12 August 2011

The Chief Planning Officer
Local Planning Authorities in England

PLANNING SUPPORT FOR BUSINESSES AND SHOPS

The events of the past week have left many businesses, particularly shops, damaged and in need of assistance to get back on their feet. Where damage has occurred it will be in everyone’s interest to restore premises and bring them fully back into use as quickly as possible. Following the Prime Minister’s statement yesterday, I am writing to ask local planning authorities to consider the ways in which their planning powers can address these issues.

Where planning permission is needed, for example, for rebuilding work or new security shutters, I ask that you prioritise the processing of these planning applications. In the majority of cases, officer determination under delegated powers will be appropriate.

It is important to ensure that a balance is struck between security and protecting the look and character of our high streets. In addition, the overall street scene should be a welcoming environment at night. In this context, it may be helpful to refer businesses to any planning policies or guidance on shop fronts and security shutters.

You may also wish to consider making Local Development Orders to grant automatic planning permission for the installation of security shutters or alterations or extensions to shops. Local Development Orders can be prepared swiftly, are flexible in that they can grant permission for specific development in specified areas, and can be time-limited. The enclosed flowchart sets out the process for making a Local Development Order.

Finally, we also propose to consult on whether security shutters and other security measures should be permitted development.

If you need any further information, please contact Siobhan Fox (0303 444 1709 or siobhan.fox@communities.gsi.gov.uk).

STEVE QUARTERMAIN
Chief Planner

Department for Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU
Flowchart- Local Development Order making process

1. LPA prepares an LDO draft and statement of reasons. Statement must contain a description of development the LDO would permit, and indicate (map/statement) where this would apply.(1)

Consultation

2. LPA required to consult those persons ‘whose interests they consider would be affected by the Order if made’ in the list at DMPO art 34(3)(a) to (o) and those persons they would have been required to consult on an application for planning permission for development proposed by the LDO.(2)

3. In undertaking the consultation, LPA shall send a copy of the draft order and statement of reasons to consultees. Draft LDO and statement of reasons must be made available at LPA’s principal office and other appropriate places, published online and advertised locally.

4. LPA shall display site notice on or near site (see Schedule 7 to the DMPO), and serve site notice on everyone the LPA knows to be the owner/tenant of the site.

5. As part of the consultation the LPA shall specify a consultation period of not less than 28 days within representations must be received. Where publication dates do not coincide, individual notice takes precedence.

6. Having taken into account representations received as a result of the consultation, LPA considers whether any modifications are needed or whether draft should be adopted. LPA determination as to whether modifications are sufficiently significant to require re-consultation.

7. At any point after the LPA has complied with consultation requirements, they must send a draft of the LDO, statement of reasons, and any modifications resulting from the consultation to the Secretary of State.

8.1. SoS gives notice to LPA of no intervention

8.2. SoS takes no action for 21 days

8.3. SoS gives notice to LPA of need for further time

8.4. SoS gives notice to LPA of intention to intervene

9.1. SoS gives notice to LPA of no intervention

9.2. SoS intervenes making direction (TCPA s 61B(1))

10.1. LDO may be adopted.(3)

10.2. LDO cannot be adopted (or must be amended, and reconsulted upon prior to adoption)

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(1) Paragraph (13) of article 34 of the Town and Country Planning (Development Management Procedure) (England) Order 2010, the ‘DMPO’, specifies that an LDO cannot permit development affecting a listed building or development in Schedule 1 to the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, the ‘EIA Regulations’. An LDO may permit development in Schedule 2 to the EIA regulations, provided the correct Environmental Impact Assessment procedures are followed.

(2) See the DMPO, Part 6, article 34(3) and (4).

(3) A Local Planning Authority may revoke a Local Development Order at any time (See section 61A of the Town and Country Planning Act 1990 as amended, the ‘TCPA’). If a revision to a Local Development Order is proposed, re-consultation is required. The Secretary of State may mandate the revision of an LDO by the Local Planning Authority at any point before or after its adoption (see paragraph 2(2)(a) of Schedule 4A to the TCPA). When an LDO is revoked or modified, compensation may be claimed by someone who suffers loss from their subsequent planning application being refused (see section 107 and 108 of the TCPA). Compensation may not be payable on the expiry of a time limit on the duration for which an LDO is ‘active’ (given that the LDO would not ultimately be revoked).