Handling of Major Planning Applications: Article 31 Cases
Produced in response to the Modernising Planning Processes Implementation Plan as part of the Planning to Deliver Programme
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Introduction

In February 2002 the Department published its Consultation Paper ‘Modernising Planning Processes’ (MPP). In its review of planning processes, the Department concluded that Article 31 procedures had been applied to applications that could have been dealt with more effectively through the normal planning process. The MPP Consultation Paper proposed that the Department should, in future, only apply Article 31 procedures to planning applications that were truly major in their scale and significance and fell within specified criteria.

The responses to the MPP Consultation Paper indicated widespread support for this approach. The respondents also asked the Department to provide greater clarity as to the criteria it would use in interpreting the existing provisions of Article 31.

This information note seeks to provide that clarity, but is for guidance only and can not be regarded as definitive or as having any legal effect.

What is an Article 31 Planning Application?

Article 31 of the Planning (Northern Ireland) Order 1991 enables the Department to deal with major planning applications under special procedures where they consider that the development for which the permission or approval is sought would, if permitted:

- involve a substantial departure from the development plan for the area to which it relates; or
be of significance to the whole or a substantial part of Northern Ireland; or

- affect the whole of a neighbourhood; or

- consist of or include the construction, formation, laying out or alteration of a means of access to a trunk road or of any other development of land within 67 metres of the middle of such a road, or of the nearest part of a special road.

What types of application might be subject to Article 31?

Where the Department considers that any or all of the circumstances described above are satisfied they may decide to apply the Article 31 procedures. In deciding whether to apply the Article 31 procedure to specific planning applications the Department will use the following criteria:

- the strategic significance of proposals
- the environmental effects of proposals
- the scale and nature of proposals

How will ‘strategic significance’ be assessed?

The Department will apply Article 31 procedures to proposed developments that raise issues of strategic significance to Northern Ireland as a whole, or to a substantial part of the region. In assessing the strategic significance of proposals the Department will take account of:

- the relationship of the proposal to the Regional Development Strategy (RDS)
- its contribution to the broader policies and objectives of Government
- any significant implications beyond NI.
(a) Major Economic Developments

The RDS provides guidance on the type of projects of strategic significance that could be anticipated to fall into this category. These might include:

- the development of strategic employment locations
- projects in major economic development corridors, including those which may have the potential to serve extensive cross border catchments
- projects that may comprise a major development package bringing benefits in terms of improvements to regional infrastructure.

(b) Major Infrastructure Projects

Major infrastructure projects comprise proposals for the provision of major transportation and service infrastructure by both the public and private sectors.

In deciding whether to apply Article 31 procedures to specific projects, the Department will take account of the scale of the proposals and their significance in contributing to the implementation of the RDS.

How will ‘environmental effects’ be assessed?

The Department considers that judgements as to what constitutes ‘environmental effects’, and in consequence the cases to which Article 31 should be applied, must be informed by the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999, and its published guidance in Development Control Advice Note 10 – Environmental Impact Assessment (DCAN10). DCAN 10 provides clarification on its approach to Schedule 2 developments and can be viewed on www.planningni.gov.uk.
The Environmental Impact Assessment (EIA) Regulations identify two categories of development:

- Schedule 1 cases, for which an EIA is considered mandatory; and
- Schedule 2 cases, for which an EIA is considered discretionary, depending on the nature of the proposals.

The Department will apply Article 31 procedures to planning applications that involve Schedule 1 developments, and to Schedule 2 developments that are major developments of such a scale as to have wide ranging environmental effect and be of more than local importance. Where environmental impacts are judged to require the submission of an Environmental Statement but the impacts are localised, the Department will deal with such applications by the normal process route.

What are the ‘scale and nature’ thresholds in assessing applications against Article 31?

(a) Large developments involving industrial, mixed retail use, retail food, leisure/recreational uses.

The Department will apply Article 31 procedures to large developments whose scale and nature are of more than local importance and which have impacts beyond local areas. It is difficult to be specific as to thresholds of proposed floorspace beyond which Article 31 procedures would be applied since the circumstances of applications, including the make up of the proposed uses, location etc, often vary considerably. However, the Department will use the following floorspace limits as indicative of the scale of development to which it may apply Article 31 procedures:
• developments exceeding 15,000 sq metres gross floorspace
• retail food stores exceeding 3,000 sq metres gross floorspace
• other retail developments over 10,000 sq metres gross floorspace, for example mixed retail, retail warehouses, factory outlet centres and warehouse clubs.

In exceptional circumstances the Department may apply Article 31 procedures to developments below these limits. Such circumstances may arise, for example, where development is proposed in a sensitive location, or where a number of competing proposals are made to meet a specific regional or sub-regional need and it is necessary to undertake a comparative assessment.

(b) Housing

The Department will, only in exceptional circumstances, apply Article 31 procedures to exclusively housing proposals. The RDS sets limits to housing growth by District Council area and Area Plans allocate this growth to specific locations. Lands zoned and left unzoned in development plans are tested through the public inquiry process. In consequence, the Department considers that planning applications for housing can be effectively judged against prevailing plans and policies.

Therefore, the Department will only apply Article 31 procedures where: -

• an application raises major issues with respect to the housing strategy in a development plan, for example a challenge, post adoption, to the plan’s phasing
an application is made to change significant zonings

an application has major implications for infrastructure provision

How are Article 31 applications determined?

When the Department decides to apply the Article 31 procedure to a planning application, it has the option of:

- serving on the applicant, within two months of the date of the application, a Notice of Opinion either to approve or refuse planning permission; or

- causing the Planning Appeals Commission (PAC) to hold a public local inquiry, for the purpose of considering representations made in respect of the application, and to report on the outcome of the inquiry. The Department shall, in determining the application to which the Article 31 procedures have been applied, take the report of the PAC into account. The decision of the Department is final.

At any time up to at least 28 days from the date of service of a Notice of Opinion, an applicant may also request a Hearing before the PAC. As before, the Department shall, in determining the application to which the Article 31 procedures have been applied, take the report of the PAC into account. The decision of the Department on Article 31 applications is final.

How is the process route decided?

The procedures involved in the processing of a planning application provide the Department with substantial information on the nature of the proposal; their impact on the environment and the amenity of residents; and the views of the public and elected representatives.
The vast majority of applications, including Article 31 cases, can be determined on the basis of current plans and policies, taking account of the views of consultees, the public and elected representatives.

In practice, most Article 31 applications in the past have been dealt with by Notice of Opinion, indicating that the Department proposes to either grant or refuse planning permission. This is likely to remain the case in future.

However, the Department may cause a public local inquiry to be held where it is considered that the inquiry process will provide additional information to inform the Department in making a final planning decision.

A key test for the Department in deciding the process route will be whether a public local inquiry is necessary to provide all the information to enable the planning decision to be taken.

The volume of public objections received to a planning application will not be a determining factor in the decision as to whether a public local inquiry is required. An important issue for the Department in respect of public comment is the content of all types of representations rather than the volume, and whether they raise issues that cannot be satisfactorily considered through normal consultation arrangements.
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