

PPS 15 Consultation Paper

As part of the Government response to the Killian Pretty Review that was published in November 2008, the DCLG published its consultation on a new Planning Policy Statement 15: Planning for the historic environment ("PPS15") in July 2009. The new PPS 15 is intended to replace existing Planning Policy Guidance 15: Planning and the Historic Environment (first published in September 1994) and Planning Policy Guidance 16: Archaeology and Planning (published in November 1990).

In accordance with the commitment in the 2007 White Paper Planning for a Sustainable Future to separate policy from guidance, the draft PPS 15 does not include those elements of PPG 15 and PPG 16 that are considered to constitute guidance rather than policy, and the new PPS 15 is much shorter than the old PPGs.

PPS 15 will be supported by guidance prepared by English Heritage, which published an initial draft of historic environment practice guidance for consultation on its website (www.english-heritage.org.uk/pps). The consultation period in respect of the draft guidance ended on 30 October 2009, but the commentary to the draft PPS 15 indicates that the practice guidance is a living document and that it will be amended from time to time to take account of suggestions as they are made.

PPS 15 defines the historic environment in terms of heritage assets to be conserved in accordance with a set of principles and in proportion to their significance. The principles behind PPS 15 are to establish the significance of each heritage asset; to provide local authorities with adequate information about the assets in their area; to integrate the

conservation of heritage assets into the wider planning context and to increase the recognition of the potential of heritage assets to influence the design of developments; and to describe the historic environment in the context of regeneration, housing supply, economic development and climate change.

PPS 15 sets out thirteen policies relating to historic assets that should be taken into account by regional planning authorities in the preparation of revisions to regional spatial strategies, by the Mayor of London in relation to the spatial development strategy for London, and by local planning authorities in their local development documents.

The policies include plan making policies, for example setting out a positive strategy for the conservation and enhancement of the historic environment and assets in their area (Policy HE3); considering the use of Article 4 directions to remove permitted development rights where appropriate (Policy HE5); and considering how proactively to monitor the impact of planning policies and decisions on the historic environment (Policy HE6). There are also a number of development management policies, including a requirement for applicants to provide a description of the significance of the heritage assets affected, and the contribution of their setting to that significance (Policy HE8); the guiding principle is that the more significant the heritage asset, the greater the presumption in favour of its conservation, but it may be desirable to enhance a World Heritage Site or Conservation Area by development of elements that do not positively contribute to its significance (Policy HE10); local planning authorities should look

favourably on applications that preserve elements of the setting that enhance the significance of the asset, and weigh any loss of enhancement of the asset against the wider benefits of the application (Policy HE11); ensuring that if any heritage assets are to be lost, evidence and information is gathered from the site and made available to the public (Policy HE13).

The draft PPS 15 has been criticised by planners and heritage professionals, including the Institute of Historic Building Conservation (IHBC) and the Royal Town Planning Institute (RTPI), as putting the country's heritage at risk by regarding heritage assets as an obstacle to development, and as being a retrograde step from PPG 15 and PPG 16, which it seeks to replace. Notably, English Heritage, which is generally supportive of the draft, notes on its website that "there are a significant number of areas where the text needs to be improved". The draft PPS 15 has also been criticised by the Historic Towns Forum, by the Civic Societies Initiative and by Heritage Link.

Although ministers have stressed that the draft PPS 15 and the guidance regard the historic environment as an asset, and not as an obstacle to development, it is clear that many objectors remain to be convinced.

The consultation period ended on 30 October 2009 and a summary of responses will be published on the DCLG website by 31 January 2010.

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New Regulations to Allow Changes to Existing Planning Permissions

The Town & Country (General Development Procedure) (Amendment No.3) (England) Order 2009 (“the Amendment Order”) came into force (in England only) on 1 October 2009.

The Amendment Order enables S73 of the Town & Country Planning Act 1990 (“TCPA”) to be used to make minor material amendments to existing planning permissions. It also introduces a new procedure under which Local Planning Authorities (“LPAs”) may make non-material amendments to existing planning permissions. The Amendment Order also introduces a new procedure for replacing a planning permission in existence on 1 October 2009 and which has not been implemented, effectively extending the life of the planning permission.

The proposed fees for applications will require an amendment to the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989 (“the Fees Regulations”). The proposed fees for applications made under the new procedures are therefore subject to Parliamentary approval. It is expected that the Fees Regulations will be amended in late November/early December 2009.

