



# Planning and Compulsory Purchase Act 2004

## 2004 CHAPTER 5

### PART 3

#### DEVELOPMENT

#### *Development plan*

### 38 Development plan

- (1) A reference to the development plan in any enactment mentioned in subsection (7) must be construed in accordance with subsections (2) to (5).
- (2) For the purposes of any area in Greater London the development plan is—
  - (a) the spatial development strategy, [<sup>F1</sup>and]
  - (b) the development plan documents (taken as a whole) which have been adopted or approved in relation to that area [<sup>F2</sup>, and.
  - (c) the neighbourhood development plans which have been made in relation to that area.]
- (3) For the purposes of any other area in England the development plan is—
  - (a) the [<sup>F3</sup> regional strategy ] for the region in which the area is situated [<sup>F4</sup> (if there is a regional strategy for that region) ], and
  - (b) the development plan documents (taken as a whole) which have been adopted or approved in relation to that area [<sup>F5</sup>, and .
  - (c) the neighbourhood development plans which have been made in relation to that area.]
- (4) For the purposes of any area in Wales the development plan is the local development plan adopted or approved in relation to that area.

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- (5) If to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is contained in the last document [F6to be adopted, approved or published (as the case may be)] [F6to become part of the development plan].
- (6) If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.
- (7) The enactments are—
- (a) this Act;
  - (b) the planning Acts;
  - (c) any other enactment relating to town and country planning;
  - (d) the Land Compensation Act 1961 (c. 33);
  - (e) the Highways Act 1980 (c. 66).
- (8) In subsection (5) references to a development plan include a development plan for the purposes of paragraph 1 of Schedule 8.
- [F7(9) Development plan document must be construed in accordance with section 37(3).]
- [F8(10) Neighbourhood development plan must be construed in accordance with section 38A.]

#### Textual Amendments

- F1** Word in s. 38(2)(a) repealed (15.11.2011 for specified purposes, 6.4.2012 for specified purposes, 3.8.2012 for specified purposes) by [Localism Act 2011 \(c. 20\)](#), ss., [240\(5\)\(j\)](#), [Sch. 9 para. 6\(a\)](#), [Sch. 25 Pt. 18](#); 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)
- F2** S. 38(2)(c) and word inserted (15.11.2011 for specified purposes, 6.4.2012 for specified purposes, 3.8.2012 for specified purposes) by [Localism Act 2011 \(c. 20\)](#), ss., [240\(5\)\(j\)](#), [Sch. 9 para. 6\(a\)](#); 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)
- F3** Words in s. 38(3)(a) substituted (1.4.2010) by [Local Democracy, Economic Development and Construction Act 2009 \(c. 20\)](#), ss. [82\(1\)](#), [148\(5\)](#) (with s. 38(2)(3)); S.I. 2009/3318, art. 4(aa)
- F4** Words in s. 38(3)(a) inserted (15.11.2011) by [Localism Act 2011 \(c. 20\)](#), s. [240\(5\)\(h\)](#), [Sch. 8 para. 13\(1\)](#)
- F5** S. 38(3)(c) and word inserted (15.11.2011 for specified purposes, 6.4.2012 for specified purposes, 3.8.2012 for specified purposes) by [Localism Act 2011 \(c. 20\)](#), ss., [240\(5\)\(j\)](#), [Sch. 9 para. 6\(b\)](#); 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)
- F6** Words in s. 38(5) substituted (15.11.2011 for specified purposes, 6.4.2012 for specified purposes, 3.8.2012 for specified purposes) by [Localism Act 2011 \(c. 20\)](#), ss., [240\(5\)\(j\)](#), [Sch. 9 para. 6\(c\)](#); 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)
- F7** S. 38(9) inserted (6.4.2009) by [Planning Act 2008 \(c. 29\)](#), ss. [180\(7\)](#), [241\(8\)](#) (with s. 226); S.I. 2009/400, art. 3(e)
- F8** S. 38(10) inserted (15.11.2011 for specified purposes, 6.4.2012 for specified purposes, 3.8.2012 for specified purposes) by [Localism Act 2011 \(c. 20\)](#), ss., [240\(5\)\(j\)](#), [Sch. 9 para. 6\(d\)](#); 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)

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#### Commencement Information

- I1** S. 38 in force at 28.9.2004 for E. by S.I. 2004/2202, **art. 2(c)**  
**I2** S. 38 in force at 15.10.2005 for W. by S.I. 2005/2847, **art. 2(a)**

