

April 2015 sees the introduction of consolidating legislation, the introduction of the Community Infrastructure Levy pooling restrictions and a swathe of other minor changes to the planning system. Planners should be mindful of the various changes and check the statutory provisions regularly to avoid errors particularly following minor amendments and revisions to the General Permitted Development and Development Management Procedure Orders.

### Community Infrastructure Levy – what's new?

The pooling restriction came into effect on 6<sup>th</sup> April, restricting contributions to no more than five since 6<sup>th</sup> April 2010 for a specific project or piece of infrastructure. For authorities yet to introduce the Levy the best advice is to identify as many individual projects as possible (without artificially creating them. Projects must be evidence based and justifiable as developers will request details as they seek to reduce the impact of contributions on their developments). As projects are delivered, new projects can then be created, giving a new five contribution allowance. This approach is of course untested and it will remain to be seen how inspectors react.

The Community Infrastructure Levy (Amendment) Regulations 2015 came into force on 1st April 2015. Authorities who have introduced the Levy should be aware of changes which extend the existing social housing relief provisions to cover a wider range of dwellings (such as dwellings let at 80% market rent to Eligible Households by private landlords).

### Environmental Impact Amendments

The Town and Country Planning (Environmental Impact Assessment) (Amendment) Regulations 2015 came into force on 6th April 2015 and raised the threshold for applications to the LPA or Secretary of State for screening decisions (reducing the burden on LPA's) for certain types of development as follows:

- residential development exceeding 150 dwellings or five hectares or including urban development of more than one hectare (not including dwellings).
- urban development exceeding one hectare
- industrial development exceeding five hectares

## Permitted Development Rights – amendments and consolidation

### Changes of use affecting drinking establishments

The Town & Country Planning (General Permitted Development) (Amendment) Order 2015 came into force on 6th April and amends the original 1995 order (and is carried through in the 2015 consolidation) so as to restrict changes of use affecting drinking establishments listed as Assets of Community Value under the Localism Act 2011. Developers are obliged to serve notice on LPA's to establish whether a building has been listed before commencing development. Development is not permitted where the building is listed.

### 1995 Order replaced

The Town & Country Planning (General Permitted Development) (England) Order 2015 comes into effect on 15th April 2015. It consolidates the previous order and the amendments over the last 20 years (as well as some new provisions). It is not surprising that the order has multiple minor wording tweaks which, in general, do not change the effect of the provisions but are intended to clarify the original meaning, as well as numbering changes. A prime example is Class Q in Part 3 (previously Class MB) dealing with change of use from agricultural buildings to dwellings. The various amendments to the wording attempt to clarify the often difficult to understand provisions of the previous enactment but do not change the effect. Areas have however been identified where changes (not highlighted in the explanatory note) may have more of an impact – an example of this being within Part 1 Class A relating to dwellings which previously stated that development was not permitted where it extended forward of the principal or side elevation and fronts a highway. This provision now restricts any development to the principal elevation (whether it fronts a highway or not) or development to the side elevation if it fronts a highway.

It is yet to be established how many of these minor changes appear throughout the order and it is therefore best practice to review any permitted development right before giving advice or considering whether permission is required.

The identified amendments to the provisions are:

- The time limit for larger home extensions is extended to 30 May 2019
- rights for extensions to non-domestic premises have been made permanent.
- new permitted development rights for the following changes of use:
  - shop, financial and professional services, betting office, pay day loan shop or casino to restaurants and cafés

- shop, betting office or payday loan shop to financial and professional services (previously limited to a change from shop to deposit-taker)
- shop, financial and professional services, a betting office or pay day loan shop to assembly and leisure
- casinos or amusement arcades to dwelling houses; and
- storage or distribution centre to dwelling houses

Other rights include:

- the introduction a right for the temporary use of buildings and land for commercial film-making
- works to non-domestic premises relating to:
  - provision of collection facilities within the curtilage of a shop (i.e. "click and collect")
  - modifying shop loading bays, including increasing their size by no more than 20%; and the extension or alteration of a building and the installation of replacement plant or machinery on land used for a waste management facility
  - installation of solar photovoltaic (PV) panels (with a generating capacity of up to one megawatt in combination with any equipment installed under permitted development rights for solar microgeneration equipment) on the roof of non-domestic buildings

### **Development Management Procedures – consolidation and amendment**

The Town & Country Planning (Development Management Procedure) (England) Order 2015 comes into force on 15th April 2015 (applying to applications received after this date – applications already validated will remain subject to the 2010 order). The order consolidates the various previous enactments into a single order and in general there are far less minor amendments than those contained in the General Permitted Development Order. There are however still various minor amendments which planners should be wary of as well as some new provisions as follows:

- A requirement to notify a railway infrastructure manager when proposed development is within ten metres of relevant railway land
- Clarification of requirements relating to information that must be supplied with an application made under a planning condition

