



Statutory Document No. 251/05

THE TOWN AND COUNTRY PLANNING ACT 1999

**THE TOWN AND COUNTRY PLANNING (DEVELOPMENT PROCEDURE)
ORDER 2005**

Approved by Tynwald

17th May 2005

Coming into operation

1st November 2005

In exercise of the powers conferred on the Department of Local Government and the Environment by sections 8, 9(1), 10, 11(3) and 40(3) of, and paragraph 2 of Schedule 8 to, the Town and Country Planning Act 1999¹, and of all other enabling powers, the following development order is hereby made:—

1. Citation, commencement and interpretation

(1) This Order may be cited as the Town and Country Planning (Development Procedure) Order 2005, and, subject to section 44(1) of the Act, shall come into operation on 1st November 2005.

(2) In this Order —

"the Act" means the Town and Country Planning Act 1999;

"the Committee" means (subject to article 3(13)) the committee constituted under article 3;

"interested person" has the meaning given by article 6(6);

"the Minister" means (subject to article 8(6)) the Minister for Local Government and the Environment.

2. Application of Order

This Order applies to all land in the Island.

3. Planning Committee

(1) The Council of Ministers shall appoint a committee, to be called "the Planning Committee", to exercise on behalf of the Department the functions specified in articles 4 to 6.

(2) Subject to paragraph (10), the Committee shall consist of 3 or more persons appointed by the Council of Ministers, of whom —

¹ 1999 c.9

Price: £1.70 Price Band: B

- (a) at least one shall be a member of the Department, other than the Minister; and
- (b) at least one shall not be a member of Tynwald.
- (3) A Tynwald member of the Committee shall go out of office -
 - (a) on the expiration of a period of 2 years and 6 months beginning with the date on which the Keys were last dissolved;
 - (b) on the dissolution of the Keys;
 - (c) if he ceases to be a member of Tynwald or of the Branch of which he was a member at the time of his appointment.
- (4) A non-Tynwald member of the Committee shall go out of office either-
 - (a) on the expiration of 5 years beginning with the date on which he was appointed; or
 - (b) if he becomes a member of Tynwald.
- (5) A member of the Committee may be removed from office by the Council of Ministers.
- (6) A member of the Committee may at any time resign on giving to the Chief Minister notice in writing of his intention to do so.
- (7) A retiring member of the Committee shall be eligible to be re-appointed if he is otherwise qualified.
- (8) Where a member of the Committee goes out of office under paragraph (3) or (4) he shall continue to be a member of the Committee for all purposes (except that of filling the vacancy) until his successor is appointed.
- (9) A casual vacancy in the members of the Committee shall be filled as soon as may be in like manner and subject to the like conditions as the office vacated.
- (10) No person shall act as a member of the Committee in relation to any matter in which he has a personal interest.
- (11) If it appears to the Committee that the public discussion of any matter would be contrary to the interests of national security or international relations it may consider that matter in private, but otherwise the Committee shall conduct its proceedings in public.
- (12) Subject to paragraph (11), the Department may make standing orders with respect to the proceedings of the Committee.
- (13) The Department may delegate any function under articles 4 to 6 to a person other than the Committee; and where any such function stands delegated to any person other than the Committee, any reference in the following provisions of this Order to the Committee shall be construed as a reference to that person.
- (14) This article is without prejudice to the powers of the Department to delegate any function, other than a function under articles 4 to 6, to the Committee.

4. Applications for planning approval

- (1) An application to the Department for planning approval shall be made on a form to be supplied by the Department, signed by the applicant or his agent, and shall include —
 - (a) the particulars specified in Schedule 1; and

(b) such further particulars as the Department may direct in any particular case.

(2) The applicant shall provide the Department with 3 additional copies of the application, and where the application is accompanied by any other document, 3 additional copies of each such document shall be provided.

(3) Where the Department has directed under paragraph (1) that further particulars be furnished and the applicant fails to comply with the direction within such time (not being less than 21 days) as may be specified therein, the application shall be deemed to have been withdrawn.

(4) The Committee may decline to consider an application in any case where it considers that the application is substantially the same as an application which has been refused at any time in the previous 5 years.

(5) An application to the Department for planning approval for development of land consisting of the erection of, structural alteration of, or the making of any addition to, a building or buildings may be expressed to be an application for approval in principle, that is, approval subject to a condition reserving for subsequent approval by the Department matters of siting, design, external appearance, internal layout, means of access or landscaping not particularised in the application.

