

2013 No. 1238

TOWN AND COUNTRY PLANNING, ENGLAND

The Town and Country Planning (Development Management Procedure) (England) (Amendment) Order 2013

<i>Made</i> - - - - -	<i>30th May 2013</i>
<i>Laid before Parliament</i>	<i>3rd June 2013</i>
<i>Coming into force</i> - - -	<i>25th June 2013</i>

The Secretary of State, in exercise of the powers conferred by sections 59, 62, 74, 78 and 333(7) of the Town and Country Planning Act 1990(a) and sections 54 and 122(3) of the Planning and Compulsory Purchase Act 2004(b), 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) Order 2013 and shall come into force on 25th June 2013.

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

Amendment of the Town and Country Planning (Development Management Procedure) (England) Order 2010

2. The Town and Country Planning (Development Management Procedure) (England) Order 2010(c) is amended in accordance with the following provisions.

Amendment in relation to reserved matters

3. In article 2(1), in the definition of “reserved matters”, in sub-paragraph (e) delete the words “, within the upper and lower limit for the height, width and length of each building stated in the application for planning permission in accordance with article 4(4)”.

(a) 1990 c.8. Section 62 was substituted by section 42(1) of the Planning and Compulsory Purchase Act 2004 (c.5) (“the 2004 Act”) and amended by paragraph 5 of Schedule 12 to the Localism Act 2011 (c.20) (“the 2011 Act”). Section 69 was substituted by section 118 of, and paragraphs 1 and 3 of Schedule 6 to, the 2004 Act and amended by section 190 of the Planning Act 2008 (c.29) and by paragraph 7 of Schedule 12 to the 2011 Act. Section 74 was amended by sections 19(1) and 84(6) of, and paragraph 17 of Schedule 7 and Part 1 of Schedule 19 to, the Planning and Compensation Act 1991 (c. 34) (“the 1991 Act”) and by section 121 of, and paragraph 9 of Schedule 12 to the 2011 Act. Section 78 was amended by section 17(2) of the 1991 Act, section 40(2)(e) and 43(2) of the 2004 Act, paragraphs 1 and 3 of Schedule 10, and paragraphs 1 and 2 of Schedule 11 to, the 2008 Act, and section 123 of and paragraphs 1 and 11 of Schedule 12 to the 2011 Act.

(b) 2004 c.5.

(c) S.I. 2010/2184. Article 31 was amended by S.I. 2012/2274, there are also other amendments to the 2010 Order which are not relevant to this Order.

Amendment in relation to design and access statements

4.—(1) For article 8 substitute—

“Design and access statements

8.—(1) Subject to paragraph (4), this article applies to an application for planning permission which is for—

- (a) development which is major development;
- (b) where any part of the development is in a designated area, development consisting of—
 - (i) the provision of one or more dwellinghouses; or
 - (ii) the provision of a building or buildings where the floor space created by the development is 100 square metres or more.

(2) An application for planning permission to which this article applies shall be accompanied by a statement (“a design and access statement”) about—

- (a) the design principles and concepts that have been applied to the development; and
- (b) how issues relating to access to the development have been dealt with.

(3) A design and access statement shall—

- (a) explain the design principles and concepts that have been applied to the development;
- (b) demonstrate the steps taken to appraise the context of the development and how the design of the development takes that context into account;
- (c) explain the policy adopted as to access, and how policies relating to access in relevant local development documents have been taken into account;
- (d) state what, if any, consultation has been undertaken on issues relating to access to the development and what account has been taken of the outcome of any such consultation; and
- (e) explain how any specific issues which might affect access to the development have been addressed.

(4) This article does not apply to an application for planning permission which is—

- (a) for permission to develop land without compliance with conditions previously attached, made pursuant to section 73 of the 1990 Act^(a);
- (b) of the description contained in article 18(1)(b) or (c);
- (c) for engineering or mining operations;
- (d) for a material change in use of the land or buildings;
- (e) for development which is waste development.

(5) In this article—

“cubic content” means the cubic content of a building measured externally; and

“designated area” means—

- (a) a conservation area;
- (b) a property appearing on the World Heritage List kept under article 11(2) of the 1972 UNESCO Convention Concerning the Protection of the World Cultural and National Heritage (a World Heritage Site)^(b).

