

— **CAVENDISH PRACTICE NOTES** —

# Planning Law

FOURTH EDITION

**CLIVE BRAND**

**LLB, SOLICITOR**

SERIES EDITOR

**CM BRAND, SOLICITOR**



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# 1 Basic Information

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## 1.1 Introduction

The function of this introductory chapter is to direct the reader to the essential materials that are needed in order to deal with a matter which arises under the town and country planning legislation. This may involve a range of different issues, for example, determining whether planning permission is needed, applying for planning permission, making an appeal following refusal of planning permission, opposing the development proposals of another party, or defending enforcement proceedings. On other occasions questions may arise as a result of the impact of town and country planning legislation on a conveyancing transaction. Giving the right advice and taking the appropriate action requires a knowledge both of town and country planning law and of practical considerations. First, a description must be given of the legislation which regulates the subject. This is followed by other sources including case law.

## 1.2 Sources

### 1.2.1 Statutes

The principal enactment is the Town and Country Planning Act 1990 ('the 1990 Act'), which is a consolidating Act. Further substantive law is to be found in two associated Acts: the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Planning (Hazardous Substances) Act 1990. All three Acts came into force together on 24 August 1990. The 1990 legislation has, however, been amended in a number of significant respects (particularly in relation to enforcement of planning control) by the Planning and Compensation Act 1991. Local government structural changes effected by the Local Government (Wales) Act 1994 and the Environment Act 1995 (which



enabled the establishment of National Park Authorities) have also necessitated many amendments to the 1990 Act. To ensure that reference is made to the current text, it will be necessary to have access to *The Encyclopedia of Planning Law and Practice* (see Chapter 10, 'Further Reading').

The most important sections of the Town and Country Planning Act 1990 are as follows:

### Sections

- 1 specifies which authorities in England and Wales are local planning authorities and confers powers on county councils, district councils, metropolitan district councils, London borough councils and county borough councils;
- 4A enables the establishment of National Park Authorities to act as local planning authorities within the National Parks;
- 12 requires preparation of a unitary development plan by each metropolitan district council and each London borough council;
- 27 meaning of 'development plan' in Greater London or a metropolitan county;
- 27A meaning of 'development plan' in relation to Wales;
- 32 confers power on county councils to alter or replace an existing structure plan;
- 36 requires preparation of district-wide local plans by non-metropolitan district councils;
- 54 meaning of 'development plan' outside Greater London or a metropolitan county;
- 54A planning decisions to be made in accordance with the development plan;
- 55 definition of 'development';
- 57 specifies that planning permission is required for the carrying-out of any development of land;
- 59 requires the Secretary of State (for the Environment) to make a 'development order' which grants planning permission for specified forms of development and (in all other cases) to make provision for applications for planning permission to be made to the local planning authority;
- 62 specifies that applications for planning permission shall be made in the prescribed manner;

- 65 notice of applications for planning permission to be given in accordance with the requirements of a development order;
- 69 maintenance of a 'planning register' of applications and decisions;
- 70 discretionary power of local planning authorities to determine planning applications;
- 71 consultations in connection with planning applications;
- 72 supplementary powers of local planning authorities in relation to conditional grants of planning permission;
- 73 applications for planning permission without complying with conditions attached to an earlier grant;
- 77 powers of the Secretary of State to 'call in' a planning application for decision by him;
- 78 right of appeal to the Secretary of State against the decision of a local planning authority, or failure to reach a decision;
- 83 making of simplified planning zones;
- 91 time within which grant of planning permission must be implemented;
- 92 grant of outline planning permission;
- 97 power to revoke or modify a grant of planning permission;
- 102 power to require discontinuance of a use or the alteration or removal of buildings or works;
- 106 entry into planning obligations with local planning authority;
- 171A meaning of 'breach of planning control';
- 171B time-limits for enforcement action;
- 171C issue of a planning contravention notice;
- 171D penalties for non-compliance with a planning contravention notice;
- 172 issue of an enforcement notice;
- 174 right of appeal to the Secretary of State against the issue of an enforcement notice;
- 179 penalties for non-compliance with an enforcement notice;
- 183 service of a stop notice;
- 187 penalties for non-compliance with a stop notice;
- 187A issue of a breach of condition notice and penalty for non-compliance;
- 187B power of local planning authority to seek an injunction;

