MAY 2020

Friends of the Earth

Briefing

Planning Applications: a campaigner's guide

This guide is designed to provide some basic information to help you respond to a planning application. It should be read alongside Friends of the Earth's guide to the English Planning System, Local Plans, Public Inquiries and Environmental Impact Assessments. At the end of the guide is a glossary, which lays out the meaning of all of the specific planning terms and phrases referred to in the guide.

How the guide works

This guide is divided into 3 parts:

Part A: "Development management" explains how councils manage and decide on applications for development in their areas;

Part B: "The ins and outs of planning" provides brief detail on other relevant aspects of the planning system; and

Part C: "How to fight an effective planning campaign" provides general advice and guidance on how to fight an effective campaign against an application. This section includes a glossary of key terms.

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Part A: Development Management

What is a planning application?

If you want to develop land for things like housing, shops and industry, or carry out engineering works such as minerals extraction (for example fracking or quarrying), you need planning permissions. In most instances, this means submitting a planning application to the local planning authority (normally the local council), who can then decide whether the development should go ahead.

Why should I be interested in planning applications?

If you want to have a say on the future of your community and ensure the best kind of developments happen (and prevent the worst), you need to be involved in the planning process. The planning system is one of the key ways we as citizens can implement our vision for sustainable development. If used properly, the system can ensure that new developments help reduce greenhouse gas emissions (through opting for renewable technologies), achieve high standards of energy efficiency, and reduce the need to travel.

You and your community have the right to be involved in the way that local planning decisions are made. Your voice needs to be heard just as loudly as those of the development industry so that decision makers can make better and more informed decisions on whether proposals should be granted permission. After all, local people have a wealth of knowledge and experience to contribute.

So, tell me how the planning application works

The process of dealing with a planning application is a bit like a horse race. Each application has to jump over a number of hurdles before it reaches the finish line and gets either approved or refused. The road map below provides an outline of the key stages a planning application has to pass through. Don't be put off by the complexity – you only have to worry about a few key stages where you can make a real difference to the outcome.

Please note:

There is a **separate process** for dealing with Nationally Significant Infrastructure Project (NSIP) applications (such as Heathrow expansion) and the Development Consent Order (DCO) regime under the 2008 Planning Act. Please consult our separate briefing (forthcoming) for more detail.

Development management procedure

Pre-application. Discussions between applicant and council. Advice sent to applicants and *may* be published on council website.

Application. Application is made using standard application form (App1). This must include:

- plans (site location/area plan, elevations etc.)
- description of development proposed
- certificate that applicant has notified owners and tenants 21 days prior to application
- the appropriate application fee
- other documents required to make it 'valid'

A council can refuse to determine an invalid application or one previously dismissed on appeal/ call in which is not materially different.

Application either:

Outline – with later application(s) for approval of "reserved" matters (see page 7 for further detail)

or

Full – with all the details attached.

Register. All valid applications go onto the council's public register.

Publicity

Minor applications: Website and 21-day site notice
Major/EIA/Departure applications: Local newspaper advert and 21-day site notice for applications (see explanation below).

N.B. Many local authorities also undertake routine neighbourhood notification (check your local authority's Statement of Community Involvement or SCI).

Consultation. Usually 21 days to respond. Provisions for public consultation are outlined in your local authority's Statement of Community Involvement (SCI).
Statutory bodies must be consulted on certain issues (eg, the Highways Agency for a proposal likely to generate traffic on a motorway or trunk road). National planning guidance lists statutory and non-statutory consultees - see "Further Reading" below.

Notification to Secretary of State.
The Secretary of State (SoS) must be notified where the local planning authority intends to approve significant applications:
- in the Green Belt
- for a large retail, office or leisure use outside a town centre
- in or affecting a World Heritage Site
- leading to the loss of a playing field
- in a flood risk area. Once the SoS has confirmed receipt of the necessary information, the LPA can grant permission if the SoS has not responded.

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Decision. The application is determined in accordance with the local plan and, where relevant, neighbourhood plan and spatial development strategy, such as the London Plan, having regard to national policy. A decision should normally be made within 8 weeks, 13 weeks (if a major project) or 16 weeks (with Environmental Impact Assessment).

→ **Granted** – the development can begin within 3 years, after which the permission expires (the local authority can however set a shorter period).

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Refused. LPA must give clear and precise reasons.

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Appeal (applicant only). Made to SoS within 6 months (for most types). In practice, the Planning Inspectorate handles most appeals on their behalf. Appeals are determined by either written representations, informal hearing or public inquiry (inquiry procedures rules apply).

→ No third party appeal allowed to the public. **Judicial review** is the only option (within 6 weeks).

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Appeal Decision. A Planning Inspector will make most decisions, although in certain circumstances the SoS will determine the appeal themselves (known as a "recovered" appeal), usually where the proposal raises a matter of "national interest".

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Legal Challenge. Applicants can seek a statutory review in the High Court *within 6 weeks* of a planning decision being made. Grounds to challenge decisions are limited to the following, that:

- The Decision was not within the powers of the Town and Country Planning Act 1990
- Procedural requirements not met

The court's decision either quashes or upholds the previous planning decision.

The 5-step guide

Step 1: pre-application discussion

The UK government encourages local councils and developers to have informal discussions about a future development before making a planning application. In theory this allows changes to be made early on, before too much time and money has been spent on drawing up plans. These meetings are viewed by some with suspicion, as they are not open to members of the public. Planners cannot, however, formally indicate whether or not the developer's proposal would gain approval at this stage and will instead give a non-binding officer opinion.

It can sometimes be difficult to find out whether meetings have taken place. But if you know a site is up for grabs and you think the planning department is not telling you, one way to find out if discussions have taken place is to make a Freedom of Information/ Environmental Information Request (refer to our briefings on "Your Right to Know"). Exemptions apply to what may be disclosed, for example, commercially sensitive information is likely to be withheld. However, some local planning authorities do make it clear that they intend to publicise the content of pre-application discussions, by way of a pre-application report at the planning application stage.

