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Joint Circular from the

Department of the Environment
2 Marsham Street, London SW1P 3EB

Welsh Office
Cathays Park, Cardiff CF1 3NQ

Sir *17 December 1986*

Housing and Planning Act 1986: Planning Provisions

1. Some of the planning provisions in the Housing and Planning Act 1986 ("the 1986 Act") will come into operation in England and Wales on 7 January 1987, by virtue of the Housing and Planning Act (Commencement No. 1) Order 1986. The Annex to this circular lists them and describes them in detail.

2. It is intended that paragraph 8 of Schedule 11 to the Act will be brought into effect on 1 March 1987. The paragraph provides for decisions on applications for costs in respect of "transferred" planning appeals to be taken by the Inspector who decides the appeal. A separate circular on costs policy and procedure will be issued shortly.

3. Other planning provisions of the Act will be brought into effect during 1987. These are Part II (Simplified Planning Zones), Part IV (Hazardous Substances), Part V (Opencast Coal), and in Part VI (Miscellaneous Provisions) those sections dealing with Listed Buildings and Conservation Areas, Local Plans and Unitary Development Plans, and other miscellaneous provisions not commenced on 7 January.

Effect on Local Government Manpower and Expenditure

4. The provisions described in the Annex are expected to have no direct financial effect except that, insofar as they lead to simpler and more readily understood procedures, they should result in a decrease in the workload of local planning authorities and in lower administrative costs. There may, therefore, be some small saving in manpower requirements.

We are, Sir, your obedient Servants

A H CORNER, *Assistant Secretary*

J C LEWIS, *Assistant Secretary*

The Chief Executive
County Councils } in England and Wales
District Councils }
London Borough Councils

The Town Clerk, City of London

The National Park Officer
Lake District Special Planning Board
Peak Park Joint Planning Board

The Chief Executive
London Docklands Development Corporation
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For information
Chief Officer, The Residuary Bodies
The Secretary, London Planning Advisory Committee

[DOE PLUP4/7120/1]

[WO P149/31/07]

PROVISIONS COMING INTO OPERATION ON 7 JANUARY 1987

Section 44: overhead electricity lines

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paragraph 14: clarification of section 1(2A) of the Town and Country Planning Act 1971

Section 54: effect of modification or termination of enterprise zone scheme

Section 55: discrimination in exercise of planning functions.

Section 44: Overhead Electricity Lines

1. Section 44 of the 1986 Act generally removes the requirement on the electricity industry to consult county councils as well as district councils about proposals for low voltage (ie. below 132 kv) overhead power lines. The requirement to consult district councils about all such lines remains. Where they exist urban development corporations exercise the functions of the district councils in this respect. County councils must still be consulted about lines to be placed in a National Park, and all lines with a voltage of 132 kv or more. Applications made before 7 January 1987 are unaffected by the provisions of section 44.

Section 45: Control of Advertisements: experimental areas

2. Section 45 of the 1986 Act amends section 63 of the Town and Country Planning Act 1971 ('the 1971 Act'), so as to provide the Secretary of State with a new regulation-making power to define an "experimental area", in order to assess the effect on amenity or public safety of the display of prescribed outdoor advertisements during the period of an experiment. As explained in paragraph 5.11 of the White Paper entitled "Building

Businesses . . . Not Barriers" (Cmnd. 9794), it is intended to use this power to initiate an experiment, in consultation with the local planning authorities in the area concerned, to evaluate proposals for a new "deemed consent", in the Control of Advertisements Regulations, for directional advertising signs for certain tourist attractions and facilities.

Section 46: Land Adversely Affecting Amenity of Neighbourhood

3. Section 46 substitutes a new version of section 65 of the 1971 Act. The new provisions extend, in two main ways, the powers for district planning authorities (local planning authorities in the metropolitan counties) to require the proper maintenance of privately-owned land in their area. First, those powers will now be available where the amenity of an area is "adversely affected" by the condition of the land in question: previously the amenity of the area had to be "seriously injured". Secondly, the powers will now be available in respect of any land (including buildings) in an authority's area: previously the powers were restricted to open land. These changes have been made in response to difficulties experienced by authorities in attempting to enforce, through the courts, notices served under section 65. Authorities will no doubt continue to use the powers with discretion, as a means of dealing with relatively isolated, severe cases of neglected or unsightly land.

