These notes refer to the Planning and Compulsory Purchase Act 2004 (c.5) which received Royal Assent on 13th May 2004

PLANNING AND COMPULSORY PURCHASE ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4: Development Control

Section 40: Local development orders

61. By providing for local permitted development rights, section 40 introduces a new procedure to allow local planning authorities to expand on the permitted development rights set nationally by way of development orders. A local development order (LDO) may be made solely to implement policies in one or more development plan documents (or, in Wales, the local development plan). Schedule 1 (which inserts a new Schedule 4A into the Town and Country Planning Act 1990) specifies that the Secretary of State may prescribe the procedure for the making of an LDO, including publicity and consultation requirements.

62. Schedule 1 also allows the Secretary of State (or the National Assembly for Wales) to set out matters which must be included in the annual report by local authorities on the extent to which a LDO is achieving its purposes. It also allows the Secretary of State (or the Assembly) to prescribe the form and content of that report.

Section 41: Effect of revision or revocation of development order on incomplete development

63. This section introduces a new section (61D) in the Town and Country Planning Act 1990. It enables the Secretary of State to include in a development order, and local planning authorities to include in any LDO, permission for the completion of development for which planning permission is granted by the development order or LDO and which has been started but not completed before that planning permission is withdrawn.

Section 42: Applications for planning permission and certain consents

64. Section 42 amends the powers to make secondary legislation prescribing the form of applications for planning permission and certain consents. It enables a development order to make provision for the procedure for applications for planning permission. This replaces the power in the Town and Country Planning Act 1990 for the Secretary of State to prescribe the procedure by regulations. It also provides new powers to prescribe the form of applications for consent under tree preservation orders, for the display of advertisements and for listed building and conservation area consents.

65. This section also requires applications for planning permission for development to be accompanied by a “design statement”, or an “access statement”, or both. The contents of the statements, and the types of development to which they will apply, would be prescribed by regulations or in a development order.

Section 43: Power to decline to determine applications

66. Section 43 extends a local planning authority's existing powers to decline to determine applications for planning permission. It also applies to applications for listed building consent and conservation area consent and the prior approval of a local planning authority for development which is permitted by virtue of a development order.

67. A local planning authority's existing powers allow it to decline to determine an application for planning permission which is the same or substantially the same as an application which, within the previous two years, the Secretary of State has called in and refused, or which the Secretary of State has dismissed on appeal.

68. The section allows a local planning authority to refuse to determine a planning application where it has refused two similar applications and there has been no appeal to the Secretary of State in the two year period preceding the submission of the application.

69. In addition, the section allows an authority to decline to determine an application if they think that it is similar to another application which has not been finally determined (either by the authority or on appeal by the Secretary of State).

Section 44: Major infrastructure projects

70. Section 44 applies only to England and provides for sections 76A and 76B to be inserted in the Town and Country Planning Act 1990. It allows the Secretary of State to call in any application for planning permission, or an application for the approval of a local planning authority required under a development order, if he thinks that the development to which the application relates is of national or regional importance. Other related applications must also be referred to him. The Secretary of State must appoint an inspector to consider the application. The Secretary of State himself, rather than the local planning authority, will make the decision, based on the advice of an inspector.

71. Consideration of any application referred to the Secretary of State may be made either by a single inspector as at present, or by a lead inspector and a number of additional inspectors appointed by the Secretary of State. It enables additional inspectors to hear evidence on matters as directed by the lead inspector but independently from him. Each additional inspector must report to the lead inspector on the matter he is appointed to consider. In every case the lead inspector must report to the Secretary of State on his consideration of the application and the consideration of any additional inspector.

Section 45: Simplified planning zones

72. Section 45 amends the provisions in the Town and Country Planning Act 1990 regarding the power available to local planning authorities to make simplified planning zones. It is intended to facilitate the designation by local planning authorities of simplified planning zones where the need for such areas has first been identified in the regional spatial strategy (or in the spatial development strategy in London, or by the National Assembly for Wales). An authority must make a simplified planning zone if directed to do so by the Secretary of State (or the Assembly).

Section 46: Planning contribution

73. Section 46 empowers the Secretary of State to make regulations which will enable planning contributions to be made in relation to the development or use of land in the area of a local planning authority. The local planning authority could be required by the regulations to set out in a document:

— which developments and uses they will seek contributions for;

— where they will not seek a contribution;

— the purposes to which receipts from contributions may be made, either in whole or in part;

— the criteria for determining the value of the contribution.

The contributor may make a contribution either by the optional planning charge ('the prescribed means') or by a means agreed by negotiation (the 'relevant requirements'), or by a combination of both. The prescribed means could consist of the payment of a sum, or the provision of a benefit in kind, or a combination of both. Section 46 also provides for regulations to prescribe circumstances in which the contribution, if made by the prescribed means, may not also be made by meeting the relevant requirements, and vice versa.

Section 122(5)(a) and 122(6) provide that any regulations made under Section 46 should be subject to the affirmative resolution procedure.

Section 47: Planning contribution: regulations

74. Section 47 sets out the range of powers in the regulations for defining the scope of contributions. It allows the Secretary of State to provide:

— maximum and minimum contributions via the prescribed means; and to periodically adjust the criteria by reference to which the value of a contribution made by the prescribed means is to be determined;

— a requirement to publish an annual report in relation to planning contributions;

— the procedure for preparing the document referred to above (in which the local planning authority sets out matters relating to planning contributions), where this is not a development plan document, and the circumstances in which the Secretary of State might take steps in relation to its preparation;

— provisions relating to enforcement, modification and discharge of planning contributions;

— a provision requiring that the local authority may only spend receipts from prescribed means on matters identified in the document referred to above;

— a provision enabling the terms of the planning contribution to be set out in writing.