(a) Section 73 was amended by sections 42(2), 51(3) and 120 of, and Schedule 9 to, the Planning and Compulsory Purchase Act 2004 (c.5).

(b) See <http://whc.unesco.org/en/list>

Amendments in relation to applications and validation disputes

5.—(1) In article 2(3)(b), after “article 29(3)” insert “or (3A)”.

(2) In article 10(3)—

(a) in sub-paragraph (a), for “article 29(3)” substitute “paragraphs (3) and (3A) of article 29”; and

(b) at end of sub-paragraph (b) delete “and” and insert—

“(bb) the particulars or evidence the authority require to be included in the application—

(i) are reasonable having regard, in particular, to the nature and scale of the proposed development; and

(ii) are about a matter which it is reasonable to think will be a material consideration in the determination of the application; and”

(3) In article 10(6)(b), after “article 29(3)” insert “or it is not a non-validated application within the meaning of article 29(3A)”.

(4) After article 10 insert—

“Validation dispute

10A.—(1) Where—

(a) a local planning authority require particulars or evidence to be included in an application; and

(b) the applicant considers any particulars or evidence required do not meet the requirements set out in article 29(4)(bb),

the applicant may send a notice to the authority which must—

(i) specify which particulars or evidence the applicant considers do not meet the requirements set out in article 29(4)(bb),

(ii) set out the reasons the applicant relies upon in holding that view; and

(iii) request the authority to waive the requirement to include those particulars or evidence in the application.

(2) Following receipt of the notice mentioned in paragraph (1), and not later than the date specified in paragraph (3), the local planning authority must notify the applicant either that—

(i) the authority no longer require the applicant to provide the particulars or evidence (“a validation notice”); or

(ii) the authority continues to require the applicant to provide the particulars or evidence (“non-validation notice”).

(3) The date specified in this paragraph is—

(a) the date the period specified or referred to in article 29(2) (“the determination period”) ends; or

(b) where the notice mentioned in paragraph (1) is received—

(i) during the 7 working days immediately before the end of the determination period; or

(ii) on the final day of, or after the end of, the determination period,

the date which is 7 working days after the date the notice is received by the local planning authority.

(4) In this article “working day” has the same meaning as in article 2(6).”

(5) In article 29(1)—

(a) after “valid application” insert “or a non-validated application”; and

- (b) after “paragraph (2)” insert “or (2A)”.
- (6) After article 29(2) insert—
 - “(2A) In relation to a non-validated application, where the notice mentioned in article 10A(1) is received—
 - (a) during the 7 working days immediately before the end of the period specified or referred to in paragraph (2) (“the initial determination period”); or
 - (b) on the final day of, or after the end of, the initial determination period,
 the period specified or referred to in this paragraph is 7 working days beginning with the date the notice mentioned in article 10A(1) is received by the local planning authority.”
- (7) After paragraph 29(3) insert—
 - “(3A) In this article “non-validated application” means an application which consists of—
 - (a) an application which complies with the requirements of article 5 or article 6, as the case may be;
 - (b) in a case to which article 8 applies, the design and access statement;
 - (c) the certificate required by article 12;
 - (d) subject to paragraph (4), the particulars or evidence required by the authority under section 62(3) of the 1990 Act (applications for planning permission) except the particulars or evidence specified by the applicant in a notice sent to the local planning authority under article 10A(1); and
 - (e) any fee required to be paid in respect of the application and, for this purpose, lodging a cheque for the amount of a fee is to be taken as payment,
 and a non-validated application shall be taken to have been received when the application, and such of the documents, particulars or evidence (except the particulars or evidence specified by the applicant in a notice sent to the authority under article 10A(1)) referred to above as required to be included in, or, to accompany, the application have been lodged with the appropriate authority mentioned in article 10(1), and the fee required to be paid has been paid.”
- (8) In article 29(4)—
 - (a) for “Paragraph (3)(d) only applies” substitute “Paragraphs (3)(d) and (3A)(d) only apply”;
 - (b) in sub-paragraph (a), for “paragraph (3)” substitute “paragraphs (3) and (3A)”;
 - (c) at end of sub-paragraph (b) delete “and” and insert—
 - “(bb) the particulars or evidence the authority require to be included in the application—
 - (i) are reasonable having regard, in particular, to the nature and scale of the proposed development; and
 - (ii) are about a matter which it is reasonable to think will be a material consideration in the determination of the application; and”
- (9) In article 36(13)(a), after “article 29(2)” insert “or (2A)”.

