2\)](#), [240\(1\)\(i\)](#) (with [ss. 143\(5\)](#), [144](#))
- F62** S. 70(2A) inserted (15.1.2012) by [Localism Act 2011 \(c. 20\)](#), [ss. 143\(3\)](#), [240\(1\)\(i\)](#) (with [ss. 143\(5\)](#), [144](#))
- F63** Words in s. 70(3) substituted (17.7.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), [s. 32](#), [Sch. 7 para.14](#) (with [s. 84\(5\)](#)); [S.I. 1992/1491, art. 2](#), [Sch. 1](#)
- F64** S. 70(4) inserted (15.1.2012) by [Localism Act 2011 \(c. 20\)](#), [ss. 143\(4\)](#), [240\(1\)\(i\)](#) (with [ss. 143\(5\)](#), [144](#))

#### Modifications etc. (not altering text)

- C28** S. 70 modified (1.4.1996) by [1994 c. 19, s. 20\(3\)](#), [Sch. 5 Pt. III para. 19](#) (with [ss. 54\(5\)\(7\)](#), [Sch. 17 paras. 22\(1\)](#), [23\(2\)](#)); [S.I. 1995/3198, art. 4.](#), [Sch. 2](#)  
S. 70 applied (with modifications) (2.8.1999) by [S.I. 1999/1892, reg. 2\(1\)](#), [Sch. art. 7](#), [Sch. 2 Pt. I](#)  
S. 70 applied (with modifications) (2.8.1999) by [S.I. 1999/1892, reg. 2\(1\)](#), [Sch. art. 7](#), [Sch. 2 Pt. II](#)

#### Marginal Citations

- M6** 1990 c. 9.
- M7** 1976 c. 83.

#### [<sup>F65</sup>70A Power to decline to determine subsequent application.

- (1) A local planning authority may decline to determine a relevant application if—
    - (a) any of the conditions in subsections (2) to (4) is satisfied, and
    - (b) the authority think there has been no significant change in the relevant considerations since the relevant event.
  - (2) The condition is that in the period of two years ending with the date on which the application mentioned in subsection (1) is received the Secretary of State has refused a similar application [<sup>F66</sup>made to the Secretary of State under section 62A or] referred to him under section 76A or 77.
  - (3) The condition is that in that period the Secretary of State has dismissed an appeal—
    - (a) against the refusal of a similar application, or
    - (b) under section 78(2) in respect of a similar application.
  - (4) The condition is that—
    - (a) in that period the local planning authority have refused more than one similar application, and
    - (b) there has been no appeal to the Secretary of State against any such refusal [<sup>F67</sup>or, if there has been such an appeal, it has been withdrawn].
- [<sup>F68</sup>(4A) A local planning authority in England may also decline to determine a relevant application if—
  - (a) the condition in subsection (4B) is satisfied, and

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- (b) the authority think there has been no significant change in the relevant considerations since the relevant event.
- (4B) The condition is that—
- (a) in the period of two years ending with the date on which the application mentioned in subsection (4A) is received the Secretary of State has refused a similar application,
  - (b) the similar application was an application deemed to have been made by section 177(5), and
  - (c) the land to which the application mentioned in subsection (4A) and the similar application relate is in England.]
- (5) A relevant application is—
- (a) an application for planning permission for the development of any land;
  - (b) an application for approval in pursuance of section 60(2) [<sup>F69</sup>, (2A) or (2B)].
- (6) The relevant considerations are—
- (a) the development plan so far as material to the application;
  - (b) any other material considerations.
- (7) The relevant event is—
- (a) for the purposes of subsections (2) [<sup>F70</sup>, (4) and (4B)] the refusal of the similar application;
  - (b) for the purposes of subsection (3) the dismissal of the appeal.
- (8) An application for planning permission is similar to another application if (and only if) the local planning authority think that the development and the land to which the applications relate are the same or substantially the same.]

#### Textual Amendments

- F65** Ss. 70A, 70B substituted (24.8.2005 for E. in so far as relates to s. 70A, 6.4.2009 for E. in so far as relates to s. 70B, and not in force for W.) for s. 70A by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), **ss. 43(1), 121** (with s. 111); S.I. 2005/2081, **art. 2** (subject to savings in art. 4); S.I. 2009/384, **art. 2(a)**
- F66** Words in s. 70A(2) inserted (9.5.2013 for E. for specified purposes, 1.10.2013 for specified purposes, 1.10.2014 in so far as not already in force) by [Growth and Infrastructure Act 2013 \(c. 27\)](#), s. 35(1), **Sch. 1 para. 6**; S.I. 2013/1124, **art. 2**; S.I. 2013/2143, **art. 2(1)(a)**; S.I. 2014/1531, **art. 2**
- F67** Words in s. 70A(4)(b) inserted (6.4.2009 for E. and otherwise prosp.) by [Planning Act 2008 \(c. 29\)](#), ss. 187, 241, **Sch. 7 para. 2(2)** (with s. 226); S.I. 2009/400, **art. 5**
- F68** S. 70A(4A)(4B) inserted (6.4.2009) by [Planning Act 2008 \(c. 29\)](#), ss. 187, 241, **Sch. 7 para. 2(3)** (with s. 226); S.I. 2009/400, **art. 3**
- F69** Words in s. 70A(5) inserted (25.4.2013) by [Growth and Infrastructure Act 2013 \(c. 27\)](#), **ss. 4(2), 35(2)**
- F70** Words in s. 70A(7)(a) substituted (6.4.2009) by [Planning Act 2008 \(c. 29\)](#), ss. 187, 241, **Sch. 7 para. 2(4)** (with s. 226); S.I. 2009/400, **art. 3**

#### Modifications etc. (not altering text)

- C29** S. 70A applied (with modifications) (6.4.1992) by S.I. 1992/666, **art. 13(1)(c)**, **Sch. 4 Pts. I, II**  
S. 70A applied (with modifications) (6.4.2007) by [The Town and Country Planning \(Control of Advertisements\) \(England\) Regulations 2007 \(S.I. 2004/783\)](#), **reg. 14(3)**, **Sch. 4** (as amended by S.I. 2007/1739, **reg. 2(b)**)

*Status: Point in time view as at 09/06/2015.*

*Changes to legislation: Town and Country Planning Act 1990, Part III is up to date with all changes known to be in force on or before 11 July 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)*

**C30** S. 70A: functions of local authority not to be responsibility of an executive of the authority (E.)  
(16.11.2000) by virtue of [S.I. 2000/2853, reg. 2\(1\)](#), [Sch. 1](#)

### **[<sup>F71</sup>70B Power to decline to determine overlapping application**

(1) A local planning authority may decline to determine an application for planning permission for the development of any land which is

[ made on the same day as a similar application, or  
<sup>F72</sup>(a)

(b)] made at a time when any of the conditions in subsections (2) to (4) applies in relation to a similar application.

(2) The condition is that a similar application is under consideration by the local planning authority and the determination period for that application has not expired.

(3) The condition is that a similar application is under consideration by the Secretary of State in pursuance of section [<sup>F73</sup>62A,] 76A or 77 or on an appeal under section 78 and the Secretary of State has not issued his decision.

(4) The condition is that a similar application—

(a) has been granted by the local planning authority,

(b) has been refused by them, or

(c) has not been determined by them within the determination period,

and the time within which an appeal could be made to the Secretary of State under section 78 has not expired.

[ A local planning authority in England may also decline to determine an application for  
<sup>F74</sup>(4A) planning permission for the development of any land in England which is made at a time when the condition in subsection (4B) applies in relation to a similar application.

(4B) The condition is that—

(a) a similar application is under consideration by the Secretary of State,

(b) the similar application is an application deemed to have been made by section 177(5), and

(c) the Secretary of State has not issued his decision.]

(5) An application for planning permission is similar to another application if (and only if) the local planning authority think that the development and the land to which the applications relate are the same or substantially the same.

(6) The determination period is—

(a) the period prescribed by the development order for the determination of the application, or

(b) such longer period as the applicant and the authority have agreed for the determination of the application.

[ If a local planning authority exercise their power under subsection (1)(a) to decline to  
<sup>F75</sup>(7) determine an application made on the same day as a similar application, they may not also exercise that power to decline to determine the similar application.]]

*Status: Point in time view as at 09/06/2015.*

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#### Textual Amendments

- F71** Ss. 70A, 70B substituted (24.8.2005 (E.) in so far as relates to s. 70A and 6.4.2009 (E.) in so far as relates to s. 70B) for s. 70A by **Planning and Compulsory Purchase Act 2004 (c. 5), ss. 43(1), 121** (with s. 111); **S.I. 2005/2081, art. 2** (subject to savings in art. 4); **S.I. 2009/384, art. 2(a)**
- F72** Words in s. 70B(1) inserted (6.4.2009 for E. and otherwise prosp.) by **Planning Act 2008 (c. 29), ss. 187, 241, Sch. 7 para. 3(2)** (with s. 226); **S.I. 2009/400, art. 5**
- F73** Word in s. 70B(3) inserted (9.5.2013 for E. for specified purposes, 1.10.2013 for specified purposes, 1.10.2014 in so far as not already in force) by **Growth and Infrastructure Act 2013 (c. 27), s. 35(1), Sch. 1 para. 7**; **S.I. 2013/1124, art. 2**; **S.I. 2013/2143, art. 2(1)(a)**; **S.I. 2014/1531, art. 2**
- F74** S. 70B(4A)(4B) inserted (6.4.2009) by **Planning Act 2008 (c. 29), ss. 187, 241, Sch. 7 para. 3(3)** (with s. 226); **S.I. 2009/400, art. 3**
- F75** S. 70B(7) inserted (6.4.2009 for E. and otherwise prosp.) by **Planning Act 2008 (c. 29), ss. 187, 241, Sch. 7 para. 3(4)** (with s. 226); **S.I. 2009/400, art. 5**

#### [<sup>F76</sup>70C Power to decline to determine retrospective application

- (1) A local planning authority in England may decline to determine an application for planning permission for the development of any land if granting planning permission for the development would involve granting, whether in relation to the whole or any part of the land to which a pre-existing enforcement notice relates, planning permission in respect of the whole or any part of the matters specified in the enforcement notice as constituting a breach of planning control.
- (2) For the purposes of the operation of this section in relation to any particular application for planning permission, a “pre-existing enforcement notice” is an enforcement notice issued before the application was received by the local planning authority.]

#### Textual Amendments

- F76** S. 70C inserted (6.4.2012) by **Localism Act 2011 (c. 20), ss. 123(2), 240(2)** (with s. 144); **S.I. 2012/628, art. 8(b)** (with arts. 9, 12, 13, 16, 18-20) (as amended (3.8.2012) by **S.I. 2012/2029, arts. 2, 4**)

#### 71 Consultations in connection with determinations under s. 70.

- [<sup>F77</sup>(1) A development order may provide that a local planning authority shall not determine an application for planning permission before the end of such period as may be prescribed.
- (2) A development order may require a local planning authority—
- (a) to take into account in determining such an application such representations, made within such period, as may be prescribed; and
  - (b) to give to any person whose representations have been taken into account such notice as may be prescribed of their decision.
- [ In subsections (1) and (2) references to [<sup>F79</sup>—
- <sup>F78</sup>(2ZA) (a) an application for consent, agreement or approval as mentioned in section 61DB(2), and
- (b)] an application for planning permission include references to an application for approval under section 61L(2).]



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- (2A) A development order making any provision by virtue of this section may make different provision for different cases or different classes of development.]
- (3) Before a local planning authority grant planning permission for the use of land as a caravan site, they shall, unless they are also the authority with power to issue a site licence for that land, consult the local authority with that power.
- [<sup>F80</sup>(3A) Subsection (3) does not apply in relation to planning permission granted by [<sup>F81</sup>a Mayoral development order or] a neighbourhood development order.]
- (4) In this section—
- [<sup>F82</sup>“ prescribed ” means prescribed by a development order ]
- “site licence” means a licence under Part 1 of the <sup>M8</sup>Caravan Sites and Control of Development Act 1960 authorising the use of land as a caravan site [<sup>F83</sup>or under Part 2 of the Mobile Homes (Wales) Act 2013 authorising the use of the land as a site for mobile homes (within the meaning of that Act)].

#### Textual Amendments

- F77** S. 71(1)(2)(2A) substituted for s. 71(1)(2) (25.11.1991 for certain purposes and otherwise 17.7.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), [s. 16\(2\)](#) (with [s. 84\(5\)](#)); [S.I. 1991/2728](#), [art. 2](#); [S.I. 1992/1491](#), [art. 2](#)
- F78** S. 71(2ZA) inserted (15.11.2011 for specified purposes, 15.1.2012 for specified purposes, 6.4.2012 for specified purposes, 3.8.2012 for specified purposes) by [Localism Act 2011 \(c. 20\)](#), [s. 240\(5\)\(j\)](#), [Sch. 12 para. 8\(2\)](#); [S.I. 2012/57](#), [art. 4\(1\)\(h\)](#) (with [arts. 6, 7, 9-11](#)); [S.I. 2012/628](#), [art. 8\(a\)](#) (with [arts. 9, 12, 13, 16, 18-20](#)) (as amended (3.8.2012) by [S.I. 2012/2029](#), [arts. 2, 4](#)); [S.I. 2012/2029](#), [arts. 2, 3\(a\)](#) (with [art. 5](#)) (as amended (6.4.2013) by [S.I. 2013/797](#), [art. 4](#))
- F79** Words in s. 71(2ZA) inserted (12.2.2015 for specified purposes, otherwise prosp.) by [Infrastructure Act 2015 \(c. 7\)](#), [s. 57\(5\)\(d\)](#), [Sch. 4 para. 9\(2\)](#)
- F80** S. 71(3A) inserted (15.11.2011 for specified purposes, 15.1.2012 for specified purposes, 6.4.2012 for specified purposes, 3.8.2012 for specified purposes) by [Localism Act 2011 \(c. 20\)](#), [s. 240\(5\)\(j\)](#), [Sch. 12 para. 8\(3\)](#); [S.I. 2012/57](#), [art. 4\(1\)\(h\)](#) (with [arts. 6, 7, 9-11](#)); [S.I. 2012/628](#), [art. 8\(a\)](#) (with [arts. 9, 12, 13, 16, 18-20](#)) (as amended (3.8.2012) by [S.I. 2012/2029](#), [arts. 2, 4](#)); [S.I. 2012/2029](#), [arts. 2, 3\(a\)](#) (with [art. 5](#)) (as amended (6.4.2013) by [S.I. 2013/797](#), [art. 4](#))
- F81** Words in s. 71(3A) inserted (12.2.2015 for specified purposes, otherwise prosp.) by [Infrastructure Act 2015 \(c. 7\)](#), [s. 57\(5\)\(d\)](#), [Sch. 4 para. 9\(3\)](#)
- F82** S. 71(4) definition of "prescribed" substituted (17.7.1992) for definitions of "agricultural holding" and "owner" by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), [s. 32](#), [Sch. 7 para.15](#) (with [s. 84\(5\)](#)); [S.I. 1992/1491](#), [art. 2](#)
- F83** Words in s. 71(4) inserted (5.11.2013) by [Mobile Homes \(Wales\) Act 2013 \(anaw 6\)](#), [s. 64\(1\)](#), [Sch. 4 para. 6\(2\)](#) (with [Sch. 5 para. 7](#)) (this amendment is to be treated as not having effect until 1.10.2014 by virtue of [S.I. 2014/11](#), [art. 3\(2\)](#))

#### Marginal Citations

- M8** 1960 c. 62.

#### [<sup>F84</sup>71A Assessment of environmental effects.

- (1) The Secretary of State may by regulations make provision about the consideration to be given, before planning permission for development of any class specified in the regulations is granted, to the likely environmental effects of the proposed development.

*Status: Point in time view as at 09/06/2015.*

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- (2) The regulations—
- (a) may make the same provision as, or provision similar or corresponding to, any provision made, for the purposes of any [<sup>F85</sup>EU] obligation of the United Kingdom about the assessment of the likely effects of development on the environment, under section 2(2) of the <sup>M9</sup> European Communities Act 1972; and
  - (b) may make different provision for different classes of development.
- (3) Where a draft of regulations made in exercise both of the power conferred by this section and the power conferred by section 2(2) of the European Communities Act 1972 is approved by resolution of each House of Parliament, section 333(3) shall not apply.]

#### Textual Amendments

- F84** S. 71A inserted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), **s.15** (with [s. 84\(5\)](#)); [S.I. 1991/2067](#), **art.3** (subject to [art. 4](#))
- F85** Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), [arts. 2, 3, 6](#) (with [arts. 3\(2\)\(3\), 4\(2\), 6\(4\)\(5\)](#))

#### Marginal Citations

- M9** 1972 c. 68.

## 72 Conditional grant of planning permission.

- (1) Without prejudice to the generality of section 70(1), conditions may be imposed on the grant of planning permission under that section—
- (a) for regulating the development or use of any land under the control of the applicant (whether or not it is land in respect of which the application was made) or requiring the carrying out of works on any such land, so far as appears to the local planning authority to be expedient for the purposes of or in connection with the development authorised by the permission;
  - (b) for requiring the removal of any buildings or works authorised by the permission, or the discontinuance of any use of land so authorised, at the end of a specified period, and the carrying out of any works required for the reinstatement of land at the end of that period.
- (2) A planning permission granted subject to such a condition as is mentioned in subsection (1)(b) is in this Act referred to as “planning permission granted for a limited period”.
- (3) Where—
- (a) planning permission is granted for development consisting of or including the carrying out of building or other operations subject to a condition that the operations shall be commenced not later than a time specified in the condition; and
  - (b) any building or other operations are commenced after the time so specified, the commencement and carrying out of those operations do not constitute development for which that permission was granted.