National planning policy and guidance encourage pre-application discussion between developers and local authorities (including statutory consultees where possible). Local authorities should also encourage developers/ applicants to engage with the local community, with their Statement of Community Involvement (SCI) usually providing additional consultation requirements for the local area.

Statements of Community Involvement (SCI)

Each local authority has the flexibility to decide for themselves how they propose to involve the local community when considering planning applications. They should set out their approach in a document known as the statement of community involvement (SCI). It can be useful to look at this statement to check the council is doing what they said they would do in regard to the consultation process and in regard to planning applications. Check your council's website.

NB: Pre-application consultation with the local community is a statutory requirement for onshore wind proposals. However, it's considered good practice for larger developments.

Step 2: the application is made

A planning application is comprised of a form (usually either filled out on a printed copy or online via the **planning portal**) and any supporting information, such as maps showing site location, site area and scheme plans (such as illustrations or diagrams). These documents are then submitted to the local planning authority for consideration. The applicant/developer must pay an application fee and sign documentation confirming that they have served notice to owners of the land within the legal timeframe. This ensures that anyone whose land is affected by the proposals has been properly informed.

The planning authority will check that the application is valid and all necessary documentation has been provided. They will use an "application validation checklist" to

do this, and, provided it is valid, record the application on the Planning Register. As a public document, members of the public have a right to view and comment on the planning application. Once on the register, the clock starts running on the determination process.

The determination period is the time allowed for the local authority to decide on the application.

What types of planning permission can be sought?

Set out below are the different types of permissions that can be sought by applicants/ developers:

1) Full planning permission: This is the most common, where full details of the proposal (eg, location, design, supporting statements) are submitted to the council who decide whether or not to grant planning permission. If granted, the Decision Notice is a legal document allowing the development or operation to take place – subject to time limits and planning conditions which the developer will have to get signed off (discharged) by the council before, during and after commencing site works. (NB Pre-commencement conditions can now only be included if the applicant has consented).
2) Outline permission: An outline application tests the water as to whether the nature and scale of a development proposal is acceptable without the need for a developer to submit detailed (and costly) plans, reducing risks for developers. For an outline application the applicant submits fewer details than they would for a full planning application. The application should show a redline boundary around land they wish to develop and include an indicative description of the development being proposed. More detail can be submitted if required. If outline permission is granted, then all other matters (eg, design, appearance, layout, scale, landscaping, and access) are considered as separate applications at a later stage – known as "reserved" matters. These will need to be approved and conditions attached before development can start. Once outline permission is approved, it's quite rare for the subsequent applications on the detail to then be refused, but it can happen. It is common for a considerable amount of negotiation to take place between the applicant and planning authority over reserved matters and there is usually some scope for the community to influence these through the consultation process.
3) PIP/ Technical Details Consent: Permission in Principle (or PiP) is where the principle for housing development has already been consented to by the council for an existing brownfield site without the need for developers to apply for outline consent. Since 2018, local authorities have been asked to compile "brownfield registers" and then decide which sites (if any) to give PiP status (ie, officially granting the principle of housing on a particular site). With the principle agreed, developers who want to carry out development on a PiP site then have to apply for a "Technical Details Consent" (similar to reserved matters above) to iron out such details as layout, scale, numbers, landscaping, design, access etc. PiP remains a relatively new concept (see Government Guidance) and is seen as a way to reduce developers' cost risk, as they do not have to apply for planning permission

for a site with PiP, encouraging more housing delivery. PiP gives developers a means to bypass the scrutiny of the planning application process.

The insertion of a PiP site into "Part 2" of the Brownfield Register is subject to either a 14- or 21-day consultation (depending on whether notification is via site notice or whether it's been publicised on the council's website). These decisions must consider what the Local Plan (see Glossary) says. The Technical Details Consent is also subject to similar timeframes. As of July 2019, few authorities have produced a Part 2 Brownfield Strategy, hence few sites currently benefit from PiP status.

4) Permitted Development/ Prior Notification/ Approval & Technical Details Consent: Permitted Development is explained in "The ins and outs of planning" section below. In short, this is where homeowners, farmers and statutory undertakers (gas, water, electricity companies) and others (anyone) can bypass the formal planning application route for certain types of development, such as house extensions, new barns, erecting broadband cabinets, and some changes of use (for example turning offices into homes).

In many cases (for instance erecting fences or sheds) no submission to the council is needed, but in some instances prior notification to the council is needed so the council can approve the proposals. These instances include development such as a farm barn or forestry building works, demolition, domestic air source heat pumps, larger housing extensions. It's best to notify the council of the intention to carry out such works in most cases.

How long does it take a planning authority to decide?

Local authorities must approve applications within set timeframes unless a longer period has been agreed with the applicant/ developer. These are as follows:

- 8 weeks: most minor full/outline planning applications (eg, small group of houses, commercial premises, extensions, and small wind turbines).
- 13 weeks: major applications (eg, 10 houses or more; site of 0.5 hectares or 1000m^2 or more).
- 16 weeks: Environmental Impact Assessment (EIA) proposals (those that have the potential for significant environmental effect and have been screened-in by the planning authority and require an environmental impact assessment).
- PiP: 5 weeks (counting from the day after the local authority has received a valid application).
- Technical Details Consents: 10 weeks (major development) 5 weeks (for other forms of development) or 16 weeks (EIA).

Local planning authorities (LPAs) are expected to keep to the aforementioned timescales. If they fail to meet targets for making planning decisions, they face the threat of being labelled as "underperforming" and being placed under "special measures" by the Secretary of State for Housing, Communities and Local Government (MHCLG).
Where an authority has been designated as underperforming, they face the risk of losing

the ability to decide planning applications, as the Planning Inspectorate takes over responsibility for decisions when an authority is placed under "special measures". While the government has written to several underperforming authorities, and has intervened in plan-making, it has yet to take over the planning functions of any LPA.

JUST A SECOND! If the application you're looking at involves an *Environmental Impact Assessment (or EIA)* you should read our separate EIA guide, especially as these types of application are subject to different regulations, considerations and timeframes. In summary:

- EIA is a process which must be carried out for development that has the potential to introduce a significant effect on the environment.
- If a proposal is for EIA is due to be determined, then an Environmental Statement (ES) should accompany the EIA application together with supporting documents.
- The applicant should aim to formally agree the scope of the ES with the local planning authority (with input from statutory consultees) to demonstrate how the development will not introduce significant effect to air, water, landscape, biodiversity, noise, heritage (et al).
- English EIA planning regulations were updated in 2017 to meet the changing requirements of the updated EIA (EU) Directive.