### [<sup>F9</sup>38A Meaning of “neighbourhood development plan”

- (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 plan.
- (2) A “neighbourhood development plan” is a plan which sets out policies (however expressed) in relation to the development and use of land in the whole or any part of a particular neighbourhood area specified in the plan.
- (3) Schedule 4B to the principal Act, which 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, is to apply in relation to neighbourhood development plans (subject to the modifications set out in section 38C(5) of this Act).
- (4) A local planning authority to whom a proposal for the making of a neighbourhood development plan has been made—
  - (a) must make a neighbourhood development plan to which the proposal relates if in each applicable referendum under that Schedule (as so applied) more than half of those voting have voted in favour of the plan, and
  - (b) if paragraph (a) applies, must make the plan as soon as reasonably practicable after the referendum is held.
- (5) If—
  - (a) there are two applicable referendums under that Schedule as so applied (because the plan relates to a neighbourhood area designated as a business area under section 61H of the principal Act), and
  - (b) in one of those referendums (but not the other) more than half of those voting have voted in favour of the plan,the authority may (but need not) make a neighbourhood development plan to which the proposal relates.
- (6) The authority are not to be subject to the duty under subsection (4)(a) if they consider that the making of the plan 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).
- (7) Regulations made by the Secretary of State may make provision as to the procedure to be followed by local planning authorities in cases where they act under subsection (6).
- (8) 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,

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- (e) as to the information and documents 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, and
  - (h) as to the making and consideration of representations (including the time by which representations must be made).
- (9) The authority must publish in such manner as may be prescribed—
- (a) their decision to act under subsection (4) or (6),
  - (b) their reasons for making that decision, and
  - (c) such other matters relating to that decision as may be prescribed.
- (10) 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 plan, and
  - (b) such other persons as may be prescribed.
- (11) If a neighbourhood development plan is in force in relation to a neighbourhood area—
- (a) a qualifying body may make a proposal for the existing plan to be replaced by a new one, and
  - (b) the process for the making of the replacement plan is the same as the process for the making of the existing plan.
- (12) For the purposes of this section—
- “local planning authority” has the same meaning as it has in Part 2 (see section 37), but the Broads Authority are to be the only local planning authority for the Broads,
- “neighbourhood area” has the meaning given by sections 61G and 61I(1) of the principal Act,
- “prescribed” means prescribed by regulations made by the Secretary of State, and
- “qualifying body” means a parish council, or an organisation or body designated as a neighbourhood forum, authorised for the purposes of a neighbourhood development plan to act in relation to a neighbourhood area as a result of section 61F of the principal Act, as applied by section 38C of this Act.

#### Textual Amendments

- F9** Ss. 38A-38C 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](#)

### 38B Provision that may be made by neighbourhood development plans

- (1) A neighbourhood development plan—
- (a) must specify the period for which it is to have effect,
  - (b) may not include provision about development that is excluded development, and

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- (c) may not relate to more than one neighbourhood area.
- (2) Only one neighbourhood development plan may be made for each neighbourhood area.
- (3) If to any extent a policy set out in a neighbourhood development plan conflicts with any other statement or information in the plan, the conflict must be resolved in favour of the policy.
- (4) Regulations made by the Secretary of State may make provision—
  - (a) restricting the provision that may be included in neighbourhood development plans about the use of land,
  - (b) requiring neighbourhood development plans to include such matters as are prescribed in the regulations, and
  - (c) prescribing the form of neighbourhood development plans.
- (5) A local planning authority must publish each neighbourhood development plan that they make in such manner as may be prescribed by regulations made by the Secretary of State.
- (6) Section 61K of the principal Act (meaning of “excluded development”) is to apply for the purposes of subsection (1)(b).

#### Textual Amendments

**F9** Ss. 38A-38C 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](#)

### 38C Supplementary provisions

- (1) The following provisions of the principal Act are to apply in relation to neighbourhood development plans.
- (2) The provisions to be applied are—
  - (a) section 61F (authorisation to act in relation to neighbourhood areas),
  - (b) section 61I(2) and (3) (neighbourhood areas in areas of two or more local planning authorities),
  - (c) section 61M (revocation or modification of neighbourhood development orders),
  - (d) section 61N (legal challenges),
  - (e) section 61O (guidance), and
  - (f) section 61P (provision as to the making of certain decisions by local planning authorities).
- (3) Section 61M of the principal Act is to apply in accordance with subsection (2) of this section as if the words “by order” (wherever occurring) were omitted.
- (4) Section 61N(1) of the principal Act is to apply in accordance with subsection (2) of this section as if the reference to section 61E(4) or (8) of that Act were a reference to section 38A(4) or (6) of this Act.

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- (5) Schedule 4B to the principal Act is to apply in accordance with 38A(3) of this Act with the following modifications—
- (a) the reference to section 61E(8) of the principal Act is to be read as a reference to section 38A(6) of this Act,
  - (b) references to the provision made by or under sections 61E(2), 61J and 61L of the principal Act are to be read as references to the provision made by or under sections 38A and 38B of this Act,
  - (c) references to section 61L(2)(b) or (5) of the principal Act are to be disregarded, and
  - (d) paragraph 8 is to have effect as if sub-paragraphs (2)(b) and (c) and (3) to (5) were omitted.
- (6) Regulations under section 61G(11) of the principal Act (designation of areas as neighbourhood areas) may include provision about the consequences of the modification of designations on proposals for neighbourhood development plans, or on neighbourhood development plans, that have already been made.
- (7) The fact that the list of applied provisions includes section 61N(2) and (3) of the principal Act is not to affect the operation of section 20(2) of the Interpretation Act 1978 in relation to other references to enactments applied in accordance with this section.]

#### **Textual Amendments**

- F9** Ss. 38A-38C 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](#)

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