

Development Management

Practice Note

PRACTICE NOTE

24

Section 54 Applications

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Preamble

This Development Management Practice Note is designed to guide planning officers and others engaged in the planning system through the fundamental legislative requirements associated with applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted. It forms part of a series of 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:

- Relevant legislation;
- Procedural guidance;
- Definitions;
- 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 Note¹ and legislation the provisions of the legislation will prevail.

¹ Please ensure you are considering the most up to date version of Practice Note 24 available on the Planning Portal at www.planningni.gov.uk and the most up to date legislation on the legislation website at www.legislation.gov.uk, which is also accessible via the Planning Portal. Furthermore, you are advised to keep up to date with case law.

1.0 Introduction

- 1.1 Planning permission for development may be granted by a planning authority² either unconditionally or subject to such conditions³ as the authority thinks fit. However, following the grant of planning permission, developers / householders sometimes wish to undertake a development without complying with conditions attached to a planning permission. This may be achieved by the submission of a planning application under section 54 of the 2011 Act and anyone can submit such an application to the relevant planning authority.
- 1.2 Section 54 is one option available for amending a planning permission. Planning permission may be sought under section 54 to develop land without complying with conditions previously attached to a grant of planning permission⁴. It would not be appropriate to make a planning application for the “removal” of a condition, since the removal of a condition does not amount to development⁵. However, a section 54 planning permission may have the resultant effect of the removal or variation of a condition previously attached to a permission or the addition of a new condition.
- 1.3 Another option available for amending a planning permission is provided by section 67 of the 2011 Act. Under section 67, someone who has an estate in the land to which a planning permission relates, may submit an application to the appropriate council for a non-material change to a planning permission⁶. A section 67 application is not an application for planning permission, rather it is a procedural mechanism which allows for the making of an amendment to

² In this Practice Note, planning authority means a district council or the Department for Infrastructure. In other instances in the document council means a district council unless otherwise stated and Department means Department for Infrastructure unless otherwise stated.

³ Refer to Development Management Practice Note 20 Use of Planning Conditions.

⁴ Section 73 (Determination of applications to develop land without compliance with conditions previously attached) of the Town and Country Planning Act 1990 (TCPA 1990) is similar to section 54 of the 2011 Act and section 73 has been the subject of much of the case law referenced in this practice note. Section 73A (Planning permission for development already carried out) of the TCPA 1990 is similar to section 55 of the 2011 Act.

⁵ Case law: Brenda Wilkinson v Rossendale Borough Council [2002] EWHC 1204 (Admin).

⁶ Refer to Development Management Practice Note 25 Non-Material Change.

an existing planning permission. For such an application to be considered the proposed change must be one which is non-material.

- 1.4 Although section 54 and 67 applications are options that allow for post-decision changes to be made to existing planning permissions, they are subject to different processes and deliver different outcomes.
- 1.5 This Practice Note deals predominantly with the legislative power and procedural provisions for a planning application made under section 54. Issues associated with such applications can often be complex and a planning authority and others involved should consider seeking their own legal advice as they see fit.

2.0 Legislative context

- 2.1 **Section 54 of the 2011 Act** is a power that allows for an application to be made for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted. A section 54 application is submitted to and determined by the planning authority which granted the previous planning permission⁷ (section 54(3)).
- 2.2 Relevant subordinate legislation includes the following:
- **Planning (General Development Procedure) Order (Northern Ireland) 2015**, hereafter referred to as the “GDPO”⁸.

⁷ Refer to paragraph 4.6 for further information on this matter and paragraph 4.7 regarding transitional provisions on which planning authority deals with a section 54 application where the previous planning permission was determined prior to 1st April 2015.

⁸ The GDPO was amended by the Planning (General Development Procedure) (Amendment) Order (Northern Ireland) 2016.

- **The Planning (Development Management) Regulations (Northern Ireland) 2015**, hereafter referred to as the “Development Management Regulations”⁹.
- **The Planning (2011 Act) (Commencement No.3) and (Transitional Provisions) Order (Northern Ireland) 2015**, hereafter referred to as the “Transitional Provisions Order”¹⁰.
- **The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017**, hereafter referred to as the “EIA Regulations”¹¹.
- **The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995**, hereafter referred to as the “Habitats Regulations”¹².
- **The Planning (Fees) Regulations (Northern Ireland) 2015**, hereafter referred to as the “Fees Regulations”¹³.

2.3 Whilst a section 54 application is subject to similar provisions for a standard planning application seeking planning permission for development e.g. publicity, neighbour notification and making representations, it is also subject to a number of special provisions¹⁴ laid out in the GDPO, which differ from some of the provisions for a standard planning application. The special provisions are summarised as follows:

⁹ The Development Management Regulations were amended by the The Planning (Development Management) (Amendment) Regulations (Northern Ireland) 2015.

¹⁰ The Transitional Provisions Order was amended by the Planning (2011 Act) (Commencement No. 3) and (Transitional Provisions) (Amendment) Order (Northern Ireland) 2016.

¹¹ Refer to regulation 48 of the EIA Regulations.

¹² The Habitats Regulations were amended by amendment regulations in 2004, 2007, 2009, 2011, 2012 and 2015.

¹³ The Fees Regulations were amended by the Planning (Fees) (Amendment) Regulations (Northern Ireland) 2015.

¹⁴ Refer to section 4.0 (of this document).