- A procedure for applicants seeking approval under a planning condition where the LPA has failed to determine the application in time, usually leading to deemed discharge of the condition (although there are exceptions)
- A requirement that, where an LPA imposes a planning condition requiring matters to be dealt with before commencement, the LPA must provide reasons for imposing the condition in its decision notice
- Amendments to the consultation requirements in respect of certain planning applications requiring consultation with additional bodies before granting the permission, an example being consultation with the Lead Local Flood Authority for major development for the purposes of sustainable drainage. Full details of the affected types of development, and the applicable consultees, are listed in Schedule 4 to the DMPO 2015

## Infrastructure Act 2015

The Act is intended to improve and speed up the delivery of infrastructure. It includes provision for the creation of “Highways England” to take over from the Highways Agency in relation to strategic roads, provisions for cycling and walking investment strategies, fracking and energy exploitation and other environmental provisions, increased powers for the HCA (and the Greater London Authority) to acquire land for disposal to enable development, provisions to enable “deemed discharge” of conditions (now covered by the new DMPO 2015), amendments to the NSIPS regime and, notably, the transfer of responsibility for local land charges from Local Authorities to the Land Registry, all of which will come in through regulation.

## What’s in force?

- So far Regulations have been made in relation to the introduction of the strategic highways companies and invasive species with further environmental/energy provisions coming into effect on 15<sup>th</sup> April along with the deemed discharge provisions under DMPO 2015. Amendments to the development consent regime are also being introduced in April and July.

## Other News

### • Planning Obligations

On 26<sup>th</sup> March 2015 guidance regarding the use of Planning Obligations was incorporated into Planning Practice Guidance. The changes advocate the use of standard clauses, state that obligations should be concluded within statutory timescales and recommend early pre-application engagement, flexibility and transparency regarding use of monies.

- **Heritage Applications**

New directions on heritage applications (confirming consultation and referral procedures) and conservation areas come into force on 15th April 2015 and are available from the DCLG website.

- **Listed Buildings & Conservation Areas**

The Planning (Listed Buildings and Conservation Areas) (Amendment) (England) Regulations 2015 (in effect 15<sup>th</sup> April 2015) amends publicity requirements, reducing the need to notify Historic England for certain applications and also reduces the circumstances where an LPA needs to refer its own applications to the Secretary of State.

- **Use Classes**

The Town and Country Planning (Use Classes) (Amendment) (England) Order 2015 (in effect 15<sup>th</sup> April 2015) reclassifies betting offices and pay day loan shops as “sui generis” uses.

- **Starter Homes Exception Sites**

New guidance has been introduced following the ministerial statement on 2<sup>nd</sup> March regarding the introduction of Starter Homes on exception sites. The guidance states that planning obligations should be secured requiring that starter homes on exception sites are offered for sale to first time buyers at a minimum of 20% below open market price and preventing re-sale and letting of the properties at open market value for a 5 year period. Such development should not be required to contribute towards affordable housing. Full guidance is contained within planning practice guidance under “Starter Homes”.

- **Planning Advertisement Appeals Procedure**

The Town and Country Planning (Hearings and Inquiries Procedure) (England) (Amendment and Revocation) Rules 2015 came into force on 6<sup>th</sup> April 2015 and amends the rules regarding advertisement planning appeals to reduce the inconsistencies between advertising appeals and other planning appeals.

- **Compensation**

The Town & Country Planning (Compensation) (England) Regulations 2015 (in effect 15<sup>th</sup> April 2015) provide that compensation under the Town & Country Planning Act 1990 is only payable in respect of planning applications made within 12 months beginning on the date the directions took effect. There is also a mechanism for withdrawal of permitted development rights without compensation being payable.

## Coming Up

The Planning (Hazardous Substances) Regulations 2015 come into force on 1<sup>st</sup> June and amend the regime for hazardous substance consent.

Consultation on the Compulsory Purchase Process is underway and closes on 9<sup>th</sup> June. Although a lot of the proposals are of a technical nature, one suggestion is that Inspectors should have the power to confirm contested orders, rather than the Secretary of State as at present. This is to be welcomed as it will speed up the confirmation process

nplaw is developing a number of initiatives to market its wide range of public sector legal services. Our new web site, [www.nplaw.co.uk](http://www.nplaw.co.uk) is now live, and provides information on the experience and skills of our fee-earners and case studies illustrating the types of work and clients we have been engaged with recently. We are also promoting our business through the Legal Services Collaboration, a partnership of 52 authorities in the Eastern region and have exhibited at a number of conferences and events. We will shortly be beginning a direct e-mail marketing campaign to introduce nplaw to a range of potential clients across the country.

**If you have any queries relating to this newsletter or wish to seek planning law advice, please contact:**

**Steve Bell:** [steven.bell@norfolk.gov.uk](mailto:steven.bell@norfolk.gov.uk) or 01603 638209



Please follow us on Twitter: @NplawNorfolk

*Whilst every effort has been made to ensure that the content of this update is up-to-date and accurate, no warranty is given to that effect and nplaw does not assume responsibility for its accuracy and correctness. The update summarises latest legal developments but is no substitute for specific legal advice after consideration of all material facts and circumstances.*