

Planning Act 2008 c. 29

s. 103 Secretary of State is to decide applications



Law In Force With Amendments Pending

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- 2 Word and s.103(1)(a)-(b) repealed by Localism Act 2011 c. 20 [Sch.25\(20\) para.1](#) (April 1, 2012)
- 3 Repealed by Localism Act 2011 c. 20 [Sch.25\(20\) para.1](#) (April 1, 2012)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

Contains public sector information licensed under the Open Government Licence v3.0.

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

Contains public sector information licensed under the Open Government Licence v3.0.

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

Contains public sector information licensed under the Open Government Licence v3.0.

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*

Contains public sector information licensed under the Open Government Licence v3.0.

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

Contains public sector information licensed under the Open Government Licence v3.0.

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

Contains public sector information licensed under the Open Government Licence v3.0.

s. 131 Commons, open spaces etc: compulsory acquisition of land



Version 3 of 3

25 June 2013 - Present

Subjects

Planning

Keywords

Commons; Compulsory purchase; Development consent orders; Ministers' powers and duties; Open spaces

131 Commons, open spaces etc: compulsory acquisition of land

(1) This section applies to any land forming part of a common, open space or fuel or field garden allotment.

(2) This section does not apply in a case to which [section 132](#) applies.

(3) An order granting development consent is subject to special parliamentary procedure, to the extent that the order authorises the compulsory acquisition of land to which this section applies, [unless—]¹[

(a) the Secretary of State is satisfied that one of subsections (4) to (5) applies, and

(b) that fact, and the subsection concerned, are recorded in the order or otherwise in the instrument or other document containing the order.

]¹

(4) This subsection applies if—

(a) replacement land has been or will be given in exchange for the order land, and

(b) the replacement land has been or will be vested in the prospective seller and subject to the same rights, trusts and incidents as attach to the order land.

[

(4A) This subsection applies if—

(a) the order land is, or forms part of, an open space,

(b) none of the order land is of any of the other descriptions in subsection (1),

(c) either—

(i) there is no suitable land available to be given in exchange for the order land, or

(ii) any suitable land available to be given in exchange is available only at prohibitive cost, and

(d) it is strongly in the public interest for the development for which the order grants consent to be capable of being begun sooner than is likely to be possible if the order were to be subject (to any extent) to special parliamentary procedure.

(4B) This subsection applies if—

(a) the order land is, or forms part of, an open space,

(b) none of the order land is of any of the other descriptions in subsection (1), and

(c) the order land is being acquired for a temporary (although possibly long-lived) purpose.

]²

(5) This subsection applies if—

(a) the order land does not exceed 200 square metres in extent or is required for the widening or drainage of an existing highway or partly for the widening and partly for the drainage of such a highway, and

(b) the giving in exchange of other land is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public.

[...]³

(11) If an order granting development consent authorises the compulsory acquisition of land to which this section applies, it may include provision—

(a) for vesting replacement land given in exchange as mentioned in subsection (4)(a) in the prospective seller and subject to the rights, trusts and incidents mentioned in subsection (4)(b), and

(b) for discharging the order land from all rights, trusts and incidents to which it is subject.

(12) In this section—

“*common*”, “*fuel or field garden allotment*” and “*open space*” have the same meanings as in [section 19 of the Acquisition of Land Act 1981 \(c. 67\)](#);

“*the order land*” means the land authorised to be compulsorily acquired;

“*the prospective seller*” means the person or persons in whom the order land is vested;

“*replacement land*” means land which is not less in area than the order land and which is no less advantageous to the persons, if any, entitled to rights of common or other rights, and to the public.

Notes

- 1 Words substituted by Growth and Infrastructure Act 2013 c. 27 s.24(2)(a) (June 25, 2013: substitution has effect on June 25, 2013 as specified in SI 2013/1124 art.4(c) subject to savings and transitional provisions specified in SI 2013/1124 art.7 and applies in relation to any order granting development consent which is made after the amendment comes into force)
- 2 Added by Growth and Infrastructure Act 2013 c. 27 s.24(2)(b) (June 25, 2013: insertion has effect on June 25, 2013 as specified in SI 2013/1124 art.4(c) subject to savings and transitional provisions specified in SI 2013/1124 art.7 and applies in relation to any order granting development consent which is made after the amendment comes into force)
- 3 Repealed by Growth and Infrastructure Act 2013 c. 27 s.24(2)(c) (June 25, 2013: repeal has effect on June 25, 2013 as specified in SI 2013/1124 art.4(c) subject to savings and transitional provisions specified in SI 2013/1124 art.7 and applies in relation to any order granting development consent which is made after the amendment comes into force)

Part 7 ORDERS GRANTING DEVELOPMENT CONSENT > Chapter 1 CONTENT OF ORDERS > Compulsory acquisition > s. 131 Commons, open spaces etc: compulsory acquisition of land

Contains public sector information licensed under the Open Government Licence v3.0.

s. 132 Commons, open spaces etc: compulsory acquisition of rights over land



Version 3 of 3

25 June 2013 - Present

Subjects

Planning

Keywords

Commons; Compulsory purchase; Development consent orders; Ministers' powers and duties; Open spaces; Proprietary rights

132 Commons, open spaces etc: compulsory acquisition of rights over land

(1) This section applies to any land forming part of a common, open space or fuel or field garden allotment.

