

**EXPLANATORY MEMORANDUM TO**  
**THE TOWN AND COUNTRY PLANNING (PERMISSION IN PRINCIPLE)**  
**(AMENDMENT) ORDER 2017**

**2017 No. 1309**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 The Order extends the ‘permission in principle’ consent regime by making provision in relation to the procedure which applies to applications for a grant of ‘permission in principle’.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

- 4.1 The Order amends the Town and Country Planning (Permission in Principle) Order 2017 (S.I. 2017/402) to set out the procedure which is to apply where a person wishes to apply to a local planning authority for permission in principle. The Order is a development order made under section 59A of the 1990 Act. Section 59A was inserted into the 1990 Act by section 150 of the Housing and Planning Act 2016 (“the 2016 Act”). Section 59A of the 1990 Act also makes provision for a development order to provide for permission in principle to be granted on sites allocated in a register created under section 14A of the Planning and Compulsory Purchase Act 2004 (see S.I. 2017/403 which requires the creation of so-called brownfield land registers and S.I. 2017/402 which provides for the granting of permission in principle in relation to land allocated for residential development and entered in Part 2 of such a register), and local and neighbourhood plans.

**5. Extent and Territorial Application**

- 5.1 This Order extends to England and Wales.  
5.2 The Order applies only to land in England.

**6. European Convention on Human Rights**

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

### *What is being done and why*

- 7.1 In the current planning application process developers are often expected to provide substantial amounts of information up-front, even as part of an application for outline planning permission. This means that developers will often have to spend significant time and money before they have certainty that the principle of development on the site is agreed. Permission in principle is a new way of obtaining planning permission for housing-led development. This consent can only be obtained in relation to residential development (i.e. the main purpose of the development is housing).
- 7.2 Permission in principle is designed to separate decision making on ‘in principle’ issues addressing land use, location, and amount of development from matters of technical detail, such as what the buildings will look like. The aim is to give up-front certainty that the fundamental principles of development are acceptable before developers need to get into more technical matters. It will also ensure that the principle of development only needs to be established once in the process. Once permission in principle is granted and before land is developed, it must be followed by an application for technical details consent covering remaining detailed matters such as the design of buildings, development layout and landscaping schemes. Applications for technical details consent must be decided by the local planning authority in accordance with the terms of the permission in principle. A grant of permission in principle plus a grant of technical details consent together equates to full planning permission.
- 7.3 Under the Town and Country Planning (Permission in Principle) Order 2017, local planning authorities already have powers to grant permission in principle to suitable sites allocated on registers of brownfield land. This Order extends this consent regime by giving developers the opportunity to identify sites and make an application to the local planning authority for a grant of permission in principle. The right to make such an application is only available for minor development as defined in the Order.

### *Consolidation*

- 7.4 There are no plans to consolidate the Town and Country Planning (Permission in Principle) Order 2017 (S.I. 2017/402).

## **8. Consultation outcome**

- 8.1 A technical consultation on the implementation of planning changes was undertaken between 18 February and 25 April 2016. Over 800 responses were received. In relation to permission in principle, the consultation set out the Government’s proposals for the detailed operation of permission in principle granted for sites by application. Issues covered included what matters should be considered when local planning authorities are deciding whether to grant permission in principle, how sensitive sites should be considered, how the community and others should be engaged in the process, information requirements and determination periods.
- 8.2 The proposals were generally supported. The majority of respondents agreed that location, use and amount of development should be matters under consideration when a local planning authority is deciding whether to grant permission in principle. However, there were calls to widen the scope to include other matters. The Government’s view is that the consideration of additional matters is not necessary to

reach an in-principle decision and that such matters can be more effectively addressed at a later stage. On sensitive sites, the majority of respondents were of the view that EIA and Habitats development should be exempt from a grant of permission in principle. The Order provides that local planning authorities may not grant permission in principle in relation development which is EIA development or Habitats development.

- 8.3 There was widespread support for the Government's proposals for engagement at the permission in principle stage, which are in line with current requirements for planning applications where statutory consultation and publicity are mandatory. These arrangements have been prescribed in the Order.
- 8.4 The majority of respondents supported the Government's proposals for proportionate information requirements for permission in principle though some raised concerns about the robustness of the process. Some respondents emphasised the need to make clear at the permission in principle stage what information is required as part of a technical details consent application. Others argued that there would be insufficient information available to make a decision on whether to grant permission in principle. The Government will set out expectations around information to support decision-making in guidance.
- 8.5 Permission in principle by application will only be available for minor development (i.e. small sites that support fewer than 10 dwellings). Respondents were asked whether they agreed with setting the maximum determination period (i.e. the amount of time the local planning authority has to reach a decision) for permission in principle applications at 5 weeks. Concerns were expressed by some respondents that the proposed determination period does not allow the public and other interested parties enough time to comment and/or for proper consideration of the issues. The Government's view is that the proposed period would allow the in-principle matters to be considered fully and for adequate engagement to take place. It has therefore decided to prescribe in the Order the 5 week period as proposed.
- 8.6 The Government's response to the technical consultation is available on the its website at <https://www.gov.uk/government/consultations/implementation-of-planning-changes-technical-consultation>

