



Built Environment Reform Programme

Proposed changes to the Town and Country Planning (Development Procedure) Order and the Town and Country Planning (Application and Appeal Fees) Order

November 2023

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1.0 INTRODUCTION

What is the purpose of this consultation?

As part of the [Built Environment Reform Programme](#) (“BERP”) and to facilitate the Department of Environment, Food and Agriculture’s (DEFA) core functions changes are proposed to the following secondary legislation which is made under the Town and Country Planning Act 1999 (“the Planning Act”):

- the Town and Country Planning (Development Procedure) Order 2019 (“the DPO”); and
- the Town and Country Planning (Application and Appeal Fees) Order 2021 (as amended in 2023) (“the Fees Order”).

This legislation sets out how applications are dealt with for:

- planning approval (e.g. new buildings, extensions/changes to existing buildings, changes of use etc.);
- minor changes to existing planning approval; and
- approval of information required by a condition attached to a planning approval.

What is proposed?

Section 2 sets out the proposed changes, which relate to:

- reviewing the ability to trigger/participate in an appeal (Interested Person Status);
- introducing a new fast track householder appeal process;
- streamlining how DEFA applications are dealt with (so there is more resource to focus on delivering planning services to the public);
- expanding Minor Change provisions so that approvals which incorporate fossil fuel boilers can be amended to remove them;
- establishing a proportionate requirement for climate change information within applications;
- targeted amendments to planning fees; and
- a number of other minor amendments.

Why are changes being made?

The Built Environment Reform Programme (BERP) was launched in July 2022 and refreshed in May 2023. It is a package of measures including (but not limited to) improvements to the planning system to facilitate delivery of Our Island Plan and the Economic Strategy, including the following key objectives of Our Island Plan:

- two key brownfield sites developed using substantial private sector leverage (whilst the metric within Our Island Plan is for key sites to be developed, the programme should aim to incentivise and unlock as much development as possible); and
- an additional 1,000 additional homes occupied

The BERP is a two year programme of work set out to develop commitments in Our Island Plan to build great communities. It is overseen by DEFA but is a joint programme also being delivered by the Cabinet Office and the Department for Enterprise. The legislative changes proposed in this consultation will contribute to the delivery of the programme.

What is out of scope?

There are a number of other types of applications that DEFA deals with, and changes to these processes are not within the scope of the current consultation:

- Building Control Applications - these are dealt with under the Building Control Act (although it is noted that the impact of the Climate Change Act and the banning of fossil fuel heating systems in new buildings may have implications for planning and this is reflected in the proposed changes to the Minor Change process);
- [Registered Building Consent](#) - there is a separate item of secondary legislation made under the Planning Act for these, and this is the subject of a separate work stream (see below);
- [Certificates of Lawful Use or Development](#) - the process for these is in standalone secondary legislation made under the Planning Act; and
- [Advertisement Consent](#) - these have their own secondary legislation made under the Planning Act which sets out those adverts that have deemed consent and those that require an application. Such applications are required to go through the same process as a planning application, therefore consequential changes will be required to the Advertisement Regulations (to ensure that the cross references are still correct). However, a wider review of the regulations is not within the scope of the current consultation.

There has been a [recent public consultation](#) on changes to the Planning Act which included proposals in relation to: the definition of development; Permitted Development; Registered Buildings and discretionary fees. The first two are relevant when a planning application is required and the third is relevant for the planned updating of the Registered Building Regulations, but are not directly relevant for the DPO. The fourth point (powers for discretionary fees) may be relevant for future reviews of planning fees, but the proposals set out in this consultation are based on the existing powers and so do not consider the introduction of discretionary fees.

How and when can I comment?

Comments can be submitted via the Consultation Hub (accessed via <https://consult.gov.im/>).

The closing date for comments is the 26th January 2024.

What will happen next?

The consultation results will be considered and any necessary amendments made to the DPO and Fees Order. The final versions of the orders will be 'made' by DEFA and must then be laid before Tynwald, who have the power to annul them. It is envisaged that the orders will come into force before the Tynwald summer recess 2024.

