

October 2016

# **Planning Applications: Campaigner's Guide**

## About this guide

This guide is designed to provide some basic information to help you respond to a planning application. It should be read alongside the Friends of the Earth's guides to the planning system (England or Wales) and Environmental Impact Assessment.

This guide is divided into two parts, the first deals with the nuts and bolts of how development control works. The second part provides some general advice and guidance on how to fight an effective planning campaign.

## Part 1

### **What is a planning application?**

If you want to develop land for things like housing, shops or new industry, you need to get planning permission from your local council. This means submitting a planning application, which allows the council to decide whether or not the development should go ahead.

### **And why should I be interested?**

Because if you want to be involved in the future of the community, to ensure the best kind of developments happen and not the worst ones, you have to be involved in the planning process. The planning system is also one of the key ways that we can implement our vision for sustainable development by ensuring, for example, that new growth helps reduce climate change emissions through renewable technology, energy efficiency and reducing the need to travel. Your voice and the voice of the community need to be heard just as loudly as the voice of the development industry.

### **But is there any point getting involved?**

Yes! You have important rights to be involved in the way that local planning decisions are made. The Council must take note of your views. Local people are often accused by developers and government of being NIMBYs, but local people have a wealth of knowledge and experience to bring, which makes for better decisions.

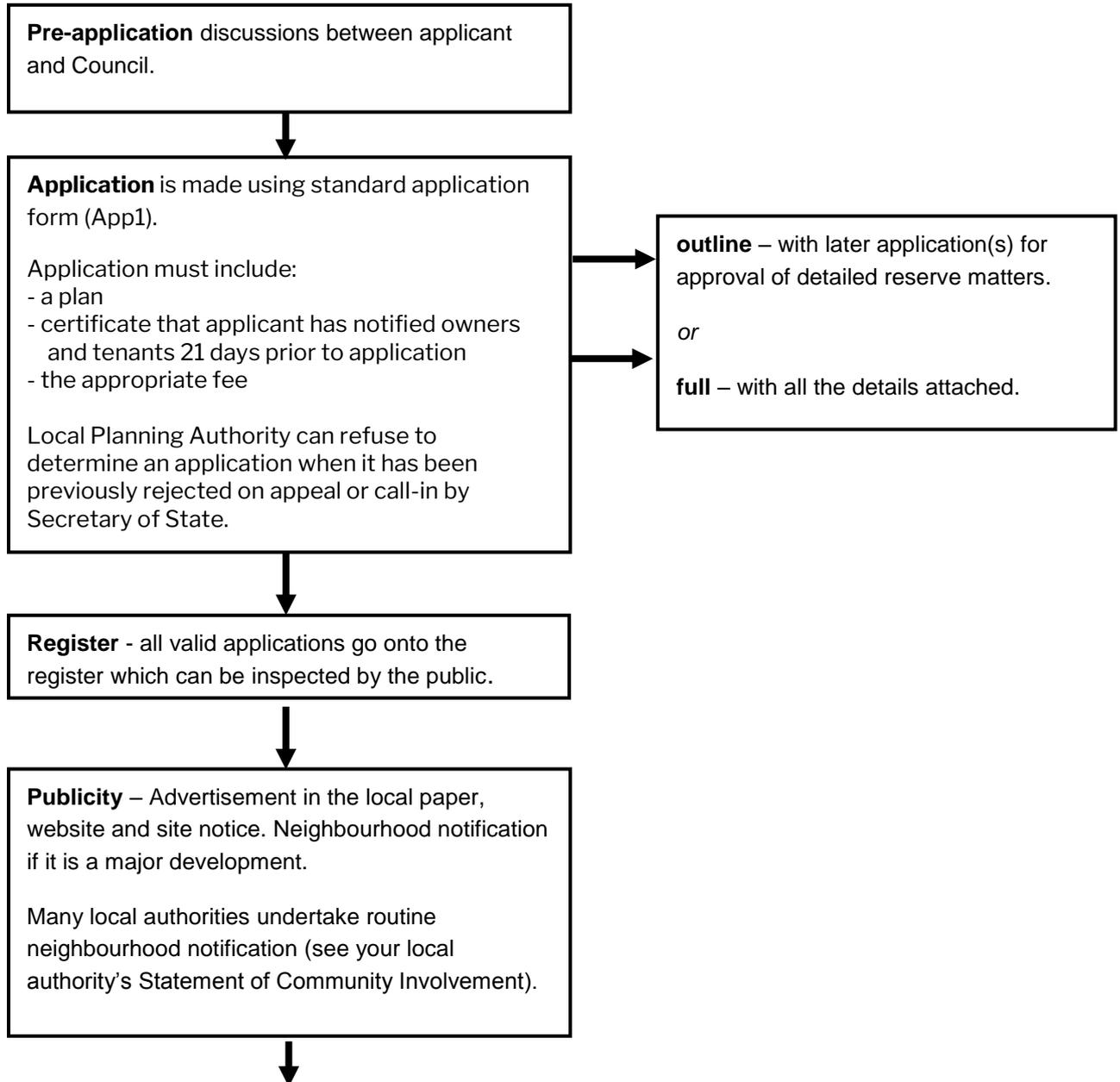
### **So tell me how it works**

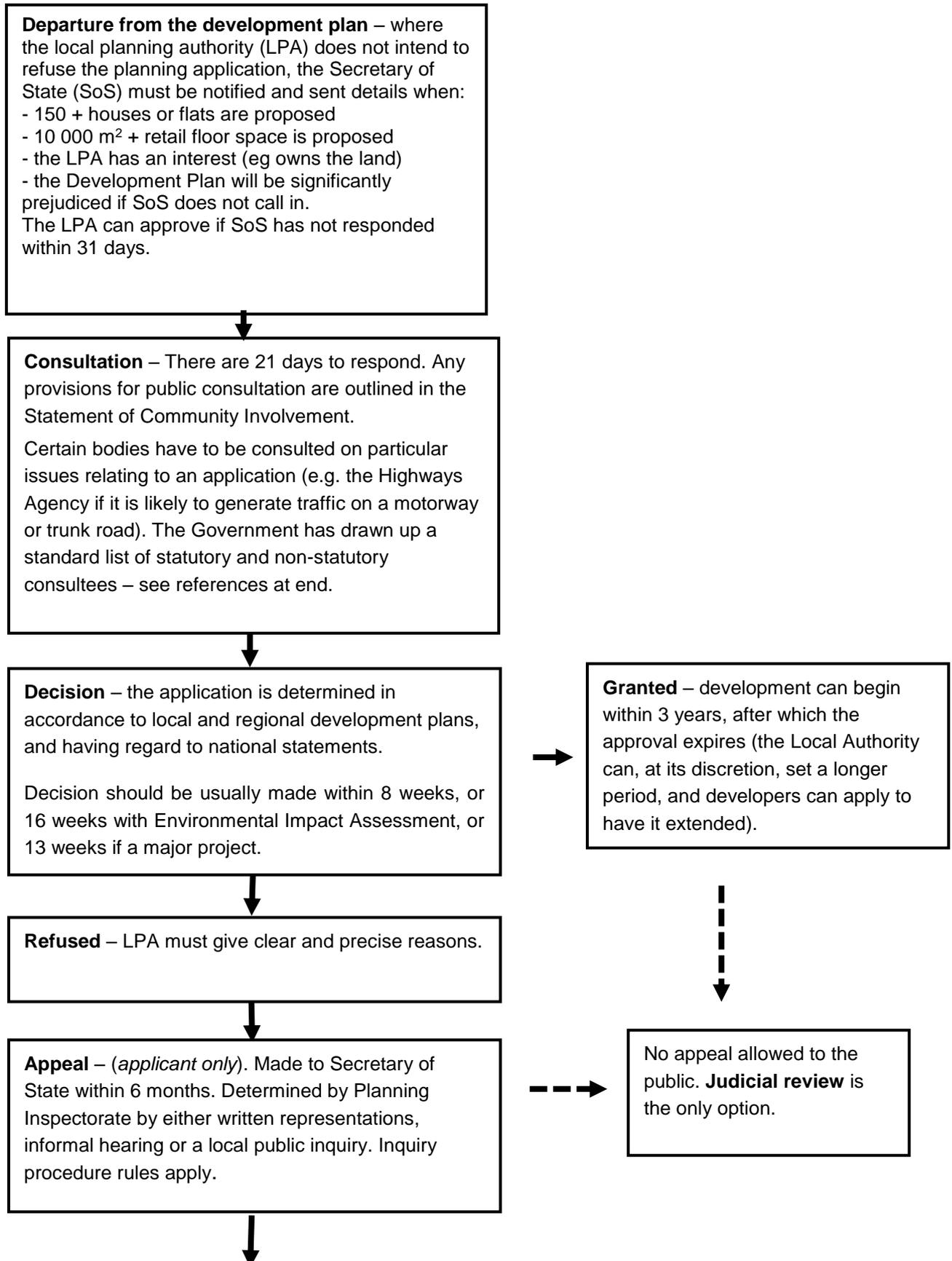
The process of dealing with a planning application is a bit like a horse race. Each application has to jump over a number of hurdles before it reaches the finish line and gets either approved or refused. The road map below provides an outline of the key stages a planning application has to pass through. Don't be put off by the complexity! In fact you only have to worry about a small number of 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 under the Planning Act 2008. Please see the separate briefing for more detail.

