



Revocation of planning permission

Standard Note: SN/SC/905

Last updated: 22 May 2013

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Planning permission vests development rights in the land, and the local planning authority has no power simply to withdraw a permission unilaterally. Once planning permission has been granted, then any revocation of the permission leaves the applicant able to claim compensation. The local planning authority has the power to revoke planning permissions under section 97 of the *Town and Country Planning Act 1990* (as amended).

The power in section 97 of the 1990 Act can only be used before the development is complete. After that date, a local planning authority can use a power to order discontinuance under section 102 of the Act. Confirmation by the Secretary of State is required under section 103. Again, there is a liability to pay compensation under section 115. The normal measure of compensation is the damage suffered in consequence of the order by depreciation of the value of an interest in the land or in minerals, or by being disturbed in the enjoyment of the land or minerals.

This note describes the circumstances in which either the local planning authority or the Secretary of State can revoke planning permission that has been granted by a local planning authority. It applies to England and Wales.

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1 The legal position

Planning permission vests development rights in the land, and the local planning authority has no power simply to withdraw a permission unilaterally. Once planning permission has been granted, then any revocation of the permission leaves the applicant able to claim compensation. The local planning authority has the power to revoke planning permissions under section 97 of the *Town and Country Planning Act 1990* (as amended). The wording of the section suggests considerable freedom for the local planning authority, but it is in practice strictly constrained:

97 Power to revoke or modify planning permission

(1) If it appears to the local planning authority that it is expedient to revoke or modify any permission to develop land granted on an application made under this Part, the authority may by order revoke or modify the permission to such extent as they consider expedient.

(2) In exercising their functions under subsection (1) the authority shall have regard to the development plan and to any other material considerations.

(3) The power conferred by this section may be exercised—

(a) where the permission relates to the carrying out of building or other operations, at any time before those operations have been completed;

(b) where the permission relates to a change of the use of any land, at any time before the change has taken place.

(4) The revocation or modification of permission for the carrying out of building or other operations shall not affect so much of those operations as has been previously carried out.

(5) References in this section to the local planning authority are to be construed in relation to development consisting of the winning and working of minerals as references to the mineral planning authority.

(6) Part II of Schedule 5 shall have effect for the purpose of making special provision with respect to the conditions that may be imposed by an order under this section which revokes or modifies permission for development—

(a) consisting of the winning and working of minerals; or

(b) involving the depositing of refuse or waste materials.

For opposed cases, section 98(1) states that "an order under section 97 shall not take effect unless it is confirmed by the Secretary of State". There is a liability to pay compensation, under section 107 of the Act, in respect of expenditure rendered abortive by the order and for any other loss or damage directly attributable to the revocation or modification.

Section 189 of the *Planning Act 2008* made changes to the 1990 Act in respect of entitlement to compensation in circumstances where planning permission granted by a development order or a local development order is withdrawn. The explanatory notes to the *2008 Act* set out how the system now works:

300. Section 189 inserts new subsections (2A) (3B), (3C), (3D), (5) and (6) into section 108 of TCPA 1990. Section 107 of TCPA 1990 sets out the entitlement to compensation where planning permission is revoked or modified. Section 108 extends this entitlement to compensation to circumstances where planning permission granted by a development order or a local development order is withdrawn. New subsection (2A) provides that where planning permission of a prescribed description granted by a development order or local development order is withdrawn by the issue of directions under powers conferred by that order, compensation would be payable only if an application for planning permission for development formerly permitted by that order is made within 12 months of the directions taking effect.

301. The effect of new subsections (3B) and (3C) is that, where planning permission granted by a development order is withdrawn, there will be no entitlement to compensation where the permission was granted for development of a prescribed description and is withdrawn in the prescribed manner, and notice of the withdrawal is published not less than 12 months or more than the prescribed period before the withdrawal takes effect. If development is started before the notice is published, compensation will be available unless the order in question contains provision permitting the completion of development.

302. Where planning permission granted by local development order is withdrawn, subsections (3B) and (3D) provide that there will be no entitlement to compensation where notice of the withdrawal is published not less than 12 months or more than the prescribed period before the withdrawal takes effect. If development is started before the notice is published, compensation will be available unless the order in question contains provision permitting the completion of development.¹

The power in section 97 of the 1990 Act can only be used before the development is complete. After that date, a local planning authority can use a power to order discontinuance under section 102 of the Act. Section 102(1) provides the main power:

102 Orders requiring discontinuance of use or alteration or removal of buildings or works

(1) If, having regard to the development plan and to any other material considerations, it appears to a local planning authority that it is expedient in the interests of the proper planning of their area (including the interests of amenity)—

(a) that any use of land should be discontinued or that any conditions should be imposed on the continuance of a use of land; or

(b) that any buildings or works should be altered or removed,

they may by order—

¹ *Planning Act 2008, Explanatory Notes*

- (i) require the discontinuance of that use, or
- (ii) impose such conditions as may be specified in the order on the continuance of it, or
- (iii) require such steps as may be so specified to be taken for the alteration or removal of the buildings or works,

as the case may be.

Confirmation by the Secretary of State is required under section 103. Again, there is a liability to pay compensation under section 115. The normal measure of compensation is the damage suffered in consequence of the order by depreciation of the value of an interest in the land or in minerals, or by being disturbed in the enjoyment of the land or minerals; and any person who carries out any works in compliance with the order is entitled to recover from the local planning authority any expenses incurred by him.