4. Any notices under section 65 of the 1971 Act, or appeals under sections 105 or 106 of that Act, which are pending on 7 January 1987 will lapse. Authorities will of course have the option of serving a fresh notice under the new section 65.

Section 48: Repeal of Unnecessary Enactments

5. Section 48 of the 1986 Act repeals the enactments relating to the following:—

(a) Grants for the Removal of Temporary Defence Works

The provisions of section 52 of the Requisitioned Land and War Works Act 1945 and paragraph 10 of the Schedule to the Requisitioned Land and War Works Act 1948 enabled compensation to be paid to land owners and planning authorities who incur expenditure on the restoration of land damaged by government war works or war use. With the passage of time these provisions have become more difficult to administer because Ministry of Defence records of war time requisitioned land and compensation paid on its release have been destroyed. Since subsequent legislation has become available to provide financial assistance towards the clearance of derelict land these provisions are redundant. The entitlement to grant will continue for schemes approved before 7 January 1987. MHLG Circular No. 28/53 is hereby cancelled.

(b) Industrial Development Certificates

The provisions of sections 66 to 72 of the 1971 Act required an industrial development certificate to be obtained before a planning application for prescribed types of industrial development could be entertained by the local planning authority. Under the Town and Country Planning (Industrial Development Certificates) (Prescribed Classes of Building) Regulations 1981 (No. 1826), which came into effect on 9 January 1982, no buildings are now prescribed and no industrial development certificate is therefore required for any building. The repeal is essentially a tidying up provision. Paragraph 25 of Part I of Schedule 11 to the 1986 Act makes a consequential amendment to the Industrial Development Act 1982 but makes no alteration of substance.

The repeal schedule (Schedule 12 to the 1986 Act) also removes from the statute book the provisions of sections 73 to 85 of the 1971 Act which provided for the control of office development. These provisions ceased to have effect on 9 August 1979 by virtue of section 86 of the 1971 Act and the Control of Office Development (Cessation) Order 1979 (No. 908).

(c) Planning Redevelopment Grants

The repeal of sections 250 to 252 of the 1971 Act which relate to planning redevelopment grants was foreshadowed by paragraph 5 of DOE Circular 29/85 (Welsh Office 65/85). Under the Town and Country Planning (Grants) (Amendment) Regulations 1985 (No. 1152) no scheme may be approved for grant unless application for approval was made before 1 April 1986. However, as explained by Circular 29/85, grant will continue to be payable for schemes already approved, and the repeal effected by section 48 of the 1986 Act does not affect that position.

Section 49 and Schedule 11: Minor and Consequential Amendments; repeals

6. Section 49 of the 1986 Act introduces Part I of Schedule 11 to the Act which amends the 1971 Act and some related enactments in a number of minor respects.

Paragraph 1 of Schedule 11: the subdivision of the planning unit

7. This amendment to section 22 of the 1971 Act is intended to clarify the circumstances in which planning permission is required to divide buildings and land. Its aim is to provide more certainty for developers who wish to know what changes can be made to non-residential property without the need for permission. The amendment was foreshadowed in the consultation paper published on 16 June 1986 setting out the Government's proposals to modernise the Town and Country Planning (Use Classes) Order.

8. The amendment does not mean that all sub-division will fall outside planning control. The existing requirement for planning permission for the conversion of houses into flats will remain in place. Moreover any sub-division of commercial and industrial premises will continue to require planning permission where it is associated with an intensification of use sufficient itself to amount to a material change of use. There is no rule of thumb for determining the point at which such a material change of use takes place: this will be a matter for local planning authorities to judge.

