

SYSTEMS FOR REGULATING DEVELOPMENT

Development on Land: The Town and Country Planning System

The planning system provides the main vehicle for regulating development and land-use above low water mark. Within the Solent the responsibilities for planning are shared between a number of local authorities, as follows:

Strategic Planning Authorities (5)

Hampshire County Council
 *Portsmouth City Council (unitary)
 *Southampton City Council (unitary)
 *Isle of Wight Council (unitary)
 West Sussex County Council

Local Planning Authorities (6)

Gosport Borough Council
 Fareham Borough Council
 Eastleigh Borough Council
 Havant Borough Council
 New Forest District Council
 Chichester District Council

* These authorities are also local planning authorities.

The purpose of the planning system is to guide and regulate land-use and development. It works through the establishment of planning policies by local authorities and the requirement for planning permission to be obtained by prospective developers. Adopted policies have statutory weight and provide a legal framework within which decisions on whether to permit or refuse development applications are made. The policies are set out in:

- Structure Plans (which set out key strategic land-use and development policies. Structure Plans for West Sussex and Hampshire apply to the Solent)
- Local Plans (which implement Structure Plan policies, and provide detailed land-use and development policies at the district level. All of the local planning authorities within the Solent, with the exception of Isle of Wight Council prepare local plans).
- Unitary Development Plans (which cover both strategic and local plan functions. The Isle of Wight UDP is the only such plan for the Solent);
- Minerals and Waste Local Plans which cover planning of minerals extraction and waste management and disposal. They are prepared by the strategic planning authorities listed above).

All the plans listed above are subject to extensive local consultation throughout their draft stages.

If an application is refused the applicant may appeal to the Secretary of State for the Environment, and evidence will be considered by a Planning Inspector appointed on their behalf. This may be through written exchange of information, an informal hearing or a public inquiry.

In exceptional circumstances, development applications may be 'called in' by the Secretary of State for the Environment. Local authorities may request a proposal is called in if it is of significant scale or is contrary to the development plan. The Secretary of State will then decide whether to allow the local authority to determine the application. If he/she decides to determine the application directly, then a public inquiry will be called. The decision of the Secretary of State may be open to legal challenge under both UK and European Law.

National Planning Guidance

Planning Policy Guidance Notes (PPGs) are issued by the Department of the Environment Transport and Regions (DETR) on behalf of the Government to provide clear, accessible and systematic policy guidance, in particular to local planning authorities. In September 1992, PPG 20: Coastal Planning was issued. It highlights planning policy issues that are particularly relevant to the coast (although they may not be exclusively coastal). Other PPGs deal with issues which affect the coast, within a broader remit:

- Green Belts (PPG 2)
- The Countryside and Rural Economy (PPG 7)
- Nature Conservation (PPG 9)
- Development on Unstable Land (PPG 14)

- Planning and its Historic Environment (PPG 15)
- Archaeology and Planning (PPG 16)
- Sport and Recreation (PPG 17)
- Tourism (PPG 21)
- Planning and Pollution Control (PPG 23)

Regional Planning Guidance

Within England and Wales there are nine planning regions with the Solent being covered by the London and South East Regional Planning Conference (SERPLAN). PPG 20 invited the regional conference of the local planning authorities to consider the need to include coastal issues in regional planning guidance. SERPLAN responded to this request by the publication of 'Coastal Planning Guidelines for the South East, 1993'. These Guidelines are comprehensive and include sections on the undeveloped coast, energy generation, the marine environment, marine resources, coastal resources and water quality.

Development on land outside the Town and Country Planning System

The planning system is limited to considering development proposals made within local authority boundaries. Within the Solent, these include the coast above mean low water mark, together with Southampton Water above Hythe, Portsmouth, Langstone and Chichester harbours, and most of the smaller river estuaries. The Western and Eastern Solent are outside local authority control, however, the Isle of Wight Council and Hampshire County Council have proposed to the Government that their boundaries should be extended to meet at the centre of the Solent.

The Town and Country Planning (General Permitted Development) Order, 1995 defines certain types of development which do not require planning permission. Permitted development rights are given to particular organisations such as harbour authorities for certain types of activity, under special circumstances. However, the order requires that if development is likely to have a significant effect on the environment, it will require planning permission, accompanied by an environmental assessment. Additionally, development by the Ministry of Defence is not subject to planning control by local authorities.

What does the Solent need from the Planning System?

The planning system has a fundamentally important role in ensuring the long-term future for the Solent. It provides a democratic and locally-accountable system for decisions about land-use and regulation of development. Many of the key needs identified within the Strategic Guidance for different sectors of interest, are directed wholly or partly at implementation through the planning system, and these are summarised in the box below.

