

2013 No. 2136

TOWN AND COUNTRY PLANNING, ENGLAND

The Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2013

<i>Made</i>	- - - -	<i>27th August 2013</i>
<i>Laid before Parliament</i>		<i>3rd September 2013</i>
<i>Coming into force</i>	- -	<i>1st October 2013</i>

The Secretary of State, in exercise of the powers conferred by sections 65, 78, 79(4), and 333(7) of the Town and Country Planning Act 1990(a), makes the following Order:

Citation, commencement and application

1.—(1) This Order may be cited as the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2013 and shall come into force on 1st October 2013.

(2) This Order applies in relation to England only.

Amendments to the Town and Country Planning (Development Management Procedure) (England) Order 2010

2.—(1) The Town and Country Planning (Development Management Procedure) (England) Order 2010(b) is amended as follows.

(2) In article 2(1) (interpretation) after the definition of “mining operations” insert—

““minor commercial application” means—

- (a) an application for planning permission for development of an existing building or part of a building currently in use for any of the purposes set out in Schedule 1A, or
- (b) an application for any consent, agreement or approval required by or under a planning permission, development order or local development order in relation to such development,

where such an application does not include a change of use, a change to the number of units in a building, or development that is not wholly at ground floor level or that would increase the gross internal area of a building.”.

(3) In article 13(7)(f) (publicity for applications for planning permission) insert “or minor commercial” after “in the case of a householder”.

(4) In Article 33 (appeals)—

(a) 1990 c. 8. Paragraphs (4A) and (4B) of section 78 were inserted by paragraph 2 of Schedule 11 to the Planning Act 2008.
(b) S.I. 2010/2184, which has been amended in ways not relevant to this Order.

- (a) in paragraph (1)(b) insert “the documents mentioned in paragraph (3)(b)(viii) to (x) (where those paragraphs apply), and” after “together with a copy of”;
- (b) in paragraph (2)(a) insert “or minor commercial” after “householder”;
- (c) in paragraph (3)(a) insert “or minor commercial” after “householder”;
- (d) omit “and” at the end of paragraph (3)(b)(vi);
- (e) at the end of paragraph (3)(b)(vii) substitute “planning permission granted;” for “planning permission granted.”;
- (f) after paragraph (3)(b)(vii) insert—
 - “(viii) subject to paragraph (3A), the applicant’s full statement of case (if they wish to make additional representations);
 - (ix) subject to paragraph (3A), a statement of which procedure (written representations, a hearing or an inquiry) the applicant considers should be used to determine the appeal; and
 - (x) subject to paragraph (3A), a draft statement of common ground if the applicant considers that the appeal should be determined through a hearing or an inquiry.
- (3A) Paragraph 3(b)(viii) to (x) does not apply—
 - (a) where a direction is given by the Secretary of State under section 321(3) of the 1990 Act (matters related to national security)(a);
 - (b) where section 293A of the 1990 Act (urgent Crown development)(b) applies;
 - (c) in relation to type A or type B appeals; or
 - (d) in relation to major infrastructure projects (within the meaning in rule 2 of the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2002 (interpretation))(c).”;
- (g) in paragraph (7)—
 - (i) before the definition of “householder appeal” insert—
 - ““draft statement of common ground” means a written statement containing factual information about the proposal which is the subject of the appeal that the applicant reasonably considers will not be disputed by the local planning authority;
 - “full statement of case” means, and is comprised of, a written statement which contains full particulars of the case which a person proposes to put forward and copies of any documents which that person intends to refer to or put in evidence;”;
 - (ii) after the definition of “householder appeal” insert—
 - ““minor commercial appeal” means an appeal under section 78(1) of the 1990 Act in relation to a minor commercial application, except an appeal against the grant of any planning permission, consent, agreement or approval which is granted subject to conditions;”;
 - (iii) in paragraph (b)(i) of the definition of “type B appeal” insert “or minor commercial” after “householder”;
- (5) after Schedule 1 insert Schedule 1A in Schedule 1.
- (6) In Schedule 2—
 - (a) after the notice under article 11 of application for planning permission for householder development insert the notice in Schedule 2; and
 - (b) after the notice under articles 11 and 32 of appeal relating to the refusal to grant permission for householder development insert the notice in Schedule 3.

