

2013 No. 2142

TOWN AND COUNTRY PLANNING, ENGLAND

**The Town and Country Planning (Section 62A Applications)
(Written Representations and Miscellaneous Provisions)
Regulations 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 62A(2), 323(1A) and 333 of the Town and Country Planning Act 1990(a), makes the following Regulations:

PART 1

Preliminary

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the Town and Country Planning (Section 62A Applications) (Written Representations and Miscellaneous Provisions) Regulations 2013 and come into force on 1st October 2013.

(2) These Regulations apply in relation to England only.

(3) In these Regulations—

“the 1990 Act” means the Town and Country Planning Act 1990;

“building” includes any structure or erection, and any part of a building, as defined in this article, but does not include plant or machinery or any structure in the nature of plant or machinery;

“designated planning authority” means the local planning authority to which an application would otherwise have been made had the applicant not chosen to make the relevant application to the Secretary of State under section 62A of the 1990 Act(b);

“document” includes a photograph, map or plan;

“dwellinghouse” does not include a building containing one or more flats, or a flat contained within such a building;

(a) 1990 c. 8. Section 62A was inserted by section 1 of the Growth and Infrastructure Act 2013 (c. 27). “Prescribed” is defined in section 333(7).

(b) See section 62A(2)(b) of the 1990 Act for the meaning of “relevant application”. Section 62A was inserted into the 1990 Act by section 1 of the Growth and Infrastructure Act 2013 (c. 27).

“electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000(a);

“erection”, in relation to buildings as defined in this article, includes extension, alteration or re-erection;

“flat” means a separate and self-contained set of premises constructed or adapted for use for the purpose of a dwelling and forming part of a building from some other part of which it is divided horizontally;

“floor space” means the total floor space in a building or buildings;

“inspector” means—

(a) in relation to a standard application, a person appointed by the Secretary of State under section 76D of the 1990 Act(b) to determine the relevant application;

(b) in relation to a recovered application, a person appointed by the Secretary of State to assist him in considering the application on the basis of written representations;

“interested person” means, in relation to a relevant application, a person who makes representations to the Secretary of State in relation to the application within the representation period;

“questionnaire” means, in relation to a relevant application, the questionnaire the designated planning authority must send to the Secretary of State under article 12 of the Town and Country Planning (Section 62A Applications) (Procedure and Consequential Amendments) Order 2013(c);

“recovered application” means a relevant application which falls to be determined by the Secretary of State as a consequence of a direction made under section 76E(1) of the 1990 Act(d);

“representation period” has the meaning given in the Town and Country Planning (Section 62A Applications) (Procedure and Consequential Amendments) Order 2013;

“standard application” means a relevant application which falls to be determined by a person appointed by the Secretary of State under section 76D of the 1990 Act;

“working day” means a day which is not a Saturday, Sunday, Bank Holiday or other public holiday; and

“written representations” includes supporting documents.

Electronic communications and service of documents

2.—(1) In these Regulations, and in relation to the use of electronic communications for any purpose of these Regulations which is capable of being carried out electronically—

(a) the expression “address” includes any number or address used for the purpose of such communications, except that where any provision of these Regulations requires any person to provide a name and address to any other person, the requirement is not fulfilled unless the person subject to the requirement provides a postal address; and

(b) references to statements, notices or other documents, or to copies of such documents, include references to such documents or copies of them in electronic form.

(2) Paragraphs (3) to (7) apply where an electronic communication is used by a person for the purpose of fulfilling any requirement in these Regulations to give or send any statement, notice or other document to any other person (“the recipient”).

(3) A requirement is taken to be fulfilled where the statement, notice or other document transmitted by the electronic communication is—

(a) 2000 c. 7; section 15(1) was amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c. 21).

(b) Section 76D was inserted by paragraph 5 of Schedule 1 to the Growth and Infrastructure Act 2013 (c. 27).

(c) S.I. 2013/2140.

(d) Section 76E was inserted by paragraph 5 of Schedule 1 to the Growth and Infrastructure Act 2013.

- (a) capable of being accessed by the recipient;
- (b) legible in all material respects; and
- (c) sufficiently permanent to be used for subsequent reference.

(4) In paragraph (3), “legible in all material respects” means that the information contained in the statement, notice or document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.

(5) Where the electronic communication is received by the recipient outside the recipient’s business hours, it is taken to have been received on the next working day.

(6) A requirement in these Regulations that any statement, notice or other document is in writing is fulfilled where the document satisfies the criteria in paragraph (3).

(7) Where a person is no longer willing to accept the use of electronic communications for any purpose of these Regulations which is capable of being effected electronically, the person must give notice in writing—

- (a) withdrawing any address notified to the Secretary of State for that purpose, or
- (b) revoking any agreement entered into with the Secretary of State for that purpose,

and such withdrawal or revocation is final and takes effect on a date specified by the person in the notice but not less than 7 days after the date on which the notice is given.

