

Changes to Section 38(6) PCPA 2004



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Decision making- the current system

Section 38(6) Planning and Compulsory Purchase Act 2004

(6) If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.



The Proposed New System

To be inserted in Section 38 PCPA 2004 – Clause 83(2)

“(5A) For the purposes of any area in England, subsections (5B) and (5C) apply if, for the purposes of any determination to be made under the planning Acts, regard is to be had to –

- (a) the development plan, and
- (b) any national development management policies.

(5B) Subject to subsections (5) and (5C), the determination must be made in accordance with the development plan and any national development management policies, unless material considerations strongly indicate otherwise.

(5C) If to any extent the development plan conflicts with a national development management policy, the conflict must be resolved in favour of the national development management policy.”

(My underlining)

The Proposed New System (2)

- (1) When does the section 38(5A) requirement apply
- (2) What is the development plan
- (3) What are national development management policies
- (4) What difference will the new system make to decision making

When does the section 38(5A) requirement apply?

Section 38(5A) applies

If, for the purposes of any determination made under the planning acts, regard is to be had to:

- (a) the development plan; and
- (b) any national development management policies.

Section 70(2) of the Town and Country Planning Act 1990 will be amended by adding at (azb)

any national development management policies, so far as material to the application,”

(Schedule 6 paragraph 3)

What is the development plan?

Clause 82 – inserts subsection (2A) in section 38 PCPA 2004

Supplementary Plans and the Policies Map are to be added to the list of documents which comprise the development plan



What are national development management policies? (1)

Clause 83(4) After subsection (9A) (inserted by section 82(4) of this Act)
insert –

“(9B) National development management policy must be construed in accordance with section 38ZA.”

Clause 84

“38ZAMeaning of “national development management policy”

(1) A “national development management policy” is a policy (however expressed) of the Secretary of State in relation to the development or use of land in England, or any part of England, which the Secretary of State by direction designates as a national development management policy.

What are national development management policies? (2)

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At the time that the Bill was published the Government published a policy paper
Levelling Up and Regeneration: Further Information

Most fundamentally, we will need to identify and consult on the National Development Management Policies which will sit alongside plans to guide decision-making. They will be derived from the policies set out currently in the National Planning Policy Framework, where these are intended to guide decision-making, but we will also identify and seek views on any gaps in the issues which are covered. The rest of the National Planning Policy Framework will be re-focused on setting out the principles to be taken into account in plan-making, whilst also streamlining national policy, making it more accessible and user friendly.

What difference will the changes make? (1)

- National development management policies will be ‘derived’ from policies on decision making in the NPPF.
- NDMP will no longer be an ‘other material consideration’- they are to be given equivalent status to the development plan under the current system.
- In the event of conflict NDMP will prevail.
- A proposal which conflicts with the development plan and any NDMP will only be granted consent if material considerations strongly indicate that a decision should be made otherwise than in accordance with the NDMP and the development plan.

What difference will the changes make? (2)

- In the initial operation of the system (before development plans have been prepared under the new arrangements) there is likely to be much debate on whether the development plan conflicts with NDMP.
- Those proposing development are likely to argue that proposals comply with the NDMP, and are not likely to rely on other material considerations outweighing the indication given by the development plan and NDMP.
- This is a change from a local plan led system to a NDMP led system.

Thank you for listening

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