## Development Management procedure





**Decision of appeal** – Inspector makes most decisions but under certain circumstances will report to Secretary of State for them to consider.



**Legal Challenge** – Applicants can seek statutory review in the High Court within 6 weeks on the grounds that:

- Decision not within the powers of the Act
- Procedural requirements not met

Decision may only be to quash or uphold previous decision.

## The step by step guide

### **Step 1: the Pre application discussion**

The Government encourages local councils and developers to have informal discussions about a future development before the planning application is made. In theory this is to allow changes to be made at an early stage before too much time and money has been spent on one version of a project. These meetings are often viewed with suspicion but it is important to remember that planners cannot give an indication to the developer as to whether or not their proposal would be acceptable or not at this stage. It is often difficult to find out whether these meetings have taken place. But if you know a site is up for grabs and you think the planning department is just not telling you, one way to find out if discussions have taken place is to make a Freedom of Information request. Refer to Friends of the Earth's Right to Know briefings.

New guidance promotes pre-application discussions more strongly but also says that other parties should be involved and that the Statement of Community Involvement should apply.

Pre-application consultation is required for onshore wind in England, as is usually part of a standard process for larger developments.

### **Step 2: the application is made**

The planning application process includes filling in a standard form (either hard copy or online via the planning portal) together with any supporting documents, such as site location and site area plans. This package of documents is submitted to the local planning authority for their consideration.

The applicant has to pay an application fee and submit a number of legal documents (re serving notice) to ensure that anyone whose land is affected has been properly informed.

The local council will ensure that the application is complete in terms of their local requirements and then validate it. It is then recorded on the Planning Register, and as a public document members of the public will have a right to the planning application. It is at this moment that the clock starts running on the determination process. The register is located in the planning department at your local council,

or more conveniently online via your local council website.

### **What kind of application is it?**

Just to confuse everyone, there are two main kinds of planning application. The most common form is an application for full planning permission, where all the details of the design and location of the development are included. There is a standard application form available online - see [www.planningportal.gov.uk](http://www.planningportal.gov.uk) Should a developer get approval, they may likely have to discharge conditions (set out by the planning authority) before they can commence development on a site.

The second kind of application is for outline permission. For this you only have to submit a redline boundary around land you wish to develop and an indicative description of the development being proposed. You do not have to submit details of design at this stage, although usually an indication of the scale and nature of the of the development is usually provided. The purpose of outline applications is to test whether the principal of development on a particular site is acceptable, with all other matters (such as design, appearance, layout, landscaping and access) being considered at a later stage. Even if the application is approved in outline, there will then need to be a second *reserved matters* application which contains all the details of design and location. It is worth bearing in mind that, once an outline application has been approved, it is usually quite rare for the full application to be refused on detailed issues.

### **How long do we get?**

Local authorities must approve planning applications within set time limits, unless the applicant agrees to a longer determination. Local councils are under a lot of pressure from Government to approve applications in these timescales. There are two important differences in timescale depending on the size and complexity of the application.

For most normal small and medium scale planning applications for things like individual or small groups of houses or medium scale commercial and retail premises, the period is **eight weeks**. For 'major' applications which do not require environmental impact assessment (EIA), the determination period is **13 weeks**. Larger schemes that are likely to have significant environmental impact and require EIA, the period for determination is **16 weeks**.

