

Definitions of Development

Whether something needs planning permission will depend on whether it is “development” under the planning acts. There are two main limbs to the general definition of development, being operational development, and change of use. The specific definition of development is set out in S.55 of the 1990 Act where it is defined as:

- (a) The carrying out of building, engineering, mining or other operations, in, on, under or over land (operational development)
- (b) The making of any material change of use of any buildings or other land (change of use)

Operational Development

Operational development is where operations result in some physical alteration to the land or buildings itself, as opposed to changes of use which do not interfere with the actual physical characteristics of land. This relatively simple concept has however been the subject of much legal discussion over the years. Operational development may be divided into four categories:

1) Building Operations

This refers not only to the construction of a new building but also to alterations or extensions to existing buildings including the partial demolition of buildings. It also includes work which is normally carried out by a person in business as a builder.

2) Engineering Operations

Although the 1990 Act contains no statutory definition, an engineering operation has been described by the courts as “An operation which would generally be supervised by an engineer”, but does not actually have to be supervised by an engineer. The reshaping of land and movement of earth is commonly within this definition.

3) Mining Operations

Again, there is no statutory definition of mining operations in the 1990 Act, but they are defined in the General Permitted Development Order 1995 as “the winning and working of minerals in, on or under land, whether by surface or underground working.” Although the extraction of minerals is more akin to a use of the land in respect of it being a continuing activity, the courts have held that each shovelful extracted from the land is a mining operation in itself, and constitutes a separate act of development. Therefore lawful use cannot be accrued for mineral extraction.

4) Other Operations

This is a catch-all for physical alterations to land/buildings which do not fit within the other categories but have a material effect.

What does NOT constitute development:

The following do not constitute development:

- Internal works or works which do not materially affect the external appearance of a building (other than listed buildings)
- Works by the highway authority within the boundary of a road
- Works to sewers
- Use of existing buildings in the garden incidental to the enjoyment of a dwelling (unless it creates ancillary accommodation)
- Use for agriculture or forestry
- Uses within the same “use class” within the Use Classes Order