

# Planning



# OBJECTIVES

Difficult to understand why some decisions made. Try to set this out.

We are not always right but we try to explain our decisions/recommendations

**What is the Planning System** – the *policy* and *legal* frameworks

- Legislation, Regulations and Orders
- National Policy and advice
- Case Law/Appeals

**What needs planning permission?**

**The decision process?**

**Appealing/Challenging a planning decision**

**Risk of 'special measures' – Performance & [Criteria for Designation](#)**

**Town and Country Planning Act 1947** “established that planning permission was required for land development; ownership alone no longer conferred the right to develop the land. 1,400 existing planning authorities to 145 (formed from county and borough councils).

*Changes in Government policy and emphasis.....*

*“This Government means business in delivering plans to help people, build new homes and kick start the economy.....starts with getting planners off our backs”*

*Prime Minister – September 2012.*

*“For **local authorities**, the Government is offering higher fees and new capacity funding to develop planning departments, simplified plan-making, and more funding for infrastructure. We will make it easier for local authorities to take action against those who do not build out once permissions have been granted”*

*Housing White Paper – February 2017.*

**What is development?**

**The statutory definition of Development**

*“The carrying out of building, engineering, mining or other operations in, on, over or under land; or the making of any material change in the use of buildings or other land”.*

**Town and Country Planning Act 1990 Section 55**

# WHAT IS DEVELOPMENT?

## ALL **DEVELOPMENT** NEEDS A PLANNING PERMISSION

Some things are “permitted” by national legislation

Eg. General **Permitted Development** Order (“PD”) gets a **DEEMED PLANNING PERMISSION** (LPAs grant “express” planning permissions)

see <https://www.gov.uk/guidance/when-is-permission-required>



## **The Town and Country Planning (General Permitted Development) (England) Order 2015**

<http://www.legislation.gov.uk/uksi/2015/596/made>

- 19 Parts and over 100 Classes covering a wide range of development
- may be subject to conditions, as with a “normal” planning permission
- “notification” of some forms of development (house extensions, agriculture, telecoms) to see if planning permission is needed

# “MATERIAL CHANGE OF USE”

- **A1 Shops** - Shops, retail warehouses, hairdressers, undertakers, travel and ticket agencies, post offices, pet shops, sandwich bars, showrooms, domestic hire shops, dry cleaners, funeral directors and internet cafes.
- **A2 Financial and professional services** - Financial services such as banks and building societies, professional services (other than health and medical services) and including estate and employment agencies. It does not include betting offices or pay day loan shops - these are now classed as “sui generis” uses (see below).
- **A3 Restaurants and cafés** - For the sale of food and drink for consumption on the premises - restaurants, snack bars and cafes.
- **A4 Drinking establishments** - **Public houses**, wine bars or other drinking establishments (but not night clubs).
- **A5 Hot food takeaways** - For the sale of hot food for consumption off the premises.

# DEVELOPMENT MANAGEMENT TAKING DECISIONS



# APPLICATION TYPES

Type	Abbreviation	Description	More Information
Householder Prior Approval (& Commercial Prior Approval)	HPRIOR (CPRIOR)	The Householder Application for Works or Extension to a Dwelling form should be used for proposals to alter or enlarge a single house, including works within the curtilage (boundary/garden) of a house.	<a href="https://ecab.planningportal.co.uk/uploads/1app/guidance/guidance_note-householder.pdf">https://ecab.planningportal.co.uk/uploads/1app/guidance/guidance_note-householder.pdf</a>
Full Planning Consent	FUL	You should use this application form to make a detailed planning application for development, excluding householder developments. For the purposes of this form, development includes building, engineering or other works, in, on, over or under land, or the making of any material change in the use of any buildings or other land.	<a href="https://ecab.planningportal.co.uk/uploads/1app/guidance/guidance_note-full_planning.pdf">https://ecab.planningportal.co.uk/uploads/1app/guidance/guidance_note-full_planning.pdf</a>
Outline Planning Consent	OUT	Applications for outline planning permission seek to establish whether the scale and nature of a proposed development would be acceptable to the local planning authority, before a fully detailed proposal is put forward	<a href="https://ecab.planningportal.co.uk/uploads/1app/guidance/guidance_note-outline_application_with_reserved_matters.pdf">https://ecab.planningportal.co.uk/uploads/1app/guidance/guidance_note-outline_application_with_reserved_matters.pdf</a>