**STOP! If the case you're working on involves environmental impact assessment (or EIA) you should read Friends of the Earth's guide to environmental impact assessment as there are different regulations which govern this process.**

#### **In summary**

- EIA is a process by which major developments which have the potential to have significant effects on the environment need to be accompanied by an Environmental Statement to demonstrate the effects *won't* be significant.
- Where required, developers will agree with the council the scope of the report (which will include objective surveys) to show how the development will not have a significant effects in terms of a range of factors e.g. landscape, ecology, noise, highways, heritage impacts (et al)
- The EIA process – which is governed by an EU Directive – is also being updated, with a streamlined approach towards screening and other changes (such as improved clarity of reports) now being promoted.

The most important thing is to ask your local council how long the determination period will be.

It is important to remember that the determination period is the time allowed for the local authority to make the decision and not the time available for local people to comment on the application. The timeframe for consultation is normally **21 days**, however consideration of late comments from statutory consultees should be considered by planning authorities if the information is pertinent to the making of the final decision.

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

A local authority is under a duty to advertise planning applications. The precise requirements for different kinds of application are laid out in the Town and Country Planning (Development Management Procedure Order 2015), and there is now a standard planning application form which means that all local authorities should be using the same set of requirements.

In general, local authorities are required to publicise planning applications by a site notice, and an advert in a newspaper which is in local circulation. Additionally, they will have to place details on their website (usually via the Public Access system which is part of their website which deals with applications). The means by which local authorities notify individual neighbours of the proposed development by letter depends on the authority, but usually as a minimum, immediate neighbours and relevant parish councils are informed. Although it is not a legal requirement, some local authorities will facilitate public meetings on major new development proposals.

The Government encourages private sector developers to organise more lengthy public participation on specific proposals, with this obviously being more important for more controversial applications. Many campaigners feel that this compromises the objectivity of the participation exercise and it is important to keep a close eye on any attempt by the private sector to manipulate the process in an unfair way.

Each local authority has the flexibility to set their own standards of participation in the development control process. The standard approach should be written down in a document known as the statement of community involvement (SCI) - see Friends of the Earth briefing on SCIs. It is useful to get a copy of this statement to make sure the council is doing what they say they would do in terms of process.

In general the public have 21 days to comment on the planning application from the date of the site notice. In practice this is a relatively short period of time compared to what is needed to digest what can be complicated application submissions and to formulate a robust response – i.e. make a representation. If you need more time, the best approach is to ring your local planning officer and agree a longer period – making sure you get confirmation in writing. However local authorities are being strongly encouraged to keep to above mentioned time – with the threat that if they do not meet targets for making planning decisions they could lose their ability to make planning decisions. Just remember that the earlier your concerns are fed into the process, the more likely they are to be taken seriously.

**STOP!** With the new Housing and Planning Act (2016), there is now scope for a portion of major housing schemes to be determined outside of the traditional planning application process. Permission in Principle (PIP) is a means by which permissions is effectively given to site allocations either on a brownfield register or within a local plan. The developer who wants to develop that site then only has to secure a 'Technical Details Consent' – you can't argue against the principle of the development itself.

This is essentially a means by which the Government is giving developers in England further means to bypass the traditional planning system, and with it your ability to influence, and your local

councils' discretion, on development happening in your area.

### Step 3: The officer's report

All the representations by the public along with all the 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 report will finish with a recommendation to refuse or approve the planning application. Planning officers are obliged to fairly summarise the case for and against and must reach a reasoned judgment based on the facts of the case.

If it is a delegated decision, the officer's report will not go to Planning Committee but be decided by the officer with responsibility for delegated decisions within the local planning authority.

### Step 4: The decision

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

The final decision on whether a planning application is refused or approved is not made by planning officers (unless it's a delegated decision) but by a group of local politicians who sit on the planning committee. These local councillors are meant to take an objective overview of the application and make a decision based on an officer's recommendation. Many local councillors tell their electors that they are not allowed to discuss planning applications. **This is not the case.**

Local councillors have an absolute duty to listen to the views of their electors. However, many codes of conduct in local government require councillors to behave in certain ways. Please check your local code of conduct (which is likely to be included within your council's constitution). Good local councillors should listen to your views and then be able to take them into account in the final decision. They will not always give you a yes or no answer about their position.

