

Sept 2016

# **The English Planning System: An overview**

## What is the planning system?

The most amazing thing about the planning system since 1947 is that it is about the public interest. It recognises that decisions on development affect people, their environment and the economy, and therefore that these decisions have to be taken by elected representatives rather than private individuals. This is a cornerstone of democracy. The planning system also gives you your most powerful right to participate and be heard in decisions that affect the environment.

### Health Warning!

**The Government is continually trying to reform the planning system, by introducing further planning acts, written ministerial statements and updates to planning practice guidance. Their aim is to try and streamline the system and make it more navigable by members of the public; although the combination of changes made so far point towards favouring economic growth over social and environmental sustainability. With the Brexit Referendum result in mind, further changes are likely to the system, so keep checking back to [www.foe.co.uk](http://www.foe.co.uk) for more information on developments.**

## How does the planning system work?

When someone wants to build something, permission has to be given. For most developments, the local council decides, but there are several routes by which the Secretary of State makes the decision instead at national level.

There is a process an application needs to follow before a decision is reached, and it is this process along with the associated planning documents used which is known as development control or development management. In general, the planning system is now geared to support sustainable developments that are in line with remit of the statutory development plan (Local and Neighbourhood Plans), unless material considerations prove otherwise. There are opportunities to object of course, and with good reason (such as proposals not according with policies of the NPPF), the council should take objections on board in coming to their final decision.

In some places, permitted (or local) development orders will be made. These allow specific forms of development to take place without the need for individual planning applications. There are however caveats to their application (e.g. prohibited where European Sites would be at risk of significant effects).

There is also 'permitted development' which means that you do not have to put in a planning application, although you may need to give prior approval to the local authority and may need to abide by building regulations where relevant.

## Planning reform

Radical reform to the planning system has occurred over the last few years. Most major infrastructure projects are now decided under the Planning Act 2008, and are examined by a unit in the Planning Inspectorate, with the final decision taken by the relevant Secretary of State.

New neighbourhood plans and development orders have been introduced by the Localism Act 2011, and regional strategies have been revoked.

There has also been a total reform of national planning policy for England with separate planning policy statements replaced by the new National Planning Policy Framework (NPPF) in 2012. Planning Practice Guidance is now also available in an online format, with most of the guidance from before 2010 having been cancelled.

### Health warning!

**Further reform with the ascent of the Housing and Planning Act (2016) and Neighbourhood Planning Bill proposed for later this year aim to further amend the planning system with the former linked to giving permission in principle for large housing sites and redefining the definition of affordable housing to include 'Starter Homes'; the latter tweaking the neighbourhood planning process and reducing scope for pre-commencement conditions in planning permissions. Keep in touch for further updates.**

## So what's the process?

After a planning application is made, along with all the additional information required to assess the impacts, planning officers (or examiners for major projects) have to weigh up the different arguments as to why a proposed development should or should not go ahead, based upon a swathe of documents and information. For example, the planning officer needs to decide (based on consultation with statutory consultees such as Natural England or the Environment Agency) whether the potential for environmental impact is likely to outweigh the perceived economic gain that might take place. If this is the case, then the officer could recommend that the application is refused. Where there has been objection, or the development being proposed is large enough in local importance, the planning officer will make his/her recommendations to the elected planning committee. The committee then votes either to grant or refuse planning permission. Democracy in action!

However the developer can appeal a refusal and this is then dealt with by the Planning Inspectorate. As there have been changes to national policy, it is expected that there will be an increase in appeals over the next couple of years as people argue over what the policy means in practice.

Developers can also now go straight to the Planning Inspectorate if their local authority has been rated as dealing with major applications "too slowly" by the Department for Communities and Local Government. This means not deciding enough applications within a 13 week timetable. Communities and other individuals are not allowed to appeal, but you can bring a Legal Challenge to the High Court if the correct process has not been followed, or alternatively complain to the Local Government Ombudsman (although the latter have more limited powers).

Finally, in the case of nationally significant projects, these are usually made straight to the Planning Inspectorate, where the relevant Secretary of State will make the final decision.

