STATUTORY INSTRUMENTS

2017 No. 1309

TOWN AND COUNTRY PLANNING, ENGLAND

The Town and Country Planning (Permission in Principle) (Amendment) Order 2017

Made - - - -	*19th December 2017*
Laid before Parliament	*21st December 2017*
Coming into force - -	*1st June 2018*

The Secretary of State, in exercise of the powers conferred by sections 59, 59A, 61(1), 61W, 62, 65, 69, 70(2ZZC), 71, 74(1), 77(4), 78, 79(4), 96A, 99(2), 293A and 316 of, and paragraphs 7(7), 8(6) and 8A(3) of Schedule 1 to, the Town and Country Planning Act 1990(**1**), section 54 of the Planning and Compulsory Purchase Act 2004(**2**) and section 213 of the Housing and Planning Act 2016(**3**), makes the following Order.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Town and Country Planning (Permission in Principle) (Amendment) Order 2017 and comes into force on 1st June 2018.

(**1**) 1990 c. 8; section 59A was inserted by section 150(2) of the Housing and Planning Act 2016 (c. 22) ("the 2016 Act"); section 61W was inserted by section 122(1) of the Localism Act 2011 (c. 20); section 62 was substituted by section 42(1) of the Planning and Compulsory Purchase Act 2004 (c. 5) ("the 2004 Act") and amended by paragraphs 7 and 8 of Schedule 12 to the 2016 Act; section 65 was substituted by section 16(1) of the Planning and Compensation Act 1991 (c. 34) ("the 1991 Act") and relevant amendments are made by paragraph 9 of Schedule 12 to the 2016 Act; section 69 was substituted by paragraphs 1 and 3 of Schedule 6 to the 2004 Act and relevant amendments are made by section 190 of the Planning Act 2008 (c. 29) ("the 2008 Act") and by paragraph 7 of Schedule 12 to the Localism Act 2011 and by paragraph 10 of Schedule 12 to the 2016 Act; section 70(2ZZC) was inserted by section 150(3) of the 2016 Act; section 71 was amended by section 16 of, and paragraph 15 of Schedule 7 to, the Planning and Compensation Act 1991 ("the 1991 Act") and by paragraph 15 of Schedule 12 to the 2016 Act; section 74 was amended by sections 19(1) and 84(6) of, and paragraph 17 of Schedule 7 and Part 1 of Schedule 19 to, the 1991 Act and paragraph 9 of Schedule 12 to the 2011 Act and by paragraph 17 of Schedule 12 to the 2016 Act; section 77(4) was amended by paragraph 18 of Schedule 7 to the 1991 Act; section 78 was amended by section 17(2) of the 1991 Act, section 43(2) of the 2004 Act, paragraph 7 of Schedule 7 and paragraphs 1 and 2 of Schedule 11 to the 2008 Act, section 123 of the 2011 Act and paragraph 8 of Schedule 1 to the Growth and Infrastructure Act 2013 (c. 27) ("the 2013 Act") and by paragraph 21 of Schedule 12 to the 2016 Act; section 79(4) amended by paragraph 23 of Schedule 12 to the 2016 Act; section 96A was inserted by section 190 of the 2008 Act and relevant amendments were made by S.I. 2017/276; section 293A was inserted by section 82(1) of the 2004 Act and amended by paragraph 34 of Schedule 12 to the 2016 Act; section 298A was inserted by paragraph 10 of Schedule 3 to the 2004 Act; paragraph 7 of Schedule 1 was substituted by paragraph 16 of Schedule 6 to the 2004 Act and amended by paragraph 1 of Schedule 8 to the 2011 Act, and by paragraph 41 of Schedule 12 to the 2016 Act; paragraph 8 of Schedule 1 was substituted by paragraph 53 of Schedule 7 to the 1991 Act and by paragraph 41 of Schedule 12 to the 2016 Act; and paragraph 8A was inserted by section 142 of the 2016 Act.