#### How do councillors actually reach a decision?

The planning committee must consider all relevant information. This is often known as information which is 'material' to a planning 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. However, while a whole range of issues might be relevant, from the loss of important dog-walking space to the effect on global climate change, some things are clearly going to carry 'greater weight'.

The most important thing in reaching a decision on application is what the local development plan says. Please see our briefing on Local Plans. In a nutshell the plans set out what and how much development should go where. Each plan has to go through an Examination in Public and in theory you should have had the opportunity to be involved in that process as a member of the local community. There is a legal presumption in favour of what is in the development plan. So if an application for housing is proposed on a piece of land already identified for housing, it is likely to be approved.

On the other hand, any application that is made which contravenes local plan policy is likely to be refused. These applications are known as departure cases (i.e. where they depart from the development plan) and have to be notified to the Secretary of State. The applicant will need to provide an extremely persuasive case as to why such development should take place in contravention of the plan.

There are some cases where the development plan will not be the most important issue. There might be other material considerations which were not explored at the development plan stage. There might, for example, be a particular rare species on a site which has legal protection and this might outweigh the provisions of the development plan.

It is worth remembering, that the older the plan the less 'weight' it carries. Developers will often say that a plan that was adopted five years ago is out of date and that their development should take place because of changes in patterns of demand. It is also important to bear in mind that the draft plan could have relevance to your case. The basic guidance is, the further the plan has gone down the adoption process, the more relevant it is. However where the local plan is not in place, then the National Planning Policy Framework 2012 (or NPPF) and the 'presumption in favour of sustainable development' applies.

The final decision of the planning committee is a mixture of factual technical information on local and national policy imperatives and of local political views.

#### Using Planning Policy

In practice you should always have a good look at your local plan to see if the application fits with the policy that is written there. You will find that local plans contain a whole range of policy which is sometimes contradictory. It is always possible to use local plan policy to support your case, particularly perhaps the sections on biodiversity and climate change. Relating your objections to local and national policy gives much more force in the decision-making process. A full list of the national policies ("The National Planning Policy Framework") can be found on the Department for Communities and Local Government web site: <http://planningguidance.planningportal.gov.uk> or see our briefing on Local Plans.

#### The final decision

The planning committee has a number of options when it makes its decision. It can:

- **Approve** the application with a certain number of conditions which will be set out in the Decision Notice. These conditions can relate to start date, working hours, planning gain deals etc. These are legally enforceable.
- **Defer** the application to a future committee date if the committee feels the need for more information.
- **Refuse** the application with suitable reasons for refusal.

In approving or refusing a planning application, a local authority must provide a reasoned justification for their decision to the applicant and the public.

#### Step 5: The appeal

The applicant has up to six months to lodge an appeal against a decision to refuse their planning application.

This right of appeal is heard by the Planning Inspectorate through a public inquiry, a hearing or through written representations (the latter being the most common method).

The local authority has a duty to publicise planning appeals, and those members of the public with an interest (often known as third parties) have a right to either appear at the hearing or submit written representations.

The decision about whether to hear a case in public or through written form is made by the Planning Inspectorate, taking into account the views of the applicant and the local authority.

Third parties themselves have no right to appeal on the approval of a planning application. Friends of the Earth has been part of a long-running campaign to achieve such a right which would be a vital part in making the planning system fair to all participants.

### **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 can examine if a procedural error has taken place in the process of making a decision. Some individuals and communities have used judicial review to overturn unfair decisions but this route is potentially costly and complex. For a complete briefing on judicial review see Friends of the Earth briefing on Judicial Review. There is also a helpline - see contacts at the end of the briefing.

### **The local government ombudsman**

Third parties can complain about the process of a planning decision to the local government ombudsman. This body has the power to investigate decisions and to deliver judgments of maladministration against local authorities who have not done their job properly. However the ombudsman cannot overturn a planning decision.

## **Some other weird planning stuff explained**

### **Section 106 agreements or planning gain deals**

Planning gain is where a developer offers significant benefits to the local community if a planning application is approved. This might mean basic highway improvements, the provision of affordable housing or more controversial off site benefits, including contributions to transport schemes or the provision of new educational and recreational facilities.

