

## **PLANNING BODIES AND PLANNING POLICIES**

### **Planning Authorities**

In England and Wales there are two tiers of planning authorities, namely county planning authorities and district planning authorities. As was the case in Ireland before 1925, there are both County Councils and District Councils within each county. In the parts of the country where there is both a county authority and a district authority, they each make a development plan. The county authority makes a structure plan and the district authority prepares the local plan. The District Council will be responsible for all development issues including applications for planning permissions and enforcement of planning controls. The overwhelming majority of applications are made to the District Council of district authority.

In London, the directly elected mayoral authority has special powers in the planning process. The planning applications will still be to local London District Council for most categories of developments. The Mayors Department must be consulted on a range of applications having potential strategic importance. In such cases, there is a power for the Mayor to refuse planning permission. The mayor may object the application if he believes it is prejudicial to good strategic planning in Greater London.

Large scale developments on which the Mayor has powers, include developments comprising more than 500 houses, flats or developments and development on land more than 10 hectares in area or than 75 metres high in the City of London or 30 metres high outside the City of London and certain larger buildings in the City of London having square footage in excess of certain thresholds

### **National Government Control over Planning**

There were more significant amendments to English Planning Legislation 2004. Major reforms are proposed. A White Paper was published in May 2007 which proposed significant changes which may take effect within the next three to four years.

The Minister for Communities and Local Government has overall responsibility for planning legislation and his/her department (the DCLG) is the planning appeal body. The DCLG has powers to “call in” planning permissions which effectively overrule the Local Authority. This would generally only be done if the matter is of more than local significance although. The DCLG has wide powers to ensure that local authorities act in accordance with the general policies as laid down by the DCLG.

The DCLG has powers over local authorities in the making or aspects of the Development Plans to ensure compliance with the departmental policies. This power is available to enable the DCLG, to say, require more housing and to direct Local Authority to alter its local Development Plan accordingly. The DCLG has powers of appeal from enforcement notices and in certain circumstances may even grant planning permission for a development to which the enforcement notices relate.

The DCLG has power to “call in” certain significant planning applications where they are of major significance. The DCLG may give directions requiring consultations before granting planning permissions. For example the DCLG has issued a requirement that Local Authorities consult it on applications for shopping area developments over 20,000 square metres. Another general direction relates to the residential density in London and South East England.

Local Authorities must consult with the DCLG upon most applications for housing development on sites of one hectare or more and where the density would be less than 30 dwellings per hectare. Other directions include ones given in relation to development in green belt areas or flood areas.

Because of the central role of DCLG it has issued several Planning Policy Statements (PPS), Planning Policy guidance notes and circulars in order to ensure that the Department's policies are followed and the significant powers mentioned above (including appeals) are used less. These circulars are available on the DCLG website. For example PPS 3 sets out the Government's key housing policies and objectives and how they are to be achieved. Wales has its own planning policy guidance notes.

## **Development Plans**

The Planning Acts have been revised recently to provide for replacement of the existing Development Plans by county and local area development plans with Regional Spatial Strategies. These new provisions are being phased in over time as Local Authorities introduce the required strategies and plans.

There are to be regional spatial strategies which are to be a broad strategy for a 15 to 20 year period. There are eight regions in England together with London which has its own special Mayoral development strategy. The regions are: Midlands, Northeast, Northwest, Southeast, Southwest, West-Midlands and Yorkshire & Humber.

The pre-existing regional planning guidelines laid down by the DCLG have now become the Regional Spatial Strategies under the new legislation. The Government's policy on spatial planning is to go beyond traditional land use planning. The Regional Spatial Plans are to take account of the scale and distribution of provision of new housing provisions for the environment, transport, infrastructure, economic development, agricultural, mineral extraction, water treatment and disposal. The regional spatial strategies are to be revised by Regional Planning Boards.

The Local Authorities, (generally the county council and the district council) or London boroughs in London prepare the local development framework. Each Local Authority is to prepare a local development scheme which is to be submitted to the DCLG. The DCLG has powers to require amendments to the scheme to ensure that they are consistent with the Regional Spatial Strategy.

The local development documents must include statements of the development and use of land which the Local Authority wishes to encourage during the specified period. Objectives relating to design and access, in relation to environmental, social and economic objectives which are relevant to the attainment of the development and use of land are specified together with the authorities' general policies.

There may be action area plans in relation to parts of a Local Authority area, identifying the area as an area of significant change or special conservation and containing the authority's policies relevant to that area.

There are provisions for community involvement in the making and finalisation of the development plan documents. The development plan documents are required to contain the following:-

1. a core strategy which must be kept up to date.
2. Action Area Plans provide a framework for areas of change and conservation
3. Zoning allocating land for specified or mixed uses
4. map to illustrate all the plans and proposals contained in the development plan.

Under the 2004 legislation the development plan for any area of England comprises the regional spatial strategy for the region together with the development plan document to take in as a whole which had been adapted or approved for that area. In Greater London the development plan has a spatial strategy development and the development plan documents in relation to that area.

Regard has to be had to the development plan in determining planning application. The determination must be made in accordance with the plan unless material considerations indicate otherwise. Where there is a conflict in the development plan between any one policy and the other, the conflict should be resolved in favour of the policy contained in the last document adapted approved and published. The requirement to have regard to the provisions of the development plan does not mean that it must be slavishly adhered to. It requires the Local Authority to consider the plan and to make its determination in accordance with it unless material considerations otherwise indicates.

## Highway

Frequently, development sites need to be linked to an adjoining public road (described as a highway). Section 278 of the Highway Act provides that if a Highway Authority is satisfied that it would be to the benefit of the public, the Authority may enter an agreement with a person (normally a developer) to carry out highway works. The Highway Authority will usually be the Council or effectively the roads department of the Council. The Highway Authority may require on terms such that the developer pays the whole or part of such costs. Highway Act Agreements will commonly be required where say in relation to new estates.

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This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.