

**Circular 07/99: The Town and Country
Planning (Development Plans and
Consultation) (Departures) Directions 1999**

On 5th May 2006 the responsibilities of the Office of the Deputy Prime Minister (ODPM) transferred to the Department for Communities and Local Government.

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Circular 07/99: The Town and Country Planning (Development Plans and Consultation) (Departures) Directions 1999

1. At [Annex 1](#) to this Circular is a copy of the Town and Country Planning (Development Plans and Consultation) (Departures) Directions 1999 which come into force on 30 August 1999. These replace, in England, the Town and Country Planning (Development Plans and Consultation) Directions 1992 contained in Annex 3 to DOE Circular 19/92.
2. [Annex 2](#) to this Circular provides policy guidance on the new Directions. The Directions require certain planning applications which do not accord with the provisions of the development plan, and which the local planning authority do not propose to refuse, to be notified to the Secretary of State. Local planning authorities are advised that, as regards applications referred under paragraph 3(c) of the Directions, only significant departures described in paragraph 7(4) of this guidance should be notified. The Secretary of State will maintain his policy of, in general, only calling in for his own determination those applications which raise planning issues of more than local importance.
3. Paragraph 2 of, and Annexes 2 and 3 to, DOE Circular 19/92 are hereby cancelled insofar as they relate to applications for planning permission to develop land in England.

Christopher Bowden
Assistant Secretary

Annex 1

The Secretary of State for the Environment, Transport and the Regions in exercise of the powers conferred on him by articles 10(3), 14(1), 17 and 27 of the Town and Country Planning (General Development Procedure) Order 1995, and all other powers enabling him in that behalf, hereby gives the following directions -

Commencement, Application And Interpretation

1. (1) These directions shall come into force on 30 August 1999 and shall apply to applications for planning permission relating to land in England made on or after that date.

(2) In these directions -

"departure application" means an application for planning permission for development which does not accord with one or more provisions of the development plan in force in the area in which the application site is situated;

"the 1995 Order" means the Town and Country Planning (General Development Procedure) Order 1995 (see [endnote 1](#));

and "requisite notice" has the meaning given by article 8(7) of the 1995 Order.

Restriction On The Grant Of Planning Permission

2. (1) Without prejudice to the requirements of article 8 of the 1995 Order, and subject to sub-paragraph (2), a local planning authority shall not grant planning permission on a departure application unless they have complied with any requirement imposed in relation to that application by [paragraph 3](#) of these directions and the relevant period set out in [paragraph 4](#) has expired or the Secretary of State has issued a decision.

(2) A local planning authority may grant planning permission on a departure application without complying with [paragraph 3](#) if they impose such conditions on the permission as will ensure, in their opinion, that if the development is carried out in accordance with those conditions it will be in accordance with the provisions of the development plan.

Notification Of Departure Applications To The Secretary Of State

3. Where a departure application which a local planning authority do not propose to refuse is for -

(a) development which consists of or includes the provision of -

(i) more than 150 houses or flats; or

(ii) more than 5,000 square metres of gross (see [endnote 2](#)) retail, leisure, office

or mixed commercial floor space;

(b) development of land belonging to a planning authority by that authority or any other party, or for the development of any land by such an authority, whether alone or jointly with any other person; or

(c) any other development which, by reason of its scale or nature or the location of the land, would significantly prejudice the implementation of the development plan's policies and proposals,

the authority shall send to the Secretary of State -

(i) a copy of the application (including copies of any accompanying plans and drawings);

(ii) a copy of the requisite notice;

(iii) a copy of any representations made to the authority in respect of the application;

(iv) a copy of any report on the application prepared by an officer of the authority;

(v) unless contained in a report supplied pursuant to sub-paragraph

(iv), a statement of the material considerations which the authority consider indicate otherwise for the purposes of section 54A of the Town and Country Planning Act 1990;

(vi) copies of any statement of any views expressed on the application by a government department, another local planning authority or a parish council.

Relevant Period Before Granting Permission On A Departure Application

4. The relevant period referred to in paragraph 2(1) is -

(a) where [paragraph 3](#) does not apply, the period specified in the requisite notice for making representations; or

(b) where a copy of the application is sent to the Secretary of State pursuant to [paragraph 3](#), the period of 21 days beginning with the date notified to the local planning authority by the Secretary of State as the date of receipt of the items specified in that paragraph. If, before the expiry of that 21 day period, the Secretary of State has notified the local planning authority that he does not intend to issue a direction under section 77 of the Town and Country Planning Act 1990 in respect of that application, the local authority may proceed to determine the application.

