

The Planning System: General Principles

On 5th May 2006 the responsibilities of the Office of the Deputy Prime Minister (ODPM) transferred to the Department for Communities and Local Government.

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Summary

Provides a general description of key elements of the planning system, including its structure, the determination of planning applications and the Secretary of State's role.

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Note: The above publication was issued by our former department, the Office of the Deputy Prime Minister (ODPM). ODPM became Communities and Local Government **on 5 May 2006** - all references in the text to ODPM now refer to Communities and Local Government.

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The plan-led system: structure

1. In England there is a hierarchical structure of guidance and plans covering national, regional and local planning which includes:
 - National Planning and Minerals Policy Statements and Guidance Notes.
 - Regional Spatial Strategies.
 - Local Development Frameworks.

National level

1. The Government determines national policies on different aspects of planning and the rules that govern the operation of the system. National planning policies are set out in Planning Policy Statements (PPS) and Planning Policy Guidance notes (PPG), Minerals Policy Statements (MPS) and Minerals Planning Guidance Notes (MPG), Circulars and Parliamentary Statements.

Regional level

1. In England Regional Planning Bodies (in London, the Mayor) prepare and produce a Regional Spatial Strategy (RSS) (in London, the Spatial Development Strategy) reflecting the needs and aspirations for development and land use for a ten to fifteen year period. Each RSS should reflect, and build on, the policies set out at national level. The RSS can include policies relating to the area, or part of the area, of more than one local planning authority, allowing for sub-regional planning.

Local level

1. Local planning authorities (other than county councils) must prepare a Local Development Framework (LDF). This will comprise a folder of documents for delivering the spatial or minerals planning strategy for the area. (The requirements for local minerals planning that apply to county councils are set out in MPS1¹, and the requirements for waste planning are in PPS10²). An LDF will include a Local Development Scheme, Local Development Documents and a Statement of Community Involvement.
2. Local planning authorities (except county councils) must prepare a Local Development Scheme (LDS) which sets out a programme for the production of Local Development Documents (LDDs); what documents are to be prepared as LDDs; the timetables for producing them; and whether they are to be prepared jointly with other local authorities. LDDs, which can either be Development Plan Documents (DPDs) or Supplementary Planning Documents (SPDs), should reflect and build upon national and regional policies, taking into account local needs and variations. The Planning and Compulsory Purchase Act 2004 requires LDDs to have regard to national policies and guidance issued by the Secretary of State, the local authority's Community Strategy, and also to be in general conformity with the RSS or, for London Boroughs, the Spatial Development Strategy.

The Development Plan

1. The statutory Development Plan will consist of:
 - i) Regional Spatial Strategies, or the Spatial Development Strategy prepared by the Mayor of London; and
 - ii) Development Plan Documents prepared by district councils, unitary authorities, Broads Authority and National Park authorities, and Minerals and Waste Development Plan Documents prepared by county councils.

1. The statutory Development Plan will continue to be the starting point in the consideration of planning applications for the development or use of land³, unless material considerations indicate otherwise. The Development Plan therefore provides the essential framework for planning decisions. When conflicts between Plan policies arise, decisions should be taken in the light of all material considerations, including local priorities and needs, guided by relevant national policy.

The plan led system: sustainable development and sustainability appraisal

1. The Planning and Compulsory Purchase Act 2004 contains a statutory requirement (section 39) for those responsible for preparing the RSS and LDDs in England, to undertake these functions with a view to contributing to the achievement of sustainable development⁴. The Act also requires a sustainability appraisal of the strategy and policies in the RSS and LDDs⁵. Sustainability appraisal is intended to assess the impact of plan policies from an environmental, economic and social perspective. It is first and foremost a systematic process. It is intended to test the performance of a plan against the objectives of sustainable development and thereby provide the basis for its improvement. Guidance to be published on sustainability appraisal will show how the requirements of the Strategic Environmental Assessment (SEA) Directive can be incorporated into the process⁶.
2. PPS11 (Regional Spatial Strategies) and PPS12 (Local Development Frameworks), together with supporting guidance, set out in more detail the operation of the plan-led system and sustainability appraisal. The Office of the Deputy Prime Minister (ODPM) has published guidance for local planning authorities on meeting the requirements of the SEA Directive in their plan-making, and this will be expanded in due course to cover the full range of Sustainability Appraisals⁷.

¹ Minerals Policy Statement 1, *Planning and Minerals*, issued for public consultation, November 2004.

² Planning Policy Statement 10, *Planning for Sustainable Waste Management*, issued for public consultation December 2004.

³ Planning and Compulsory Purchase Act 2004, section 38(6).

⁴ The duty states that: "The person or body must exercise the function with a view to contributing to the achievement of sustainable development." (Section 39(2) Planning and Compulsory Purchase Act 2004).