(2) An order granting development consent is subject to special parliamentary procedure, to the extent that the order authorises the compulsory acquisition of a right over land to which this section applies by the creation of a new right over land, [unless—]¹[

(a) the Secretary of State is satisfied that one of subsections (3) to (5) applies, and

(b) that fact, and the subsection concerned, are recorded in the order or otherwise in the instrument or other document containing the order.

]¹

(3) This subsection applies if the order land, when burdened with the order right, will be no less advantageous than it was before to the following persons—

(a) the persons in whom it is vested,

(b) other persons, if any, entitled to rights of common or other rights, and

(c) the public.

(4) This subsection applies if—

(a) replacement land has been or will be given in exchange for the order right, and

(b) the replacement land has been or will be vested in the persons in whom the order land is vested and subject to the same rights, trusts and incidents as attach to the order land (ignoring the order granting development consent).

[

(4A) This subsection applies if—

(a) the order land is, or forms part of, an open space,

(b) none of the order land is of any of the other descriptions in subsection (1),

(c) either—

(i) there is no suitable land available to be given in exchange for the order land, or

(ii) any suitable land available to be given in exchange is available only at prohibitive cost, and

(d) it is strongly in the public interest for the development for which the order grants consent to be capable of being begun sooner than is likely to be possible if the order were to be subject (to any extent) to special parliamentary procedure.

(4B) This subsection applies if—

- (a) the order land is, or forms part of, an open space,
- (b) none of the order land is of any of the other descriptions in subsection (1), and
- (c) the order land is being acquired for a temporary (although possibly long-lived) purpose.

]²

(5) This subsection applies if—

- (a) the order land does not exceed 200 square metres in extent or the order right is required in connection with the widening or drainage of an existing highway or in connection partly with the widening and partly with the drainage of such a highway, and
- (b) the giving of other land in exchange for the order right is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public.

[...]³

(11) If an order granting development consent authorises the compulsory acquisition of a right over land to which this section applies by the creation of a new right over land, it may include provision—

- (a) for vesting replacement land given in exchange as mentioned in subsection (4)(a) in the persons in whom the order land is vested and subject to the rights, trusts and incidents mentioned in subsection (4)(b), and
- (b) for discharging the order land from all rights, trusts and incidents to which it has previously been subject so far as their continuance would be inconsistent with the exercise of the order right.

(12) In this section—

“common”, *“fuel or field garden allotment”* and *“open space”* have the same meanings as in [section 19](#) of the [Acquisition of Land Act 1981 \(c. 67\)](#);

“*the order land*” means the land to which this section applies over which the order right is to be exercisable;

“*the order right*” means the right authorised to be compulsorily acquired;

“*replacement land*” means land which will be adequate to compensate the following persons for the disadvantages which result from the compulsory acquisition of the order right—

- (a) the persons in whom the order land is vested,
- (b) the persons, if any, entitled to rights of common or other rights over the order land, and
- (c) the public.

Notes

- 1 Words substituted by Growth and Infrastructure Act 2013 c. 27 s.24(3)(a) (June 25, 2013: substitution has effect on June 25, 2013 as specified in SI 2013/1124 art.4(c) subject to savings and transitional provisions specified in SI 2013/1124 art.7 and applies in relation to any order granting development consent which is made after the amendment comes into force)
- 2 Added by Growth and Infrastructure Act 2013 c. 27 s.24(3)(b) (June 25, 2013: insertion has effect on June 25, 2013 as specified in SI 2013/1124 art.4(c) subject to savings and transitional provisions specified in SI 2013/1124 art.7 and applies in relation to any order granting development consent which is made after the amendment comes into force)
- 3 Repealed by Growth and Infrastructure Act 2013 c. 27 s.24(3)(c) (June 25, 2013: repeal has effect on June 25, 2013 as specified in SI 2013/1124 art.4(c) subject to savings and transitional provisions specified in SI 2013/1124 art.7 and applies in relation to any order granting development consent which is made after the amendment comes into force)

Part 7 ORDERS GRANTING DEVELOPMENT CONSENT > Chapter 1 CONTENT OF ORDERS > Compulsory acquisition > s. 132 Commons, open spaces etc: compulsory acquisition of rights over land

Contains public sector information licensed under the Open Government Licence v3.0.

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

Contains public sector information licensed under the Open Government Licence v3.0.