

## Circular and Direction

# THE TOWN AND COUNTRY PLANNING (CONSULTATION) (ENGLAND) DIRECTION 2009

### **INTRODUCTION**

1. Section 77 of the Town and Country Planning Act 1990 allows the Secretary of State to give directions requiring applications for planning permission, or for the approval of any local planning authority required under a development order, to be referred to her instead of being dealt with by local planning authorities.
2. Article 10(3) of the Town and Country Planning (General Development Procedure) Order 1995 gives the Secretary of State power to issue directions to local planning authorities requiring them to consult with specified persons before granting planning permission for certain types of development. Article 14(1) gives the Secretary of State power to issue directions restricting the grant of planning permission in respect of specified development – either indefinitely or for a specified period. This circular replaces the provisions contained in existing directions, and introduces a new requirement relating to development which may adversely impact on World Heritage Sites. The circular is intended to ensure that ministerial involvement takes place only where necessary, and that all decisions are taken at the appropriate level.

### **COMMENCEMENT AND EXTENT**

3. With effect from 20 April 2009 the guidance contained in this circular and the annexed direction will replace the provisions of the following directions, which will be cancelled, insofar as they apply in relation to England:
  - Circular 15/93: Town and Country Planning (Shopping Development)(England and Wales)(No 2) Direction 1993
  - Circular 09/98: Town and Country Planning (Playing Fields) (England) Direction 1998

- Circular 07/99: The Town and Country Planning (Development Plans and Consultation) (Departures) Directions 1999
  - Circular 11/05: The Town and Country Planning (Green Belt) Direction 2005; and
  - Circular 04/06 (Communities and Local Government): The Town and Country Planning (Flooding)(England) Direction 2007
4. This circular applies only in relation to England.

### **THE DIRECTION**

5. A copy of the direction, which comes into force on 20 April 2009, forms the annex to this circular. When the direction comes into force, it will require local planning authorities in England to consult the Secretary of State before granting planning permission for certain types of development. It will not affect the Secretary of State's power under section 77 of the Town and Country Planning Act 1990 to direct that any particular planning application should be called in for her own determination, irrespective of whether it falls within the terms of the new direction, having regard to her policy on call-in.

### **PURPOSE AND SCOPE**

6. The new direction clarifies the arrangements and criteria for consulting the Secretary of State. The purpose of the direction is to give the Secretary of State an opportunity to consider whether to exercise her call-in powers under section 77. It also simplifies the process, consolidating all requirements into a single new direction. The effect of the direction is to require local planning authorities to refer any application for planning permission which falls within paragraphs 3-8 of the direction, and in respect of which the authority does not propose to refuse planning permission, to the Secretary of State at the appropriate regional government office, in accordance with the provisions in paragraphs 9-12 of the direction.

### **WORLD HERITAGE SITES**

7. The direction introduces a new requirement for local planning authorities to refer applications where they are minded to grant planning permission in circumstances where English Heritage has objected on the grounds that a proposed development could have an adverse impact on the outstanding universal value, integrity, authenticity and significance of a World Heritage Site or its setting, including any buffer zone or its equivalent, and has not withdrawn that objection.

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# THE TOWN AND COUNTRY PLANNING (CONSULTATION) (ENGLAND) DIRECTION 2009

The Secretary of State for Communities and Local Government (“the Secretary of State”), in exercise of powers conferred by articles 10(3), 14(1) and 27 of the Town and Country Planning (General Development Procedure) Order 1995<sup>1</sup> (“the Order”) directs as follows:

1. This Direction shall come into force on 20 April 2009 and shall apply to applications for planning permission relating to land in England received on or after that date.

2. In this Direction –

“flood risk area” means land in an area within –

- (a) Flood Zones 2 or 3; or
- (b) Flood Zone 1 which has critical drainage problems and which has been notified for the purposes of article 10 of the Order to the local planning authority by the Environment Agency;

“Flood Zone” has the same meaning as in article 10(2)(o) of the Order;

“floor space” means the gross floor space in a building or buildings measured externally;

“inappropriate development” has the same meaning as in Planning Policy Guidance note 2: “Green Belts”, dated January 1995 (PPG2) or any successor document;

“major development” means –

- (a) in respect of residential development, a development where the number of dwellings to be provided is 10 or more; or the site area is 0.5 hectares or more;
- (b) in respect of non-residential development, a development where the new floor space to be provided is 1,000 square metres or more, or the site area is 1 hectare or more;

“edge-of-centre” means, for retail purposes, a location that is well connected to and within easy walking distance (i.e. up to 300 metres) of the primary shopping area and, for all other main town centre uses, is likely to be within 300 metres of a town centre boundary;

“out-of-centre” means a location which is not in, or on the edge of, a town centre but not necessarily outside the urban area;

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<sup>1</sup> S.I. 1995/419 to which there are amendments not relevant to this direction

“out-of-town” means an out-of-centre development outside the existing urban area;

“playing fields” has the same meaning as in article 10(2)(l) of the Order;

“requisite notice” means notice in the appropriate form set out in Schedule 3 to the Order or in a form substantially to the same effect; and

“setting” means the area around a World Heritage Site (including any buffer zone or its equivalent) in which development is capable of having an adverse impact on the World Heritage Site, including an adverse impact on views to and from the World Heritage Site.

