



BACKGROUND

This article explains how the Conservation of Habitats and Species Regulations 2017 (“the 2017 Regulations”) apply to the deemed grant of planning permission set out in the General Permitted Development Order 2015 (“the 2015 Order”).

The 2017 Regulations apply to development on land defined as a European Site or within the catchment of a European Site. If you are planning on exercising permitted development rights in such an area it is important to be aware of the operation of the 2017 Regulations in accordance with Article 3(1) of the 2015 Order. Failure to comply with the requirements of the 2017 Regulations could result in the development carried out under the 2015 Order being unlawful as it would not benefit from deemed planning permission.

Regulation 75 of the 2017 Regulations requires that any planning permission granted after 30 November 2017 by way of the 2015 Order which could have a likely significant effect on a European Site or European Offshore Marine Site and is not directly connected to the management of the site must not be begun until the developer has received written notification of the approval of the relevant local planning authority under Regulation 77 of the 2017 Regulations.

Regulations 76 to 78 of the 2017 Regulations set out the procedure and requirements when confirmation is required under Regulation 75 that development permitted under the 2015 Order would not adversely affect the integrity of a European Site.

Regulation 76 of the 2017 Regulations allows the developer to request an opinion from the relevant nature conservation body to confirm if the proposed development will have a likely significant effect. If the nature conservation body is of the view that the development will not have a likely significant effect Regulation 76(6) of the 2017 Regulations states that this opinion is conclusive for the purpose of relying on the planning permission granted by the 2015



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Order. In this case the local planning authority would not be required to carry out a separate appropriate assessment. The local planning authority will also be notified of the decision of the relevant nature conservation body in accordance with Regulation 76(4) of the 2017 Regulations.

Regulation 77 of the 2017 Regulations requires that an application made to the local planning authority for approval must;

- a) give details of the development which is intended to be carried out; and
- b) be accompanied by—
 - (i) a copy of any relevant notification by the appropriate nature conservation body under regulation 76; and
 - (ii) any fee required to be paid.

Where approval of the local planning authority is required under Regulation 77 of the 2017 Regulations Regulation 77(3) requires that the application is sent to the relevant nature conservation body. In England this would be Natural England and in Wales this would be Natural Resources Wales. Regulation 77 also requires that where the application is sent to a nature conservation body and a notification has not been received that the proposed development would not have a likely significant effect in accordance with Regulation 77(4) the relevant local planning authority must make an appropriate assessment of the implications of development for the site taking into account the comments of the relevant nature conservation body.

Regulation 77(7) requires that the relevant local planning authority may only approve the development after ascertaining that it will not adversely affect the integrity of the site. This could therefore be a lengthy process with the need to consult and receive comments from the relevant nature conservation body as well as carrying out an appropriate assessment of the likely significant effects of the proposed development.

No development should be started under the 2015 Order until these requirements are fulfilled otherwise it will not benefit from deemed planning permission.

The process for obtaining confirmation that the proposed development will have no likely significant effect is potentially lengthy due to the need to consult with the relevant nature conservation body and carry out an appropriate assessment. These requirements do not appear to be significantly different to those required when a formal planning application is made. The use of permitted development rights can be seen as a more straightforward and faster option in the planning process. However it is important to be aware of the operation of 2017 Regulations as these introduce another layer and potential delay to the deemed grant of planning permission.

RESTRICTIONS ON DEVELOPMENT OF CERTAIN TYPES OF LAND

Development under the 2015 Order is already restricted by reason of the inclusion of the categories of Article 2(3) and Article 2(4) land. The definition of Article 2(3) land is set out in Schedule 1 Paragraph 1 of the 2015 Order and includes conservation areas, areas of outstanding natural beauty, the broads, a national park and world heritage sites.

Article 2(4) land is set out in Schedule 1 Paragraph 2 of the 2015 Order and includes land within a National Park, the Broads and land which is outside of a National Park but which is within the list of parishes set out in Schedule 1 Paragraph 2(3).

The restrictions on development and how they apply to Article 2(3) and Article 2(4) land are set out in the various classes in Schedule 2 of the 2015 Order. It is important to review the relevant class of development corresponding to the permitted development rights sought to ascertain whether there is a restriction on development imposed by Article 2(3) and 2(4) of the 2015 Order.

In addition to the restrictions on the exercise of permitted development rights on Article 2(3) and 2(4) land it is necessary to look at the types of land and areas to which the 2017 Regulations apply.

