

PLANNING – PERMISSIONS IN PRINCIPLE

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WHAT IS A PERMISSION IN PRINCIPLE (“PIP”)?

PiPs are an alternative way of obtaining planning permission for housing-led developments. The PiP route involves separating out the consenting process into two distinct stages: first, the local planning authority (the “LPA”) establishes whether a site is suitable in principle (the PiP stage); and second, the LPA assesses the detailed proposals of the scheme (the technical details stage where Technical Details Consent (“TDC”) is obtained).

LPAs can grant a PiP by entering a site in Part 2 of the brownfield land register¹ or, as of 1 June 2018, by determining an application². This new applicant-led route of obtaining a PiP is the focus of this briefing note.

SCOPE

The PiP consent route is not available to an applicant if:

1. the proposal is for ‘major’ development (i.e. ten or more dwellings, 1,000sqm or more of new floor space, or if the overall site is one hectare or more)³;
2. the development will fall within the Habitats or EIA regimes (subject to limited exceptions); or
3. the proposal is ‘householder’ development – i.e. involves the redevelopment of an existing dwelling, or is development within the curtilage of an existing dwelling, for any purpose incidental to the enjoyment of the dwelling.

Unlike the LPA-allocated PiPs, which are limited to land designated by the LPA as brownfield land, applicant-led PiPs can be obtained for developments on land not previously developed (i.e. greenfield land).

LIMITATIONS

Essentially, applicant-led PiPs are available for small-scale housing-led developments. While an application may include non-housing aspects (for example, a shop unit), the “main purpose” of the development must be for housing. How LPAs will choose to interpret “main purpose” remains to be seen.

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Some enterprising landowners may see an opportunity to divide up larger sites and apply for a number of different PiPs so as to remain within the strict thresholds set out above, rather than obtain planning permission for the whole site. However, the recently updated Planning Practice Guidance (the “PPG”) warns LPAs to consider whether the cumulative environmental impact of two or more adjoining sites proposed for a grant of PiP would amount to EIA or Habitats development. While the PPG does not specifically deal with the cumulative impact of adjoining sites together amounting to ‘major’ development (for example, two adjacent sites that in combination exceed nine dwellings), our view is that attempts to ‘salami slice’ larger sites will fail in this regard, even if the aggregated site remains outside the EIA and Habitats regimes.

It is not possible for LPAs to attach conditions to PiPs. As such, LPAs can consider non-material amendments to PiPs under section 96A of the Town and Country Planning Act 1990 (the “TCPA”) (for example, a proposed variation to the number of dwellings or use of the non-housing element) but variations under section 73 of the TCPA (for variation or removal of conditions) are not possible. Section 73 is, however, available to vary or remove conditions attached to TDCs.

TIMESCALES

Valid applications for PiPs and TDCs should be determined by LPAs as quickly as possible, and in any event within the statutory time limit of five weeks⁴ (unless extended by agreement in writing).

Where a PiP is granted by application, the default duration of that permission is three years. Applications for TDC must be determined within the duration as stated on the PiP decision notice, which will be the default three year period unless the LPA considers it appropriate on planning grounds they may shorten or extend the period.

CONSULTATION

The consultation requirements mirror those for normal planning applications. LPAs are under a duty to consult members of the public at both the PiP and TDC stages meaning that they will have an opportunity to object on more than one occasion and there are two opportunities to mount judicial review challenges.

APPEAL

There is a right of appeal where a local planning authority refuses PiP upon receipt of a valid application.

FEES

Subject to certain limited exceptions, the applicable fee for PiP proposals is £402 per 0.1 hectare. The fee for making a non-material amendment to a PiP is £195. It should be noted that pre-application fees are not included in the PiP fees so these would need to be accounted for separately. There is then a separate fee to be paid at the technical details stage, which is calculated under the fee regulations in the same way as a full planning application would be.

COMMENT

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The applicant-led PiP route offers a streamlined and simplified way to add certainty to the development potential of land, without having to apply for full (or outline) planning permission. This represents a potentially significant time and cost saving for landowners who have little interest in developing sites themselves. In theory, this should encourage landowners to release land to developers sooner.

It may be tempting to liken PiP and TDC to outline permission and reserved matters but this would be a rather crude comparison to make. Potential purchasers of PiP land should be mindful that the scope of a PiP is limited to location, land use and size of development. Pre-application discussion with the LPA prior to submission of technical details would still be recommended and there is no guarantee that TDC will be obtained. Due to the relatively narrow scope of the PiP and the short timeframe between the granting of a PiP and needing to secure TDC (default being three years), we do not consider PiP to provide the same level of certainty that outline permission gives on a large scheme.

The uplift in land value as a result of a grant of PiP will depend, at least to some extent, on what the average conversion rate is from PiP to TDC. If PiPs are to work as intended, LPAs have a role to play in ensuring that they do not speculatively grant PiPs (for example, to boost housing land supply figures) without properly considering the potential hurdles that might be faced at the TDC stage. After all, LPAs are free to inform applicants at the PiP stage about what they expect to see in terms of technical details. Proper engagement throughout will be the key to making PiPs a success, both from an LPA and market perspective.

1 Town and Country Planning (Permission in Principle) Order 2017

2 Town and Country Planning (Permission in Principle) (Amendment) Order 2017

3 Note, though, that this limitation does not apply to LPA-allocated PiPs

4 If at the TDC stage the development is assessed as being either a major development or EIA development, the statutory determination period would increase to ten weeks and 16 weeks respectively.

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