- 191 application for certificate of lawfulness of existing use or development;
- 192 certificate of lawfulness of proposed use or development;
- 195 right of appeal to the Secretary of State against refusal of an application for a certificate under ss 191 and 192;
- 198 making of tree preservation orders;
- 215 power to require proper maintenance of land where amenity is adversely affected;
- 220 control of display of advertisements;
- 226 power to acquire land compulsorily for development purposes;
- 288 application to the High Court to quash specified planning orders and decisions;
- 289 appeal to the High Court against a decision of the Secretary of State in enforcement proceedings;
- 320 power of the Secretary of State to convene a public local inquiry;
- 336 definition section.

Readers of this book will also have cause to consult the Planning (Listed Buildings and Conservation Areas) Act 1990. The key provisions of that Act are as follows:

#### **Sections**

- 1 listing of buildings of special architectural or historic interest;
- 3 temporary listing by means of a building preservation notice;
- 8 authorisation of works to listed buildings;
- 10 making of applications for listed building consent;
- 20 right of appeal to the Secretary of State on refusal of listed building consent or grant subject to conditions;
- 38 power to issue a listed building enforcement notice;
- 47 compulsory acquisition of listed buildings;
- 69 designation of conservation areas;
- 72 requirement that special attention be paid to the desirability of preserving or enhancing the character or appearance of a conservation area in exercise of functions under the Planning Acts;
- 74 conservation area consent for demolition of buildings in conservation areas;
- 91 definition section.

### 1.2.2 Statutory instruments

Delegated legislation plays a key role in town and country planning as there are well over 100 different statutory instruments (quite apart from commencement orders) currently in force. Of these, only four have a direct effect on the substantive law of development control. These are:

- (a) the Town and Country Planning (Applications) Regulations 1988 SI 1988/1812;
- (b) the Town and Country Planning (General Permitted Development) Order 1995 SI 1995/418 (in this book referred to as 'the GPDO 1995');
- (c) the Town and Country Planning (General Development Procedure) Order 1995 SI 1995/419 (in this book referred to as 'the GDPO 1995');
- (d) the Town and Country Planning (Use Classes) Order 1987 SI 1987/764, as amended.

Another well-defined group of statutory instruments deals with the conduct of a planning or enforcement appeal. In this group are:

- (a) the Town and Country Planning (Inquiries Procedure) (England) Rules 2000 SI 2000/1624;
- (b) the Town and Country Planning (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000 SI 2000/1625;
- (c) the Town and Country Planning (Hearings Procedure) (England) Rules 2000 SI 2000/1626;
- (d) the Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000 SI 2000/1628;
- (e) the Town and Country Planning (Enforcement) (Inquiries Procedure) Rules 1992 SI 1992/1903;
- (f) the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997 SI 1997/420.

Other principal regulations are those which regulate the control of advertisements:

- (a) the Town and Country Planning (Control of Advertisements) Regulations 1992 SI 1992/666.

The payment of fees on making a planning application or an appeal against an enforcement notice are regulated by:

- (b) the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989 (SI 1989/193, as amended by SI 1990/2473, SI 1991/2735, SI 1992/1817, SI 1992/3052, SI 1993/3170 and SI 1997/37).

### 1.2.3 Departmental circulars and policy guidance

The Department of the Environment, Transport and the Regions frequently issues circulars and planning policy guidance notes. These documents explain the powers and duties of local planning authorities, explain the effect of new legislation and give guidance on national planning policy. Circulars tend to focus on legislative and procedural matters. Leading examples of these are:

- (a) 13/87 Change of Use of Buildings and Other Land: Town and Country Planning (Use Classes) Order 1987;
- (b) 14/91 Planning and Compensation Act 1991;
- (c) 15/92 Publicity for Planning Applications;
- (d) 8/93 Award of Costs Incurred in Planning and Other (Including Compulsory Purchase Order) Proceedings;
- (e) 9/95 General Development Order Consolidation 1995;
- (f) 10/95 Planning Controls over Demolition;
- (g) 11/95 The Use of Conditions in Planning Permissions;
- (h) 1/97 Planning Obligations;
- (i) 10/97 Enforcing Planning Control: Legislative Provisions and Procedural Requirements;
- (j) 2/99 Environmental Impact Assessment;
- (k) 05/2000 Planning Appeals: Procedures (Including Inquiries into Called-in Planning Applications).