However, there are also some overall principles which need to be achieved. Local authorities should:

- ensure that comprehensive coverage of coastal issues is given within their planning policies;
- pay careful attention to the interactions of different uses within the Solent and ensure that policies take account of the full range of interests;
- co-operate to ensure that the policies included within their plans are co-ordinated and consistent;
- develop robust, long-term policies to protect the Solent's environment, particularly with regard to the possible impacts of climate change, and the cumulative impacts of development;
- seek positive, balanced policies towards recreational and economic activity wherever possible. and seek better information on trends;
- monitor and report regularly on the implementation of policies for the Solent;
- ensure full and constructive dialogue with the full range of interests as policies are developed and reviewed;
- continue to review, adapt and improve planning policies for the Solent in light of new information and monitoring;
- ensure that clear relationships between the planning system and various non-statutory plans are established with regard to consistency of policies, implementation and the avoidance of duplicating effort.

A review of planning policies for the Solent is currently being carried out by the planning department of Hampshire County Council. The early indications are that the broad coverage and consistency of policies is good, with a small number of detailed areas where improvements may be required.

A summary of the framework of statutory and non-statutory plans within the Solent is provided in the following section of the Guidance.

Action points from the Strategic Guidance where the planning system has a key role

Nature Conservation

- protect the natural system from long-term damage due to human activity
- monitor the achievement of nature conservation objectives and their socio-economic impact

Landscape and Seascape

- ensure that new land-use and development maintains and enhances the character of the Solent
- monitor landscape and seascape change
- improve the quality of the landscape and seascape where possible

Historic Heritage and Maritime Archaeology

- continue to protect historic and archaeological sites from development
- recognise the importance of maritime archaeology within coastal defence policies
- take a strategic approach to the protection and use of historic buildings and sites

Ports and Shipping

- address the need for port expansion and development

Marine Aggregates and Aggregate Imports

- improve integration of offshore and onshore aspects of the aggregates industry

Recreation and Tourism

- promote a positive approach to sport, recreation and tourism development
- manage development and activities within the capacity of the system

Naval Base and Defence Interests

- ensure that the best possible use is made of released MoD land, taking into account all significant interests, within a strategic framework

Fisheries

- promote more cohesion within the fishing industry where possible

Marine Industries

- deliver effective land-use planning for the marine industries
- deliver co-ordinated economic development

Transport and Communications

- continue to develop integrated transport solutions for the Solent region
- ensure the impacts of new transport initiatives within the Solent are acceptable

Coast Protection and Sea Defence

- put in place effective planning policies to support long-term management of the shoreline

Environmental Quality

- ensure sites for investment in water quality infrastructure have the capacity for expansion to meet increased standards in the future
- ensure minimal use of the coastal zone for waste disposal and prevent any further use for land-fill waste disposal in particular

Protected sites on land

Special protection is offered to important wildlife landscape and historic sites through the planning system, as follows:

Nature Conservation

- Special Areas of Conservation
- Special Protection Areas
- RAMSAR Sites
- Sites of Special Scientific Interest
- Sites of Importance for Nature Conservation
- National Nature Reserves
- Local Nature Reserves

Landscape

- New Forest Heritage Area
- Areas of Outstanding Natural Beauty
- Heritage Coast
- Areas of Special Landscape Quality

Historic Heritage and Maritime Archaeology

- Scheduled Ancient Monuments
- Listed Buildings
- Conservation Areas
- Protected Wrecks

There are a number of sites which receive additional statutory protection with regard to development or activities. The main categories of site where additional protection measures apply are as follows:

Sites of Special Scientific Interest (SSSI)

SSSIs are notified by English Nature under UK legislation *Wildlife & Countryside Act, 1981* and represent wildlife resources of recognised national importance. English Nature notify landowners/occupiers of the site's conservation interest, and the activities which could cause damage - known as potentially damaging operations (PDO). The landowner/occupier is required to consult with English Nature before carrying out any PDO on the site, or any operation adjacent to the site which could cause damage;

Scheduled Ancient Monuments (SAM)

SAMs are identified by the Secretary of State for National Heritage - on advice from English Heritage - under UK legislation *Ancient Monuments & Archaeological Areas Act, 1979* and represent archaeological sites of recognised national significance. Works which might affect a SAM may only be carried out if a Scheduled Ancient Monument Consent from the Secretary of State has been obtained;