Background

The new procedures are designed to allow for greater flexibility and certainty in the planning system and are in response to the Killian Pretty review which recommended in November 2008 that the Government should allow a more proportionate approach to minor material changes in development proposals after planning permission has been granted. This recommendation arose from concerns that some new planning applications were being required where relatively small changes were being sought.

The new regulations were also introduced following the dramatic downturn in the economic climate which led to a reduction in the implementation rate of major schemes that already had planning permission.

Minor Material Amendments

Section 73 of the TCPA enables applications for planning permission for development without complying with conditions attached to an earlier permission. It effectively gives power to amend or discharge planning conditions. The legal effect is however that a new planning permission is issued if the S73 application is successful: the existing planning permission is not amended.

S73 cannot be used to extend the life of a planning permission by extending the time within which the development must be started or an application for reserved matters approval must be made (S73(5) of the TCPA).

Before the Amendments Order came into force, minor material changes required a new planning application.

The Amendment Order streamlines the S73 process by removing the requirement in Article 4 of the General Development Procedure Order 1995 (“the GDPO”) to provide sufficient information to enable the LPA to identify the previous planning permission and the conditions with which the applicant seeks not to comply. This is because the application form must be made on a standard application form, which itself requires that information.

LPAs have discretion to decide whether to reconsult statutory consultees, save where the development is an environmental impact assessment development (“EIA development”) (Article 10 (1) (v) of the GDPO). Applications must be made on a standard application form that can be downloaded from the planning portal. Design and access statements are required.

DCLG guidance confirms that the application must be considered against the development plan and material considerations under S38(6) of the TCPA.

The S73 application results in a new planning permission with the same expiry date as the original permission. The decision will appear in the planning register, and there is a right of appeal under S78 of the TCPA. A flat fee of £170 is currently payable and no changes are proposed.

Non-Material Amendments

S96A of the TCPA provides power to LPAs to make a change to any planning permission relating to land in their area if they are satisfied that the change is not material (S96A (1) of the TCPA). S96A was inserted into the TCPA on 1 October 2009 by S190 of the Planning Act 2008.

A S96A application may only be made by or on behalf of a person with an interest in the land to which the planning permission relates. Where the application is made by a person who has an interest in part of the land to which the planning permission relates, the application may only be made in respect of that part of the land in which the person has an interest.

The application procedure is set out in Article 4F of the GDPO.

The application must be submitted on a standard application form (downloadable from the planning portal website) and the applicant must notify other landowners (and tenants of an agricultural holding) of the application. The other owners and agricultural holding tenants have 14 days to make representations to the LPA. In determining the application, the LPA must take into account any representations

made within the 14 day period. The LPA is required to give the applicant written notice of their decision within 28 days of receipt of the application, or within such longer period as may be agreed between the LPA and the applicant.

Since the S96A application is not an application for planning permission, design and access statements are not required.

At present there is no fee for an application for a non-material amendment. This will however be amended to a flat fee of £170, save for non-material amendments to householder applications for which the application fee will be £25.

Extensions of Time for Existing Planning Permissions

The Amendment Order introduces a new streamlined procedure (“an Article 10B Application”) that will enable the replacement of an extant planning permission which is due to lapse, effectively giving an extension of time for commencement of development and allowing a longer period for implementation. The previous planning permission will not be revoked but a new planning permission will be granted subject to the new time limit.

The new procedure applies to any planning permission (including permissions for major development) that is extant on 1 October 2009, and for which development has not yet begun.

For an Article 10B Application, plans and drawings are not required and Local Planning Authorities have discretion whether to reconsult statutory consultees, save where they are required to do so by the Town & Country Planning (Environmental Impact Assessment (England & Wales) Regulations 1999 (“the 1999 EIA Regulations”).

The fee for an application to extend the time limit is currently calculated as if it were a wholly new application. This will be however be amended to £500 for major developments, £50 for householder developments and £170 for other sizes of development.

Where there is an associated application for listed building consent or conservation area consent, the planning (Listed Buildings and Conservation Areas) (Amendment) (England) Regulations 2009 (“the LBCA Amendment Order”) removes the requirement for three copies of the form and a design and access statement to be submitted. The LBCA Amendment Order also came into force on 1 October 2009.

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