*Status: Point in time view as at 09/06/2015.*

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- (4) Subsection (3)(a) does not apply to a condition attached to the planning permission by or under section 91 or 92.
- (5) Part I of Schedule 5 shall have effect for the purpose of making special provision with respect to the conditions which may be imposed on the grant of planning permission for development consisting of the winning and working of minerals [<sup>F86</sup>or involving the depositing of refuse or waste materials], and subsection (2) has effect subject to paragraph 1(6)(a) of that Schedule.

#### Textual Amendments

**F86** Words in s. 72(5) inserted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 21, [Sch. 1 para.2](#) (with s. 84(5)); [S.I. 1991/2067](#), [art. 3](#) (subject to art. 4)

#### Modifications etc. (not altering text)

- C31** S. 72: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of [S.I. 2000/2853](#), reg. 2(1), [Sch. 1](#)
- C32** S. 72 applied (7.7.2014) by [The East Anglia ONE Offshore Wind Farm Order 2014 \(S.I. 2014/1599\)](#), arts. 1, [35\(1\)](#) (with arts. 37, 38, [Sch. 9 para. 19](#))
- C33** S. 72(1)(a) modified (26.11.1992) by [S.I. 1992/2683](#), reg. 2, [Sch. para. 2](#)  
S. 72(1)(a) modified (3.6.1995) by [S.I. 1995/1139](#), reg. 2, [Sch. para. 1](#)

### 73 **Determination of applications to develop land without compliance with conditions previously attached.**

- (1) This section applies, subject to subsection (4), to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.
- (2) On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—
  - (a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and
  - (b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.
- (3) [<sup>F87</sup>Special provision may be made with respect to such applications—
  - (a) by regulations under section 62 as regards the form and content of the application, and
  - (b) by a development order as regards the procedure to be followed in connection with the application.]
- (4) This section does not apply if the previous planning permission was granted subject to a condition as to the time within which the development to which it related was to be begun and that time has expired without the development having been begun.
- [<sup>F88</sup>(5) Planning permission must not be granted under this section to the extent that it has effect to change a condition subject to which a previous planning permission was granted by extending the time within which—

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- (a) a development must be started;
- (b) an application for approval of reserved matters (within the meaning of section 92) must be made.]

#### Textual Amendments

**F87** S. 73(3) repealed (6.8.2004 for certain purposes and otherwise prosp.) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), ss. 42(2), 120, 121, [Sch. 9](#) (with s. 111); S.I. 2004/2097, [art. 2](#)

**F88** S. 73(5) inserted (24.8.2005 for E and otherwise prosp.) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), ss. 51(3), 121 (with s. 111); S.I. 2005/2081, [art. 2](#) (subject to savings in art. 4)

#### Modifications etc. (not altering text)

**C34** S. 73: functions of local authority not to be responsibility, of an executive of the authority (E.) (16.11.2000) by virtue of [S.I. 2000/2853](#), reg. 2(1), [Sch. 1](#) para. A. 2

**C35** S. 73: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of [S.I. 2000/2853](#), reg. 2(1), [Sch. 1](#)

**C36** S. 73 applied (16.8.2012) by [The Hinkley Point Harbour Empowerment Order 2012 \(S.I. 2012/1914\)](#), arts. 1(1), [18\(4\)-\(6\)](#) (with arts. 34, 35, 37, 40)

#### [<sup>F89</sup>73A Planning permission for development already carried out.

- (1) On an application made to a local planning authority, the planning permission which may be granted includes planning permission for development carried out before the date of the application.
- (2) Subsection (1) applies to development carried out—
  - (a) without planning permission;
  - (b) in accordance with planning permission granted for a limited period; or
  - (c) without complying with some condition subject to which planning permission was granted.
- (3) Planning permission for such development may be granted so as to have effect from—
  - (a) the date on which the development was carried out; or
  - (b) if it was carried out in accordance with planning permission granted for a limited period, the end of that period.]

#### Textual Amendments

**F89** S. 73A inserted (2.1.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 32, [Sch. 7 para. 16\(1\)](#) (with s. 84(5)); S.I. 1991/2905, art. 3, [Sch.1](#) (subject to art. 5)

#### Modifications etc. (not altering text)

**C37** S. 73A: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of [S.I. 2000/2853](#), reg. 2(1), [Sch. 1](#)

**C38** S. 73A applied (16.8.2012) by [The Hinkley Point Harbour Empowerment Order 2012 \(S.I. 2012/1914\)](#), arts. 1(1), [18\(4\)-\(6\)](#) (with arts. 34, 35, 37, 40)

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## 74 Directions etc. as to method of dealing with applications.

(1) Provision may be made by a development order for regulating the manner in which applications for planning permission to develop land are to be dealt with by local planning authorities, and in particular—

- (a) for enabling the Secretary of State to give directions restricting the grant of planning permission by the local planning authority, either indefinitely or during such period as may be specified in the directions, in respect of any such development, or in respect of development of any such class, as may be so specified;
- (b) for authorising the local planning authority, in such cases and subject to such conditions as may be prescribed by the order or by directions given by the Secretary of State under it, to grant planning permission for development which does not accord with the provisions of the development plan;
- (c) for requiring that, before planning permission for any development is granted or refused, local planning authorities prescribed by the order or by directions given by the Secretary of State under it shall consult with such authorities or persons as may be so prescribed;
- (d) for requiring the local planning authority to give to any applicant for planning permission, within such time as may be prescribed by the order, such notice as may be so prescribed as to the manner in which his application has been dealt with;
- (e) for requiring the local planning authority to give any applicant for any consent, agreement or approval required by a condition imposed on a grant of planning permission notice of their decision on his application, within such time as may be so prescribed;
- (f) for requiring the local planning authority to give to the Secretary of State, and to such other persons as may be prescribed by or under the order, such information as may be so prescribed with respect to applications for planning permission made to the authority, including information as to the manner in which any such application has been dealt with.

[<sup>F90</sup>(1ZA) In subsection (1)—

- (a) in paragraph (c) the reference to planning permission for any development includes a reference to [<sup>F91</sup>—
  - (i) a consent, agreement or approval as mentioned in section 61DB(2), and
  - (ii)] an approval under section 61L(2), and
- (b) in paragraph (f) references to applications for planning permission include references to [<sup>F92</sup>—
  - (i) applications for consent, agreement or approval as mentioned in section 61DB(2), and
  - (ii)] applications for approvals under section 61L(2).

[ Provision may be made by a development order—

- <sup>F93</sup>(1A)
  - (a) for determining the persons to whom applications under this Act are to be sent; and
  - (b) for requiring persons to whom such applications are sent to send copies to other interested persons.]

[ Provision may be made by a development order—  
<sup>F94</sup>(1B)

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- (a) for enabling the Mayor of London in prescribed circumstances, and subject to such conditions as may be prescribed, to direct the local planning authority for a London borough to refuse an application for planning permission of a prescribed description in any particular case;
- (b) for prohibiting a local planning authority to which any such direction is given from implementing the direction in prescribed circumstances or during prescribed periods; and
- (c) for modifying any provision of this Act relating to an appeal against a refusal of planning permission (and, in particular, any such provision concerning parties or costs) in its application in relation to a refusal in compliance with such a direction;

and in the preceding provisions of this subsection “ prescribed ” means prescribed by, or by directions made under, a development order.

(1C) In determining whether to exercise any power under subsection (1B) to direct a local planning authority to refuse an application, the Mayor of London shall have regard to—

- (a) the development plan, and
- (b) the spatial development strategy prepared and published under Part VIII of the Greater London Authority Act 1999,

so far as material to the application.]

(2) Subsection (1) is subject to the provisions of <sup>F95</sup> . . . sections 67(7) and 73(1) of the <sup>M10</sup>Planning (Listed Buildings and Conservation Areas) Act 1990.]

#### Textual Amendments

- F90** S. 74(1ZA) inserted (15.11.2011 for specified purposes, 15.1.2012 for specified purposes, 6.4.2012 for specified purposes, 3.8.2012 for specified purposes) by [Localism Act 2011 \(c. 20\)](#), s. 240(5)(j), [Sch. 12 para. 9](#); S.I. 2012/57, [art. 4\(1\)\(h\)](#) (with arts. 6, 7, 9-11); S.I. 2012/628, [art. 8\(a\)](#) (with arts. 9, 12, 13, 16, 18-20) (as amended (3.8.2012) by S.I. 2012/2029, arts. 2, 4); S.I. 2012/2029, arts. 2, [3\(a\)](#) (with art. 5) (as amended (6.4.2013) by S.I. 2013/797, [art. 4](#))
- F91** Words in s. 74(1ZA)(a) inserted (12.2.2015 for specified purposes, otherwise prosp.) by [Infrastructure Act 2015 \(c. 7\)](#), s. 57(5)(d), [Sch. 4 para. 10\(a\)](#)
- F92** Words in s. 74(1ZA)(b) inserted (12.2.2015 for specified purposes, otherwise prosp.) by [Infrastructure Act 2015 \(c. 7\)](#), s. 57(5)(d), [Sch. 4 para. 10\(b\)](#)
- F93** S. 74(1A) inserted (25.11.1991 for certain purposes and otherwise 2.1.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), [s. 19\(1\)](#) (with s. 84(5)); S.I. 1991/2728, [art. 2](#); S.I. 1991/2905, [art. 3](#) (subject to art. 5)
- F94** S. 74(1B)(1C) inserted (12.1.2000) by 1999 c. 29, [s. 244\(9\)](#) (with Sch. 12 para. 9(1)); S.I. 1999/3434, [art. 2](#)
- F95** Words in s. 74(2) repealed (17.7.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), ss. 32, 84(6), [Sch. 7 para. 17](#), [Sch. 19](#), Pt. I (with s. 84(5)); S.I. 1992/1491, art. 2, Schs. 1, 2

#### Modifications etc. (not altering text)

- C39** S. 74(1B)(a) excluded (30.3.2006) by [London Olympic Games and Paralympic Games Act 2006 \(c. 12\)](#), [ss. 5\(4\)\(a\)](#), 40

#### Marginal Citations

- M10** 1990 c. 9.

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## **[<sup>F96</sup>74A Deemed discharge of planning conditions**

- (1) The Secretary of State may by development order make provision for the deemed discharge of a condition to which this section applies.
- (2) This section applies to a condition which—
  - (a) has been imposed on the grant of planning permission for the development of land in England, and
  - (b) requires the consent, agreement or approval of a local planning authority to any matter.
- (3) Deemed discharge of a condition means that the local planning authority's consent, agreement or approval to any matter as required by the condition is deemed to have been given.
- (4) A development order which makes provision for deemed discharge of a condition must provide that the condition is deemed to be discharged only if—
  - (a) a person (“the applicant”) has applied to the local planning authority for the consent, agreement or approval required by the condition,
  - (b) the period for the authority to give notice of their decision on the application has elapsed without that notice having been given, and
  - (c) the applicant has taken such further steps (if any) as are prescribed under subsection (5).
- (5) The Secretary of State may by development order make provision about the procedure for the deemed discharge of a planning condition and, in particular, provision—
  - (a) allowing or requiring steps to be taken by the applicant or the local planning authority;
  - (b) as to the time at which or period within which a step may or must be taken;
  - (c) as to the time at which the deemed discharge takes effect (including for this to be determined by the applicant, subject to such limitations as may be prescribed);
  - (d) for a time or period within paragraph (b) or (c) to be modified by agreement between the applicant and the local planning authority;
  - (e) as to the form or content of any notice which may or must be given as part of the procedure, and as to the means by which it may or must be given.
- (6) The Secretary of State may by development order provide that provision for deemed discharge of a condition does not apply—
  - (a) in relation to a condition of a prescribed description;
  - (b) in relation to a condition imposed on the grant of planning permission of a prescribed description;
  - (c) in relation to a condition imposed on the grant of planning permission for development of a prescribed description;
  - (d) in other prescribed circumstances.
- (7) The power in subsection (6)(d) includes power to provide that provision for deemed discharge of a condition does not apply where an applicant for planning permission and the local planning authority to whom the application is made agree, before or after planning permission is granted, that it should not apply in relation to a condition imposed on the grant of permission.

*Status: Point in time view as at 09/06/2015.*

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- (8) The Secretary of State may by development order make provision for section 78(2) (appeals to the Secretary of State) not to apply, or to apply with modifications, where—
- (a) a person has applied for the consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission,
  - (b) the local planning authority have not given notice to that person of their decision on the application within the period mentioned in section 78(2), and
  - (c) the person has taken such further steps (if any) as are prescribed to bring about the deemed discharge of the planning condition.
- (9) A development order which makes provision for deemed discharge of a condition must limit the application of that provision to a condition imposed on the grant of planning permission following an application made after the development order comes into force.
- (10) In this section—
- “condition” includes a limitation;
- “prescribed” means prescribed by development order made by the Secretary of State.]

#### Textual Amendments

**F96** S. 74A inserted (12.2.2015) by [Infrastructure Act 2015 \(c. 7\)](#), ss. 29, 57(5)(c)

## 75 Effect of planning permission.

- (1) Without prejudice to the provisions of this Part as to the duration, revocation or modification of planning permission, any grant of planning permission to develop land shall (except in so far as the permission otherwise provides) enure for the benefit of the land and of all persons for the time being interested in it.
- (2) Where planning permission is granted for the erection of a building, the grant of permission may specify the purposes for which the building may be used.
- (3) If no purpose is so specified, the permission shall be construed as including permission to use the building for the purpose for which it is designed.

#### Modifications etc. (not altering text)

**C40** S. 75 applied (with modifications) (2.8.1999) by [S.I. 1999/1892](#), reg. 2(1), [Sch. art. 7](#), [Sch. 2 Pt. I](#)

S. 75 applied (with modifications) (2.8.1999) by [S.I. 1999/1892](#), reg. 2(1), [Sch. art. 7](#), [Sch. 2 Pt. II](#)

## 76 Duty to draw attention to certain provisions for benefit of disabled.

F97 .....

#### Textual Amendments

**F97** S. 76 omitted (6.8.2004) by virtue of [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), ss. 118, 121, [Sch. 6 para. 4](#) (with s. 111); [S.I. 2004/2097](#), [art. 2](#) and said section repealed (10.8.2006 for E. and



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30.6.2007 for W.) by Planning and Compulsory Purchase Act 2004 (c. 5), ss. 120, 121, **Sch. 9** (with s. 111); S.I. 2006/1061, **art. 3**; S.I. 2007/1369, **art. 2**

*Secretary of State's powers as respects planning applications and decisions*

**[<sup>F98</sup>76A Major infrastructure projects**

- (1) This section applies to—
  - (a) an application for planning permission;
  - (b) an application for the approval of a local planning authority required under a development order,if the Secretary of State thinks that the development to which the application relates is of national or regional importance.
- (2) The Secretary of State may direct that the application must be referred to him instead of being dealt with by the local planning authority.
- (3) If the Secretary of State gives a direction under subsection (2) he may also direct that any application—
  - (a) under or for the purposes of the planning Acts, and
  - (b) which he thinks is connected with the application mentioned in subsection (1),must also be referred to him instead of being dealt with by the local planning authority.
- (4) If the Secretary of State gives a direction under this section—
  - (a) the application must be referred to him;
  - (b) he must appoint an inspector to consider the application.
- (5) If the Secretary of State gives a direction under subsection (2) the applicant must prepare an economic impact report which must—
  - (a) be in such form and contain such matter as is prescribed by development order;
  - (b) be submitted to the Secretary of State in accordance with such provision as is so prescribed.
- (6) For the purposes of subsection (5) the Secretary of State may, by development order, prescribe such requirements as to publicity and notice as he thinks appropriate.
- (7) A direction under this section or section 76B may be varied or revoked by a subsequent direction.
- (8) The decision of the Secretary of State on any application referred to him under this section is final.
- (9) Regional relates to a region listed in Schedule 1 to the Regional Development Agencies Act 1998 (c. 45).
- (10) The following provisions of this Act apply (with any necessary modifications) to an application referred to the Secretary of State under this section as they apply to an application which falls to be determined by a local planning authority—
  - (a) section 70;
  - (b) section 72(1) and (5);
  - (c) section 73;
  - (d) section 73A.

*Status: Point in time view as at 09/06/2015.*

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- (11) A development order may apply (with or without modifications) any requirements imposed by the order by virtue of section 65 or 71 to an application referred to the Secretary of State under this section.
- (12) This section does not apply to an application which relates to the development of land in Wales.

#### Textual Amendments

**F98** Ss. 76A, 76B inserted (6.8.2004 for certain purposes, 24.8.2005 for E. and otherwise prosp.) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), [ss. 44, 121](#); [S.I. 2004/2097](#), [art. 2](#); [S.I. 2005/2081](#), [art. 2](#) (subject to savings in [art. 4](#))

### 76B Major infrastructure projects: inspectors

- (1) This section applies if the Secretary of State appoints an inspector under section 76A(4)(b) (the lead inspector).
- (2) The Secretary of State may direct the lead inspector—
- to consider such matters relating to the application as are prescribed;
  - to make recommendations to the Secretary of State on those matters.
- (3) After considering any recommendations of the lead inspector the Secretary of State may—
- appoint such number of additional inspectors as he thinks appropriate;
  - direct that each of the additional inspectors must consider such matters relating to the application as the lead inspector decides.
- (4) An additional inspector must—
- comply with such directions as to procedural matters as the lead inspector gives;
  - report to the lead inspector on the matters he is appointed to consider.
- (5) A copy of directions given as mentioned in subsection (4)(a) must be given to—
- the person who made the application;
  - the local planning authority;
  - any other person who requests it.
- (6) If the Secretary of State does not act under subsection (3) he must direct the lead inspector to consider the application on his own.
- (7) In every case the lead inspector must report to the Secretary of State on—
- his consideration of the application;
  - the consideration of the additional inspectors (if any) of the matters mentioned in subsection (3)(b).
- (8) The function of the lead inspector in pursuance of subsection (2)—
- may be exercised from time to time;
  - includes making recommendations as to the number of additional inspectors required from time to time.

