



## Members' Research Service – QuickGuide 46 Gwasanaeth Ymchwil yr Aelodau – HysbysHwylus 46



### Planning 6: Planning Permission

#### When is planning permission required?

Since 1947 it has been an established general principle that planning permission is required for the development or change of use of land. Section 57 of the *Town and Country Planning Act 1990*<sup>1</sup> (the Act) provides—

(1) Subject to the following provisions of this section, planning permission is required for the carrying out of any development of land.

The concept of 'development' is central to control over the development and use of land. Development is defined in section 55 of the Act as:

(1) ...“development,” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

The Act clearly differentiates between operational development and material change of use of buildings or land.

#### How is planning permission granted?

By section 58 of the Act (as amended), planning permission may be granted:

- By the local planning authority on an application (see Planning Quick Guide 47: Application Process);
- By Development Order (eg the *Town and Country Planning (General Permitted Development) Order 1995*, see Planning Quick Guide 45: Permitted Development and 49: Material Change of Use);

#### What different types of planning permission are there?

There are two major types of planning permission; outline and full. An application for outline permission is usually to secure approval of proposals for a certain development in principle, with some 'reserved matters' to be the subject of a further application at a later date.

Where outline permission has already been granted, it will usually also be necessary to make an application for the 'reserved matters', as set out in a condition of the outline permission. If the proposals change from the original outline permission, then a new application for full planning permission is required.

Planning permission may also be granted to renew a temporary permission.

#### What constitutes operational development?

Operational development is the carrying out of building, engineering, mining, or other operations in, on, over or under land.

<sup>1</sup> *The Town and Country Planning Act 1990*,  
<http://www.lexisnexis.com/uk/legal/results/docview>



## Members' Research Service – QuickGuide 46 Gwasanaeth Ymchwil yr Aelodau – HysbysHwylus 46

### Building operations

Section 55(1A) of the Act provides that 'building operations' includes—

- demolition of buildings;
- rebuilding;
- structural alterations of or additions to buildings; and
- other operations normally undertaken by a person carrying on business as a builder.

The term 'building' is defined by subsection 336(1) of the Act to include 'any structure or erection, and any part of a building, as so defined, but does not include any plant or machinery comprised in a building'.

In planning law, the statutory term 'building' has been given a wider meaning than its ordinary, everyday meaning so as to include the 'erection' of structures that might not otherwise be regarded as buildings. Objects that are large and/or take a long time to set up or dismantle may change the physical character of the land. Case law has established that the principal considerations in determining whether an object is a structure or erection for the purposes of development control are size and permanence<sup>2</sup>.

### Engineering operations

Section 336(1) of the Act defines engineering operations as including "the formation or laying out of a means of access to highways". The extent of the term is limited by paragraphs (b) and (c) in section 55(2) of the Act, which specify operations which are not to be seen as involving the development of the land:

(b) the carrying out on land within the boundaries of a road by a highway authority of any works required for the maintenance or improvement of the road, but in the case of any such works which are not exclusively for the maintenance of the road, not including any works which may have significant adverse effects on the environment;

(c) the carrying out by a local authority or statutory undertakers of any works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus, including the breaking open of any street or other land for that purpose.

Other types of engineering operation may be considered as development but are not specifically defined in the legislation.

### Mining operations

Section 55(4) defines mining operations as:

- (a) the removal of material of any description –
  - (i) from a mineral-working deposit;
  - (ii) from a deposit of pulverised fuel ash or other furnace ash or clinker; or
  - (iii) from a deposit of iron, steel or other metallic slags; and
- (b) the extraction of minerals from a disused railway embankment.

### Other operations

'Other operations' are not clearly defined:

"...there is no recorded judicial decision of any particular activity being held to be an 'other operation'. In fact there are few known examples of an activity found to be an 'other operation' and these are contained in Ministerial decisions given on appeal"<sup>3</sup>.

<sup>2</sup> Cheshire CC v. Woodward [1962] 2 QB 126; Barvis Ltd v Secretary of State for the Environment (1971) 22 P&CR 710

<sup>3</sup> Moore, Victor, 2005. *A Practical Approach to Planning Law*. 9<sup>th</sup> ed. Oxford University Press.



## Members' Research Service – QuickGuide 46 Gwasanaeth Ymchwil yr Aelodau – HysbysHwylus 46

### Excluded operations and uses

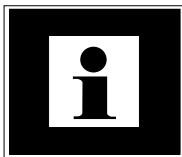
Section 55(2) of the Act specifically excludes the following categories of operations and uses from the meaning of 'development':

- the carrying out for the maintenance, improvement or other alteration of any building of works which affect only the interior of the building or do not materially affect the external appearance of the building (eg removal of an internal wall), and are not works for making good war damage;
- the carrying out on land within the boundaries of a road by a highway authority of any works required for the maintenance or improvement of the road but, in the case of any such works which are not exclusively for the maintenance of the road, not including any works which may have significant adverse effects on the environment;
- the carrying out by a local authority or statutory undertakers of any works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus, including the breaking open of any street or other land for that purpose;
- the use of any buildings or other land within the curtilage of a dwelling house for any purpose incidental to the enjoyment of the dwellinghouse as such;
- the use of any land for the purposes of agriculture or forestry and the use for any of those purposes of any building occupied together with land so used;

New subsections 2A and 2B would allow Welsh Ministers to specify, in a development order, situations where the above excluded operations do not apply. This section has not yet commenced in Wales but came into force in England on 10 May 2006.

In addition to the above, certain types of development are 'permitted development' and therefore are granted general planning permission (see Planning Quick Guide 45: Permitted Development).

Generally the change of use of land within a 'use class' also does not constitute development and therefore does not require permission (see Planning Quick Guide 49: Material Change of Use).



#### Further Information:

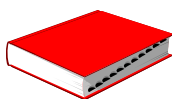
The statutory provisions cited above may be subject to subsequent amendment; the consolidated text of those provisions can be obtained from Butterworths' *LexisNexis* service:

[http://assembly/presidingoffic/mrs/resources/electronic/qlinks\\_lexisnexis.htm](http://assembly/presidingoffic/mrs/resources/electronic/qlinks_lexisnexis.htm)



#### More Quick Guides:

[Full list of QuickGuides](#)



[Glossary of terms](#)