9. The need for the amendment stemmed from a grammatical defect in section 22 of the 1971 Act. Subsection (2) *(f)* of that section removes from the definition of 'development' changes of use of buildings and land where both the existing and proposed uses fall within the same class of the Use Classes Order; planning permission is therefore not needed for such changes of use. However, the grammatical construction of the sub-section before this amendment was such that the only changes of use excluded from the need for planning permission were those affecting the *whole* of the planning unit concerned. A Court of Appeal case (Winton v Secretary of State for the Environment: [1984] JPL 188) had confirmed that a material change in the use of *part* of the premises, even though both existing and proposed uses fell within the same use class, did require planning permission. The implication of the case was that where a person owned two industrial buildings on a site he was unable to sell one for continued use for a similar industrial purpose within the same use class without obtaining planning permission. As a result of this amendment to section 22, this difficulty no longer arises.

Paragraph 2 of Schedule 11: Development Orders

10. Paragraph 2(1) amends section 24(3) of the 1971 Act to enable future Development Orders to make different provisions for different descriptions of land and so remove the need both for parallel General Development Orders (GDOs) and Special Development Orders (SDOs) and for constant updating of SDOs. As previously worded, section 24 enabled the Secretary of State to make GDOs applicable to all land in England and Wales or SDOs applicable only to the land specified in the orders concerned. This meant that as changes were made to the GDO, any special provisions applying in National Parks, Areas of Outstanding Natural Beauty or Conservation Areas, for example, could only be achieved by a parallel SDO. Moreover, as SDOs could only apply to the land specified in them, and not to descriptions of types of area, they needed to be specifically updated if they were to cover, for example, Conservation Areas designated after the order had been made.

11. Paragraph 2(2) amends paragraph 17 of Schedule 16 to the Local Government Act 1972 which required the Secretary of State to include in the GDO a power enabling highway authorities to direct the district planning authority how to deal with certain planning applications. As amended, the provision gives the Secretary of State the discretion to include in the GDO such provisions for highway authority involvement in development control as he sees fit. This paves the way for an amendment to the GDO to replace highway authorities' powers of direction with a right to be consulted—as foreshadowed in the White Paper 'Building Businesses . . . Not Barriers' (paragraph 8.28) (Cmnd. 9794).

Paragraph 3 of Schedule 11: Disabled Persons: construction of references to certain documents

12. This amendment to sections 29A and B of the 1971 Act updates (and provides for the future updating of) the references to two publications—British Standards Institution "Code of Practice for Access of the Disabled to Buildings" (BS5810: 1979) and Design Note 18 "Access for Disabled People to Educational Buildings" (1984). These specify the requirements for providing means of access for disabled people to buildings which are open to the public, and local planning authorities are under a duty to draw them to the attention of persons to whom planning permission is granted for certain types of development.

Paragraph 4 of Schedule 11: Applications to vary or revoke conditions attached to planning permission

13. This paragraph introduces a new section 31A into the 1971 Act to provide that in the case of land with an extant planning permission granted subject to conditions, an applicant may apply to the local planning authority for relief from any or all of those conditions. It may be seen as complementing the power in section 32(1)(*b*) which provides that applications for planning permission may relate to development already undertaken if they are for permission to retain buildings or works, or to continue a use of land, without complying with some conditions subject to which a previous permission was granted. This new section will provide an applicant with an alternative to appealing against the original permission. It will also enable him (after the expiry of the 6 month period during which an appeal must be lodged) or any subsequent owner of the land (who does not have the right to appeal) to obtain relief from conditions without the need to submit a second full application. On receipt of an application under

section 31A (the form and content of which will not be prescribed until new regulations are made in Spring 1987) the local planning authority may consider only the conditions to which the planning permission ought to be subject and may not go back on their original decision to grant permission. If the authority do decide that some variation of conditions is acceptable, a new alternative permission will be created. It is then open to the applicant to choose whether to implement the new permission or the one originally granted. Regulations to govern the fee payable for applications under section 31A will be introduced early in 1987.