*Status: Point in time view as at 09/06/2015.*

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- (9) The power of the Secretary of State under subsection (3) to appoint an additional inspector includes power to revoke such an appointment.]

#### Textual Amendments

**F98** Ss. 76A, 76B inserted (6.8.2004 for certain purposes, 24.8.2005 for E. and otherwise prosp.) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), [ss. 44, 121](#); [S.I. 2004/2097](#), [art. 2](#); [S.I. 2005/2081](#), [art. 2](#) (subject to savings in [art. 4](#))

#### [<sup>F99</sup>76C Provisions applying to applications made under section 62A

- (1) Sections 62(3) and (4), 65(5), 70 to 70C, 72(1) and (5) and 73A apply, with any necessary modifications, to an application for planning permission made to the Secretary of State under section 62A as they apply to an application for planning permission which is to be determined by the local planning authority.
- (2) Any requirements imposed by a development order by virtue of section 62, 65 or 71 or paragraph 8(6) of Schedule 1 may be applied by a development order, with or without modifications, to an application for planning permission made to the Secretary of State under section 62A.
- (3) Where an application is made to the Secretary of State under section 62A(3) instead of to the authority to whom it would otherwise have been made, a development order may apply, with or without modifications, to the application any enactment that relates to applications of that kind when made to that authority.

#### Textual Amendments

**F99** Ss. 76C-76E inserted (9.5.2013 for E. for specified purposes, 1.10.2013 for specified purposes, 1.10.2014 in so far as not already in force) by [Growth and Infrastructure Act 2013 \(c. 27\)](#), [s. 35\(1\)](#), [Sch. 1 para. 5](#); [S.I. 2013/1124](#), [art. 2](#); [S.I. 2013/2143](#), [art. 2\(1\)\(a\)](#); [S.I. 2014/1531](#), [art. 2](#)

#### 76D Deciding applications made under section 62A

- (1) An application made to the Secretary of State under section 62A (“a direct application”) is to be determined by a person appointed by the Secretary of State for the purpose instead of by the Secretary of State, subject to section 76E.
- (2) Where a person has been appointed under subsection (1) or this subsection to determine a direct application then, at any time before the person has determined the application, the Secretary of State may—
  - (a) revoke the person's appointment; and
  - (b) appoint another person to determine the application instead.
- (3) A person appointed under this section to determine an application for planning permission made to the Secretary of State under section 62A has the same powers and duties that the Secretary of State has under section 76C.
- (4) Where a direct application is determined by a person appointed under this section, the person's decision is to be treated as that of the Secretary of State.

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- (5) Except as provided by Part 12, the validity of that decision is not to be questioned in any proceedings whatsoever.
- (6) It is not a ground of application to the High Court under section 288 that a direct application ought to have been determined by the Secretary of State and not by a person appointed under this section unless the applicant challenges the person's power to determine the direct application before the person's decision on the direct application is given.
- (7) Where any enactment (other than this section and section 319A)—
- (a) refers (or is to be read as referring) to the Secretary of State in a context relating to or capable of relating to an application made under section 62A (otherwise than by referring to the application having been made to the Secretary of State), or
  - (b) refers (or is to be read as referring) to anything (other than the making of the application) done or authorised or required to be done by, to or before the Secretary of State in connection with any such application,
- then, so far as the context permits, the enactment is to be read, in relation to an application determined or to be determined by a person appointed under this section, as if the reference to the Secretary of State were or included a reference to that person.

#### Textual Amendments

**F99** Ss. 76C-76E inserted (9.5.2013 for E. for specified purposes, 1.10.2013 for specified purposes, 1.10.2014 in so far as not already in force) by [Growth and Infrastructure Act 2013 \(c. 27\), s. 35\(1\), Sch. 1 para. 5](#); S.I. 2013/1124, art. 2; S.I. 2013/2143, art. 2(1)(a); S.I. 2014/1531, art. 2

#### **76E Applications under section 62A: determination by Secretary of State**

- (1) The Secretary of State may direct that an application made to the Secretary of State under section 62A (“a direct application”) is to be determined by the Secretary of State instead of by a person appointed under section 76D.
- (2) Where a direction is given under subsection (1), the Secretary of State must serve a copy of the direction on—
- (a) the person, if any, appointed under section 76D to determine the application concerned,
  - (b) the applicant, and
  - (c) the local planning authority.
- (3) Where a direct application is to be determined by the Secretary of State in consequence of a direction under subsection (1)—
- (a) in determining the application, the Secretary of State may take into account any report made to the Secretary of State by any person previously appointed to determine the application, and
  - (b) subject to that, the provisions of the planning Acts which are relevant to the application apply to it as if section 76D had never applied to it.
- (4) The Secretary of State may by a further direction revoke a direction under subsection (1) at any time before the determination of the direct application concerned.

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- (5) Where a direction is given under subsection (4), the Secretary of State must serve a copy of the direction on—
  - (a) the person, if any, previously appointed under section 76D to determine the application concerned,
  - (b) the applicant, and
  - (c) the local planning authority.
- (6) Where a direction is given under subsection (4) in relation to a direct application—
  - (a) anything done by or on behalf of the Secretary of State in connection with the application which might have been done by a person appointed under section 76D to determine the application is, unless the person appointed under section 76D to determine the application directs otherwise, to be treated as having been done by that person, and
  - (b) subject to that, section 76D applies to the application as if no direction under subsection (1) had been given in relation to the application.]

#### Textual Amendments

- F99** Ss. 76C-76E inserted (9.5.2013 for E. for specified purposes, 1.10.2013 for specified purposes, 1.10.2014 in so far as not already in force) by [Growth and Infrastructure Act 2013 \(c. 27\), s. 35\(1\), Sch. 1 para. 5](#); [S.I. 2013/1124, art. 2](#); [S.I. 2013/2143, art. 2\(1\)\(a\)](#); [S.I. 2014/1531, art. 2](#)

## 77 Reference of applications to Secretary of State.

- (1) The Secretary of State may give directions requiring applications for planning permission, or for the approval of any local planning authority required under a development order [<sup>F100</sup>, a local development order or a neighbourhood development order], to be referred to him instead of being dealt with by local planning authorities.
- (2) A direction under this section—
  - (a) may be given either to a particular local planning authority or to local planning authorities generally; and
  - (b) may relate either to a particular application or to applications of a class specified in the direction.
- (3) Any application in respect of which a direction under this section has effect shall be referred to the Secretary of State accordingly.
- (4) Subject to subsection (5), where an application for planning permission is referred to the Secretary of State under this section, sections [<sup>F101</sup>70, 72(1) and (5), 73 and 73A] shall apply, with any necessary modifications, as they apply to such an application which falls to be determined by the local planning authority [<sup>F102</sup>and a development order may apply, with or without modifications, to an application so referred any requirements imposed by such an order by virtue of section 65 or 71].
- (5) Before determining an application referred to him under this section, the Secretary of State shall, if either the applicant or the local planning authority wish, give each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- (6) Subsection (5) does not apply to an application for planning permission referred to a Planning Inquiry Commission under section 101.

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[<sup>F103</sup>(6A) Subsection (5) does not apply to an application referred to the Welsh Ministers under this section instead of being dealt with by a local planning authority in Wales.]

(7) The decision of the Secretary of State on any application referred to him under this section shall be final.

#### Textual Amendments

**F100** Words in s. 77(1) substituted (15.11.2011 for specified purposes, 15.1.2012 for specified purposes, 6.4.2012 for specified purposes, 3.8.2012 for specified purposes, 6.4.2013 in so far as not already in force) by [Localism Act 2011 \(c. 20\)](#), s. 240(5)(j), [Sch. 12 para. 10](#); [S.I. 2012/57](#), art. 4(1)(h) (with arts. 6, 7, 9-11); [S.I. 2012/628](#), art. 8(a) (with arts. 9, 12, 13, 16, 18-20) (as amended (3.8.2012) by [S.I. 2012/2029](#), arts. 2, 4); [S.I. 2012/2029](#), arts. 2, 3(a) (with art. 5) (as amended (6.4.2013) by [S.I. 2013/797](#), art. 4); [S.I. 2013/797](#), arts. 1(2), 2

**F101** Words in s. 77(4) substituted (2.1.1992 so far as relating to the inclusion of a reference to s. 73A otherwise 17.7.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 32, [Sch. 7 para.18](#) (with s. 84(5)); [S.I. 1991/2905](#), art. 3, [Sch.1](#) (subject to art. 5) and [S.I. 1992/1491](#), art.2, [Sch.1](#)

**F102** Words in s. 77(4) inserted (17.7.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 32, [Sch. 7 para. 18](#) (with s. 84(5)); [S.I. 1992/1491](#), art. 2, [Sch.1](#)

**F103** S. 77(6A) inserted (11.11.2014) by [The Town and Country Planning \(Determination of Procedure\) \(Wales\) Order 2014 \(S.I. 2014/2773\)](#), art. 1(2), [Sch. 1 para. 2](#)

#### Modifications etc. (not altering text)

**C41** S. 77 extended (3.11.1994) by [1994 c. 33](#), [ss. 80\(3\)](#), 172(4)

**C42** S. 77 applied (with modifications) (6.4.2007) by [The Town and Country Planning \(Control of Advertisements\) \(England\) Regulations 2007 \(S.I. 2004/783\)](#), [reg. 10](#)

**C43** S. 77(5) excluded (27.5.1997) by [1997 c. 8](#), [ss. 70\(4\)](#), 278(2), [Sch. 7 para. 7](#) (with [ss. 20](#), 64, 219)

## 78 Right to appeal against planning decisions and failure to take such decisions.

(1) Where a local planning authority—

- (a) refuse an application for planning permission or grant it subject to conditions;
- (b) refuse an application for any consent, agreement or approval of that authority required by a condition imposed on a grant of planning permission or grant it subject to conditions; or
- (c) refuse an application for any approval of that authority required under a development order [<sup>F104</sup>, a local development order or a neighbourhood development order] or grant it subject to conditions,

the applicant may by notice appeal to the Secretary of State.

(2) A person who has made such an application [<sup>F105</sup>to the local planning authority] may also appeal to the Secretary of State if the local planning authority have [<sup>F106</sup>done none of the following]—

- (a) given notice to the applicant of their decision on the application;
- [<sup>F107</sup>(aa) given notice to the applicant that they have exercised their power under section 70A [<sup>F108</sup>or 70B][<sup>F109</sup>or 70C] to decline to determine the application;]
- (b) given notice to him that the application has been referred to the Secretary of State in accordance with directions given under section 77,

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within such period as may be prescribed by the development order or within such extended period as may at any time be agreed upon in writing between the applicant and the authority.

- (3) Any appeal under this section shall be made by notice served within such time and in such manner as may be prescribed by a development order.
- (4) The time prescribed for the service of such a notice must not be less than—
- (a) 28 days from the date of notification of the decision; or
  - (b) in the case of an appeal under subsection (2), 28 days from the end of the period prescribed as mentioned in subsection (2) or, as the case may be, the extended period mentioned in that subsection.
- [<sup>F110</sup>(4A) A notice of appeal under this section must be accompanied by such information as may be prescribed by a development order.
- (4B) The power to make a development order under subsection (4A) is exercisable by—
- (a) the Secretary of State, in relation to England;
  - (b) the Welsh Ministers, in relation to Wales.
- (4C) Section 333(5) does not apply in relation to a development order under subsection (4A) made by the Welsh Ministers.
- (4D) A development order under subsection (4A) made by the Welsh Ministers is subject to annulment in pursuance of a resolution of the National Assembly for Wales.]
- (5) For the purposes of the application of sections [<sup>F111</sup>79(1) and (3)], 253(2)(c), 266(1)(b) [<sup>F112</sup>, 288(10)(b) [<sup>F113</sup>, 319A(7)(b) and 319B(7)(b)]] in relation to an appeal under subsection (2), it shall be assumed that the authority decided to refuse the application in question.

#### Textual Amendments

- F104** Words in s. 78(1)(c) substituted (15.11.2011 for specified purposes, 15.1.2012 for specified purposes, 6.4.2012 for specified purposes, 3.8.2012 for specified purposes, 6.4.2013 in so far as not already in force) by [Localism Act 2011 \(c. 20\)](#), s. 240(5)(j), [Sch. 12 para. 11](#); [S.I. 2012/57](#), art. 4(1)(h) (with arts. 6, 7, 9-11); [S.I. 2012/628](#), art. 8(a) (with arts. 9, 12, 13, 16, 18-20) (as amended (3.8.2012) by [S.I. 2012/2029](#), arts. 2, 4); [S.I. 2012/2029](#), arts. 2, 3(a) (with art. 5) (as amended (6.4.2013) by [S.I. 2013/797](#), art. 4); [S.I. 2013/797](#), arts. 1(2), 2
- F105** Words in s. 78(2) inserted (9.5.2013 for E. for specified purposes, 1.10.2013 for specified purposes, 1.10.2014 in so far as not already in force) by [Growth and Infrastructure Act 2013 \(c. 27\)](#), s. 35(1), [Sch. 1 para. 8](#); [S.I. 2013/1124](#), art. 2; [S.I. 2013/2143](#), art. 2(1)(a); [S.I. 2014/1531](#), art. 2
- F106** Words in s. 78(2) substituted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34\)](#), SIF 123:1), [s. 17\(2\)](#) (with s. 84(5)); [S.I. 1991/2067](#), [art.3](#) (subject to art. 4)
- F107** S. 78(2)(aa) substituted (25.9.1991) for 'nor' by [Planning and Compensation Act 1991 \(c. 34\)](#), SIF 123:1), [s. 17\(2\)](#) (with s. 84(5)); [S.I. 1991/2067](#), [art. 3](#) (subject to art. 4)
- F108** Words in s. 78(2)(aa) inserted (6.4.2009 for E. and otherwise prosp.) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), [ss. 43\(2\)](#), 121 (with s. 111); [S.I. 2009/384](#), [art. 2](#)
- F109** Words in s. 78(2)(aa) inserted (6.4.2012) by [Localism Act 2011 \(c. 20\)](#), [ss. 123\(3\)](#), 240(2) (with s. 144); [S.I. 2012/628](#), art. 8(b) (with arts. 9, 12, 13, 16, 18-20) (as amended (3.8.2012) by [S.I. 2012/2029](#), arts. 2, 4)
- F110** S. 78(4A)-(4D) inserted (6.4.2009 for E., 30.4.2012 for W.) by [Planning Act 2008 \(c. 29\)](#), s. 241(3)(4), [Sch. 11 para. 2](#) (with s. 226); [S.I. 2009/400](#), art. 5(d); [S.I. 2012/802](#), art. 2(b)

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- F111** Words in s. 78(5) substituted (6.4.2009 for certain purposes and otherwise prosp.) by Planning Act 2008 (c. 29), ss. 196, 241, **Sch. 10 para. 3(a)** (with s. 226); S.I. 2009/400, **art. 3**
- F112** Words in s. 78(5) substituted (6.4.2009 for certain purposes and otherwise prosp.) by Planning Act 2008 (c. 29), ss. 196, 241, **Sch. 10 para. 3(b)** (with s. 226); S.I. 2009/400, **art. 3**
- F113** Words in s. 78(5) substituted (11.11.2014) by The Town and Country Planning (Determination of Procedure) (Wales) Order 2014 (S.I. 2014/2773), art. 1(2), **Sch. 1 para. 3**