These deals are secured through legal agreements known as Section 106 agreements. In theory such deals can lead to real benefits to the local community but they are often perceived to be a form of bribery by which cash-strapped local authorities would agree to approve development which they otherwise might have refused because of the financial benefits it would bring. Many local councils now write policy into their local plans which requires contributions from developers. This improves the transparency of the process but the bottom line is that the overall sustainable development of the community should not be compromised by the promise of planning gain.

### **Community Infrastructure Levy (CIL)**

New ways of getting money from new development for local infrastructure are in the form of a Community Infrastructure Levy. This process is a means of extracting financial gain from a development in light of the additional burden it will have on the local infrastructure (e.g. roads, utilities, schools, services etc.). It is applicable to many forms of new development that creates net additional floor space. This is usually where internal floor space exceeds 100m<sup>2</sup>, although CIL is applicable to applied to new residential units which provide less floor space (with some exceptions such as self-build units, social housing). Each local authority sets out a charging schedule for their area with a different rate depending on the type of development. The money will be collected by the charging authority. While CIL can work in tandem with s106 agreements for some larger sites, there needs to be clarity that developments are not charged twice for the same infrastructure. Overall, CIL payments are intended to provide infrastructure to support new development of an area, rather than make a planning application acceptable in planning terms - which is more the remit of s106 agreements

described above. Planning Practice Guidance provides further reading on the CIL process (see reference at end of document).

### **Call-in by the Secretary of State**

The Secretary of State has reserve powers to take any decision out of the hands of a local council and decide it for himself/herself. Note that in London, the Mayor has new powers to call-in certain applications on certain criteria. For more information see the references.

This process is known as calling-in a planning application. All major planning applications which are a departure from the development plan, or large-scale housing development over a certain size, have to be notified to the Secretary of State and a decision made about whether to call it in.

Getting a controversial application called-in can be an important campaign objective, because such applications are usually then heard by a local inquiry run by the Planning Inspectorate. This provides the opportunity to give oral evidence and cross-examine witnesses. The Secretary of State bases the decision on whether to call in an application on published policy in particular on whether the application:

- Has wide 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

### **Enforcement**

Enforcement is a way that a local council can make sure that developers do what was agreed in the Decision Notice. The planning permission and the conditions will set out precisely what the developer is allowed to do. If a breach of these conditions happens, or where a developer starts to build without planning permission, then the council can issue a number of legal notices. These include:

- a planning contravention notice which allows them to gain access to land and find out what is going on;
- a temporary stop notice which forces the developer to stop work for up to 28 days;
- an enforcement notice which can require the demolition of the structure which has been built without planning permission.

The Local Authority has discretion whether to use these orders or not and the developer can submit a retrospective planning application to gain permission for something they have already done. This might sound unfair but it is perfectly lawful. The final option is appeal against the enforcement notice (although there are only *28 days to appeal* against a breach of planning control).

## **Part 2**

### **Five top tips for an effective planning campaign!**

An individual application for a big new development such as a supermarket 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 5 big principles

to keep in mind:

### **1 Intelligence**

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

- Checking the council web site
- 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 (some councils will charge for this).

Normally applicants have had pre-negotiations with the council before they make a planning application and you can ask the planning officer if these have taken place - under Freedom of Information regulations if necessary.

### **2 Making 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. It is also worth building links with other organisations in your community who might be concerned. Don't assume that the whole community will automatically support your campaign.

### **3 Good communications**

Make sure you have got a clear message for the media and public about the negative impacts the new development will have. For instance people may love supermarkets but surveys have shown people do not want to lose their local shops.

### **4 Get them on their weakest points**

It is important to concentrate your fire in complex planning cases. Rather than trying to say something about everything, you need to work out the key areas of objection and make them into killer arguments. In most retail applications these will be traffic impact and the impact on the vitality and viability of existing town centres.

### **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, get information about jobs that may be lost in local shops, make the case that the 'improvements' will not justify the negative impacts.

## Annex 1

The Secretary of State can also 'call-in' planning applications, and recover appeals, for his determination. In general the Secretary of State will use these intervention powers selectively and will not interfere with the jurisdiction of local planning authorities unless it is necessary to do so. It is worth noting that an application *cannot be called-in once a decision has been made by the Local Authority*. The criteria for calling-in planning applications has now been updated within a recent briefing paper (no. 00930 – 'Calling in Planning Applications' – July 2016).