2.0 PROPOSALS

The refreshed and published [Built Environment Reform Programme](#) (BERP) contains Pillar 3, "Improve the Planning Process", with Objective 1 "Develop faster and more proportionate planning process" delivered by the action, "Ensure a proportionate appeals system, better quality applications and appropriate fees. This will include consideration of the pre-application advice service and validation requirements, the planning appeals process and the fees structure".

Two draft orders have been produced and are the subject of this consultation - one will make changes to the DPO and one will make changes to the Fees Order. The draft amendment orders and "keeling" documents that show the current orders with the proposed amendments are available for view as part of this consultation. For reference purposes, a summary is available on our website of the existing [Planning Application Process](#) and [Planning Appeals Process](#)

Area 1 – Appeal Triggers and Giving Evidence

Intended Outcomes

- Interested Person Status (IPS) has been fully reviewed and replaced with the right to appeal and the right to give evidence as part of an appeal.
- 3rd Party Appeals can only be triggered where there has been meaningful engagement prior to determination and the points raised relate to defined issues.
- Unopposed planning approvals can be implemented without delay.

Proposed Changes

- Previously IPS allowed both applicants and any 3rd party to trigger an appeal in relation to an application for planning approval, request an appeal by inquiry and participate in an appeal. The automatic right to appeal an application for planning approval will instead be reserved solely for the applicant. Other 3rd parties may still be afforded a right to appeal, if they are able to satisfy DEFA via written representations that they meet the specific criteria proposed under the new article A10.
- The removal of automatic IPS will mean that where there are no objections and the applicant does not wish to appeal, a planning approval will become final (and so can be implemented) when the decision notice is issued rather than 21 days after issue – thus avoiding an unnecessary delay to the implementation of unopposed approvals.
- The criteria for assessing IPS is currently set out in an Operational Policy but will be refined included in the DPO, this will help to ensure that 3rd party appeals can still be lodged by those potentially impacted on by proposals where they have engaged in the process pre-determination, whilst helping to avoid unnecessary appeals.
- Currently those with IPS have the right to give evidence or participate in an appeal, and others may only do so at the Inspector's discretion. The right to give evidence (and also to request the appeal be by way of an inquiry) will be widened, and no longer limited to those who could appeal.

Question 1 – Do you think the intended outcomes described are appropriate? (please give reasons for your answer)

Question 2 – Do you think the proposed amendments set out in the draft orders will achieve the intended outcomes set out above? (if not please give reasons)

Area 2 – Fast Track Householder Appeals

Intended Outcome

- Householder appeals are subject to a fast track appeals process.

Proposed Changes

- Where an applicant wishes to appeal against a decision in respect of an application for planning approval relating to an alteration or extension of a dwelling, and they are the only individual with a right to appeal, then they may request that their appeal is treated as a householder appeal.
- Householder appeals will be sent directly to the Inspector for consideration (without statements of case, rebuttals or an inquiry), and will result in a quicker resolution for these types of appeals.

Question 3 – Do you think the intended outcomes described are appropriate? (please give reasons for your answer)

Question 4 – Do you think the proposed amendments set out in the draft orders will achieve the intended outcomes set out above? (if not please give reasons)

Area 3 – Department Applications

Intended Outcome

- Department Applications have a proportionate level of scrutiny relevant to their nature and the level of public interest/opposition.

Department Applications

- Currently all applications made by DEFA or where DEFA has an interest (e.g. is the landowner) must be determined by the Council of Ministers, following a review by an Inspector (using either written representations of an inquiry meeting). Whilst it is appropriate that there are safeguards in place where DEFA is the applicant, this process has resulted in very minor proposals receiving a high level of scrutiny with the accompanying cost implications.
- It is proposed instead that DEFA applications are in the first instance determined by Planning Committee (the members of whom are appointed by Council not DEFA) and in the event of an appeal, the appeal is determined by Council.

Question 5 – Do you think the intended outcomes described are appropriate? (please give reasons for your answer)

Question 6 – Do you think the proposed amendments set out in the draft orders will achieve the intended outcomes set out above? (if not please give reasons)

Area 4 - Minor Change Applications

Intended Outcome

- Allow for changes to planning approvals where these result from the fossil fuel boiler ban and those changes are minor.

