Development Management

Practice Note

Planning Registers and Statutory Charges Registers

April 2015
Preamble

This Development Management Practice Note is designed to guide planning officers and relevant users through the requirements for Planning Registers and deals primarily with procedures as well as good practice. It forms part of a series of new practice notes stemming from the Planning Act (Northern Ireland) 2011 (the 2011 Act) and any related subordinate legislation. The emphasis is very much on advice but where explicit legislative requirements must be followed these will be made clear.

Where appropriate this practice note will therefore highlight:

1. Relevant legislation;
2. Procedural guidance;
3. Definitions;
4. Best practice examples / relevant case law

This guidance is not intended to replace the need for judgement by planning officers and those making planning applications. Nor is it intended to be a source of definitive legal advice. Reference should be made to the actual legislation referred to in this document and if any discrepancy or conflict exists between the Practice Note and legislation the provisions of the legislation will prevail.
1.0 **Introduction**

1.1 The Department of the Environment was required to hold a register containing information on Planning Applications, Enforcement, Simplified Planning Zones and Enterprise Zones, Hazardous Substances, Deemed Consents and Orders and Directions and related environmental information. The two tier planning system will require similar provisions for the statutory registers, with responsibility falling to the councils.

2.0 **Legislative Context**

2.1 **Section 242 (1) of the Planning Act (Northern Ireland) 2011 (the 2011 Act)** requires councils to keep one or more registers with information on the processing and determination of applications, including pre application community consultation, and enforcement actions undertaken. **The Planning (General Development Procedure) Order (Northern Ireland) 2015 (the GDPO)** article 24, 25, 26 and 27 provide that councils must have a register for Applications, Simplified Planning Zones and Enterprise Zones, Enforcement Notices and Orders and Directions. Councils may choose to use electronic storage for registers.

3.0 **Types of Registers**

3.1 Councils are ultimately responsible for the keeping and maintenance of the registers. A large single register may not be feasible given the diverse range of information that has to be kept. It is recommended therefore that councils make arrangements to create registers for each of the identified areas outlined in Article 24, 25, 26 and 27 of the GDPO. These are:

- Register of Applications;
- Register of Simplified Planning Zones and Enterprise Zones;
- Register of Enforcement Notices;
- Register of Orders and Directions.

This Practice Note will highlight where a register should be kept and suggest other pieces of information that it would be prudent to hold.

4.0 **Register of Applications**

4.1 Section 242 (1) (a) to (e) and (m) to (r) of the 2011 Act. The council register must contain information with respect to:

(a) Applications made, or deemed to be made under this act to the council, to the Department or to the planning appeals commission for any permission, consent approval or determination;
(b) The manner to which such applications have been dealt with;
(c) Notices under section 27(2) (proposal of application notice);
(d) Pre-application community consultation reports under section 28;
(e) The revocation or modification of any permission or consent granted under this Act.

4.2 The provisions of the 2011 Act also cover areas that will result in consent being given or required, if not directly through an application

(m) Notices under Section 127 (Preservation of trees in Conservation Areas);
(n) Breach of condition notices;
(o) Certificates under section 169 or 170 (CLUD’s);
(p) Building preservation notices;
(q) Temporary stop notices issued under section 135;
(r) Applications for a determination under paragraph 9 of Schedule 2 or paragraph 7 of Schedule 3.

4.3 Article 24 of the GDPO refers to matters outlined in the 2011 Act. The order requires that any register must contain the following:
• A copy (which may be photographic) of each application together with copies of plans and drawings submitted and any accompanying design and access statement provided in accordance with Article 6 of the GDPO;
• The decision notice, if any, in respect of the application, including details of any conditions subject to which permission or consent was granted;
• The reference number, the date and effect of any kind of decision of the Planning Appeals Commission in respect of the application.
• Brief details of any revocation or modification relating to any permission or consent, including date of issue.

4.4 This information relates to planning applications, but not only those determined by the Council. Section 242 of the 2011 Act does not make provision for the Department to hold registers. Councils will therefore have to hold information relevant to the applications processed by the Department. This will include not only regionally significant applications, but also applications called in by the Department for determination. The correspondence and Directions issued by the Department under the provisions of Section 29 of the 2011 Act will also have to be part of the register of applications as under Section 242(1)(b) it must record the manner in which such applications have been dealt with.