Application made to a council or the Department

- **Article 3(5)(b)** – Form and content of an application made under section 54
- **Article 6(4)(a)** – Design and access statement in relation to a section 54 application
- **Article 14 and Schedule 3** – Consultation with statutory consultees in relation to a section 54 application

Application made to the Department

- **Article 21** – Representations, public local inquiry / hearing in relation to a section 54 application

3.0 Section 54 of the 2011 Act – an application for planning permission to develop land without compliance with conditions previously attached

3.1 The main aspects of an application made under section 54 are referred to in the following paragraphs.

What should the planning authority fundamentally establish about a section 54 application?

3.2 A planning authority should fundamentally establish that the application proposal falls within the scope of section 54 as soon as possible after receiving an application, i.e. it should satisfy itself that it is a 'true' section 54 application. Such an application is one that complies with the legislative requirements of section 54 and relevant case law and does not propose a change that could not have been considered under the previous (original) planning permission. It is important to ensure that the decision as to whether

or not an application should be accepted under section 54 in the first place is made at the earliest stage possible in order to avoid delay and uncertainty in the development management process. Applications received by a planning authority need to be considered on a case by case basis and the appropriate judgement made as to whether it can be processed and determined under section 54 and such judgement should be recorded on file in a transparent way. It is also important to note for clarification purposes that section 55 of the 2011 Act deals with applications for development already carried out without complying with some condition subject to which planning permission was granted i.e. retrospective applications¹⁵.

- 3.3 If a planning authority considers that a proposal falls outside the scope of section 54, then the application may be rejected as invalidly made. Therefore, a planning authority may refuse to accept an application to vary a condition or conditions on the basis that the application is considered to be for new development (case law: ***Derrick Taylor v The Scottish Ministers - Court of Session 27/10/2004***). In the Taylor case, a local planning authority refused to accept an application for the amendment of a condition because it considered the proposal to be a new application for development on the basis that a trout farm would become a site for the deposit of inert material. This stance was supported by a Reporter¹⁶ in an appeal, whose decision was upheld by the Court of Session (in Scotland). The court also agreed with the Reporter's comment that the problem in the appeal was that it depended on:-

“the fallacious idea that a condition of a planning permission can in effect convey planning permission for substantial development not within the scope of the original application.”

- 3.4 An applicant / agent may enter into Pre-Application Discussions¹⁷ (PADs) with a planning authority in order to establish if a potential application would

¹⁵ Refer to paragraphs 3.21 to 3.23 (of this document).

¹⁶ A Reporter is the representative of the Scottish Government who considers and, in most cases, decides a planning appeal in Scotland.

¹⁷ Refer to Development Management Practice Note 10 Pre-Application Community Consultation (and Pre-application Discussions).

be considered to fall under the scope of section 54 or not and be able to submit the appropriate application and planning fee to a planning authority. An applicant / agent may also seek further advice on specific proposals by contacting the relevant planning authority¹⁸.

What must the planning authority consider when dealing with a section 54 application?

- 3.5 In considering an application made under section 54, the planning authority which granted the previous planning permission must consider only the **“question of the conditions”** subject to which planning permission should be granted (section 54(3)). In essence, section 54 allows for different conditions to be attached to a new planning permission but does not allow for the amendment of the description of development of the previous (original) permission. A successful section 54 application results in a new planning permission for the same description of development previously approved but with different conditions attached¹⁹. Consequently, the scope of the planning authority is, in principle, more limited when dealing with a section 54 application, although it is also entitled to consider the circumstances that led to the previous (original) conditional grant of planning permission.

What does section 54 tell the planning authority to do when determining an application made under the provision?

- 3.6 If the planning authority decides that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, the planning authority must grant planning permission accordingly (section 54(3)(a)).

¹⁸Contact details for individual councils and the Department for Infrastructure are available via the Planning Portal at www.planningni.gov.uk.

¹⁹ In the circumstances of planning appeal reference 2015/A0126, a section 54 permission granted by a council was considered ‘not a variation of the earlier approval, but rather is a second planning permission for the same development’.

- 3.7 If the planning authority decides that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, the planning authority must refuse the application (section 54(3)(b)).

Are there any legislative restrictions on what section 54 can be used for?

- 3.8 Section 54 does not apply where a previous planning permission has been granted subject to a condition setting the time within which the development was to be begun and that time has expired without the development having been begun (section 54(4)). Therefore, if a planning permission lapses, then a section 54 application in relation to it cannot be accepted by the planning authority.
- 3.9 Furthermore, under section 54(5) planning permission must not be granted to the extent that it has effect to change a condition subject to which a previous planning permission was granted by extending the time within which:-
- (a) a development must be begun²⁰;
 - (b) an application for approval of reserved matters (within the meaning of section 62) must be made²¹.
- 3.10 A section 54 permission has the same time period for commencement of development as conditioned in a previous planning permission. An applicant must factor this into the section 54 application when it is being considered for submission. Also, a section 54 permission has the same time period for submission of an application for the approval of reserved matters as conditioned in a previous outline planning permission. Notwithstanding the fact that these time periods cannot be extended through a section 54 application, a planning authority needs to be mindful when dealing with such an application and be astute to consider any issues arising in respect of any time limit imposed on a previous planning permission.

²⁰ Refer to sections 61, 62 and 63 of the 2011 Act.

²¹ Refer to section 63 of the 2011 Act.

- 3.11 If a developer finds that the existing time condition in a planning permission for a development cannot be met, then the developer may submit another application for planning permission for that development, even when the time period for commencement of development in the previous (original) planning permission has not expired.
- 3.12 An application made under section 54 to vary a time commencement condition or time period for submission of reserved matters condition is not permissible and should be returned by the planning authority.

