

An Introduction to Planning Training for Local Councillors

Course Handout



Course prepared and delivered by Steve Tilbury MSc AssocRTPI

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stevejtilburyconsulting@gmail.com

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Training Outcomes

Aim

- to enable you to make a more informed and effective contribution to discussions and debates about planning matters

Objectives

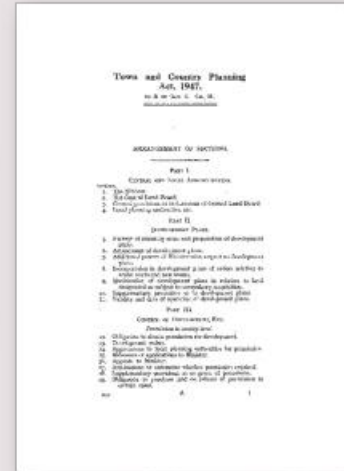
- to provide you with a understanding of the key parts of the planning system
- to explain the process that a straightforward planning application (which is most of them) goes through
- to explain your role, and how effective representations and comments can be made

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How the system is constructed

How you can make use of your land or property?



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The Town and Country Planning Act 1947 introduced the fundamentals of the planning system we have today. You need permission to carry out anything defined as the 'development of land'.

Any 'development of land' requires planning permission



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'Development' falls into one of two broad categories; either 'operational development' which means building things, engineering works, and putting up structures; or 'change of use' which means using land or property for a different purpose than the current one. There are lots of caveats – but that's the principle. Planning permission isn't the same as listed building consent or building regulations approval.

The 'plan led system' - consistent decision making according to explicit priorities and policies



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The planning system exists to achieve economic, social and environmental outcomes. These objectives are turned into policies in the Local Plan, or one of the other documents which form the statutory development plan, and serve as a reference for decision making.

The government defines the structure, the policies and the rules

- the government determines how the planning system will operate - by passing new legislation or giving new guidance
- it decides what outcomes the planning system is going to achieve - by making policy
- it sets out policies which must be followed in the **National Planning Policy Framework (NPPF)**
- Planning Practice Guidance (PPG) explains the 'nuts and bolts' of the management of the system

It can change all of these - and it does; frequently



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The government 'owns' the planning system. It can only change the legal structure with the agreement of parliament, but it can change the overarching policies whenever it feels that it needs to.

Permission can be obtained (or not) in a number of ways



By an application for permission to the local planning authority (the 'LPA')



By 'permitted development' where the government makes an order that certain types of development are acceptable



Major infrastructure projects (a power station, a runway) are considered by applying for a Development Consent Order

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Permitted development rights are planning permission given to limited forms of development by the government 'en bloc'. An application to the local authority is not required but approval of some aspects of the development may be required. Whether something does actually fall within the category of permitted development is often the subject of argument.

The local planning authority - the 'LPA'

The body with the local and administrative responsibility for planning decisions in a particular area

- a unitary council
- a district council
- a national park authority
- a county council (for minerals and waste and some buildings)

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At the local planning authority

Professional officers



Elected members



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Approximately 95% of planning applications are determined by officers of the LPA using its policies to reach their decision. Only a small number of decisions are made by councillors.



To prepare and keep up to date the documents which form the 'Local Plan'



To make a decision about whether development will be permitted when an application is made



To take what action it considers appropriate if there is evidence that development has taken place without permission

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In the long term the most important task for the LPA is to produce and keep up to date its Local Plan. That should ensure that there is the most effective local control over development proposals.

What is the Local Plan?

- a policy document which defines 'sustainable development' for the local planning authority area
- sets out how the needs of the area can be met - looking 15 or so years ahead
- identifies environmental, economic and social objectives
- based on evidence and in accordance with government policy (not necessarily 'what we'd like')
- allocates land for development to meet needs and identifies areas to be protected
- includes policies to ensure quality, character and to minimise harm

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The government stresses the importance of reviewing the Local Plan every five years and there are consequences if that is not done – but most LPAs find it very difficult.

Why is the Local Plan so important?



The law says that every decision must be made:

'in accordance with the development plan unless there are material considerations which indicate otherwise'



If it is up to date then its policies cannot easily be challenged, only how they are applied to a particular application



It can become out of date and the influence of some of its policies can diminish - that is when most problems arise

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Other parts of the development plan

- any **Neighbourhood Plan** - these form part of the development plan when adopted

- the **Minerals and Waste Plan**

there are also:

- supplementary planning documents - adding detail to a local plan policy, either on an issue (e.g. design) or a location (e.g. a major development site)
- village design statements
- strategic partnerships or alliances in which the local planning authority is involved



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Just to reiterate – the Local Plan and the other parts of the statutory development plan is the starting point for all decision making about planning applications. But if the plan is not updated and reviewed as it should be then its ‘weight’ or effectiveness can be diminished.