Paragraphs 5–7 of Schedule 11: Purchase Notices

14. Some minor amendments to the purchase notice provisions in Part IX of the 1971 Act are made by paragraphs 5 to 7 in Schedule 11 to the 1986 Act. To minimise delay, paragaph 5 of Schedule 11 introduces a statutory obligation for a council receiving a notice to send a copy of the purchase notice and any counter-notice to the Secretary of State *before* serving the counter-notice on the landowner, if the council decide not to accept the purchase notice and cannot find another authority or statutory undertaker to comply with it in their place. Paragaph 6 of Schedule 11 amends section 184 of the 1971 Act so that land shall not be regarded as having no "reasonably beneficial use" if either a part or the whole of the land has a restricted use by virtue of a previous planning permission. Paragraph 7 of Schedule 11 provides that when an enforcement or other planning appeal, involving the same land as the purchase notice land, is either already before, or comes before, the Secretary of State, the time-limits specified in section 186(3) of, and paragraph 3(3)(*b*) of Schedule 19 to, the 1971 Act are suspended until the other appeal has been determined.

Paragraph 10 of Schedule 11: Procedure on applications and appeals disposed of without inquiry or hearing

15. This paragraph contains provisions to enable regulations to be made to govern the written representations appeals procedure. The Government's aim is to facilitate target setting and discourage late representations, and thus accelerate the handling of written representations appeals. The regulations will be made as soon as possible following consultation with interested parties.

Paragraph 11 of Schedule 11: Power to return appeal for determination by Inspector

16. This paragraph enables the Secretary of State to transfer back to a Planning Inspector for decision a planning appeal previously recovered for decision by the Secretary of State.

Paragraph 12 of Schedule 11: Appointment of Assessors

17. This paragraph enables an assessor to be appointed to assist an Inspector at a local inquiry into a planning appeal transferred to the Inspector for decision. This brings transferred appeals into line with cases determined by the Secretary of State where the power to appoint an assessor is already available.

Paragraph 13 of Schedule 11: Increase of daily penalties for offences

18. This paragraph increases the maximum daily penalty which the Magistrates' Court may impose on conviction for certain "continuing" planning offences under the 1971 Act. The new maximum daily penalties now amount, in each case, to one-tenth of the maximum penalty for the related main offence.

Paragraph 14 of Schedule 11

19. This paragraph substitutes a new subsection (2A) in section 1 of the 1971 Act. Although subsection (2A) was previously amended by section 3(2) of the Local Government Act 1985 it remained an untidy provision. The new version inserted by the 1986 Act recognises that there are a number of instances where, in non-metropolitan counties, the local planning authority is not the county or district: for example an urban development corporation may be designated by order as the local planning authority for an area for specified purposes of the 1971 Act. This new subsection has no implications beyond recognising the realities created by other provisions of the planning legislation.

Section 54: Effect of Modification or Termination of Enterprise Zone Scheme

20. Under Schedule 32 to the Local Government Planning and Land Act 1980 (as enacted), planning permission for developments in EZs ends with the termination date of the zone. The amendment made by section 54 extends the planning permission granted by an enterprise zone planning scheme to development that has started but is not complete by the time the area ceases to be an enterprise zone.

21. Where development has begun before the end of the life of an enterprise zone, the provisions of section 44(2) to (6) of the 1971 Act will apply. A local authority will be able to issue a notice stating that the planning permission will cease to have effect at the end of a specified period of not less than one year if the development is not completed by then. As a consequence, the provisions of section 43(1) to (3) of the 1971 Act will also apply for the purpose of defining when development has begun.

Section 55: Discrimination in Exercise of Planning Functions

22. This section makes it unlawful for a local planning authority to practise racial discrimination in deciding planning applications and in carrying out their other planning functions. In so doing it will provide a further remedy over and above the present forms of redress through the local ombudsman and the planning appeals system. The section refers simply to "discrimination", a term defined in the Race Relations Act 1976 as embracing *both* racial discrimination and discrimination by way of victimisation. It will enable those discriminated against to claim compensation if discrimination is proved, and to have the effects of discrimination remedied by legal action through the courts. It will also afford a specific remedy for someone who may be discriminated against in the administrative process of handling a planning application—for example if his application is deliberately delayed.

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