



We care for the Chilterns

Chiltern Society: A Guide to Local Planning

1. Introduction

The Job Description for Planning Field Officers gives practical guidance on their responsibilities. This document gives an overview of Legislation and Local Plans that are relevant for dealing with planning applications and may be used when submitting an objection or comment to the Local Planning Authority (LPA).

****Please note: Although every effort was made to ensure its accuracy, this Guide must not be relied on as the sole source of information about the planning system; additionally changes to rules and procedures may inevitably have taken place since the time of writing.****

Planning applications should be assessed for their effect on the quality of life for those who live in the Chilterns, with a particular focus on protecting the landscape of the Chilterns AONB and the Green Belt. Small scale developments which may affect few people may be ignored at the PFO's discretion.

A Guide to the planning system for non-professionals is available through the Planning Portal <http://www.planningportal.gov.uk/planning/planningsystem/>

2. Legislation

2.1 National Policy: National Planning Policy Framework (NPPF)

The Framework sets out the Government's planning policies for England and how these should be applied. It provides a framework within which locally prepared plans for housing and other developments can be produced. The NPPF has been reviewed during 2018 and the updated version was published in July 2018.

Planning law requires that applications for planning permission be determined in accordance with the development plan (this includes the local and neighborhood plans that have been brought into force) unless material considerations indicate otherwise. The National Planning Policy Framework must be taken into account in preparing the development plan, and is a material consideration in planning decisions.

The particularly relevant sections of the NPPF for our purposes are:

- Presumption in favour of sustainable development – paragraph 11
- Area of Outstanding Natural Beauty (AONB) - paragraph 172
- Green Belt – paragraphs 133 - 141

The National Planning Policy Framework can be accessed on the following link –

<https://www.gov.uk/government/publications/national-planning-policy-framework--2>

Other planning policies of relevance may be published from time to time and are generally available online eg White Papers, consultations on housing.

2.2 Minerals, Waste and Transport

The County Councils or Unitary Authorities are the local planning authorities for Minerals, Waste, and major Transport matters and will produce Plans for Minerals, Waste and Transport to guide development management.

2.3 Local Plans

These are the statutory plans produced by District Councils or Unitary Authorities, either individually or in partnership with neighbouring Councils. They are sometimes also known as a Local Development Framework. They need to conform to the National Planning Policy Framework. They include a number of documents called Development Plan Documents or DPDs. These include Core Strategies and Site Specific allocations and policies as well as the Proposal Map. These documents are prepared by planning policy teams and regularly go out to consultation.

The Chiltern Society input into these plans is co-ordinated by the Planning Officer, working with the Area Planning Co-ordinators. It is vital that the Society responds to consultations on these documents and influence them where necessary to reflect Chiltern Society objectives. You should familiarise yourself on their current status. Planning applications are determined on the basis of these policies, so if the policy is not right the decision on a development is unlikely to be right either. Supplementary Planning Documents (SPDs) are also produced by each Council on a variety of topics. They, unlike the DPDs, are not subject to examination, but are subject to formal consultation processes.

The Local Plans can also recognise other guidance documents within their policies, such as the Chilterns Buildings Design Guide. These do not have SPD status but can be a consideration in planning decisions.

2.4 Neighbourhood Plans

The Localism Act 2011 established neighbourhood plans as part of the local development plan. These plans are prepared by local community groups, often Parish and Town Councils, and focus on specific local planning issues. The plans have to be developed in association with the Local Plan and often have a set target for the number of houses set at district level. The number of neighbourhood plans varies between different districts, as does the help and advice available from the district council. You will need to familiarise yourself with the plans being prepared in your local area and it is important to input at the various consultation stages as these plans now form part of the decision-making process for planning applications. Some of the neighbourhood plans are also responded to by the Society's Planning Officer. <https://www.gov.uk/guidance/neighbourhood-planning--2>

2.5 Development Control/Management

By law, any development requires planning permission from the Local Planning Authority, unless specifically excluded, (see 3.4), for which the developer must make a Planning Application. The applicant does not have to be the owner of the land, but must notify all owners.