Can a planning authority issue a planning permission with conditions different to those proposed in a section 54 application?

- 3.13 Under section 54(3)(a) a planning authority has the power to grant planning permission subject to different conditions. The different (fresh) conditions are not limited to those proposed in a section 54 application (case law: ***R v Leicester City Council Ex p. Powergen UK plc (2000) 80 P. & C.R. 176***).

Are there limitations to the scope of a section 54 application?

- 3.14 'It is established law that a condition on a planning permission will not be valid if it alters the extent or indeed the nature of the development permitted' (case law: ***Cadigan v Secretary of State for the Environment (1993) 65 P. & C.R. 410*** – Lord Justice Glidewell). When considering an application under section 54, the planning authority must avoid any variation to conditions or new conditions which would fundamentally alter the nature of a planning permission (case law: ***R v Coventry City Council ex parte Arrowcroft Group plc 2000 WL 1151469***).

In the Arrowcroft case²² Justice Sullivan stated:

“the Council is able to impose different conditions upon a new planning permission, but only if they are conditions which the Council could lawfully have imposed upon the original planning permission in the sense that they do not amount to a fundamental alteration of the proposal put forward in the original application.”

- 3.15 On the basis of this principle established in the Arrowcroft case different conditions may be imposed on a section 54 permission so long as they could lawfully have been imposed upon the previous (original) permission and do not amount to a fundamental alteration of the proposal (description of development) set out in the previous (original) planning application. In the Arrowcroft case the application was considered to have gone beyond the scope of section 73 of the TCPA 1990. Furthermore, in the case ***R (Vue Entertainment Limited) v City of York Council [2017] EWHC 588 (Admin)***, Justice Collins, in referring to the Arrowcroft case, said in paragraph 13 “it was not permissible for a condition to seek to vary the permission which had been granted and therefore it was a misuse of section 73 to seek to achieve that.” Furthermore, Justice Collins, in referring to the Arrowcroft case, said that, “in my judgement does no more than make the clear point that it is not open to the council to vary conditions if the variation means that the grant (and one has to look at the precise terms of grant) are themselves varied.”
- 3.16 The Vue case also highlighted that an application to vary conditions is affected by the precise details set out in the description of development of the existing (original) planning application – see case outline below. In the Vue case the application was considered not to have gone beyond the scope of section 73 of the TCPA 1990. Care needs to be exercised by a planning authority when accepting a planning application in terms of the precise details set out in a description of development and the degree to which such

²² Refer to a summary of the Arrowcroft case on page 13 of Development Management Practice Note 25 Non-Material Change.

details are fixed / defined, and which is granted planning permission with conditions, because it affects the scope of a potential section 54 application.

R (Vue Entertainment Limited) v City of York Council [2017] EWHC 588 (Admin)

Planning permission was granted in May 2015 for a sports, leisure, entertainment and retail redevelopment scheme near York that included a 'multi-screen cinema'. The permission included a condition stating that the development was to be built in accordance with the approved drawings and with respect to the cinema this comprised 12 screens and 2,000 seats. A section 73 application that sought to vary the condition in order to amend the drawings to show a 13 screen cinema and 2,400 seats was approved by the council in June 2016 and this decision was challenged in the High Court in that it was considered to be a fundamental change to the effect of the planning permission. The court held that "the amendments sought do not vary the permission....and there is nothing in the permission itself which limits the size of either the amount of floor space or the number of screens and thus the capacity of the multi-screen cinema". The proposed development also included 'an 8,000 seat community stadium' and Justice Collins stated that "It seems obvious to me that if the application had been to amend the condition to increase the capacity of the stadium that would not have been likely to fall foul of the Arrowcroft principle because it would have been a variation to the grant of permission itself but as I say, that is not the case here". Justice Collins also stated "When one is concerned with fundamental variations, one must look, as it seems to me, to the permission as a whole in order to see whether there is in reality a fundamental change, or whether any specific part of the permission as granted is sought to be varied by the change of condition".

- 3.17 A proposed fundamental or substantial material amendment to a development having planning permission can be addressed by the submission of a fresh application for planning permission to the relevant

planning authority. A judgement on 'materiality'²³ in any particular case is a matter of fact and degree for the planning decision maker.

Can a planning authority issue a planning permission with more onerous conditions than those imposed on a previous planning permission?

- 3.18 Under section 54(3) a planning authority can grant planning permission with conditions differing from those subject to which a previous permission was granted. However, it must be borne in mind that conditions should only be imposed on a planning permission where they meet the six legal tests for conditions:- necessary; relevant to planning; relevant to the development to be permitted; enforceable; precise; and reasonable in all other respects. These tests must be applied to the consideration and imposition of conditions, including those that would be considered to be more onerous than those imposed on a previous planning permission. Furthermore, as established in the Arrowcroft case, a planning authority is able to impose different conditions upon a new planning permission, but only if they are conditions which the planning authority could lawfully have imposed upon the previous (original) planning permission. Therefore, it should be noted that even if a planning authority considers imposing more onerous conditions on a section 54 permission, the conditions of the previous (original) planning permission can be implemented if it is still extant (fallback position), thus making such an imposition of no real effect.

What is the effect of a successful section 54 application?

