

# **CIRCULAR PA 2/98**

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## **INTRODUCTION**

This Circular announces a change in the Instrument of Delegation and a recently approved clarification of the policy on illegal development contained in Circular 2/96. It also introduces a new procedure for dealing with minor amendments to permissions and approved plans which has recently been approved.

Attention is drawn to changes in the procedures on consultation with the applicant/architect on the DPA report and on notification of the target process date of applications. This Circular goes on to clarify the validity period of development permissions introduced by the amendments to the Development Planning Act 1992, and the nature of DPA report. Finally the availability of the Authority's GDO officer is detailed.

## **1 INSTRUMENT OF DELEGATION**

- 1.1 The Instrument of Delegation by the Planning Authority 1997 (Government Notice No. 529 of 1997) was amended by Government Notice No. 289 of 1998 on 7th April 1998.
- 1.2 The effect of the amendment is that the Development Control Commission (DCC) can now refuse applications submitted by Government Departments and Agencies. Previously, where the DCC considered that such an application should be refused, the Instrument of Delegation required that the application should be referred to the Planning Authority Board for a decision. The change

is designed to expedite determination of these applications and their possible subsequent consideration by the Inter Departmental Planning Committee.

## 2 ENFORCEMENT POLICY -- ILLEGAL DEVELOPMENT

- 2.1 The following policy on illegal development, which elaborates on the policy set out in Circular 2/96, was approved on 12th February 1998. It will appear in a future supplement of the Planning Factbook.
- 2.2 The policy in PA Circular 2/96 seeks to ensure that illegal development is regularised (where it can be) and that enforcement action is or can be taken (where it can not be regularised). One way of putting pressure on persons to do this is not to permit any further development on the site where there is illegal development. This is a reasonable and practical approach.
- 2.3 Where the illegalities concern parts of buildings over which a person, who wishes to carry out new development, had no control, then not permitting the development (solely because there are illegalities elsewhere on the site) will not serve this purpose. However, it is important to ensure, first, that the new development would not prevent the rectification of the illegalities, and, second, that a developer does not profit from an illegality.
- 2.4 In these circumstances, the following general principle is appropriate

*Where part(s) of a site or building is illegal, permission for new development elsewhere on the site or building should not be refused **solely** because there are illegalities in the building when*

- *granting permission for the new development will not physically prevent, hinder or make difficult enforcement action (removal or rectification) against the illegal parts of the building; and*
- *the application does not include the 'illegal' part(s); and*
- *the applicant has no control over the 'illegal' part(s) and was not involved in the 'illegal' development*

- 2.5 In a little more detail, and going through this step by step, the first and basic question, which should be addressed when an application on a site where there is illegal development is considered, is

*Would the application, if granted, compromise or prevent the eventual execution of enforcement action against the illegal part of the building ?*

- 2.6 If the answer is YES, then the application should be refused (for a reason directly referring to PA Circular 2/96), since new development should not adversely affect the potential for enforcement action.

- 2.7 If the answer is NO, the question then to be addressed is
- Does the application relate to or include those parts of the building where there is illegal development ?*
- 2.8 If the answer to this is YES, then permission should be refused, since the illegal development should be sanctioned before other development can be considered.
- 2.9 If the answer is NO, the question then to be addressed is
- Does the applicant have control whether directly or indirectly over those parts of the building where there is illegal development and/or was the applicant involved whether directly or indirectly (as, for example, the original developer) in the illegal development ?*
- 2.10 If the answer to this is YES, then permission should be refused, since the illegal development should be sanctioned before other development can be considered.
- 2.11 If the answer is NO, then permission can be granted (if there are no other planning objections).

### **3 PROCEDURE FOR DEALING WITH MINOR AMENDMENTS TO PERMISSIONS AND APPROVED PLANS**

#### **3.1 Introduction**

- 3.1.1 The Planning Authority adopted the Procedure For Dealing With Minor Amendments to Permissions and Approved Plans. This procedure will be once the legal notice relating to the required fees is formally published. The following paragraphs reproduce the procedure, which will also appear in a future supplement of the Planning Factbook.

#### **3.2 Purpose And Scope Of Procedure**

- 3.2.1 Certain minor changes to current, valid development permissions and approved plans can be dealt with in relation to the original application rather than by requiring a further application. Approval for the changes must be sought before they are carried out, and whilst the original permission is still valid.
- 3.2.2 Minor variations carried out to development underway or completed which would have been covered by the General Development Order had they been notified to the Authority can also be dealt with using this procedure. Similarly the guidelines can be used to determine whether or not variations are minor for the purposes of the Compliance Certificate procedure (see paragraphs 3.5.1 - 3.5.3).