5. Notice of application

(1) The Department shall, as soon as practicable after receipt of an application for planning approval, prepare a notice of the application —

- (a) specifying the location of, and describing, the proposed development to which it relates, and
- (b) state that any person may make written representations to the Department with respect to the application before such date as is specified in the notice (not being less than 21 days after the publication date),

and shall decide on the date by which the notice shall be published in accordance with this article ("the publication date").

(2) The Department shall send a copy of the notice to the applicant, with a letter requiring him, not later than the publication date —

- (a) to send a copy of the notice to every owner or occupier of the land the subject of the application or any part of it, and
- (b) to post a copy of the notice by fixing it firmly to a building, structure or post on the land, sited and displayed in such a way as to be easily visible by members of the public, for a period of not less than 21 days;

and, after the expiry of that period, to send to the Department a certificate in the form in Schedule 2.

(3) The Department shall, not later than the publication date, send a copy of the notice to —

- (a) the Department of Transport;

- (b) the local authority for the district in which the land the subject of the application is situated who shall post it in one or more conspicuous places within its district;
- (c) any voluntary organisation designated for the purposes of these Regulations under article 14;

and shall send a copy of the application to the bodies referred to in sub-paragraphs (a) and (b).

(4) The Department shall, not later than the publication date, cause the notice to be published in at least one newspaper published and circulating in the Island.

6. Determination of application

(1) On receipt of an application for planning approval the Department shall cause it to be considered by one of its officers, who shall —

- (a) consider any written representations made pursuant to a notice under article 5 with respect to the application, and
- (b) as soon as practicable after the relevant date make a recommendation in writing to the Committee with respect to the application.

(2) In paragraph (1) "the relevant date", in relation to an application, means —

- (a) the date specified in the notice under article 5(1)(b), or
- (b) the date on which the certificate mentioned in article 5(2) is received, or
- (c) where the Department has directed under article 4(1)(b) that further particulars be furnished, the date on which such particulars are received by the Department,

whichever is last.

(3) On receipt of a recommendation under paragraph (1) the Committee shall determine the application, having regard to —

- (a) the recommendation made under paragraph (1), and
- (b) any written representations made with respect to the application (whether pursuant to a notice under article 5 or otherwise).

(4) When it determines the application the Committee shall decide which persons (if any) who have made written representations with respect to the application (whether pursuant to a notice under article 5 or otherwise), other than those specified in paragraph (5), have in the opinion of the Committee sufficient interest in the subject matter of the application to take part in any subsequent proceedings relating to the application.

(5) The persons referred to in paragraph (4) are —

- (a) the applicant;
- (b) the owner and the occupier of any land the subject of the application;
- (c) the Department of Transport; and
- (d) the local authority in whose district the said land is situated.

- (6) Each of the following —
 - (a) any person who the Committee decides under paragraph (4) has a sufficient interest in the subject matter of the application to take part in any subsequent proceedings relating to it, and
 - (b) any person specified in paragraph (5),

is in this Order referred to as an "interested person".

(7) Except where a previous application relating to the same matter has not been finally disposed of or the Committee declines to consider the application under Article 4(4), the Committee shall make an initial decision on every application for planning approval within 8 weeks of —

- (a) the date on which the application is received, or
- (b) where the Department has directed under Article 4(1)(b) that further particulars or other matters be furnished, the date on which the applicant complies with the decision.

(8) If the Committee fails to comply with paragraph (7), the applicant may, at any time after the expiration of the said period of 8 weeks, give written notice to the Department requiring the Committee to determine the application within 21 days of the date of service of the notice and if the Committee fails to do so the application shall be deemed to have been refused.

7. Notice of decision

(1) As soon as possible after the determination by the Committee of an application for planning approval, the Department shall give notice in writing of the decision to —

- (a) every interested person, and
- (b) any other person who has made representations with respect to the application.

(2) A notice under paragraph (1) shall set out —

- (a) in the case of an approval, the conditions (if any) subject to which the approval is granted and the reasons for them;
- (b) in the case of a refusal, the reasons for it; and
- (c) the effect of paragraph (3);

and, in the case of a notice given to any of the persons specified in paragraph (1)(a), shall state that he may, in accordance with article 8, appeal to the Minister.

(3) The determination of the application shall not have effect —

- (a) if an appeal is made to the Minister, until the appeal is determined or withdrawn;
- (b) if no such appeal is made, until the time within which an appeal may be made has expired.

8. Appeal to the Minister

(1) Any interested person may, within 21 days after the date of the notice under article 7(2), by notice in writing to the Department appeal to the Minister against the decision in question.

