

PLANNING PERMISSION

Overview

English planning law is broadly similar to Irish planning law. However the resemblance is superficial and there are significant differences in detail in relation to the procedures and processes.

As in Ireland, planning permission is required whenever there are “works” or a “material change of use”. The permission is generally referred to as a “planning consent”. “Works” include carrying on any building, engineering, mining or other operations in, under or over land. Generally, there must be a building activity. Building operations include demolition, rebuilding, structural alterations and additions to buildings. Works which affect the interior of a building only or do not materially reflect the external appearance do not generally require planning permission. Works to the interior of a “listed building” require “Listed Building Consent” which is similar to a planning permission.

A material change of use will also require planning permission. This is a matter of interpretation of the entire circumstances. Whether a change of use is “material” will depend upon its impact on the environment.

Generally Permitted Development Orders

The “Generally Permitted Development Order” (called “GPDO” for convenience) specifies a range of works, use and changes for which planning consent will not generally be required. This Order is amended by the Secretary of State from time to time. Local Authorities can disapply the Generally Permitted Development Order rights thereby requiring planning consent for works which would not otherwise require it. This is commonly done in “conservation areas”.

Each type of permitted development contains detailed provisions which need to be examined. For example, the exemption for enlargement, improvement or other alteration of a dwellinghouse contains limitations in relation to the cubic content, height and total area of the dwellinghouse. There are conditions in relation to the front building line, the position of windows, distance from adjoining properties and boundaries, ground air covered and changes to roofs.

The GPDO sets out particular classes of use. A change of use within a particular class is generally deemed not to be material change. The order is divided into four parts which correspond broadly with shopping area uses, business and industrial uses, residential uses and social and community uses. The classification makes it more likely that a change of use from one part of the order to another would be regarded as a material change of use.

Enforcement

The Planning Authority has extensive powers to enforce breaches of planning permission. There is no equivalent to the Irish legislation whereby any individual can apply to enforce planning legislation in the Circuit or High Court. It is far to say that planning enforcement is more rigorous in England than in Ireland. The Local Authorities have powers to serve planning contravention notices, breach of condition notices, enforcement notices or to seek injunction in order to enforce planning laws. It is an offence not to comply with the terms of an enforcement notice.

If a planning law breach involving works is not enforced within four years, it is deemed to be planning compliant. This is stronger than in the position in Ireland which does not provide a deemed grant of planning permission but only confers a limited immunity. In relation to planning law breaches involving changes of use other than those of a single dwellinghouse the relevant period is 10 years.

Where no enforcement action has been taken within the above time limits it is possible to apply for a certificate of lawful use or development, which is largely equivalent to a planning consent.

Planning Consent

Unlike in Ireland, the planning consent decision is usually made by a committee of the elected Councillors rather than by the planning officers (employed officials) of the planning authority. Planning officers are intimately involved in the process but ultimately the members of planning committee make the requisite decisions.

The Council (described as Local Planning Authority) may grant planning consent, either unconditionally, or (more likely) subject to conditions or they may refuse planning consent. The Council decide planning applications in accordance with their Development Plan and other material considerations that are relevant. The Development Plan, as in Ireland, is an overall statement of the plans and objectives for the area as adopted by the Council. The Council also decides in accordance with other material considerations that are relevant.

The planning permission notice must state full reason for each condition and specify the policies and proposals relevant to the decision. The decision should be decided in accordance with the Development Plan unless there are other material considerations.

A planning consent lasts for the length of time specified which is generally limited to three years (since legislation in 2004). Planning consents is effective for planning purposes only. It does not confer any right to build where any other issue is involved. It may still be necessary to obtain a listed building consent for internal works, building regulation consents, comply with the some special rules that apply and comply with terms of the title under which the property is held if there are covenants on the terms of a title.

A planning authority has power to decline an application if it is similar to another. The power to decline requires that there has been no significant change in the consideration since the other application. Generally, the planning authority may refuse to determine an application within two years of a similar application. It has the power to decline overlapping applications.

A planning authority can impose such conditions as they think fit provided that they are for planning purpose and reasonably related to the development. Where a Planning Authority has refused planning permission, granted it subject to conditions which are objected to, or failed to notify the decision within the prescribed period, (usually eight weeks) the applicant may appeal to the Department of Communities and Local Governments within six months. Only the applicant can appeal. Unlike the case in Ireland, there is no third party right of appeal. Even the owner of the land has no entitlement to appeal.

The appeal will be held by Inspectors of the Department of Communities and Local Governments. It may be determined by written representations or where appropriate by an enquiry. An appeal will be a re-hearing of the application. The local Planning Authority and the applicant are the parties to the appeal.

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.