Consultation On Certain Highway Proposals

5. A local planning authority shall consult the Secretary of State before granting planning permission on any application made by a local highway authority (not being an application falling within [paragraph 3](#)) for development which consists of or includes the construction of a road, the route of which is not proposed in the relevant local plan or, as the case may be, in Part 11 of the relevant unitary development plan.

Copies Of Certain Permissions To Be Sent To The Secretary Of State

6. Where the local planning authority grant planning permission on a departure application, they shall send a copy of the permission to the Secretary of State as soon as is reasonably practicable.

Cancellation And Saving

7. The Town and Country Planning (Development Plans and Consultation) Directions 1992 are hereby cancelled insofar as they apply to applications for planning permission to develop land in England, save that they shall continue to apply to any departure application made before these directions come into force.

Signed by authority of the Secretary of State for the Environment, Transport and the Regions.

Christopher Bowden

An Assistant Secretary in the Department of the Environment, Transport and the Regions

13 August 1999

Endnotes

1. SI 1995 No 419 as amended.
2. For the purposes of this direction, floorspace shall be calculated by external measurement.

Annex 2

The Town and Country Planning (Development Plans and Consultation) (Departures) Directions 1999

1. At Annex 1 to this Circular is a copy of the Town and Country Planning (Development Plans and Consultation) (Departures) Directions 1999. These Directions come into force on 30 August 1999 and cancel from that date the Town and Country Planning (Development Plans and Consultation) Directions 1992 (previously contained in Annex 3 to DOE Circular 19/92) as respects applications for planning permission to develop land in England, save that they shall continue to apply to any departure application made before these directions come into force.
2. Research commissioned by the Department (see [endnote 3](#)) suggests that the 1992 Directions and guidance on them have not been providing the Secretary of State with a consistent reporting system, and that there is wide variation between authorities in their interpretation of the requirements of the Directions. The purpose of this version of the Directions is essentially for clarification, in order to promote consistency in the interpretation of both the definition of a departure, and the definition of a departure which is significantly prejudicial to the implementation of the development plan's policies and proposals. The changes to the Directions and Guidance are not expected to impose a significant additional burden on local planning authorities.
3. The Town and Country Planning (Development Plans and Consultation) (Departures) Directions 1999, together with article 8 of the Town and Country Planning (General Development Procedure) Order 1995 ("the 1995 Order") reflect the Government's commitment to the plan-led system. Article 8 requires publicity to be given to planning applications for development which would constitute a departure from the development plan; the Directions require that some departure applications must also be notified to the Secretary of State.
4. The notification requirements provide the Secretary of State with an opportunity to check general compliance with development plan policies, and to consider whether an application should be called in for his own determination. The Secretary of State will, however, continue to be very selective about calling in planning applications and will, in general, do so only if planning issues of more than local importance are involved.
5. Where there is both an adopted plan and an emerging plan, the decision on whether an application is a departure must be considered against the adopted plan. Moreover, where a structure plan has been updated and the structure plan authority has issued a statement indicating that the local plan is no longer in conformity, the former prevails. For further guidance, authorities should refer to the section in PPG 12 entitled 'Precedence of Plans'.
6. Attention is drawn particularly to paragraph 3 of the Directions which set out the requirements for authorities notifying departure applications to the Secretary of State. Authorities should only notify applications which they do not propose to refuse and which either fall within the terms of paragraphs 3(a) and (b) or, in the case of any other

development under paragraph 3(c), would significantly prejudice the implementation of the development plan's policies and proposals. It is for local planning authorities to take a reasonable view on whether departure applications fall within paragraph 3(c). Applications should not be notified on a "safety first" basis. If in any **doubt, local planning authorities should consult the relevant Government Office** at an early stage. If the authority considers that an application does not fall within the terms of paragraph 3, they may grant permission without notification to the Secretary of State.

7. In carrying out the duties imposed by the 1995 Order and by the Directions, local planning authorities may find it helpful to approach the question in the following sequence:

(1) Does the application accord with the provisions of the development plan in force in the area?

If it does not, article 8 of the 1995 Order requires the local planning authority to publicise the application by means of a site display and local advertisement as soon as possible after receipt to facilitate efficient development control. Under article 20(5) of the 1995 Order, they must not determine departure applications before the end of a period of 21 days beginning with the date when the site notice was first displayed and before the end of a period of 14 days beginning with the date on which the advertisement was first published (whichever is the later). The site notice and local advertisement should make it clear that the application does not accord with the provisions of the development plan. Guidance on publicising planning applications is given in DOE Circular 15/92 "Publicity for Planning Applications".