WHAT LAND CONSTITUTES A EUROPEAN SITE

European Sites are defined in Article 8 of the 2017 Regulations and include a Special Area of Conservation, a Special Protection Area and a site which has been proposed to be designated as a Special Area of Conservation until the time the appropriate nature conservation body gives notice of its intention not to designate the site.

The restrictions on the exercise of permitted development rights would only apply to those sites falling within the definition of a European Site in the 2017 Regulations.

A map of European Sites including a 500 metre buffer zone is published by the Department for Environment, Food and Rural Affairs (DEFRA).

A relatively small area of England and Wales is designated as a European Site on the map published by DEFRA. Therefore the 2017 Regulations are only likely to be applicable to a relatively small area where permitted development rights could also be restricted due to the operation of Articles 2(3) and 2(4) of the 2017 Regulations.

SITES WITHIN THE CATCHMENT AREA OF A EUROPEAN SITE

Due to the continuing issues with nutrient neutrality and the effect on land within the catchment of such affected areas Natural England has issued guidance to affected local planning authorities on the application of permitted development rights under the 2017 Regulations.

This guidance is provided on a case by case basis to local planning authorities and mainly applies to agricultural development or development which would result in an increase in population including temporary increases in population.

For development in affected areas it is likely that in the absence of guidance from Natural England an appropriate assessment would need to be undertaken and an opinion requested by the applicant from the relevant nature conservation body in accordance with Regulation 76 of the 2017 Regulations. Although it may be the case that due to the issues in the affected area it would already be known that any proposed development would have a likely significant effect on the European Site.

Where an area is failing in its conservation status it is likely that due to the failure of the European Site to meet its conservation targets this would result in a negative appropriate assessment for any proposed development. For development to be acceptable it would need to demonstrate nutrient neutrality through the provision of adequate on-site or off-site mitigation which can be very difficult to achieve in practice.

The Policy Paper titled Nutrient Pollution: Reducing the impact on protected sites published on 28 June 2023 sets out the steps the Government proposes to take to allow sustainable development to continue. Whether or not development can be unlocked will depend on the speed of implementation of these measures.

It will be necessary for the relevant local planning authority to decide on a case by case basis whether a development or particular site will be subject to the requirements of the 2017 Regulations with factors to consider including the location of the site, its proximity to a European Site as well as the nature of the proposed development.

It is therefore important to be aware of the current status of the area where permitted development rights are sought to be exercised. Failure to do so could lead to wasted costs and time in making an application.

EFFECT OF GPDO IF REQUIREMENTS OF THE 2017 REGULATIONS ARE NOT FOLLOWED

If the necessary confirmation is not provided by the relevant local planning authority or nature conservation body before the development is commenced the proposed development will not benefit from deemed planning permission under the 2015 Order. If the development was deemed to be unlawful enforcement action could be taken. An application for retrospective planning permission could be costly and may be refused at the time it is determined due to potential changes in the required conservation objectives for the European Site.

CONCLUSION

In considering development and whether the requirements of the 2017 Regulations apply to development permitted by the 2015 Order it is necessary to consider the following steps to ensure that the proposed development benefits from deemed planning permission;

- Does the land sit in area of land that falls within the definition of Art 2(3) or Art 2(4) of the 2015 Order. If so there may be restrictions on the operation of permitted development rights and an application for planning permission for development may be required.
- If the relevant permitted development rights are available is the land within an area defined as a European Site in the 2017 Regulations or lie within the catchment of a European Site.
- If the land is within an area defined as a European Site or catchment of a European Site an appropriate assessment and confirmation from the local planning authority under Regulation 77 will be required before the development can proceed. Alternatively has the relevant nature conservation body provided confirmation to the applicant and local planning authority under Regulation 76 of the 2017 Regulations that the development would not have a likely significant effect.

About Pathfinder Legal Services Ltd's Planning and Highways Team

Planning and Highways is an area of law which impacts on everyone in the community but is rarely recognised until something goes wrong. Members of the public often expect rapid response times to complaints about pot holes, planning permission which has been granted in their local area or highways closures and Pathfinder Legal Services understands the importance of providing practical and timely advice on these matters. With the benefit of extensive legal expertise combined with a keen knowledge of historical detail and a solid understanding of legal principals, our team are able to guide you through all aspects of planning and highways law, taking into account the different duties and responsibilities of our clients.

About Pathfinder Legal Services Ltd

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