

CAAV National Tutorial 2024

The Planning System

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The Planning System

Overview of English planning system

The English planning system:

- Governs use and development of all land and buildings in England.
- Most planning matters are the responsibility of local planning authorities (LPAs). Usually that function is taken on by the district council.
- LPAs appoint planning officers to assist with the operation of the planning system
 - Minor and uncontroversial applications –decided through delegated decision-taking powers – officers.
 - Larger / controversial developments - planning committee, informed by officers' recommendations.
- Secretary of State oversees the planning system.
 - Direct role in small number of decisions through the appeals system, the call-in process (power to direct LPA to refer decision to them) and decisions on NSIPs.

Plan-led system

- "Plan-led" system.
 - This means what can be built and where, is set out in local plans:
 - Plans are prepared by LPAs – note many are overdue for update (should be reviewed every 5 years).
 - Vision and framework for future development of and land use in their area.
 - Identify what development is needed, where it should go, and what land is protected – such as greenbelt.
 - Neighbourhood plans prepared by parish or town councils or local groups (called neighbourhood forums).
 - Allows a local community to shape new buildings – look, infrastructure.

Planning policies

Government's planning policies set out in the National Planning Policy Framework (NPPF).

NPPF

- Framework within which local plans can provide for sufficient housing and other development in sustainable manner.
- Note various updates to NPPF – Labour is intent on reversing recent changes i.e. reimposing mandatory housing targets and bringing in grey belt as a change to green belt.
- Local and neighbourhood plans should be prepared in line with the NPPF.
- Planning applications determined in accordance with plans, so plans are a material consideration.

Planning Practice Guidance (PPG) – not policy but guidance

- Extensive online resource of detailed policy guidance – not policy, but it helps to explain policy and how issues should be addressed – it will be useful resource when facing a planning query. It is online and it is updated from time to time, with not much fanfare. Important therefore to check the latest version on the Gov.uk website.
- To be used alongside NPPF, sets out how the government envisages the day to day working of the planning system.
- Various topics are covered in detail, including guidance on BNG, NG and NN, green belt, use of planning conditions etc.

Planning considerations – summary

When formulating a planning proposal, should consider the effect of the following:

- Local plan – particularly as it identifies locations where development should take place and restrictions in certain areas.
- Any applicable Neighbourhood plan for the area – is it all within the same neighbourhood plan area, if there is an NP - the boundary of any neighbourhood plan should be checked carefully. A neighbourhood plan is supposed to be in line with the local plan, but neighbourhood plans can often cause significant delays and even stymy development, so they must be taken seriously.
- Central government policies contained in the NPPF and advice in the PPG. As you will be aware, there is currently a consultation in place on significant changes to be made to the NPPF. The proposed changes to the NPPF are currently only proposed changes, but the Government has been sneaky in issuing a Written Ministerial Statement, setting out the proposed changes in a different forum. A WMS is a material consideration in a planning decision being made, so the Government has effectively brought in changes by the backdoor early. This does not normally happen!
- Any Supplementary Planning Documents or Guidance which the LPA has in place on relevant issues.
- Although not policy, will also need to think about planning conditions on existing permissions, such as restrictions on use, amount of floorspace permitted, hours of operation etc. They would have been brought in by the LPA (or Secretary of State if an appealed decision) previously for a reason, so it may be that those restrictions would continue.

- CIL liability which may arise if the LPA has decided to introduce CIL in its area - helping to fund infrastructure, as set out in LPA's wider development plan.
- Any significant development will be subject to a section 106 planning agreement, setting out obligations, including benefits will be provided for the area. The CIL Regulations have introduced statutory tests which limit LPA's ability to include certain obligations in the s 106. When thinking about what should be offered, those tests (including relevance) must be followed.

Planning Applications

Having covered the relevant policies attributable to any development of land, I just want to cover briefly the planning application process which will have to be considered in order to carry out development of land.

Planning permission is required for the development of land

What then is Development?

'Development', defined in the Town and Country Planning Act 1990 (TCPA) as:

- Operations affecting land; and
- the change of use of land.

Operational development includes building operations, engineering operations, mining operations and other operations.

Change of use of land will require planning permission only if the change of use is **material**. – Question of fact and degree.