2.6 Numbering and Types of Applications

Each Local Planning Authority will have its own system for numbering planning applications and indicating the type of application it relates to. This often takes the form of a suffix at the end of the application number eg /HH for householder applications, /FUL for full applications. You will need to familiarise yourself with the system used by the authority you are working with.

2.7 Definitions of Major, Minor and Other planning applications

Major: 10 or more dwellings, or the site area for residential development is 0.5 hectares or more, but less than 4 hectares; or –
1,000 sqm or more of industrial or retail space, or the site area is 1 hectare or more.

Minor: Fewer than 10 dwellings, or the site area for residential development is less than 0.5 hectares; or –
Less than 1,000 sqm of industrial or retail space, or the site area is less than 1 hectare.

Other: Changes of use, householder developments (developments within the curtilage of a residential property), listed building consents, conservation area consents, lawful development certificates, agricultural notifications, telecommunications, etc.

2.8 Material / Non-Material Planning considerations

Material Planning Considerations are those normally taken in to account in the determination of applications:

- National Planning Policy Framework
- National Planning Practice Guidance (PPG) – This is the key national guidance that supports the NPPF. It covers a wide range of topics, is web based, and is updated regularly. <https://www.gov.uk/government/collections/planning-practice-guidance>
- The Statutory Development Plan / District Local Plan - Section 38(6) of the Planning & Compulsory Purchase Act 2004 requires that applications or appeals be determined in accordance with the Development Plan unless Material Considerations indicate otherwise
- District Council Planning/Development Briefs
- Government Advice eg Circulars, White Papers
- Previous Planning Decisions (including existing uses)
- Statutory Designations eg Area of Outstanding Natural Beauty, Green Belt, Conservation Area
- Environmental Impacts eg Landscape, Wildlife, Heritage
- Amenity Considerations
 - Overlooking
 - Over development
 - Impacts on daylight and sunlight
 - Character and appearance of the area
 - Trees
 - Noise
 - Smell
- Traffic generation, parking and safety
- Design

- Materials
- Flood Risk
- Crime and community safety
- Need (eg Agricultural Workers Dwelling).

Non-material planning considerations NOT normally considered in the determination of applications:

- Loss of property value
- Competition
 - takeaways
 - name of business (eg different supermarket chains)
- Loss of a private view
- Legal rights/consents, deeds, covenants, private rights of way, licenses (eg entertainment)
- Internal layout
- Matters controlled by other legislation

3. How the LPA works

3.1 Planning Decisions

Planning applications are allocated to a case officer who undertakes consultations, deals with any issues raised and makes a recommendation for approval or refusal. If there are a significant number of objections or the application is 'called in' by a local councilor, the application will be referred for consideration by a Planning or Development Control Committee, who then approve or reject the recommendation. In routine cases (the majority), the decision may be delegated to the chief planning officers. The decision of the Committee is usually automatically accepted by the full Council.

The LPA's decision (often called *determination*) can be one of three:

- unconditional permission (although there is always a condition that development be started within a maximum of 3 years of the decision being issued, or 3 years from the submission of reserved matters. If it is an outline permission, a reserved matters application should be submitted within 3 years.
- permission granted with conditions, giving reasons for them
- refusal, with reasons

3.2 Time Limits

Central Government sets a target for LPA's to determine the majority of planning applications within 8 weeks, or within 13 weeks if an application is major or an Environmental Statement is required. However, this is not mandatory.

If no decision is given within the time limit then the application is 'non-determined', (see 4.2). If the application is likely to extend beyond the expiry date due to matters being outstanding, an extension of time can be agreed between the applicant and the LPA.

It should be noted that, under the requirements of the NPPF, there is always a presumption in favour of sustainable development.

Once granted, permission cannot be revoked except

- if it is out-of-time,
- when overridden by another permission which would conflict with the original,
- by agreement,
- by the LPA paying compensation.