PART 2

Prescribed matters

Major development

3. The description of development prescribed under section 62A(2) of the 1990 Act as major development is any development involving one or more of the following—

- (a) the provision of dwellinghouses where—
 - (i) the number of dwellinghouses to be provided is 10 or more; or
 - (ii) the development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the development falls within sub-paragraph (a)(i);
- (b) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more;
- (c) development carried out on a site having an area of 1 hectare or more.

Prescribed period for determination of procedure

4. For the purposes of section 319A(3) of the 1990 Act(a) the prescribed period within which the Secretary of State must decide the procedure to be followed for the determination of a relevant application(b) is 5 working days beginning with the day after the end of the representation period.

(a) Section 319A was inserted into the 1990 Act by section 196 of the Planning Act 2008 (c. 29).

(b) See section 62A(2)(b) of the 1990 Act for the meaning of “relevant application”. Section 62A was inserted into the 1990 Act by section 1 of the Growth and Infrastructure Act 2013 (c.27).

PART 3

Written representations procedure

Application

5.—(1) This Part applies where the Secretary of State has determined under section 319A of the 1990 Act that a relevant application is to be determined on the basis of representations in writing.

(2) Where this Part applies in relation to a relevant application which previously fell to be considered in accordance with the Town and Country Planning (Section 62A Applications) (Hearings) Rules 2013, any step taken or thing done under those Rules which could have been done under any corresponding provision of these Regulations has effect as if it had been taken or done under the corresponding provision.

Determining the application: standard applications

6.—(1) This regulation applies where a relevant application is a standard application.

(2) When making his determination, the inspector—

- (a) must take into account any representations made to the Secretary of State pursuant to any notice of, or information about, or consultation in relation to, the application, under articles 9, 13, 14, 16, 17 or 18 of the Town and Country Planning (Section 62A Applications) (Procedure and Consequential Amendments) Order 2013 which are received within the representation period; and
- (b) may disregard any representations or information received after the end of the representation period.

(3) If, after the end of the representation period, the inspector takes into consideration any new information (not being a matter of government policy), he must not determine the application without first—

- (a) notifying in writing the applicant and any interested person of the new information; and
- (b) affording them an opportunity of making written representations to him.

Determining the application: recovered applications

7.—(1) This regulation applies where a relevant application is a recovered application.

(2) When making his determination, the Secretary of State—

- (a) must take into account any representations made to the Secretary of State pursuant to any notice of, or information about, or consultation in relation to, the application, under articles 9, 13, 14, 16, 17 or 18 of the Town and Country Planning (Section 62A Applications) (Procedure and Consequential Amendments) Order 2013 which are received within the representation period; and
- (b) may disregard any representations or information received after the end of the representation period.

(3) If, after the end of the representation period, the Secretary of State takes into consideration any new information (not being a matter of government policy), he must not determine the application without first—

- (a) notifying in writing the applicant and any interested person of the new information; and
- (b) affording them an opportunity of making written representations to him.

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

27th August 2013

Nick Boles
Parliamentary Under Secretary of State
Department for Communities and Local Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 62A of the Town and Country Planning Act 1990 (“the 1990 Act”) provides that a local planning authority may be designated by the Secretary of State. Where an authority is designated a person applying for planning permission for major development may choose to submit their application to the Secretary of State for determination.

These Regulations prescribe certain matters under section 62A and 319A of the 1990 Act and make provision in relation to relevant applications which are to be determined by way of written representations.

These Regulations are part of a package of provisions in relation to section 62A applications—

- (a) the procedures to be followed in relation to relevant applications made directly to the Secretary of State under section 62A of the 1990 Act are set out in the Town and Country Planning (Section 62A Applications) (Procedure and Consequential Amendments) Order 2013;
- (b) the fees to be charged in relation to section 62A applications and pre-application advice are prescribed in the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012, which were amended by the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2013;
- (c) the rules in relation to hearings held to consider relevant applications are set out in the Town and Country Planning (Section 62A Applications) (Hearings) Rules 2013;
- (d) the provisions which apply where the application is to be determined by way of written representations, instead of a hearing, are set out in these Regulations.

Part 2 prescribes which development is “major development” under section 62A(2) of the 1990 Act (this definition is similar to the definition of “major development” in the Town and Country Planning (Development Management Procedure) (England) Order 2010, however waste development and minerals developments are, for the purposes of these Regulations, now subject to the same thresholds as any other type of development (for example, carried out on a site which has an area of 1 hectare or more)); and the period within which the Secretary of State must determine which procedure an application under section 62A is to follow. Under section 319A of the 1990 Act the procedure which may be used includes a hearing or written representations.

Part 3 of the Regulations makes provision in relation to determining a relevant application on the basis of written representations.

These Regulations implement section 1 of, and Schedule 1 to, the Growth and Infrastructure Act 2013. That Act was subject to a full impact assessment which can be found at www.legislation.gov.uk. Copies of that impact assessment may be obtained from the Planning Directorate, 1st Floor, Department for Communities and Local Government, Eland House, Bressenden Place, London, SW1E 5DU.

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