(2) Any appeal under paragraph (1) shall be referred to a person appointed for the purpose by the Council of Ministers, and the appointed person shall —

- (a) consider the application and any written representations made with respect thereto (whether pursuant to a notice under article 5 or otherwise);
- (b) invite the Department to make written representations, on behalf of the Committee, to him with respect to the application;
- (c) invite every interested person to make written representations (or further written representations) to him with respect to the application;
- (d) give to the Department, and every interested person, an opportunity to appear before him and to make oral representations to him and to call and examine witnesses; and
- (e) make to the Minister a report in writing, including his recommendations as to the determination of the appeal.

(3) The Minister shall consider the report of the appointed person and shall —

- (a) allow the appeal; or
- (b) dismiss the appeal;

and may in either case reverse or vary any part of the decision of the Committee, whether the appeal relates to that part or not.

(4) As soon as possible after the determination of the appeal, the Department shall give notice in writing of the Minister's decision to every interested person, and such notice —

- (a) shall be accompanied by a copy of the report of the appointed person; and
- (b) if, and to the extent that, the decision does not follow the recommendation of the appointed person, shall state the reasons for the decision.

(5) The appellant may, at any time before his appeal is referred to the appointed person, withdraw the appeal by giving notice in writing to the Chief Secretary.

(6) The Minister may delegate any function under this article or article 9 to another person (being a member of the Council or the Keys); and where any such function stands delegated to such a person, any reference in paragraphs (1) to (5) or article 9 to the Minister shall be construed as a reference to that person.

9. Payment of costs

(1) If a person by whom an appeal under article 8 is brought ("the appellant") fails without reasonable cause to appear at the time and place appointed under article 8(2)(d), the Minister, on an application for the purpose by the Department or any interested person ("the claimant"), order the appellant to pay the whole, or such part as may be specified in the order, of the costs and expenses incurred by the claimant in connection with the appeal.

(2) An application under paragraph (1) must be made not later than 14 days after the date of the notice under article 8(4).

10. Reference of applications to the Council of Ministers

- (1) Any application for planning approval —
 - (a) made by the Department, or
 - (b) for the development of land any interest in which is vested in, or which is occupied or controlled by, the Department,

shall be referred to and determined by the Council of Ministers.

(2) The Council of Ministers shall refer an application referred to in paragraph (1) to a person appointed for the purpose by the Council of Ministers, and the appointed person shall —

- (a) consider the application and any written representations made with respect thereto pursuant to a notice under article 5;
- (b) invite the Department to make written representations to him with respect to the application;
- (c) invite every person specified in paragraph (4) to make written representations (or further written representations) to him with respect to the application;
- (d) give to the Department and every person specified in paragraph (4) an opportunity to appear before him and to make oral representations to him and to call and examine witnesses; and
- (e) make to the Council of Ministers a report in writing, including his recommendations as to the determination of the application.

(3) As soon as possible after the determination by the Council of Ministers of an application under this article, the Chief Secretary shall give notice in writing of its decision to the Department and to every person specified in paragraph (4); and such notice —

- (a) shall be accompanied by a copy of the report of the appointed person; and
- (b) if, and to the extent that, the decision does not follow the recommendation of the appointed person, shall state the reasons for the decision.

(4) In relation to any application to which this article applies, the persons referred to in paragraphs (2)(c) and (d) and (3) are —

- (a) the Department;
- (b) the applicant (if not the Department);
- (c) the owner and the occupier of any land the subject of the application (if not the Department);
- (d) the local authority in whose district the said land is situated;
- (e) the Department of Transport; and
- (f) any person who —

- (i) has made written representations (whether pursuant to a notice under article 5 or otherwise) with respect to the application; and
- (ii) in the opinion of the appointed person has a sufficient interest in the subject matter of the application.

(5) Paragraphs (2) to (4) apply with any necessary modifications to an application referred to the Council of Ministers under section 11(1) of the Act as they apply to an application mentioned in paragraph (1).

11. Inquiry procedure

The provisions of Schedule 3 apply to proceedings conducted by an appointed person under article 8(2) or 10(2).

12. Other applications

The foregoing provisions of this Order (except article 5(3)) apply with any necessary modifications to —

- (a) applications under section 10(3) of the Act (variation or discharge of conditions); and
- (b) applications for such approval as is mentioned in section 10(6)(d) of the Act (reserved matters);

as they apply to applications for planning approval.