#### **Modifications etc. (not altering text)**

- C44** S. 78 modified by S.I. 1989/670, **reg. 15** as amended by S.I. 1990/1562, **regs. 2, 3, 6**  
S. 78 applied (with modifications) (6.4.1992) by S.I. 1992/666, reg. 15(1)(3), **Sch. 4 Pts. I, IV, V**  
S. 78 applied (with modifications) (2.8.1999) by S.I. 1999/1892, reg. 2(1), **Sch. art. 7, Sch. 2 Pt. I**  
S. 78 applied (with modifications) (2.8.1999) by S.I. 1999/1892, reg. 2(1), **Sch. art. 7, Sch. 2 Pt. II**
- C45** S. 78 restricted (18.12.1996) by 1996 c. 61, s. 9(5), **Sch. 6 Pt. IV para. 33**
- C46** S. 78 applied (7.6.2006) by Planning and Compulsory Purchase Act 2004 (c. 5), ss. 89, 121, **Sch. 4 para. 5(3)** (with s. 111); S.I. 2006/1281, **art. 2**
- C47** Ss. 78, 79 applied (with modifications) (6.4.2007) by The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (S.I. 2007/783), reg. 17, **Sch. 4** (as amended (1.10.2013) by S.I. 2013/2114, **regs. 1(1), 3**)
- C48** S. 78 restricted (22.7.2008) by Crossrail Act 2008 (c. 18), ss. 10, **Sch. 7 para. 31**
- C49** S. 78 applied (22.7.2008) by Crossrail Act 2008 (c. 18), ss. 49, **Sch. 16 para. 2(7)**
- C50** S. 78 applied (26.9.2012) by The Network Rail (Ipswich Chord) Order 2012 (S.I. 2012/2284), arts. 1, **35(a)** (with art. 26(2))
- C51** S. 78 applied (in part) (6.11.2012) by The Network Rail (North Doncaster Chord) Order 2012 (S.I. 2012/2635), arts. 1, **7(1)(a)** (with art. 35(2))
- C52** S. 78 applied (with modifications) (28.2.2013) by The Rookery South (Resource Recovery Facility) Order 2011 2013 (S.I. 2013/680), **art. 4(1)(a)**
- C53** S. 78 applied (13.3.2013) by The Brechfa Forest West Wind Farm Order 2013 (S.I. 2013/586), arts. 1, **4(1)**
- C54** Ss. 78, 79 applied (15.6.2013) by The Galloper Wind Farm Order 2013 (S.I. 2013/1203), arts. 1, **6(1)** (with arts. 11, 12)
- C55** Ss. 78, 79 applied (31.7.2013) by The East Northamptonshire Resource Management Facility Order 2013 (S.I. 2013/1752), arts. 1, **5(1)(a)**
- C56** Ss. 78, 79 applied (15.8.2013) by The North Blyth Biomass Power Station Order 2013 (S.I. 2013/1873), arts. 1, **4(a)** (with art. 30)
- C57** S. 78 applied (with modifications) (20.11.2013) by The M1 Junction 10a (Grade Separation) Order 2013 (S.I. 2013/2808), arts. 1, **39(1)(a)**
- C58** S. 78 applied in part (with modifications) (21.11.2013) by The Network Rail (Redditch Branch Enhancement) Order 2013 (S.I. 2013/2809), arts. 1, **37** (with arts. 27(2), 39, **Sch. 10 para. 4**)
- C59** S. 78 applied in part (21.4.2014) by The Network Rail (Norton Bridge Area Improvements) Order 2014 (S.I. 2014/909), arts. 1, **45(1)(a)** (with art. 34(2))
- C60** S. 78 modified (7.7.2014) by The East Anglia ONE Offshore Wind Farm Order 2014 (S.I. 2014/1599), arts. 1, **35(3)** (with arts. 37, 38, **Sch. 9 para. 19**)
- C61** S. 78 applied (with modifications) (24.7.2014) by The Daventry International Rail Freight Interchange Alteration Order 2014 (S.I. 2014/1796), arts. 1, **8** (with art. 24(2), **Sch. 6 para. 3**)
- C62** S. 78 applied (with modifications) (6.8.2014) by The Rampion Offshore Wind Farm Order 2014 (S.I. 2014/1873), arts. 1, **6(1)(a)** (with arts. 12, 13, **Sch. 12**)
- C63** S. 78 applied (2.10.2014) by The Clocaenog Forest Wind Farm Order 2014 (S.I. 2014/2441), arts. 1, **4(1)** (with art. 33)
- C64** S. 78 applied (21.10.2014) by The Central Bedfordshire Council (Woodside Link Houghton Regis) Development Consent Order 2014 (S.I. 2014/2637), arts. 1, **40(1)(a)**
- C65** S. 78 applied (with modifications) (23.10.2014) by The South Hook Combined Heat and Power Plant Order 2014 (S.I. 2014/2846), arts. 1, **4(1)(a)**



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- C66** S. 78 applied (with modifications) (29.10.2014) by [The Able Marine Energy Park Development Consent Order 2014 \(S.I. 2014/2935\)](#), **art. 58(1)(a)** (with arts. 30(4), 53)
- C67** S. 78 applied (28.11.2014) by [The Walney Extension Offshore Wind Farm Order 2014 \(S.I. 2014/2950\)](#), arts. 1, **9(1)(a)** (with arts. 38, 39)
- C68** S. 78 applied (31.12.2014) by [The Hornsea One Offshore Wind Farm Order 2014 \(S.I. 2014/3331\)](#), arts. 1, **32(a)** (with arts. 37, 38)
- C69** Ss. 78, 79 modified (7.1.2015) by [The Willington C Gas Pipeline Order 2014 \(S.I. 2014/3328\)](#), arts. 1, **3(3)**
- C70** S. 78 applied (11.3.2015) by [The Dogger Bank Creyke Beck Offshore Wind Farm Order 2015 \(S.I. 2015/318\)](#), arts. 1, **6(1)(a)** (with arts. 40, 41, Sch. 12)
- C71** Ss. 78, 79 applied (9.6.2015) by [The White Moss Landfill Order 2015 \(S.I. 2015/1317\)](#), arts. 1, **7(1)(a)** (with art. 5)
- C72** S. 78(1) applied (with modifications) (7.7.2014) by [The East Anglia ONE Offshore Wind Farm Order 2014 \(S.I. 2014/1599\)](#), arts. 1, **35(2)** (with arts. 37, 38, Sch. 9 para. 19)
- C73** S. 78(1) applied (with modifications) (7.1.2015) by [The Willington C Gas Pipeline Order 2014 \(S.I. 2014/3328\)](#), arts. 1, **3(2)**

#### [<sup>F114</sup>78A Appeal made: functions of local planning authorities

- (1) This section applies if a person who has made an application mentioned in section 78(1)(a) appeals to the Secretary of State under section 78(2).
- (2) At any time before the end of the additional period the local planning authority may give the notice referred to in section 78(2).
- (3) If the local planning authority give notice as mentioned in subsection (2) that their decision is to refuse the application—
  - (a) the appeal must be treated as an appeal under section 78(1) against the refusal;
  - (b) the Secretary of State must give the person making the appeal an opportunity to revise the grounds of the appeal;
  - (c) the Secretary of State must give such a person an opportunity to change any option the person has chosen relating to the procedure for the appeal.
- (4) If the local planning authority give notice as mentioned in subsection (2) that their decision is to grant the application subject to conditions the Secretary of State must give the person making the appeal the opportunity—
  - (a) to proceed with the appeal as an appeal under section 78(1) against the grant of the application subject to conditions;
  - (b) to revise the grounds of the appeal;
  - (c) to change any option the person has chosen relating to the procedure for the appeal.
- (5) The Secretary of State must not issue his decision on the appeal before the end of the additional period.
- (6) The additional period is the period prescribed by development order for the purposes of this section and which starts on the day on which the person appeals under section 78(2).]

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### Textual Amendments

**F114** S. 78A inserted (6.8.2004 for certain purposes and otherwise prosp.) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), **ss. 50(1)**, 121 (with s. 111); [S.I. 2004/2097](#), **art. 2**

## 79 Determination of appeals.

- (1) On an appeal under section 78 the Secretary of State may—
- (a) allow or dismiss the appeal, or
  - (b) reverse or vary any part of the decision of the local planning authority (whether the appeal relates to that part of it or not),
- and may deal with the application as if it had been made to him in the first instance.
- (2) Before determining an appeal under section 78 the Secretary of State shall, if either the appellant or the local planning authority so wish, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- [<sup>F115</sup>(3) Subsection (2) does not apply to—
- (a) an appeal referred to a Planning Inquiry Commission under section 101; or
  - (b) an appeal against a decision of a local planning authority in England.]

[<sup>F116</sup>(3A) Subsection (2) does not apply to an appeal to the Welsh Ministers.]

(4) Subject to subsection (2), the provisions of sections [<sup>F117</sup>70, 72(1) and (5), 73 and 73A] and Part I of Schedule 5 shall apply, with any necessary modifications, in relation to an appeal to the Secretary of State under section 78 as they apply in relation to an application for planning permission which falls to be determined by the local planning authority [<sup>F118</sup>and a development order may apply, with or without modifications, to such an appeal any requirements imposed by a development order by virtue of section 65 or 71].

(5) The decision of the Secretary of State on such an appeal shall be final.

(6) If, before or during the determination of such an appeal in respect of an application for planning permission to develop land, the Secretary of State forms the opinion that, having regard to the provisions of sections 70 and 72(1), the development order and any directions given under that order, planning permission for that development—

    - (a) could not have been granted by the local planning authority; or
    - (b) could not have been granted otherwise than subject to the conditions imposed,

he may decline to determine the appeal or to proceed with the determination.

[<sup>F119</sup>(6A) If at any time before or during the determination of such an appeal it appears to the Secretary of State that the appellant is responsible for undue delay in the progress of the appeal, he may—

    - (a) give the appellant notice that the appeal will be dismissed unless the appellant takes, within the period specified in the notice, such steps as are specified in the notice for the expedition of the appeal; and
    - (b) if the appellant fails to take those steps within that period, dismiss the appeal accordingly.]

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- (7) Schedule 6 applies to appeals under section 78, including appeals under that section as applied by or under any other provision of this Act.

#### Textual Amendments

- F115** S. 79(3) substituted (6.4.2009 for certain purposes and otherwise prosp.) by [Planning Act 2008 \(c. 29\)](#), ss. 196, 241, [Sch. 10 para. 4](#) (with s. 226); S.I. 2009/400, [art. 3](#)
- F116** S. 79(3A) inserted (11.11.2014) by [The Town and Country Planning \(Determination of Procedure\) \(Wales\) Order 2014 \(S.I. 2014/2773\)](#), art. 1(2), [Sch. 1 para. 4](#)
- F117** Words in s. 79(4) substituted (2.1.1992 so far as relating to the inclusion of a reference to s. 73A and otherwise 17.7.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 32, [Sch. 7 para. 19](#) (with s. 84(5)); S.I. 1991/2905, art. 3, [Sch. 1](#) (subject to art. 5); S.I. 1992/1491, art. 2, [Sch. 1](#)
- F118** Words at end of s. 79(4) inserted (17.7.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 32, [Sch. 7 para. 19](#) (with s. 84(5)); S.I. 1992/1491, art. 2, [Sch. 1](#)
- F119** S. 79(6A) inserted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 18 (with s. 84(5)); S.I. 1991/2067, [art. 3](#) (subject to art. 4)

#### Modifications etc. (not altering text)

- C54** Ss. 78, 79 applied (15.6.2013) by [The Galloper Wind Farm Order 2013 \(S.I. 2013/1203\)](#), arts. 1, [6\(1\)](#) (with arts. 11, 12)
- C55** Ss. 78, 79 applied (31.7.2013) by [The East Northamptonshire Resource Management Facility Order 2013 \(S.I. 2013/1752\)](#), arts. 1, [5\(1\)\(a\)](#)
- C56** Ss. 78, 79 applied (15.8.2013) by [The North Blyth Biomass Power Station Order 2013 \(S.I. 2013/1873\)](#), arts. 1, [4\(a\)](#) (with art. 30)
- C69** Ss. 78, 79 modified (7.1.2015) by [The Willington C Gas Pipeline Order 2014 \(S.I. 2014/3328\)](#), arts. 1, [3\(3\)](#)
- C71** Ss. 78, 79 applied (9.6.2015) by [The White Moss Landfill Order 2015 \(S.I. 2015/1317\)](#), arts. 1, [7\(1\)\(a\)](#) (with art. 5)
- C74** Ss. 78, 79 modified by S.I. 1989/670, [reg. 15](#) as amended by S.I. 1990/1562, [regs. 2, 3, 6](#)  
Ss. 78, 79 applied (with modifications) (6.4.1992) by S.I. 1992/666, [reg. 15\(1\)\(3\)](#), [Sch. 4 Pts. I, IV, V](#)  
S. 79 applied (with modifications) (2.8.1999) by S.I. 1999/1892, [reg. 2\(1\)](#), [Sch. art. 7](#), [Sch. 2 Pt. I](#)  
S. 79 applied (with modifications) (2.8.1999) by S.I. 1999/1892, [reg. 2\(1\)](#), [Sch. art. 7](#), [Sch. 2 Pt. II](#)
- C75** Ss. 78, 79 applied (with modifications) (6.4.2007) by [The Town and Country Planning \(Control of Advertisements\) \(England\) Regulations 2007 \(S.I. 2007/783\)](#), [reg. 17](#), [Sch. 4](#) (as amended (1.10.2013) by S.I. 2013/2114, [regs. 1\(1\), 3](#))
- C76** S. 79 applied (26.9.2012) by [The Network Rail \(Ipswich Chord\) Order 2012 \(S.I. 2012/2284\)](#), arts. 1, [35\(a\)](#) (with art. 26(2))
- C77** S. 79 applied (6.11.2012) by [The Network Rail \(North Doncaster Chord\) Order 2012 \(S.I. 2012/2635\)](#), arts. 1, [7\(1\)\(a\)](#) (with art. 35(2))
- C78** S. 79 applied (with modifications) (28.2.2013) by [The Rookery South \(Resource Recovery Facility\) Order 2011 2013 \(S.I. 2013/680\)](#), [art. 4\(1\)\(a\)](#)
- C79** S. 79 applied (13.3.2013) by [The Brechfa Forest West Wind Farm Order 2013 \(S.I. 2013/586\)](#), arts. 1, [4\(1\)](#)
- C80** S. 79 applied (with modifications) (20.11.2013) by [The M1 Junction 10a \(Grade Separation\) Order 2013 \(S.I. 2013/2808\)](#), arts. 1, [39\(1\)\(a\)](#)
- C81** S. 79 applied (with modifications) (21.11.2013) by [The Network Rail \(Redditch Branch Enhancement\) Order 2013 \(S.I. 2013/2809\)](#), arts. 1, [37](#) (with arts. 27(2), 39, [Sch. 10 para. 4](#))
- C82** S. 79 applied (21.4.2014) by [The Network Rail \(Norton Bridge Area Improvements\) Order 2014 \(S.I. 2014/909\)](#), arts. 1, [45\(1\)\(b\)](#) (with art. 34(2))
- C83** S. 79 modified (7.7.2014) by [The East Anglia ONE Offshore Wind Farm Order 2014 \(S.I. 2014/1599\)](#), arts. 1, [35\(3\)](#) (with arts. 37, 38, [Sch. 9 para. 19](#))

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- C84** S. 79 applied (with modifications) (24.7.2014) by [The Daventry International Rail Freight Interchange Alteration Order 2014 \(S.I. 2014/1796\)](#), arts. 1, **8** (with art. 24(2), Sch. 6 para. 3)
- C85** S. 79 applied (with modifications) (6.8.2014) by [The Rampion Offshore Wind Farm Order 2014 \(S.I. 2014/1873\)](#), arts. 1, **6(1)(a)** (with arts. 12, 13, Sch. 12)
- C86** S. 79 applied (2.10.2014) by [The Clocaenog Forest Wind Farm Order 2014 \(S.I. 2014/2441\)](#), arts. 1, **4(1)** (with art. 33)
- C87** S. 79 applied (21.10.2014) by [The Central Bedfordshire Council \(Woodside Link Houghton Regis\) Development Consent Order 2014 \(S.I. 2014/2637\)](#), arts. 1, **40(1)(a)**
- C88** S. 79 applied (with modifications) (23.10.2014) by [The South Hook Combined Heat and Power Plant Order 2014 \(S.I. 2014/2846\)](#), arts. 1, **4(1)(a)**
- C89** S. 79 applied (with modifications) (29.10.2014) by [The Able Marine Energy Park Development Consent Order 2014 \(S.I. 2014/2935\)](#), **art. 58(1)(a)** (with arts. 30(4), 53)
- C90** S. 79 applied (28.11.2014) by [The Walney Extension Offshore Wind Farm Order 2014 \(S.I. 2014/2950\)](#), arts. 1, **9(1)(a)** (with arts. 38, 39)
- C91** S. 79 applied (31.12.2014) by [The Hornsea One Offshore Wind Farm Order 2014 \(S.I. 2014/3331\)](#), arts. 1, **32(a)** (with arts. 37, 38)
- C92** S. 79 applied (11.3.2015) by [The Dogger Bank Creyke Beck Offshore Wind Farm Order 2015 \(S.I. 2015/318\)](#), arts. 1, **6(1)(a)** (with arts. 40, 41, Sch. 12)
- C93** S. 79(2) excluded (27.5.1997) by 1997 c. 8, ss. 70(4), 278(2), **Sch. 7 para. 7** (with ss. 20, 64, 219)

<sup>F120</sup>**80** .....

#### Textual Amendments

**F120** S. 80 repealed (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), ss. 31, 84(6), Sch. 6 para. 11, **Sch. 19**, Pt.II (with s. 84(5)); S.I. 1991/2067, **art.3** (subject to art. 4)

<sup>F121</sup>**81** .....

#### Textual Amendments

**F121** S. 81 repealed (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), ss. 31, 84(6), Sch. 6 para. 11, **Sch. 19**, Pt.II; S.I. 1991/2067, **art.3** (subject to art. 4)

### *Simplified planning zones*

#### **82 Simplified planning zones.**

- (1) A simplified planning zone is an area in respect of which a simplified planning zone scheme is in force.
- (2) The adoption or approval of a simplified planning zone scheme has effect to grant in relation to the zone, or any part of it specified in the scheme, planning permission—
  - (a) for development specified in the scheme, or
  - (b) for development of any class so specified.
- (3) Planning permission under a simplified planning zone scheme may be unconditional or subject to such conditions, limitations or exceptions as may be specified in the scheme.

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**Modifications etc. (not altering text)**

**C94** S. 82(2) restricted (31.7.2013) by [The East Northamptonshire Resource Management Facility Order 2013 \(S.I. 2013/1752\)](#), arts. 1, **6(1)**

**83 Making of simplified planning zone schemes.**

- (1) Every local planning authority shall consider, as soon as practicable after 2nd November 1987, the question for which part or parts of their area a simplified planning zone scheme is desirable, and then shall keep that question under review.
  - (2) If as a result of their original consideration or of any such review a local planning authority decide that it is desirable to prepare a scheme for any part of their area they shall do so; and a local planning authority may at any time decide—
    - (a) to make a simplified planning zone scheme, or
    - (b) to alter a scheme adopted by them, or
    - (c) with the consent of the Secretary of State, to alter a scheme approved by him.
  - (3) Schedule 7 has effect with respect to the making and alteration of simplified planning zone schemes and other related matters.
- [<sup>F122</sup>(5) In this section and in Schedule 7 references to a regional strategy are to a regional strategy under Part 5 of the Local Democracy, Economic Development and Construction Act 2009]

**Textual Amendments**

**F122** S. 83(5) inserted (1.4.2010) by [Local Democracy, Economic Development and Construction Act 2009 \(c. 20\)](#), ss. 85, 148, 149, **Sch. 5 para. 2(3)**; S.I. 2009/3318, **art. 4**

**84 Simplified planning zone schemes: conditions and limitations on planning permission.**

- (1) The conditions and limitations on planning permission which may be specified in a simplified planning zone scheme may include—
  - (a) conditions or limitations in respect of all development permitted by the scheme or in respect of particular descriptions of development so permitted, and
  - (b) conditions or limitations requiring the consent, agreement or approval of the local planning authority in relation to particular descriptions of permitted development.
- (2) Different conditions or limitations may be specified in a simplified planning zone scheme for different cases or classes of case.
- (3) Nothing in a simplified planning zone scheme shall affect the right of any person—
  - (a) to do anything not amounting to development, or
  - (b) to carry out development for which planning permission is not required or for which permission has been granted otherwise than by the scheme.