- 3.19 A successful application under section 54 is a new or fresh grant of planning permission (case law: ***Powergen UK plc v Leicester City Council (2001) 81 P. & C.R. 5***). To assist with clarity, when issuing a fresh planning permission granted under section 54, it is advisable that all the conditions of the previous (original) planning permission to which the new planning

²³ Refer to Development Management Practice Note 25 Non-Material Change and in particular the non-exhaustive list of assessment criteria to guide the decision on whether or not proposed changes to an existing planning permission are material or not.

permission is to be subject should be restated in the new permission, unless they have already been discharged, and not be left to a process of cross referencing with the previous (original) planning permission (case law: ***R (Reid) v Secretary of State for Transport, Local Government and the Regions [2002] EWHC 2174***).

Does the previous (original) planning permission remain intact and unamended?

- 3.20 Subsequent to a section 54 planning permission the previous (original) planning permission remains intact and unamended (case law: ***Powergen UK plc v Leicester City Council (2001) 81 P. & C.R. 5***). An applicant may choose whether to implement the previous (original) planning permission or the new planning permission granted under section 54 so long as they are not time-expired.

Can an application be made for planning permission for development carried out without complying with some conditions subject to which planning permission was granted i.e. a retrospective application?

- 3.21 **Section 55 of the 2011 Act** is a power that allows for the grant of planning permission for development already carried out (i.e. retrospective planning permission) and under section 55(1)(c) this includes development carried out without complying with some condition subject to which planning permission was granted. Therefore, a breach of planning control, including a breach of condition, in relation to a planning permission where development has been carried out may be remedied by a planning application seeking retrospective planning permission²⁴ made under section 55 or planning enforcement action may be taken within the time limits set by section 132 of the 2011 Act.

²⁴ Case law: *Lawson Builders Ltd & Others v Secretary of State for Communities & Local Government [2015] EWCA Civ 122*, which relates to an appeal case involving a section 73 application (seeking to vary conditions) and the granting of retrospective planning permission under 73A of the TCPA 1990.

- 3.22 Whilst a section 54 application is subject to special provisions laid out in the GDPO, which differ from some of the provisions for a standard planning application, a section 55 application is subject to the provisions for a standard planning application.
- 3.23 Issues surrounding a potential section 54 or 55 application should be discussed with the relevant planning authority, e.g. through a PAD, prior to submission in order to establish what should be the appropriate application and planning fee to submit to a planning authority.

Can a section 54 application be made in relation to an existing approval of reserved matters?

- 3.24 A section 54 application can only be made in relation to an extant planning permission with conditions, whether an outline or full planning permission. An application for the approval of reserved matters is not an application for planning permission. A fresh approval of reserved matters application may be made for alternative details in relation to the same reserved matter(s) so long as the time period under an outline planning permission for the submission of such an application(s) has not expired. An application for the approval of reserved matters is subject to the payment of a planning fee in accordance with the Fees Regulations.

Can a section 54 application made to a council be called in by the Department?

- 3.25 Section 29(1) states that the Department may give directions requiring applications for planning permission made to a council to be referred to it instead. Under section 29(4) any application in respect of which a direction under section 29 has effect shall be referred to the Department accordingly. Therefore, a section 54 application made to a council may be called in²⁵ by the Department if a direction is given to a council.

²⁵ Refer to Development Management Note 13 Notification and Call In of Applications.

Are other types of applications required where a section 54 application is made to a planning authority?

3.26 Depending upon the circumstances of each individual situation, where a section 54 application is made to a planning authority in relation to approved development, there may also be a requirement for one or more applications for the following consent regimes:

- a section 95 application in relation to an extant **listed building consent**²⁶
- a section 95 as applied by section 105(6) application in relation to an extant **conservation area consent**²⁷
- a section 111 application in relation to an extant **hazardous substances consent**²⁸.

4.0 Procedures (including special provisions) for a section 54 application

4.1 The main procedures and special provisions²⁹ for a section 54 application are referred to in the following paragraphs.

How may an applicant seek planning permission under section 54?

4.2 Article 3(5)(b) of the GDPO states that an application for planning permission under section 54 shall be made in writing and give sufficient information to identify the previous grant of planning permission and any condition in question. This provides a more streamlined approach to submitting a planning application. Such an application is made to the relevant planning

²⁶ Refer to section 8.0 (of this document).

²⁷ Refer to section 9.0 (of this document).

²⁸ Refer to section 10.0 (of this document).

²⁹ Refer to paragraph 2.3 (of this document).

authority³⁰. Applicants should clearly state that it is an application made under section 54 of the Planning Act (Northern Ireland) 2011. Applicants must also submit a completed Form P2 Planning Application Certificate under Section 42 of the Planning Act (Northern Ireland) 2011, which is a statement of ownership. If Certificate C or D is completed on Form P2, then an applicant has to give requisite notice to certain persons about a forthcoming planning application and can use Form P2A Notice of Application for Planning Permission for this purpose.

4.3 Alternatively, the 'Application for permission to develop land without compliance with conditions previously attached / Planning Act (Northern Ireland) 2011 - Section 54' model application form (Form RVC1)³¹, which is not a statutory requirement, may be used as a means of providing the information required by Article 3(5)(b) of the GDPO and other legislative requirements e.g. section 42 Certificate. The application form states as a sub-heading that it is an application made under the 'Planning Act (Northern Ireland) 2011 – Section 54.' Form RVC1 includes a Certificate of Ownership section which is equivalent to Form P2, therefore, if this section is used a separate completed Form P2 is not required. If Certificate C or D in the Certificate of Ownership section on Form RVC1 is completed, then an applicant has to give requisite notice to certain persons about a forthcoming planning application and can use Form P2A Notice of Application for Planning Permission for this purpose.