Listed Buildings

Listed Buildings are identified by the Secretary of State for National Heritage - on advice from English Heritage - under UK legislation *Planning (Listed Buildings and Conservation Areas) Act, 1990*. Any work which might affect the structure or setting of a Listed Buildings requires Listed Buildings Consent from the local planning authority. The authorities routinely consult with English Heritage, and other expert interests as appropriate on such applications;

Conservation Areas

Conservation Areas are normally identified by the local planning authority under UK legislation, *Planning (Listed Buildings and Conservation Areas) Act, 1990*. Development which might affect the character or appearance of a conservation area would normally require Conservation Area Consent from the local planning authority;

Protected Wrecks

Protected Wrecks may be identified in the intertidal zone as well as below Low Water Mark. Protected Wrecks are identified by the Secretary of State for National Heritage, who is advised by the Advisory Committee on Shipwrecks. Sites approved for designation will have an exclusion zone identified, and will be marked on Admiralty Charts. No diving or interference with protected wrecks is permitted. Applications to survey and excavate sites require a licence from the Secretary of State.

Development below low water mark

Below low water mark a series of different sectoral-based controls operate. These systems are diverse, and subject to different Acts with various arrangements for the ways in which applications are handled. In order to ensure public confidence in the sectoral consents is maintained, it is important to;

- involve routine consultation with all interests who might be affected by the application and ensure that consultees comments are taken into account in the decision-taking process;
- ensure that decisions taken, and conditions applying are routinely communicated to those consulted;
- provide information concerning applications, decisions and conditions to the public on request;
- monitor the implementation of proposals to ensure that they meet the terms and conditions of the consent.

A detailed summary of the different regulatory mechanisms is provided in 'Coastal Planning and Management: A Review', published by the Department of the Environment in 1993. The main types of consent which affect the Solent are set out below:

Coast Protection Act, Section 34 Navigation Consent.

The purpose of Navigation Consent is to ensure that development on the coast does not adversely affect the safety of navigation. Consent is required for construction works, and for deposit or removal of materials (including minerals dredging) below Mean High Water Springs. The procedure is administered by the DETR, Ports Division.

- **Consultation Procedure:** There is no definitive consultation procedure, the DETR normally consult with the harbour authority (if one exists), Royal Yachting Association, General Council of British Shipping, MAFF, MoD, the pilotage and lighthouse authorities and the local coastguard office. The Secretary of State can require an application to be advertised, but this is only regarded as necessary in a minority of cases;
- **Decision:** Consultees who have made representations will be notified of the Secretary of State's decision together with other consultees who are judged to need the information (for instance if works require lighting, marking on charts or notice to mariners);
- **Access to Information:** DETR maintain a register of applications and decisions, information from which may be obtained by the public on request;
- **Monitoring/enforcement:** Where works are carried out without consent, or outside of any conditions imposed, the Secretary of State may serve a notice requiring them to be altered within a specified period of no less than thirty days. Failure to comply may lead to the works being removed at the developer's expense. In urgent cases works may be removed without notice.

Discharge Consent

The purpose of Discharge Consents is to regulate the discharge of sewage, trade and other effluents. Consents are issued by the Environment Agency under the *Environment Act, 1995*.

- **Consultation procedure:** English Nature are a statutory consultee for applications which may affect SSSIs or European Wildlife Sites. Other consultation is at the discretion of the Environment Agency. Details of the application may need to be published, in which case adverts will be placed in the London Gazette and a local newspaper;
- **Decision:** The Agency has four months from application to determine it, after which time it is deemed to be refused. Consent holders are required to inform the Agency if they transfer a consent to another person or company;
- **Access to information:** The Agency maintains a statutory register which is available for public inspection, which includes details of applications, any consent granted with conditions, samples of effluent taken and information on analyses, with any follow up action taken;
- **Monitoring/enforcement:** Monitoring and enforcement of consents is undertaken by the Environment Agency.

Food and Environment Protection Act (FEPA) Licences

The purpose of FEPA licensing is to ensure that development and works in the coastal zone do not damage the marine environment or human health, or interfere with legitimate uses of the sea. Licences are issued by the Ministry of Agriculture, Fisheries and Food (MAFF).

- **Consultation procedure:** MAFF have a duty to consult English Nature if a proposal affects a SSSI, European Wildlife Site, or National/Local Nature Reserves. When applications are received MAFF routinely advise the Local Planning Authority, Environment Agency, Crown Estate and English Nature. Within MAFF, consultation is carried out with fisheries scientists and the local fisheries officer;
- **Decision:** Licences are issued with any conditions attached. Consultees are not routinely advised of licence conditions or decisions;
- **Access to information:** Applications and any supporting information must be made available on the public register, unless the Minister agrees to withhold details on the grounds of national security or unreasonable prejudice of commercial interests. Once a licence is issued, a summary of the decision and conditions are added to the register. Environmental statements are not held on the public register, and remain the property of the applicant;
- **Monitoring/enforcement:** Enforcement of the licence and any conditions is carried out by the local fisheries officer.

