

SHEET 7

Development Management

Consultation and Commenting on Planning Applications

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This is **Sheet 7** of The Planning Pack. This pack has been written by Planning Aid England, and is endorsed by the Royal Town Planning Institute.

This sheet sets out how you can get involved in improving a development and reducing its impacts on the local neighbourhood either through the pre-consultation process or through making comments on a planning application at the right time, so that your views can be given full consideration before a formal decision on the proposal is made. It also briefly explores what issues can be taken account off when a decision is being made by the Local Planning Authority on a planning application.

Pre-application consultation by the applicant

To further strengthen the role of local communities in planning, the Localism Act 2011 introduced a new requirement for developers to consult local communities before submitting planning applications for certain developments. This will give local communities an opportunity to comment on a scheme at the early stages when there is still scope to make changes to the proposal. Local communities will be able to raise issues for the developer to consider, and make suggestions which could improve the development and reduce its impact on the neighbourhood. The requirement on developers will be as follows:

- ◆ Developers **must consult** communities before submitting applications, having regard to any advice that their local planning authority may provide.
- ◆ They **must consider** any responses they receive before they finalise their proposals and submit their applications.
- ◆ When submitting their application they **must account** for how they have consulted the local community, what comments they have received, and how they have taken those comments into account, or not.



The Act sets out a number of powers for the Secretary of State to prescribe detailed operational matters in secondary legislation. These matters could include:

- ◆ The type of developments to which this applies.
- ◆ Publicity associated with the consultation.
- ◆ The form of consultation to be undertaken.
- ◆ Collaboration between the developer and others on design.
- ◆ The timetable for any consultation carried out under the measure.

At present there is no secondary legislation on the matter, however there have been discussions as to the description of which developments the requirement will apply to. It is likely that the provision will apply to large scale major applications as defined below:

- ◆ Residential developments of 200 or more new residential units, or (where the number of residential units to be constructed is not specified) with a site area of four hectares or more.
- ◆ Any non-residential developments providing 10,000 square metres or more of new floorspace or with a site area of two hectares or more.

Consultation of a planning application by the local planning authority

Generally all development applications are subject to some form of mandatory notification/advertising that is required to be undertaken by the local planning authority for a period of normally 21 days in the form of:

- ◆ A neighbour **notification letter** sent to owner/occupiers of adjoining properties by post.
- ◆ A **site notice** displayed on or near the land to which the application relates which is visible to the general public.
- ◆ An **advertisement in a local newspaper**;

For example in the case of a major development application the local planning authority are required to advertise in a local newspaper circulating in the area, plus either a site notice or neighbour notification letter. In the case of a minor application these require either a site notice to be displayed or neighbour notification letter. For any proposals that would affect the setting of a listed building or for development proposals within a conservation area would require an advertisement in the local newspaper and a site notice.

Commenting on planning applications

Proposals for development often raise interest amongst the general public. Your opinions on a scheme, whether in support or opposition, are important to the decision making process.

Be it a proposal for a modest conservatory, a new supermarket or the redevelopment of a Town Centre, the impact (whether positive or negative) on you and the wider environment is something that will be taken into consideration. The local planning authority recognises that you have a unique insight into the potential effects of a development on you and your neighbourhood, but it is the individual's responsibility to ensure their views are known.

To object or not to object, that is the Question....

Participating in the planning process is about more than just objecting. **Supporting** a proposal or **suggesting amendments or conditions** that will alleviate your concerns are just as important.

All comments should be based on fact and it is important to understand precisely what is being proposed and the potential impact this may have. Before making any comments make sure you have viewed the plans and discussed any queries with the planning/case officer. Plans can be viewed at the local planning authority's offices or electronically on the local planning authority's website. Plans are also normally held by the local Town/ Parish/Community Council.

Making comments

When a decision is made on a planning application, only certain issues can be taken into account. Hence, comments must be based on planning matters, these issues are often referred to as '**material planning considerations**' and this is discussed in detail below.

How to Comment

All comments **must be submitted in writing**, either by hand or electronically, and may be made public as part of the planning application. Verbal comments are not accepted. If the planning application is to be determined at a planning committee meeting you may be able to speak at a planning committee meeting in addition to your written representation. Contact your

local planning authority to find out more about whether or not you would be able to speak at a planning committee meeting. It is important to be precise and to the point when commenting. It can be tempting to cover a variety of matters, but including irrelevant or factually questionable points may mean that relevant issues are lost.

What Next?

If an application is refused then there is a right of appeal by the applicant to the Planning Inspectorate. You will be invited by the Planning Inspectorate to make your comments known again, although your original representations will be sent to the Planning Inspectorate. If, on the other hand, an application is approved, there is no third party right of appeal. A third party can only challenge the decision by applying for a Judicial Review to the High Court or make a complaint to the Local Government Ombudsman, on the basis of how the decision was arrived at (see **Sheet 13**).

