

Town and Country Planning Act 1990 c. 8

s. 70 Determination of applications: general considerations.



Law In Force With Amendments Pending

[View proposed draft amended version](#)

Version 8 of 9

19 July 2017 - Present

Subjects

Planning

70.— Determination of applications: general considerations.

(1) Where an application is made to a local planning authority for planning permission—

- (a) subject to [\[section 62D\(5\) and\]](#)¹[sections 91 and 92](#), they may grant planning permission, either unconditionally or subject to such conditions as they think fit; or
- (b) they may refuse planning permission.

[

(1A) Where an application is made to a local planning authority for permission in principle—

- (a) they may grant permission in principle; or
- (b) they may refuse permission in principle.

]²

(2) In dealing with [\[an application for planning permission or permission in principle\]](#)³ the authority shall have regard [\[to —\]](#)⁴[

- (a) the provisions of the development plan, so far as material to the application,

[

- (aza) a post-examination draft neighbourhood development plan, so far as material to the application,

]⁵[

- (aa) any considerations relating to the use of the Welsh language, so far as material to the application;

]⁶

- (b) any local finance considerations, so far as material to the application, and
- (c) any other material considerations.

]⁴

[

(2ZZA) The authority must determine an application for technical details consent in accordance with the relevant permission in principle. This is subject to subsection (2ZZC).

(2ZZB) An application for technical details consent is an application for planning permission that—

- (a) relates to land in respect of which permission in principle is in force,
- (b) proposes development all of which falls within the terms of the permission in principle, and
- (c) particularises all matters necessary to enable planning permission to be granted without any reservations of the kind referred to in [section 92](#).

(2ZZC) Subsection (2ZZA) does not apply where—

- (a) the permission in principle has been in force for longer than a prescribed period, and
- (b) there has been a material change of circumstances since the permission came into force.

“Prescribed” means prescribed for the purposes of this subsection in a development order.

]⁷[

(2ZA) Subsection (2)(aa) applies only in relation to Wales.

]⁸[

(2A) [Subsections (1A), (2)(b) and (2ZZA) to (2ZZC) do not]¹⁰ apply in relation to Wales.

]⁹

(3) Subsection (1) has effect subject to [\[section 65\]](#)¹¹ and to the following provisions of this Act, to [sections 66, 67, 72 and 73](#) of the [Planning \(Listed Buildings and Conservation Areas\) Act 1990](#) and to [section 15](#) of the [Health Services Act 1976](#).

[

(3B) For the purposes of subsection (2)(aza) (but subject to subsections (3D) and (3E)) a draft neighbourhood development plan is a “postexamination draft neighbourhood development plan” if—

- (a) a local planning authority have made a decision under [paragraph 12\(4\) of Schedule 4B](#) with the effect that a referendum or referendums are to be held on the draft plan under that Schedule,
- (b) the Secretary of State has directed under [paragraph 13B\(2\)\(a\)](#) of that Schedule that a referendum or referendums are to be held on the draft plan under that Schedule,
- (c) an examiner has recommended under [paragraph 13\(2\)\(a\) of Schedule A2](#) to the [Planning and Compulsory Purchase Act 2004](#) (examination of modified plan) that a local planning authority should make the draft plan, or
- (d) an examiner has recommended under [paragraph 13\(2\)\(b\)](#) of that Schedule that a local planning authority should make the draft plan with modifications.

(3C) In the application of subsection (2)(aza) in relation to a postexamination draft neighbourhood development plan within subsection (3B)(d), the local planning authority must take the plan into account as it would be if modified in accordance with the recommendations.

(3D) A draft neighbourhood development plan within subsection (3B)(a) or (b) ceases to be a post-examination draft neighbourhood development plan for the purposes of subsection (2)(aza) if—

- (a) [section 38A\(4\)\(a\)](#) (duty to make plan) or [\(6\)](#) (cases in which duty does not apply) of the [Planning and Compulsory Purchase Act 2004](#) applies in relation to the plan,
- (b) [section 38A\(5\)](#) (power to make plan) of that Act applies in relation to the plan and the plan is made by the local planning authority,
- (c) [section 38A\(5\)](#) of that Act applies in relation to the plan and the local planning authority decide not to make the plan,
- (d) a single referendum is held on the plan and half or fewer of those voting in the referendum vote in favour of the plan, or
- (e) two referendums are held on the plan and half or fewer of those voting in each of the referendums vote in favour of the plan.

(3E) A draft neighbourhood development plan within subsection (3B)(c) or (d) ceases to be a post-examination draft neighbourhood development plan for the purposes of subsection (2)(aza) if—

- (a) the local planning authority make the draft plan (with or without modifications), or
- (b) the local planning authority decide not to make the draft plan.