⁵ Planning and Compulsory Purchase Act 2004, section 5(4) for RSS; 19(5) for LDDs.

⁶ Directive 2001/42/EC, 'Assessment of the effects of certain plans and programmes on the Environment'.

⁷ The Strategic Environmental Assessment Directive: Guidance for Planning Authorities, ODPM (October 2003).

Determination of planning applications

Determining planning applications

1. Local planning authorities must determine planning applications in accordance with the statutory Development Plan, unless material considerations indicate otherwise. If the Development Plan contains material policies or proposals and there are no other material considerations, the application should be determined in accordance with the Development Plan. Where there are other material considerations, the Development Plan should be the starting point, and other material considerations should be taken into account in reaching a decision. One such consideration will be whether the plan policies are relevant and up to date. The 2004 Act provides that if there is a conflict between policies in an RSS or policies in a DPD, the most recent policy will take precedence.

Other material considerations

1. *"In principle...any consideration which relates to the use and development of land is capable of being a planning consideration. Whether a particular consideration falling within that broad class is material in any given case will depend on the circumstances"* (Stringer v MHLG 1971). Material considerations must be genuine planning considerations, i.e. they must be related to the development and use of land in the public interest. The considerations must also fairly and reasonably relate to the application concerned (*R v Westminster CC ex-parte Monahan 1989*).
2. The Courts are the arbiters of what constitutes a material consideration. All the fundamental factors involved in land-use planning are included, such as the number, size, layout, siting, design and external appearance of buildings and the proposed means of access, together with landscaping, impact on the neighbourhood and the availability of infrastructure.
3. The Courts have also held that the Government's statements of planning policy are material considerations which must be taken into account, where relevant, in decisions on planning applications. These statements cannot make irrelevant any matter which is a material consideration in a particular case. But where such statements indicate the weight that should be given to relevant considerations, decision-makers must have proper regard to them. If they elect not to follow relevant statements of the Government's planning policy, they must give clear and convincing reasons (*E C Grandson and Co Ltd v SSE and Gillingham BC 1985*).
4. Emerging policies, in the form of draft policy statements and guidance, can be regarded as material considerations, depending on the context. Their existence may indicate that a relevant policy is under review; and the circumstances which have led to that review may need to be taken into account.
5. In those cases where the Development Plan is not relevant, for example because there are no relevant policies, or policies in the DPDs pull in opposite directions so that there is no clear guide for a particular proposal, the planning application (or planning appeal) should be determined on its merits in the light of all the material considerations.

6. Local planning authorities may sometimes decide to grant planning permission for development which departs from a Development Plan if other material considerations indicate that it should proceed. Significant departures must be notified to the Secretary of State so that he can decide whether he wishes to intervene.

Prematurity

1. In some circumstances, it may be justifiable to refuse planning permission on grounds of prematurity where a DPD is being prepared or is under review, but it has not yet been adopted. This may be appropriate where a proposed development is so substantial, or where the cumulative effect would be so significant, that granting permission could prejudice the DPD by predetermining decisions about the scale, location or phasing of new development which are being addressed in the policy in the DPD. A proposal for development which has an impact on only a small area would rarely come into this category. Where there is a phasing policy, it may be necessary to refuse planning permission on grounds of prematurity if the policy is to have effect.
2. Otherwise, refusal of planning permission on grounds of prematurity will not usually be justified. Planning applications should continue to be considered in the light of current policies. However, account can also be taken of policies in emerging DPDs. The weight to be attached to such policies depends upon the stage of preparation or review, increasing as successive stages are reached. For example:
 - Where a DPD is at the consultation stage, with no early prospect of submission for examination, then refusal on prematurity grounds would seldom be justified because of the delay which this would impose in determining the future use of the land in question.
 - Where a DPD has been submitted for examination but no representations have been made in respect of relevant policies, then considerable weight may be attached to those policies because of the strong possibility that they will be adopted. The converse may apply if there have been representations which oppose the policy. However, much will depend on the nature of those representations and whether there are representations in support of particular policies.
3. Where planning permission is refused on grounds of prematurity, the planning authority will need to demonstrate clearly how the grant of permission for the development concerned would prejudice the outcome of the DPD process.