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- (4) No limitation or restriction subject to which permission has been granted otherwise than under the scheme shall affect the right of any person to carry out development for which permission has been granted under the scheme.

**85 Duration of simplified planning zone scheme.**

- (1) A simplified planning zone scheme shall take effect on the date of its adoption or approval and shall cease to have effect at the end of the period of 10 years beginning with that date.
- (2) When the scheme ceases to have effect planning permission under it shall also cease to have effect except in a case where the development authorised by it has been begun.

**86 Alteration of simplified planning zone scheme.**

- (1) This section applies where alterations to a simplified planning zone scheme are adopted or approved.
- (2) The adoption or approval of alterations providing for the inclusion of land in the simplified planning zone has effect to grant in relation to that land, or such part of it as is specified in the scheme, planning permission for development so specified or of any class so specified.
- (3) The adoption or approval of alterations providing for the grant of planning permission has effect to grant such permission in relation to the simplified planning zone, or such part of it as is specified in the scheme, for development so specified or development of any class so specified.
- (4) The adoption or approval of alterations providing for the withdrawal or relaxation of conditions, limitations or restrictions to which planning permission under the scheme is subject has effect to withdraw or relax the conditions, limitations or restrictions immediately.
- (5) The adoption or approval of alterations providing for—
- (a) the exclusion of land from the simplified planning zone,
  - (b) the withdrawal of planning permission, or
  - (c) the imposition of new or more stringent conditions, limitations or restrictions to which planning permission under the scheme is subject,
- has effect to withdraw permission, or to impose the conditions, limitations or restrictions, with effect from the end of the period of 12 months beginning with the date of the adoption or approval.
- (6) The adoption or approval of alterations to a scheme does not affect planning permission under the scheme in any case where the development authorised by it has been begun.

**87 Exclusion of certain descriptions of land or development.**

- (1) The following descriptions of land may not be included in a simplified planning zone—
- (a) land in a National Park;
  - (b) land in a conservation area;

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- (c) land within the Broads;
  - (d) land in an area designated under [<sup>F123</sup>section 82 of the Countryside and Rights of Way Act 2000] as an area of outstanding natural beauty;
  - (e) land identified in the development plan for the district as part of a green belt;
  - [<sup>F124</sup>(f) land within a site of special scientific interest (within the meaning of the Wildlife and Countryside Act 1981).]
- (2) Where land included in a simplified planning zone becomes land of a description mentioned in subsection (1), that subsection does not operate to exclude it from the zone.
- (3) The Secretary of State may by order provide that no simplified planning zone scheme shall have effect to grant planning permission—
- (a) in relation to an area of land specified in the order or to areas of land of a description so specified, or
  - (b) for development of a description specified in the order.
- (4) An order under subsection (3) has effect to withdraw such planning permission under a simplified planning zone scheme already in force with effect from the date on which the order comes into force, except in a case where the development authorised by the permission has been begun.

#### Textual Amendments

**F123** Words in s. 87(1)(d) substituted (1.4.2001) by 2000 c. 37, s. 93, **Sch. 15 Pt. I para. 10**; S.I. 2001/114, **art. 2(2)(e)**

**F124** S. 87(1)(f) substituted (30.1.2001) by 2000 c. 37, ss. 76(1), 103(2), **Sch. 10 Pt. II para. 7**

#### *Enterprise zone schemes*

### **88 Planning permission for development in enterprise zones.**

- (1) An order designating an enterprise zone under Schedule 32 to the <sup>M11</sup>Local Government, Planning and Land Act 1980 shall (without more) have effect on the date on which the order designating the zone takes effect to grant planning permission for development specified in the scheme or for development of any class so specified.
- (2) The approval of a modified scheme under paragraph 11 of that Schedule shall (without more) have effect on the date on which the modifications take effect to grant planning permission for development specified in the modified scheme or for development of any class so specified.
- (3) Planning permission so granted shall be subject to such conditions or limitations as may be specified in the scheme or modified scheme or, if none is specified, shall be unconditional.
- (4) Subject to subsection (5), where planning permission is so granted for any development or class of development the enterprise zone authority may direct that the permission shall not apply in relation—
- (a) to a specified development; or
  - (b) to a specified class of development; or

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- (c) to a specified class of development in a specified area within the enterprise zone.
- (5) An enterprise zone authority shall not give a direction under subsection (4) unless—
- (a) they have submitted it to the Secretary of State, and
  - (b) he has notified them that he approves of their giving it.
- (6) If the scheme or the modified scheme specifies, in relation to any development it permits, matters which will require approval by the enterprise zone authority, the permission shall have effect accordingly.
- (7) The Secretary of State may by regulations make provision as to—
- (a) the procedure for giving a direction under subsection (4); and
  - (b) the method and procedure relating to the approval of matters specified in a scheme or modified scheme as mentioned in subsection (6).
- (8) Such regulations may modify any provision of the planning Acts or any instrument made under them or may apply any such provision or instrument (with or without modification) in making any such provision as is mentioned in subsection (7).
- (9) Nothing in this section prevents planning permission being granted in relation to land in an enterprise zone otherwise than by virtue of this section (whether the permission is granted in pursuance of an application made under this Part or by a development order [<sup>F125</sup>, a local development order or a neighbourhood development order]).
- (10) Nothing in this section prejudices the right of any person to carry out development apart from this section.

#### Textual Amendments

**F125** Words in s. 88(9) substituted (15.11.2011 for specified purposes, 15.1.2012 for specified purposes, 6.4.2012 for specified purposes, 3.8.2012 for specified purposes, 6.4.2013 in so far as not already in force) by [Localism Act 2011 \(c. 20\)](#), s. 240(5)(j), [Sch. 12 para. 12](#); [S.I. 2012/57](#), art. 4(1)(h) (with arts. 6, 7, 9-11); [S.I. 2012/628](#), art. 8(a) (with arts. 9, 12, 13, 16, 18-20) (as amended (3.8.2012) by [S.I. 2012/2029](#), arts. 2, 4); [S.I. 2012/2029](#), arts. 2, 3(a) (with art. 5) (as amended (6.4.2013) by [S.I. 2013/797](#), art. 4); [S.I. 2013/797](#), arts. 1(2), 2

#### Marginal Citations

**M11** 1980 c.65.

## 89 Effect on planning permission of modification or termination of scheme.

- (1) Modifications to an enterprise zone scheme do not affect planning permission under the scheme in any case where the development authorised by it has been begun before the modifications take effect.
- (2) When an area ceases to be an enterprise zone, planning permission under the scheme shall cease to have effect except in a case where the development authorised by it has been begun.



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### *Deemed planning permission*

## **90 Development with government authorisation.**

- (1) Where the authorisation of a government department is required by virtue of an enactment in respect of development to be carried out by a local authority [<sup>F126</sup>or National Park authority], or by statutory undertakers who are not a local authority [<sup>F126</sup>or National Park authority], that department may, on granting that authorisation, direct that planning permission for that development shall be deemed to be granted, subject to such conditions (if any) as may be specified in the direction.
- [<sup>F127</sup>(2) On granting or varying a consent under section 36 or 37 of the Electricity Act 1989 in relation to a generating station or electric line in England or Wales, the Secretary of State may give a direction for planning permission to be deemed to be granted, subject to such conditions (if any) as may be specified in the direction, for—
  - (a) so much of the operation or change of use to which the consent relates as constitutes development;
  - (b) any development ancillary to the operation or change of use to which the consent relates.
- (2ZA) On varying a consent under section 36 or 37 of the Electricity Act 1989 in relation to a generating station or electric line in England or Wales, the Secretary of State may give one or more of the following directions (instead of, or as well as, a direction under subsection (2))—
  - (a) a direction for an existing planning permission deemed to be granted by virtue of a direction under subsection (2) (whenever made) to be varied as specified in the direction;
  - (b) a direction for any conditions subject to which any such existing planning permission was deemed to be granted to be varied as specified in the direction;
  - (c) a direction for any consent, agreement or approval given in respect of a condition subject to which any such existing planning permission was deemed to be granted to be treated as given in respect of a condition subject to which a new or varied planning permission is deemed to be granted.]
  - [<sup>F128</sup>(2A) On making an order under section 1 or 3 of the Transport and Works Act 1992 which includes provision for development, the Secretary of State may direct that planning permission for that development shall be deemed to be granted, subject to such conditions (if any) as may be specified in the direction.]
  - (3) The provisions of this Act (except [<sup>F129</sup>Part]XII) shall apply in relation to any planning permission deemed to be granted by virtue of a direction under this section as if it had been granted by the Secretary of State on an application referred to him under section 77.
  - (4) For the purposes of this section development is authorised by a government department if—
    - (a) any consent, authority or approval to or for the development is granted by the department in pursuance of an enactment;
    - (b) a compulsory purchase order is confirmed by the department authorising the purchase of land for the purpose of the development;
    - (c) consent is granted by the department to the appropriation of land for the purpose of the development or the acquisition of land by agreement for that purpose;

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- (d) authority is given by the department—
  - (i) for the borrowing of money for the purpose of the development, or
  - (ii) for the application for that purpose of any money not otherwise so applicable; or
- (e) any undertaking is given by the department to pay a grant in respect of the development in accordance with an enactment authorising the payment of such grants;

and references in this section to the authorisation of a government department shall be construed accordingly.

[<sup>F130</sup>(5) In subsection (2), the reference to ancillary development, in the case of a consent relating to the extension of a generating station, does not include any development which is not directly related to the generation of electricity by that station.

- (6) In this section, references to England or Wales include—
  - (a) waters adjacent to England or Wales up to the seaward limits of the territorial sea, and
  - (b) a Renewable Energy Zone, except any part of a Renewable Energy Zone in relation to which the Scottish Ministers have functions.

(7) In this section “electric line”, “extension”, “generating station” and “Renewable Energy Zone” have the same meanings as in Part 1 of the Electricity Act 1989.]

#### Textual Amendments

- F126** Words in s. 90(1) inserted (23.11.1995) by 1995 c. 25, s. 78, **Sch. 10 para. 32(4)** (with ss. 7(6), 115, 117, Sch. 8 para. 7); S.I. 1995/2950, **art. 2(1)**
- F127** S. 90(2)(2ZA) substituted for s. 90(2) (31.7.2013) by Growth and Infrastructure Act 2013 (c. 27), **ss. 21(2), 35(1)**; S.I. 2013/1488, **art. 5(b)**
- F128** S. 90(2A) inserted (1.1.1993) by Transport and Works Act 1992 (c. 42), **s. 16(1)**; S.I. 1992/2784, **art. 2, Sch. 1.**
- F129** Word in s. 90(3) substituted (25.9.1991) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), s. 31, **Sch. 6 para. 12** (with s. 84(5)); S.I. 1991/2067, **art. 3** (subject to art. 4)
- F130** S. 90(5)(6)(7) substituted for s. 90(5) (31.7.2013) by Growth and Infrastructure Act 2013 (c. 27), **ss. 21(3), 35(1)**; S.I. 2013/1488, **art. 5(b)**

#### Modifications etc. (not altering text)

- C95** S. 90(2A) modified (21.8.2013) by The Croxley Rail Link Order 2013 (S.I. 2013/1967), **arts. 1, 32**
- C96** S. 90(2A) modified (19.8.2014) by The Network Rail (Huyton) Order 2014 (S.I. 2014/2027), **arts. 1, 29** (with **art. 31(2)**)

### *Duration of planning permission*

## **91 General condition limiting duration of planning permission.**

(1) Subject to the provisions of this section, every planning permission granted or deemed to be granted shall be granted or, as the case may be, be deemed to be granted, subject to the condition that the development to which it relates must be begun not later than the expiration of—

- (a) [<sup>F131</sup>three years] beginning with the date on which the permission is granted or, as the case may be, deemed to be granted; or

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- (b) such other period (whether longer or shorter) beginning with that date as the authority concerned with the terms of planning permission may direct.
- (2) The period mentioned in subsection (1)(b) shall be a period which the authority consider appropriate having regard to the provisions of the development plan and to any other material considerations.
- (3) If planning permission is granted without the condition required by subsection (1), it shall be deemed to have been granted subject to the condition that the development to which it relates must be begun not later than the expiration of [<sup>F132</sup>three years] beginning with the date of the grant.
- [<sup>F133</sup>(3A) Subsection (3B) applies if any proceedings are begun to challenge the validity of a grant of planning permission or of a deemed grant of planning permission.
- (3B) The period before the end of which the development to which the planning permission relates is required to be begun in pursuance of subsection (1) or (3) must be taken to be extended by one year.
- (3C) Nothing in this section prevents the development being begun from the time the permission is granted or deemed to be granted.]
- (4) Nothing in this section applies—
- (a) to any planning permission granted by a development order [<sup>F134</sup>, a local development order or a neighbourhood development order];
  - (b) to any planning permission [<sup>F135</sup>granted for development carried out before the grant of that permission];
  - (c) to any planning permission granted for a limited period;
  - <sup>F136</sup>[(d) to any planning permission for development consisting of the winning and working of minerals or involving the depositing of mineral waste which is granted (or deemed to be granted) subject to a condition that the development to which it relates must be begun before the expiration of a specified period after—
    - (i) the completion of other development consisting of the winning and working of minerals already being carried out by the applicant for the planning permission; or
    - (ii) the cessation of depositing of mineral waste already being carried out by the applicant for the planning permission;]
  - (e) to any planning permission granted by an enterprise zone scheme;
  - (f) to any planning permission granted by a simplified planning zone scheme; or
  - (g) to any outline planning permission, as defined by section 92.

#### Textual Amendments

**F131** Words in s. 91(1)(a) substituted (24.8.2005 for E. and otherwise prosp.) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), **ss. 51(1)(a)**, 121 (with **ss. 51(6)**, 111); S.I. 2005/2081, **art. 2** (subject to savings in **art. 4**)

**F132** Words in s. 91(3) substituted (24.8.2005 for E. and otherwise prosp.) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), **ss. 51(1)(a)**, 121 (with **ss. 51(6)**, 111); S.I. 2005/2081, **art. 2** (subject to savings in **art. 4**)

**F133** S. 91(3A)-(3C) inserted (24.8.2005 for E. and otherwise prosp.) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), **ss. 51(1)(b)**, 121 (with **ss. 51(6)**, 111); S.I. 2005/2081, **art. 2** (subject to savings in **art. 4**)

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- F134** Words in s. 91(4)(a) substituted (15.11.2011 for specified purposes, 15.1.2012 for specified purposes, 6.4.2012 for specified purposes, 3.8.2012 for specified purposes, 6.4.2013 in so far as not already in force) by **Localism Act 2011 (c. 20)**, s. 240(5)(j), **Sch. 12 para. 13**; S.I. 2012/57, art. 4(1)(h) (with arts. 6, 7, 9-11); S.I. 2012/628, art. 8(a) (with arts. 9, 12, 13, 16, 18-20) (as amended (3.8.2012) by S.I. 2012/2029, arts. 2, 4); S.I. 2012/2029, arts. 2, 3(a) (with art. 5) (as amended (6.4.2013) by S.I. 2013/797, art. 4); S.I. 2013/797, arts. 1(2), 2
- F135** Words in s. 91(4)(b) substituted (2.1.1992) by **Planning and Compensation Act 1991 (c. 34, SIF 123:1)**, s. 32, **Sch. 7 para.20** (with s. 84(5)); S.I. 1991/2905, art. 3, **Sch.1**
- F136** S. 91(4)(d) substituted (25.9.1991) by **Planning and Compensation Act 1991 (c. 34, SIF 123:1)**, s. 21, **Sch. 1 para. 3**; S.I. 1991/2067, **art. 3** (subject to art. 4)

#### Modifications etc. (not altering text)

- C97** S. 91 excluded (5.11.1993) by **1993 c. 42, s. 24(2)** (with ss. 2, 30(1), **Sch. 2 para.9**)  
S. 91 excluded (18.12.1996) by **1996 c. 61, s. 10(4)**
- C98** S. 91 excluded (22.7.2008) by **Crossrail Act 2008 (c. 18), ss. 11(4)**

## 92 Outline planning permission.

- (1) In this section and section 91 “outline planning permission” means planning permission granted, in accordance with the provisions of a development order, with the reservation for subsequent approval by the local planning authority or the Secretary of State of matters not particularised in the application (“reserved matters”).
- (2) Subject to the following provisions of this section, where outline planning permission is granted for development consisting in or including the carrying out of building or other operations, it shall be granted subject to conditions to the effect—
  - (a) that, in the case of any reserved matter, application for approval must be made not later than the expiration of three years beginning with the date of the grant of outline planning permission; and
  - (b) that the development to which the permission relates must be begun not later than—
    - (i) <sup>F137</sup> . . . . .
    - (ii) <sup>F138</sup> . . . the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.
- (3) If outline planning permission is granted without the conditions required by subsection (2), it shall be deemed to have been granted subject to those conditions.
- (4) The authority concerned with the terms of an outline planning permission may, in applying subsection (2), substitute, or direct that there be substituted, for the periods of three years, <sup>F139</sup> . . . or two years referred to in that subsection such other periods respectively (whether longer or shorter) as they consider appropriate.
- (5) They may also specify, or direct that there be specified, separate periods under paragraph (a) of subsection (2) in relation to separate parts of the development to which the planning permission relates; and, if they do so, the condition required by paragraph (b) of that subsection shall then be framed correspondingly by reference to those parts, instead of by reference to the development as a whole.
- (6) In considering whether to exercise their powers under subsections (4) and (5), the authority shall have regard to the provisions of the development plan and to any other material considerations.