## OK, let's hear more about this 'system' you mentioned

This is the current structure of the planning system in England:

- Neighbourhood planning introduced by the Localism Act 2011 is the lowest tier of planning and will be done by Neighbourhood Forums (unelected organisations designated by local authorities) or Parish Councils;
- Local planning, consists of Local Plans, Minerals and Waste Plans, and development management - all carried out by local planning authorities;
- Enterprise zones, where planning constraint is relaxed and take the form of local development orders (LDOs);
- Major infrastructure projects, examined by a Unit within the Planning Inspectorate, and decided by the relevant Secretary of State.

## How decisions are influenced

Any planning decision will have to take into account “material considerations” which means relevant policy and evidence, but the process is also informed by European law. The following diagram is a brief overview.



## Pretty diagram, but what does it mean?

Well, European directives and laws directly influence national planning legislation, as all member states need to interpret and implement them. There are also primary and secondary acts of Parliament, key primary ones being the Town & Country Planning Act (1990), Planning & Compulsory Purchase Act (2004), the Planning Act (2008), the Localism Act (2011), the Growth and Infrastructure Act (2013), Infrastructure Act (2015) and Housing and Planning Act (2016).

These acts in turn influence **national planning policy**. This last significantly changed in March 2012, from planning policy statements (PPS), minerals policy statements (MPSs) to the National Planning Policy Framework (NPPF). There is a list at the back of the NPPF which shows which guidance is out of date and which is still current. Other guidance has recently been replaced by a new online version of Planning Practice Guidance which was published in March 2014, but which is subject to periodic updates from Government.

For major infrastructure there are also National Policy Statements (NPSs). These have legal status. Also, just to confuse the already muddied waters, government circulars, government white papers and

ministerial statements also carry weight. Weight is a term describing how much importance is given to a policy or other factor when deciding planning matters.

Regional Spatial Strategies have been removed, replaced by the duty to co-operate for local authorities in an attempt to get them to deal with more strategic housing and development deliver without the overview of a Government Office setting targets. This was issued in the Localism Act 2011.

Minerals and waste remain the responsibility of unitary authorities and County Councils (the “top tier” councils).

Old style spatial plans are being progressively replaced by ‘Local Plans’ (also known as Local development Frameworks), which are made up of statutory development plan documents and non-statutory supplementary planning documents. All plans in England were subject to ‘transitional arrangements’ which mean that plans in place have to go through a process to check that they are in line with the new National Planning Policy Framework, and plans in development had until February 2013 to get this into place.

Where there are no plans in place, the Government has introduced a “presumption in favour of sustainable development” in England which allows developers to put in speculative applications that the local authority can only refuse if they can prove significant harm, or that the presumption is limited by other policies within the NPPF.

## Government planning policy

Local planning authorities need to take into account national planning policies when drawing up development plans and other documents and when making decisions on planning applications. Government policy is set out in the new NPPF, and waste is still set out in Planning Policy Statement 10 but has been consulted on and will change in 2014. This policy is produced by the Department for Communities and Local Government (CLG). The NPPF focusses on stating Government policy. Guidance is being developed by many organisations and interest groups in an attempt push for ‘best’ practice. CLG is also reviewing all the other government guidance and circulars which have not been replaced by the NPPF so far – and this was published as the online planning practice guidance in March 2014.

## Regions replaced by ‘duty to co-operate’

The Regional Strategies (RSs) are gone to all intents and purposes apart from in London, which retains a weaker plan responsibility. The duty to co-operate is a new requirement under the Localism Act 2011 which means that in preparing local plans local authorities need to consult and talk to each other about strategic approaches. There must evidence of this co-operation within the local plan. This duty to co-operate will however be difficult to enforce and will be another layer of complexity on top of the local enterprise partnerships. Funding may be channelled through Local Enterprise Partnerships (LEPs), but these are voluntary and not democratically accountable and therefore should not be engaging in statutory planning.