Planning policy/considerations

As we have covered in question 1, LPA will decide a planning application in line with relevant policies in its local plan (and the neighbourhood plan, if there is one) **unless "material considerations" indicate otherwise**. The LPA will need to consider if there are any **material considerations** to take into account in making any decision.

No set list of material considerations, though NPPF is included as an important material consideration, which is a bit circuitous, as the local plan is supposed to be in line with it. Other material considerations which will include privacy issues, parking, highway safety, traffic, noise, effect on listed buildings or conservation area, layout and density of building, design, appearance and materials, previous planning decisions and nature conservation.

As well as considering relevant policies, a developer should therefore consider these from the outset in thinking about how to increase their chances of obtaining PP for residential development.

Permitted development

- Most types of "development" require planning permission from the LPA to go ahead.
- Some forms of "permitted development" don't require planning permission and are deemed approved, e.g. certain home improvement projects. These types of operational development are deemed granted by the TCP (General Permitted Development) (England) Order 2015, i.e. agricultural PD rights.

- An application for prior approval may still be needed in some cases. For example, Class Q barns to houses
- Permitted Development rights are in a constant state of flux, with regular government consultations being undertaken to extend PDRs further. It is worth considering what PD rights could be used.

S.106 Agreements

What is a section 106?

- Planning obligation, often providing money or delivering a building or land for the benefit of the local area.
- Takes form of either bilateral agreement between LPA and developer OR is in the form of a unilateral undertaking made by the landowner/developer alone (often used at appeal).
- Planning obligations may:
 - Restrict the development or use of land in some way.
 - Require operations or activities to be carried out in, on, under or over land.
 - Require land to be used in a particular way.
 - Require payment of financial sums to be made to LPA.

Need for a planning obligation will tend to arise in larger developments

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- Permission is granted subject to a S106 being entered.
- When the s106 is completed, permission should follow, usually the same day or shortly thereafter
- Anyone with a legal interest in the land to be bound by the S106 will be required to enter into the S106.
 - This includes mortgagees, freehold owners and often leaseholders.
- General position is that planning obligations run with the land.
 - Can be enforced against both the original covenantor and against anyone who acquires that interest in the land subsequently.
 - Liability can be limited to the period of their ownership of the land in question.

Planning obligation can only constitute a reason for granting planning permission, if obligation is:

- CIL Reg 122 introduces statutory test limiting the ability to include certain obligations in the s 106 agreement

- Planning obligation can only constitute a reason for granting planning permission, if the obligation is:
 - a. Necessary to make the proposed development acceptable in planning terms.
 - b. Directly related to the proposed development.
 - c. Fairly and reasonably related in scale and kind to the proposed development.

Typical obligations

Typical section 106 agreement may contain obligations relating to provision of:

- affordable housing – the local plan should set out the target level of AH.
- Open space.
- On-site BNG.
- financial contributions for infrastructure (education, transport, highways) etc.
- Delivery of use/buildings.
- School/educational contributions

Local Plan Review, Council and Neighbour engagement

Local Plans are supposed to be reviewed and updated regularly, but many LPAs have not complied with this over recent years.

If there is a Local Plan Review in the offing, it would be really important to think carefully (and potentially also quickly!) about proposed housing and other development plans, then to consider putting forward land to be allocated in that Plan Process. Once land is allocated, it is generally much easier to obtain consent when an application is made. There are exceptions, so an allocation does not necessarily guarantee consent is then granted.

It is generally helpful to engage with the local authority before submitting a largescale application. Some LPAs will insist on formal pre-app meetings, with fees being paid to the officer for the privilege and then pre-app advice received in writing (which cannot be relied upon!), but others will allow much more informal discussions about what should be taken into consideration/is needed for this to be taken seriously.

Neighbour Consultation

Vitally important.

Trust is really important in any planning application. A lot of communities fall out over planning issues.

Neighbour/community input can be really helpful to the applicant in applications.

- It can help direct local housing needs; and
- Set out clearly what benefits the area needs/what section 106 contributions would be needed here.

If the draft application changes before submission due to neighbour comments, the neighbours will feel listened to, respected and potentially even part of the process.

Neighbours will be consulted by the LPA as part of planning process – it is far better to hear about the application from the applicant first, rather than just receiving a notice in the post from the LPA.

Much more likely to be granted permission by the LPA if neighbours actually support it.

May also be worth considering meeting the chair of the PC to discuss application with him or her before submission, in order to get PC support.