

Planning Act 2008 c. 29

s. 42 Duty to consult



Version 2 of 2

1 April 2010 - Present

Subjects

Planning

Keywords

Consultation; Development consent applications

[

42 Duty to consult

(1) The applicant must consult the following about the proposed application—

(a) such persons as may be prescribed,

(aa) the Marine Management Organisation, in any case where the proposed development would affect, or would be likely to affect, any of the areas specified in subsection (2),

(b) each local authority that is within [section 43](#),

(c) the Greater London Authority if the land is in Greater London, and

(d) each person who is within one or more of the categories set out in [section 44](#).

(2) The areas are—

- (a) waters in or adjacent to England up to the seaward limits of the territorial sea;
- (b) an exclusive economic zone, except any part of an exclusive economic zone in relation to which the Scottish Ministers have functions;
- (c) a Renewable Energy Zone, except any part of a Renewable Energy Zone in relation to which the Scottish Ministers have functions;
- (d) an area designated under [section 1\(7\)](#) of the [Continental Shelf Act 1964](#), except any part of that area which is within a part of an exclusive economic zone or Renewable Energy Zone in relation to which the Scottish Ministers have functions.

]

Notes

- 1 Existing s.42 renumbered as s.42(1) and s.42(1)(aa) and (2) inserted by Marine and Coastal Access Act 2009 c. 23 [Pt 1 c.4 s.23\(2\)](#) (April 1, 2010)

Part 5 APPLICATIONS FOR ORDERS GRANTING DEVELOPMENT CONSENT > Chapter 2 PRE-APPLICATION PROCEDURE > s. 42 Duty to consult

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s. 44 Categories for purposes of section 42(1)(d)



Law In Force

Version 3 of 3

1 April 2012 - Present

Subjects

Planning

Keywords

Consultation; Development consent applications; Proprietary interests

44 [Categories for purposes of section 42(1)(d)]¹

(1) A person is within Category 1 if the applicant, after making diligent inquiry, knows that the person is an owner, lessee, tenant (whatever the tenancy period) or occupier of the land.

(2) A person is within Category 2 if the applicant, after making diligent inquiry, knows that the person—

(a) is interested in the land, or

(b) has power—

(i) to sell and convey the land, or

(ii) to release the land.

(3) An expression, other than “the land”, that appears in subsection (2) of this section and also in [section 5\(1\)](#) of the [Compulsory Purchase Act 1965 \(c. 56\)](#) has in subsection (2) the meaning that it has in [section 5\(1\)](#) of that Act.

(4) A person is within Category 3 if the applicant thinks that, if the order sought by the proposed application were to be made and fully implemented, the person would or might be entitled—

(a) as a result of the implementing of the order,

(b) as a result of the order having been implemented, or

(c) as a result of use of the land once the order has been implemented,

to make a relevant claim. This is subject to subsection (5).

(5) A person is within Category 3 only if the person is known to the applicant after making diligent inquiry.

(6) In subsection (4) “*relevant claim*” means—

(a) a claim under [section 10](#) of the [Compulsory Purchase Act 1965 \(c. 56\)](#) (compensation where satisfaction not made for the taking, or injurious affection, of land subject to compulsory purchase);

(b) a claim under [Part 1](#) of the [Land Compensation Act 1973 \(c. 26\)](#) (compensation for depreciation of land value by physical factors caused by use of public works) [;]²

[

(c) a claim under [section 152\(3\)](#).