(**2**) 2004 c. 5.

(**3**) 2016 c. 22.

(2) In this Order "the 2017 Order" means the Town and Country Planning (Permission in Principle) Order 2017(**4**).

Amendment of the Town and Country Planning (Permission in Principle) Order 2017

2. The 2017 Order is amended in accordance with the following provisions.

Amendment to article 2

3. In article 2 (interpretation) of the 2017 Order insert the following definitions in the appropriate places—

""by site display" means by posting the notice in question by firm fixture to some object so that the notice is displayed in such a way as to be easily visible and legible by members of the public;";

""electronic communication" has the same meaning as in section 15(1) of the Electronic Communications Act 2000(**5**);";

""infrastructure manager" means any person who, in relation to relevant railway land—

(a) is responsible for developing or maintaining the land; or

(b) manages or uses the land, or permits the land to be used for the operation of a railway;";

""relevant railway land" means land—

(a) forming part of any operational railway; or

(b) which is authorised to be used for the purposes of an operational railway under—

(i) a planning permission granted or deemed to be granted,

(ii) a development consent granted by an order made under the Planning Act 2008(**6**), or

(iii) an Act of Parliament,

including viaducts, tunnels, retaining walls, sidings, shafts, bridges, or other structures used in connection with an operational railway and excluding car parks, offices, shops, hotels or any other land which, by its nature or situation, is comparable with land in general rather than land which is used for the purpose of an operational railway;"; and

""residential development" means development the main purpose of which is housing development;".

Insertion of new Part 2A

4. After Part 2 of the 2017 Order insert—

(**4**) S.I. 2017/402.
(**5**) 2000 c. 7. Section 15 was amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c. 21).
(**6**) 2008 c. 29.

"Part 2A

Permission in principle: applications to local planning authorities

Permission in principle

5A.—(1) A local planning authority may grant permission in principle on an application to the authority in accordance with the provisions of this Order.

(2) Subject to article 5B, for the purposes of section 59A(1)(b) of the 1990 Act(**7**), the description of development in relation to which a local planning authority may grant permission in principle is residential development of land.

(3) When granting permission in principle under paragraph (1) the local planning authority must—

(a) in relation to the housing development, specify the minimum and maximum net number of dwellings which are, in principle, permitted; and

(b) in relation to the non-housing development (if any is, in principle, permitted), specify the scale of any such development which is, in principle, permitted and the use to which it may be put.

(4) In this article—

"maximum net number of dwellings" means the maximum number of dwellings on the land after the proposed development less the number of dwellings on the land immediately prior to the date the application for permission in principle is submitted; and

"minimum net number of dwellings" means the minimum number of dwellings on the land after the proposed development less the number of dwellings on the land immediately prior to the date the application for permission in principle is submitted.

Exemption of certain developments

5B.—(1) A local planning authority may not grant permission in principle, on an application to the authority, in relation to development which is—

(a) major development;

(b) habitats development;

(c) householder development; or

(d) Schedule 1 development.

(2) A local planning authority may not grant permission in principle, on an application to the authority, in relation to Schedule 2 development unless—

(a) the local planning authority has adopted a screening opinion under regulation 6 of the EIA Regulations that the development (up to and including the maximum net number of dwellings) is not EIA development;

(b) the Secretary of State has made a screening direction under regulation 7 of the EIA Regulations that the development is not EIA development; or

(c) the Secretary of State has made a direction under regulation 63 of the EIA Regulations that the development is exempted from the application of those Regulations.

(3) Where it appears to the local planning authority that—

(**7**) Section 59A was inserted into the 1990 Act by section 150(2) of the Housing and Planning Act 2016 (c. 22).

(a) an application for permission in principle which is before them for determination may be Schedule 2 development; and

(b) the development in question has not been the subject of a screening opinion or screening direction,

paragraphs (5) and (6) of regulation 6 of the EIA Regulations apply as if the receipt of the application were a request made under regulation 6(1) of those Regulations.

