

S.I. No. 431/1999: LOCAL GOVERNMENT (PLANNING AND DEVELOPMENT) (NO. 2) REGULATIONS, 1999

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1999 431

STATUTORY INSTRUMENTS.

S.I. No. 431 of 1999.

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The Minister for the Environment and Local Government, in exercise of the powers conferred on him by sections 4, 10, 25 and 78 of the Local Government (Planning and Development) Act, 1963 (No. 28 of 1963) (as amended), section 2 of the Local Government (Planning and Development) Act, 1993 (No. 12 of 1993), and sections 2, 6, 24, 26 and 41 of the Local Government (Planning and Development) Act, 1999 (No. 17 of 1999), and after consulting with the Minister for Arts, Heritage, Gaeltacht and the Islands in accordance with the last-mentioned section 2, hereby makes the following Regulations:—

1. (1) These Regulations may be cited as the Local Government (Planning and Development) (No. 2) Regulations, 1999.

(2) The collective citation "the Local Government (Planning and Development) Regulations, 1994 to 1999" shall include these Regulations.

2. These Regulations shall come into operation on the 1st day of January 2000.

3. In these Regulations:—

"the Act of 1999" means the Local Government (Planning and Development) Act, 1999 (No. 17 of 1999);

"the 1994 Regulations" means the Local Government (Planning and Development) Regulations, 1994 (S.I. No. 86 of 1994), as amended;

"the Local Government (Planning and Development) Regulations, 1994 to 1999" has the meaning assigned to it in the Local Government (Planning and Development) Regulations, 1999 (S.I. No. 92 of 1999).

4. (1) A record of protected structures shall at least contain—

(a) in respect of each protected structure—

(i) an identifying number,

(ii) an address.

(b) one or more maps, to a scale that enables clear identification of the protected structures, showing the locations of such structures.

(2) A map referred to in sub-article (1)(b) may, in addition to the information referred to in that subarticle, contain other information.

5. The following bodies are hereby prescribed for the purposes of section 6(1) of the Act of 1999:—

(a) the Heritage Council;

(b) An Taisce — the National Trust for Ireland;

(c) An Chomhairle Ealaíon.

6. The prescribed documents and particulars for the purposes of section 24(4) of the Act of 1999 shall be—

(a) a copy of the relevant notice published in accordance with section 23(1)(a) of that Act, and

(b) a copy of the relevant notice served in accordance with section 23(1)(b) of that Act.

7. The prescribed form of vesting order for the purposes of section 26 of the Act of 1999 shall be the form set out in the Schedule to these regulations or a form substantially to the like effect.

8. Article 3(3) of the 1994 Regulations is hereby amended by the substitution for the definition of "the Acts" therein of the following:—

""the Acts" means the Local Government (Planning and Development) Acts, 1963 to 1999;".

9. The 1994 Regulations are hereby amended by the insertion after article 9A thereof of the following article:—

"9B. Further to the provisions of section 8 of the Act of 1999, development consisting of or comprising the erection on a protected structure or a proposed protected structure of an advertisement structure described in class 5, 9 or 15 of column 1 of Part II of the Second Schedule shall be exempted development.".

10. Article 10 of the 1994 Regulations is hereby amended by the deletion of sub-paragraphs (ix) and (x) of paragraph (a) of sub-article (1) thereof.

11. The 1994 Regulations are hereby amended by the insertion after article 10 thereof of the following article:—

"10A (1) Development to which article 9 relates shall not be exempted development for the purposes of the Acts if such development would consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a draft of a proposed development plan or a proposed variation of a development plan, and the development would materially affect the character of the area concerned.

(2) Sub-article (1) shall not apply to the erection of an advertisement structure described in class 5, 9 or 15 column 1 of Part II of the Second Schedule."

12. (1) Where a planning application relates to development which would consist of or comprise the carrying out of works to a protected structure or proposed protected structure:—

- (a) the relevant notices given pursuant to article 14 of the 1994 Regulations, and
- (b) the planning application,

shall indicate this fact.

(2) Where a planning application relates to—

- (a) development referred to in sub-article (1), or
- (b) development which would consist of or comprise the carrying out of works to the exterior of a structure that is located within an architectural conservation area or an area specified as an architectural conservation area in a draft of a proposed development plan or a proposed variation of a development plan,

the relevant list made available by a planning authority in accordance with article 30 or 42 of the 1994 Regulations shall indicate this fact.

13. Article 20 of the 1994 Regulations is hereby amended by the insertion after paragraph (a) of sub-article (2) thereof of the following paragraph:—

"(aa) development which would consist of or comprise the carrying out of works to a protected structure or a proposed protected structure,".

