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Andrew Maginn
DCLG

Your Ref:

By email only

Our Ref:

Date: 24 October 2014

Dear Andrew

PLANNING ACT 2008, SECTIONS 131 and 132 OPEN SPACE

As you will be aware the Growth and Infrastructure Act has now been in operation for some time. It would therefore be helpful to clarify the arrangements for applications proposing compulsory acquisition of open space and (or rights in open space) taking account of the amendments brought into force by the Growth and Infrastructure Act 2013. We agreed corresponding arrangements for common land with the Department for the Environment, Foods and Rural Affairs last year. I attach their reply letter for your information.

Statutory context

To the extent that a development consent order authorises the compulsory acquisition of open space (or a right in open space) it 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 (3) to (5) of s132 and, as you know, include the situation where replacement open space 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 s131 or 132 certificate applications to be made to the Department of Communities and Local Government (DCLG). DCLG 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.

The Secretary of State responsible for applying the tests under ss131 and 132 is the Secretary of State who is ultimately responsible for determining the development consent for the infrastructure project. For example, the Secretary of State for Energy and Climate Change will determine applications concerning energy projects; the Secretary of State for Transport will determine applications for transport projects, the Secretary of State for Communities and Local Government will determine applications relating to hazardous waste and applications concerning waste water and water supply will be a joint decision by the Secretary of State for Communities and Local Government and the Secretary of State for the Environment Food and Rural Affairs.

Approach to applications which engage ss131 and 132 in relation to open space

Pre-application

Applications which include a request for compulsory acquisition and where the land includes special category land (such as open space) 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 could be subject to SPP and replacement land and the area in square metres of those plots;
- Funding statement indicating how compulsory acquisition will be funded; and
- Land plan – which must identify the special category land and replacement land.

We are advising applicants to provide information in the statement of reasons which will enable the Examining Authority to address the matters under ss 131 and 132 and provide a recommendation to the Secretary of State about whether the matters are satisfied.

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 ss131 or 132 matters) and site inspections under the procedures established by the Planning Act 2008 and Infrastructure Planning (Examination Procedure) Rules 2010 (as amended).

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 State.¹ As noted above, this will be the Secretary of State with responsibility for making the decision on the infrastructure.

¹ 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.

Please do not hesitate to contact me should you require any further information or clarification in relation to any of the matters set out above.

Yours sincerely

Simone Wilding

Simone Wilding
Head of NI Case Management

Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

A record of the advice which is provided will be recorded on the Planning Inspectorate website together with the name of the person or organisation who asked for the advice. The privacy of any other personal information will be protected in accordance with our Information Charter which you should view before sending information to the Planning Inspectorate.



Department for
Communities and
Local Government

Simone wilding
The Planning Inspectorate

By email only

24 October 2014

Dear Simone

PLANNING ACT 2008, SECTIONS 131 and 132, OPEN SPACES

Thank you for your letter of 23 October 2014 clarifying arrangements for applications proposing compulsory acquisition of open spaces (or rights in open spaces) taking account of the amendments brought into force by the Growth and Infrastructure Act 2013.

I agree with your clarification of these arrangements.

Yours sincerely

Andrew Maginn

Head, major infrastructure planning policy

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