*Status: Point in time view as at 09/06/2015.*

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#### Textual Amendments

- F137** S. 92(2)(b)(i) omitted (24.8.2005 for E. and otherwise prosp.) by virtue of [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), [ss. 51\(2\)\(a\)](#), 121 (with [ss. 51\(6\)](#), 111); S.I. 2004/2081, [art. 2](#) (subject to savings in [art. 4](#))
- F138** Words in s. 92(2)(b)(ii) omitted (28.8.2005 for E. and otherwise prosp.) by virtue of [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), [ss. 51\(2\)\(b\)](#), 121 (with [ss. 51\(6\)](#), 111); S.I. 2005/2081, [art. 2](#) (subject to savings in [art. 4](#))
- F139** Words in s. 92(4) omitted (24.8.2005 for E. and otherwise prosp.) by virtue of [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), [ss. 51\(2\)\(c\)](#), 121 (with [ss. 51\(6\)](#), 111); S.I. 2005/2081, [art. 2](#) (subject to savings in [art. 4](#))

#### Modifications etc. (not altering text)

- C99** S. 92: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of S.I. 2000/2853, [reg. 2\(1\)](#), [Sch. 1](#)

### 93 Provisions supplementary to ss. 91 and 92.

- (1) The authority referred to in section 91(1)(b) or 92(4) is—
- the local planning authority or the Secretary of State, in the case of planning permission granted by them,
  - in the case of planning permission deemed to be granted under section 90(1), the department on whose direction planning permission is deemed to be granted, and
  - in the case of planning permission deemed to be granted under section 90(2), the Secretary of State.
- (2) For the purposes of section 92, a reserved matter shall be treated as finally approved—
- when an application for approval is granted, or
  - in a case where the application is made to the local planning authority and on an appeal to the Secretary of State against the authority's decision on the application the Secretary of State grants the approval, when the appeal is determined.
- (3) Where a local planning authority grant planning permission, the fact that any of the conditions of the permission are required by the provisions of section 91 or 92 to be imposed, or are deemed by those provisions to be imposed, shall not prevent the conditions being the subject of an appeal under section 78 against the decision of the authority.
- (4) In the case of planning permission (whether outline or other) which has conditions attached to it by or under section 91 or 92—
- development carried out after the date by which the conditions require it to be carried out shall be treated as not authorised by the permission; and
  - an application for approval of a reserved matter, if it is made after the date by which the conditions require it to be made, shall be treated as not made in accordance with the terms of the permission.

*Status: Point in time view as at 09/06/2015.*

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## 94 Termination of planning permission by reference to time limit: completion notices.

- (1) This section applies where—
- (a) by virtue of section 91 or 92, a planning permission is subject to a condition that the development to which the permission relates must be begun before the expiration of a particular period, that development has been begun within that period, but that period has elapsed without the development having been completed; or
  - (b) development has been begun in accordance with planning permission under a simplified planning zone scheme but has not been completed by the time the area ceases to be a simplified planning zone; or
  - (c) development has been begun in accordance with planning permission under an enterprise zone scheme but has not been completed by the time the area ceases to be an enterprise zone [<sup>F140</sup>; or
  - (d) a planning permission under a neighbourhood development order is subject to a condition that the development to which the permission relates must be begun before the expiration of a particular period, that development has been begun within that period, but that period has elapsed without the development having been completed.]
- (2) If the local planning authority are of the opinion that the development will not be completed within a reasonable period, they may serve a notice (“a completion notice”) stating that the planning permission will cease to have effect at the expiration of a further period specified in the notice.
- (3) The period so specified must not be less than 12 months after the notice takes effect.
- (4) A completion notice shall be served—
- (a) on the owner of the land,
  - (b) on the occupier of the land, and
  - (c) on any other person who in the opinion of the local planning authority will be affected by the notice.
- (5) The local planning authority may withdraw a completion notice at any time before the expiration of the period specified in it as the period at the expiration of which the planning permission is to cease to have effect.
- (6) If they do so they shall immediately give notice of the withdrawal to every person who was served with the completion notice.

### Textual Amendments

**F140** S. 94(1)(d) and word inserted (15.11.2011 for specified purposes, 15.1.2012 for specified purposes, 6.4.2012 for specified purposes, 3.8.2012 for specified purposes, 6.4.2013 in so far as not already in force) by [Localism Act 2011 \(c. 20\), s. 240\(5\)\(j\)](#); [Sch. 12 para. 14](#); [S.I. 2012/57, art. 4\(1\)\(h\)](#) (with [arts. 6, 7, 9-11](#)); [S.I. 2012/628, art. 8\(a\)](#) (with [arts. 9, 12, 13, 16, 18-20](#)) (as amended (3.8.2012) by [S.I. 2012/2029, arts. 2, 4](#)); [S.I. 2012/2029, arts. 2, 3\(a\)](#) (with [art. 5](#)) (as amended (6.4.2013) by [S.I. 2013/797, art. 4](#)); [S.I. 2013/797, arts. 1\(2\), 2](#)

### Modifications etc. (not altering text)

**C100** S. 94 applied (with modifications) (18.12.1996) by [1996 c. 61, s. 10\(5\)\(6\)](#)

*Status: Point in time view as at 09/06/2015.*

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**C101** S. 94(2): functions of local authority not to be responsibility of an executive of the authority (E.)  
(16.11.2000) by virtue of [S.I. 2000/2853](#), [reg. 2\(1\)](#), [Sch. 1](#)

## **95 Effect of completion notice.**

- (1) A completion notice shall not take effect unless and until it is confirmed by the Secretary of State.
- (2) In confirming a completion notice the Secretary of State may substitute some longer period for that specified in the notice as the period at the expiration of which the planning permission is to cease to have effect.
- (3) If, within such period as may be specified in a completion notice (which must not be less than 28 days from its service) any person on whom the notice is served so requires, the Secretary of State, before confirming the notice, shall give him and the local planning authority an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- (4) If a completion notice takes effect, the planning permission referred to in it shall become invalid at the expiration of the period specified in the notice (whether the original period specified under section 94(2) or a longer period substituted by the Secretary of State under subsection (2)).
- (5) Subsection (4) shall not affect any permission so far as development carried out under it before the end of the period mentioned in that subsection is concerned.

### **Modifications etc. (not altering text)**

**C102** S. 95(2) modified (18.12.1996) by [1996 c. 61](#), [s. 10\(6\)](#)

## **96 Power of Secretary of State to serve completion notices.**

- (1) If it appears to the Secretary of State to be expedient that a completion notice should be served in respect of any land, he may himself serve such a notice.
- (2) A completion notice served by the Secretary of State shall have the same effect as if it had been served by the local planning authority.
- (3) The Secretary of State shall not serve such a notice without consulting the local planning authority.

*[<sup>F141</sup>Non-material changes to planning permission*

### **Textual Amendments**

**F141** S. 96A and cross-heading inserted (1.10.2009) by [Planning Act 2008 \(c. 29\)](#), [ss. 190\(2\)](#), [241](#) (with [s. 226](#)); [S.I. 2009/2260](#), [art. 3](#)

## **96A Power to make non-material changes to planning permission**

- (1) A local planning authority <sup>F142</sup>... may make a change to any planning permission relating to land in their area if they are satisfied that the change is not material.

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- (2) In deciding whether a change is material, a local planning authority must have regard to the effect of the change, together with any previous changes made under this section, on the planning permission as originally granted.
- (3) The power conferred by subsection (1) includes power—
- (a) to impose new conditions;
  - (b) to remove or alter existing conditions.
- (4) The power conferred by subsection (1) may be exercised only on an application made by or on behalf of a person with an interest in the land to which the planning permission relates.
- (5) An application under subsection (4) [<sup>F143</sup>to a local planning authority in England] must be made in the form and manner prescribed by development order.
- [ A development order may provide that an application under subsection (4) to a local  
F144(5A) planning authority in Wales must be made—
- (a) in the form prescribed by the order or in a form published by the Welsh Ministers; and
  - (b) in the manner prescribed by the order.]
- (6) Subsection (7) applies in relation to an application under subsection (4) made by or on behalf of a person with an interest in some, but not all, of the land to which the planning permission relates.
- (7) The application may be made only in respect of so much of the planning permission as affects the land in which the person has an interest.
- (8) A local planning authority [<sup>F145</sup>in England] must comply with such requirements as may be prescribed by development order as to consultation and publicity in relation to the exercise of the power conferred by subsection (1).]
- [<sup>F146</sup>(9) A development order may make provision about how a local planning authority in Wales are to deal with an application under subsection (4) (including provision imposing requirements as to consultation and publicity and as to when steps specified in the order are to be taken).
- (10) For the purposes of this section as it applies in relation to Wales, a person has an interest in land only if in relation to that land (or any mineral in, on or under it) the person—
- (a) is the estate owner of the fee simple;
  - (b) is entitled to a tenancy granted or extended for a term of years certain of which not less than two years remain unexpired;
  - (c) is the mortgagee of any interest or estate in the land; or
  - (d) is a party to an estate contract within the meaning of section 2(4) of the Land Charges Act 1972.]

#### Textual Amendments

**F142** Words in s. 96A(1) omitted (1.9.2014) by virtue of [The Town and Country Planning \(Non-Material Changes and Correction of Errors\) \(Wales\) Order 2014 \(S.I. 2014/1770\)](#), arts. 1, **2(2)**

**F143** Words in s. 96A(5) inserted (1.9.2014) by [The Town and Country Planning \(Non-Material Changes and Correction of Errors\) \(Wales\) Order 2014 \(S.I. 2014/1770\)](#), arts. 1, **2(3)**

**F144** S. 96A(5A) inserted (1.9.2014) by [The Town and Country Planning \(Non-Material Changes and Correction of Errors\) \(Wales\) Order 2014 \(S.I. 2014/1770\)](#), arts. 1, **2(4)**



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- F145** Words in s. 96A(8) inserted (1.9.2014) by [The Town and Country Planning \(Non-Material Changes and Correction of Errors\) \(Wales\) Order 2014 \(S.I. 2014/1770\)](#), arts. 1, **2(5)**
- F146** S. 96A(9)(10) inserted (1.9.2014) by [The Town and Country Planning \(Non-Material Changes and Correction of Errors\) \(Wales\) Order 2014 \(S.I. 2014/1770\)](#), arts. 1, **2(6)**

### *Revocation and modification of planning permission*

## **97 Power to revoke or modify planning permission.**

- (1) If it appears to the local planning authority that it is expedient to revoke or modify any permission to develop land granted on an application made under this Part, the authority may by order revoke or modify the permission to such extent as they consider expedient.
- (2) In exercising their functions under subsection (1) the authority shall have regard to the development plan and to any other material considerations.
- (3) The power conferred by this section may be exercised—
  - (a) where the permission relates to the carrying out of building or other operations, at any time before those operations have been completed;
  - (b) where the permission relates to a change of the use of any land, at any time before the change has taken place.
- (4) The revocation or modification of permission for the carrying out of building or other operations shall not affect so much of those operations as has been previously carried out.
- (5) References in this section to the local planning authority are to be construed in relation to development consisting of the winning and working of minerals as references to the mineral planning authority,<sup>F147</sup> . . .
- <sup>F148</sup>(6) Part II of Schedule 5 shall have effect for the purpose of making special provision with respect to the conditions that may be imposed by an order under this section which revokes or modifies permission for development—
  - (a) consisting of the winning and working of minerals; or
  - (b) involving the depositing of refuse or waste materials.]

### **Textual Amendments**

- F147** Words in s. 97(5) repealed (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), ss. 21, 84(6), Sch. 1 para. 4, **Sch. 19**, Pt.I (with s. 84(5)); S.I. 1991/2067, art. 3, **Sch.1** (subject to art. 4)
- F148** S. 97(6) inserted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 21, **Sch. 1 para.4** (with s. 84(5)); S.I. 1991/2067, **art.3** (subject to art. 4)

## **98 Procedure for s. 97 orders: opposed cases.**

- (1) Except as provided in section 99, an order under section 97 shall not take effect unless it is confirmed by the Secretary of State.
- (2) Where a local planning authority submit such an order to the Secretary of State for confirmation, they shall serve notice on—
  - (a) the owner of the land affected,

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- (b) the occupier of the land affected, and
  - (c) any other person who in their opinion will be affected by the order.
- (3) The notice shall specify the period within which any person on whom it is served may require the Secretary of State to give him an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- (4) If within that period such a person so requires, before the Secretary of State confirms the order he shall give such an opportunity both to him and to the local planning authority.
- (5) The period referred to in subsection (3) must not be less than 28 days from the service of the notice.
- (6) The Secretary of State may confirm an order submitted to him under this section either without modification or subject to such modifications as he considers expedient.

**99 Procedure for s. 97 orders: unopposed cases.**

- (1) This section applies where—
- (a) the local planning authority have made an order under section 97; and
  - (b) the owner and the occupier of the land and all persons who in the authority's opinion will be affected by the order have notified the authority in writing that they do not object to it.
- (2) Where this section applies, instead of submitting the order to the Secretary of State for confirmation the authority shall advertise in the prescribed manner the fact that the order has been made, and the advertisement must specify—
- (a) the period within which persons affected by the order may give notice to the Secretary of State that they wish for an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose; and
  - (b) the period at the expiration of which, if no such notice is given to the Secretary of State, the order may take effect by virtue of this section without being confirmed by the Secretary of State.
- (3) The authority shall also serve notice to the same effect on the persons mentioned in subsection (1)(b).
- (4) The period referred to in subsection (2)(a) must not be less than 28 days from the date the advertisement first appears.
- (5) The period referred to in subsection (2)(b) must not be less than 14 days from the expiration of the period referred to in subsection (2)(a).
- (6) The authority shall send a copy of any advertisement published under subsection (2) to the Secretary of State not more than three days after the publication.
- (7) If—
- (a) no person claiming to be affected by the order has given notice to the Secretary of State under subsection (2)(a) within the period referred to in that subsection, and
  - (b) the Secretary of State has not directed within that period that the order be submitted to him for confirmation,

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the order shall take effect at the expiry of the period referred to in subsection (2)(b), without being confirmed by the Secretary of State as required by section 98(1).

- (8) This section does not apply—
- (a) to an order revoking or modifying a planning permission granted or deemed to have been granted by the Secretary of State under this Part or Part VII, or
  - (b) to an order modifying any conditions to which a planning permission is subject by virtue of section 91 or 92.

## **100 Revocation and modification of planning permission by the Secretary of State.**

- (1) If it appears to the Secretary of State that it is expedient that an order should be made under section 97, he may himself make such an order.
- (2) Such an order which is made by the Secretary of State shall have the same effect as if it had been made by the local planning authority and confirmed by the Secretary of State.
- (3) The Secretary of State shall not make such an order without consulting the local planning authority.
- (4) Where the Secretary of State proposes to make such an order he shall serve notice on the local planning authority.
- (5) The notice shall specify the period (which must not be less than 28 days from the date of its service) within which the authority may require an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- (6) If within that period the authority so require, before the Secretary of State makes the order he shall give the authority such an opportunity.
- (7) The provisions of this Part and of any regulations made under this Act with respect to the procedure to be followed in connection with the submission by the local planning authority of any order under section 97 and its confirmation by the Secretary of State shall have effect, subject to any necessary modifications, in relation to any proposal by the Secretary of State to make such an order and its making by him.

<sup>F149</sup>[(8) Subsections (5) and (6) of section 97 apply for the purposes of this section as they apply for the purposes of that.]

### **Textual Amendments**

**F149** S. 100(8) substituted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 21, [Sch. 1 para.5](#) (with s. 84(5)); [S.I. 1991/2067](#), [art.3](#) (subject to [art. 4](#))

### *References to Planning Inquiry Commission*

## **101 Power to refer certain planning questions to Planning Inquiry Commission.**

- (1) The Secretary of State may constitute a Planning Inquiry Commission to inquire into and report on any matter referred to them under subsection (2) in the circumstances mentioned in subsection (3).
- (2) The matters that may be referred to a Planning Inquiry Commission are—

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- (a) an application for planning permission which the Secretary of State has under section 77 directed to be referred to him instead of being dealt with by a local planning authority;
  - (b) an appeal under section 78 (including that section as applied by or under any other provision of this Act);
  - (c) a proposal that a government department should give a direction under section 90(1) that planning permission shall be deemed to be granted for development by a local authority [<sup>F150</sup>or National Park authority] or by statutory undertakers which is required by any enactment to be authorised by that department;
  - (d) a proposal that development should be carried out by or on behalf of a government department.
- (3) Any of those matters may be referred to any such commission under this section if it appears expedient to the responsible Minister or Ministers that the question whether the proposed development should be permitted to be carried out should be the subject of a special inquiry on either or both of the following grounds—
- (a) that there are considerations of national or regional importance which are relevant to the determination of that question and require evaluation, but a proper evaluation of them cannot be made unless there is a special inquiry for the purpose;
  - (b) that the technical or scientific aspects of the proposed development are of so unfamiliar a character as to jeopardise a proper determination of that question unless there is a special inquiry for the purpose.
- (4) Part I of Schedule 8 shall have effect as respects the constitution of any such commission and its functions and procedure on references to it under this section, and the references in subsection (3) and in that Schedule to “the responsible Minister or Ministers” shall be construed in accordance with Part II of that Schedule.
- (5) In relation to any matter affecting both England and Wales, the functions of the Secretary of State under subsection (1) shall be exercised by the Secretaries of State for the time being having general responsibility in planning matters in relation to England and in relation to Wales acting jointly.