If you're unsure about the type of planning application submitted, the most important thing to ask your local council is how long will the determination period be? It is important to remember that the determination period is the time allowed for the local authority to reach a decision on the application, not the time available for people to comment on the application. The timeframe for public consultation is normally 21 days (or 14 days where published in a newspaper), however late comments from statutory consultees (or even sometimes public comments) may be considered by the planning authority, as long as the planning officer considers it pertinent to making their recommendation.

How will I find out if a planning application has been made?

The first place to look is your council website, where you will be able to search the register of planning applications. The applicant is required to notify all owners/ tenants/ occupants of the proposed site before submitting an application. Once validated, the local authority is under a duty to publicise the planning application.

As a minimum, local authorities are required to put up site notices near to the application site and/ or the nearest neighbours via letter.

The **Town and Country Planning Development Management Procedure Order (DMPO) 2015** sets out the different consultation requirements for different types of application (a useful summary is available in **Table 1 of "Consultation and pre-decision matters"**).

Site notices should contain the council's website address, specifically those pages which deal with planning applications (usually via the Public Access system). Local authorities must also advertise certain types of application in a local newspaper (eg, major

applications, EIA, departure applications and applications for Listed Building and Conservation Area consent).

Although not a legal requirement, some authorities encourage applicants to organise public meetings for major new development proposals in accordance with their Statement of Community Involvement (SCI) – see Glossary. Some people feel that developer-led forums compromise the objectivity of the participation exercise, so it's important to keep a close eye on any attempt by the private sector to manipulate the process in an unfair way. On the other hand, early engagement in consultation exercises can in some circumstances provide an opportunity to help shape and influence proposals in a meaningful, positive way, as well as reiterate and explain your concerns about why a scheme should not go ahead or, if it does go ahead, should be modified to address your concerns.

Responding to applications

The public normally has 21 days to comment on a planning application from the date of the site notice (or 14 days where published in a newspaper). In practice this is a relatively short period of time compared to what is needed to digest what may be a suite of highly technical reports and to then formulate a robust representation. If you need more time to comment on a proposal, contact the planning officer responsible for dealing with the application to see if you can agree a longer period – making sure you get confirmation in writing (eg email).

Remember that the earlier your planning concerns are fed into the process, the more likely they are to be taken seriously. However, at the same time, try and keep an eye on the council's planning application portal for new evidence and comment on the proposal, including any relevant objections from statutory consultees, arguments and evidence you can draw on and mention in your response that might help bolster your case.

Keeping your planning objection relevant

If you are objecting to or supporting an application, it is useful to include material considerations relevant to the application. You should check to see if the proposal accords with existing planning policy (check your Local Plan) and if it doesn't, spell this out in your letter/ email. If objecting, try to also comment robustly on negative environmental, social and economic factors, such as potential damage to wildlife sites, watercourses (including ground water), potential highway safety issues, unacceptable loss of amenity, landscape/ visual, noise, smells/ fumes/ dust and any loss of daylight.

Objections need to be "material" to the application (ie, relevant). As planning is concerned with the public good, the following matters **should be avoided in** your response: impact on house prices; behaviour/ personal knowledge of the applicant; the principle of development (in the case of reserved matters/ PiP consent application); matters covered by Building Regulations; issues arising from the construction period covered by Control of Pollution Act; private issues between landowners; and loss of private view.

Step 3: The officer's report

All the representations by the public, along with other issues material to the case, will be summarised in the planning officer's report. This can be a lengthy document which tries

to lay out all the key impacts of the new development and how they relate to local and national policy. The officer will appraise the scheme, taking into account evidence, representations, planning policies and other relevant considerations (known as material planning considerations). The report will finish with a recommendation to either refuse or approve the planning application. Planning officers are obliged to fairly summarise the case for and against development and must reach a reasoned judgment based on the facts of the case.

Step 4: The decision

There are two ways in which a planning decision can be taken: under delegated powers or by planning committee. If it is a delegated decision, the application will be decided by the officer with responsibility for delegated decisions within the LPA, typically the Head of Planning or another senior officer. Delegation usually only applies in certain circumstances and/ or for certain types of development, such as minor applications. Detail of the delegation procedure can be found in your council's constitution/ scheme of delegation.

What is the planning committee and what part do elected councillors play in the decision?

For larger or more controversial applications, the final decision on whether a planning application is refused or approved is **not** made by planning officers (unless delegated), but by a group of local councillors comprising the planning committee. Members of the planning committee should take an objective view of the application and the committee's decision should take into account the officer's recommendation.

Many local councillors tell their electors they are not allowed to discuss planning applications in case they are judged to have "predetermined" their decision. This is not necessarily the case, though some council codes of conduct advise against planning committee members discussing applications with members of the public ahead of the committee meeting. Planning committee members may decline to discuss a planning application due to the risk of their being perceived as predisposed towards a particular outcome. Councillors who do not sit on the planning committee are free to discuss applications with members of the public. In any discussion members of the planning committee must remain open to different arguments and evidence keeping "an open mind" right up to and during the planning meeting itself.

Local councillors have an absolute duty to listen to the views of their electors. However, codes of conduct in local government require councillors to behave in certain ways.

Check your local council's code of conduct (which is likely to be included within your council's constitution). It is unlikely they will give you a "yes" or "no" or answer on their position, or sign any pledge/ petition either "for" or "against" a development, as to do that would suggest they have a "closed mind" on the issue. Friends of the Earth's briefing note on predetermination also explains how good local councillors (and committee members) can listen to your views without predetermining their decision.

How do councillors reach a decision?

The planning committee must consider all relevant information which is "material" to a particular application. Despite what some planning officers say, anything which relates to the use and development of land is capable of being relevant and material to a planning decision. While a whole range of issues are relevant, from the loss of important dog-walking space to the effect on global climate breakdown, some matters will carry "greater weight" than others. As stated above, matters such as impacts on house-prices, the loss of a private view, or applicant's background are not generally considered material planning reasons.