## **9. Guidance**

- 9.1 We will publish guidance for permission in principle by application. Guidance to support the introduction of permission in principle for sites entered on registers of brownfield land and the technical details consent was published in July 2017 and can be found <https://www.gov.uk/guidance/permission-in-principle>. In relation to permission in principle by application, the guidance will address our expectations about the detailed practical operation of the policy. We will also support authorities through an active programme of continuous engagement to coincide with the coming into force of the Order.

## **10. Impact**

- 10.1 We have assessed that there will be a deregulatory impact on business, charities or voluntary bodies. The Order enables applicants to establish upfront, and at minimal cost, whether sites are suitable for residential development. Under the existing system, applicants typically will pay the much higher cost of preparing and submitting a full planning application in order to settle the question of site suitability. This new consent

enables applicants to avoid the costs associated with making a full planning application, and then having it refused in principle. The new consent is permissive in the sense that developers will remain free to submit a full application without seeking permission in principle in advance.

- 10.2 Our assessment is that it will be mostly small and medium sized enterprises that will use this new consent because it is limited to minor residential development, which is defined in the Order. In the year to the first quarter of 2017, 15,000 minor project approvals were granted. In the same period, 74% of minor residential applications were approved<sup>1</sup>. This implies a total of 20,000 potential applications annually.
- 10.3 We expect take-up among potential users will be gradual as it will take time for all of them to become fully aware of the new consent and understand how it could benefit them. An application for permission in principle will cost less than an application for full planning permission because the applicant is required to provide much less information in support of an application.
- 10.4 The typical cost of preparing and submitting a full planning application is estimated to be approximately £25,000 for a minor site<sup>2</sup>, including fee costs. Based on the information requirements set out in the Order, we anticipate that preparing and submitting a permission in principle application will require 5% of the resources associated with preparing and submitting a full application; and that the subsequent technical details consent application will require the other 95% of resources. By way of illustration, on a four dwelling site, we estimate that the average fee would be £800 for a permission in principle application and £1,500 for a technical details consent application. A full application for a four dwelling site is currently £1,500
- 10.5 Taking this information together, we estimate a developer of a four dwelling site that chooses to take up the new option to apply for permission in principle will incur an additional cost of £800 in an instance where permission in principle is granted but will save on average £22,000 in an instance where permission in principle is refused. This is as a result of the developer being able to avoid the costs of submitting a full application. There will be some low one-off familiarisation costs, associated with learning how to make permission in principle applications. Assuming an hourly time cost per firm of £28<sup>3</sup>, this implies a familiarisation cost per applicant of £14.
- 10.6 The impact on the public sector is negligible as a fee is payable by applicants which will enable authorities to cover the cost of processing permission in principle applications.
- 10.7 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

- 11.1 The Order applies to activities that are undertaken by small businesses.
- 11.2 The Government has assessed that the Order will have deregulatory impact on small businesses (see Section 10).

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<sup>1</sup> The 15,000 is based on data from Barbour on planning approvals and the 74% from DLCCG planning application statistics live table P124.

<sup>2</sup> Based on total cost of submitting an application from 'Benchmarking the costs to applicants of submitting a planning application', Arup 2009 for DCLG, inflated to 2017 prices.

<sup>3</sup> For developer wage costs we have used the average hourly wage for 'activities of head office; management consultancy activities' taken from the latest ONS Annual Survey of Hours and Earnings in 2017 prices), uprated by 30% (based on HMT Green Book and DCLG appraisal guide) to incorporate non-wage labour costs.

## **12. Monitoring & review**

- 12.1 Article 9 of the Town and Country Planning (Permission in Principle) Order 2017, which this Order amends, already includes a review provision. The new provisions inserted by this Order would be subject to review under that provision by 15<sup>th</sup> April 2022.

## **13. Contact**

- 13.1 Mide Beaumont at the Department for Communities and Local Government  
Telephone: 030 3444 4246 or email: [mide.beaumont@communities.gsi.gov.uk](mailto:mide.beaumont@communities.gsi.gov.uk) can answer any queries regarding the instrument.