

THE PLANNING ACT 2008
MISCELLANEOUS PROVISIONS

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Local development

- The Planning and Compulsory Purchase Act 2004 is amended to require that a local development scheme need only specify local development documents which are to be development plan documents (and therefore does not include other local development documents).
- A statement of community involvement must not now be specified as a development plan document in the local development scheme and is not now subject to independent examination [section 180].
- Development plan documents must, taken as a whole, include policies designed to secure that the development and use of land contribute to the mitigation of and adaptation to climate change [section 182].
- In exercising functions in producing local development documents not only must a local authority exercise those functions with the objective of achieving sustainable development but also have regard to the desirability of achieving good design [section 183].

Legal Challenges

- Section 113 of the Planning and Compulsory Purchase Act 2004 which provides for a statutory challenge to a development plan document or local development plan and which effectively repeats section 287 of the 1990 Act is amended. Currently section 113(7), only enables a court, if it considers a local development document to be legally flawed, to quash all or part of that document.
- Section 185 amends that subsection to enable a High Court to:
 - o Quash the relevant document.
 - o Remit the document to a person or body with a function relating to its preparation, publication, adoption or approval and to give directions as to the actions to be taken in respect of that document.
 - o Court directions may:-
 - Require the relevant document to be treated generally or for specified purposes as not having been approved or adopted.
 - Require specified steps in the process to be treated as having been or not having been taken.
 - Require action to be taken by a person or body with a function relating to the preparation of that document.
 - Require action to be taken by a person or body to depend on what action had been taken by another person or body.

Power to decline to determine applications

- Schedule 7 of the 2008 Act amends section 70A (subsequent applications) and section 70B (twin tracking not yet in force) of the 1990 Act to include a decision by the Secretary of State to refuse an application deemed to have been made for planning permission on appeal under an enforcement notice or where such a decision is pending.

Non material changes to a planning permission

- This enables a local planning authority to make a change to any planning permission if they are satisfied that the change is not material.
- In deciding whether or not a change is material it must have regard to the effect of the change together with any previous changes made on the planning permission as originally granted.
- This power includes a power to impose new conditions and to remove or alter existing ones.
- An application can only be made by a person who has an interest in the land the subject of the permission [section 190].

Fees for Planning Applications

- The Secretary of State may make regulations for the provision of the payment of a fee to a local planning authority of any function they have or anything done by them which is calculated to facilitate or is conducive or incidental to the performance of any such function [section 199].

Determining Appeal Procedure

- Section 196 makes provision that the Secretary of State “must” make a determination as to the “most appropriate” procedure by which proceedings to hear:-
 - o Planning appeals,
 - o Called in applications,
 - o Enforcement appeals,
 - o Appeals re certificates of lawful use and development
 - o Appeals against notices for tree replacement;
 - o Appeals against a refusal of listed building consent
 - o Called in application for listed building consent;
 - o Appeals against listed building enforcement notice

are to be considered. i.e. whether by:-

- o Local inquiry
- o Hearing
- o Written representation

- The Secretary of State is required to publish criteria that are to be applied in making such a determination.

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