4.4 With respect to a section 54 application, as with any planning application, it is important to ensure the proposal description and the site address are sufficient to give proper notice of the application by way of newspaper advertisement and through neighbour notification³² and the other

³⁰ Refer to paragraphs 4.6 and 4.7 (of this document).

³¹ This form, which was revised in December 2017, is available on the Planning Portal at www.planningni.gov.uk as well as guidance on applying for planning permission which can be obtained from the document entitled 'Explanatory Notes on Applying for Planning Permission, Approval of Reserved Matters and Other Types of Planning Consent'.

³² Refer to Development Management Practice Note 14 Publicity Arrangements and Neighbour Notification.

requirements of **Article 8(1) and (2)** of the GDPO are fully met³³. The proposal description should make reference to the application reference number and the nature of the development of the previous (original) planning permission and provide the condition numbers and summary details of the conditions that are the subject of the application³⁴. This also ensures that the information required for a section 54 application under Article 3(5)(b) is provided by an applicant.

- 4.5 The planning authority may, in writing addressed to the applicant, require such further information as may be specified to enable it to determine the application (Article 3(6) of the GDPO).

Who processes an application for planning permission made under section 54?

- 4.6 Section 54(3) indicates that the planning authority which granted the previous (original) planning permission subject to conditions deals with the section 54 application. Therefore, a section 54 application related to an existing local or major development³⁵ which has planning permission granted by the appropriate council³⁶ is dealt with by that council, whereas a section 54 application in relation to a major development of regional significance³⁷ (and a called-in application under section 29 of the 2011 Act) having planning permission granted by the Department is dealt with by the Department.
- 4.7 Under the Transitional Provisions Order, a section 54 application in relation to development having planning permission with conditions granted under the

³³ Failure to follow these legislative requirements could leave the council or the Department susceptible to Ombudsman cases (NIPSO) and judicial reviews that ultimately could result in invalid decisions. Furthermore, appeals in relation to section 54 applications refused by a council could be rendered invalid by the Planning Appeals Commission (PAC) and could lead to costs awards.

³⁴ Refer to paragraph 3.5 (of this document).

³⁵ Under section 25 of the 2011 Act and regulation 2 and the Schedule to the Development Management Regulations a development is categorised in accordance with a hierarchy of development i.e. local or major development. Major development is classified in accordance with the Schedule.

³⁶ Under the GDPO and Development Management Regulations, 'appropriate council' means the council for the district in which the land to which the application relates is situated.

³⁷ Under section 26 of the 2011 Act and regulation 3 and the Schedule to the Development Management Regulations certain major development can be major development of regional significance. Major development of regional significance is classified in accordance with the Schedule.

Planning (Northern Ireland) Order 1991, hereafter referred to as the 1991 Order, (i.e. granted permission prior to 1st April 2015), is also dealt with by the appropriate council. Furthermore, under the transitional provisions, a section 54 application in relation to planning permission granted under **Article 31** of the 1991 Order is dealt with by the Department.

Is a Design and Access Statement required for a section 54 application?

- 4.8 Under Article 6(4)(a), the requirement for a design and access statement does not apply to a section 54 application for planning permission to develop land without compliance with conditions previously attached to a grant of planning permission for major development and major development of regional significance, unless those conditions relate to design and access issues.

Is there a requirement for the planning authority to consult others in relation to a section 54 application?

- 4.9 **Article 14** of the GDPO states that before determining a section 54 application for planning permission the planning authority must consult the statutory consultees in **Schedule 3** as the planning authority considers appropriate.
- 4.10 The duty to respond to consultation prescribed by **Article 15** of the GDPO applies to applications made pursuant to section 54.

Is Pre-application Community Consultation (PACC) required for a section 54 application?

- 4.11 Under **section 25** of the 2011 Act, development is categorised in accordance with a hierarchy of development i.e. local or major development. In granting planning permission for a major development, which includes major development of regional significance, a planning application will have been subject to PACC undertaken by an applicant, including the preparation of a

pre-application community consultation report, in accordance with the requirements of sections 27 and 28 of the 2011 Act and regulations 5 and 6 of the Development Management Regulations.

- 4.12 In terms of the hierarchy of development, each section 54 application should be considered on a case by case basis and categorised and classified on its own merits by the relevant planning authority. If a section 54 application relates to an already approved major development or major development of regional significance where PACC has already been undertaken, then it is not the legislative intention that it would be subject to PACC.
- 4.13 The extant planning permission, whether for major development or major development of regional significance, has established the principle of development on a given application site, and a section 54 application is not a means to re-visit the principle since under section 54 a planning authority must consider only the question of the conditions attached to an extant planning permission for a development.
- 4.14 As mentioned previously a section 54 application will be subject to statutory publicity and neighbour notification through which the community may engage in the planning process and interested parties may submit representations. Furthermore, the council has the power to conduct a pre-determination hearing³⁸ under **section 30** of the 2011 Act and, under section 30(4) specifically, may elect to give an applicant and any other specified person an opportunity of appearing before and being heard by a committee of the council before determining an application for planning permission, and this would include a section 54 application.
- 4.15 As referred to earlier, early engagement between an applicant / agent and a planning authority may be of assistance in these matters.

³⁸ Refer to Development Management Practice Note 17 Pre-Determination Hearings.

What regard is to be had to when making a determination in relation to a section 54 application?