]²

Notes

1 Heading substituted by Marine and Coastal Access Act 2009 c. 23 Pt 1 c.4 s.23(3)(b) (April 1, 2010)

2 Added by Localism Act 2011 c. 20 Pt 6 c.6 s.135(8) (April 1, 2012)

Part 5 APPLICATIONS FOR ORDERS GRANTING DEVELOPMENT CONSENT > Chapter 2 PRE-APPLICATION PROCEDURE > s. 44 Categories for purposes of section 42(1)(d)

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s. 103 Secretary of State is to decide applications



Version 2 of 3

1 April 2012 - Present

Subjects

Planning

Keywords

Administrative decision-making; Development consent applications; Interpretation; Ministers' powers and duties

103 [Secretary of State is to decide applications]¹

(1) The Secretary of State has the function of deciding an application for an order granting development consent [.]²[...] ²

[...] ³

Notes

- 1 Heading substituted by Localism Act 2011 c. 20 [Sch.13\(1\) para.48\(4\)](#) (April 1, 2012)
- 2 Word and s.103(1)(a)-(b) repealed by Localism Act 2011 c. 20 [Sch.25\(20\) para.1](#) (April 1, 2012)
- 3 Repealed by Localism Act 2011 c. 20 [Sch.25\(20\) para.1](#) (April 1, 2012)

*Part 6 DECIDING APPLICATIONS FOR ORDERS GRANTING DEVELOPMENT CONSENT > Chapter 5
DECISIONS ON APPLICATIONS > s. 103 Secretary of State is to decide applications*

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s. 104 Decisions in cases where national policy statement has effect



Law In Force With Amendments Pending

Version 3 of 4

1 April 2012 - Present

Subjects

Planning

Keywords

Administrative decision-making; Development consent applications; Ministers' powers and duties; National policy statements

104 [Decisions in cases where national policy statement has effect]¹

(1) This section applies in relation to an application for an order granting development consent if [a national policy statement has effect in relation to development of the description to which the application relates]².

(2) In deciding the application the [Secretary of State]³ must have regard to—

(a) any national policy statement which has effect in relation to development of the description to which the application relates (a “relevant national policy statement”),

[

(aa) the appropriate marine policy documents (if any), determined in accordance with [section 59](#) of the [Marine and Coastal Access Act 2009](#),

] ⁴

(b) any local impact report (within the meaning given by [section 60\(3\)](#)) submitted to the [Secretary of State]⁵ before the deadline specified in a notice under [section 60\(2\)](#),

(c) any matters prescribed in relation to development of the description to which the

application relates, and

(d) any other matters which the [Secretary of State]³ thinks are both important and relevant to [the Secretary of State's]⁶ decision.

(3) The [Secretary of State]⁷ must decide the application in accordance with any relevant national policy statement, except to the extent that one or more of subsections (4) to (8) applies.

(4) This subsection applies if the [Secretary of State]⁷ is satisfied that deciding the application in accordance with any relevant national policy statement would lead to the United Kingdom being in breach of any of its international obligations.

(5) This subsection applies if the [Secretary of State is]⁸ satisfied that deciding the application in accordance with any relevant national policy statement would lead to the [Secretary of State being in breach of any duty imposed on the Secretary of State]⁹ by or under any enactment.

(6) This subsection applies if the [Secretary of State]¹⁰ is satisfied that deciding the application in accordance with any relevant national policy statement would be unlawful by virtue of any enactment.

(7) This subsection applies if the [Secretary of State]¹⁰ is satisfied that the adverse impact of the proposed development would outweigh its benefits.

(8) This subsection applies if the [Secretary of State]¹⁰ is satisfied that any condition prescribed for deciding an application otherwise than in accordance with a national policy statement is met.

(9) For the avoidance of doubt, the fact that any relevant national policy statement identifies a location as suitable (or potentially suitable) for a particular description of development does not prevent one or more of subsections (4) to (8) from applying.