4.5 The Planning register is not restricted to local, major or regional planning applications. Section 242 (1)(a) requires a council to keep one or more registers containing information on applications for any permission, consent, approval or determination. Similar provisions must therefore be made to that outlined above for the other consents a council will determine. Councils should also maintain registers covering:
• Certificates of Lawful Development;
• Listed Building Consent (Including revocation or modification);
• Conservation Area Consent;
• Hazardous Substance Consent;
• Tree Preservation Orders;
• Non Material Changes.

4.6 Registers may be audited both by council appointed officials and external officials. It is therefore considered prudent that copies of the following also be included:

• All plans considered by the council or Department in determining the application or consent;
• Related studies submitted in support of the application eg; retail impact assessments, traffic assessments;
• Decisions made by the Department of an application called in for determination by the Department;
• The case officers report and associated submissions;
• A copy of the fee paid by the applicant.

4.7 The applications register must not contain information related to:

• National security or the measures taken to ensure the security of any premises or property;
• Consideration by the council or the Department of an application to which Section 235 (National Security) of the 2011 Act applies.

5.0 EIA Requirements

5.1 The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015 (EIA Regulations) Regulation 41(1) requires that in the Register of Applications copies of the following be attached:
• Any determination or opinion given pursuant to regulation 7(1), 10(1), 11(1), 14(1) 15(1) or 18(1), notification under regulation 16(1), 17(1) or 18(2) or determination confirmed or amended under regulation 42(2) together with the accompanying statement of reasons, the relevant request and the documents which accompanied it;

• Any Environmental Statement and further information and any other information received under these Regulations; and

• Where environmental information has been taken into consideration in determining an application for planning permission or subsequent application or appeal, a statement containing:
  ➢ The content of any decision and any conditions attached to it;
  ➢ The main reasons and considerations on which the decision is based including, if relevant, information about the participation of the public;
  ➢ A description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the development; and
  ➢ Information regarding the right to challenge the validity of the decision and the procedures for doing so.

6.0 Register of Simplified Planning Zones and Enterprise Zones

6.1 Section 242 (1)(i) requires a register of simplified planning zones and enterprise zones. Article 25 of the GDPO requires that it contains:

• Brief details of any action taken by the council or, as the case may be, the Department in accordance with sections 33 (simplified planning zones) to 38 (exclusion of certain descriptions of land or development) of the 2011 Act to make or alter any simplified planning zone scheme, including the
date of adoption, the date on which the scheme or alteration becomes operative and the date of adoption, and the date on which it ceases to be operative;

- A copy of any simplified planning zone scheme, or alteration to an existing scheme including any documents which have been made available for inspection under Schedule 1 of the 2011 Act as applied by section 34(4) of that Act;

- Map showing the boundary of any operative or proposed simplified planning zone scheme including any alterations to an existing scheme were appropriate;

- Brief details of any action taken by the Department in accordance with Article 3 to 5, 7, 8 and 10 to 13 of the Enterprise Order to designate or modify any areas as an enterprise zone including the date of adoption of any scheme or modification to a scheme prepared in relation to the development of that area;

- A copy of any scheme or modification to a scheme including documents which have been made available for inspection under Article 3, 5, 8 and 10 of the Enterprise Order;

- A map showing the boundary of any adopted or proposed scheme relating to an enterprise zone including modifications to an existing scheme were appropriate.

7.0 **Register of Enforcement Notices**

7.1 Section 242 (1) (f), (g) and (k) sets out what should be covered by this register. Article 26 of the GDPO states what shall be contained in the register for enforcement.

- The name and address of every person on whom notice is served in accordance with the relevant provisions of the
2011 Act, the address of the land to which the notice relates or a plan reference to which its location can be ascertained;

- The date of issue of the notice;
- The date of service of copies of the notice and the date on which the notice is to take effect;
- A statement or summary of the breach of planning control or hazardous substances control alleged and the requirements of the notice, including the period within which steps should be taken;
- The date of receipt of any appeal to the Planning Appeals Commission and the date of final determination or withdrawal of any appeal, the appeal decision and any conditions imposed;
- The date of service, and if applicable, of withdrawal of any stop notice referring to an enforcement notice, together with a statement or summary of the activity prohibited by any such stop notice; and
- The date, if any, on which the council, or as the case may be, the Department, is satisfied that steps required by the notice have been complied with.