14. Article 23 of the 1994 Regulations is hereby amended by the insertion after sub-article (1) thereof of the following sub-article:—

"(1A) Where development would consist of or comprise the carrying out of works to a protected structure or a proposed protected structure, a planning application shall, in addition to meeting the requirements of sub-article (1), be accompanied by such plans and other particulars as are necessary to show how the development would affect the character of the structure."

15. Article 32 of the 1994 Regulations is hereby amended by the deletion of paragraph (c) of sub-article (1) and the insertion therein of the following:—

"(c) where it appears to the planning authority that the development would—

- (i) consist of or comprise the carrying out of works to a protected structure or proposed protected structure or to the exterior of a structure which is located within an architectural conservation area or an area specified as an architectural conservation area in a draft of a proposed development plan or a proposed variation of a development plan,
- (ii) detract from the appearance of a structure referred to in sub-paragraph (i),
- (iii) affect or be unduly close to any cave, site, feature or other object of archaeological, geological, scientific or historical interest,
- (iv) obstruct any scheme for the improvement of the surroundings of or any means of access to any structure, place, feature or object referred to in sub-paragraph (iii), to the Minister for Arts, Heritage, Gaeltacht and the Islands, the Heritage Council, and An Taisce — the National Trust for Ireland,
- (cc) where it appears to the planning authority that—
- (i) the development would be of a type referred to in sub-paragraph (i) of paragraph (c), and
- (ii) the said structure was constructed during or after the year 1900, to An Chomhairle Ealaíon,".

16. Article 39 of the 1994 Regulations is hereby amended by the insertion after paragraph (bb) thereof (as inserted by article 15 of the Local Government (Planning and Development) Regulations, 1999 (S.I. 92 of 1999)) of the following paragraph:—

"(bbb) in case notice has been sent pursuant to article 32(1)(c), the expiration of twenty eight days beginning on the day of receipt by the planning authority of the application;".

17. Where an appeal determined by the Board relates to a planning application in respect of development which would consist of or comprise the carrying out of works to—

- (a) a protected structure or proposed protected structure, or
 - (b) a structure which is located within an architectural conservation area or an area specified as an architectural conservation area in a draft of a proposed development plan or a proposed variation of a development plan,
- the relevant list made available by the Board in accordance with article 62(1)(b) of the 1994 Regulations shall, in addition to meeting the requirements of that article, indicate this fact.

18. Section II of the Fourth Schedule to the 1994 Regulations is hereby amended by the insertion after reference 2 thereof of the following reference:—

"

Column 1

Column 2

Class of Development

Amount of Fee

2A. Works consisting of develop- ment which would be ex- empted development but for the provisions of section 8(1) of the Act of 1999 or article 10(A) of these Regulations.

£24

"

19. Article 120 of the 1994 Regulations is hereby amended by the insertion after paragraph (a) thereof of the following paragraph:—

"(aa) where the proposed development consists of or comprises the carrying out of—

(i) works which would materially affect the character of a protected structure or a proposed protected structure, or

(ii) works to the exterior of a structure which is located within an architectural conservation area or an area specified as an architectural conservation area in a draft of a proposed development plan of a proposed variation of a development plan, and the development would materially affect the character of the area concerned, indicating this fact,".

20. Article 122 of the 1994 Regulations is hereby amended by the deletion of paragraph (c) of sub-article (3) thereof and the insertion therein of the following:—

"(c) where it appears to the local authority that the development would—

(i) consist of or comprise the carrying out of works which would materially affect a protected structure or proposed protected structure,

(ii) consist of or comprise the carrying out of works to the exterior of a structure which is located within an architectural conservation area or an area specified as an architectural conservation area in a draft of a proposed development plan or a proposed variation of a development plan, and would materially affect the character of the area concerned.

(iii) detract from the appearance of a structure referred to in sub-paragraph (i) or (ii),

(iv) affect or be unduly close to any cave, site, feature or other object of archaeological, geological, scientific or historical interest,

(v) obstruct any scheme for the improvement of the surroundings of or any means of access to any structure, place, feature or object referred to in sub-paragraph (iv) of this paragraph, to the Minister for Arts, Heritage, Gaeltacht and the Islands, the Heritage Council, and An Taisce — the National Trust for Ireland,

(cc) where it appears to the planning authority that—

(i) the development would be of a type referred to in sub-paragraph (i) or (ii) of paragraph (c), and

(ii) the said structure was constructed during or after the year 1900, to An Chomhairle Ealaíon,".

