

# EXPLANATORY NOTE FOR DEVELOPERS, ARCHITECTS AND AGENTS ON CHANGES TO THE PLANNING APPLICATION SYSTEM – TOWN PLANNING ACT 2018 AND REGULATIONS

## INTRODUCTION

The introduction of the Town Planning Act 2018 means that there will be some changes to the planning application system.

This note highlights some of the main changes, as they relate to the planning application system, but you are advised to refer to the Town Planning Act 2018 (available at <http://www.gibraltarlaws.gov.gi/>) for full details.

References to section numbers are to sections of the Town Planning Act, 2018

## PLANNING PERMISSION

The terminology used in the Act in relation to the term “planning permission” has been changed to better reflect general usage. The Act now refers to Outline Planning permission (an in-principle approval) and Full Planning Permission (approval of a detailed application). The term Planning permit is no longer used.

## DEVELOPMENT REQUIRING PLANNING PERMISSION

Planning permission is required for development as defined in section 16.

The Act makes clear (section 16(2) and (3)) that the following minor operations constitute development and therefore need planning permission:

- i. The enclosure of any balcony or veranda;
- ii. The removal, replacement or installation of shutters;
- iii. The removal, replacement or other alteration of a window;
- iv. The replacement of existing roof coverings.

However, there are some exceptions to the above, namely where the replacement of shutters or windows is on a like for like basis using the same materials and does not materially affect the external

appearance of the building, then no planning permission is required. Please note however, that replacement of windows will always require Building control approval.

Works that only affect the interior of the building or which do not materially affect the external appearance of the building or destroy the nest of any wild bird do not require planning permission. However, these works will still require Building Control approval and a Planning/Building Control application should be submitted. On receipt of an application the Department will assess whether the works require planning permission and if they do not you will be advised. In such cases the application will continue and only Building Control approval will be needed. Please note that whilst works may only involve internal alterations if a change of use is also involved then planning permission will be required regardless.

#### Notification of applications

As previously, all owners of the land to which the applicant relates must be served notice (the old section 21 now section 22) Therefore, when submitting an application you must ensure that the relevant notifications to owners have been carried out and you have certified this in the application.

In addition, you should note that where the application relates to a site that is in multiple occupation (e.g. an apartment building), you are also required to serve notice on the Management Company and you must also place site notices at the main entrances to the land/building. Again, you need to ensure that you submit certification of this with the application.

## PUBLIC PARTICIPATION

Certain types of development will be subject to public participation (what was previously referred to as section 19 development) under section 23. Changes have been made to the public participation process and you should take careful note of the following:

The first step is to erect a site notice (which must now be a minimum size of A3). The notice will advise the public that an application is going to be submitted.

You will have a maximum of 1 month from the date the site notice is erected to actually submit the application.

Only after the site Notice has been posted on the site may you publish notices (similar to the site notice) in the Gibraltar Gazette and two local newspapers (the requirement to publish in one weekly and one daily newspaper has been replaced by a requirement to simply publish in two local newspapers).

You must wait for a minimum of 14 days after posting the notice on site before you are able to submit the application.

The application must be accompanied by a certificate confirming that the site notice was on site for at least 14 days, together with copies of the publications in which the notice was published.

The public have 21 working days to make comments and the 21 day period commences from the date the application is validated by the Department of Town Planning and Building Control. The Department will aim to validate (or alternatively to notify you that it cannot be validated) within 7 working days of receipt. It is therefore important for applicants to ensure that the application is complete and has all necessary documentation attached when it is submitted.

As previously, the applicant has 14 days in which to make counter representations. However, in addition to submitting these counter representations to the DPC the applicant is now also required to submit these to the person making the representations.

The public participation requirements explained above relate to specified types of development. However, the Commission may require public participation in addition to the above and dependent on the circumstances. In these cases you will be advised what is required.

Applications that do not fall under section 23 and where the Commission does not require any additional public participation, will nevertheless be open for public comment for a minimum period which has been set as 5 working days from the date the application is validated.