Types of Application

A ‘full’ application

Seeks approval for all aspects of the proposal to be approved in one go

An ‘outline’ application

Seeks approval for the principle of proposal to be established with certain details to be approved subsequently

A ‘hybrid’ application

Similar to an ‘outline’ application but with some additional detail approved in detail

A ‘reserved matters’ application

Seeks approval of the details of an ‘outline’ application already approved

A ‘retrospective’ application

A full application which is submitted after development has taken place

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The case officer manages the application from validation to recommendation



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The case officer is the 'ring master' or 'ring mistress' for the application. It's their job to move it through all the necessary stages and to recommend or make a decision as to whether it should be approved.

Who is consulted?

"Internal consultees"

Council officers with specific responsibilities and expertise such as environmental health or heritage

"Statutory consultees"

Organisations on a list of those which must be asked their views on a planning application such as local councils and Natural England

Other organisations the LPA thinks may have something relevant to say

Members of the public and in particular those who are neighbours to the application site

The government must be informed about a small range of applications with particular significance

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Every local planning authority has a slightly different way of managing the process and complying with the legal requirements.

Reaching a decision - development plan policies and the 'planning balance'

we have a 'plan led' system

"in accordance with the development plan unless
material considerations indicate otherwise"

each issue will be assessed to consider how
important it is - the 'weight' to be given



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You'll see the phrases 'planning balance' and 'planning judgement' used a lot by planning professionals – remember the relevant Local Plan (and Neighbourhood Plan) policies must go on balance to be weighed.



There would be
some positive
benefit for local
infrastructure



The
development
would resolve a
long-standing
problem site



Development
would not be
viable if every
requirement of
the plan were to
be met



The planning
history of the site



The proposal would
have a harmful
effect on other
important social or
economic
objectives



There is a new
and relevant local
or national issue
that the plan
does not
anticipate

The number of people who object or support

Claims that other property will become less valuable

The loss of a personal view

The fact that construction is temporarily inconvenient

The amount of money being made from a project

The applicant is unpopular or has a bad reputation

Disputed private rights or interests

There is no definitive list of what is, or is not, a material consideration, but the issues mentioned in the preceding slides are well established by court/appeal decisions. Remember that just because something is material, that does not mean it is more important than other considerations – it just means it can be weighed in that planning balance.

The decision - to approve

- approval will be subject to a number of conditions which must be complied with – some generic and some specific to the application
- the precise wording of the decision notice is very important
- may be subject to completion of a Section 106 agreement

Decision Notice
MC/18/2749

Medway
Serving You

Mr Philip Mathewman
32 Little Victoria Mount
St Marys Island
Chatham
ME4 3TB

Applicant Name:
St Mathewman

Town and Country Planning Act 1990

Location: Cambridge House, 1 Cornridge Terrace, Chatham, Kent, ME4 4RG.

Proposal: Construction of a 6 storey block of flats comprising of 11-two bedroom flats and 5-one bedroom flats - demolition of existing office

Notification of Grant of Planning Permission to Develop Land.

Take Notice that the Medway Council in pursuance of its powers under the above Act HAS GRANTED PERMISSION for the development of land as described above in accordance with your application for planning permission received complete on 19 September 2018.

SUBJECT TO THE CONDITIONS SPECIFIED HEREUNDER:

- The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
Reason: To comply with Section 91 of the Town and Country Planning Act 1990 (as amended).
- The development hereby permitted shall be carried out in accordance with the following approved plans:

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The decision notice is an important document – it cannot be altered without a formal process even if there is an obvious mistake.

What is a Section 106 agreement?

- an 'S106' is a separate contract entered into between the LPA and the applicant (and sometimes other parties) which creates a legally binding requirement for certain works to be carried out or payments made
- planning obligations must be necessary to make the application acceptable
 - funding to extend a school if there is evidence that existing facilities would be inadequate and otherwise the application would have to be refused
 - but not a payment to provide a new sports pavilion as a 'gesture of goodwill'

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Section 106 agreements 'run with the land' which means they bind any subsequent owners, not just the people who signed the agreement.