(4) For the purposes of paragraphs (2) and (3), the EIA Regulations have effect in relation to applications for permission in principle as if the reference to an application for planning permission in Part 2 (screening) and in regulation 63 of the EIA Regulations were a reference to an application for permission in principle.

(5) In this article—

"EIA development" has the same meaning as in regulation 2 of the EIA Regulations;

"EIA Regulations" means the Town and Country Planning (Environmental Impact Assessment) Regulations 2017(**8**);

"European offshore marine site" has the meaning given in regulation 18 of the Conservation of Offshore Marine Habitats and Species Regulations 2017(**9**);

"European site" has the meaning given by regulation 8 of the Conservation of Habitats and Species Regulations 2017(**10**);

"habitats development" means development which is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects) and is not directly connected with or necessary to the management of the site;

"house" does not include a building containing one or more flats, or a flat contained within such a building;

"householder development" means development of an existing dwelling, or development within the curtilage of such a dwelling for any purpose incidental to the enjoyment of the dwelling, but does not include change of use or change in the number of dwellings in a building;

"major development" means development involving any one or more of the following —

(a) the provision of dwellings where the number of houses to be provided is 10 or more;

(b) the provision of a building or buildings where the floor space to be created is 1,000 square metres or more; or

(c) development carried out on a site having an area of 1 hectare or more;

"maximum net number of dwellings" has the same meaning as in article 5A; and

"Schedule 1 development" and "Schedule 2 development" have the same meanings as in regulation 2 of the EIA Regulations.

Consultation before applying for permission in principle

5C. For the purposes of section 61W of the 1990 Act (requirement to carry out pre-application consultation) a person must carry out consultation on a proposed application

(**8**) S.I. 2017/571.
(**9**) S.I. 2017/1013.
(**10**) S.I. 2017/1012.

for permission in principle for any residential development involving an installation for the harnessing of wind power for energy production where—

(a) the development involves the installation of more than 2 turbines; or

(b) the hub height of any turbine exceeds 15 metres.

Applications for permission in principle

5D.—(1) An application for permission in principle must—

(a) be made in writing, to the local planning authority for the area in which the land is situated, on a form published by the Secretary of State (or a form to substantially the same effect);

(b) include the particulars specified or referred to in the form;

(c) be accompanied, whether electronically or otherwise, by—

(i) a plan which identifies the land to which the application relates;

(ii) except where the application is made by electronic communications or the local planning authority indicate that a lesser number is required, 3 copies of the form; and

(iii) where consultation is required by virtue of article 5C, particulars of—

(aa) how the applicant complied with section 61W(1) of the 1990 Act;

(bb) any responses to the consultation that were received by the applicant; and

(cc) the account taken of those responses by the applicant.

(2) A plan required to be provided by paragraph (1)(c)(i) must be drawn to an identified scale and must show the direction of North.

(3) Where an application is made using electronic communications to transmit a form to the local planning authority, the applicant is taken to have agreed—

(a) to the use of such communications by the local planning authority for the purposes of the application;

(b) that the applicant's address for those purposes is the address incorporated in, or otherwise logically associated with, the application; and

(c) that the applicant's deemed agreement under this paragraph subsists until the applicant gives notice in writing of the withdrawal of consent to the use of electronic communications under article 7A.

Applications in respect of Crown land

5E. An application for permission in principle in respect of Crown land(**11**) must be accompanied by—

(a) a statement that the application is made in respect of Crown land; and

(b) where the application is made by a person authorised in writing by the appropriate authority(**12**), a copy of that authorisation.

Acknowledgement etc of applications

5F.—(1) When the local planning authority receive an application which—

(**11**) For the definition of "Crown land" see section 293 of the 1990 Act.

(**12**) *See* section 293(2) of the 1990 Act for the definition of "the appropriate authority".