21. Article 130 of the 1994 Regulations is hereby amended by the substitution for paragraph (a) of sub-article (3) thereof of the following paragraph:—

"(a) the development would consist of works of maintenance or repair other than works of repair—

(i) which would materially affect the character of a protected structure or proposed protected structure, or

(ii) to the exterior of a structure which is located within an architectural conservation area or an area specified as an architectural conservation area in a draft of a proposed development plan or a proposed variation of a development plan, where the development would materially affect the character of the area concerned, or".

22. Article 131 of the 1994 Regulations is hereby amended by the insertion after paragraph (a) of sub-article (2) thereof of the following paragraph:—

"(aa) where the proposed development consists of or comprises the carrying out of works—

- (i) which would materially affect the character of a protected structure or a proposed protected structure,
- (ii) to the exterior of a structure which is located within an architectural conservation area or an area specified as an architectural conservation area in a draft of a proposed development plan or a proposed variation of a development plan, and the development would materially affect the character of the area concerned, indicate this fact,".

23. Article 132 of the 1994 Regulations is hereby amended by the deletion of paragraph (c) of sub-article (3) thereof and the insertion therein of the following:—

"(c) where it appears to the local authority that the development would—

- (i) consist of or comprise the carrying out of works which would materially affect the character of a protected structure or proposed protected structure,
- (ii) consist of or comprise the carrying out of works to the exterior of a structure which is located within an architectural conservation area or an area specified as an architectural conservation area in a draft of a proposed development plan or a proposed variation of a development plan, and would materially affect the character of the area concerned,
- (iii) detract from the appearance of a structure referred to in sub-paragraph (i) or (ii),
- (iv) affect or be unduly close to any cave, site, feature or other object of archaeological, geological, scientific or historical interest,
- (v) obstruct any scheme for the improvement of the surroundings of or any means of access to any structure, place, feature or object referred to in sub-paragraph (iv) of this paragraph, to the Minister for Arts, Heritage, Gaeltacht and the Islands, the Heritage Council, and An Taisce — the National Trust for Ireland,"

(cc) where it appears to the planning authority that—

- (i) the development would be of a type referred to in sub-paragraph (i) or (ii) of paragraph (c), and
- (ii) the said structure was constructed during or after the year 1900, to An Chomhairle Ealaíon,".

24. Article 158 of the 1994 Regulations is hereby amended by:—

(a) the insertion following paragraph (a) of sub-article (3) thereof of the following paragraph:—

"(aa) where the proposed development consists of or comprises the carrying out of works:—

- (i) which would materially affect the character of a protected structure or proposed protected structure,
- or

- (ii) to the exterior of a structure which is located within an architectural conservation area or an area specified as an architectural conservation area in a draft of a proposed development plan or a proposed variation of a development plan, and the development would materially affect the character of the area concerned,

this fact."; (b) the insertion following sub-paragraph (i) of paragraph (a) of sub-article (4) thereof of the following sub-paragraph:—

"(i1) where the proposed development consists of or comprises the carrying out of works:—

- (i) which would materially affect the character of a protected structure or proposed protected structure,
- or

- (ii) to the exterior of a structure which is located within an architectural conservation area or an area specified as an architectural conservation area in a draft of a proposed development plan or a proposed variation of a development plan, and the development would materially affect the character of the area concerned,
- this fact.".

25. The 1994 Regulations are hereby amended by the substitution for article 159 thereof of the following article:—

"159. (1) A State authority shall send notice of proposed development to the planning authority for the area in which the proposed development would be situate.

- (2) Where proposed development consists of or comprises the carrying out of works:—
- (a) which would materially affect the character of a protected structure or proposed protected structure, or
 - (b) to the exterior of a structure which is within an architectural conservation area or an area specified as an architectural conservation area or an area specified as an architectural conservation area in a draft of a proposed development plan or a proposed variation of a development plan, and the development would materially affect the character of the area concerned,
- a State authority shall send notice of such development to the Minister for Arts, Heritage, Gaeltacht and the Islands.
- (3) A notice sent in accordance with sub-article (1) or (2) shall—
- (a) indicate the location, nature and extent of the proposed development,
 - (b) be accompanied by a copy of the plans and particulars of the proposed development made available for inspection by members of the public in accordance with article 160,
 - (c) where the proposed development is of a type described in sub-article (2), indicate this fact, and
 - (d) state that submissions or observations with respect to the proposed development, dealing with the proper planning and development of the area in which the development would be situated, may be made in writing to the State authority concerned within a period of six weeks beginning on the day on which the latest notice under sub-articles (1) or (2) is sent."

