

For information**Bills Committee on Town Planning (Amendment) Bill 2003****Planning Application Systems
in the United States of America and the United Kingdom****Purpose**

At the Bills Committee meeting on 3 December 2003, members requested the Administration to provide information on the town planning systems in the United States of America (USA) and the United Kingdom (UK) in respect of planning permission and third party review. This paper provides the requested information.

Planning Application Systems in the USA and the UK

2. A comparison of the planning application systems in the USA and the UK is attached at **Annex**.

General Background

3. In the UK, the planning system is mainly governed by the Town and Country Planning Act and the development order made under it, including the General Development Procedure Order (GDPO), the General Permitted Development Order (GPDO) and the Use Classes Order (UDO). The Town and Country Planning Act provides that planning permission is required for the carrying out of any 'development' of land, and 'development' includes building or other operations and material change of use. The GDPO sets out the detailed procedures for dealing with planning applications and enforcement. The GPDO (Schedule 2) specifies certain classes of developments that do not require planning approvals, such as enlargement and extension of a dwelling house up to a certain size and change of use from, say, restaurant to shop or from general industrial or storage purpose to business use. The UDO specifies classes of use of buildings or other land for the purposes of the Town and Country Planning Act, under which certain operations/uses or a change of use within the same class will not be taken as involving development, and therefore do not require planning permission. Planning policies are set out in development plans prepared and adopted by local planning authorities within the framework of national and regional policies.

4. In the USA, the planning system is generally governed by state law and operations can differ from state to state or even from city to city within the same state. Taking California and District of Columbia as examples, the individual city's Municipal Code or Zoning Ordinance sets out the general zoning provisions such as the permitted uses (similar to Column One uses in the notes of our outline zoning plan) and conditional uses (similar to Column Two uses) in a particular use district (similar to a zone on our outline zoning plan). The Code also specifies detailed development standards including permitted maximum floor areas, building height and bulk, setbacks and parking requirements for each use district. Any variance from the standards or development of a conditional use within a particular use district would require a development permit from the city council.

Public Participation

5. In respect of public participation in the processing of planning applications, the provisions proposed in the Bill are similar to the approach in the UK in that public are invited to submit written comments on planning application to the local planning authority prior to its consideration. However, a majority of minor applications¹ need not be submitted to the Planning Committee for consideration, the planning officer is required to take into account the written comments in deciding on the application. For cases submitted to the Planning Committee for consideration, any persons including the applicant and the general public may attend the meeting. However, the opportunities for making representations at the meeting are relatively limited when compared with the open hearing in the USA and some local councils may require pre-registration of the persons who wish to speak at the meeting. In any case, there is usually limited time (five to ten minutes according to some councils' guidelines) for making representations by the applicant or the public.

6. In the USA, whilst the detailed procedures for dealing with planning applications may differ from one state to another, the general requirements of notifying the adjoining neighbours (usually within 300 feet of the outer boundaries of the application site) and publicizing the public hearing are the same. All applications for development permits² including those determined by the Director of Planning are considered at a public hearing at which both the applicant and objectors

¹ For example, 80% of planning applications in Birmingham are determined by a public officer under delegated authority.

² Some cities like San Francisco have provision for the Director of Planning to have the discretion to determine applications for variances involving less than 10% deviations from the development standards set out in the zoning ordinance without calling for a public hearing.

may attend and make representations. Given the timing for determining planning applications in the USA is relatively loose, there is less restriction on representations to be made by the applicant or the public at the hearing, and the hearing can be adjourned if necessary.

Third Party Appeal

7. There is no provision for third party appeal in the UK whereas in the USA, any person within the consultation area (usually within 300 feet of the application site in most cities) can file an appeal against the decision on a planning application. The permit given shall not have effect until the period for appeal has lapsed. In considering a reform of the planning system in the UK in 2000, there had been heated debate on the third party appeal issue. The government eventually decided not to pursue it because it was considered necessary to strike a proper balance of ensuring a fair system whilst at the same time avoiding delays in implementing development which would bring benefits to the community in terms of homes, jobs and revitalizing neighbourhoods. It was considered that the planning system already gave the public ample opportunities to participate in the planning process through consultation on development plans and publication of planning applications, and there was always the right to challenge any planning decisions by a local planning authority by seeking a judicial review. Nevertheless, the government decided to amend the GDPO to enhance the transparency of the system by requiring the local planning authority to give reasons and provide a summary of the relevant policies when granting planning permission to a development.

Third Party Review in the Hong Kong Context

8. The planning application processes in the UK and USA are basically two-stage processes, i.e. application and appeal. But in Hong Kong, there are three stages, i.e., application, review and appeal. If time has to be allowed for review and appeal by third parties, it would likely result in uncertainty and substantial delays to development. Based on the provisions under the existing ordinance and normal processing time of appeals by the Town Planning Appeal Board, there could be a minimum delay of 12 months if both third party review and appeal are allowed (provided no deferment is requested from either party).

