

## Precedents for “zoning” in England and Wales



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- A number of “zoning” type powers which allow a greater degree of definition than plan allocations and which in many cases substitute for the need for planning permission:
  - Special Development Orders
  - Local Development Orders
  - Neighbourhood Development Orders
  - Enterprise Zones
  - Simplified Planning Zones
  - New Towns Act 1981
- Generally, all underused, though significant degree of central control by government e.g. SDOs, EZs and under New Towns Act. There is considerable scope for use of such powers to bypass regular planning control

- S. 59(3)(b) TCPA 1990: SoS may make special development order applicable only to such land or descriptions of land as is specified. SDO may:
  - itself grant planning permission for specified development or class
  - provide for LPA to grant planning permission in accordance with provisions of order. (Greater freedom from development control)
- Process: made by SI, subject to negative resolution. SoS acting in legislative capacity with absolute discretion: ***Essex CC v MHCLG*** (1967) 18 P&CR 531
- E.g. Town and Country Planning (Cardiff Bay Urban Development Area) Special Development Order 1989/1180, permitting development within Cardiff Bay area in accordance with proposals approved by SoS

- Ss. 61A-C and Sch. 4 TCPA 1990. Encouraged by NPPF 2019 §§51, 68. Procedure in Art 38 DMPO
- Allows LPAs to include grants of planning permission in development plan documents to implement policies in the plan. May grant permission for -
  - specified development
  - development of a specified class (s. 61A(2))
- Very flexible. Permission may be granted unconditionally (so no application for planning permission required) or conditionally, and (if granted for a class) may be disapplied to a specific development or area (s. 61C). LPA can require further approvals (e.g. on matters of detailing) if it so wishes.

- Must not grant permission for:
  - development affecting listed building
  - Sched 1 EIA Development (Art 38(12) DMPO) (if Sched 2. development, requires screening – see PPG 4-007-20170728)
- Control of LDO by SoS/NAW (s. 61B)
  - SoS can direct LDO be submitted for approval (s. 61B(1)). NAW requires submission (Art 27(10) DMPO (Wales) 2012)
  - May approve or reject LDO or part of it (s. 61B(5))
  - NAW may direct LPA to modify LDO (s. 61B(6))
  - May at any time revoke LDO if expedient to do so (s. 61B(8)). But compensation may be payable by LPA (s. 108)

- S. 61E-Q TCPA 1990. Procedure in Sched 4B TCPA 1990 and Neighbourhood Planning (General) Regulations 2012 Pt 6
- PPG *Neighbourhood planning* (section 41)
- Triggered by “qualifying body” (parish council or body designated as neighbourhood forum by LPA) submits proposal and draft order to LPA
- Scope: NDO may
  - grant permission unconditionally
  - grant conditional permission requiring further approvals. Regulations may make approvals to be sought from Parish Council not LPA
  - make different provision for different cases or circumstances
- Can authorise: building operations, material changes of use, engineering operations

- Limitations:
  - For qualifying bodies only and only covers a specific neighbourhood area and may not cover more than one neighbourhood area (s. 61J(5))
  - cannot be used for development listed in s. 61K TCPA 1990, including
    - county matters (e.g. minerals, waste)
    - Sched 1 EIA Development
    - NSIP development
  - may not grant permission where permission already granted (s. 61J(4))
  - SoS may revoke a NDO, LPA may revoke with SoS consent (s. 61M)
- *Community Right to Build Order* – specific form of NDO – s. 61Q and Sched 4C TCPA obtainable by “community organisations” (Sched 4C §3) - grants planning permission for specified development in relation to a specified site in the specified neighbourhood area within prescribed limits

- S. 179 and Sched 32 LGPLA 1980, s. 88 TCPA 1990. SoS invites body (e.g. Dev Corp) to prepare scheme designating area as EZ. DC prepares and adopts scheme, SoS designates area as EZ and DC as EZ Authority
- Scope:
  - Designating order grants planning permission for specified development or class of development, subject to limitations specified in the scheme.
  - Designations last for 10 years.
  - EZ Authority may direct permission does not apply to specified development, class of development or within specified area
  - Order may designate EZ Authority LPA for EZ
  - EZ scheme does not have to relate to local plan



- Ss. 82-87 TCPA 1990, procedure in Sched 7 TCPA 1990
- LPAs to consider and keep under review in which part of their areas an SPZ scheme is desirable, and prepare SPZ Scheme when desirable.
- Scope:
  - SPZ grants permission for development – specifically or generally
  - Permission conditional or unconditional. Conditions can be case specific but are necessarily general
  - Permission lasts for 10 years
  - Legislation does not tie SPZ schemes to development plan
  - Challenge – akin to a challenge for local plan, not planning permission

- Limitations:
  - Cannot be used to grant permission for what would be a “county matter”
  - Cannot use in National Park, Conservation Areas, AONBs, Green Belt or SSSI
- SoS Control:
  - Any person asking LPA to make or alter SPZ may refer matter to SoS if LPA refuses, save in limited circumstances
  - SoS may call in SPZ scheme prior to adoption
  - SoS may direct LPA to modify proposals
  - SoS may provide further areas where SPZ cannot apply

- New Towns Act 1981 replaced earlier post-war legislation for new towns which was run down, the Commission for the New Towns being replaced in 1985 by English Partnerships, the regeneration functions of which from 2008 were vested in Homes England
- Designation:
  - SoS makes order designating area including “any existing town or other centre of population” to be developed as new town if “expedient in the national interest that any area of land should be developed as a new town by a corporation established under this Act” (s. 1(1))
  - SoS may appoint LA/s to oversee development (s. 1A(1)) (*oversight authority*) which may require OA’s consent to exercise of specific functions
- Development Corporation
  - SoS makes order appointing development corporation (s. 3(1)) to secure layout and development of new town (s. 4(1))

- Development corporation to submit proposals for development of land to SoS for approval (with or without modifications) (s. 7(1)). Under old circulars, this was generally in the form of a masterplan (e.g. DOE 18/84)
- Duty to have regard to desirability of good design (s. 4(1B))
- SoS may make SDO under s. 59 TCPA 1990 granting permission (conditionally or unconditionally) (s. 7(2))
  - Town and Country Planning (New Towns) Special Development Order 1977/665 grants permission for DC to carry out development in accordance with approved and submitted plans, subject to restrictions (e.g. consultation requirements, other consents)
  - Imports flexibility of s. 59 powers
- SoS must direct DC to secure the preservation of any features of special architectural or historic interest and in particular of listed buildings (s. 8)

# Thank you for listening

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