# APPLICATION TYPES

Type	Abbreviation	Description	More Information
Reserved Matters	RMA	Where outline permission has been granted, you may, within three years of the outline approval, make an application for the outstanding reserved matters, i.e. the information excluded from the initial outline planning application. This will typically include information about the layout, access, scale and appearance of the development.	<a href="https://ecab.planningportal.co.uk/uploads/1app/guidance/guidance_note-approval_of_reserved_matters.pdf">https://ecab.planningportal.co.uk/uploads/1app/guidance/guidance_note-approval_of_reserved_matters.pdf</a>
Listed Building Consent	LBC	You will need to apply for listed building consent if either of the following cases apply: a) You want to demolish a listed building or b) You want to alter or extend a listed building in a manner which would affect its character as a building of special architectural or historic interest	<a href="https://ecab.planningportal.co.uk/uploads/1app/guidance/guidance_note-listed_building_consent.pdf">https://ecab.planningportal.co.uk/uploads/1app/guidance/guidance_note-listed_building_consent.pdf</a>
Advertisement Consent	ADV	This form should be used for proposals to display an advertisement or sign which requires planning permission.	<a href="https://ecab.planningportal.co.uk/uploads/1app/guidance/guidance_note-advertisement_consent.pdf">https://ecab.planningportal.co.uk/uploads/1app/guidance/guidance_note-advertisement_consent.pdf</a>
Lawful Development Certificate	LDC	For peace of mind that an existing or proposed use of a building is lawful or that the proposal doesn't require planning permission, you can apply for a lawful development certificate	<a href="https://ecab.planningportal.co.uk/uploads/1app/guidance/guidance_note-lawful_development_certificates.pdf">https://ecab.planningportal.co.uk/uploads/1app/guidance/guidance_note-lawful_development_certificates.pdf</a>

# APPLICATION TYPES

Type	Abreviation	Description	More Information
Pre-Application Advice	PREAPP	The pre-application phase of development management is part of a positive and proactive planning process. Engagement prior to any planning application being formally submitted can be critically important and should provide the applicant and the Council with the opportunity to gain a clear understanding of the objectives of and constraints on development.	<a href="http://www.newark-sherwooddc.gov.uk/media/newarkandsherwood/imagesandfiles/developmentmanagement/pdfs/GUIDANCE%20AND%20CHARGING%20RATES%20FOR%20DO%20I%20NEED%20PLANNING%20PERMISSION%20REQUESTS%20March%202017%20amended%20details.pdf">http://www.newark-sherwooddc.gov.uk/media/newarkandsherwood/imagesandfiles/developmentmanagement/pdfs/GUIDANCE%20AND%20CHARGING%20RATES%20FOR%20DO%20I%20NEED%20PLANNING%20PERMISSION%20REQUESTS%20March%202017%20amended%20details.pdf</a>
Non-Material Amendment	NMA	A minor material amendment is one whose scale and nature results in a development which is not substantially different from the one which has been approved.	<a href="https://ecab.planningportal.co.uk/uploads/1app/guidance/guidance_note-non-material_amendment.pdf">https://ecab.planningportal.co.uk/uploads/1app/guidance/guidance_note-non-material_amendment.pdf</a>
Removal or Variation of Condition	DISCON	This form should be used to make an application for the removal or variation of a condition following the grant of planning permission or listed building consent.	<a href="https://ecab.planningportal.co.uk/uploads/1app/guidance/guidance_note-application_for_removal_or_variation_of_a_condition.pdf">https://ecab.planningportal.co.uk/uploads/1app/guidance/guidance_note-application_for_removal_or_variation_of_a_condition.pdf</a>

## Scheme of Delegation

- Part 2 of the Constitution
- sets out the criteria for Committee or officer decisions
- includes a “call in” power (the basis of accountability) by **District Councillors**
- If you don’t want officers to make a decision you need to 1) ask Councillor to call it in and 2) have planning reasons. Parishes are consulted on **ALL planning** applications

# Determining a planning application

S.70(2) Town and County Planning Act 1990 Act – have regard to the **development plan and any other material planning considerations**

S.38(6) Planning and Compulsory Purchase Act 2004 – determination must be made in accordance with the **development plan unless material considerations indicate otherwise**

NB Each case on its own merits

Plan has primacy **unless** not up-to-date (eg. Built enough housing across the District even though the Council doesn't build!). Unless it is delivered (even in a different Parish/Town) it has knock-on consequences.

# THE DEVELOPMENT PLAN

## NSDC Development Plan Documents (DPDs)

- Core Strategy (Adopted March 2011) DPD
- Allocations & Development Management DPD (Adopted July 2013) (including sites for development and policies for planning applications)
- Neighbourhood Plans

*Both subject to independent examination*

## What is happening now?

- **Plan Review (looking at Core Strategy and development sites)**



# “OTHER MATERIAL CONSIDERATIONS”

## 1. POLICY

National Planning Policy Framework (NPPF)

National Planning Policy Guidance (NPPG) – online tool

Supplementary Planning Documents (not part of the statutory plan, but subject to consultation and formal adoption)

- [Affordable Housing SPD \(Adopted June 2013\)](#)
- [Conversion of Traditional Rural Buildings SPD \(Adopted Nov 2014\)](#)
- [Householder Development SPD \(Adopted Nov 2014\)](#)
- [Developer Contributions & Planning Obligations SPD \(Adopted Dec 2013\)](#)
- [Shopfronts and Advertisements Design Guide SPD \(Adopted Nov 2014\)](#)
- [Wind Energy SPD \(Adopted March 2014\)](#)