EIA Requirements

7.2 Regulation 41(2) of the EIA Regulations requires that in the Register of Enforcement, copies of the following should be attached:

- Every regulation 31 notice served;
- Every determination made in accordance with regulation 31(2) or notice confirmed or amended under regulation 42(2) in respect of a deemed application under Part 8;
- Every environmental statement or additional or additional information received by virtue of regulation 34(1) – (PAC procedures for dealing with ES);
• Every notice received under regulation 35(4) or (5) – (Requests for further information on an ES).

8.0 Register of Orders and Directives and Notices

8.1 Section 242 (1) (l), (h), (j) and (l) to (r) requires a register of simplified planning zones and enterprise zones and notices. Article 27 of the GDPO requires that it contains certain information including:

• Date of issue;
• Subsequent variations;
• Revocation;
• Expiry.

EIA Requirements

8.2 Regulation 41(3) of the EIA Regulations requires that in the Register of Orders and Directions, copies of any direction given under regulation 3(1) (a) and (b), and any information obtained under the regulation 3 (2).

9.0 Cross boundary applications

.9.1 In these instances the applicant will be required to submit an application to all the relevant councils identifying on accompanying plans the portions of the application within each council area.¹ For planning applications that straddle one or more council boundaries, it is suggested that details of the application are kept on each of the councils registers involved, and the plan will need to be included on the register along with the relevant information listed.

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¹ Section 8 of the Local Government Act (Northern Ireland) 2014 provides that a Council can arrange for the discharge of functions by any other Council.
10.0 **Regionally Significant Applications and other applications processed by the Department**

10.1 There is no statutory requirement for the Department to hold registers. However section 242 (2) requires the Department to supply a council with such information as may be so specified in the GDPO and the onus will be on the Department to highlight to the council when it needs to update the registers and actions within its council district area. For example on issuing a Direction under Section 29 or the issuing of a determination of a regionally significant application, the Department will highlight in its correspondence to the relevant councils of its requirement to update the appropriate register. A list of the information and documents to be placed on the register should also be included. It is not a legislative requirement, however it would be good administrative practise to keep a record, either electronically or in paper form to show what has been sent to the relevant council or requested to be placed on their register.

10.2 Specifically Article 24(3) requires the Department to provide the council with a copy of an application and any accompanying plans, drawings and information.

11.0 **Online Information, Public inspection and Charging**

11.1 Section 242(3) requires the council to make registers available for public inspection at all reasonable hours. In particular councils will have to make hard copies of their registers available on request and provide a suitable place to view such documents in their offices. Section 242 (4) allows a council to make a reasonable charge for any extract from the registers kept by the Council.

12.0 **Statutory Charges Register**

12.1 The Council and the Department will have responsibility for ensuring relevant information is placed on the Statutory Charges Register. In the most part this will fall to Councils as most of the relevant planning functions will fall within their responsibility.
12.2 Section 245 of the 2011 Act amends the Land Registration Act (Northern Ireland) 1970 and requires the registration in the Statutory Charges Register (maintained by the Land Registry) of certain matters relevant to the processing of planning applications and enforcement actions. In line with the 2011 Act entries onto the Statutory Charges Register should include:

(a) Planning agreements under section 76;
(b) An entry in a list compiled under section 80 (Listed Buildings);
(c) Tree preservation orders;
(d) Enforcement notices which take effect in relation to land;
(e) Listed building enforcement notices which take effect in relation to any land;
(f) Any conditions imposed on the grant of planning permission –
   (i) relating to the occupancy of a dwelling house; or
   (ii) requiring that a dwelling house on any land which is under the control of the applicant be demolished or cease to be used as a dwelling house;
(g) Notices under section 164 (Enforcement duties as to replacement of trees) which take effect in relation to any land;
(h) Orders under section 68 (Revocation or Modification of planning permission by Council), 72 (Revocation or Modification of planning permission by Department) or 73 (Orders requiring discontinuance of use or alteration or removal of buildings or works);
(i) Designation under section 104(1) (Conservation Areas).