> The most important thing in reaching a decision on an application is what the Local Plan says. In a nutshell, a Local Plan sets out what and how much development should go where. Each plan must go through consultation and an Examination in Public (see Glossary). You can be involved in this process as a member of the local community. In reaching a decision, there's a legal presumption in favour of what is set out in the Development Plan (see Glossary). So, if an application for housing is proposed on a piece of land already identified for housing in a Local or Neighbourhood Plan, it's more likely to be approved. This is known as the "plan-led" system and means that the Development Plan should form the starting point for a decision, unless "material considerations" indicate otherwise. See Glossary (or our **Local Plans Guide)** for more information on the significance of, and different types of, plan.

On the other hand, an application that contravenes the Development Plan is much more likely to be refused. These are known as departure applications – where a proposed scheme "departs" from the policies of the Development Plan – and must be advertised in a local paper and via site notice for 21 days. In these instances, the applicant will need to provide an extremely persuasive case as to why development should take place in contravention of the plan. In the case of departure housing schemes, applicants will usually cite material considerations to support their case, such as the Local Plan being out of date, national policy, local or national housing need or other social or economic benefits the scheme would introduce.

In some cases, the Development Plan will not be the most important consideration. Other material considerations may exist that the plan does not address, and plans cannot cover all such considerations in any event as there are just too many. There might, for example, be a rare animal species present on site which has legal protection, and this might outweigh the provisions of the Development Plan.

As a general rule, the older the plan, the less "weight" it carries. For example, developers will often argue that a plan or policies are out of date. As a result, their proposal should go ahead because changes have taken place since the plan was adopted, such as a need or demand for a particular type of development and/ or national policy appearing to lend support to their proposal.

Where there is a conflict between national and local policy, the former usually takes precedence. The National Planning Policy Framework (NPPF) requires local planning authorities to maintain a 5-year supply of housing land. Where they fail to do this, they may lose their ability to refuse a housing scheme that is contrary to their Local Plan, for example due to the location, scale or nature of the proposal being out of kilter with what the plan says. The 5-year supply relates to the delivery and availability of housing sites in the district/ area at a particular time.

It's important to bear in mind that a draft plan – that is, a new or revised plan which is being drawn up – could also have a bearing on your (or the developer's) case and is considered material. The closer the draft plan is to being adopted, the more relevant it is and more weight it carries. However, where a Local Plan is not in place, then the NPPF, and what is known as the "presumption in favour of sustainable development", applies. In practice, this is more a presumption in favour of "development" rather than sustainable development – making it harder for planning authorities to refuse housing applications where their plan is not up to date, the area lacks a 5-year housing land supply or their housing delivery is substantially below the requirement.

Ultimately, the planning committee's decision is based on considerations of the factual (and technical) information supplied with the application and the proposal's compatibility with the Local Plan, national policy and any relevant Neighbourhood Plan or Strategic Plan (where applicable) unless material considerations indicate otherwise. There may well be a political element also guiding the committee's hand, but the council's decision making should be robust, clearly justified, and open to scrutiny (if needed).

Using planning policy

As well as using material considerations, you should always have a good look at your Local Plan (and, if applicable, Neighbourhood Plan) to see if the application fits with the policies these contain. You will likely find your Local Plan contains a whole range of policies, some of which may appear contradictory. In most cases it is usually possible to use local planning policy to support your case, drawing for example on policies on biodiversity, protecting green space and amenity, design, and climate change. Relating your objections or, where applicable, comments in support of a scheme to local and national policy gives them more credibility in the decision-making process. National policies set out in the National Planning Policy Framework (NPPF) together with guidance can be found on the MHCLG website: http://planningguidance.planningportal.gov.uk and also Friends of the Earth's Local Plans Guide.

The Final Decision

The planning committee has several options available when it makes its decision. It can:

- **Approve** the application subject to certain **conditions** set out in the accompanying Decision Notice (see "the ins and outs of planning" section below).
- **Defer** the application to a future committee date if the committee feels the need for more information from the applicant, statutory consultee and so forth.
- **Refuse** the application with suitable reasons for refusal in the Decision Notice.

When approving or refusing a planning application, the local authority must provide a reasoned planning justification for their decision to both the applicant and the public. Formal approval takes place once the Decision Notice is issued. There is usually a short period of time between the planning committee's resolution to grant consent and the issuing of the decision notice. However, for large or complex schemes with conditions and agreements to negotiate it can take several weeks, months or in some cases years from the committee's resolution for the authority to issue a decision notice.

Step 5: the appeal

The applicant has up to 6 months to lodge an appeal against a decision to refuse their

planning application. Appeals are made to and heard by the Planning Inspectorate who deals with appeals on behalf of the Secretary of State.

Appeals are heard by a Planning Inspector via public inquiry, a hearing or decided by written representations (the latter being the most common method of appeal).

The local authority has a duty to publicise planning appeals and will usually upload appeal documents on their website and notify anyone involved in the original application wishing to take further part in the appeal process. These "interested parties" are usually those who had an interest in the original application (such as a parish council, amenity group, residents association or you) and **have a right** to either appear at the hearing or inquiry or submit written additional representations.

The decision about whether to hear a case in public (eg, an inquiry or a hearing), or via written representation, is made by the Planning Inspectorate after having considered the views of the applicant and the local authority. Timescales for applicants to make appeals range from 28 days to 6 months.

Third parties have no right to appeal against the granting of a planning permission in their area. Friends of the Earth is, however, part of a long-running campaign with others (including the Town and Country Planning Association – see pg. 97 of link) to try and achieve such a right in order to make the planning system fair for all participants. Attempts have been made in other countries to level the playing field for local communities. Ireland, Denmark, Sweden, and Australia already have a form of Third Party Right of Appeal, resulting in some refusals, condition amendments etc. We will keep campaigning on this community right to challenge, an approach which is strongly aligned with and based on Aarhus Convention principles (see Glossary).