#### Textual Amendments

**F150** Words in s. 101(2)(c) inserted (23.11.1995) by 1995 c. 25, s. 78, **Sch. 10 para. 32(4)** (with ss. 7(6), 115, 117, **Sch. 8 para. 7**); S.I. 1995/2950, **art. 2(1)**

#### *Other controls over development*

### **102 Orders requiring discontinuance of use or alteration or removal of buildings or works.**

- (1) If, having regard to the development plan and to any other material considerations, it appears to a local planning authority that it is expedient in the interests of the proper planning of their area (including the interests of amenity)—
- (a) that any use of land should be discontinued or that any conditions should be imposed on the continuance of a use of land; or
  - (b) that any buildings or works should be altered or removed,

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- they may by order—
- (i) require the discontinuance of that use, or
  - (ii) impose such conditions as may be specified in the order on the continuance of it, or
  - (iii) require such steps as may be so specified to be taken for the alteration or removal of the buildings or works,
- as the case may be.
- (2) An order under this section may grant planning permission for any development of the land to which the order relates, subject to such conditions as may be specified in the order.
  - (3) Section 97 shall apply in relation to any planning permission granted by an order under this section as it applies in relation to planning permission granted by the local planning authority on an application made under this Part.
  - <sup>F151</sup>[(4) The planning permission which may be granted by an order under this section includes planning permission, subject to such conditions as may be specified in the order, for development carried out before the date on which the order was submitted to the Secretary of State under section 103.
  - (5) Planning permission for such development may be granted so as to have effect from—
    - (a) the date on which the development was carried out; or
    - (b) if it was carried out in accordance with planning permission granted for a limited period, the end of that period.]
  - (6) Where the requirements of an order under this section will involve the displacement of persons residing in any premises, it shall be the duty of the local planning authority, in so far as there is no other residential accommodation suitable to the reasonable requirements of those persons available on reasonable terms, to secure the provision of such accommodation in advance of the displacement.
  - (7) Subject to section 103(8), in the case of planning permission granted by an order under this section, the authority referred to in sections 91(1)(b) and 92(4) is the local planning authority making the order.
  - (8) The previous provisions of this section do not apply to the use of any land for development [<sup>F152</sup>consisting of the winning and working of minerals or involving the depositing of refuse or waste materials] except as provided in Schedule 9, and that Schedule shall have effect for the purpose of making provision as respects land which is or has been so used.

#### Textual Amendments

**F151** S. 102(4)(5) substituted (2.1.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 32, [Sch. 7 para.21](#) (with s. 84(5)); S.I. 1991/2905, [art.3](#) (subject to art. 5)

**F152** Words in s. 102(8) substituted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 21, [Sch. 1 para. 6](#) (with s. 84(5)); S.I. 1991/2067, [art. 3](#) (subject to art. 4)

#### Modifications etc. (not altering text)

**C103** S. 102: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of [S.I. 2000/2853](#), [reg. 2\(1\)](#), [Sch. 1](#)

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### **103 Confirmation by Secretary of State of s. 102 orders.**

- (1) An order under section 102 shall not take effect unless it is confirmed by the Secretary of State, either without modification or subject to such modifications as he considers expedient.
- (2) The power of the Secretary of State under this section to confirm an order subject to modifications includes power—
  - (a) to modify any provision of the order granting planning permission, as mentioned in subsections (2) to (5) of section 102;
  - (b) to include in the order any grant of planning permission which might have been included in the order as submitted to him.
- (3) Where a local planning authority submit an order to the Secretary of State for his confirmation under this section, they shall serve notice—
  - (a) on the owner of the land affected,
  - (b) on the occupier of that land, and
  - (c) on any other person who in their opinion will be affected by the order.
- (4) The notice shall specify the period within which any person on whom it is served may require the Secretary of State to give him an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- (5) If within that period such a person so requires, before the Secretary of State confirms the order, he shall give such an opportunity both to him and to the local planning authority.
- (6) The period referred to in subsection (4) must not be less than 28 days from the service of the notice.
- (7) Where an order under section 102 has been confirmed by the Secretary of State, the local planning authority shall serve a copy of the order on the owner and occupier of the land to which the order relates.
- (8) Where the Secretary of State exercises his powers under subsection (2) in confirming an order granting planning permission, he is the authority referred to in sections 91(1)(b) and 92(4).

### **104 Power of the Secretary of State to make s. 102 orders.**

- (1) If it appears to the Secretary of State that it is expedient that an order should be made under section 102, he may himself make such an order.
- (2) Such an order made by the Secretary of State shall have the same effect as if it had been made by the local planning authority and confirmed by the Secretary of State.
- (3) The Secretary of State shall not make such an order without consulting the local planning authority.
- (4) Where the Secretary of State proposes to make such an order he shall serve notice on the local planning authority.
- (5) The notice shall specify the period within which the authority may require an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

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- (6) If within that period the authority so require, before the Secretary of State makes the order he shall give the authority such an opportunity.
- (7) The period referred to in subsection (5) must not be less than 28 days from the date of the service of the notice.
- (8) The provisions of this Part and of any regulations made under this Act with respect to the procedure to be followed in connection with the submission by the local planning authority of any order under section 102, its confirmation by the Secretary of State and the service of copies of it as confirmed shall have effect, subject to any necessary modifications, in relation to any proposal by the Secretary of State to make such an order, its making by him and the service of copies of it.

<sup>F153</sup>105 .....

#### Textual Amendments

**F153** S. 105 repealed (1.11.1995) by 1995 c. 25, ss. 96(4), 120(3), Sch. 24 (with ss. 7(6), 115, 117); S.I. 1995/2765, art. 2

#### [106 <sup>F154</sup>Planning obligations.

- (1) Any person interested in land in the area of a local planning authority may, by agreement or otherwise, enter into an obligation (referred to in this section and sections 106A [<sup>F155</sup>to 106C] as “ a planning obligation ”), enforceable to the extent mentioned in subsection (3)—
  - (a) restricting the development or use of the land in any specified way;
  - (b) requiring specified operations or activities to be carried out in, on, under or over the land;
  - (c) requiring the land to be used in any specified way; or
  - (d) requiring a sum or sums to be paid to the authority [<sup>F156</sup>(or, in a case where section 2E applies, to the Greater London Authority)] on a specified date or dates or periodically.

[ In the case of a development consent obligation, the reference to development in <sup>F157</sup>(1A) subsection (1)(a) includes anything that constitutes development for the purposes of the Planning Act 2008.]

- (2) A planning obligation may—
  - (a) be unconditional or subject to conditions;
  - (b) impose any restriction or requirement mentioned in subsection (1)(a) to (c) either indefinitely or for such period or periods as may be specified; and
  - (c) if it requires a sum or sums to be paid, require the payment of a specified amount or an amount determined in accordance with the instrument by which the obligation is entered into and, if it requires the payment of periodical sums, require them to be paid indefinitely or for a specified period.
- (3) Subject to subsection (4) a planning obligation is enforceable by the authority identified in accordance with subsection (9)(d)—
  - (a) against the person entering into the obligation; and

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- (b) against any person deriving title from that person.
- (4) The instrument by which a planning obligation is entered into may provide that a person shall not be bound by the obligation in respect of any period during which he no longer has an interest in the land.
- (5) A restriction or requirement imposed under a planning obligation is enforceable by injunction.
- (6) Without prejudice to subsection (5), if there is a breach of a requirement in a planning obligation to carry out any operations in, on, under or over the land to which the obligation relates, the authority by whom the obligation is enforceable may—
- (a) enter the land and carry out the operations; and
  - (b) recover from the person or persons against whom the obligation is enforceable any expenses reasonably incurred by them in doing so.
- (7) Before an authority exercise their power under subsection (6)(a) they shall give not less than twenty-one days' notice of their intention to do so to any person against whom the planning obligation is enforceable.
- (8) Any person who wilfully obstructs a person acting in the exercise of a power under subsection (6)(a) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (9) A planning obligation may not be entered into except by an instrument executed as a deed which—
- (a) states that the obligation is a planning obligation for the purposes of this section;
  - <sup>F158</sup>(aa) [ if the obligation is a development consent [ obligation, contains a statement to that effect;]
  - (b) identifies the land in which the person entering into the obligation is interested;
  - (c) identifies the person entering into the obligation and states what his interest in the land is; and
  - (d) identifies the local planning authority by whom the obligation is enforceable. [<sup>F159</sup>and, in a case where section 2E applies, identifies the Mayor of London as an authority by whom the obligation is also enforceable]
- (10) A copy of any such instrument shall be given to the [<sup>F160</sup>authority so identified ][<sup>F160</sup>local planning authority so identified and, in a case where section 2E applies, to the Mayor of London] .
- (11) A planning obligation shall be a local land charge and for the purposes of the <sup>M12</sup>Local Land Charges Act 1975 the authority by whom the obligation is enforceable shall be treated as the originating authority as respects such a charge.
- (12) Regulations may provide for the charging on the land of—
- (a) any sum or sums required to be paid under a planning obligation; and
  - (b) any expenses recoverable by a local planning authority [<sup>F161</sup>or the Mayor of London] under subsection (6)(b),
- and this section and sections 106A [<sup>F162</sup>to 106BC] shall have effect subject to any such regulations.



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(13) In this section “ specified ” means specified in the instrument by which the planning obligation is entered into and in this section and section 106A “ land ” has the same meaning as in the <sup>M13</sup> Local Land Charges Act 1975.

[ In this section and section 106A “ development consent obligation ” means a planning <sup>F163</sup>(14) obligation entered into in connection with an application (or a proposed application) for an order granting development consent. ]]

#### Textual Amendments

- F154** Ss. 106-106B substituted for s. 106 (25.10.1991 so far as substituting the new s. 106, 25.11.1991 for certain purposes and otherwise 9.11.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\), s. 12\(1\)](#) (with s. 84(5)); [S.I. 1991/2272, art. 3\(1\)\(a\)](#); [S.I. 1991/2728, art. 2](#); [S.I. 1992/2831, art. 2](#)
- F155** Words in s. 106(1) substituted (25.4.2013) by [Growth and Infrastructure Act 2013 \(c. 27\), s. 35\(2\), Sch. 2 para. 3\(2\)](#)
- F156** Words in s. 106(1)(d) inserted (6.4.2008) by [Greater London Authority Act 2007 \(c. 24\), ss. 33\(2\), 59; S.I. 2008/582, art. 2\(a\)](#)
- F157** S. 106(1A) inserted (1.3.2010) by [Planning Act 2008 \(c. 29\), ss. 174\(2\)\(a\), 241](#) (with s. 226); [S.I. 2010/101, art. 3\(k\)](#) (with art. 6)
- F158** S. 106(9)(aa) inserted (1.3.2010) by [Planning Act 2008 \(c. 29\), ss. 174\(2\)\(b\), 241](#) (with s. 226); [S.I. 2010/101, art. 3\(k\)](#) (with art. 6)
- F159** Words in s. 106(9)(d) inserted (6.4.2008) by [Greater London Authority Act 2007 \(c. 24\), ss. 33\(3\), 59; S.I. 2008/582, art. 2\(a\)](#)
- F160** Words in s. 106(10) substituted (6.4.2008) by [Greater London Authority Act 2007 \(c. 24\), ss. 33\(4\), 59; S.I. 2008/582, art. 2\(a\)](#)
- F161** Words in s. 106(12)(b) inserted (6.4.2008) by [Greater London Authority Act 2007 \(c. 24\), ss. 33\(5\), 59; S.I. 2008/582, art. 2\(a\)](#)
- F162** Words in s. 106(12) substituted (25.4.2013) by [Growth and Infrastructure Act 2013 \(c. 27\), s. 35\(2\), Sch. 2 para. 3\(3\)](#)
- F163** S. 106(14) inserted (1.3.2010) by [Planning Act 2008 \(c. 29\), ss. 174\(2\)\(c\), 241](#) (with s. 226); [S.I. 2010/101, art. 3\(k\)](#) (with art. 6)

#### Modifications etc. (not altering text)

- C104** S. 106 modified (1.4.1996) by [1994 c. 19, s. 66\(7\), Sch. 17 para. 15\(2\)\(b\)](#) (with ss. 54(5)(7), Sch. 17 paras. 22(1), 23(2)); [S.I. 1995/3198, art. 6\(3\), Sch. 5](#)
- C105** S. 106: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of [S.I. 2000/2853, reg. 2\(1\), Sch. 1](#)
- C106** S. 106(1) modified (24.9.2014) by [The Thames Water Utilities Limited \(Thames Tideway Tunnel\) Order 2014 \(S.I. 2014/2384\), art. 1, Sch. 19 Pt. 1 para. 9\(3\)](#)

#### Marginal Citations

- M12** 1975 c. 76.  
**M13** 1975 c. 76.

#### [<sup>F164</sup>106A Modification and discharge of planning obligations.

- (1) A planning obligation may not be modified or discharged except—
- by agreement between [<sup>F165</sup>the authority by whom the obligation is enforceable][<sup>F165</sup>the appropriate authority (see subsection (11))] and the person or persons against whom the obligation is enforceable; or
  - in accordance with [<sup>F166</sup>—

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- (i) this section and section 106B <sup>F167</sup>, or  
(ii) sections 106BA and 106BC.]
- (2) An agreement falling within subsection (1)(a) shall not be entered into except by an instrument executed as a deed.
- (3) A person against whom a planning obligation is enforceable may, at any time after the expiry of the relevant period, apply to <sup>F168</sup>the local planning authority by whom the obligation is enforceable<sup>F168</sup>the appropriate authority] for the obligation—
- (a) to have effect subject to such modifications as may be specified in the application; or
- (b) to be discharged.
- (4) In subsection (3) “ the relevant period ” means—
- (a) such period as may be prescribed; or
- (b) if no period is prescribed, the period of five years beginning with the date on which the obligation is entered into.
- (5) An application under subsection (3) for the modification of a planning obligation may not specify a modification imposing an obligation on any other person against whom the obligation is enforceable.
- (6) Where an application is made to an authority under subsection (3), the authority may determine—
- (a) that the planning obligation shall continue to have effect without modification;
- (b) if the obligation no longer serves a useful purpose, that it shall be discharged; or
- (c) if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.
- (7) The authority shall give notice of their determination to the applicant within such period as may be prescribed.
- (8) Where an authority determine <sup>F169</sup>under this section] that a planning obligation shall have effect subject to modifications specified in the application, the obligation as modified shall be enforceable as if it had been entered into on the date on which notice of the determination was given to the applicant.
- (9) Regulations may make provision with respect to—
- (a) the form and content of applications under subsection (3);
- (b) the publication of notices of such applications;
- (c) the procedures for considering any representations made with respect to such applications; and
- (d) the notices to be given to applicants of determinations under subsection (6).
- (10) Section 84 of the <sup>M14</sup>Law of Property Act 1925 (power to discharge or modify restrictive covenants affecting land) does not apply to a planning obligation.
- [ In this section “ the appropriate authority ” means—
- <sup>F170</sup>(11) (a) the Mayor of London, in the case of any planning obligation enforceable by him;
- (aa) <sup>F171</sup>[ the Secretary of State, in the case of any development consent obligation <sup>F172</sup>...;

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<sup>F173</sup>(ab) . . . . .]

(b) in the case of any other planning obligation, the local planning authority by whom it is enforceable.

(12) The Mayor of London must consult the local planning authority before exercising any function under this section.]]

#### Textual Amendments

- F164** S. 106- 106B substituted for s. 106 (25.10.1991 so far as substituting the new s. 106, 25.11.1991 for certain purposes and otherwise 9.11.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\), s. 12\(1\)](#); [S.I. 1991/2272, art. 3\(1\)\(a\)](#); [S.I. 1991/2728, art. 2](#); [S.I. 1992/2831, art. 2](#)
- F165** Words in s. 106A(1)(a) substituted (6.4.2008) by [Greater London Authority Act 2007 \(c. 24\), ss. 34\(2\), 59](#); [S.I. 2008/582, art. 2\(a\)](#)
- F166** Word in s. 106A(1) inserted (25.4.2013) by [Growth and Infrastructure Act 2013 \(c. 27\), s. 35\(2\), Sch. 2 para. 4\(2\)\(a\)](#)
- F167** Words in s. 106A(1) inserted (25.4.2013) by [Growth and Infrastructure Act 2013 \(c. 27\), s. 35\(2\), Sch. 2 para. 4\(2\)\(b\)](#)
- F168** Words in s. 106A(3) substituted (6.4.2008) by [Greater London Authority Act 2007 \(c. 24\), ss. 34\(3\), 59](#); [S.I. 2008/582, art. 2\(a\)](#)
- F169** Words in s. 106A(8) inserted (25.4.2013) by [Growth and Infrastructure Act 2013 \(c. 27\), s. 35\(2\), Sch. 2 para. 4\(3\)](#)
- F170** S. 106(11)(12) inserted (6.4.2008) by [Greater London Authority Act 2007 \(c. 24\), ss. 34\(4\), 59](#); [S.I. 2008/582, art. 2\(a\)](#)
- F171** S. 106A(11)(aa)(ab) inserted (1.3.2010) by [Planning Act 2008 \(c. 29\), ss. 174\(3\), 241 \(with s. 226\)](#); [S.I. 2010/101, art. 3\(k\)](#) (with art. 6)
- F172** Words in s. 106A(11)(aa) repealed (1.4.2012) by [Localism Act 2011 \(c. 20\), s. 240\(2\), Sch. 13 para. 77\(2\)\(a\), Sch. 25 Pt. 20](#); [S.I. 2012/628, art. 7](#)
- F173** Words in s. 106A(11) repealed (1.4.2012) by [Localism Act 2011 \(c. 20\), s. 240\(2\), Sch. 13 para. 77\(2\)\(b\), Sch. 25 Pt. 20](#); [S.I. 2012/628, art. 7](#)

#### Marginal Citations

**M14** 1925 c. 20.

### 106B <sup>F174</sup>Appeals [<sup>F175</sup>in relation to applications under section 106A].

- (1) Where [<sup>F176</sup>an authority]—[<sup>F177</sup> (other than the Secretary of State <sup>F178</sup> ...)]
- (a) fail to give notice as mentioned in section 106A(7); or
- (b) determine [<sup>F179</sup>under section 106A] that a planning obligation shall continue to have effect without modification,
- the applicant may appeal to the Secretary of State.
- (2) For the purposes of an appeal under subsection (1)(a), it shall be assumed that the authority have determined that the planning obligation shall continue to have effect without modification.
- (3) An appeal under this section shall be made by notice served within such period and in such manner as may be prescribed.
- (4) Subsections (6) to (9) of section 106A apply in relation to appeals to the Secretary of State under this section as they apply in relation to applications to authorities under that section.