(3F) The references in subsection (3B) to [Schedule 4B](#) are to that Schedule as applied to neighbourhood development plans by [section 38A\(3\)](#) of the [Planning and Compulsory Purchase Act 2004](#).

] ¹²[

(4) In this section—

“*local finance consideration*” means—

- (a) a grant or other financial assistance that has been, or will or could be, provided to a relevant authority by a Minister of the Crown, or
- (b) sums that a relevant authority has received, or will or could receive, in payment of Community Infrastructure Levy;

“*Minister of the Crown*” has the same meaning as in the [Ministers of the Crown Act 1975](#);

“*relevant authority*” means—

- (a) a district council;
- (b) a county council in England;
- (c) the Mayor of London;
- (d) the council of a London borough;
- (e) a Mayoral development corporation;
- (f) an urban development corporation;
- (g) a housing action trust;
- (h) the Council of the Isles of Scilly;
- (i) the Broads Authority;
- (j) a National Park authority in England;
- (k) the Homes and Communities Agency; or

- (l) a joint committee established under [section 29](#) of the [Planning and Compulsory Purchase Act 2004](#).

] ¹³

Notes

- 1 Words inserted by Planning (Wales) Act 2015 anaw. 4 [Sch.4 para.5](#) (March 1, 2016 in relation to developments of national significance and secondary consents; not yet in force otherwise)
- 2 Added by Housing and Planning Act 2016 c. 22 [Pt 6 s.150\(3\)\(a\)](#) (July 12, 2016)
- 3 Words substituted by Housing and Planning Act 2016 c. 22 [Sch.12 para.11\(2\)](#) (July 13, 2016)
- 4 Word and s.70(2)(a)-(c) substituted for words by Localism Act 2011 c. 20 [Pt 6 c.7 s.143\(2\)](#) (January 15, 2012)
- 5 Added by Neighbourhood Planning Act 2017 c. 20 [Pt 1 s.1\(2\)](#) (July 19, 2017)
- 6 Added by Planning (Wales) Act 2015 anaw. 4 [Pt 6 s.31\(2\)](#) (January 4, 2016 as SI 2015/1987)
- 7 Added by Housing and Planning Act 2016 c. 22 [Pt 6 s.150\(3\)\(b\)](#) (July 12, 2016)
- 8 Added by Planning (Wales) Act 2015 anaw. 4 [Pt 6 s.31\(3\)](#) (January 4, 2016 as SI 2015/1987)
- 9 Added by Localism Act 2011 c. 20 [Pt 6 c.7 s.143\(3\)](#) (January 15, 2012)
- 10 Words substituted by Housing and Planning Act 2016 c. 22 [Sch.12 para.11\(3\)](#) (July 13, 2016)
- 11 Substituted by Planning and Compensation Act 1991 c. 34 [Sch.7 para.14](#) (July 17, 1992)
- 12 Added by Neighbourhood Planning Act 2017 c. 20 [Pt 1 s.1\(3\)](#) (July 19, 2017)
- 13 Added by Localism Act 2011 c. 20 [Pt 6 c.7 s.143\(4\)](#) (January 15, 2012)

Part III CONTROL OVER DEVELOPMENT > Determination of applications > s. 70 Determination of applications: general considerations.

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Town and Country Planning Act 1990 c. 8

s. 90 Development with government authorisation.



Law In Force

Version 8 of 8

1 October 2018 - Present

Subjects

Planning

Keywords

Authorisation; Deemed consent; Development; Electricity lines; Government departments; Planning permission; Power stations

90.— Development with government authorisation.

(1) Where the authorisation of a government department is required by virtue of an enactment in respect of development to be carried out by a local authority [or National Park authority]¹, or by statutory undertakers who are not a local authority [or National Park authority]¹, that department may, on granting that authorisation, direct that planning permission for that development shall be deemed to be granted, subject to such conditions (if any) as may be specified in the direction.

[

(2) On granting or varying a consent under [section 36](#) or [37](#) of the [Electricity Act 1989](#) in relation to a generating station or electric line in England or Wales, the Secretary of State [or the Welsh Ministers]³ may give a direction for planning permission to be deemed to be granted, subject to such conditions (if any) as may be specified in the direction, for—

- (a) so much of the operation or change of use to which the consent relates as constitutes development;
- (b) any development ancillary to the operation or change of use to which the consent relates.

