Local Authority Planning Permission

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This note describes some issues that arise when a local authority applies for planning permission.

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1 Can a local council grant itself planning permission?

Local authorities gained the right to apply for planning permission by regulations in 1976.[1] Previously, local authorities had been selling land without planning permission to developers who often then applied for planning permission and made a considerable financial gain through increasing the price of the land.

The 1976 regulations required publicity but not really a determination of the planning application in the way that a private sector applicant would have been treated. Some dissatisfaction was expressed by those arguing that local authorities then allowed some developments that would have been refused if the applications had come from a private developer. There was a consultation exercise, and further regulations were made in 1992.[2] By this time, the *Planning and Compensation Act 1991* had come into force, with its introduction of "plan-led" determinations of planning applications rather than the presumption in favour of development. This issue was raised in 1995 in an Adjournment Debate, in which the then Minister (Sir Paul Beresford) described the changes in the 1992 regulations and the safeguards included.

> The procedures which the regulations replaced - those set out in the 1976 regulations - had been criticised on the ground that local planning authorities could not act impartially when they were plaintiff and jury in their own cause. It was suggested that, because a local authority may gain financially when disposing of land with the benefit of planning permission, planning permission might be granted, which would be refused if the applicant were not the authority. The fifth report from the Select Committee on the Environment for 1985-86 concluded that the regulations had a built-in conflict of interest without balancing safeguards, and recommended that the Department should review the existing procedures.
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> As my hon Friend will understand and expect, the Department took the recommendations to heart, and published a consultation paper proposing reforms in February 1990. The proposals, revised to take account of consultation responses, were implemented through section 316 of the Planning and Compensation Act 1991 and the 1992 regulations made under that section. The general principle underlying the 1992 regulations is that local planning authorities must make planning applications in the same way as any other person, and must apply for planning permission. Except in special circumstances, they must follow the same procedures as would apply to applications made by anyone else.
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> County and district councils may grant themselves planning permission for their own development on land in which they have an interest, but that ability is subject to several important safeguards. For example, the proposals must be advertised and decided in public by a committee that is not responsible for land management. The public cannot be excluded from committee meetings at which local authority development proposals are discussed - as my hon. Friend suggested, that could have had an influence on some recent decisions.
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> To avoid a conflict of interest, applications may not be determined by a committee or officer responsible for the management of the land concerned. Local authority development proposals or development on its land must also be notified to the

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1 *The Town and Country Planning General Regulations 1976* (SI 1419) made under the *Town and Country Planning Act 1971*

2 *The Town and Country Planning General Regulations* 1992 (SI 1492)

> Secretary of State if it is not in accordance with the provisions of the development plan in force in the area, so that he can consider whether to call in the application for his own determination...Unitary authorities can grant planning permission for their own development on land in which they have an interest, or for development by others on their land, but they are subject to the same safeguards of accountability and publicity. [3]

However, the Member who had raised the topic remained dissatisfied and re-stated his complaint a few weeks later.[4]

2 The 1992 procedure, as amended in 2009

The 1992 Regulations deal with some special cases, such as applications that would not normally be determined by the local planning authority, but the following two articles cover the situation for normal planning applications:

> **Effect of Planning Permission**
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> 9 Any grant of planning permission by an interested planning authority for development [of any land by that interested planning authority][5] shall enure only for the benefit of the applicant interested planning authority, except in the case of development of any land by an interested planning authority jointly with any other person where that person is specified in the application for planning permission as a joint developer, in which case the permission shall enure for the benefit of the applicant interested planning authority and that other person.
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> **Arrangements for discharge of functions**
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> 10 Notwithstanding anything in section 101 of the Local Government Act 1972 (arrangements for the discharge of functions by local authorities) no application for planning permission for development to which regulation 3 applies may be determined
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> (a) by a committee or sub-committee of the interested planning authority concerned if that committee or sub-committee is responsible (wholly or partly) for the management of any land or buildings to which the application relates; or
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> (b) by an officer of the interested planning authority concerned if his responsibilities include any aspect of the management of any land or buildings to which the application relates.[6]

Until April 2009, in cases where the development was not in accordance with the development plan, and the authority did not propose to refuse it, the authority had to notify the DCLG to give the Secretary of State the opportunity to call in the application to determine it himself, if he should wish to do so.[7] However, DCLG Circular 02/09: The Town and Country Planning (Consultation) (England) Direction 2009 repealed that earlier direction. Such applications no longer have to be notified, although the Secretary of State has not lost the power to call them in.

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3 HC Deb 6 December 1995 c.334
4 HC Deb 19 December 1995 c.1331
5 The words in square brackets were substituted by SI 1992 no.1982
6 *Town and Country Planning General Regulations 1992* (SI 1492)
7 DETR Circular 07/99, *Town and Country Planning (Development Plans and Consultation) (Departures) Directions 1999*

3 Other minor changes since 1992

There has been no substantial change in the position since 1992. However, local planning authorities are under more pressure to be very careful about their procedures. That is partly a result of the *Human Rights Act 1998*, which opens up the possibility of a challenge on the basis that the planning application was not fairly considered. The Standards Board also lays down further guidance for the conduct of councillors in local planning authorities.

Another change is the *Freedom of Information Act 2000*. For normal planning applications, negotiations between the developer and planning authority, for example over section 106 agreements, are exempt from freedom of information requests on the grounds that they are commercially confidential. However, when a local planning authority applies to itself for planning permission, that exemption does not apply. In other words, a freedom of information request could obtain information about any written negotiations between the local authority officers involved in development and those involved in planning.

The *Planning and Compulsory Purchase Act 2004* makes it easier for local authorities to acquire land compulsorily. In a way, that expresses confidence in local authorities not to blur their responsibilities and to determine applications fairly even when another part of the local authority is involved in the development.