EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) (AMENDMENT) ORDER 2013

2013 No. 1238

THE PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) (AMENDMENT) (ENGLAND) REGULATIONS 2013

2013 No. 1239

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Town and Country Planning (Development Management Procedure) (England) (Amendment) Order 2013 ("the Order") amends the Town and Country Planning (Development Management Procedure) (England) Order 2010 ("the DMPO") to simplify the requirements for design and access statements, introduce provision in relation to non-validated applications, and remove the requirement to provide reasons for approval and a summary of relevant policies and proposals on written decision notices where a planning permission is approved.

2.2 The Planning (Listed Buildings and Conservation Areas) (Amendment) (England) Regulations 2013 ("the Regulations") amend the Planning (Listed Buildings and Conservation Areas) Regulations 1990 ("the 1990 Regulations") to simplify the requirements for design and access statements.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 Part 2 of the DMPO sets out the procedures connected with making planning applications in England. The amendment in article 3 of the Order is a minor amendment consequential on revocation of article 4(4) of the DMPO by S.I. 2012/3109.

4.2 Article 8 of the DMPO provides that in certain cases a design and access statement must be submitted with an application for planning permission. Article

4 of the Order substitutes a new article 8 of the DMPO which reduces the number of applications which must be accompanied by a design and access statement. It also reduces the level of prescription regarding the content of design and access statements.

4.3 Article 10 of the DMPO sets out general provisions relating to planning applications and article 29(3) defines when an application is a 'valid' application. The requirement to determine a planning application within the time limits set out in article 29 only apply where an application is valid. Article 5 of the Order amends articles 2,10, 29 and 36 and inserts a new article 10A. These amendments, read together with section 78(2) of the 1990 Act, would provide applicants with a right of appeal in relation to non-validated applications – these are applications where there is a dispute between the applicant and the local planning authority as to whether the application is 'valid'. In order to exercise this new appeal route an applicant will first have to send a notice to the local planning authority setting out the information which the applicant does not consider needs to be provided (article 10A). Article 8 makes transitional provision in relation to article 5.

4.4 Article 5 of the Order also amends article 29(4) to prescribe that an applicant only needs to provide information on a local authority list where it is reasonable having regard, in particular, to the nature and scale of the proposed development; and about a matter which it is reasonable to think will be a material consideration in the determination of the application

4.5 Article 20 of the DMPO prescribes the consultations to which the duty to respond in section 54 of the Planning and Compulsory Purchase Act 2004 applies. Article 6 adds new provision to this list.

4.6 Article 31 of the DMPO makes provision for a local planning authority to send a decision notice after determining a planning application. Article 7 of the Order amends article 31 of the DMPO to remove the requirement for local planning authorities to include a summary of their reasons for approval, and a summary of relevant policies and proposals, on decision notices when granting planning permission.

4.7 The 1990 Regulations, amongst other things, set out procedures for making applications for listed building or conservation area consent. Regulation 3A of the 1990 Regulations provides that a design and access statement must be submitted with an application for listed buildings consent. Regulation 2 of the Regulations amends regulation 3A of the 1990 Regulations to reduce the information to be provided in a design and access statement.

5. Territorial Extent and Application

5.1 These instruments apply to England only.

6. European Convention on Human Rights

6.1 As these instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

Streamlining the planning application process

7.1 The National Planning Policy Framework published in March 2012 contains strong policies on how local planning authorities should approach decision-taking in a positive way to foster the delivery of sustainable development. To complement these policies the Government is pursuing a programme of reforms to simplify and speed up the planning application process.

7.2 A consultation paper "Streamlining information requirements for planning applications"[1] was published in July 2012 and proposed greater scrutiny of local lists, changes to outline planning applications and amendments to the standard application form. The legislative changes associated with the July 2012 consultation came into force on 31 January 2013 (SI 2012/3109).

7.3 On 21 January 2013, the Government consulted on a further package of measures to streamline the planning application process. The three main proposals related to:

(a) design and access statements.
(b) improvements to the validation stage.
(c) reasons for approval on decision notices.