An applicant can appeal against refusal, or against 'non-determination' when a decision has not been made within the relevant time period. This then takes the decision out of the hands of the LPA. Determination is then by the Secretary of State or a Planning Inspector on his/her behalf, following a Public Inquiry, an Informal Hearing or Written Representations Procedure. Only the applicant can appeal and there is no right of appeal for third parties.

3.3 Conditions and Obligations

Conditions may be imposed on a planning application by the LPA. They should not restrict a pre-existing right or use. Conditions are imposed on the Permission, and cannot bind a third party; they do, however, 'run with the property' and as such do bind successor owners and occupiers. Conditions cannot include financial considerations.

Some decision notices will include 'pre-commencement' conditions. These are conditions that require something to be done before construction work begins on site or a development is occupied. They typically require additional plans to be approved by the LPA or parking and landscape plans to be implemented.

Some of the conditions will require actions by the applicant and will need to be formally discharged by the LPA through a Discharge of Conditions application. This typically relates to issues such as choice of materials, landscape or parking layouts.

A condition attached to an outline permission will reserve matters for later approval, commonly including exact siting, design, external appearance, access details, landscaping, external lighting, drainage. In these cases, further 'reserved matters' applications have to be made and will be processed in the normal way. However, a condition can be imposed which says, in effect, that something is not permitted 'without the written permission of the LPA': this is not strictly a 'reserved matter' and a further formal application may not be necessary.

Conditions are just as important as the application itself. When making representations, you can propose conditions, whether supporting or objecting in principle (this can be done 'without prejudice' to an objection). You can support an application subject to conditions being attached, stating that otherwise you object.

It is most important that conditions are applied to outline permissions, as conditions cannot be introduced later unless they are specific to the 'reserved matters'.

Examples of conditions that may be requested or imposed:

- 'Velux' windows or obscure glazing
- materials for walls or roof
- hours of operation or opening
- access, surface treatment and parking
- landscaping; retention of existing trees

- the eventual removal of redundant equipment (on expiry of temporary permission or if it is suspected that some part of an installation will cease to be operational at some future date)
- occupancy restriction
- withdrawal or restriction of future PD rights.

3.4 Planning Obligations

Planning Obligations can be agreed under Section 106 of the 1990 Act, and are legal agreements which can extend to third parties. They are a local Land Charge, binding on successors in title. Obligations can be offered unilaterally by the applicant, and this can be taken into account at appeal. They should relate to the development, eg for infrastructure improvements made necessary by the development. Examples can be affordable housing, highway improvements or financial contributions for community benefit i.e. school places, libraries, open space etc.

3.5 The Community Infrastructure Levy (CIL)

This is a charge that has partially replaced Section 106 contributions in many districts and allows Councils to raise funds from new developments for use on infrastructure to support growth, normally beyond the application site boundary. The money collected from the levy will be used to support development by funding infrastructure that the Council, local community and neighbourhoods need. For example:

- new road or transport schemes
- flood defences
- schools
- green spaces
- leisure centres, and
- hospitals and healthcare.

The levy will apply to most new buildings, but the exact charge rates and types of development will vary between local authorities. Charges will be based on the size, type and location of the new development and will be set out in a charging schedule. Not all LPAs have a CIL in place.

3.6 Permitted Development (PD)

The Town and Country Planning (General Permitted Development) (England) Order 2015 defines classes of development, which would not require permission (but might need Building Regulation approval). These include:

- domestic extensions (subject to size limits, added to the original)
- porches; incidental structures (sheds, greenhouses etc.) subject to area limit
- domestic and industrial hard-standing
- various temporary uses of open land (up to 14 or 28 days per year) including car boot sales
- plant and machinery on an industrial site
- certain development by public utilities,
- demolition (not in a conservation area or of listed building) - but a 'prior notification' procedure applies

- road improvement within the existing highway boundary, and on immediately adjacent land
- change of use between some classes permitted by the Use Classes Order 1987. See <https://lichfields.uk/media/2913/lichfields-use-class-order.pdf>

There are tighter restrictions on some of the above PD rights in National Parks, AONB's, Conservation Areas and within the curtilage of listed buildings.