(a) Section 321 has been amended in ways not relevant to this Order.
 (b) Section 293A was inserted by section 82(1) the Planning and Compulsory Purchase Act 2004 (c. 5).
 (c) S.I. 2002/1223. Rule 2 was partly revoked by S.I. 2005/2115.

(7) In Schedule 3 for the notice under article 13(4) or (5) of application for planning submission substitute the notice in Schedule 4.

Transitional provisions

3.—(1) This Order does not apply in relation to—

- (a) any appeal under section 78(1) of the Planning Act^(a) relating to an application determined before this Order comes into force; or
- (b) any appeal under section 78(2) of the Planning Act^(b) if the relevant period referred to in that paragraph expired before this Order comes into force.

(2) Article 2(4)(b) and (c) does not apply in relation to any appeal under section 78 of the Planning Act relating to an application made before this Order comes into force.

(3) In this article—

“the Planning Act” means the Town and Country Planning Act 1990^(c).

Signed by authority of the Secretary of State for Communities and Local Government

Nick Boles

Parliamentary Under Secretary of State

Department for Communities and Local Government

27th August 2013

(a) Section 78(1) was amended by paragraph 11 of Schedule 12 to the Localism Act 2011 (c. 20).
(b) Section 78(2) was amended by section 17(2) of the Planning and Compensation Act 1991 (c. 34), section 43(2) of the Planning and Compulsory Purchase Act 2004 (c. 5) (in force in relation to England only, *see* S.I. 2009/384), and section 123(3) of the Localism Act 2011.
(c) 1990 c. 8.

SCHEDULE 1

Article 2(5)

“SCHEDULE 1A

Article 2(1)

Minor commercial development uses

Shops

1. Use for all or any of the following purposes—
 - (a) for the retail sale of goods other than hot food,
 - (b) as a post office,
 - (c) for the sale of tickets or as a travel agency,
 - (d) for the sale of sandwiches or other cold food for consumption off the premises,
 - (e) for hairdressing,
 - (f) for the direction of funerals,
 - (g) for the display of goods for sale,
 - (h) for the hiring out of domestic or personal goods or articles,
 - (i) for the washing or cleaning of clothes or fabrics on the premises,
 - (j) for the reception of goods to be washed, cleaned or repaired,
 - (k) as an internet café, where the primary purpose of the premises is to provide facilities for enabling members of the public to access the internet,

where the sale, display or service is to visiting members of the public.

Financial and professional services

2. Use for the provision of—
 - (a) financial services,
 - (b) professional services (other than health or medical services), or
 - (c) any other services (including use as a betting office) which it is appropriate to provide in a shopping area,

where the services are provided principally to visiting members of the public.

Restaurants and cafes

3. Use for the sale of food and drink for consumption on the premises.

Drinking establishments

4. Use as a public house, wine-bar or other drinking establishment.

Hot food takeaways

5. Use for the sale of hot food for consumption off the premises.”

SCHEDULE 2

Article 2(6)(a)

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

NOTICE UNDER ARTICLE 11 OF APPLICATION FOR PLANNING PERMISSION FOR MINOR COMMERCIAL DEVELOPMENT

(to be published in a newspaper and, where relevant, on a website or to be served on an owner or a tenant** in the case of an application for planning permission or consent for minor commercial development***)*

Proposed minor commercial development*** at (a).....
I give notice that (b) is applying to the (c) Council for planning permission to (d)

Any owner* of the land or tenant** who wishes to make representations about this application should write to the Council at (e)..... by (f).....

In the event that an appeal is made against a decision of the Council to refuse to grant planning permission for the proposed development, and that appeal then proceeds by way of the expedited procedure under the written representations procedure+, any representations made by the owner* or tenant** to the Council about this application will be passed to the Secretary of State and there will be no opportunity to make further representations. Any owner or tenant wishing to make representations should do by the date given above.