Proposed Changes

- Currently only one Minor Change Application (MCH) could be submitted in relation to any particular grant of planning approval. Instead, more than one may now be made where all previous MCHs have been either refused or withdrawn. More than one may also be submitted where the MCH relates solely to the installation of low carbon technology.
- Some flexibility will also be introduced where Minor Changes make a small increase to floor area (subject to safeguards)

Question 7 – Do you think the intended outcomes described are appropriate? (please give reasons for your answer)

Question 8 – Do you think the proposed amendments set out in the draft orders will achieve the intended outcomes set out above? (if not please give reasons)

Area 5 - Climate change policies

Intended Outcome

A proportionate approach to seeking climate change information in support of applications.

Proposed Changes

- The Climate Change Act sets out six areas where planning policies must be in place by 01.01.25 - the maximisation of carbon sequestration; the minimising of greenhouse gas emissions; the maintenance and restoration of ecosystems; biodiversity net gain; the need for sustainable drainage systems; and the provision of active travel infrastructure.
- The Climate Change Act contains provisions to amend the DPO so that all planning applications must be accompanied by information on how they have complied with these policies (or if not, why not) other than applications for changes of use, reserved matters, an application to replace a window or a door of a building in a conservation area or a minor changes application. These parts of the Act are not yet in force (they have not been included in an Appointed Day Order).
- As further work has been undertaken on the implementation of the Act, it is considered that there are number of smaller proposals where the requirement of such climate change statements may be disproportionate resulting in unnecessary bureaucracy for applicants (in particular homeowners) and also require a disproportionate amount of limited Department resources to be redirected into assessing very small proposals in much more detail.
- It is therefore proposed to increase the list of exemptions to include extensions or alterations of existing buildings, erection or demolition of outbuildings within a domestic curtilage or approval of information required by condition. This would not preclude case officers seeking more information on a case by case basis where it was considered necessary. This proposal has no effect on whether or not other measures (such as Building Control) is required.

Question 9 – Do you think the intended outcomes described are appropriate? (please give reasons for your answer)

Question 10 – Do you think the proposed amendments set out in the draft orders will achieve the intended outcomes set out above? (if not please give reasons)

Area 6 - Planning Application Fees

What is proposed and why

- General increase to take account of inflation;
- Provision that Minor Change Applications required as a result of the Fossil Fuel Heating Ban are free;
- Refinements/clarification about how fees are calculated where proposals involve elements of different fee categories; and
- Specific provision for the fee for amending applications pre-determination - this is currently charged as an admin fee and at a lower level, increasing this more accurately reflects the work involved in processing amendments which can require re-consultation and re-assessment. Provision will be retained to waive this if the amendment results from a suggested change by the Case Officer.

Question 11 – Do you have any comments in relation to the proposed fee changes?

Area 7 - Other changes

What is proposed and why

- Time limits in which DEFA must issue a decision on an application under the DPO will be removed so that these can instead be established via Departmental customer care policies. DEFA has published a [Customer Charter and Performance Reporting](#)
- A requirement will be introduced, such that in any application for planning approval, the applicant must provide a copy of that application to any owners of that land (where the applicant is not the owner). An exception will be made in cases where the land is not registered and the applicant does not know the identity of the owner.
- Correction Notices (issued where a decision notice contain an error) will no longer change the date of issue unless the correction meaningfully changes the wording of a condition (this responds to the current issue that where errors are spotted after works have commenced the appeal window could be re-opened unnecessarily)
- Applications for approval of information required by condition will be dealt with in the DPO. The process, as well as decisions and appeals for such applications, will be set out under a new Part 3A.
- Decisions on applications for planning approval will now be required to include reasons where approved, not just where refused (this was previously done as a matter of policy rather than legal requirement)
- The provisions relating to Approvals in Principle will be clarified
- Various clarifications to provisions.

Question 12 – Do you think the proposed other changes are appropriate? (If no, please give reasons for your answer)

Question 13 – Do you have any other comments?