The Government has published a useful guide to permitted development for householders and this can be found at the following link -

<https://www.gov.uk/government/publications/permitted-development-rights-for-householders-technical-guidance>

'Article 4 Directions', initiated by the LPA, can withdraw PD rights, eg in conservation areas or other special cases.

There are a number of types of development that are subject to a 'prior approval' process from the LPA. These arrangements vary from time to time, but the most common ones you are likely to come across are -

- larger extensions to the rear of private dwellings (Currently a temporary arrangement until 30th May 2019).
- agricultural buildings and operations (PD up to 465 sqm m every 2 years in most cases, depending on size of holding).
- telecom masts (PD up to 15m high + aerials) by 'code system operators'; mast sharing is encouraged. Refer to the Society Policy on this.

Otherwise, the LPA cannot intervene in PD, although they may issue Lawful Development Certificates, which confirm in writing that a development is considered by the LPA to be permitted development.

Statutory Undertakers, such as Gas, Electricity, Water Utilities, have many PD rights, but in certain cases (eg a telecom mast or a replacement electricity line) the LPA has the right to consider whether there would be a significant environmental effect: if not agreed, the Utility must apply to the Secretary of State.

Some things are not classed as development, including:

- interior alterations to a building (except for listed building applications and in relation to some changes of use)
- work on a building which does not materially affect external appearance
- uses of land or existing structures within the curtilage of but incidental to a dwelling
- use of land for agriculture or forestry
- change of use within the same Use Class

3.7 Public Notification

Within 3 working days of receiving a valid application, the LPA must make the details available in the Part 1 Register. These include the application form, drawings and any supporting information made as part of the application. When a decision is made it must be placed on the Part 2 Register. Both registers must be kept at the principal office of the LPA if possible, and be available for inspection at reasonable hours by the public.

In practice, the application details are placed on the Council's website and can be viewed by everyone. If you submit comments, these are also likely to be placed on the website, so cannot be considered to be confidential.

The LPA must publish a weekly list of applications received, and notify Parish Councils in their areas. These lists are normally available on the council's website and some will send out a weekly e-mail. Some PFO's receive the lists directly from the LPA. Major developments (10 or more dwellings, or more than 1000 sqm of industrial or retail floor space, or with a site area more than 1 hectare) necessitate a newspaper notice, and a site notice or neighbour notification.

The use of site notices varies between local authorities, with some using notices for all applications and some restricting it to the statutory requirements for notices in relation to Listed Buildings, Conservation Areas, Environmental Impact Assessments, Public Rights of Way and departures from the Development Plan.

3.8 Evasion by Developers

Development may be started but not completed. This can be quite common, since to avoid the lapse of a permission, development has to be started (but not completed) within 3 years. A Completion Notice is available to the LPA but is rarely used.

Unauthorised development: the LPA has powers of enforcement, but will first usually try and persuade the offender to submit a retrospective application. Note that development without planning permission or in breach of condition becomes legal after 4 years for any building or engineering operation or for change-of-use to a dwelling, and after 10 years in any, other case.

4. Commenting on Planning Applications

4.1 Representing the Society

Planning Field Officers have delegated authority to comment on planning applications on behalf of the Society. Whether comments are made by letter, e-mail attachment, or submitted online, a phrase "These comments are submitted on behalf of the Chiltern Society" or suchlike should be included to make this clear. Names and addresses of respondents are made public, so using the Society's office address rather than your home address is an option.

In order to represent the Society in this way, it follows that comments should be in line with Society policies. Under no circumstances should personal views be submitted in a way that might suggest they are those of the Society (for example on Society notepaper).