26. The 1994 Regulations are hereby amended by the substitution for sub-article (1) of article 115 thereof of the following sub-article:—

"(1) This Part shall not apply to development proposed to be carried out by or on behalf of a local authority outside the functional area of that local authority, or development which comprises or is for the purposes of an activity in relation to which a licence under Part IV of the Environmental Protection Agency Act, 1992 or a waste licence is required."

27. Article 45 of the 1994 Regulations is hereby revoked.

Article 7

FORM

Form of Vesting Order

LOCAL GOVERNMENT (PLANNING AND DEVELOPMENT) ACT, 1999 (NO. 17 OF 1999)

SECTION 26

.....(insert name of planning authority).

VESTING ORDER

WHEREAS the structure described in the Schedule hereto and shown on the map (which has been marked1 and sealed with the seal of the planning authority) attached hereto is a protected structure within the meaning of the Local Government (Planning and Development) Act, 1999 (hereinafter called "the Act");

1. The map should be sealed and marked by a heading containing a reference to the order, e.g. "Map referred to in vesting order made under section 25 of the Local Government (Planning and

Development) Act, 1999, on the day of,, by (name of planning authority)".

AND WHEREAS it appears to 2 (hereinafter called "the planning authority") that it is necessary or desirable to acquire the said structure for the protection of the said structure, and the structure is not lawfully occupied as a dwelling house by any person other than a person employed as a caretaker;

2. Insert full description of planning authority.

AND WHEREAS the planning authority has, in accordance with section 23(1)(a) of the Act, published a notice and, in accordance with section 23(1)(b) of the said Act, served on every owner, lessee and occupier (except tenants for one month or a period less than one month) a notice in relation to the compulsory acquisition of the said protected structure;

3 AND WHEREAS no objection has been submitted to the planning authority under section 24 of the Act;

3. Delete recitals which do not apply.

AND WHEREAS an objection has been submitted to the planning authority under section 24 of the Act and was subsequently withdrawn.

AND WHEREAS an objection has been submitted to the planning authority under section 24 of the Act and has not subsequently been withdrawn, and the Minister for the Environment and Local Government has granted consent to the compulsory acquisition of the said protected structure by the planning authority;

NOW THEREFORE, the planning authority, in exercise of the powers conferred on it by section 25 of the Act, hereby orders that the said protected structure shall, on the day of,, 4vest in the planning authority in fee simple free from encumbrances and all estates, rights, titles and interests of whatsoever kind.

4. Section 26(2) of the Local Government (Planning and Development) Act, 1999 provides that the vesting date shall be a specified date not earlier than 21 days after the making of the vesting order.

Description of Protected Structure.5

5. The description and location of the protected structure should be set out, with an appropriate reference to the manner in which the structure is shown on the map and its unique identifying number in the relevant record of protected structures.

The official seal of the planning authority was affixed hereto this day of,
....., in the presence of:666

6. The description of the persons in whose presence the seal is affixed should be stated, e.g. "the Lord Mayor, "Mayor", "Chairman", "Nominated Member", "City Manager and Town Clerk", "Manager", etc.

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DIRECTIONS FOR COMPLETING THIS FORM.

GIVEN under the Official Seal of the Minister for the Environment and Local Government, this 23rd day of December, 1999.

NOEL DEMPSEY,

Minister for the Environment and Local Government.

EXPLANATORY NOTE.

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations amend the Planning Regulations, 1994 to 1999, principally to reflect the provisions of the Local Government (Planning and Development) Act, 1999. Both the Act and the Regulations will come into operation on 1 January 2000.

The Regulations prescribe a number of matters under the 1999 Act, principally the form of Record of Protected Structures and the bodies to be consulted on any proposal to amend a Record of Protected Structures. They also provide that certain development will not be exempted development where it relates to a structure located within an architectural conservation area or a proposed architectural conservation area. Where an application for planning permission relates to a protected structure or a structure in an architectural conservation area, the normal public notices and lists published must indicate this fact, and Dúchas, the Heritage Council, An Taisce, and in certain circumstances, the Arts

Council, must be consulted. Similar procedures are applied to development by a local authority (whether EIA or otherwise) and to development undertaken by the State under the 1993 Planning Act.

The Regulations also amend the approval procedures which apply to local authority development that requires an Integrated Pollution Control licence from the Environmental Protection Agency. These procedures are brought into line with the procedures which apply to local authority development that requires a licence under the Waste Management Act, 1996.