Notes

- 1 Heading substituted by Localism Act 2011 c. 20 [Sch.13\(1\) para.49\(7\)](#) (April 1, 2012)
- 2 Words substituted by Localism Act 2011 c. 20 [Sch.13\(1\) para.49\(2\)](#) (April 1, 2012)
- 3 Words substituted by Localism Act 2011 c. 20 [Sch.13\(1\) para.49\(3\)\(a\)](#) (April 1, 2012)
- 4 Added by Marine and Coastal Access Act 2009 c. 23 [Pt 3 c.4 s.58\(5\)](#) (November 12, 2010)
- 5 Word substituted by Localism Act 2011 c. 20 [Sch.13\(1\) para.49\(3\)\(b\)](#) (April 1, 2012)
- 6 Word substituted by Localism Act 2011 c. 20 [Sch.13\(1\) para.49\(3\)\(c\)](#) (April 1, 2012)
- 7 Words substituted by Localism Act 2011 c. 20 [Sch.13\(1\) para.49\(4\)](#) (April 1, 2012)
- 8 Words substituted by Localism Act 2011 c. 20 [Sch.13\(1\) para.49\(5\)\(a\)](#) (April 1, 2012)
- 9 Words substituted by Localism Act 2011 c. 20 [Sch.13\(1\) para.49\(5\)\(b\)](#) (April 1, 2012)
- 10 Words substituted by Localism Act 2011 c. 20 [Sch.13\(1\) para.49\(6\)](#) (April 1, 2012)

Part 6 DECIDING APPLICATIONS FOR ORDERS GRANTING DEVELOPMENT CONSENT > Chapter 5 DECISIONS ON APPLICATIONS > s. 104 Decisions in cases where national policy statement has effect

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s. 114 Grant or refusal of development consent



Law In Force

Version 2 of 2

1 April 2012 - Present

Subjects

Planning

Keywords

Administrative decision-making; Development consent applications; Development consent orders; Ministers' powers and duties

114 Grant or refusal of development consent

(1) When [the Secretary of State]¹ has decided an application for an order granting development consent, the [Secretary of State]² must either—

(a) make an order granting development consent, or

(b) refuse development consent.

(2) The Secretary of State may by regulations make provision regulating the procedure to be followed if the [Secretary of State]³ proposes to make an order granting development consent on terms which are materially different from those proposed in the application.

Notes

1 Word substituted by Localism Act 2011 c. 20 [Sch.13\(1\) para.55\(2\)\(a\)](#) (April 1, 2012)

2 Words substituted by Localism Act 2011 c. 20 [Sch.13\(1\) para.55\(2\)\(b\)](#) (April 1, 2012)

Notes

- 3 Words substituted by Localism Act 2011 c. 20 [Sch.13\(1\) para.55\(3\)](#) (April 1, 2012)

Part 6 DECIDING APPLICATIONS FOR ORDERS GRANTING DEVELOPMENT CONSENT > Chapter 8 GRANT OR REFUSAL > s. 114 Grant or refusal of development consent

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s. 120 What may be included in order granting development consent



Law In Force With Amendments Pending

Version 2 of 3

1 April 2012 - Present

Subjects

Planning

Keywords

Development consent orders

120 What may be included in order granting development consent

(1) An order granting development consent may impose requirements in connection with the development for which consent is granted.

(2) The requirements may in particular include [—]¹[

(a) requirements corresponding to conditions which could have been imposed on the grant of any permission, consent or authorisation, or the giving of any notice, which (but for [section 33\(1\)](#)) would have been required for the development;

(b) requirements to obtain the approval of the Secretary of State or any other person, so far as not within paragraph (a).

]¹

(3) An order granting development consent may make provision relating to, or to matters ancillary to, the development for which consent is granted.

(4) The provision that may be made under subsection (3) includes in particular provision for or relating to any of the matters listed in [Part 1 of Schedule 5](#).

(5) An order granting development consent may—

- (a) apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order;
- (b) make such amendments, repeals or revocations of statutory provisions of local application as appear to the [Secretary of State]² to be necessary or expedient in consequence of a provision of the order or in connection with the order;
- (c) include any provision that appears to the [Secretary of State]² to be necessary or expedient for giving full effect to any other provision of the order;
- (d) include incidental, consequential, supplementary, transitional or transitory provisions and savings.

(6) In subsection (5) “*statutory provision*” means a provision of an Act or of an instrument made under an Act.

(7) Subsections (3) to (6) are subject to subsection (8) and the following provisions of this Chapter.

[

(8) With the exception of provision made under subsection (3) for or relating to any of the matters listed in [paragraph 32B of Schedule 5](#), an order granting development consent may not include—

- (a) provision creating offences,
- (b) provision conferring power to create offences, or
- (c) provision changing an existing power to create offences.