*Status: Point in time view as at 09/06/2015.*

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- (5) Before determining the appeal the Secretary of State shall, if either the applicant or the authority so wish, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- (6) The determination of an appeal by the Secretary of State under this section shall be final.
- (7) Schedule 6 applies to appeals under this section.
- [<sup>F180</sup>(8) In the application of Schedule 6 to an appeal under this section in a case where the authority mentioned in subsection (1) is the Mayor of London, references in that Schedule to the local planning authority are references to the Mayor of London.]

#### Textual Amendments

- F174** Ss. 106-106B substituted for s. 106 (25.10.1991 so far as substituting the new s. 106, 25.11.1991 for certain purposes and otherwise 9.11.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), [s. 12\(1\)](#); S.I. 1991/2272, [art. 3\(1\)\(a\)](#); S.I. 1991/2728, [art.2](#); S.I. 1992/2831, [art. 2](#)
- F175** Words in s. 106B heading inserted (25.4.2013) by [Growth and Infrastructure Act 2013 \(c. 27\)](#), s. 35(2), [Sch. 2 para. 5\(2\)](#)
- F176** Words in s. 106B(1) substituted (6.4.2008) by [Greater London Authority Act 2007 \(c. 24\)](#), [ss. 34\(6\)](#), 59; S.I. 2008/582, [art. 2\(a\)](#)
- F177** Words in s. 106B(1) inserted (1.3.2010) by [Planning Act 2008 \(c. 29\)](#), [ss. 174\(4\)](#), 241 (with s. 226); S.I. 2010/101, [art. 3\(k\)](#) (with [art. 6](#))
- F178** Words in s. 106B(1) repealed (1.4.2012) by [Localism Act 2011 \(c. 20\)](#), s. 240(2), [Sch. 13 para. 77\(3\)](#), [Sch. 25 Pt. 20](#); S.I. 2012/628, [art. 7](#)
- F179** Words in s. 106B(1)(b) inserted (25.4.2013) by [Growth and Infrastructure Act 2013 \(c. 27\)](#), s. 35(2), [Sch. 2 para. 5\(3\)](#)
- F180** S. 106B(8) inserted (6.4.2008) by [Greater London Authority Act 2007 \(c. 24\)](#), [ss. 34\(7\)](#), 59; S.I. 2008/582, [art. 2\(a\)](#)

#### [<sup>F181</sup>106B] **Modification or discharge of affordable housing requirements**

- (1) This section applies in relation to an English planning obligation that contains an affordable housing requirement.
- (2) A person against whom the affordable housing requirement is enforceable may apply to the appropriate authority—
  - (a) for the requirement to have effect subject to modifications,
  - (b) for the requirement to be replaced with a different affordable housing requirement,
  - (c) for the requirement to be removed from the planning obligation, or
  - (d) in a case where the planning obligation consists solely of one or more affordable housing requirements, for the planning obligation to be discharged.
- (3) Where an application is made to an authority under subsection (2) and is the first such application in relation to the planning obligation—
  - (a) if the affordable housing requirement means that the development is not economically viable, the authority must deal with the application in accordance with subsection (5) so that the development becomes economically viable, or

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- (b) if paragraph (a) does not apply, the authority must determine that the affordable housing requirement is to continue to have effect without modification or replacement.
- (4) Where an application is made to an authority under subsection (2) and is the second or a subsequent such application in relation to the planning obligation, the authority may—
  - (a) deal with the application in accordance with subsection (5), or
  - (b) determine that the affordable housing requirement is to continue to have effect without modification or replacement.
- (5) The authority may—
  - (a) determine that the requirement is to have effect subject to modifications,
  - (b) determine that the requirement is to be replaced with a different affordable housing requirement,
  - (c) determine that the planning obligation is to be modified to remove the requirement, or
  - (d) where the planning obligation consists solely of one or more affordable housing requirements, determine that the planning obligation is to be discharged.
- (6) A determination under subsection (5)(a), (b) or (c)—
  - (a) may provide for the planning obligation to be modified in accordance with the application or in some other way,
  - (b) may not have the effect that the obligation as modified is more onerous in its application to the applicant than in its unmodified form, and
  - (c) may not have the effect that an obligation is imposed on a person other than the applicant or that the obligation as modified is more onerous in its application to such a person than in its unmodified form.
- (7) Subsection (6)(b) does not apply to a determination in response to the second or a subsequent application under this section in relation to the planning obligation; but such a determination may not have the effect that the development becomes economically unviable.
- (8) In making a determination under this section the authority must have regard to—
  - (a) guidance issued by the Secretary of State, and
  - (b) where the determination relates to an application to which section 106BB applies, any representations made by the Mayor of London in accordance with that section.
- (9) The authority must give notice of their determination to the applicant—
  - (a) within such period as may be prescribed by the Secretary of State, or
  - (b) if no period is prescribed under paragraph (a) (and subject to section 106BB(5)), within the period of 28 days beginning with the day on which the application is received, or such longer period as is agreed in writing between the applicant and the authority.
- (10) Where an authority determine under this section that a planning obligation is to have effect subject to modifications, the obligation as modified is to be enforceable as if it had been entered into on the date on which notice of the determination was given to the applicant.

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- (11) The Secretary of State may by regulations make provision with respect to—
- (a) the form and content of applications under subsection (2), and
  - (b) the notices to be given to applicants of determinations under subsection (9).
- (12) This section and section 106BC do not apply in relation to an English planning obligation if planning permission for the development was granted wholly or partly on the basis of a policy for the provision of housing on rural exception sites.
- (13) In this section and section 106BC—
- “affordable housing requirement” means a requirement relating to the provision of housing that is or is to be made available for people whose needs are not adequately served by the commercial housing market (and it is immaterial for this purpose where or by whom the housing is or is to be provided);
- “the appropriate authority” has the same meaning as in section 106A;
- “the development”, in relation to a planning obligation, means the development authorised by the planning permission to which the obligation relates;
- “English planning obligation” means a planning obligation that—
- (a) identifies a local planning authority in England as an authority by whom the obligation is enforceable, and
  - (b) does not identify a local planning authority in Wales as such an authority.
- (14) The Secretary of State may by order amend this section so as to modify the definition of “affordable housing requirement” in subsection (13).
- (15) An order under subsection (14) may have effect for the purposes of planning obligations entered into before (as well as after) its coming into force.
- (16) The Mayor of London must consult the local planning authority before exercising any function under this section.

#### Textual Amendments

**F181** Ss. 106BA-106BC inserted (25.4.2013) by [Growth and Infrastructure Act 2013 \(c. 27\)](#), [ss. 7\(1\), 35\(2\)](#) (with [s. 7\(3\)-\(5\)](#))

#### **106BB Duty to notify the Mayor of London of certain applications under section 106BA**

- (1) This section applies to an application under section 106BA(2) in relation to a planning obligation where—
- (a) the application for the planning permission to which the planning obligation relates was an application to which section 2A applied (applications of potential strategic importance relating to land in Greater London),
  - (b) the application for planning permission was not determined by the Mayor of London, and
  - (c) pursuant to an order under section 2A or a development order, the local planning authority that determined the application for planning permission were required to consult the Mayor of London in relation to that determination.

*Status: Point in time view as at 09/06/2015.*

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- (2) A local planning authority that receive an application to which this section applies must send a copy of the application to the Mayor of London before the end of the next working day following the day on which the application was received.

In this subsection, “working day” means a day which is not a Saturday, Sunday, Bank Holiday or other public holiday.

- (3) The Mayor of London must notify the local planning authority before the end of the period of 7 days beginning with the day on which the application was received by the authority whether the Mayor intends to make representations about the application.
- (4) Where pursuant to subsection (3) the Mayor of London notifies the local planning authority that the Mayor intends to make representations, those representations must be made before—
- (a) the end of the period of 14 days beginning with the day on which the application was received by the authority, or
  - (b) the end of such longer period as may be agreed in writing between the authority and the Mayor.
- (5) Where this section applies, section 106BA(9)(b) applies as if it required an authority to give notice of their determination to an applicant within—
- (a) the period of 35 days beginning with the day on which the application was received by the authority, or
  - (b) such longer period as is agreed in writing between the applicant and the authority.

#### **Textual Amendments**

**F181** Ss. 106BA-106BC inserted (25.4.2013) by [Growth and Infrastructure Act 2013 \(c. 27\)](#), **ss. 7(1), 35(2)**  
(with s. 7(3)-(5))

### **106BC Appeals in relation to applications under section 106BA**

- (1) Where an authority other than the Secretary of State—
- (a) fail to give notice as mentioned in section 106BA(9),
  - (b) determine under section 106BA that a planning obligation is to continue to have effect without modification, or
  - (c) determine under that section that a planning obligation is to be modified otherwise than in accordance with an application under that section,
- the applicant may appeal to the Secretary of State.
- (2) For the purposes of an appeal under subsection (1)(a), it is to be assumed that the authority have determined that the planning obligation is to continue to have effect without modification.
- (3) An appeal under this section must be made by notice served within such period as may be prescribed by the Secretary of State.
- (4) If no period is prescribed under subsection (3), an appeal under this section must be made—

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- (a) in relation to an appeal under subsection (1)(a), within the period of 6 months beginning with the expiry of the period mentioned in section 106BA(9) that applies in the applicant's case, or
  - (b) otherwise, within the period of 6 months beginning with the date on which notice of the determination is given to the applicant under section 106BA(9).
- (5) An appeal under this section must be made by notice served in such manner as may be prescribed by the Secretary of State.
- (6) Subsections (3) to (8), (10) and (11) of section 106BA apply in relation to an appeal under this section as they apply in relation to an application to an authority under that section, subject to subsections (7) to (15) below.
- (7) References to the affordable housing requirement or the planning obligation are to the requirement or obligation as it stood immediately before the application under section 106BA to which the appeal relates.
- (8) References to the first, the second or a subsequent application in relation to a planning obligation are to an appeal under this section against a determination on the first, the second or a subsequent application in relation to the obligation (whether or not it is the first such appeal).
- (9) Section 106BA(5)(d) (discharge of affordable housing requirement) does not apply in relation to an appeal under this section.
- (10) Subsection (11) applies if, on an appeal under this section, the Secretary of State—
- (a) does not uphold the determination under section 106BA to which the appeal relates (if such a determination has been made), and
  - (b) determines that the planning obligation is to be modified in accordance with section 106BA(5)(a), (b) or (c).
- (11) The Secretary of State must also determine that the planning obligation is to be modified so that it provides that, if the development has not been completed before the end of the relevant period, the obligation is treated as containing the affordable housing requirement or requirements it contained immediately before the first application under section 106BA in relation to the obligation, subject to the modifications within subsection (12).
- (12) Those modifications are—
- (a) the modifications necessary to ensure that, if the development has been commenced before the end of the relevant period, the requirement or requirements apply only in relation to the part of the development that is not commenced before the end of that period, and
  - (b) such other modifications as the Secretary of State considers necessary or expedient to ensure the effectiveness of the requirement or requirements at the end of that period.
- (13) In subsections (11) and (12) “relevant period” means the period of three years beginning with the date when the applicant is notified of the determination on the appeal.
- (14) Section 106BA and this section apply in relation to a planning obligation containing a provision within subsection (11) as if—
- (a) the provision were an affordable housing requirement, and



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- (b) a person against whom the obligation is enforceable were a person against whom that requirement is enforceable.
- (15) If subsection (11) applies on an appeal relating to a planning obligation that already contains a provision within that subsection—
  - (a) the existing provision within subsection (11) ceases to have effect, but
  - (b) that subsection applies again to the obligation.
- (16) The determination of an appeal by the Secretary of State under this section is to be final.
- (17) Schedule 6 applies to appeals under this section.
- (18) In the application of Schedule 6 to an appeal under this section in a case where the authority mentioned in subsection (1) is the Mayor of London, references in that Schedule to the local planning authority are references to the Mayor of London.]

#### Textual Amendments

**F181** Ss. 106BA-106BC inserted (25.4.2013) by [Growth and Infrastructure Act 2013 \(c. 27\)](#), ss. 7(1), 35(2) (with s. 7(3)-(5))

### 106C Legal challenges relating to development consent obligations

- (1) A court may entertain proceedings for questioning a failure by the Secretary of State<sup>F182</sup> ... to give notice as mentioned in section 106A(7) [<sup>F183</sup>or 106BA(9)] only if—
  - (a) the proceedings are brought by a claim for judicial review, and
  - (b) the claim form is filed [<sup>F184</sup>before the end of] the period of 6 weeks beginning with [<sup>F185</sup>the day after] the day on which the period prescribed under section 106A(7) [<sup>F183</sup>or 106BA(9)] ends.
- <sup>F186</sup>(1A) If no period is prescribed under section 106BA(9), the period of 6 weeks referred to in subsection (1)(b) that applies in relation to proceedings for failure to give notice as mentioned in subsection (9) of section 106BA begins with [<sup>F187</sup>the day after] the expiry of the period mentioned in that subsection that applies in the applicant's case.]
- (2) A court may entertain proceedings for questioning a determination by the Secretary of State<sup>F182</sup> ... that a planning obligation shall continue to have effect without modification only if—
  - (a) the proceedings are brought by a claim for judicial review, and
  - (b) the claim form is filed [<sup>F188</sup>before the end of] the period of 6 weeks beginning with [<sup>F189</sup>the day after] the day on which notice of the determination is given under section 106A(7) [<sup>F190</sup>or 106BA(9)].
- <sup>F191</sup>(3) A court may entertain proceedings for questioning a determination by the Secretary of State on an application under section 106BA that a planning obligation shall be modified otherwise than in accordance with the application only if—
  - (a) the proceedings are brought by a claim for judicial review, and
  - (b) the claim form is filed [<sup>F192</sup>before the end of] the period of 6 weeks beginning with [<sup>F193</sup>the day after] the day on which notice of the determination is given under section 106BA(9).]

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### Textual Amendments

- F182** Words in s. 106C repealed (1.4.2012) by [Localism Act 2011 \(c. 20\)](#), s. 240(2), Sch. 13 para. 77(4), [Sch. 25 Pt. 20](#); S.I. 2012/628, art. 7
- F183** Words in s. 106C(1) inserted (25.4.2013) by [Growth and Infrastructure Act 2013 \(c. 27\)](#), s. 35(2), [Sch. 2 para. 6\(2\)](#)
- F184** Words in s. 106C(1)(b) substituted (13.4.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), [ss. 92\(2\)\(a\)\(i\)](#), 95(1); S.I. 2015/778, art. 3, Sch. 1 para. 71
- F185** Words in s. 106C(1)(b) inserted (13.4.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), [ss. 92\(2\)\(a\)\(ii\)](#), 95(1); S.I. 2015/778, art. 3, Sch. 1 para. 71
- F186** S. 106C(1A) inserted (25.4.2013) by [Growth and Infrastructure Act 2013 \(c. 27\)](#), s. 35(2), [Sch. 2 para. 6\(3\)](#)
- F187** Words in s. 106C(1A) inserted (13.4.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), [ss. 92\(2\)\(b\)](#), 95(1); S.I. 2015/778, art. 3, Sch. 1 para. 71
- F188** Words in s. 106C(2)(b) substituted (13.4.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), [ss. 92\(2\)\(c\)\(i\)](#), 95(1); S.I. 2015/778, art. 3, Sch. 1 para. 71
- F189** Words in s. 106C(2)(b) inserted (13.4.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), [ss. 92\(2\)\(c\)\(ii\)](#), 95(1); S.I. 2015/778, art. 3, Sch. 1 para. 71
- F190** Words in s. 106C(2) inserted (25.4.2013) by [Growth and Infrastructure Act 2013 \(c. 27\)](#), s. 35(2), [Sch. 2 para. 6\(4\)](#)
- F191** S. 106C(3) inserted (25.4.2013) by [Growth and Infrastructure Act 2013 \(c. 27\)](#), s. 35(2), [Sch. 2 para. 6\(5\)](#)
- F192** Words in s. 106C(3)(b) substituted (13.4.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), [ss. 92\(2\)\(c\)\(i\)](#), 95(1); S.I. 2015/778, art. 3, Sch. 1 para. 71
- F193** Words in s. 106C(3)(b) inserted (13.4.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), [ss. 92\(2\)\(c\)\(ii\)](#), 95(1); S.I. 2015/778, art. 3, Sch. 1 para. 71

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