4.2 Reasons underlying an Objection or Expression of Support

To be effective, comments must be made on the basis of land-use policies, such as:

- designation of the site for the type of development proposed
- 'settlement envelope' (sometimes called 'settlement policy area' or 'village development limit')
- conservation area; important open space
- Green Belt or landscape designation (AONB, etc.)
- other areas of control (e.g. 'green wedge', area of special restraint, floodplain, riverside protection area)
- adjacent to a nature conservation site

- affects listed building or its setting, or archaeological or historic sites nearby
- Chilterns Buildings Design Guide (Chilterns Conservation Board 2010) <https://www.chilternsaonb.org/uploads/files/ConservationBoard/PlanningDevelopment/BuildingsDesignGuide2010.pdf>

The following are *not* legitimate grounds for objection or support:

- commercial competition (unless 'viability or vitality' of town centre is threatened);
- loss of pleasant (private) view (except loss of privacy) or effect on property values.
- moral arguments (e.g. against gambling).

Note that the Local Plan, or in some cases, Local Development Framework, is a material consideration. Be prepared to argue against a proposed development which is contrary to existing policy but not contrary to any emerging policy. In this case it can be argued that the proposal is 'premature', i.e. that the outcome of the planning policy process and a Public Examination should be awaited.

4.3 Periods for Objection and Decision

Comments on applications must be received by the LPA within 21 days of the site notice being posted, the application being posted on the website, or a consultation letter being sent out, and within 14 days of the newspaper notice being published. Applications involving an Environmental Statement may have a longer response period.

The LPA should make a decision on the application after the notification period and within the relevant time limit (normally 8 weeks or 13 weeks). If the LPA fails to do this, the applicant may appeal to the Secretary of State against 'non-determination'.

4.4 Public Speaking at Committee

There is usually some system of hearing verbal objections at the relevant Committee meeting. Specific procedures vary between Local Authorities; but you may need to request this in the letter of objection or at a subsequent stage. There is seldom scope for communicating anything other than key messages – for example Dacorum Borough allow 3 minutes in total, to be shared by all the objectors!

5. Appeals and Public Inquiries

5.1 Planning Appeals

A Public Inquiry, Informal Hearing or Written Representations procedure can be triggered by:

- an appeal by the applicant (or their agent) against refusal, conditions, or non-determination. This must be made within 6 months of the LPA's decision being received.
- a Public Inquiry can be triggered by a 'call-in' by the Secretary of State.

The process to be used is at the discretion of the appointed Planning Inspector.

There is a right for 'duly made' objectors to submit additional written comments or be heard at an Informal Public Hearing or Public Inquiry. Objectors are given the opportunity to make their cases in greater detail than in the original objection. However, you cannot introduce new issues not

already referred to. Thus it is important to ensure that all relevant points are made in the first place. This written evidence has to be submitted by a set deadline for written representation cases and at least 3 weeks before the Inquiry or hearing. Inquiry participants are entitled to receive a copy of all other parties' submissions (and they yours) but you may have to ask for them. All deadlines will be clearly set out by the Planning Inspectorate's case officer and will be enforced very rigidly.

Further guidance on the appeals process is available on the following link –

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/730088/Procedural_Guide_Planning_appeals_version_2.pdf

Make sure you have authority for the representations you submit. (This can be questioned eg at a Public Inquiry). Participants or their witnesses will be cross-examined and can themselves cross-examine. Objectors and supporters can, of course, send in written representations, which will be fully considered without their attending the Inquiry, but then there is no opportunity for cross-examination or to refute the other side's arguments. There is usually a site visit, which, if 'accompanied', you should attend (you can be sure that the Applicant will!). This is not an opportunity to lobby, or to bring out new issues, but can be used to point things out to the Inspector.

If you have participated in the appeal process you should be notified of the decision, but if not decisions are available on the Inspectorate's Appeals Casework Portal at the following website –

<https://acp.planninginspectorate.gov.uk/>

If an application you are dealing with goes to appeal, you may wish to discuss the Society's best approach with your Area Planning Co-ordinator and/or the Planning Officer.

Chiltern Society
15th August 2018