

CAAV National Tutorial 2024
The Planning System – scenario notes

This is an Outline Answer, covering the points raised in a very broad problem. This Outline Answer is intended to be read alongside the Detailed Notes provided to Delegates.

Scenario:

The family wishes for the Estate to take steps to ensure its land can be developed in the future. There is a disagreement about whether the Estate should focus on the solar development or residential development. Karl believes that housing would be damaging to surrounding environment and that the local river is likely to be polluted.

Question 1:

What are the relevant general planning policies which must be taken into account (at national and local level) when considering a future housing development on the Estate?

a) Local and Neighbourhood Plans

- 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.

b) NPPF

- Government's planning policies are set out in 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.

c) PPG – not policy but guidance, which helps when considering use of policy

- Extensive online resource of detailed 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 and NN, green belt, use of planning conditions etc.

d) Planning considerations – summary

When formulating a proposal, the family 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 – presumably the whole Estate would be within a neighbourhood plan for the village of Green Valley, if there is one, but 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 stymie 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, which Jack has heard about. He is however not entirely correct in that it will not necessarily be "easy" to develop houses in the open countryside, but it may be easier, once the updated policies have been brought in, especially if the local area does not have its 5-year housing supply in place. 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, the family 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 the family is thinking about what should be offered, those tests (including relevance) must be followed.

Question 2:

What steps the Estate should take to increase the chances of planning permission being obtained for residential development.

a) 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 about the Estate.

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. Before submission of an application, will be very important to think about other material considerations here, which might 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, the family should therefore consider these from the outset in thinking about how to increase their chances of obtaining PP for residential development. Are there certain parts of the Estate which are too close to the conservation area in Green Valley or the listed building at Argyle Farm, so any development there would be tricky? What about highway access – for example, is the access from the 10 hectares of bare land which has recently been surrendered onto a corner of the main road with limited visibility, so might that site be better for a use which is not traffic heavy? Are the existing uses being carried out on the industrial estate noisy and so should an application on the farmland next to the industrial estate be avoided?

b) Permitted development

Also worth thinking about any permitted development which might help an application here, such as agricultural PD rights.

- We know that one of the farms has been surrendered recently. Does that one have a few barns scattered across those 10 hectares which might be converted under Class Q permitted development right from Agricultural to Residential? Might that mean that housing development across the remainder of the 10 ha be easier to achieve in the future?

- Something which would be allowed under PD, so might be a huge help to the family here in terms of achieving the overall planning balance, might be to consider developing some of the farm buildings somewhere on the Estate into a State Funded School. As the change of use for up to 500 m² (i.e. a small school) would be allowed anyway under PD, it would generally be easier for the family to achieve planning permission for it (as part of the overall development scheme), if a school of that size was included in the housing planning application and then the new school was effectively offered as part of the section 106 obligations. This is the sort of issue which can often help to achieve PP – i.e. using a PD right in the background to satisfy a local need.

c) S.106 Agreements

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.

Which section 106 obligations might help to achieve planning permission here?

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.
- I have mentioned already the potential school provision on this site. If there are other local needs, it might be worth considering as part of the overall section 106 package here.

d) 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 requirement over recent years.

If there is a Local Plan Review in the offing, it would be really important for the family to think carefully (and potentially also quickly!) about their proposed housing and other development plans (and where on the Estate they might develop areas of land), 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 engagement is covered below.

Question 3

If, in your view, the Estate is better to pursue the solar development or residential development options.

Big housing drive by the current Government – 1.5 m homes in this Parliamentary term!

Local needs (lots of LPAs are having to produce a lot of housing, as they are behind on delivery of housing).

Have considered other factors in how to increase chances of gaining residential PP, they would be considered again here as part of this assessment.

Check local plan policies regarding solar development/SPDs/any Climate Emergency declarations by the LPA.

Energy needs for the area – is the area next door to a nuclear power station or miles from any other energy supplier?

High quality agricultural land unlikely to get PP for solar development (3B grade and worse, more likely to get PP for solar).

Would there be an impact on Conservation area and listed buildings? Unlikely to be granted.

Alternative locations assessment – have all sites around the farm been considered and is this the best site?

Has an Alternative Technology Assessment been carried out? Would a single wind turbine be better here?

Council would need a mitigation of impacts employed statement (e.g. non reflective solar panels)

Could solar panels be provided on top of the existing industrial buildings and on all new houses in the development instead of taking up agricultural land?

Question 4

Should the family be telling anyone from the neighbouring area about their plans before an application is submitted?

Yes. It is vital to tell them and keep the neighbours updated throughout.

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 family 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.