(2) Does the authority propose to refuse planning permission, or to grant it subject to conditions such as will ensure that if the development is carried out in accordance with those conditions it will be in accordance with the provisions of the development plan?

In such a case, no further duty arises under the 1999 Directions.

(3) If not, is the application for:

(a) development which consists of or includes the provision of (i) more than 150 houses or flats; or (ii) more than 5,000 square metres of gross retail, leisure, office or mixed commercial floor space; or

(b) development of land belonging to a planning authority by that authority or by any other person, or for the development of any land by such an authority, whether alone or jointly with any other person.

If so, the authority must notify the Secretary of State, by sending him the items listed in paragraph 3 of the Directions.

(4) Is the application for any other development which constitutes a departure from the development plan and which, by reason of its scale or nature, or the location of the land, would significantly prejudice the implementation of the development plan's policies and proposals?

In deciding this question, local planning authorities should consider each case on the facts. Although it is a matter for the local planning authority to determine that a proposed development may cause significant prejudice to the implementation of the development plan's policies and proposals, this decision must be made lawfully and is subject to review by the courts. Among the matters the local planning authority should take into account are the size of the proposed development, its impact on the area and the type of development. The following are examples of the types of **development proposal which might significantly prejudice the implementation of the development** plan's policies and proposals:

(i) applications for development of major importance having more than local significance, eg major industrial developments and major retail, leisure, office or mixed commercial developments (other than those notified automatically to the Secretary of State);

(ii) applications which raise important or novel issues of development control, eg major infrastructure projects;

(iii) applications for major proposals involving the winning and working of minerals, or waste disposal, storage, treatment or processing facilities, eg clinical or special waste incinerators or waste-to-energy power plants;

(iv) applications significantly affecting national parks, areas of outstanding natural beauty, sites of special scientific interest and conservation areas, Grade I and II* listed buildings, and scheduled monuments;

(v) applications involving development for which an environmental impact assessment is required;

(vi) applications involving inappropriate development in the Green Belt and Metropolitan Open Land in Greater London. Advice on what constitutes inappropriate development is set out in the revised PPG2 "Green Belts" (1995) and RPG3 "Strategic Guidance for London Planning Authorities" (1996);

(vii) applications involving development that would result in the loss of open space or playing fields both publicly and privately owned;

(viii) applications which, through their cumulative impact with existing and / or proposed development, may have a significant impact on the implementation of the policies and proposals in the development plan.

8. Paragraph 3 of the Directions also specifies the material that should be sent to the Secretary of State when a local planning authority decides to notify a departure application. The Secretary of State considers it essential to be aware of the reasons why the local planning authority does not propose to refuse a planning application which departs from the adopted development plan. It is therefore necessary for the local planning authority to forward, amongst other things, a copy of their officials' report on the application, where this

report does not include it, a statement of the material considerations which the authority consider indicate otherwise for the purposes of section 54A of the Town and Country Planning Act 1990, and copies of any statement of any views expressed on the application by a government department, another local planning authority or a parish council.

9. When considering departure applications, district planning authorities should give particular weight to the representations of the county planning authority in response to consultations required by paragraph 7 of Schedule 1 to the Town and Country Planning Act 1990, which they have a statutory duty to take into account. When a departure application is notified to the Secretary of State, and where the county planning authority's views have been made known, they should be enclosed. The Secretary of State will take them into account in deciding whether to call in the application. Similarly, when a county planning authority sends a departure application to the Secretary of State they must also enclose the views of the district planning authority given under article 12(1) of the 1995 Order and under paragraph 3(vi) of the Directions.

10. Paragraph 5 of the Directions contains a provision requiring the local planning authority to consult the Secretary of State about any planning application by a local highway authority which is, while not a departure application falling within paragraph 3 of the Directions, for development which consists of or includes the construction of a road whose route is not proposed in the relevant adopted local plan or Part 11 of the unitary development plan. This provision, taken together with paragraph 3(b), meets the commitment given in PPG12 to make a direction to require a local highway authority seeking to grant themselves planning permission for a new road scheme, which has not been subjected to local plan procedures or is in conflict with the plan, to notify the application to the Secretary of State. When the Secretary of State is consulted under Paragraph 5 of the Directions, he will find it helpful if authorities send him the material referred to in paragraph 3(c)(i)-(vi) of the Directions.

Endnotes

3. Cambridge University, Department of Land Economy: "Departure Applications. The Effectiveness of The Town and Country Planning (Development Plans and Consultation) Direction 1992", Department of the Environment, Transport and the Regions (1997).