# “OTHER MATERIAL CONSIDERATIONS”

## 2. DUTIES UNDER ACTS

- Listed Buildings Conservation Areas Act
- Race Relations Act
- Environment Act 1995
- Crime and Disorder
- Marine and Coastal Access act
- Climate Change Act 2008

# “OTHER MATERIAL CONSIDERATIONS”

## 3. VIEWS OF CONSULTEES

- statutory consultees

Environment Agency, NCC Highways,  
Heritage England

- technical consultees (Environmental Health)
- public notification (letters, site notices, press notices)

DIFFICULTY OF NOT BEING ABLE TO CHALLENGE  
PROFESSIONAL VIEW IF WE HAVE ASKED THEM TO  
RECONSIDER

## 4. FACTORS “ON THE GROUND” (Committee Site Visits and Presentation Material)

# SOME FACTORS “ON THE GROUND”

## MATERIAL

- design and visual impact
- privacy/daylight/sunlight
- noise, smell, pollution
- access/traffic
- health/ health and safety
- ecology, landscape
- crime (and fear of)
- economic impact
- planning history / related decisions
- fallback position e.g. PD
- cumulative impact

## NOT MATERIAL

- the applicant
- land ownership
- private rights (e.g. access)
- restrictive covenants
- property value
- competition
- loss of view
- “moral” issues
- numbers of objections
- change from previous scheme

- usually, the suggestion that a “better” site might exist for the proposal, or that a “better” use exists for the site, is not material
- Its about evidence – at appeal it is the LPA which is put to the burden of proof and evidence

# “MATERIAL CONSIDERATIONS” AND “WEIGHT”

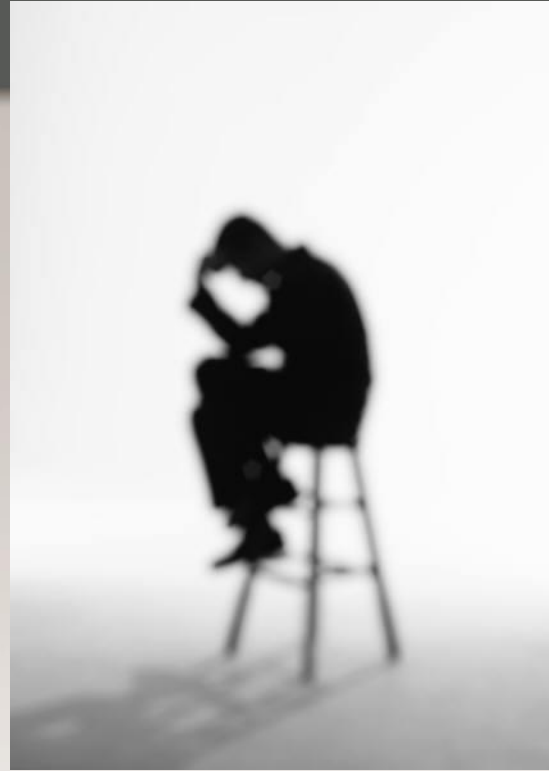
The law has always made a clear distinction between whether something is a **MATERIAL CONSIDERATION** and the **WEIGHT** it should be given

“The former is a question of law. The latter is a question of planning judgement which is entirely a matter for the planning authority. Provided that the planning authority has regard to all material considerations, it is at liberty (within the test of “reasonableness”) to give whatever weight the planning authority thinks fit or no weight at all.....”

*Lord Hoffmann, in Tesco Stores Ltd v Secretary of State for the Environment 1995.*

**subject to technical expert AND evidence**





# MAKING THE DECISION

# Officers (Del Report) or Planning Committee

- 15 elected District Councillors
- From across the District
- No bound by Officers advice (job is to advise on risk of taking action not to say cant do something)
- Debate in public
- Parishes can speak but public and applicant cannot
- Majority vote basis, including chairs ability to use casting vote

# REFUSALS

- must be justified by reasons
- must refer to the Development Plan
- reasons must be valid in terms of planning law
- must be based on assessment of the material considerations in the case
- may be subject to appeal; reasons should be defensible
- unreasonable or invalid refusals may result in cost awards against the council; but considered decisions properly defended will not, even if lost at appeal
- only one good reason is sufficient!

# APPROVALS

- justification should be minuted if different from officer report/recommendation. New caselaw that this must be recorded and robust
- should include a statement relating to development plan policies
- must be justified by reasons valid in planning law
- usually subject to conditions with reasons (which may also be subject to an appeal)

# APPEAL RIGHTS

- against a refusal
- against a condition on permission
- against failure to determine within the statutory period (usually 8 weeks from validation – 13 weeks for “major” applications)
- against an enforcement notice

Appeal types – written representations, informal hearings, Public Inquiries.

Nationally approx. 30% appeals lost. NSDC lose approx. 29%