The legal challenge

In some limited cases third parties can use the courts to challenge planning decisions. This is through the process of judicial review, where the courts examine if a procedural error has taken place in the process of making a decision. Judicial review has been used by individuals and community groups to overturn unfair decisions, but this route is potentially costly and complex. Applications for judicial review must be made within six weeks of the date of the decision. See Friends of the Earth Judicial Review briefing for further information.

The local government ombudsman

Third parties can also complain to the local government ombudsman about the process undertaken in making a planning decision if they feel this has been flawed. The Local Government and Social Care Ombudsmen has the power to investigate decisions and to deliver judgments of maladministration against local authorities who have not done their job properly – including if you think the council has acted unreasonably/ unfairly. The ombudsman cannot however overturn a planning decision.

Part B: The ins and outs of planning

Designations

Land designated through legislation, national or local policy due to particular characteristics or sensitivities, for example landscape, ecology, green belt, flood risk, historical, military, mining or other reasons is subject to restrictions regarding what development may or may not be permitted. Local Plan policy maps will show these designations, as well as allocations for housing, employment, and other uses. Examples include:

- Green Belt
- Conservation Areas
- Best and Most Versatile (BMV) Agricultural Land (see Glossary)
- Flood Risk Zones (1,2 And 3(A+B)
- Air Quality Areas
- Local Green Space.

Protected sites and areas

Protected sites and areas are land designated for their landscape, nature, conservation, or geological interest. If a development is proposed either within these areas **or** is likely to impact on species using these areas, a developer will need to assess the impact on protected sites and areas and make sure they're protected in line with their status.
Protection of wildlife sites follows a hierarchy whereby internationally protected sites have the highest status and therefore receive (or warrant) the strongest protection, followed by national, then local sites. The developer will need to ensure they have taken the necessary steps where required, such as undertaking Appropriate Assessment (where a proposal is considered likely to have a significant effect on a protected habitat) and/or consulting Natural England. Protected sites and areas include:

- Special Area of Conservation (SAC)
- Special Protection Area (SPA)
- Ramsar wetland (wetland of international importance)
- Potential SPA, possible SAC or proposed Ramsar wetland
- Site of Special Scientific Interest (SSSI)
- Marine Conservation Zone (MCZ)
- Local Nature Reserve
- Local Wildlife Site
- Local Geological Site
- National Park or The Norfolk And Suffolk Broads (Article 2(4) Land)
- Areas of Outstanding Natural Beauty
- Heritage Coast

Tree Preservation Order

A Tree Preservation Order is an order made by a local planning authority in England to protect specific trees, groups of trees or woodland. When granting planning permission authorities have a duty to ensure, whenever appropriate, that planning conditions are used to provide for tree preservation and planting. It is important to note that the

potential effect of development on all trees is a material consideration irrespective of whether they are protected by Tree Preservation Order/ conservation area status, or not.

Planning gain

Planning gain is where a developer will offer significant benefits to the local community if a planning application is approved. Such benefit usually must be associated with the development and could mean basic highway improvements, the provision of affordable housing or community facilities, for example. Alternatively, off-site benefits can include financial contributions to transport schemes or the provision of new educational, community and recreational facilities.

These deals are secured through legal agreements, such as Section 106 (s106) or 278 agreements (see Glossary). In theory, agreements can lead to real benefits to the local community, but they are also often perceived to be a form of bribery whereby cash-strapped local authorities consent to developments they may have otherwise refused. Many local councils now write Local Plan policies requiring contributions from developers, which improves the transparency of the process. Agreements may in some circumstances make the difference between a scheme that may or may not be acceptable to the community, for example a housing scheme that provides, or fails to provide, affordable housing. You will need to decide this for yourself on a case by case basis. The bottom line is that the overall sustainable development of the community should not be compromised by the promise of planning gain to justify a fundamentally unsustainable scheme.

Community Infrastructure Levy (CIL)

A Community Infrastructure Levy is a way to extract financial gain from a development based on the extra burden it places on local infrastructure such as roads, utilities, schools, police, and social services. It applies to many types of new developments which create net additional floor space (usually where internal floor space exceeds 100m^2). CIL also applies to new residential units that provide less floor space, though exceptions include self-build units and social housing.

Each local authority – known as the charging authority – sets out a "charging schedule" for its area. The rate charged differs depending on the type of development and its viability in the area. CIL money is collected by local authorities, with the amount taken dependant on the charging schedule they have published and adopted. This schedule must identify the total cost of infrastructure they wish to fund – either wholly or partly – through the levy. It must also justify the proposed levy rates based on the need for the infrastructure, taking into account viability across the area. The CIL charging schedule is subject to public consultation to consider the types of development which are liable for the levy and the relevant rates for these development types and examined in public (EiP) by a Planning Inspector.

CIL can be used to fund a wide range of infrastructure, including transport, flood defences, schools, hospitals, play areas, open spaces, parks and green spaces, cultural, sports and healthcare facilities, schools, police stations, district heating and community facilities. Local authorities must spend the levy on infrastructure needed to support the development of their area. The types of infrastructure sought will be set out in the Local Plan and Infrastructure Delivery Plan.

While previous restrictions affected how CIL and S106 could be used, revisions to the regulations in September 2019 allow contributions from S106 an CIL to contribute towards the same infrastructure. This provides more flexibility to ensure that new infrastructure will be forthcoming (see PPG and reference section).

Similarly, changes also allow the pooling of contributions of more than 5 S106 obligations into a single infrastructure project – something that was not allowed previously. Both these changes increase the likelihood of securing the necessary funding and delivering the infrastructure. Finally, councils must produce infrastructure funding statements that include how much money they have collected in developer contributions and how the money has been spent.

Planning Practice Guidance (PPG) provides further reading on CIL. This area is constantly under review, so it's best to keep checking PPG for the latest position.

Call in by the Secretary of State

A "call in" refers to the Secretary of State's power to take a decision out of the hands of a local council and determine (decide) an application him or herself. The Mayors of London, Liverpool and West of England also have powers to call in certain applications considered to be of strategic importance. In London, applications which are called in are called "referred" applications**.** With the creation of new metro mayors and combined authorities, as part of wider devolution plans, call in powers may be extended elsewhere too, depending on the nature of the devolution agreement and whether it includes strategic planning. In reality, only a small proportion of applications are called in.