In July 2012 the Supreme Court ruled that when local planning authorities are deciding whether or not to revoke or modify a planning permission they are entitled to take into account the compensation they could have to pay.²

2 The position when planning permission was improperly granted

The Sweet & Maxwell Planning Encyclopaedia notes that in cases where the planning permission may not have been properly granted in terms of procedure, it may be better financially for the local council to have the planning permission quashed at judicial review, rather than revoke the planning permission and have to pay compensation:

However, if a planning permission has been granted in a way that was improper and invalid, it may not be “expedient” for the local planning authority to commence revocation proceedings under this section and to pay compensation. The court may instead quash the permission on an application for judicial review, without liability to compensation. Such an application may be made by a person supported by the council, though the Court will in such a case have particular regard to the effect on third parties.³

The rules about bringing a judicial review are strict however and a claim must be made within legal time limits. In January 2013 it was reported that a leader of a council in Devon was refused a judicial review of planning permission granted by mistake after the application was lodged too late for judicial review proceedings. The council was left with a choice of paying an estimated £500,000 in compensation to formally revoke the planning consent it had granted, or to allow a supermarket to move into a retail park even though it was not considered to be needed in the area.⁴

3 Power of the Secretary of State

3.1 Use of the power

The local planning authority has the power to revoke planning permissions under section 97 of the 1990 Act, but this has to be confirmed by the Secretary of State. The Secretary of

² For more information see Planning Portal, [Key ruling on revocation of planning permissions and costs](#), 2 August 2012 and [Supreme Court press summary](#), The Health and Safety Executive (Appellant) v Wolverhampton City Council (Respondent) [2012] UKSC 34, 18 July 2012

³ *Sweet & Maxwell Encyclopaedia of Planning Law and Practice*, P97.04

⁴ “Planning blunder leaves council facing stark choice” [Planning](#), 24 January 2013

State also has the power revoke planning permission under section 100 of the 1990 Act. If this is done the liability to pay compensation still falls on the local planning authority, as though it had made the revocation order. In March 2006, the then Planning Minister described the use of these powers:

Yvette Cooper: Local planning authorities have power under s97 of the Town and Country Planning Act 1990 to make an order revoking or modifying a planning permission, prior to it being implemented, where they consider it expedient to do so. They should have regard to the development plan and to any other material consideration. This is not a routine justification since the fact that planning permission was granted indicates that the development was considered acceptable at the time. If an order is opposed, it has to be confirmed by the Secretary of State before it can take effect.

The Secretary of State has power, under s100 of the Town and Country Planning Act 1990, to revoke or modify a planning permission granted by a local planning authority. Revocation or modification can only be made before a planning permission is implemented. The Secretary of State can use these powers as he thinks fit, after consultation with the local planning authority. Such intervention by the Secretary of State can only be justified in exceptional circumstances. However, the Secretary of State will generally use this power only if the original decision is judged to be grossly wrong, so that damage is likely to be done to the wider public interest.

Where orders come before the Secretary of State the decision will be taken only after considering the evidence by way of written representations, a hearing or a public local inquiry. The more controversial cases will almost inevitably go to inquiry.

Since 1997 the Secretary of State has used this power on 5 March 1998 to make a modification order to remove A1 retail use from outline planning permission for an industrial site granted by Alnwick district council and on 9 March 2000 to make a revocation and a modification order in respect of proposals for a factory outlet shopping village in an isolated location in Restormel, Cornwall.

The Office does not record representations received about the powers of the Secretary of State to revoke planning permissions.⁵

The revocation of a planning consent by the Secretary of State is most unusual. The Secretary of State already has a power for preventing consent being granted to major, controversial proposals with effects spreading beyond the local planning authority. That is the Secretary of State's power to call in an application to determine it himself. He is also able to recover to himself an appeal against rejection of a planning application.

4 Examples of revocation

It is fairly common for local planning authorities to revoke planning consent, subject to approval by the Secretary of State. These cases do not, however, normally cover recent consents. More often, they relate to old consents that have been started but not completed. There may be some good reason why the proposal that gained planning consent would now never be carried out. The local planning authority will have to pay some compensation but it may be worthwhile, in order to enable them to develop derelict land. Unopposed cases are normally approved, but opposed cases require a public inquiry.

⁵ HC Deb 16 March 2006 c2444W

In May 2008 planning permission was revoked for eleven dormant quarries in the Brecon Beacons national park.⁶

In 2007 the Peak District National Park Authority was allowed to revoke planning permission at two quarries without compensation for the operator or landowner.⁷

In 1993 Alnwick District Council granted planning permission to Northumberland Estates for a supermarket near Alnwick. A protest campaign was launched two years later when it emerged that Safeway had bought the land. Protestors feared that Safeway would close its existing branch in Alnwick and consolidate operations on the new site. The Secretary of State in 1997 (John Gummer) revealed that he proposed to revoke the permission. The council challenged the decision in the High Court but lost. Safeway submitted a claim for £4.6 million in compensation for the loss of its planning consent. The council feared that it might be bankrupted. However, in the end it was all settled amicably with the Duke of Northumberland buying back the land that he had sold to Safeway. Safeway agreed to forego £2.6 million of their compensation claim and accepted £2 million, which was paid by the council's insurers, Zurich Municipal.⁸

⁶ "Park quarries lose permits" *Planning*, 30 May 2008

⁷ "National Park Authority allowed to revoke planning permission" *Planning*, 7 September 2007

⁸ "Alnwick Relief as Safeway Settles Case", *Daily Telegraph*, 10 February 2000