Amendments in relation to duty to respond to consultations

- 6. After article 20(1)(c) insert—
 - “(cc) paragraphs N(3) and (4) of Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (change of use)(a);”

(a) S.I. 1995/418. Class N was inserted by article 6 of S.I. 2013/1101.

Amendment in relation to the giving of reasons on decision where planning permission granted

7. In article 31(1)—

(a) for sub-paragraph (a) substitute—

“(a) where planning permission is granted subject to conditions, the notice shall state clearly and precisely their full reasons for each condition imposed;”;

(b) in sub-paragraph (d) for “sub-paragraph (a)(iii)” substitute “sub-paragraph (a)”.

Transitional provision

8. The amendments made by article 5 shall not have effect in relation to any application for planning permission made before the coming into force of this Order.

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

30th May 2013

EXPLANATORY NOTE

(This note is not part of the Order)

The Town and Country Planning (Development Management Procedure) (England) Order 2010 (S.I. 2010/2184) (“the 2010 Order”) provides for procedures connected with planning applications in England.

Article 3 of this Order amends the definition of “reserved matters” in article 2 of the 2010 Order. The amendment removes an obsolete reference to article 4(4) (that provision was revoked by S.I. 2012/3109).

Article 4 of this Order amends article 8 of the 2010 Order. Article 8 provides that certain applications for planning permission must be accompanied by a design and access statement, as well as specifying the content which must be included within such statements. The effect of the amendment is to reduce the number of types of applications which must be accompanied by a design and access statement, and to simplify their required content. Under article 8, a design and access statement is required with applications for major development (subject to certain exceptions). A design and access statement is also required for certain applications for development which is not major development in a conservation area or a World Heritage Site.

Article 5 of this Order amends articles 2, 10, 29 and 36 of the 2010 Order and inserts a new article 10A. Article 10 of the 2010 Order sets out the general requirements which apply to an application for planning permission. Article 29 of the 2010 Order sets out the time periods within which a local planning authority must determine a valid application. The effect of the amendments to articles 10 and 29 and new article 10A is to provide a right of appeal for non-determination of applications where an applicant considers that a local authority require particulars or evidence that do not meet the requirements set out in article 29(4)(bb). In such cases, article 10A provides that the applicant may send the local planning authority a notice. Where an applicant sends such a notice and the authority do not waive the information requirement the application is then described as a ‘non-validated application’. On receipt of an article 10A notice a local planning authority could accept the notice and determine the application. Alternatively a local planning authority could reject the article 10A notice. This Order amends article 29 to provide that the local planning authority are required to determine a non-validated application within the time periods set out. If a local planning authority fails to determine a non-validated application within the time specified in article 29 of the 2010 Order then article 33 of that Order provides that an applicant may proceed to appeal on grounds of non-determination under section 78 of the 1990 Act. The amendments to articles 2 and 36 of the 2010 Order are consequential amendments.

Article 6 of this Order amends article 20 of the 2010 Order which provides a list of the consultations in relation to which the duty to respond in section 54 of the Planning and Compulsory Purchase Act 2004 applies. Article 6 amends this list by inserting the consultations referred to in paragraphs N(3) and (4) of Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (change of use). Paragraph N is inserted by the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013.

Article 7 of this Order amends article 31 of the 2010 Order. Article 31 provides that where a local planning authority determines an application for planning permission, they must issue a written notice of decision and set out the content of such notice. The effect of the amendment is to remove the requirement to include both a summary of reasons for the grant of permission and a summary of the policies and proposals in the development plan which are relevant to the decision to grant permission.

Article 8 of this Order makes transitional provision to the effect that the amendments to articles 2, 10, 29 and 36 and new article 10A of the 2010 Order do not apply in relation to an application for planning permission submitted before the coming into force of this Order.

An impact assessment will be prepared in relation to this instrument. The assessment will be placed in the Library of each House of Parliament and copies may be obtained from the Planning Directorate, the Department for communities and Local Government, Eland House, Bressenden Place, London SW1E 5DU or <http://www.communities.gov.uk>.

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STATUTORY INSTRUMENTS

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