Planning appeals can also be called in by the Secretary of State, known as a "recovered" appeal.

Applications and appeals can be called in for any reason, however in practice the Secretary of State exercises this power on few occasions. Certain types of application must also be notified to the Secretary of State who then has 21 days to decide whether to call in. These include certain Green Belt developments, development outside town centres, World Heritage site development, playing field development or flood risk area development. Further specific detail is available in the Government's online Planning Practice Guidance on determining a planning application.

Anyone can ask for an application to be called in. Getting a controversial application called in can be an important campaign objective, because such applications are usually then heard by public inquiry facilitated by a Planning Inspector. This provides the opportunity to give oral evidence, submit written evidence and cross-examine witnesses. The Secretary of State decides whether to call in an application on published policy – particularly if the application:

- Has wider effects beyond the immediate locality
- Gives rise to substantial national or regional controversy
- Conflicts with national policy on important matters
- Involves the interests of foreign governments.

Further information on the criteria for calling in planning applications and recovering appeal is set out in a House of Commons Research Paper (no. 00930 – "Calling in Planning Applications" – January 2019).

In March 2019 the Secretary of State made clear that they will no longer give reasons for deciding not to call in an application.

Shale gas and oil development and fracking – applications, appeals and call in

A 2018 written ministerial statement (WMS) on Energy Policy (HCWS690) confirmed that the Secretary of State (MHCLG) is minded to call-in applications and recover appeals for gas and oil development from "underperforming" local authorities. This refers to authorities where 50% or fewer oil and gas applications were made within the statutory determination period (or such extended period as has been agreed in writing by the applicant).

The WMS also stated that the Secretary of State remains committed to scrutinising appeals for fracking proposals and that the recovery of planning appeals will continue for a further two years (from May 2018).

In November 2019 following a report by the Oil and Gas Authority, which found that it was not possible to accurately predict the seismic effects of fracking, Government announced a moratorium against issuing any further Hydraulic Fracturing Consents. The moratorium is to remain in place unless new evidence is provided.

It remains to be seen whether the industry will come forward with new fracking proposals while the moratorium is in place or how planning authorities will respond if they do. Hydraulic Fracturing Consent is a separate regulatory regime to planning, however planning authorities have a duty to ensure that the impacts of any scheme they approve would be acceptable and the schemes would not pose risks to health and safety.

As we understand, at the time of writing, only high-volume high-pressure fracking, such as was carried out by Cuadrilla in Lancashire, is covered by the moratorium. Acid fracking is not covered.

Planning conditions

Planning guidance states that "conditions can enhance the quality of development and enable development proposals to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects of the development."

Planning permission is nearly always granted subject to planning conditions, with the number and extent depending on the type, scale and longevity of the development being consented and potential for planning impacts. Conditions can cover start dates, working hours, noise levels, planning gain, landscaping, lighting levels, tree planting and retention, and are legally enforceable by the council.

Any failure of developers to implement conditions can theoretically mean the original consent is no longer valid, although unfortunately there is no legal requirement for planning authorities to take enforcement action and so the approach to remedying such "breaches of condition" varies from authority to authority.

Their protective nature only really works, however, if the conditions are a) well-specified, b) adhered to, c) amended by developers as little as possible and d) enforced where necessary.

Enforcement

Enforcement is one way that local councils can make sure that developers do what was agreed in the Decision Notice (including adhering to conditions) and take action where unauthorised development has taken place. If a breach of conditions happens or a developer starts to build without planning permission, then the council can take several different steps, including:

- serving a planning contravention notice which allows them to gain access to land and find out what is going on.
- serving an enforcement notice which can require the demolition of the structure which has been built without planning permission.
- issuing a temporary stop notice which forces the developer to stop work for up to 28 days.
- If all else fails, seeking an injunction – though this is an expensive legal process actioned by the courts and will be reserved for only the most extreme cases of planning breach.

It's up to the discretion of the Local Authority whether to exercise enforcement powers or not, and the developer can submit a retrospective planning application to gain permission for something they have already done. This may sound unfair, but it's perfectly lawful. The final option is to appeal against the enforcement notice (although there are only **28 days to appeal** against a breach of planning control). You should alert your council's enforcement team if you feel a developer in your area is breaching conditions of a permission, whether it be a housing development, fracking site or any other type of development about which you have concern.

Permitted development

Permitted development rights were originally introduced to enable those carrying out minor or certain essential works to bypass the formalities of a planning application where it would be out of proportion with the impact of the works carried out.

The General Permitted Development Order 2015 lists specific circumstances where statutory undertakers or utilities (electricity, gas, water operators, telecoms) can carry out repairs; householders can extend their homes; farmers erect certain types of barn and changes of use can be made from one type of building to another (for example, an office converted to a home) – all without the need to apply for planning permission. However, some types of permitted development (PD) require a form of technical details consent and/ or neighbour consultation (eg, large house extensions and changes of use).

Permitted development rights have been extended by the government in recent years to accommodate a wider range of operations and development, some far removed from the original intention. Most controversially in 2018 the government consulted on allowing exploratory drilling for shale gas to take place **without any need to make a planning application** (though government eventually decided not to pursue this approach). We continue to campaign against what we consider a fundamental erosion of the planning system.

In some places and circumstances, permitted development rights do not apply, especially where an Article 4 Direction is in force. The Article 4 Direction mechanism enables the Secretary of State or local planning authority to withdraw specified permitted development rights across a defined area, including some major city centres, where the permitted change from office to residential might otherwise dramatically reduce the availability of business premises. PD rights are also restricted in designated areas such as Conservation Areas, Areas of Outstanding Natural Beauty and World Heritage Sites.

Prior Approval is the consenting process used in instances where certain types of permitted development need to be considered further by the council, for instance farm shops or changes of use from office to residential. This allows the council to look at potential impacts the development may have and how, if necessary, these can best be mitigated. These impacts may relate to highways, access and safety, noise levels, contamination, and flood risk. Where impacts cannot be satisfactorily mitigated prior approval may not be forthcoming.