7.4 The central purpose of the Order is to bring into force the changes that were proposed in the January 2013 consultation, which can be viewed at: https://www.gov.uk/government/consultations/streamlining-the-planning-application-process

A. Design and access statements

7.5 The DMPO and 1990 Regulations set out:

- the **thresholds** which specify applications that must be accompanied by a design and access statement; and
- the **content** which must be contained in any design and access statement.

7.6 From August 2006, all planning applications and listed building consent applications were required to provide a design and access statement, apart from

[1] https://www.gov.uk/government/consultations/streamlining-information-requirements-for-planning-applications

those for material change of use, engineering/mining operations or householder development outside sensitive locations. The Killian Pretty Review of the planning application process in 2008 recommended a revised and more proportionate approach to design and access statements. This led to updated guidance and regulations introduced in 2010 aimed at streamlining the process.

7.7 The July 2012 consultation paper asked respondents if they considered that there would be merit in reviewing the content of design and access statements where these are being provided in support of outline applications. Responses indicated that, despite the changes made following the Killian Pretty Review, there is still concern about the proportionality and effectiveness of design and access statements.

7.8 The design and access statement changes are twofold:

- To raise the statutory thresholds which specify those applications that must include a design and access statement.
- To simplify the statutory content of design and access statements.

7.9 The Order refocuses the need for a statement on the developments where they offer the greatest value, whilst reducing statutory burdens on applicants. The Order amends the DMPO to stipulate that a design and access statement is only required with certain applications for major development. Recognising that in areas of historic value, smaller proposals may also have a significant impact on the character of an area, lower size thresholds apply in conservation areas and World Heritage Sites. Similarly, applications for listed building consent continue to require a design and access statement.

7.10 A common concern is that design and access statements are too long, repetitive and disproportionate to the specific development proposed. In part, this is because the required content of design and access statements is prescribed in considerable detail within the secondary legislation and these requirements are applicable to every Statement, regardless of the development or works proposed. The Order and the Regulations remove some of the rigid prescription in the DMPO and the 1990 Regulations. This is intended to encourage a more proportionate approach to the preparation of design and access statements by enabling applicants to better tailor content to the scale and nature of the application proposals.

B. Improvements to the validation stage

7.11 Applicants and businesses have expressed concerns that the current system of local validation lists has resulted in unnecessary information requests pursued by local authorities, which in turn imposes additional costs on applicants.

7.12 To address these concerns, section 6 of the Growth and Infrastructure Act 2013 provides that all information requests must be reasonable having regard, in particular, to the nature and scale of the proposed development; and are about a matter which it is reasonable to think will be a material consideration in the

determination of the application. This brings the statutory framework in to line with the policy position set out in paragraph 193 of the National Planning Policy Framework.

7.13 The amendment to article 29 of the DMPO inserts the tests set out in the National Planning Policy Framework and Growth and Infrastructure Act to any request set out on a local authority's locally prepared list of information requirements. This means that the existence of an item on a validation list does not compel the applicant to provide it, he or she first has to consider whether the item in question is reasonable and necessary. The change also means that a local authority cannot withhold validation on the grounds of insufficient information, unless they can justify the need for additional information against the tests set out in the DMPO.

7.14 The tests provide for a statutory frame of reference for any differences between parties at the validation stage. The Order also provides for a procedure that applicants can follow where they consider that local authorities persist in requesting information that is not reasonable or necessary. Under new article 10A of the DMPO an applicant can notify the local authority why it thinks the information required is unnecessary. The local authority would then have to respond to the applicant within the statutory time period for determining the application (or within 7 working days, where the statutory time period is soon to or has already elapsed) either by validating the application or issuing a non-validation notice.

7.15 The serving of a non-validation notice (or failure to do so within the timescale specified in article 29 of the DMPO) could then form the basis of a subsequent appeal under section 78 of the Town and Country Planning Act 1990 against non-determination of the planning application in question.

7.16 The new approach to local lists, together with potential for an appeal will ensure that all parties give greater consideration to whether information requests are genuinely reasonable and necessary in relation to the development proposed. This will help achieve the Governments aim of a streamlined and effective planning system.