3.2.3 Case officers should follow the following guidelines in deciding whether or not alterations to plans can be treated as minor amendments or whether an amended or new full application is necessary.

### **3.3 What Are Minor Amendments ?**

3.3.1 Changes to approved plans which do not require an amended application should be minor and only relate to certain of the details of the proposed development. They should not

- significantly alter the overall form or nature of the development;
- amount to alterations in the details which are sufficient to give rise to new material planning considerations (which were not or could not be addressed or assessed in the original application); or
- affect the way in which the material considerations raised by the development have been assessed or addressed.

Similarly conditions or limitations on permissions may be varied or altered given the same provisos.

3.3.2 The application of the principles set out in preceding paragraph will depend on the precise nature of the development and of the building(s) proposed, and on whether the site or building is covered by a designation such as an Urban Conservation Area. *This procedure should not be applied to buildings that are scheduled, since any works to scheduled property require a formal application.*

**3.3.3 Changes to approved plans may be acceptable as amendments to existing permissions, without the need to obtain an amended development permission, in the following circumstances**

- a) internal changes in the layout of a building (such as in the dimensions or locations of rooms) which
- have no effect on the external appearance
  - do not adversely affect sanitary considerations (changes in the size of backyards or shafts, for example, may do)
  - do not adversely affect safety or access considerations (such as increasing the steepness of basement garage access ramps so that they do not accord with current standards)
  - do not change the nature of the use (by introducing different uses) or
  - increase the scale of the development (by increasing the number of dwelling or shop units, for example)

- b) changes in the external materials of parts of facades (but not changes in the type of material used in the whole of a facade or facades), in the colour of materials or in the treatment of external materials, provided that these changes do not significantly alter the visual appearance of the building or alter it in such a way that it no longer accords with the character of the building or the surrounding area
- c) minor variations in door, window, balcony and gallery size, position, style/form and materials, provided that the changes do not
  - significantly alter the 'visual composition' or disposition of these elements of the building so that the character of the building or the surrounding area is adversely affected
  - run counter to current standards or policies (so that, for example, garage doors are increased in width beyond 3 metres or are roofed over at more than 12 courses)
- d) minor variations in other building elements, such as parapet walls, external stairs, and in structures like garden walls, provided that these variations do not run counter to current standards or policies or significantly alter the visual appearance or 'visual composition' of the building so that it no longer accords with the character of the surrounding area
- e) alterations in the details of landscaping schemes which do not affect the substance or overall form of the scheme (so that they do not reduce or diminish its effect or detract from its purpose), including changes to the species to be planted (provided that these are considered to be acceptable alternatives or substitutes)
- f) changes to the form of treatment or layout of external spaces or boundaries which do not affect the substance or overall form of the layout or the scheme for external treatment (so that they do not reduce or diminish its effect, detract from its purpose, introduce inappropriate materials, have an adverse impact on car parking provision or result in changes in the position of the building(s))
- g) minor changes in the size of development which do not
  - change the nature of the use or increase the scale of the development;
  - significantly alter the visual appearance of the building or alter it in such a way that it no longer accords with the character of the building or the surrounding area;
  - affect the surrounding area; or
  - give rise to new or different material planning considerations

- h) variations in conditions (except where the condition was imposed by the Planning Authority) where these concern the details of the condition rather than its overall form or purpose, and the variation would not give rise to new or additional environmental impacts or would not change any of the details of the scheme in such a way as to run counter to the guidance set out above

unless the amendments in the plans or changes to conditions relate to safety precautions (for example, requirements for ventilation or fire prevention measures) or to conditions required by other agencies.

- 3.3.4 It will however be a matter for the judgement of the case officer in all cases, in consultation with a Planning Officer or the Area Team Manager.