* “owner” means a person having a freehold interest or a leasehold interest the unexpired term of which is not less than 7 years.

** “tenant” means a tenant of an agricultural holding any part of which is comprised in the land.

*** “minor commercial development” means development of an existing building, or part of a building, in use for certain commercial purposes. It does not include a change of use, development not wholly at ground floor level, an increase in floor space or a change to the number of units in a building.

+ The expedited procedures in relation to written representations are set out in Part 1 of the Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009 (S.I. 2009/452).

Signed.....
On behalf of (delete if not applicable).....
Date

Statement of owners’ rights

The grant of planning permission does not affect owners’ rights to retain or dispose of their property, unless there is some provision to the contrary in an agreement or in a lease.

Statement of agricultural tenants’ rights

The grant of planning permission for non-agricultural development may affect agricultural tenants’ security of tenure.

Insert:

- (a) address or location of the proposed development
 - (b) applicant’s name
 - (c) name of the Council
 - (d) description of the proposed development
 - (e) address of the Council
 - (f) date giving a period of 21 days beginning with the date of service, or 14 days beginning with the date of publication, of the notice (as the case may be)
- ”

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

NOTICE UNDER ARTICLES 11 AND 32 OF APPEAL

(to be published in a newspaper and, where relevant, on a website or to be served on an owner* or a tenant** in the case of an appeal against the refusal to grant planning permission for minor commercial development***)

Proposed minor commercial development*** at (a).....
I give notice that (b)
having applied to the (c).....Council
to (d)
is appealing to the Secretary of State against the refusal of the Council to grant planning permission for the proposed development.

In the event that the appeal is dealt with by the expedited procedure under the written representations procedure+, any representations made by the owner* of the land or tenant** to the Council about the application will be passed to the Secretary of State and there will be no opportunity to make further representations in relation to the appeal.

- * “owner” means a person having a freehold interest or a leasehold interest the unexpired term of which is not less than 7 years.
** “tenant” means a tenant of an agricultural holding any part of which is comprised in the land.
*** “minor commercial development” means development of an existing building, or part of a building, in use for certain commercial purposes. It does not include a change of use, development not wholly at ground floor level, an increase in floor space or a change to the number of units in a building.

+ The expedited procedures in relation to written representations are set out in Part 1 of the Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009 (S.I. 2009/452).

Signed.....
On behalf of (delete if not applicable).....
Date

Statement of owners’ rights
The grant of planning permission does not affect owners’ rights to retain or dispose of their property, unless there is some provision to the contrary in an agreement or in a lease.

Statement of agricultural tenants’ rights
The grant of planning permission for non-agricultural development may affect agricultural tenants’ security of tenure.

- Insert:
(a) address or location of the proposed development
(b) applicant’s name
(c) name of the Council
(d) description of the proposed development

”

“ NOTICE UNDER ARTICLE 13(4) or (5) OF APPLICATION FOR PLANNING PERMISSION

(to be published in a newspaper, displayed on or near the site, or served on owners and/or occupiers of adjoining land)

Proposed development at (a)

I give notice that (b)

is applying to the (c)Council

for planning permission to (d).....

The proposed development does not accord with the provisions of the development plan in force in the area in which the land to which the application relates is situated.*

Members of the public may inspect copies of

- the application
• the plans
• and other documents submitted with it

at (e)

during all reasonable hours until (f).....

Anyone who wishes to make representations about this application should write to the Council at (g).....

by (f).....

