

## Appendix 7

### Compensation Provisions and Article 4 directions

**S107 of the Town and Country Planning Act 1990** provides that in certain circumstances where planning permission is revoked or modified compensation may be payable if an application for such compensation is made to the LPA within a prescribed time and in a prescribed manner.

Compensation would cover any aborted expenditure together with any other loss or damage which is directly attributable to the revocation or modification.

**S108 of the Town and Country Planning Act 1990** applies the provisions of S107 to certain other circumstances, including where planning permission granted by a development order is withdrawn by the issue of a direction under powers conferred by the order.

**Section (2A)** states that where planning permission granted by a development order for development of a **prescribed description** is withdrawn by the issue of directions under powers conferred by the order, the ability to claim compensation only applies if the claim is made before the end of the period of 12 months beginning with the date on which the direction took effect.

However **Section (3B)** provides that the right to compensation does not apply at all if in the case of planning permission granted by development order subsection **(3C)** is met. The condition in **Subsection (3C)** is that planning permission is granted for development of a **prescribed description**; the permission is withdrawn in the **prescribed manner**; notice of the withdrawal was published in the prescribed manner not less than 12 months or more than the **prescribed period** before the withdrawal took effect and either the development authorised by the development order had not started before the notice was published or the development order includes provision in pursuance of Section 61D permitting the development to be completed after the permission is withdrawn.

Section (4) of the Act does enable regulations to be made that would prevent compensation from being payable where a direction withdraws permitted development rights for the demolition of buildings or any description of buildings, but no such regulations as of the current date have been made.

**The Town and Country Planning (General Permitted Development) Order 2015** prescribes in its schedules those types of development for which permission is granted without having to make an application for planning permission. Article 4 of that order enables directions to be made to restrict certain of those permitted development rights. The procedure for making such a direction is set out in Schedule 3 to the Order.

### **The Town and Country Planning (Compensation) (England) Regulations 2015**

**Regulation 2** sets out what is the prescribed development for the purposes of Section 108(2A)(a) and (3C)(a) of the 1990 Act. The prescribed development is as follows:

- (a) **Part 1** (development within the curtilage of a dwellinghouse);
- (b) Classes D and E of **Part 2** (minor operations relating to electric vehicle charging points);
- (c) Classes [AA, ]<sup>1</sup> C, D, J, L, M, N, O, P, [PA, ]<sup>2</sup> Q, R, S, T and U of **Part 3** (certain changes of use);
- (d) Classes C, [CA, ]<sup>3</sup> D and E of **Part 4** (temporary uses);
- (e) Classes A to H, L, M and N of **Part 7** (non-domestic extensions, alterations etc);
- (f) **Part 14** (installation of renewable energy equipment); and
- (g) Class A of **Part 16** (development by electronic communications code operators) to the extent that **paragraph A.2(5)** of Class A disapplies certain conditions in **paragraph A.3** of Class A.

**Regulations 3** sets out the prescribed manner for withdrawing planning permission in a development order as follows:-

For the purposes of [section 108\(3C\)\(b\)](#) of the Act the prescribed manner for withdrawing planning permission is—

- (a) by direction in accordance with [article 4](#) of the Permitted Development Order; or
- (b) by providing in a development order that planning permission—
  - (i) is for a limited period; or
  - (ii) is withdrawn after a date specified in the development order.

**Regulation 4** sets out the prescribed manner of publication and period for development orders as follows:-

- (1) For the purposes of [section 108\(3C\)\(c\)](#) of the Act the following matters are prescribed.
- (2) The prescribed manner in which notice of withdrawal is to be published is—
  - (a) in the manner described in [paragraphs 1\(1\) to \(5\) of Schedule 3](#) to the Permitted Development Order; or
  - (b) by providing in a development order that planning permission—
    - (i) is for a limited period; or
    - (ii) is withdrawn after a date specified in the development order.
- (3) The prescribed period is—
  - (a) 2 years; or
  - (b) where notice of withdrawal is published in accordance with paragraph (2)(b), 5 years.

**Article 12 of The Town and Country Planning General Regulations 1992** prescribes that any claim for compensation made pursuant to the provisions of S107 including those under S107 as applied by S108 shall be in writing and served on the Lpa by delivering it at their offices or by sending it by pre-paid post. It further states that any claim should be served 12 months from the date of the decision in respect of which the claim is made or such longer period as may be prescribed by the Secretary of State may allow.

### **Conclusion**

In summary therefore if an Article 4 Direction is being made it will depend upon two main things as to whether or not compensation is payable. Firstly the nature of the PD rights being withdrawn and secondly whether you are using an immediate or non-immediate direction.

If the direction covers the rights prescribed in Regulation 2 of the 2015 Regs and the notice is given in the manner set out in regs 3 and 4 then no compensation will be payable.

If it is not prescribed development then the time limits in the 1992 regs apply.

If it is prescribed development but it is not withdrawn in the prescribed manner then the provisions for time limits of Section 2A of the 1990 act apply.

I hope this provides more clarity to a complicated set of statutory provisions.