### **3.4 Dealing With Minor Amendments**

- 3.4.1 All amendments **MUST** be dealt with in writing. The architect should submit a letter, which gives clear details of the current permit which is to be amended and indicates in detail the proposed change(s), together with 3 copies of the relevant plans or drawings clearly showing the changes. The acceptance of amendments to permissions should always be endorsed by a professional officer.
- 3.4.2 Where the amendment may affect sanitary considerations, the Sanitary Engineering Officer should be consulted and should also endorse the plans.
- 3.4.3 If the Area Team Manager/SPO/PO/APO feels that the change can be accepted and approved as a minor amendment to the original permit, this should be stated in a letter, to the architect and applicant, referring to the original permit number and date. The letter should make it clear that the conditions of the original permit remain valid, and that the development is still subject to these. The letter should be signed by a planning officer and the amended plans should be endorsed as approved and placed on the original file, with one copy returned to the applicant/architect.
- 3.4.4 Where the professional officer feels that the proposed change is significant and an amended application should be submitted, the architect should be informed of this in writing.
- 3.4.5 Since this procedure is designed to have benefits for the overall development control process, particularly in terms of time, it follows that requests for minor amendments should be dealt with as expeditiously as possible. Normally, a response should be given within 14 days.
- 3.4.6 A nominal fee of Lm 15 will be charged for dealing with minor amendments.

3.4.7 Development which has been the subject of a request for an amendment without a new application should be monitored carefully to ensure that it complies with the terms of the approval or the later amendment. It follows that all copies of correspondence relating to amendments should be placed in the relevant application file so that they are available to the appropriate Enforcement Officer.

### **3.5 Other Applications Of The Guidelines And The Procedure**

3.5.1 The Compliance Certificate procedure also ensures that minor variations from approved plans (in development already under construction) are notified to the Authority. This facility is not, however, intended to replace the advance notification of changes as provided for in this procedure. However the guidance in paragraphs 3.3.1 to 3.3.3 can be used to determine whether or not variations from approved plans indicated in the certificate from architects (and shown on plan) are acceptable without the need for a further application for development permission.

3.5.2 Similarly this procedure can be used to cover (sanction) development which would be permitted development in terms of the General Development Order (1993 and 1996), but which has already been carried out (and so can not be notified in accordance with the General Development Order No. 2). In this case a nominal fee of Lm 20 will be charged. Works which are permitted by the GDO but require the Authority's response within 30 days are excluded from this procedure.

3.5.3 Minor works carried out before this new procedure comes into force can also be sanctioned in the manner described above.

## **4 CONSULTATION WITH THE APPLICANT/ARCHITECT ON THE DPA REPORT**

4.1 At present the DPA report on every application is sent to the architect/applicant for comments prior to the application being placed on the agenda for the DCC or being determined as a delegated application.

4.2 Where the recommendation is for refusal or for approval with non standard conditions, the applicant/architect has 30 days from receipt of the report to submit written comments. The application is only determined after the receipt of comments or the expiry of the 30 day period, whichever is the shorter. Where the recommendation is for approval with standard conditions, the Authority continues with the determination of the application.

4.3 This procedure will now change and **the DPA will no longer be sent out when the recommendation is for approval with standard conditions.** Sending out the DPA report in these circumstances is unnecessary since, in most cases, the applicant will receive the decision notice shortly after completion of the DPA report. In addition, the applicant is safeguarded,

since in those few cases where the DCC/PA Board decides to overturn the recommendation of the case officer, the applicant is invited to make a written submission at that stage.

4.4 Standard conditions are those conditions which do not modify or restrict the development beyond what is proposed in the application and shown on the approved plans. They include the following examples which are commonly imposed on development permissions

- ◆ the standard condition imposed on all permissions which includes the validity period, requirements to display the permit and to return the Commencement Notice etc.;
- ◆ the height limitation condition;
- ◆ conditions requiring the submission of further details for approval;
- ◆ the standard conditions on swimming pools;
- ◆ the standard advertisement condition on the maintenance of the sign and of the site etc;
- ◆ conditions which give information, such as those indicating that
  - ◇ for tourism or catering projects, the approval of the HCEB is required;
  - ◇ the approval of the landowner is also necessary;
  - ◇ a trading licence is required;
- ◆ the condition requiring the obtaining of a Compliance Certificate;
- ◆ conditions requiring the use of local stone in the facade of a building; and that apertures and balconies should not be in gold, silver or bronze aluminium or that they should be in timber (where this accords with what is proposed in the application).

4.5 Conditions which are **not considered standard** are those which modify or restrict the development, or require additional or different works to those proposed in the application. The following are examples of this type of condition (but there are, of course, others)

- ◆ prohibiting a change of use within the same Use Class;
- ◆ which do not approve part of the development as submitted, such a condition not approving an advertisement and requiring separate approval;
- ◆ relating to DC 1/88 which may modify the development proposed, i.e. restrict the number of steps proposed in a front garden;
- ◆ requiring a vehicle ramp to a basement garage to be less than a given gradient, where the plans show a ramp of a steeper gradient;
- ◆ conditions requiring the use of local stone in the facade of a building; and that apertures and balconies should not be in gold, silver or bronze aluminium or that they should be in timber (where the application proposes something different).