#### Changes to an application before planning permission is granted

A new provision is included that allows an applicant to make changes to an application before planning permission has been granted. Where such changes are made the Commission has the power to require the amended application to be subject to the procedures relating to notification of owners and the general public.

#### Classes of development to which public participation is mandatory

Some changes have been made to the types of development that require public participation. The following are worth noting:

- Swimming pools that are intended for the exclusive use of a single private residence are now excluded;
- Additional storeys to a building are now included regardless of their height and regardless of whether they cover the whole or only part of a roof area;
- The total or partial demolition of buildings is now included.

The complete list is contained in regulation 5 of the Town Planning (General Procedures) Regulations, 201.

## RIGHT TO BE HEARD

A person who makes written representations on an application within the prescribed period has a right to be heard by the Commission.

## MAKING MINOR AMENDMENTS TO PLANNING PERMISSION

Section 38 allows for applications to be made to make “minor amendments” to an existing planning permission. Such applications are only possible where works have not yet been completed, or where works have not yet commenced, before the expiry date of the original permission. A fee is payable for such applications.

A minor amendment is one whose scale and nature does not have a material effect on the overall scheme of the development and results in a development which is not, in the opinion of the Commission, substantially different from the one which has been approved. Further guidance on what would be considered minor amendments is given in Info sheet 10 . If an amendment is not considered minor then a fresh application would be required. It should be noted that decisions on whether an amendment can be considered under the minor amendment application process is entirely a matter for the Commission.

## APPEALS

Appeals are now lodged with Secretary to the Development appeals Tribunal rather than the Secretary of the Development and Planning Commission.

## ENFORCEMENT NOTICE

Unlike the previous process whereby a person who carries unauthorised development had to be convicted in court in the first instance, the Commission now has the power to serve an Enforcement Notice. Such a Notice will set out the steps to be undertaken.

A person served with an Enforcement Notice can appeal to the Development Appeals Tribunal within 28 days of the notice being served.

## PAINTING OF BUILDINGS

A new provision is included to allow for regulations to control the painting of buildings. Before painting a building you must first apply for consent from the Commission.

## DOCUMENTATION TO BE SUBMITTED WITH AN APPLICATION

Schedule 1 of Town Planning (General Procedures) Regulations, 2019, provides a full list of supporting documentation required with an application. It is worth noting that design statements, statements on energy efficiency and “Planning” statements are now required to be submitted with applications.

Applications submitted without the necessary supporting documentation will not be validated. It is therefore important to ensure that all the required documentation is submitted together with the application to avoid delays.

## APPLICATION FEES

Schedule 4 of the Town Planning (General Procedures) Regulations, 2019, contains an updated fee schedule. Fees are now payable on applications to renew planning permission and for minor amendments to a planning permission.

## GROUND FLOOR AREA

This has been amended to make clear that the requirement that no building shall cover more than 80% is measured at ground level.

## AIRFIELD SAFEGUARDING AND BUILDING HEIGHT RESTRICTIONS

Proposals are not permitted to breach the official Gibraltar Airport Safeguarding Map. Only in exceptional cases, and when supported by an aeronautical study, may breaches be acceptable. It is important to note that even where a proposal may meet the Safeguarding requirements it may not be acceptable on planning grounds.

## WINDOWS ON PROPERTY BOUNDARIES (COMMONLY REFERRED TO AS ENCROACHING WINDOWS)

A new regulation is introduced that means that windows proposed on a boundary that abuts another property are not permitted unless all affected property owners have agreed in writing. Otherwise, any window must be set back from the boundary by a minimum of 2metres.

## PARKING

In addition to standard car parking spaces, developments are now required to make provision for accessible parking spaces, motorcycle spaces, bicycle spaces and electric vehicle charging points. The level of provision for different categories of development are given in the schedule to Town Planning (Development Control) Regulations, 2019.