Part C: How to fight an effective planning campaign

Top tips for an effective planning campaign

An individual application for a large new development (such as a supermarket) or mining operation such as an open cast coal mine or fracking site can be a complex process and it is easy to feel overwhelmed when it lands on your doorstep.

Fighting the planning case and running a campaign can be a challenge but there are some key principles to keep in mind:

1. Be prepared

In order to mount the best planning case, you need to make sure you know about an application early on. You can find out about applications by:

- Checking your local council website
- Looking out for site notices in the area around the intended development site
- Checking the local press
- Talking to local councillors
- Getting a circulation list of new applications (usually available on the council's website).

Normally applicants for larger and more complex schemes will have held pre-application discussions with the council before they make a planning application. You can ask the planning officer if these discussions have taken place – under Freedom of Information regulations if necessary (NB they may however heavily edit transcripts/ meeting notes due to commercial sensitivities of the applicant).

Draw on evidence to support your case. Technical documents submitted during and after the application (including reports by statutory consultees such as the Highways Authority) and other consultation responses may contain material you can use.

2. Make Good Relationships

It pays to be on good terms with your local planners. Always try to meet planning officers face to face to make them aware of your concerns. They will also be able to explain local policies to you and may offer some additional context. It's also worth building links with other organisations, groups and individuals in your community who might share your concerns, including ward and parish councillors, the lead cabinet member for planning and members of the planning committee. Don't assume that the whole community will automatically support your campaign, as there are nearly always competing interests at play and different points of view.

3. Good communication

Make sure you have a clear message for the media and public about the negative impacts of the proposed new development. For instance, people may love supermarkets, but surveys have shown people do not want to lose their local shops. Yes, we need more homes, but they should be affordable, energy efficient and built in the right place. While opencast mining or fracking may in theory provide local employment and local multiplier effects for businesses, in practice workers may be brought in from outside the area and the planning impacts (such as dust, noise, traffic, noise, biodiversity, landscape and visual impact and greenhouse gas emissions) will usually outweigh such limited benefits.

4. Get them on their weakest points

It is important to focus your objections in complex planning cases. Rather than trying to say something about everything, you need to work out the key areas of objection and turn them into killer arguments. In major out-of-town developments traffic impact will be a big concern but so will, in the case of housing, the potential for communities to become isolated and car dependent. Where major out of town retail, leisure or commercial schemes are proposed, there will be impact on the **vitality** and **viability** of existing town centres to consider, as well as traffic impact. For open-cast coal mines and exploratory fracking sites, it's usually visual, amenity, noise, biodiversity, and highways issues arising from the mining operations themselves. Don't be afraid to get stuck into the evidence and reports, as they are not always as impenetrable as you might think.

5. Danger points

Look out for the applicant's killer response. They may employ a public relations (PR) firm and will sell the messages of new jobs and other benefits. Watch out for enticing offers to the local council for anything from new roads to football stadiums which can be delivered through planning gain. Prepare your counter-attack (for example, collect information about the number of jobs and longevity of employment the development is likely to bring), and make the case that such short term benefits do not outweigh the obvious environmental harm (including climate change impacts and implications of unsustainable development which the community will have to live with for years to come).

6. Can you commission your own evidence?

While not an option for everyone, you are entitled to commission an independent interpretation of the impacts resulting from a development proposal, although this will depend heavily on whether you (or your group) have the means and/ or access to consultants and the time available (depending on the consultation period). If this is something you can do, then try to focus on specifics like noise, dust, landscape/ visual, motorways etc. Additional evidence can be very powerful, but unfortunately money, expertise and time are often scarce when going down this route.

7. Speak at the Planning Committee Meeting

It is extremely helpful and, in some cases, essential to attend the planning committee meeting. Here the officer's report will be presented to members of the planning committee who will vote either for, against or to defer the proposal back to officers. The meeting provides a key opportunity to voice your concerns, although each council usually differs as to how many third parties can speak and for how long. Some limit this to one person to speak "for" (usually the applicant or their agent) and one "against" (the most likely opportunity for you or someone else from your group to speak).

Try to voice legitimate planning concerns relating to the application in question, which might include material considerations such as climate change, landscape or visual disturbance, traffic, noise, biodiversity loss and impact, loss of amenity. The planning committee may feel more compelled to act when a number of local residents express legitimate planning concern, rather than cite reductions in house prices, the loss of a private view or construction impacts which unfortunately cannot usually be considered (as they're not about planning impacts).

8. Supporting a planning application

There may be circumstances where it is a good idea to support a planning application, for example, where a proposed scheme would deliver positive benefits for your community, such as zero carbon development or a renewable energy scheme. If this is a major scheme there may also be an opportunity for you to influence aspects of the proposal for the better, for example in terms of sustainability considerations. If others object to the scheme, your supporting representation would help ensure a range of views is relayed to the planning committee. As with making objections, it is helpful to cite material planning considerations and Local Plan policy as this will strengthen your case considerably.

Glossary of planning terms

Aarhus Convention: the United Nations Economic Council for Europe Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters adopted in 1998. The UK is signatory to this convention created to empower the role of citizens and civil society organisations in environmental matters and founded on the principles of participative democracy. The Aarhus Convention establishes a number of rights to individuals and civil society organisations with regard to the environment.

Call in: where the Secretary of State for Housing, Communities and Local Government decides to determine an application (usually via a Public Inquiry).

Development: the Town and Country Planning Act 1990 defines development as: "the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land".

Delegated decision: where decision to grant or refuse an application is made by a planning officer under delegated powers. Check your council's Constitution for specific circumstances where this can occur (eg, where there are no objections, small-scale extensions etc).

Determination period: the period it takes for a planning authority to make a decision on an application (usually 8, 13 or 16 weeks depending on the proposal).

Developer contributions: financial contributions developers pay to cover the cost of infrastructure to meet the needs of their development. The main mechanisms are Section 106 (s106) Agreements (also called Planning Obligations) and Section 278 (s278) Agreements which are legally binding agreements, and the Community Infrastructure Levy (CIL) whereby developers pay a set amount in line with the local authority's CIL charging schedule.