(2ZA) On varying a consent under [section 36](#) or [37](#) of the [Electricity Act 1989](#) in relation to a generating station or electric line in England or Wales, the Secretary of State [or the Welsh Ministers]³ may give one or more of the following directions (instead of, or as well as, a direction under subsection (2))—

- (a) a direction for an existing planning permission deemed to be granted by virtue of a direction under subsection (2) (whenever made) to be varied as specified in the direction;
- (b) a direction for any conditions subject to which any such existing planning permission was deemed to be granted to be varied as specified in the direction;
- (c) a direction for any consent, agreement or approval given in respect of a condition subject to which any such existing planning permission was deemed to be granted to be treated as given in respect of a condition subject to which a new or varied planning permission is deemed to be granted.

]²[

(2A) On making an order under [section 1](#) or [3](#) of the [Transport and Works Act 1992](#) which includes provision for development, the Secretary of State may direct that planning permission for that development shall be deemed to be granted, subject to such conditions (if any) as may be specified in the direction.

]⁴

(3) The provisions of this Act (except [section 100ZA and]⁵[Part]⁶XII) shall apply in relation to any planning permission deemed to be granted by virtue of a direction under this section as if it had been granted by the Secretary of State on an application referred to him under section 77[(so that section 71ZA applies as if references to the decision notice were to the direction)]⁷.

(4) For the purposes of this section development is authorised by a government department if—

- (a) any consent, authority or approval to or for the development is granted by the department in pursuance of an enactment;
- (b) a compulsory purchase order is confirmed by the department authorising the purchase of land for the purpose of the development;
- (c) consent is granted by the department to the appropriation of land for the purpose of the development or the acquisition of land by agreement for that purpose;
- (d) authority is given by the department—
 - (i) for the borrowing of money for the purpose of the development, or
 - (ii) for the application for that purpose of any money not otherwise so applicable; or
- (e) any undertaking is given by the department to pay a grant in respect of the development in accordance with an enactment authorising the payment of such grants;

and references in this section to the authorisation of a government department shall be construed accordingly.

[

(5) In subsection (2), the reference to ancillary development, in the case of a consent relating to the extension of a generating station, does not include any development which is not directly related to the generation of electricity by that station.

(6) In this section, references to England or Wales include—

- (a) waters adjacent to England or Wales up to the seaward limits of the territorial sea, and
- (b) a Renewable Energy Zone, except any part of a Renewable Energy Zone in relation to which the Scottish Ministers have functions.

(7) In this section “*electric line*”, “*extension*”, “*generating station*” and “*Renewable Energy Zone*” have the same meanings as in Part 1 of the Electricity Act 1989.

] ⁸

Notes

- 1 Words inserted by Environment Act 1995 c. 25 Sch.10 para.32(4) (November 23, 1995)
- 2 S.90(2) and (2ZA) substituted for s.90(2) by Growth and Infrastructure Act 2013 c. 27 s.21(2) (July 31, 2013)
- 3 Words inserted by Wales Act 2017 c. 4 Pt 2 s.39(13) (April 1, 2018: insertion has effect on April 1, 2018 as SI 2017/1179 reg.3(h) for the purposes of 2017 c.4 Sch.1 subject to transitional provisions specified in 2017 c.4 s.70 and Sch.7 paras 1, 6 and 8; April 1, 2019 as SI 2017/1179 reg.5(a) subject to transitional provisions specified in 2017 c.4 s.70 and Sch.7 paras 1, 6 and 8 otherwise)
- 4 Added by Transport and Works Act 1992 c. 42 Pt I s.16(1) (January 1, 1993)
- 5 Words inserted by Neighbourhood Planning Act 2017 c. 20 Sch.3 para.5 (October 1, 2018 as SI 2018/567 reg.3(b))

Notes

- 6 Substituted by Planning and Compensation Act 1991 c. 34 [Sch.6 para.12](#) (September 25, 1991 subject to transitional provisions specified in SI 1991/2067 Sch.2 Part II)
 - 7 Words inserted by Planning (Wales) Act 2015 anaw. 4 [Pt 6 s.33\(3\)](#) (September 6, 2015 for the purposes of enabling the Welsh Ministers to exercise any function of making regulations or orders by statutory instrument under any enactment as amended by 2015 anaw 4 Pts 3-8; March 1, 2016 in relation to developments of national significance and secondary consents; March 16 subject to transitional provisions specified in SI 2016/52 art.12 otherwise)
 - 8 S.90(5)-(7) substituted for s.90(5) by Growth and Infrastructure Act 2013 c. 27 [s.21\(3\)](#) (July 31, 2013)
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*Part III CONTROL OVER DEVELOPMENT > Deemed planning
permission > s. 90 Development with government authorisation.*

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