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Mr Jeffrey Penfold
Major Applications & Plans
The Planning Inspectorate
Room 3/18 Eagle Wing
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25 September 2013

Dear Mr Penfold,

PLANNING ACT 2008, SECTIONS 131 AND 132

I am sorry for the long delay in replying to both your email of 24 June 2013 to Ian Bennett and the accompanying letter from Simone Wilding of the same date which was forwarded to the Commons, Access and Inland Waterways Team within Defra. The letter set out how the Planning Inspectorate intended to handle the arrangements for applications involving the compulsory acquisition of common land or rights of common under, respectively, sections 131 or 132 of the Planning Act 2008 as now amended by the Growth and Infrastructure Act 2013.

We have noted the information that no applications seeking such compulsory acquisitions were submitted between 19 October 2012 and 24 June 2013 (inclusive).

We are content for applications, which have been received on or after 25 June 2013 and which involve the compulsory acquisition of common land under section 131 of the Planning Act 2008 or the compulsory acquisition of rights of common land under section 132 of that Act, to be considered by the Planning Inspectorate as part of the Development Consent Order (DCO) process.

We currently have a Service Level Agreement (SLA) for the period 1 April 2013 to 31 March 2014 signed by both Defra and the Planning Inspectorate. Schedule A in Part 2 of the SLA provides for services "in respect of the handling and determinations of applications under sections 131 and 132 of the Planning Act 2008 to effect compulsory purchase of common land and town or village greens, in relation to major infrastructure projects". We consider that the SLA should continue so that applications are considered in accordance with the legislation by the Planning Inspectorate's Major Applications and Plans team rather than the Common Land Casework Team on this Department's behalf. Therefore the costs of any work carried out by the Planning Inspectorate would be covered by the terms of the current SLA.



Consultation of any commoners and any inquiry needs to happen as part of the DCO pre-application and application process. When consulting those with an interest in the land, in the case of commons, this must include those holding and/or exercising rights of common. The definition of common land includes town and village greens so consultation in the case of town and village greens, must include local people exercising their right to take part in lawful sports and pastimes.

The consideration of any application where common land falls under sections 131 or 132 of the Planning Act 2008 must have regard to any Defra policy guidance that has been issued on common land. In making your recommendation to the relevant Secretary of State on the terms of the DCO, it is therefore important that any recommendations on whether or not a case should proceed to special parliamentary procedure under sections 131 or 132 of that Act are consistent with the Defra guidance on what constitutes replacement land which is “no less advantageous to the public”.

We would expect the Major Applications and Plans Team to make internal arrangements with the Common Land Casework Team to update the casework spread sheet which is currently provided to Defra by that latter team. In addition the Planning Inspectorate should take steps to inform the relevant Commons Registration Authorities of any DCO made under the Planning Act 2008 authorising the compulsory purchase of common land (or town and village greens) so that the registers can be subsequently amended following application by the person acquiring the land.

We should be grateful if you could ensure that the Commons, Access and Inland Waterways Team in Defra is informed about every application you receive under either sections 131 and 132 of the Planning Act 2008 involving common land since, as I mentioned at the beginning of this letter, we have the lead responsibility for policy on common land and town and village greens within Defra.

Yours sincerely,

RICHARD HEPBURN
Commons, Access and Inland Waterways Team





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Mr Richard Hepburn
Commons, Access and Inland
Waterways Team
Department for Environment,
Food and Rural Affairs
109, Temple Quay House
Bristol

Your Ref:

Our Ref:

Date: 10 October 2013

Dear Richard,

PLANNING ACT 2008, SECTIONS 131 AND 132 - COMMON LAND

We can now confirm that there are no applications proposing compulsory acquisition of common land (or rights in common land) which are caught by the transitional provisions in the Growth and Infrastructure Act 2013 (Commencement No 1 and Transitional and Saving Provisions) Order 2013. We don't anticipate therefore that it will be necessary to put in place the handling arrangements originally proposed in our letter of 24 June 2013. However, (and in response to your letter of 25 September addressed to Jeffrey Penfold), I thought it would be helpful to set out how we expect applications which were made on or after 25 June 2013 (and which engage ss 131 or 132 in relation to common land) to be dealt with and whether any internal arrangements need to be put in place.