— a provision to allow the Secretary of State to make different provision in different areas or local authorities.

Section 48: Planning contribution: Wales

75. Section 48 sets out the terms for operating planning contributions in Wales. It:

— confers on the National Assembly for Wales the same powers in relation to planning contributions as the Secretary of State has for England;

— substitutes the local development plan for any reference to the development plan document.

Section 49: Development to include certain internal operations

76. Section 49 amends the definition of development in Section 55(2) of the Town and Country Planning Act 1990 so as to bring the creation of additional floorspace within buildings under planning control. Secondary legislation will enable the Secretary of State, by development order, to bring specified proposals for the provision of additional floorspace in existing buildings within the definition of "development".

Section 50: Appeal made: functions of local planning authority

77. Section 50 inserts a new section 78A into the Town and Country Planning Act 1990. Its intention is to allow a short period of dual jurisdiction between the Secretary of State and the local planning authority where an appeal has been made against non-determination of a planning application by that authority.

78. This provision applies where an applicant appeals to the Secretary of State on the grounds that the local planning authority have not determined his planning application within the prescribed period (8 weeks). Once an appeal has been made, jurisdiction to decide whether to grant planning permission passes to the Secretary of State. The local planning authority cannot determine the application, even in circumstances where the local planning authority would have been in a position to do so shortly after the prescribed period.

79. The purpose of this new section is to allow an additional period of time (to be prescribed by the development order) in which the local planning authority could still issue its decision even though an appeal has been lodged. The period of "dual jurisdiction" would have effect where an appeal against non-determination has been lodged after the 8 week deadline.

80. In such cases the appeal will progress under the usual procedures - for example if the local planning authority refuse planning permission, then the appeal (against non-determination) would become an appeal against refusal. If the local planning authority grant permission, the appellant may withdraw the appeal, proceed with the appeal or revise the grounds of appeal (for example, an appeal against conditions which may have been imposed).

Section 51: Duration of permission and consent

81. Section 51 amends sections 73, 91 and 92 of the Town and Country Planning Act 1990 and sections 18 and 19 of the Planning (Listed Buildings and Conservation Areas) Act 1990. It reduces the period of validity of a planning permission, a listed building consent and a conservation area consent from five to three years. But local planning authorities may still direct longer or shorter periods where this would be appropriate. It also prevents an extension to the agreed period of validity without the submission of a new application.

Section 52: Temporary Stop Notice

82. Section 52 inserts new sections 171E - 171H into the Town and Country Planning Act 1990. It provides local planning authorities with a new discretionary power to serve temporary stop notices to halt breaches of planning control for a period of up to 28 days. It gives them the means to prevent unauthorised development at an early stage without first having had to issue an enforcement notice. It allows them up to 28 days to decide whether further enforcement action is appropriate and what that action should be, without the breach intensifying by being allowed to continue.

83. The new sections set out how the notice must be issued, what the notice should say about the activities that should stop, and on whom the notice should be served. The temporary stop notice has effect immediately but ceases to have effect after 28 days, unless it is withdrawn earlier. It also sets out what the offences are for contravening a temporary stop notice and the arrangements for compensation.

84. There is also provision for the Secretary of State to prescribe in regulations other activities that a temporary stop notice shall not apply to, even though those activities are in breach of planning control. Regulations may set out these activities either by describing them or by setting out circumstances when an activity cannot be prohibited by a temporary stop notice. This section also sets out when second or subsequent temporary stop notices can be used.

Section 53: Fees and charges

85. Section 53 amends section 303 of the Town and Country Planning Act 1990. Section 303 enables the Secretary of State to prescribe planning fees for applications made to local planning authorities under the planning Acts (by instrument subject to affirmative resolution). The planning Acts are the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Planning (Hazardous Substances) Act 1990. The section widens the scope of that power so as to enable the Secretary of State to provide for the payment of both charges and fees relating to planning applications and other functions of local planning authorities. The section also widens the scope for how the charge or fee is set, including the provision to allow local planning authorities to set their own fees, subject to the provision that taking one year with another they do not make a profit. The section allows the Secretary of State to prescribe that no charge or fee is payable in relation to specific activities.

Section 54: Duty to respond to consultation

86. Section 54 introduces a requirement that those persons or bodies which are required to be consulted by the Secretary of State, the National Assembly for Wales or a local planning authority (as the case may be) before the grant of any permission, approval or consent under the planning Acts must respond to consultation requests within a prescribed period. It also applies to consultation by any other person prior to an application for any permission, approval or consent. Secondary legislation will specify to which consultation requirements the duty to respond will apply and the prescribed period.

87. The section also gives the Secretary of State power to require reports on the performance of consultees in meeting their response deadlines.

Section 55: Time in which Secretary of State to take decisions

88. Section 55 and Schedule 2 require that the Secretary of State must set a timetable for his decisions on "called in" planning applications and recovered appeals, together with any other decisions for which he is responsible and which are connected to those decisions. The Secretary of State is required to tell parties which timetable applies to the decision in question. At this stage he is able to vary the standard timetable if necessary for the purposes of the decision. He will also be able to revise a timetable subsequently if events arise which prevent the set timetable from being met. Where the Secretary of State fails to meet a timetable he must give reasons for that failure. The Secretary of State will be required to report to Parliament each year on his performance under these provisions. This section does not apply to decisions in relation to which the function has been transferred to the National Assembly for Wales.