## Local Development Frameworks (Local Plans)

In place of the old local plans, the Planning and Compulsory Purchase Act (2004) introduced Local Development Frameworks (although the Government has now coined these as Local Plans once more). These are folders of documents that get produced at different times and added to the framework once they are adopted by the local authority. There is a general duty in the 2004 act which requires that local authorities carry out planning with the; “*objective of contributing to the achievement of sustainable development*”. In addition, the Planning Act (2008) puts an additional obligation on plan-making

authorities ensure its development plan documents (taken as a whole) include policies that are; *“...designed to secure that the development and use of land in the local planning authority’s area contribute to the mitigation of, and adaptation to, climate change.”*

Please refer to Friends of Earth’s guide to Local Development Frameworks for more detailed information.

## Local Development Schemes

This is a public statement setting out details of which local development documents will be produced, in what order and when. The Local Development Scheme (LDS) is the starting point for local communities to find out what local planning policies relate to your area and when consultation will take place with regards to their formation or review. Please refer to Friends of the Earth’s guide to Local Development Schemes.

## Local Development Documents

These are all the documents included in the framework. There are three types of local development document:

### 1. Statement of Community Involvement (SCI)

This explains how the local authority will engage with the public in preparing its documents.

### 2. Development plan documents

Development plan documents are statutory documents and form part of the ‘local plan’. These include:

- Core Strategy
- Proposals map
- Area Action Plans (e.g. shopping centres, airports)
- Development Management policies
- Site Allocation policies

### 3. Supplementary planning documents

These elaborate on policies and proposals in the development plan documents, such as:

- Design guides
- Development briefs
- Practice advice notes

## Minerals and waste plans

Minerals and waste local development documents are contained within a minerals and waste plan. They are produced by the minerals and waste planning authority (county council or unitary authority).

Previous planning policy statement 10 on waste was reviewed as part of the national waste action plan and superseded by the National planning policy for waste in October 2014.

**The document includes:**

- An overview of existing waste generation;
- The role of waste planning in meeting European Obligations;
- Explanation of the Waste Hierarchy.
- Preparing Local Plans and Sustainability Appraisals for Local Plans
- Building Evidence Bases, including assessing waste management capacity; forecasting waste arising's; using data to monitor and forecast waste needs and how to identify suitable sites and areas;
- How to determine planning applications;
- Regulatory Regimes

Minerals plans are also being revised to be in line with a focus on economic growth; including policies to cover unconventional oil and gas developments (or fracking). Please see our briefing on unconventional oil and gas development and planning for more information, as well as our Campaigners Guide to Local Development Frameworks (Local Plans).

## Community Strategies

Community Strategies and Local Strategic Partnerships are likely to have a significant effect on your area, shaping its future development and setting priorities over the services, strategies and spending of bodies such as the council, police, health service and other organisations. Local Enterprise Partnerships and Enterprise Zones have also been added to the mix and are central to the Government's regional funding initiatives. However these partnerships are not accountable or transparent bodies and it can be very difficult to get information on what's happening locally.

The Department for Communities and Local Government is in charge of Local Strategic Partnerships. The Local Government Act 2000 placed a duty on local authorities (county and district councils and unitary authorities) to prepare a Community Strategy in partnership with the community. Community Strategies are usually prepared by a body called a Local Strategic Partnership, made up of representatives from local bodies and interest groups. Please refer to Friends of the Earth's guide to *Sustainable Community Strategies; Local Strategic Partnerships*. Enterprise partnerships are voluntary but it is really worthwhile reporting any issues with lack of access, transparency, information or accountability to the Department for Communities and Local Government.

## Neighbourhood Planning and Development Orders

**The Neighbourhood Planning Bill is currently progressing through the Houses of Commons and Lords, aiming to provide detailed procedures for modifying neighbourhood plans, including amendments to how they are examined (where the area has been modified) and requirements for local planning authorities to include community consultation for such plans within their Statement of Community Involvement (SCIs); which they also need to update more regularly. Keep in touch for updates to the Bill.**

The Localism Act 2011 introduced Neighbourhood planning. Such plans can be undertaken by Parish Councils where they exist or in other places by new Neighbourhood Forums. These forums must

consist of a minimum of 21 people, and should be established for the following purpose as outlined in the Act:

*“5(a) it is established for the express purpose of promoting or improving the social, economic and environmental wellbeing of an area that consists of or includes the neighbourhood area concerned (whether or not it is also established for the express purpose of promoting the carrying on of trades, professions or other businesses in such an area)”*

People living in, working in, and wanting to live in the area can become a member of the Neighbourhood Forum. The Neighbourhood Forum or Parish Council can create a Neighbourhood Plan which sets out the policies for the development of the neighbourhood (which cannot cross a local authority boundary).