Material and non material planning considerations

When a decision is made on a planning application, only certain issues are taken into account; these are often referred to as 'material planning considerations'.

Material Planning Considerations:

Issues that may be relevant to the decision:

(There may exist further material planning considerations not included here)

- ◆ Local, strategic, **national planning policies** and policies in the local plan
- ◆ **Emerging new plans** which have already been through at least one stage of public consultation
- ◆ **Pre-application planning consultation** carried out by, or on behalf of, the applicant
- ◆ **Government and Planning Inspectorate requirements** - circulars, orders, statutory instruments, guidance and advice
- ◆ **Previous appeal decisions** and planning Inquiry reports
- ◆ Principles of **Case Law** held through the Courts
- ◆ **Loss of sunlight** (based on Building Research Establishment guidance)
- ◆ **Overshadowing/loss of outlook** to the detriment of residential amenity (though not loss of view as such)
- ◆ Overlooking and **loss of privacy**
- ◆ **Highway issues:** traffic generation, vehicular access, highway safety
- ◆ **Noise or disturbance** resulting from use, including proposed hours of operation
- ◆ **Smells and fumes**
- ◆ Capacity of **physical infrastructure**, e.g. in the public drainage or water systems
- ◆ Deficiencies in **social facilities**, e.g. spaces in schools
- ◆ Storage & handling of **hazardous materials** and development of contaminated land
- ◆ Loss or effect on **trees**
- ◆ Adverse impact on **nature conservation** interests & biodiversity opportunities
- ◆ Effect on **listed buildings** and **conservation** areas
- ◆ **Incompatible** or **unacceptable** uses
- ◆ **Local financial considerations** offered as a contribution or grant
- ◆ Layout and density of **building design**, visual appearance and finishing materials
- ◆ Inadequate or inappropriate **landscaping** or means of enclosure

The importance attached to material considerations in reaching a decision is a matter of judgement for the decision-taker; however the decision-taker is required to demonstrate that in reaching that decision that they have considered all relevant matters.

Generally greater weight is attached to issues raised which are supported by evidence rather than solely by assertion or opinion.

If an identified issue can be dealt with by means of a suitable condition then the Local Planning Authority is required to consider this rather than by issuing a refusal.

Non-Material Planning Considerations

Issues that are not relevant to the decision:

(There exist further non-material planning considerations not included in this list)

- ◆ **Matters controlled under building regulations** or other non-planning legislation e.g. structural stability, drainage details, fire precautions, matters covered by licences etc.
- ◆ **Private issues between neighbours** e.g. land/boundary disputes, damage to property, private rights of access, covenants, ancient and other rights to light etc.
- ◆ **Problems arising from the construction period** of any works, e.g. noise, dust, construction vehicles, hours of working (covered by Control of Pollution Acts).
- ◆ **Opposition to the principle of development** when this has been settled by an outline planning permission or appeal
- ◆ **Applicant's personal circumstances** (unless exceptionally and clearly relevant, e.g. provision of facilities for someone with a physical disability)
- ◆ **Previously made objections/representations** regarding another site or application
- ◆ **Factual misrepresentation** of the proposal
- ◆ Opposition to **business competition**
- ◆ Loss of **property value**
- ◆ Loss of **view**

TOPTIPS

Making your comments effective

- ◆ Keep informed – check for site notices in your area, check for any notices in your local newspaper and check the local planning authority's planning register.
- ◆ Meet the official deadline for comments (usually 21 days). You can ask the local planning authority for more time but it is up to them whether they will agree to this or not.
- ◆ Make comments in writing (by letter or email). Be clear, concise and accurate in your comments.
- ◆ If you support the idea of the development and are only concerned about some aspects; state which aspects of the proposal you would like changed and how.
- ◆ Quote relevant policies and proposals from the development plan that supports your case. It will not be necessary to quote the policy in full, just refer to the policy or paragraph number and explain how it applies to the site. The case/planning officer at the Local Planning Authority should be able to help you identify the relevant policies.
- ◆ Ask the case/planning officer when and how the decision will be made. Is it going to be made by Councillors at planning committee or by planning officers under delegated powers.
- ◆ If an application is going to be considered at committee the case officers report will be prepared and made available to the public five working days before committee.
- ◆ Obtain a copy of the report and check that your comments have been taken into account. If you feel they have not, you can write a further letter to the chair of the planning committee and the case officers to highlight this and to set out to them what your comments are.
- ◆ Find out if you can speak at planning committee. This is another opportunity to make your views known.