- 4.16 **Section 6(4)** of the 2011 Act states that ‘where, in making any determination under this Act, regard is to be had to the local development plan, the determination must be made in accordance with the plan unless material considerations indicate otherwise.’
- 4.17 **Section 45(1)** of the 2011 Act states that ‘where an application is made for planning permission, the council or, as the case may be, the Department, in dealing with the application, must have regard to the local development plan, so far as material to the application, and to any other material considerations, and–
- (a) subject to sections 61 and 62, may grant planning permission, either unconditionally or subject to such conditions as it thinks fit; or
 - (b) may refuse planning permission.’
- 4.18 Furthermore, in relation to a section 54 application the planning authority must comply with section 54(3). The previous planning permission for development which is the subject of a section 54 application will be a material consideration in its determination.

Is there a time period for decision for a section 54 application?

- 4.19 A section 54 application made to the council shall be determined within a period specified in accordance with **Article 20** of the GDPO, that is, 16 weeks (Article 20(2)(a)) or 8 weeks (Article 20(2)(b)) depending upon the category / type of the application, beginning on the date when the application was received; or, such extended period agreed in writing between the applicant and the council (if the applicant has not given notice of appeal to the Planning Appeals Commission (PAC) under sections 58 and 60 of the 2011 Act).

- 4.20 A section 54 application that is EIA development is subject to regulation 17 of the EIA Regulations, which extends the time period for the council's decision on an application under Article 20(2)(b) of the GDPO from 8 to 16 weeks and the date when the application is received is subject to the events of regulation 17(c) having occurred as well as those under Article 20(3) of the GDPO.
- 4.21 A section 54 application made to the council is also subject to **Article 2 and Schedule 3** (Planning Indicators) and **Schedule 4** (Planning Standards) of the **Local Government (Performance Indicators and Standards) Order (Northern Ireland) 2015**, which sets indicators and standards for the processing of major and local applications for planning permission as well as for enforcement cases as defined in the Schedules.

What is the different decision making process for a section 54 application processed by the Department?

- 4.22 Where a section 54 application must be made to the Department it is subject to a different decision making process by way of Article 21 of the GDPO.
- 4.23 Under Article 21 of the GDPO, where an application under section 54 is submitted to the Department, then for the purpose of considering representations made in respect of the application, the Department may cause a public local inquiry to be held by the PAC or a person appointed by the Department for that purpose.
- 4.24 Where a local public inquiry is not held, the Department must, before determining the application, serve a notice in writing (i.e. Notice of Opinion) on the applicant and the appropriate council indicating the decision which it proposes to make and if within such period as may be specified in the notice (not being less than 28 days from the date of service of the notice), the applicant or the council request in writing to appear before and being heard by the PAC or person appointed, the Department must afford each of them an opportunity to do so.

- 4.25 Where an inquiry or hearing is held, the Department must take into account any report of the PAC or person appointed as the case may be. The decision of the Department on an application made under section 54 of the 2011 Act shall be final.

What should a decision notice to grant a section 54 permission include?

- 4.26 A decision notice relating to a planning application shall be in accordance with **Article 22** of the GDPO and this includes a section 54 permission. A decision notice to grant a section 54 permission shall comply with this Article and needs to include a reference making it clear that it relates to an application made under section 54 of the Planning Act (Northern Ireland) 2011, as well as the proposal description and site address. This includes the information required for a section 54 application made under Article 3(5)(b) of the GDPO. Furthermore, the decision notice³⁹ of a section 54 permission must be in accordance with sections 54(3)(a) and 54(5). (Note: Regulation 26 of the EIA Regulations lists the information to accompany a decision when an EIA application is determined). Subject to the complexity of some section 54 permissions, it would be good practice for a planning authority to attach an informative to the decision notice in order to clarify which conditions have been, in effect, varied / removed; added; restated and discharged.
- 4.27 A successful section 54 application in relation to either a previous full planning permission or outline planning permission is a new or fresh grant of planning permission, i.e. a section 54 planning permission, which is for the same description of development but with different conditions attached. In particular, careful attention would need to be applied when imposing conditions on a section 54 planning permission where there is a previous outline planning permission.

³⁹ Refer to paragraph 3.17 (of this document) with respect to conditions to be applied to a decision notice.

Will a section 54 application appear on the Public Register (Register of Applications)?

- 4.28 Under **Article 24** of the GDPO, a Register of Applications, which forms part of the Public Register⁴⁰ as per **section 242** of the 2011 Act, is to be kept by the council and shall contain certain specified information as listed under the Article in relation to planning applications and this includes section 54 applications.
- 4.29 **Regulation 44(1)** of the EIA Regulations requires the Register of Applications kept by the council to contain copies of certain specified documents as listed under the regulation.
- 4.30 In relation to applications processed and determined by the Department, there is no statutory requirement for the Department to hold registers. However, section 242(2) of the 2011 Act 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 within its council district area. This includes the certain specified documents as listed under regulation 44(1) of the EIA Regulations.

5.0 Planning fees

- 5.1 Under **regulation 3** of the Fees Regulations, a section 54 application is subject to a planning fee⁴¹ in accordance with Schedule 1, Part 2 Scales of Fees, category of development 11(b).

⁴⁰ Refer to Development Management Practice Note 29 Public Registers and Statutory Charges Registers in relation to paragraphs 4.28 to 4.30 (of this document).

⁴¹ Refer to paragraph 6.5 (of this document).

6.0 Section 54 application and the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 and the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995

6.1 A section 54 application does not fall within the meaning of subsequent application laid out in the EIA Regulations. Therefore, it is considered to be a new application for planning permission under the EIA Regulations.