Planning conditions and obligations

1. Local planning authorities can impose conditions on planning permissions only where there is a clear land-use planning justification for doing so. Conditions should be used in a way which is clearly seen to be fair, reasonable and practicable. One key test of whether a particular condition is necessary is if planning permission would have to be refused if the condition were not imposed. Otherwise, such a condition would need special and precise justification.
2. Unless otherwise specified, a planning permission runs with the land. Exceptionally, however, the personal circumstances of an occupier, personal hardship, or the difficulties of businesses which are of value to the welfare of the local community, may be material to the consideration of a planning application. In such circumstances, a permission may be made subject to a condition that it is personal to the applicant. Such arguments will seldom outweigh the more general planning considerations, however.
3. Where it is not possible to include matters that are necessary for a development to proceed in a planning condition, developers may seek to negotiate a planning

obligation under section 106 of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991). Planning obligations should meet the Secretary of State's policy tests set out in Department of the Environment Circular 1/1997 (or its successor); i.e. they should be:

- (a) necessary;
 - (b) relevant to planning;
 - (c) directly related to the proposed development;
 - (d) fairly and reasonably related in scale and kind to the proposed development; and
 - (e) reasonable in all other respects.
1. The use of planning obligations must be governed by the fundamental principle that planning permission may not be bought or sold. It is therefore not legitimate for unacceptable development to be permitted because of benefits or inducements offered by a developer which are not necessary to make the development acceptable in planning terms. Planning obligations are only a material consideration to be taken into account when deciding whether to grant planning permission, and it is for local planning authorities to decide what weight should be attached to a particular material consideration.

Planning appeals

1. Applicants have the right of appeal to the Secretary of State if an application is refused, or granted subject to conditions, or if it has not been determined within the specified period. Appeals are administered by the Planning Inspectorate - an executive agency reporting to the Secretary of State. Appeals are considered by written representation, through hearings and through public inquiries.

The Secretary of State's role

1. The Secretary of State can make representations regarding the RSS or LDDs for consideration at the examination, or prior to adoption in the case of LDDs that are not subject to examination. The Secretary of State also has reserve powers to intervene in the process, including directing modifications to be made or calling in LDDs for his own determination. The Secretary of State expects to use his powers of direction and intervention sparingly.
2. The Secretary of State can also 'call-in' planning applications, and recover appeals, for his determination. In general the Secretary of State will use these intervention powers selectively and will not interfere with the jurisdiction of local planning authorities unless it is necessary to do so. Criteria for calling-in planning applications were set out by the then Minister for Planning in June 1999.

Criteria for calling in planning applications for determination by the Secretary of State

"(The) policy is to be very selective about calling-in planning applications. (The Secretary of State) will, in general, only take this step if planning issues of more than local importance are involved. Such cases may include, for example, those which, in his opinion:

- may conflict with national policies on important matters;
- could have significant effects beyond their immediate locality;
- give rise to substantial regional or national controversy;
- raise significant architectural or urban design issues; or
- may involve the interests of national security, or of foreign Governments.

However, each case will continue to be considered on its individual merits."

(Hansard, Written Answer, 16 June 1999, col.138)

Propriety

1. The members of the local planning authority are elected to represent the interests of the whole community in planning matters. When determining planning applications they must take into account planning considerations only. This can include views expressed on relevant planning matters. However, local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission, unless it is founded upon

valid planning reasons.

2. Part III of the Local Government Act 2000 introduced a new ethical framework for local government. Each local authority is required to adopt a local code of conduct for councillors based on a model code issued by Government. The model code sets out the expectations as to the conduct of elected members in carrying out their official duties. The guidance note, *Probity in Planning (update) - the role of councillors and officers*, published by the Local Government Association in 2002, relates these requirements specifically to planning. The Standards Board for England is responsible for investigating allegations of breaches of local codes and has a range of sanctions open to it, ranging up to suspension or removal from office. Similarly the Local Government Ombudsman may find that the breach of a code by a councillor constitutes maladministration.

Private interests

1. The planning system does not exist to protect the private interests of one person against the activities of another, although private interests may coincide with the public interest in some cases. It can be difficult to distinguish between public and private interests, but this may be necessary on occasion. The basic question is not whether owners and occupiers of neighbouring properties would experience financial or other loss from a particular development, but whether the proposal would unacceptably affect amenities and the existing use of land and buildings which ought to be protected in the public interest.

Other legislation

1. Non-planning legislation may place statutory requirements on planning authorities, or may set out controls which need to be taken into account (for example, environmental legislation, or water resources legislation). Planning authorities, in exercising their functions, also need to have regard to the general requirements of other legislation, in particular:
 - The Race Relations (Amendment) Act 2000 which prevents discrimination directly or indirectly in any functions carried out by public authorities.
 - The Disability Discrimination Act 1995 which places a duty on all those responsible for providing a service to the public not to discriminate against disabled people by providing a lower standard of service.
 - The Human Rights Act 1998 which incorporated provisions of the European Convention on Human Rights (ECHR) into UK law. The general purpose of the ECHR is to protect human rights and fundamental freedoms and to maintain and promote the ideals and values of a democratic society. It sets out the basic rights of every person together with the limitations placed on these rights in order to protect the rights of others and of the wider community. The specific Articles of the ECHR relevant to planning include Article 6 (Right to a fair and public hearing), Article 8 (Right to respect for private and family life, home and correspondence), Article 14 (Prohibition of discrimination) and Article 1 of Protocol 1 (Right to peaceful enjoyment of possessions and protection of property).

Further information

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