As this is a householder or minor commercial application, in the event of an appeal against a refusal of planning permission, which is to be dealt with on the basis of representations in writing, any representations made about this application will be sent to the Secretary of State and there will be no further opportunity to comment at the appeal stage.*

Signed.....(Council’s authorised officer)

On behalf ofCouncil

Date

* delete where inappropriate

Insert:

- (a) address or location of the proposed development
(b) applicant’s name
(c) name of the Council
(d) description of the proposed development
(e) address at which the application may be inspected
(f) date giving a period of 21 days, beginning with the date when the notice is first displayed on or near the site or served on an owner and/or occupier of adjoining land, or a period of 14 days, beginning with the date when the notice is published in a newspaper (as the case may be)
(g) address of the Council

”

EXPLANATORY NOTE

(This note is not part of the Order)

This order amends the Town and Country Planning (Development Management Procedure) (England) Order 2010 in two ways. Firstly, it enables certain minor commercial appeals to be considered through the expedited written representations procedure. Those are appeals relating to minor ground floor development to buildings in use for any of the purposes set out in a Schedule that reproduces the uses in Part A of the Schedule to the Town and Country Planning (Use Classes) Order 1987^(a). This Order sets out the time limit for submitting such an appeal, and the related publicity requirements. These mirror the requirements for householder appeals which are already considered through the expedited procedure as set out in Part 1 of the Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009 (“the 2009 Regulations”)^(b).

Secondly, this Order amends article 33, which sets out the documents that must be submitted with an appeal form. These amendments apply to most appeals under section 78 of the Town and Country Planning Act 1990 (“the 1990 Act”), other than householder and minor commercial appeals. They do not apply in relation to appeals where a national security direction is issued by the Secretary of State, or to urgent Crown development. They also do not apply in relation to type A or B appeals (appeals relating to development that is substantially the same as development in respect of which an enforcement notice has been served), or appeals relating to major infrastructure projects.

Applicants will be required to submit a greater amount of information with their appeal forms. They will have to submit their full statement of case, a statement of what procedure they think should be used to consider their appeal, and where relevant a draft statement of common ground. These terms are all defined in article 33(7) as amended, and applicants will also have to send copies of these documents to the local planning authority.

After the appeal is submitted, the Secretary of State has the power to determine which procedure will be used to determine the appeal under section 319A of the 1990 Act^(c). If the appeal is to be determined by an inquiry, the procedure is set out in the Town and Country Planning (Inquiries Procedure) (England) Rules 2000^(d) or the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000^(e) if the appeal is to be determined by inspectors appointed by the Secretary of State. If the appeal is to be determined by a hearing, the procedure is set out in the Town and Country Planning (Hearings Procedure) (England) Rules 2000^(f). If the appeal is to be determined through written representations, the procedure is set out in the 2009 Regulations.

We are amending these procedural instruments at the same time to reflect the changes we are making in this Order. The relevant instruments are the Town and Country Planning (Hearings and Inquiries Procedure) (England) (Amendment) Rules 2013 (“the Amendment Rules”) and the Town and Country Planning (Written Representations Procedure and Advertisements) (England) (Amendment) Regulations 2013 (“the Written Representations Amendment Regulations”).

We are making similar amendments to listed building and conservation area appeals at the same time through the Planning (Listed Buildings and Conservation Areas) (Amendment No. 2) (England) Regulations 2013 (“the Listed Buildings Amendment Regulations”).

A combined impact assessment is being prepared for this Order, the Amendment Rules, the Written Representations Amendment Regulations and the Listed Buildings Amendment Regulations. The assessment will be placed in the Library of each House of Parliament and on the

^(a) S.I. 1987/764. Part A has been amended by S.I. 1991/1567 and 2005/84.

^(b) S.I. 2009/452.

^(c) Section 319A was inserted by section 196(1) of the Planning Act 2008. Section 319A is in force in relation to appeals made under section 78 of the Town and Country Planning Act 1990, but not for all purposes, *see* SI 2009/400.

^(d) S.I. 2000/1624, as amended by S.I. 2002/1223, 2003/956, 2006/1282, 2008/2831 and 2009/455.

^(e) S.I. 2000/1625, as amended by S.I. 2003/956, 2008/2831 and 2009/455.

^(f) S.I. 2000/1626, as amended by S.I. 2003/956 and 2009/455.

Department for Communities and Local Government website
(<https://www.gov.uk/government/organisations/department-for-communities-and-local-government>).

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£5.75

UK2013082839 09/2013 19585

<http://www.legislation.gov.uk/id/uksi/2013/2136>

ISBN 978-0-11-110324-1



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