Development Plan: the collection of planning policies and proposals for the development, conservation and use of land and buildings in force in a particular local authority area. It includes the Local Plan and, where applicable, any Neighbourhood Plan(s) and Spatial Development Strategy relevant to the area in question.

Examination in Public: a formal round-table discussion led by an independent Planning Inspector into the soundness of a local or strategic plan; together with the plan-making authority (i.e. Council) and relevant interested parties (statutory consultees, objectors etc).

Local Plan: sets out planning policies in a local authority area and allocates land for development. The Local Plan is used to guide planning decisions.

Local planning authority: the public body responsible for carrying out planning functions for an area. This is usually the district, unitary, borough or county council, the main functions being the act of granting or refusing planning permission and plan making – formulating policies to guide decisions and future development of an area. Responsibility for waste and minerals planning rests with the **waste and mineral planning authority** – who are either unitary or county councils. National park authorities are also local planning authorities.

National Planning Policy Framework: principal document containing planning policy for England which sets out how these are expected to be applied.

Non-statutory consultees: additional bodies/ persons, not specified in law, who local planning authorities should also consider engaging when they believe there are planning

policy reasons which would make it likely these bodies would have an interest in a proposed development.

Reserved matters: matters initially reserved at the outline application stage which – assuming outline consent is granted - are then subject to consideration via a reserved matters application. These can include layout, scale, landscaping, access, and appearance.

Recovered Appeal: where the Secretary of State (MHCLG) makes the final decision on a planning appeal. NB this decision will usually follow consideration of the Inspector's recommendation/ initial decision.

S106: a legal agreement between an applicant seeking planning permission and the local planning authority.

Statutory consultees: organisations and bodies, defined by statute, who local planning authorities are legally required to consult before reaching a decision on relevant planning applications.

Statement of Community Involvement: the Council's statement on how the local community and individuals will be involved in the preparation of the Local Plan and the consideration of planning applications.

Useful websites

Government departments, bodies, and agencies

Air Quality – UK National Air Quality site
www.airquality.co.uk

Defra (Magic Maps)
https://magic.defra.gov.uk/MagicMap.aspx

Environment Agency
www.environment-agency.gov.uk/

Environment Agency Public Registers
https://environment.data.gov.uk/public-register/view/index

Information Commissioners Office
https://ico.org.uk/

Ministry for Housing, Communities and Local Government
https://www.gov.uk/government/organisations/ministry-of-housing-communities-and-local-government

Neighbourhood Statistics (ONS)
www.neighbourhood.statistics.gov.uk

Planning Appeals Procedural Guide
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/788173/Procedural_Guide_Planning_appeals_version_5.pdf

Planning Guidance
https://www.gov.uk/government/collections/planning-practice-guidance
https://www.gov.uk/guidance/determining-a-planning-application
https://www.gov.uk/guidance/consultation-and-pre-decision-matters

Planning Ombudsmen
https://www.lgo.org.uk/make-a-complaint/fact-sheets/planning-and-building-control/how-your-application-for-planning-permission-is-dealt-with

Planning Portal
https://www.planningportal.co.uk/

The Planning Inspectorate
https://www.gov.uk/government/organisations/planning-inspectorate

Legislation and policy

Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019 https://www.legislation.gov.uk/ukdsi/2019/9780111187449

Development Management Procedure Order 2015
http://www.legislation.gov.uk/uksi/2015/595/pdfs/uksi_20150595_en.pdf

National Planning Policy Framework 2019
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/810197/NPPF_Feb_2019_revised.pdf

The Planning and Compulsory Purchase Act 2004
https://www.legislation.gov.uk/ukpga/2004/5/contents

Town and Country Planning Act 1990
https://www.legislation.gov.uk/ukpga/1990/8/contents

Non-Governmental Organisations (NGOs)

CPRE – The Countryside Charity
www.planninghelp.org.uk

Environmental Law Foundation
www.elflaw.org/

Liberty
www.liberty-human-rights.org.uk/

Wildlife and Countryside Link
www.wcl.org.uk

Generic planning reading and other resources

Calling in planning applications:
www.parliament.uk/briefing-papers/sn00930.pdf

Development Management, decision making, committees and probity:
https://www.local.gov.uk/sites/default/files/documents/development-management-de-5f9.ppt; https://askyourcouncil.uk/probity-in-planning
https://www.local.gov.uk/sites/default/files/documents/probity-planning-councill- d92.pdf (see pg. 8 – predetermination and windfarm example)

Fracking Moratorium
https://www.gov.uk/government/news/government-ends-support-for-fracking

Fracking WMS (HCWS690)
https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2018-05-17/HCWS690

Generic forms for your council available through Planning Portal:
www.planningportal.gov.uk

Greater London Authority – powers of the Mayor of London
https://www.london.gov.uk/what-we-do/planning/planning-applications-and-decisions/

How to respond to a planning application: 8 step guide
https://www.nalc.gov.uk/library/publications/1632-how-to-respond-to-planning-applications/file

How to take part in a planning inquiry, short video by the Planning Inspectorate
https://www.youtube.com/watch?v=ey9TAdpUdEw

List of non-statutory consultees
https://www.gov.uk/guidance/consultation-and-pre-decision-matters#table-3-Non-statutory-consultees

List of statutory consultees
https://www.gov.uk/guidance/consultation-and-pre-decision-matters#Statutory-consultees

Liverpool City Region devolution agreement
https://www.liverpoollep.org/wp-content/uploads/2015/11/Liverpool_devolution_deal.pdf

Planning Appeals Procedural Guide (March 2019)
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/788173/Procedural_Guide_Planning_appeals_version_5.pdf

Planning applications map-based search facility
https://www.planit.org.uk/

Protected sites and areas: how to review applications that might affect protected sites and areas
https://www.gov.uk/guidance/protected-sites-and-areas-how-to-review-planning-applications#types-of-protected-sites-and-areas

Rising to the Climate Crisis – A Guide for Local Authorities on Planning for Climate Change, TCPA and RTPI (2018, 2nd edition):
https:/www.tcpa.org.uk/planning-for-climate-change