9. Furthermore, some fundamental problems relating to third party review or appeal would need to be addressed. In particular, there should be sufficient

safeguards against vexatious and frivolous appeals which may result in possible abuse of the system. Some delays in development would be inevitable regardless whether an appeal is subsequently lodged as time has to be allowed to lapse before the development can be implemented. It would therefore add to the cost and uncertainty of development. There is also concern in some overseas countries where third party appeals are practiced that major planning decisions would be left in the hands of the appeal body rather than the planning authority.

10. We need to strike a proper balance between public participation and efficiency of the planning system. The third party appeal is a complicated issue that requires further consultation and discussion with key stakeholders and careful assessment on resource implications.

**Housing, Planning and Lands Bureau
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Comparison of the Planning Application Systems in Hong Kong, the UK and the USA

	<u>Hong Kong</u>	<u>United Kingdom</u>	<u>USA (California)</u>
Requirement for Planning Permission	Permission may be granted (for Column 2 uses) in accordance with the provisions of the relevant statutory plan	Permission required for the carrying out of any development unless permitted in accordance with the General Permitted Development Order	Development Permit required for conditional use and any variance of the development standards set out in the Zoning Ordinance
Decision-making Body	Town Planning Board (TPB)	Local Planning Authority (or Secretary of State for call-in cases)	City Council (in cities) or Board of Supervisors (in counties)
Delegation of Authority	Planning Committee or Public officer (for minor amendment to permission previously granted by TPB)	Planning Committee or usually Development Control Sub-committee or planning officer for minor cases*	Zoning Commission (or Planning Commission) or Zoning Administrator (Director of Planning) for most development permits involving variances of the development standards.
Owner's Consent/Notification	Under the Bill, the applicant is required to seek owner's consent or notify the owner	Applicant is required to certify: <ul style="list-style-type: none"> - he is the sole owner; or - he has notified all owners; or - he has taken all reasonable steps to notify all owners but unable to do so (provided that a notice has been published by him in a local newspaper) 	Consent of all owners or a 'qualified tenant' meaning the exclusive tenant under a recorded lease with a remaining term of at least five or more years is required
Publication of	Under the Bill, TPB is required to	Local planning authority to publish	Only notice of public hearing is

	<u>Hong Kong</u>	<u>United Kingdom</u>	<u>USA (California)</u>
Application	publish all applications for three weeks for public comments by posting site notice or publishing notice in newspaper	all applications by posting site notice for 21 days or written notification to adjoining owners; and newspaper advertisement (for major developments [#])	given by advertising in newspaper, posting site notice and writing to adjoining owners (within 300 feet of the application site)
Time for Consideration of Application	Maximum two months	8 weeks or such extended period as agreed between the applicant and the authority stipulated under the GDPO Applicant may appeal for non-determination if decision is not made within the prescribed period	Not all city councils have specified a time limit in the municipal code. Within 60 days for variance cases and 90 days for conditional use applications after conclusion of the public hearing specified in San Francisco Municipal Code. 90 days on average quoted by some other city councils (e.g. San Jose)
Hearing of Application	The applicant shall be heard at the review stage (under s.17) and the appeal stage (under s.17B)	All meetings are open to public as required under the Local Government Act. Limited opportunities for both applicant and public to be heard at the committee meeting No committee meeting for cases determined by planning officers	All cases to be considered at a public hearing Both applicant and public shall be heard

	<u>Hong Kong</u>	<u>United Kingdom</u>	<u>USA (California)</u>
Review	Applicant can apply for a review of the TPB's decision within 21 days of notification	No provision	No provision
Appeal	Applicant can appeal within 60 days of notification of the Board's decision	Only applicant can appeal within 3 months of the expiry of the 8 week period or notification of the authority's decision	Applicant or any property owner or tenant within the consultation area (i.e., 300 feet of the application site) may appeal, subject to a fee, within 10 days of notification of the decision
Appeal Body	Independent Town Planning Appeal Board	Planning Inspectorate appointed by Secretary of State	Planning Commission appointed by City Council or Board of Supervisors

* Minor cases include most of the cases involving alteration and extension to dwelling houses and change of use where no objections have been received in respect of the application. In addition, most refusals of planning permission are also dealt with by the public officer under delegated authority if the proposed development is clearly not in accordance with the council's planning policies and practice.

Major developments are defined under the GDPO to include housing development involving 10 or more dwelling houses or over 0.5 hectare of land, provisions of building(s) involving 1000 m² or more floor space, other development on a site of 1 hectare or more, winning and working of minerals and waste treatment, disposal, storage and processing facilities.