Communities and businesses will also be able to use neighbourhood development orders to give permission for the development they want to see - in full or in outline – without the need for planning applications. There will of course be caveats to such orders, which might apply to certain types of development, and so consideration of each NDO is needed on a case by case basis.

Neighbourhood plans and development orders must be in line with Local Development Frameworks/ Local Plans where they exist, and the National Planning Policy Framework (NPPF) 2012. They are voted on in a referendum to be adopted or refused.

Many Neighbourhood Plans have ended up as Supplementary Planning Documents, and therefore need to follow the process for the adoption of SPDs as set out in regulation. They also form part of the statutory development plan for an area where development is proposed includes the geographical remit of that plan.

## Conclusion

The planning system may appear complicated but there are steps you can take to ensure your involvement is as effective as possible.

- Make sure you talk to the planning officer at your local authority and ask them your questions if you want something explained.
- Read the various briefings we have prepared to guide you.
- Keep copies of any letters you write and receive.
- Local authorities are duty bound to engage and consult with local communities – don't let them off the hook!
- Get others involved – together you can make a difference. Don't let apathy rule the day, and never take 'no' for an answer.

## **Further information and guidance:**

Friends of the Earth – Tel: 020 7490 1555  
The Printworks, 139 Clapham Road, Stockwell, London, SW9 0HP  
Website: [www.foe.co.uk](http://www.foe.co.uk)

### **Rights and Justice Centre**

The Friends of the Earth Rights & Justice Centre provides legal advice and representation to people who want to use the law to protect their communities and the environment. We take on a small number of environmental “public interest” cases on behalf of these groups. We try in particular to work with community groups who suffer the brunt of bad environmental decisions and who cannot otherwise get legal advice. We also try to take ‘test cases’ that will help other communities in the future.

If you hear of an individual or community group (it doesn’t have to be a Friends of the Earth local group) who needs legal advice, you can put them in touch with the legal team at [legal@foe.co.uk](mailto:legal@foe.co.uk).

## **Specific reading**

### **Local Development Frameworks**

Search for your local development framework here:  
<http://www.planningportal.gov.uk/wps/portal/ldf?docRef=LDFSearch&scope=203&langid=0>

### **Planning Policy**

National Planning Policy Framework  
<http://www.communities.gov.uk/planningandbuilding/planningsystem/planningpolicy/planningpolicyframework/>

National planning policy for Waste  
<https://www.gov.uk/government/publications/national-planning-policy-for-waste>

Online planning practice guidance  
<http://planningguidance.planningportal.gov.uk>

### **Planning Acts**

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)

Housing and Planning Act 2016  
<http://www.legislation.gov.uk/ukpga/2016/22/contents/enacted>

## **Useful websites**

## **Government**

Department for Communities and Local Government  
<http://www.communities.gov.uk/>

*Department for Energy and Climate Change* (now part of Department for Business, Energy & Industrial Strategy)  
<https://www.gov.uk/government/organisations/department-of-energy-climate-change>

Department for Environment, Food and Rural Affairs  
[www.defra.gov.uk](http://www.defra.gov.uk)

The Planning Inspectorate  
<http://www.planning-inspectorate.gov.uk/>

Historic England  
<https://historicengland.org.uk/>

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

Environment Agency Public Registers  
<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)

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)

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)

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)

**These organisations funded by Government to provide advice:**



Campaign to Protect Rural England planning site (working with Locality and the National Association of Local Councils)

[www.planninghelp.org.uk](http://www.planninghelp.org.uk)

The Royal Town Planning Institute – Planning Aid

<http://www.rtpi.org.uk/planning-aid/>

The Prince's Foundation for Building Community

<http://www.princes-foundation.org/>