6.2 Where a council or, as the case may be, the Department considers that a section 54 application is EIA development, then an Environmental Statement (ES) must be submitted in accordance with the EIA Regulations. Where an Environmental Impact Assessment was carried out on the previous (original) permission, which is the subject of a section 54 application, the council or, as the case may be, the Department will need to consider if further information needs to be added to the previous (original) Environmental Statement to satisfy the requirements of the EIA Regulations. Whether further information is required or not to the (previous) original ES, an ES must be submitted with a section 54 application when it is considered to be EIA development.

6.3 Under Article 13 of the GDPO, before determining a section 54 application that is EIA development the council or, as the case may be, the Department shall consult in accordance with the Article and Schedule 3 (statutory consultees).

6.4 Where a section 54 application is EIA development, then under regulation 4 of the EIA Regulations, planning permission shall not be granted by a council, the Department or the PAC unless an environmental impact assessment has been carried out in respect of that development.

6.5 If a section 54 application is EIA development, then it will be subject to regulation 11 of the Fees Regulations.

6.6 Regulation 43 of the Habitats Regulations prohibits a competent authority⁴² from giving any consent, permission or other authorisation for a project which is likely to have a significant effect on a European site⁴³ without first making an appropriate assessment of the implications for the site in view of the site's conservation objectives. This includes a planning permission to be granted under section 54, therefore, the provisions of the Habitats Regulations must be considered in relation to a section 54 application. Under regulation 23 of the EIA Regulations, where, in relation to EIA development, there is, in addition to the requirement for an EIA to be carried out in accordance with these Regulations, also a requirement to carry out a Habitats Regulations Assessment, the council or, as the case may be, the Department shall, where appropriate, ensure that the Habitats Regulations Assessment and the EIA are coordinated.

7.0 Section 54 application and right to a planning appeal

7.1 Under **section 58** of the 2011 Act, an applicant may appeal in writing to the PAC when a section 54 application has been refused planning permission by a council. Furthermore, when a section 54 application is granted planning permission subject to conditions, an applicant may appeal in writing to the PAC with respect to one or more of those conditions. The time limit for an appeal served on the PAC is within 4 months from the date of the decision notice.

7.2 An appeal against failure to take a planning decision (non-determination) may be made to the PAC if a council does not issue a decision notice within the statutory time period for decision in relation to a section 54 application.

7.3 Under section 58(4), where an appeal is brought under section 58 from a decision of the council, which includes appeals in relation to a section 54

⁴² Under regulation 5 of the Habitats Regulations a competent authority includes government departments and district councils.

⁴³ Regulation 9 of the Habitats Regulations lays out the meaning of a European site.

decision (section 58(7)), the PAC may allow or dismiss the appeal or may reverse or vary any part of the decision whether the appeal relates to that part thereof or not and may deal with the application as if it had been made to it in the first instance. This means that any planning conditions can be considered by the PAC in an appeal in relation to a section 54 decision and not just those that are the subject of refusal.

7.4 A section 54 application determined by the Department is not subject to appeal under section 58. However, under Article 21 of the GDPO, there is provision for a public local inquiry or a hearing to be held prior to the Department making a decision on a section 54 application after taking into account any report by the PAC or person appointed and that decision is final.

8.0 Application made under section 95 of the 2011 Act for consent to execute works without compliance with conditions previously attached to a listed building consent

8.1 Similar to a section 54 application, there is provision under **section 95** of the 2011 Act for an application for listed building consent for the execution of works to a building without complying with conditions subject to which a previous listed building consent was granted.

8.2 A section 95 application⁴⁴ is made to the authority which granted the previous listed building consent, who must consider only the question of the conditions subject to which listed building consent should be granted.

8.3 An application to the council made under section 95 must be made in accordance with **regulation 10 of the Planning (Listed Buildings) Regulations (Northern Ireland) 2015**, hereafter referred to as the “Listed Buildings Regulations”⁴⁵.

⁴⁴ The form and content of an application and procedure to be followed in connection with such an application is laid out in the Listed Buildings Regulations.

⁴⁵ Amended by the Planning (Listed Buildings) (Amendment) Regulations (Northern Ireland) 2016.

- 8.4 An application to the Department made under section 95 must be made in accordance with **regulation 11** of the Listed Buildings Regulations.
- 8.5 Furthermore, under paragraph 7 of Schedule 2 of the Transitional Provisions Order, where listed building consent under the 1991 Order was granted subject to conditions, then any application under section 95 of the 2011 Act shall be made to the appropriate council in accordance with the Listed Buildings Regulations, provided that the consent has not become time expired.
- 8.6 An application made under section 95 of the 2011 Act is not subject to the payment of a fee under the Fees Regulations.
- 9.0 Application made under section 95 as applied by section 105(6) of the 2011 Act for consent to execute works without compliance with conditions previously attached to a conservation area consent**
- 9.1 Similar to a section 54 application, there is provision under **section 95 as applied by section 105(6)** of the 2011 Act for an application for conservation area consent for the execution of works to a building without complying with conditions subject to which a previous conservation area consent was granted.
- 9.2 A section 95 application as applied by section 105(6)⁴⁶ is made to the authority which granted the previous conservation area consent, who must consider only the question of the conditions subject to which conservation area consent should be granted.
- 9.3 An application to the council made under section 95 as applied by section 105(6) must be made in accordance with **regulation 9 of the Planning**

⁴⁶ The form and content of an application and procedure to be followed in connection with such an application is laid out in the Conservation Area Demolition Regulations.

(Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015, hereafter referred to as the Conservation Area Demolition Regulations.

- 9.4 An application to the Department made under section 95 as applied by section 105(6) must be made in accordance with **regulation 10** of the Conservation Area Demolition Regulations.
- 9.5 Furthermore, under paragraph 7 of Schedule 2 of the Transitional Provisions Order, where conservation area consent under the 1991 Order was granted subject to conditions, then any application under section 95 as applied by section 105(6) of the 2011 Act shall be made to the appropriate council in accordance with the Conservation Area Demolition Regulations, provided that the consent has not become time expired.
- 9.6 An application made under section 95 as applied by section 105(6) of the 2011 Act is not subject to the payment of a fee under the Fees Regulations.
- 10.0 Application made under section 111 of the 2011 Act for applications for hazardous substances consent without compliance with conditions previously attached to a hazardous substances consent**
- 10.1 Similar to a section 54 application, there is provision under **section 111** of the 2011 Act for an application for hazardous substances consent without complying with conditions subject to which a previous hazardous substances consent was granted.
- 10.2 A section 111 application⁴⁷ is made to the authority which granted the previous hazardous substances consent, who must consider only the question of the conditions subject to which hazardous substances consent should be granted.

⁴⁷ The form and content of an application and procedure to be followed in connection with such an application is laid out in the Hazardous Substances Regulations.

- 10.3 An application to the council made under section 111 must be made in accordance with **the Planning (Hazardous Substances) (No. 2) Regulations (Northern Ireland) 2015**, hereafter referred to as the Hazardous Substances Regulations⁴⁸, namely **regulation 5(2)**.
- 10.4 An application to the Department made under section 111 must be made in accordance with **regulation 5(2)** of the Hazardous Substances Regulations.
- 10.5 Furthermore, under paragraph 7 of Schedule 2 of the Transitional Provisions Order, where hazardous substances consent under the 1991 Order was granted subject to conditions, then any application under section 111 of the 2011 Act shall be made to the appropriate council in accordance with the Hazardous Substances Regulations, provided that the consent has not become time expired.
- 10.6 An application made under section 111 of the 2011 Act is subject to a planning fee under regulation 10 of the Fees Regulations and in accordance with Schedule 2.

11.0 Conditions imposed in relation to a consent to display advertisements

- 11.1 No provision exists under **The Planning (Control of Advertisements) Regulations (Northern Ireland) 2015** for an application for consent to display advertisements without complying with conditions subject to which a previous consent to display advertisements was granted.

⁴⁸ Amended by the Planning (Hazardous Substances) (No. 2) (Amendment) Regulations (Northern Ireland) 2016.

12.0 Summary of main points in relation to a section 54 application

- 12.1 A section 54 application is submitted to and determined by the planning authority which granted the previous planning permission (subject to the Transitional Provisions Order). (Paragraph 2.1)
- 12.2 Unless there has been a pre-application discussion, a planning authority should fundamentally establish that the application proposal falls within the scope of section 54 as soon as possible after receiving an application i.e. it should satisfy itself that it is a 'true' section 54 application. (Paragraphs 3.2 and 3.4)
- 12.3 In considering an application made under section 54, the planning authority which granted the previous planning permission must consider only the **“question of the conditions”** subject to which planning permission should be granted (section 54(3)). In essence, section 54 allows for different conditions to be attached to a new planning permission but does not allow for the amendment of the description of development of the previous (original) permission. A successful section 54 application results in a new planning permission for the same description of development previously approved but with different conditions attached. (Paragraph 3.5)
- 12.4 A section 54 permission has the same time period for commencement of development as conditioned in a previous planning permission. Also, a section 54 permission has the same time period for submission of an application for the approval of reserved matters as conditioned in a previous outline planning permission. (Paragraph 3.10)
- 12.5 A planning authority is able to impose different conditions upon a new planning permission, but only if they are conditions which the planning authority could lawfully have imposed upon the original planning permission in the sense that they do not amount to a fundamental alteration of the proposal put forward in the original application. (Paragraph 3.14)

- 12.6 Care needs to be exercised by a planning authority when accepting a planning application in terms of the precise details set out in a description of development and the degree to which such details are fixed / defined, and which is granted planning permission with conditions, because it affects the scope of a potential section 54 application. (Paragraph 3.16)
- 12.7 A successful application under section 54 is a new or fresh grant of planning permission. To assist with clarity, when issuing a fresh planning permission granted under section 54, it is advisable that all the conditions to which the new planning permission is to be subject should be restated in the new permission, unless they have already been discharged, and not be left to a process of cross referencing with the previous (original) planning permission. (Paragraph 3.19)
- 12.8 Subsequent to a section 54 planning permission the previous (original) planning permission remains intact and unamended. An applicant may choose whether to implement the previous (original) planning permission or the new planning permission granted under section 54, so long as they are not time-expired. (Paragraph 3.20)
- 12.9 If a section 54 application relates to an already approved major development or major development of regional significance where PACC has already been undertaken, then it is not the intention that it would be subject to PACC. (Paragraph 4.12)
- 12.10 A section 54 application does not fall within the meaning of subsequent application laid out in the EIA Regulations, therefore, it is considered to be a new application for planning permission under the EIA Regulations and an ES must be submitted with a section 54 application when it is considered to be EIA development. (Paragraphs 6.1 and 6.2)
- 12.11 The provisions of the Habitats Regulations must be considered in relation to a section 54 application. (Paragraph 6.6)



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