3. This Direction shall apply in relation to any application for planning permission which –
  - (a) is for Green Belt development, development outside town centres, World Heritage Site development, playing field development or flood risk area development; and
  - (b) is received by a planning authority on or after 20 April 2009.
4. For the purposes of this Direction, “Green Belt development” means development which consists of or includes inappropriate development on land allocated as Green Belt in an adopted local plan, unitary development plan or development plan document and which consists of or includes –
  - (a) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or
  - (b) any other development which, by reason of its scale or nature or location, would have a significant impact on the openness of the Green Belt.
- 5.(1) For the purposes of this Direction, “development outside town centres” means development which consists of or includes retail, leisure or office use, and which –
  - (a) is to be carried out on land which is edge-of-centre, out-of-centre or out-of-town; and
  - (b) is not in accordance with one or more provisions of the development plan in force in relation to the area in which the development is to be carried out; and
  - (c) consists of or includes the provision of a building or buildings where the floor space to be created by the development is:
    - (i) 5,000 square metres or more; or
    - (ii) extensions or new development of 2,500 square metres or more which, when aggregated with existing floor space, would exceed 5,000 square metres.

- (2) In calculating the area of existing floor space for the purposes of development referred to in paragraph 5(1)(c)(ii) this shall include retail, leisure or office floor space situated within a 1 kilometre radius of any part of the same type of use to be comprised in the proposed development and –
- (a) is already provided;
  - (b) has been substantially completed within the period of 5 years immediately preceding the date an application for development to which this Direction applies is received;
  - (c) in respect of which an application for planning permission has been made but not finally determined on the date an application for development to which this Direction applies is received; or
  - (d) in respect of which an application for planning permission has been granted within the period of 5 years immediately preceding the date an application for development to which this Direction applies is received.
6. For the purposes of this Direction, “World Heritage Site development” means development which would have an adverse impact on the outstanding universal value, integrity, authenticity and significance of a World Heritage Site or its setting, including any buffer zone or its equivalent, and being development to which English Heritage has objected, that objection not having been withdrawn.
7. For the purposes of this Direction, “playing field development” means development of a description mentioned in paragraph (z) of the Table<sup>2</sup> in article 10 of the Order where –
- (a) the land (or any part of the land) which is the subject of the application –
    - (i) is land of a local authority; or
    - (ii) is currently used by an educational institution as a playing field; or
    - (iii) has at any time in the five years before the application is received been used by an educational institution as a playing field; and
  - (b) the English Sports Council (“Sport England”) has been consulted pursuant to article 10(1) of the Order, and has made representations objecting to the whole or part of the development on one or more of the following grounds –
    - (i) that there is a deficiency in the provision of playing fields in the area of the local authority concerned;
    - (ii) that the proposed development would result in such a deficiency; or

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<sup>2</sup> Paragraph Z was inserted by S.I. 1996/1817.

- (iii) that where the proposed development involves a loss of a playing field and an alternative or replacement playing field is proposed to be provided, that alternative or replacement does not match (whether in quantity, quality or accessibility) that which would be lost.
- 8. For the purposes of this Direction, “flood risk area development” means major development in a flood risk area to which the Environment Agency has made an objection that it has not been able to withdraw even after discussions with the local planning authority.
- 9. Where a local planning authority does not propose to refuse an application for planning permission to which this Direction applies, the authority shall consult the Secretary of State.
- 10. Where, by virtue of paragraph 9, a local planning authority is required to consult the Secretary of State, they shall as soon as practicable send to the Secretary of State at the appropriate Government Office for the Region –
  - (a) a copy of the application (including copies of any accompanying plans, drawings and any appropriate flood risk assessment) and supporting information;
  - (b) a copy of the requisite notice;
  - (c) a copy of any representations made to the authority in respect of the application;
  - (d) a copy of any report on the application prepared by an officer of the authority;
  - (e) unless contained in a report supplied pursuant to sub-paragraph (d), a statement of the material considerations which the authority consider indicate a departure application should be determined otherwise than in accordance with s.38(6) of the Planning and Compulsory Purchase Act 2004<sup>3</sup>.
- 11. Subject to paragraph 12 below, where, by virtue of paragraph 9, a local planning authority is required to consult the Secretary of State, they shall not grant planning permission on the application until the expiry of a period of 21 days beginning with the date which the Secretary of State tells the authority in writing is the date she received the material specified in paragraph 10 above.
- 12. If, before the expiry of the 21 day period referred to in paragraph 11, the Secretary of State has notified the authority that she does not intend to issue a direction under section 77 of the Town and Country Planning Act 1990 in respect of that application, the authority may proceed to determine the application.
- 13. The following directions are cancelled –
  - (a) Circular 15/93: Town and Country Planning (Shopping Development) (England and Wales)(No 2) Direction 1993;

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<sup>3</sup> 2004 c. 5.

- (b) Circular 09/98: Town and Country Planning (Playing Fields) (England) Direction 1998;
- (c) Circular 07/99: The Town and Country Planning (Development Plans and Consultation) (Departures) Directions 1999;
- (d) Circular 11/05: The Town and Country Planning (Green Belt) Direction 2005; and
- (e) Circular 04/06 (Communities and Local Government): The Town and Country Planning (Flooding) (England) Direction 2007.

Signed by authority of the Secretary of State

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