Government View Procedure (Crown Estate)

The Government View Procedure regulates marine aggregate extraction. It is an extended consultative process which follows the principles of land based planning procedures. It is administered by the DETR (Minerals and Waste Planning Division). The procedure is non-statutory and will be replaced in due course by a statutory mechanism, also to be administered by DETR.

- **Consultation procedure:** There are three stages to Government View.
 1. An initial informal stage is conducted by the Crown Estate on receipt of an application to dredge. The Estate commission an investigation of possible impacts on coastal erosion, if there are impacts the proposal is rejected without further consideration. The proposal may also be modified at this stage to take account of consultees comments. Otherwise the proposal is advertised and details are sent to a range of consultees.
 2. A formal application is made, with an Environmental Statement.
 3. DETR consults with other Government departments, who jointly consider the proposals and agree the Government View about whether the proposal should proceed.
- **Decision:** A favourable Government View results if all of the relevant Departments agree to the proposal. The Crown Estate will only licence applications which receive a favourable Government View.
- **Access to information:** The Government View document is available if requested. The licence is a commercial document and not in the public domain.
- **Monitoring/enforcement:** Enforcement of the licence and its conditions are carried out by the Crown Estate.

Harbour Revision Orders (HRO)

Harbour Revision Orders authorise works within established harbours, where these lie outside the existing powers of the harbour authority. They are also the vehicle for amending the powers and areas of a Harbour Authority. HROs are made by the Secretary of State for Transport.

- **Consultation procedure:** There are no set requirements and consultation is carried out by the DETR as appropriate. There is provision for a public inquiry to be held if required.
- **Decision:** This is taken by the Secretary of State for Transport.
- **Access to information:** Information concerning HROs is available to the public if requested.
- **Monitoring/enforcement:** This is the responsibility of the DETR.

Harbour Works Licences (Harbour Authorities)

Some harbour authorities have powers to regulate works within their areas through the issue of harbour works licences, which aim to protect safety of navigation. Works Licences currently operate in parallel with Section 34 Navigation Consents.

- **Consultation procedure:** There is no set consultation process, and Harbour Authorities contact interests that may be affected by an application as they consider appropriate;
- **Decision:** Taken by the appropriate harbour authority;
- **Access to information:** Information on harbour licence applications is generally not on the public record; for information contact the relevant Harbour Authority;

- **Monitoring/enforcement:** This is the responsibility of the relevant Harbour Authority.

Consent for works affecting Watercourses or Flood Defences

The purpose of Land Drainage Consent is to ensure that development does not endanger life or property by increasing the risk of flooding, or cause harm to the water environment.

- **Consultation procedure:** There are no specific consultation requirements;
- **Decision:** The Agency has two months in which to grant or refuse consent. Consent should not be unreasonably withheld;
- **Access to information:** Information on applications and consents is kept on a public register maintained by the Agency;
- **Monitoring/enforcement:** This is the responsibility of the Environment Agency.

Transport & Works Act (1992)

The Transport and Works Act regulates construction projects outside harbour areas, and some non-harbour related construction within Harbours. The Act is administered by the DETR.

- **Consultation procedure:** Applications under the Act must be notified to English Nature, Countryside Commission, relevant Local Authorities and the Environment Agency. An Environmental Statement is required unless a waiver has been given by the Secretary of State. There is provision for public inquiry if required;
- **Decision:** Is taken by the Secretary of State for Transport (transport projects), Trade and Industry (energy projects) or Environment (other projects);
- **Access to information:** Applications and decisions are available to the public if requested;
- **Monitoring/enforcement:** Is the responsibility of the DETR.

Environmental assessment of development proposals

Environmental Assessment is the process by which information about the environmental effects of projects is collected, assessed and taken into account by the regulatory authority in reaching a decision about whether the proposed development should go ahead.

Environmental Assessment (EA) is required for projects which are likely to have significant effects on the environment. Some projects (known as Schedule 1 projects) always require EA, other projects (known as Schedule 2 projects) require EA when the development proposed would be likely to have significant environmental effects. Where required, an environmental assessment will be submitted with the application for development. In addition to Environmental Assessment, development which might significantly affect a European Wildlife Site requires an 'appropriate assessment' of its implications in relation to the nature conservation objectives for the site. The scope and content of the assessment will depend on the location, size and significance of the project.