Criteria for calling in planning applications for determination by the Secretary of State

[www.parliament.uk/briefing-papers/sn00930.pdf](http://www.parliament.uk/briefing-papers/sn00930.pdf)

The Government reaffirmed its position on calling-in applications in May 2012:

The Minister of State, Department for Communities and Local Government (Greg Clark): *The Government believe that planning decisions should be taken in, and by, local communities, and so use their call-in powers sparingly. Essentially, the powers are used when matters are of national significance*

(HC Deb 30 April 2012 c1234)

### **Fracking applications and calling-in**

In a written ministerial statement (WMS) on fracking (Sept 2015), the then SoS confirmed that he would be minded to call-in applications for gas and oil from *underperforming* local authorities. 'Underperforming' authorities refer to those where 50% or fewer oil and gas applications being made within the statutory determination period (or such extended period as has been agreed in writing by the applicant). Underperforming local authorities will be identified on a yearly basis.

This is a means by which local authorities are being given a 'stick' by government, to appraise and make a decision on applications within given timeframes. While authorities that have considered no more than two oil and gas applications are exempt, the WMS is clear that the government is not afraid to use its calling-in powers for developments it considers are in the national interest.

## Further information and guidance:

Friends of the Earth  
139 Clapham Road  
London SW9 0HP

Tel: 020 7490 1555

Website: [www.foe.co.uk](http://www.foe.co.uk)

## Useful web sites

### Government

Department for Communities and Local Government  
[www.gov.uk](http://www.gov.uk)

Planning Guidance  
<http://planningguidance.planningportal.gov.uk>

The Planning Inspectorate  
[www.planning-inspectorate.gov.uk/](http://www.planning-inspectorate.gov.uk/)

Environment Agency  
[www.environment-agency.gov.uk/](http://www.environment-agency.gov.uk/)

Environment Agency Public Registers  
[www2.environment-agency.gov.uk/epr/](http://www2.environment-agency.gov.uk/epr/)

Information Commissioners Office  
[www.ico.gov.uk](http://www.ico.gov.uk)

Neighbourhood Statistics  
[www.neighbourhood.statistics.gov.uk](http://www.neighbourhood.statistics.gov.uk)

Planning Portal  
[www.planningportal.gov.uk](http://www.planningportal.gov.uk)

### Non Governmental Organisations (NGO)

Air Quality – UK National Air Quality site  
[www.airquality.co.uk](http://www.airquality.co.uk)

Campaign to Protect Rural England planning site  
[www.planninghelp.org.uk](http://www.planninghelp.org.uk)

Environmental Law Foundation  
[www.elflaw.org/](http://www.elflaw.org/)

Liberty  
[www.liberty-human-rights.org.uk/](http://www.liberty-human-rights.org.uk/)

Wildlife and Countryside Link.  
[www.wcl.org.uk](http://www.wcl.org.uk)

## Specific reading

National Planning Policy Framework 2012

<http://planningguidance.planningportal.gov.uk>

Development Management Procedure Order

[http://www.legislation.gov.uk/uksi/2015/595/pdfs/uksi\\_20150595\\_en.pdf](http://www.legislation.gov.uk/uksi/2015/595/pdfs/uksi_20150595_en.pdf)

The Planning and Compulsory Purchase Act 2004

[www.legislation.hmso.gov.uk/acts/acts2004/20040005.htm](http://www.legislation.hmso.gov.uk/acts/acts2004/20040005.htm)

Greater London Authority – powers of the Mayor of London

[www.london.gov.uk/who-runs-london/mayor](http://www.london.gov.uk/who-runs-london/mayor)

Generic forms for your council are available through Planning Portal:

[www.planningportal.gov.uk](http://www.planningportal.gov.uk)

Draft list of statutory and non-statutory consultees

[www.planningportal.gov.uk/uploads/kpr/Draft\\_list\\_of\\_stat\\_and\\_non\\_stat\\_consultees.pdf](http://www.planningportal.gov.uk/uploads/kpr/Draft_list_of_stat_and_non_stat_consultees.pdf)

Calling in planning applications:

[www.parliament.uk/briefing-papers/sn00930.pdf](http://www.parliament.uk/briefing-papers/sn00930.pdf)