13. Duration of planning approval

(1) Any planning approval granted pursuant to this Order shall be deemed to be granted subject to the condition that the development must be begun —

- (a) not later than the expiration of such period as may be specified therein; or
- (b) if no such period is specified, the period of 4 years beginning with the date on which it is granted.

(2) The period specified under paragraph (1)(a) shall not exceed 4 years unless the Department is satisfied that there are special circumstances justifying a longer period.

(3) Any person interested in the land to which a planning approval relates may, before the expiration of the period referred to in paragraph (1), apply in writing to the Department for the extension of that period, and the Department may, subject to paragraph (2), extend that period by such further period as may be specified in the application or such lesser period as the Department may determine.

14. Voluntary organisations

(1) The Department may designate for the purposes of this Order voluntary organisations in the Island appearing to the Department to be concerned with the environment.

(2) Before it designates an organisation under this article the Department shall require the organisation to provide in writing particulars of its aims, objectives, membership and current activities and to supply copies of its recent accounts.

15. Transitional provision

Any application for planning approval made, but not finally determined, under Schedule 1 to the Isle of Man Planning Scheme (Development Plan) Order 1982², before this Order comes into operation shall be determined in accordance with the provisions of that Schedule as if the Act had not been passed.

² GC 140/82

Article 4(1)(a).

SCHEDULE 1

PARTICULARS TO BE PROVIDED WITH APPLICATIONS FOR PLANNING APPROVAL

All applications

1. (1) This paragraph applies to —
 - (a) applications for planning approval; and
 - (b) applications for such approval as is mentioned in section 10(6)(d) of the Act (reserved matters).
- (2) Subject to sub-paragraph (3), every application to which this paragraph applies must include a plan to a scale of 1:500 on which —
 - (a) there is clearly marked a north point;
 - (b) the site is clearly defined with a red line; and
 - (c) there is illustrated the relationship of the site to adjoining land and buildings, to any highway serving the site, and to the nearest settlement or other familiar point of reference.
- (3) In the case of an application relating to land in a rural area —
 - (a) the plan referred to in sub-paragraph (2) may be to a scale of 1:1250 or 1:2500;
 - (b) where the application relates to agriculture, the plan must also define with a blue line the boundary of the entire agricultural holding; and
 - (c) the illustration referred to in sub-paragraph (2)(c) may consist of a separate plan to a scale of 1:10,000 or 1:10,560.

All applications except those for approval in principle or change of use only

2. (1) This paragraph applies to —
 - (a) applications for planning approval, except —
 - (i) approval in principle, or
 - (ii) approval to development consisting of a change in the use of a building and not involving building or engineering operations;
 - (b) applications for such approval as is mentioned in section 10(6)(d) of the Act.
- (2) Every application to which this paragraph applies must also include —
 - (a) a site plan to a scale of not less than 1:500 on which are indicated accurately —
 - (i) the position of all buildings, both existing and proposed;
 - (ii) the position of all proposed engineering operations, including service trenches, drains, sewers, paving, fencing, and walling
 - (iii) the position and extent of all existing trees, the branches of which are within one metre of any proposed building or engineering operations; and
 - (iv) the position and nature of all proposed landscaping; and

- (b) plans, elevations and sections of all proposed buildings and structures to a scale of not less than 1:100, fully dimensioned using metric units, and annotated so as to specify —
 - (i) the material and nature of all external finishes; and
 - (ii) floor or base levels relative to a fixed datum outside the site plan required by sub-paragraph (a).

Applications for change of use only

3. An application for approval to development consisting of a change in the use of a building and not involving building or engineering operations must include dimensioned floor plans which show clearly —

- (a) the arrangement of the rooms in the building, and
- (b) the means of access to and egress from the building.

Applications for approval of reserved matters

4. Every application for such approval as is mentioned in section 10(6)(d) of the Act must also include details of the approval in principle to which the application relates.

Article 5(2).

SCHEDULE 2

CERTIFICATE UNDER ARTICLE 5(2)

Proposed development at *[location][or as the case may be]*

I CERTIFY THAT

1. [I am][The applicant is] the sole owner of the land the subject of the application dated *[date]* relating to the above proposal

OR

1. [I have][The applicant has] given a copy of the notice sent to [me][the applicant] by the Department of Local Government and the Environment to every person who is an owner or occupier of the land or any part of the land the subject of the application dated *[date]* relating to the above proposal, as listed below:

Owner or occupier's name
served

Address at which notice was

2. [I] [The applicant] posted a copy of the notice by fixing it firmly to some object on or near the land to which the application relates, sited and displayed in such a way as to be easily visible by members of the public, for not less than 21 days beginning on *[date]*.