Planning policy guidance notes are:

- (a) PPG 1 General Policy and Principles;
- (b) PPG 2 Green Belts;
- (c) PPG 3 Housing;
- (d) PPG 4 Industrial and Commercial Development and Small Firms;
- (e) PPG 5 Simplified Planning Zones;
- (f) PPG 6 Town Centres and Retail Developments;
- (g) PPG 7 The Countryside: Environmental Quality and Economic and Social Development;
- (h) PPG 8 Telecommunications;

- (i) PPG 9 Nature Conservation;
- (j) PPG 10 Planning and Waste Management;
- (k) PPG 11 [deleted];
- (l) PPG 12 Development Plans;
- (m) PPG 13 Transport;
- (n) PPG 14 Development on Unstable Land;
- (o) PPG 15 Planning and the Historic Environment;
- (p) PPG 16 Archaeology and Planning;
- (q) PPG 17 Sport and Recreation;
- (r) PPG 18 Enforcing Planning Control;
- (s) PPG 19 Outdoor Advertisement Control;
- (t) PPG 20 Coastal Planning;
- (u) PPG 21 Tourism;
- (v) PPG 22 Renewable Energy;
- (w) PPG 23 Planning and Pollution Control;
- (x) PPG 24 Planning and Noise.

Practitioners should also note relevant regional or strategic guidance for their area contained in a series of regional planning guidance documents. These are:

- (a) RPG 1 Strategic Guidance for Tyne and Wear;
- (b) RPG 2 Strategic Guidance for West Yorkshire;
- (c) RPG 3 Strategic Guidance for London Planning Authorities;
- (d) RPG 4 Strategic Guidance for Greater Manchester;
- (e) RPG 5 Strategic Guidance for South Yorkshire;
- (f) RPG 6 Regional Planning Guidance for East Anglia;
- (g) RPG 7 Regional Planning Guidance for the Northern Region;
- (h) RPG 8 Regional Planning Guidance for the East Midlands Region;
- (i) RPG 9 Regional Planning Guidance for the South East;
- (j) RPG 9A The Thames Gateway Planning Framework;
- (k) RPG 10 Regional Planning Guidance for the South West;
- (l) RPG 11 Regional Planning Guidance for the West Midlands Region;
- (m) RPG 12 Regional Planning Guidance for Yorkshire and Humberside;
- (n) RPG 13 Regional Planning Guidance for the North West.

The above circulars and policy guidance are essential reading in understanding planning practice and procedures and therefore repay close examination both for the purposes of giving advice on planning matters and also in preparing for planning appeals.

#### **1.2.4 Cases**

The current town and country planning system is derived from the Town and Country Planning Act 1947 which came into force on 1 July 1948. As more than 50 years have elapsed since that date, a very substantial body of case law has developed. Access to this case law is achieved by using the conventional research methods.

Decisions of the superior courts are, however, one source of the planning case law. A further other source is planning appeal decisions issued by the Secretary of State for the Environment, Transport and the Regions. These do not have binding effect but will frequently contain opinion on the interpretation of a point of law and are useful, persuasive authority in argument. These can be sourced from Planning Appeal Decisions and the several journals mentioned in Chapter 10.

### **1.3 Administrative authorities**

The authorities entrusted with the administration of the town and country planning system are principally the local planning authorities and the Secretary of State for the Environment, Transport and the Regions. The former are the local authorities, district councils, county councils, London borough councils and, in Wales, county borough councils. It is these authorities which carry out the bulk of planning functions, especially the making of decisions on applications for planning permission. In this respect, the Secretary of State is an appellate authority, though the 1990 Act confers many other powers on the Secretary of State which are exercised independently of any action taken by a local planning authority. So far as planning applications are concerned, the framework, including the superior courts, is as follows:

- (a) House of Lords;
- (b) Court of Appeal;
- (c) High Court (under s 288 of the 1990 Act (restricted right of appeal – does not include merits of decision));
- (d) Secretary of State for the Environment;