The decision - to refuse

- the decision notice must give the reasons for refusal
- these are then the only matters which are normally the subject to discussion at an appeal
- an application can be resubmitted with modifications which try to address the reasons given



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An appeal against refusal

- submitted to the independent Planning Inspectorate (known to all as PINS)
- allocated to an Inspector
 - written representations - correspondence only, nothing 'in person'
 - hearing - a short, relatively informal exchange of views
 - inquiry - formal and heavy-duty
- local councils can participate at inquiries ('Rule 6')
- Secretary of State may intervene to require that he personally decides based on a recommendation from the Inspector
- Inspector prepares report and decision
- costs (of participating in the appeal) can be awarded if one party has behaved 'unreasonably'

When development is carried out

- it must be carried out in accordance with the description of the development and conditions which refer to the 'approved drawings' or 'approved details'
- the case officer will rarely make compliance checks except in relation to conditions
- conditions are formally 'discharged' when the case officer agrees they've been fulfilled (which allows for some discretion)
- conditions can be varied by a formal application

Strictly speaking all appeals are determined by the Secretary of State but in almost all cases the decision is delegated to PINS. The SoS only steps in to take direct responsibility for a decision in very controversial or significant cases. Appeals focus on the reasons for refusal, making the working assumption that other matters are not in dispute and therefore do not require much if any reconsideration by the inspector.

Enforcement – a major area of contention

- **it is not a criminal offence to develop without planning permission...**
- **...or to build something slightly different to the approved development or to be in breach of conditions**
- Why?
 - to stop people getting a criminal record for honest mistakes
 - to use limited resources on preventing harm
- the local planning authority has powers to take 'enforcement' action when this has happened
- but it has to use discretion - to decide whether enforcement is 'expedient'
- the local planning authority has tools to stop development from continuing but they are not effortless
- complex enforcement cases or cases with people being bloody-minded can go on for years

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It should be no surprise that planning decisions can create heated and polarised arguments. They concern things people feel very strongly about. Everyone involved in decision making should be mindful of this.

The parish/town council role

- a 'statutory consultee' but not a decision maker
- facilitating local community involvement in strategic decisions
- commissioning a Neighbourhood Plan or Village Design Statement if appropriate
- raising issues of development taking place without permission or non-compliance
- providing advice on infrastructure and local issues
- maintaining a long term relationship with the officers and members of the local planning authority

Your personal responsibilities (some essential, some desirable....)

- you must be honest, fair and open-minded (but you can have opinions)
- ensure any personal or financial interests or connections are disclosed and you step aside
- try to avoid any actions which could be misinterpreted
- it is perfectly OK to listen to what people have to say but be prepared to listen to all sides
- stick to what is in the plan or material to the application

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How can you represent your community effectively?

- **Read and try to get to grips with the local plan and your neighbourhood plan if you have one**
- think about the place you live 'in the round'
- make use of the tools available (when appropriate)
- build a constructive relationship with the officers of the local planning authority
- assist your residents by focussing on material and factual issues
- always try to give the LPA something it can work with

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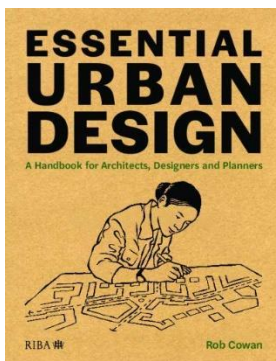


The system is set for change - although the timing and scope is uncertain

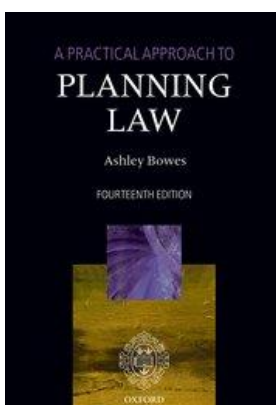
Communication with your local planning authority will be essential

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The planning system is complex and it is impossible to keep up with all of the updates and changes without time, experience and professional support – even professionals need their networks to help them. But the basic principles are all you need to be familiar with in order to approach more complex issues with some confidence.



If you're interested in understanding more about the practical aspects of 'good design' presented in a very readable and mainly graphic format then I can recommend this book by Rob Cowan and published by the RIBA. The ISBN is 978-1-85946-901-9



If you are interested in a single volume 'handbook' of planning law this is the one that I refer to on a regular basis written by Dr Ashley Bowes, a very highly regarded planning barrister. It will need updating soon (the latest edition is 2019) but as a reference for practice and case law it remains extremely helpful. Published by OUP ISBN: 9780198833253