Signed

[On behalf of _____]

Date

Article 11.

SCHEDULE 3
INQUIRY PROCEDURE

Interpretation

1. In this Schedule —

"the appointed person" means the person appointed by the Council of Ministers under article 8(2) or 10(2);

"inquiry" means proceedings conducted by an appointed person under article 8(2) or 10(2).

Procedure at inquiry

2. (1) Except as otherwise provided in this Schedule, the appointed person shall determine the procedure at an inquiry.

(2) At the start of the inquiry the appointed person shall identify what are, in his opinion, the main issues to be considered at the inquiry and any matters on which he requires further explanation from the persons entitled or permitted to appear.

(3) Nothing in sub-paragraph (2) shall preclude any person entitled or permitted to appear from referring to issues which he considers relevant to the consideration of the application or appeal but which were not issues identified by the appointed person pursuant to that sub-paragraph.

(4) Unless in any particular case the appointed person otherwise determines, the Department shall begin and the applicant shall have the right of final reply; and the other persons entitled or permitted to appear shall be heard in such order as the appointed person may determine.

(5) The appointed person may —

(a) require any person appearing or present at an inquiry who, in his opinion, is behaving in a disruptive manner to leave; and

(b) refuse to permit that person to return; or

(c) permit him to return only on such conditions as he may specify,

but any such person may submit to him any evidence or other matter in writing before the close of the inquiry.

(6) The appointed person may proceed with an inquiry in the absence of any person entitled to appear at it.

(7) The appointed person may take into account any written representation or evidence or any other document received by him from any person before an inquiry opens or during the inquiry provided that he discloses it at the inquiry.

(8) The appointed person may from time to time adjourn an inquiry and, if the date, time and place of the adjourned inquiry are announced at the inquiry before the adjournment, no further notice shall be required.

Evidence

3. (1) A person entitled to appear at an inquiry shall be entitled to call evidence and to cross-examine persons giving evidence, but, subject to sub-

paragraphs (2) and (3), the calling of evidence and the cross-examination of persons giving evidence shall otherwise be at the discretion of the appointed person.

- (2) The appointed person may refuse to permit —
 - (a) the giving or production of evidence;
 - (b) the cross-examination of persons giving evidence; or
 - (c) the presentation of any other matter,

which he considers to be irrelevant or repetitious; but where he refuses to permit the giving of oral evidence, the person wishing to give the evidence may submit to him any evidence or other matter in writing before the close of the inquiry.

(3) The appointed person may direct that facilities shall be afforded to any person appearing at an inquiry to take or obtain copies of documentary evidence open to public inspection.

Site inspections

4. (1) The appointed person may make an unaccompanied inspection of the land before or during an inquiry without giving notice of his intention to the persons entitled to appear at the inquiry.

- (2) During an inquiry or after its close, the appointed person —
 - (a) may inspect the land in the company of the applicant, the Department and any other person entitled to appear at the inquiry; and
 - (b) shall make such an inspection if so requested by the applicant or the Department before or during an inquiry.

(3) In all cases where the appointed person intends to make an accompanied site inspection he shall announce during the inquiry the date and time at which he proposes to make it.

(4) The appointed person shall not be bound to defer an inspection of the kind referred to in sub-paragraph (2) where any person mentioned in that sub-paragraph is not present at the time appointed.

MADE 19th April 2005

John Rimington

Minister for Local Government and the Environment

EXPLANATORY NOTE

(This note is not part of the Order.)

This development order prescribes the procedure for applications for planning approval and related approvals under Part 2 of the Town and Country Planning Act 1999. It applies to the whole Island (article 2).

Provision is made for the establishment of the Planning Committee of the Department of Local Government and the Environment (article 3), the making and notice of planning applications (articles 4 and 5), their determination by the Committee on written representations (article 6) and notice of the Committee's decision (article 7). An appeal lies to the Minister (article 8), who is given power to award costs against an appellant who does not appear (article 9). Applications by the Department, or in respect of land owned or occupied by the Department, are to be referred to the Council of Ministers for determination (article 10). The procedure at an inquiry under article 8 or 10 is prescribed (article 11).

These procedures apply with necessary modifications to applications for approval of reserved matters (article 12). Provision is made for the duration of planning approvals, normally for 4 years (article 13). The Department is required to designate voluntary organisations for the purpose of consulting on applications (article 14). Transitional provision is made for applications pending when the Order comes into force (article 15).