



Levelling-up and Regeneration Act 2023

2023 CHAPTER 55

PART 3

PLANNING

CHAPTER 4

GRANT AND IMPLEMENTATION OF PLANNING PERMISSION

PROSPECTIVE

110 Material variations in planning permission

- (1) TCPA 1990 is amended as follows.
- (2) After section 73A insert—

“73B Applications for permission not substantially different from existing permission

- (1) An application for planning permission in respect of land in England is to be determined in accordance with this section if the applicant—
 - (a) requests that it be so determined,
 - (b) makes a proposal as to the conditions (if any) subject to which permission should be granted, and
 - (c) identifies an existing planning permission by reference to which the application is to be considered (“the existing permission”).
- (2) The existing permission must not have been granted—
 - (a) under section 73, section 73A or this section, or
 - (b) other than on application.

Status: This version of this provision is prospective.

Changes to legislation: There are currently no known outstanding effects for the Levelling-up and Regeneration Act 2023, Section 110. (See end of Document for details)

- (3) The applicant may also identify, for the purposes of an application to be determined in accordance with this section, a planning permission—
- (a) that was granted under section 73 or this section by reference to the existing permission, or
 - (b) that forms part of a sequence of planning permissions granted under section 73 or this section, the first of which was granted by reference to the existing permission.
- (4) A development order must set out how an applicant is to do as mentioned in subsections (1) and (3).
- (5) Planning permission may be granted in accordance with this section only if the local planning authority is satisfied that its effect will not be substantially different from that of the existing permission.
- (6) Planning permission may not be granted in accordance with this section in a way that differs from the existing permission as to the time by which a condition requires—
- (a) development to be started, or
 - (b) an application for approval of reserved matters (within the meaning of section 92) to be made.
- (7) In determining an application in accordance with this section, the local planning authority must limit its consideration to those respects in which the permission being applied for would, if granted in accordance with the proposal under subsection (1)(b), differ in effect from—
- (a) the existing permission, and
 - (b) each planning permission (if any) identified in accordance with subsection (3).
- Section 70(2) is subject to this subsection.
- (8) If the local planning authority decides not to grant planning permission in accordance with this section, it must refuse the application.
- (9) For the purposes of this section, the effect of a planning permission is to be assessed by reference to both the development it authorises and any conditions to which it is subject.
- (10) In assessing the effect of an existing planning permission for the purposes of subsection (5) (but not for the purposes of subsection (7)), any change to the permission made under section 96A is to be disregarded.
- (11) The following provisions apply in relation to the condition under paragraph 13 of Schedule 7A (biodiversity gain condition)—
- (a) nothing in this section authorises the disapplication of the condition;
 - (b) the condition is to be disregarded for the purposes of subsections (1)(b), (5) and (7);
 - (c) where—
 - (i) the existing planning permission is subject to the condition,
 - (ii) a biodiversity gain plan (“the earlier biodiversity gain plan”) was approved for the purposes of the condition as it attaches to that permission,

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- (iii) planning permission is granted in accordance with this section, and
- (iv) that planning permission is consistent with the post-development biodiversity value of the onsite habitat as specified in the earlier biodiversity gain plan,
the earlier biodiversity gain plan is to be regarded as approved for the purposes of the condition as it attaches to the planning permission granted in accordance with this section.
- (12) Nothing in this section authorises the disapplication of the condition under section 90B (condition relating to development progress reports in England).
- (13) In relation to an application for planning permission that is made to, or is to be determined by, the Secretary of State, a reference in this section to the local planning authority is to be read as a reference to the Secretary of State.
- (14) The preceding provisions of this section apply in relation to an application for permission in principle as if—
- each reference to planning permission were a reference to permission in principle, and
 - the provisions of this section relating to conditions were omitted.
- (15) Permission in principle granted in accordance with this section is to be taken, for the purposes of section 70(2ZZC), as having come into force when the existing permission in principle identified under subsection (1)(c) came into force.”
- (3) In section 62A (applications that may be made directly to the Secretary of State)—
- in subsection (2), after “73(1)” insert “, an application that is to be determined in accordance with section 73B”;
 - in subsection (3)(d), after “73(1)” insert “nor an application that is to be determined in accordance with section 73B”.
- (4) In section 70A (power to decline to determine application similar to an earlier one)—
- in subsection (8), for “subsection (9)” substitute “subsections (9) to (11)”;
 - at the end insert—
- “(10) An application that is to be determined in accordance with section 73B is not similar to an earlier application that was not determined in accordance with that section.
- (11) An application that is to be determined in accordance with section 73B is similar to an earlier application that was determined in accordance with that section only if the local planning authority think that the difference of effect referred to in subsection (7) of that section is (both in kind and in degree) the same or substantially the same in the case of both applications.”
- (5) In section 70B (power to decline to determine application similar to a pending one)—
- in subsection (5), at the beginning insert “Subject to subsections (5A) and (5B),”;
 - after subsection (5) insert—

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“(5A) An application that is to be determined in accordance with section 73B is not similar to another application that is not to be determined in accordance with that section.

(5B) An application that is to be determined in accordance with section 73B is similar to another application that is to be determined in accordance with that section only if the local planning authority think that the difference of effect referred to in subsection (7) of that section is (both in kind and in degree) the same or substantially the same in the case of both applications.”

Commencement Information

II S. 110 not in force at Royal Assent, see [s. 255\(3\)\(b\)](#)

Status:

This version of this provision is prospective.

Changes to legislation:

There are currently no known outstanding effects for the Levelling-up and Regeneration Act 2023, Section 110.