Statutory context

To the extent that it authorises the compulsory acquisition of common land (or a right in common land) a development consent order (DCO) will be subject to special parliamentary procedure (SPP) unless the Secretary of State is satisfied about certain matters. These matters are set out in subsections (4) to (5) of s131 (and subsections (3) to (5) of s132) and, as you know, include the situation where replacement common land has been or will be given in exchange for the order land, and 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.

Whilst the Secretary of State must be satisfied about these matters to enable the DCO to be made without being subject to SPP, the Growth and Infrastructure Act 2013 has streamlined processes under the Planning Act and amended ss131 and 132 to remove the need for certification and for a public local inquiry. Instead, the Secretary of State must simply record satisfaction in the DCO that one of the subsections applies. There will therefore be no requirement for separate ss 131 or 132 certificate applications to be made to Defra. CLG guidance related to procedures for the compulsory acquisition of land (see paragraph 7 of Annex A

<https://www.gov.uk/government/publications/planning-act-2008-procedures-for-the->

[compulsory-acquisition-of-land](#)) may be of assistance.

There is no definition of “Secretary of State” in the Planning Act and the Growth and Infrastructure Act did not make any consequential amendments defining the Secretary of State with duties under ss131 and 132. It is our understanding that the Secretary of State responsible for addressing the tests under ss131 and 132 is therefore the Secretary of State responsible for the infrastructure (which is the subject matter of the DCO) with power to grant or refuse development consent under s114 of the Planning Act.

Approach to applications which engage ss131 or 132 in relation to common land

Pre-application

Applications which include a request for compulsory acquisition and where the land includes special category land (such as common land) must be accompanied by (amongst other things) the following prescribed documents:

- Statement of reasons – justifying compulsory acquisition
- Book of Reference – part 5 of which must specify the special category land, land which is subject to SPP and replacement land and the area in square metres of those plots
- Funding statement indicating how compulsory acquisition will be funded
- Land plan – which must identify the special category land and replacement land

We will be advising applicants to provide information in the statement of reasons which will enable the Examining Authority to address the matters under ss131 and 132 and provide a recommendation to the Secretary of State about whether the matters are satisfied. This information should also be sufficient to enable the Secretary of State to consider matters such as relative size and proximity of the replacement land, current use of proposed replacement land and the overall extent of common land being acquired compulsorily as identified in Annex A (paragraphs 8 to 11) of the CLG guidance related to procedures for the compulsory acquisition of land.

The commoners (as persons with an interest in the land) must be consulted by the applicant before the application is made.

Examination

Matters relating to ss131 and 132 will be considered as part of the DCO examination through questions, compulsory acquisition (or other) hearings (whether or not held solely for s131 matters) and site visits under the procedures established by the Planning Act 2008 and Infrastructure Planning (Examination Procedure) Rules 2010.

The commoners (as interested parties¹ and affected persons²) will be able to participate in the examination.

Reporting

The Examining Authority’s findings and conclusions in relation to the matters in subsections (4) to (5) of s131 (and subsections (3) to (5) of s132) will be set out in the report made to the (relevant) Secretary of State³. As noted above, this will be the Secretary of State with responsibility for the infrastructure and not the Secretary of State for Environment, Food and Rural Affairs.

¹ Persons notified of the acceptance of the application in accordance with s56 (2) (d)

² Persons with an interest in land which is subject to compulsory acquisition notified to the Secretary of State in accordance with s59

³ In accordance with s74 (2)

Decision

In the event that the Secretary of State decides that the DCO should be made and is satisfied (having considered the Examining Authority's report) that one of the conditions applies, the DCO should record that fact.

Internal arrangements

As set out above there will be no requirement for a separate local inquiry and therefore no need to draw on the Service Level Agreement.

There is no requirement under the Planning Act for the Secretary of State (or the Planning Inspectorate under delegated powers) to inform the relevant Commons Registration Authority (CRA) of a DCO which authorises the compulsory acquisition of common land. However, the CRA (being a county council in England; a district council in England for an area without a county council; a London borough council or a county or county borough council in Wales) is also an interested party for the purposes of the Planning Act⁴ and will therefore be notified by the Planning Inspectorate of the Secretary of State's decision.

I hope you find this clarification useful. Please do not hesitate to contact me if you would like any further information or if we can be of any further assistance.

Yours sincerely

Simone Wilding

Head of Case Management
National Infrastructure

⁴ S102(c) - an interested party includes the local authority in whose area the land is located and local authority includes a county council or district council, a London borough council and a county or county borough council in Wales.