]³

(9) To the extent that provision for or relating to a matter may be included in an order

granting development consent, none of the following may include any such provision—

- (a) an order under [section 14](#) or [16](#) of the [Harbours Act 1964 \(c. 40\)](#) (orders in relation to harbours, docks and wharves);
- (b) an order under [section 4\(1\)](#) of the [Gas Act 1965 \(c. 36\)](#) (order authorising storage of gas in underground strata);
- (c) an order under [section 1](#) or [3](#) of the [Transport and Works Act 1992 \(c. 42\)](#) (orders as to railways, tramways, inland waterways etc.).

Notes

- 1 Existing text renumbered as s.120(2)(a) and s.120(2)(b) inserted by [Localism Act 2011 c. 20 Pt 6 c.6 s.140](#) (April 1, 2012)
- 2 Words substituted by [Localism Act 2011 c. 20 Sch.13\(1\) para.60\(2\)](#) (April 1, 2012)
- 3 Substituted by [Localism Act 2011 c. 20 Sch.13\(1\) para.60\(3\)](#) (April 1, 2012)

*Part 7 ORDERS GRANTING DEVELOPMENT CONSENT > Chapter 1 CONTENT OF ORDERS > General > s. 120
What may be included in order granting development consent*

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s. 122 Purpose for which compulsory acquisition may be authorised



Version 2 of 2

1 April 2012 - Present

Subjects

Planning

Keywords

Compulsory purchase; Conditions; Development consent orders; Ministers' powers and duties

122 Purpose for which compulsory acquisition may be authorised

(1) An order granting development consent may include provision authorising the compulsory acquisition of land only if the [Secretary of State]¹ is satisfied that the conditions in subsections (2) and (3) are met.

(2) The condition is that the land—

(a) is required for the development to which the development consent relates,

(b) is required to facilitate or is incidental to that development, or

(c) is replacement land which is to be given in exchange for the order land under [section 131 or 132](#).

(3) The condition is that there is a compelling case in the public interest for the land to be acquired compulsorily.

Notes

- 1 Words substituted by Localism Act 2011 c. 20 [Sch.13\(1\) para.62](#) (April 1, 2012)

Part 7 ORDERS GRANTING DEVELOPMENT CONSENT > Chapter 1 CONTENT OF ORDERS > Compulsory acquisition > s. 122 Purpose for which compulsory acquisition may be authorised

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s. 123 Land to which authorisation of compulsory acquisition can relate



Version 2 of 2

1 April 2012 - Present

Subjects

Planning

Keywords

Authorisation; Compulsory purchase; Development consent orders; Ministers' powers and duties

123 Land to which authorisation of compulsory acquisition can relate

(1) An order granting development consent may include provision authorising the compulsory acquisition of land only if the [Secretary of State]¹ is satisfied that one of the conditions in subsections (2) to (4) is met.

(2) The condition is that the application for the order included a request for compulsory acquisition of the land to be authorised.

(3) The condition is that all persons with an interest in the land consent to the inclusion of the provision.

(4) The condition is that the prescribed procedure has been followed in relation to the land.

Notes

¹ Words substituted by Localism Act 2011 c. 20 [Sch.13\(1\) para.62](#) (April 1, 2012)

Notes

Part 7 ORDERS GRANTING DEVELOPMENT CONSENT > Chapter 1 CONTENT OF ORDERS > Compulsory acquisition > s. 123 Land to which authorisation of compulsory acquisition can relate

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Schedule 5 PROVISION RELATING TO, OR TO MATTERS ANCILLARY TO, DEVELOPMENT

para. 10



Version 1 of 1

1 March 2010 - Present

Subjects

Planning

Keywords

Development consent; Proprietary rights

10

The protection of the property or interests of any person.

*Schedule 5 PROVISION RELATING TO, OR TO MATTERS ANCILLARY TO, DEVELOPMENT > Part 1 THE
MATTERS > para. 10*

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