C. Reasons for approval on decision notices

7.17 Since 2003 local planning authorities have been required to provide a summary of reasons for approval (and a summary of relevant policies and proposals) on written decision notices when granting planning permission. The local government planning community has suggested that this is both burdensome and unnecessary because it duplicates material documented elsewhere.

7.18 The relevant officer reports (either for delegated decisions or for decisions to be taken by committee) typically provide far more detail on the logic and reasoning behind a particular decision than a decision notice. In order to understand the full rationale for the decision the officer report would need to be obtained. The

requirement to provide this summary therefore adds little to the transparency or the quality of the decision-taking process, but it does add to the burdens on local planning authorities.

7.19 Since the requirement was introduced, ease of access to planning information has grown. Officer reports for both minor and major applications are now generally available online. In addition, the minutes and decisions of planning committee meetings are also published electronically. Furthermore, familiarity with the rights granted under the Freedom of Information Act 2000 has increased. As a result of these advances, there is now a greater level of transparency in the decision taking process.

7.20 By removing the current provisions in the DMPO, the Order seeks to reduce the regulatory burden and offer time-saving benefits to local authorities, without reducing the transparency or accountability of the decision-making process.

Permitted development changes

7.21 Amendments have been made to the Town and Country Planning (General Permitted Development) Order 1995 to provide new permitted development rights for change of use relating to office buildings, agricultural buildings and state-funded schools. The exercise of these rights will require a prior approval application before development can proceed. Article 6 of the Order puts in place a minor consequential change to ensure that where statutory consultees are consulted by the local planning authority as part of this new prior approval process, they must respond to that consultation within the statutory time limit of 21 days.

Consolidation

7.22 There are no plans to consolidate the DMPO or the 1990 Regulations in the immediate future.

8. Consultation outcome

8.1 The changes given effect by the Order and the Regulations were set out in 'Streamlining the planning application process' which was subject to public consultation between 21 January and 4 March 2013.

8.2 A total of 254 responses were received. Local authorities represented the largest group of respondents, followed by parish/town councils. Several professional trade associations responded, as did a number of individual planners and planning consultants. The remaining responses came from a broad range of organisations, including chambers of commerce, architects, developers, housebuilders, landowners, voluntary organisations as well as members of the public.

8.3 The three broad proposals were well supported and have been taken forward as consulted on. The only alteration relates to the thresholds that define which applications must be accompanied by a design and access statement. The principle of applying lower thresholds in conservation areas and World Heritage Sites ('designated areas') was strongly supported. However, a number of responses questioned the effectiveness of the lower thresholds that were consulted on[2]. The Order therefore contains the following thresholds for applications in designated areas:

- The provision of one or more dwellinghouses; and
- The provision of a building or buildings where the floor space created by the development is 100 square metres or more.

8.4 The Government's response to this consultation provides a more detailed summary of the comments which were received.

9. Guidance

9.1 There is no proposal to issue any guidance for this instrument.

10. Impact

10.1 The amendments are considered to have a positive impact on businesses and individuals that submit planning applications. There will also be administrative savings for local authorities. An impact assessment accompanied the January 2013 consultation paper ('streamlining the planning application process'). Please note that the 'equivalent annual net cost to business' figure in the Impact Assessment is subject to final validation by the Regulatory Policy Committee.

11. Regulating small business

11.1 The measures benefit all types of business that make applications for planning permission and listed building consent, including small and micro businesses. By removing the need for most minor applications to be accompanied by a design and access statement, the Order will result in financial savings for small developers.

12 Monitoring & review

12.1 The Department for Communities and Local Government receives regular feedback from local planning authorities, practitioners, professional bodies and the general public on all aspects of planning. We will monitor progress and evaluate the success of these changes.

[2] The lower thresholds for designated areas proposed in the consultation paper were: a) extensions of existing buildings exceeding 100 square metres; and b) new buildings exceeding 100 cubic metres.

13. Contact

13.1 Tom Winter at the Department for Communities and Local Government Tel: 0303 444 1305 or e-mail: tom.winter@communities.gov.uk can answer any queries regarding the instrument.