4.6 This change in procedure will help to expedite the determination of certain types of application, thus being of benefit to architects and their clients

whilst safeguarding their interests in ensuring notification where it is necessary.

## 5 NOTIFICATION OF THE TARGET PROCESS DATE

- 5.1 In order to reduce the considerable volume of communication, expedite the processing of applications and make more effective use of administrative time and resources, **the applicant/architect will not be notified every time the target process date is revised.** However, in order to ensure that the applicant/architect have access to information on the target process date, the steps set out below will be taken.
- 5.2 The standard 'acknowledgement of validation' will be amended so that the applicant is made aware that the target process date is 'moveable' and of the circumstances in which particular activities, such as consultation with Government Departments or requests for further information, do not constitute part of the overall 12 or 26 weeks determination period, as provided for in the Act. Moreover, the letter will indicate that, in the case of those applications subject to an initial 12 weeks determination period, the applicant should not assume 'deemed' approval without first requesting confirmation of the actual target process date from the Authority;
- 5.3 In addition, a system will be set up whereby the applicant/architect can either check the actual target process date through poll fax or through a telephone line directed to the Planning Shop.

## 6 THE VALIDITY PERIOD OF DEVELOPMENT PERMISSIONS

- 6.1 The period for which development permissions are valid was altered by the amendments (Development Planning (Amendment) Act 1997) to the Development Planning Act 1992. This has given rise to some confusion, and so the matter is clarified in the following paragraphs.
- 6.2 ***Permissions granted since 12th August 1997***
- 6.2.1 A development permission granted since the amendments came into force on 12th August is valid for three years.
- 6.2.2 **The permission ceases to be valid at the end of the three years if works have not been undertaken on the site,** and a new application for full development permission must be submitted to carry out the development.
- 6.2.3 **If works have commenced on the site, the permit is valid for a further 12 months.** Where the development has not been completed at the end of this period, a renewal application may be submitted. The Authority may extend the permit for a period or periods which it considers appropriate.

### 6.3 ***Permissions which were valid when the amended Act came into force***

6.3.1 Where permits were still valid immediately before the coming into force of the Act (that is they were valid on 12th August 1997), the permit is automatically extended by three years from the date on which it was originally granted. The applicant must notify the Authority of his/her intention to utilise this 'extension'. When this 'extended' period lapses, the provisions outlined above apply.

6.3.2 For a permit to have been valid immediately before the coming into force of the Act, it is necessary that either

- works had commenced within the first year after the granting of permission and the overall validity period had not expired (note that this may be either two or three years depending on the period imposed in the relevant condition); or
- where works had not commenced, the year allowed for commencement of the works had not expired

In the latter case, where the permit is automatically extended, it is no longer necessary for works to commence within the first year.

6.3.3 It should be noted that there may be some permissions, such as large scale projects, with a longer period than three years stated in the condition relating to completion or overall duration. The amended provisions of the Act would, therefore, not apply in this case, or at least they would be of no benefit as they would not give a longer validity period. Similarly, these provisions do not apply to temporary permissions, which have a specifically limited and restricted overall duration, nor to outline development permissions, which do not grant permission to develop.

## **7 ACCESS TO THE GDO OFFICER**

7.1 The Authority's GDO officer is responsible for dealing with the notifications which need to be made to the Authority in accordance with the General Development Order and with 'trading licence applications'. In the interests of providing a better service to clients, the Officer will be available as follows

- in person -- Tuesday and Thursday morning, between 8 and 12; and
- by phone -- Monday to Friday, between 9.00 am and 11.00 am

This arrangement will ensure guaranteed availability at the specified times, and outside of these will enable concentration on dealing with submitted notifications etc.

## **8 THE DPA REPORT**

- 8.1 It should be noted that the contents of the DPA report, including the recommendation, represent the collective Planning Directorate view on an application, rather than the view of the case officer or any one particular person.
- 8.2 Comments on the DPA report should therefore reflect this. They should be directed towards the planning issues and should also be couched in general terms, rather than refer directly to the case officer (the person responsible for putting the report together).

**Godwin Cassar**  
**Director of Planning**  
12th June 1998