

Planning Training - New Parish Councillors -

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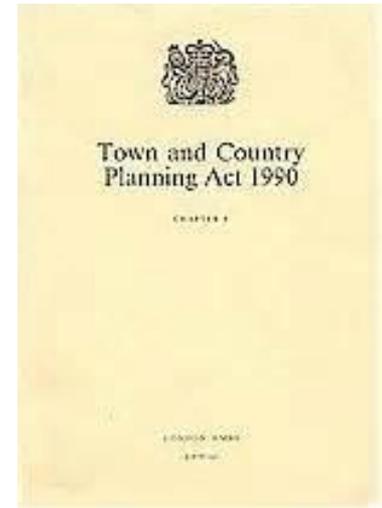
8th July 2015

Agenda/Objectives

To provide an overview and a basic understanding of :

- The purpose of the town and country planning system;
- Permitted development;
- Primacy of the development plan;
- Issues that can and cannot be taken into account;
- The role of parish councils;
- The role of planners;
- The decision-making process for planning applications;
- Consequences and risks of planning decisions;
- Section 106 Agreements

The Town & Country Planning System



- It ensures that the right development takes place in the right place at the right time;
- It balances economic, social and environmental needs (sustainable development);
- It provides legitimacy through effective consultation and testing of evidence;
- It delivers change on the ground;
- It shapes our settlements to meet identified needs and helps to protect the wider countryside for its own sake;
- It is a system for managing development positively in the public interest, and not in a controlling or regulatory way.

Presumption in Favour

National Planning Policy Framework

At the heart of the National Planning Policy Framework is a **presumption in favour of sustainable development**, which should be seen as a golden thread running through both plan-making and decision-taking.

For **decision-taking** this means:

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
 - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
 - specific policies in this Framework indicate development should be restricted

(National Planning Policy Framework (NPPF), paragraph 14)

Development



- The Town & Country Planning Act 1990 (as amended) defines the meaning of development (S.55). Activities classed as development include:
 - Building operations,
 - Engineering operations,
 - Mining operations,
 - Other operations,
.....in, on, over or under land;
 - Material change in the use of any land and buildings;

- Certain activities do not involve development and are therefore beyond the local authority's control, such as:
 - Chattels or moveable structures which are not building operations and do not involve a change of use;
 - Internal alterations, or works that do not materially affect the external appearance of a building;
 - Use of any land or buildings for agriculture;

Permitted Development



Building Works

Certain building projects do not require planning permission from the council because they are permitted by planning legislation (aka permitted development).

<http://www.planningportal.gov.uk/permission/>

Change Of Use

Planning legislation puts uses of land and buildings into various categories (known as 'Use Classes') and permits certain changes of use without planning permission from the council.

<http://www.planningportal.gov.uk/permission/commonprojects/changeofuse/>

Prior Approval

Some of these permitted development rights require the council's prior approval (a 'light touch' review of proposals with limited factors that can be considered).

For further information, visit www.planningportal.gov.uk

Planning Applications - General -



- The procedure for dealing with planning applications is governed by legislation;
- Certain information is required with planning applications, such as a form, fee, plans and technical evidence (aka 'validation requirements');
- There are specific requirements for consultation and publicity;
- Planning applications should be determined within a certain timescale, depending on the type and scale of development (generally 8 or 13 weeks);

The Development Plan

Section 38(6) of the Planning & Compulsory Purchase Act 2004 states that:

“Development proposals must be determined in accordance with the Development Plan unless material planning considerations indicate otherwise.”



ADOPTED 15TH DECEMBER 2014

In Mendip, the Development Plan consists of:

- **Mendip District Local Plan Part I: Strategy and Policies 2006 – 2029 (adopted December 2014)**
 - Somerset Minerals Plan (adopted February 2015)
 - Somerset Waste Core Strategy (adopted February 2013)
 - Policy 6 (Green Belt) of the Somerset & Exmoor National Park Joint Structure Plan Review (adopted April 2000)
- The Mendip District Local Plan Part II (Site Allocations) process has commenced and details will follow in due course.
- Part II will effectively review existing development limits and important open spaces, and will identify sites to accommodate development identified in the adopted Part I.

Relevant Planning Considerations



There is no definitive list of relevant (material) considerations. The Courts are the arbiters of what constitutes a material consideration. Examples include:

- Government planning policy and guidance (NPPF, NPPG)
- Planning legislation.
- Adopted and emerging local policy/guidance (e.g. neighbourhood plans, village design statements)
- Planning history/related decisions
- Permitted development
- Design, appearance and relationship with the surrounding area.
- Living conditions such as light, privacy, noise and odour.
- Highway safety (Somerset County Council Standing Advice)
- Biodiversity
- Impact on trees and the landscape
- Flood risk in identified areas at risk.
- Heritage assets such as listed buildings, conservation areas and archaeology
- The economy, including job creation/retention.
- Drainage and surface water run-off.

If an issue is not covered by local or national planning policy, it's probably not relevant.

Non-Material Planning Considerations



Irrelevant (“non-material”) planning considerations are often raised through the consultation process but the courts have decided that they cannot be taken in account when determining an application. Examples include:

- The history or character of an applicant;
- Perceived or actual impact of development on property values;
- Land ownership, restrictive covenants or other private property rights including boundary and access disputes or maintenance;
- An applicant’s motivations or future intentions;
- Retrospective nature of applications;
- Impact on private views;
- Moral issues;
- “Better“ site/use/development (exc. town centre development)
- The extent of public support or opposition for a proposal alone;
- Unfairness of competition between businesses;
- Matters controlled by other (non-planning) legislation such as licensing, environmental permitting and building regulations.

Role of Parish Councils



- PCs are the tier of local government closest to the people;
- They provide the local knowledge to supplement the decision-making process for planning applications;
- There is a requirement to notify PCs of applications for planning permission and reserved matters;
- PCs are notified at the same time as other consultation and publicity;
- All representations must be taken into account when a decision is made;
- PCs are sent a copy of decisions made in their parish;

Conflicting views are inevitable and unavoidable because.....

- Certain matters of judgement are subjective or open to interpretation.
- Other matters of judgement are more objective and must be supported by technical evidence or detailed reasoning;
- Some concerns cannot be taken into account;

Planners!

Planners, often referred to as case officers, are employed by the council to form balanced and impartial judgements, and to recommend planning applications for approval or refusal, taking into account:

- representations made;
- the development plan;
- any other relevant material planning considerations;
- risks and consequences of decisions made;



The Council/RTPI “Code of Conduct” states that planners must:

- act with competence, honesty and integrity;
- fearlessly and impartially exercise their independent professional judgement;
- not make or subscribe to any statements or reports which are contrary to their bona fide professional opinions, and shall not knowingly enter into any contract or agreement which requires them to do so.

The Decision-Making Process



- The process is based on extensive experience and best practice;
- It has been jointly developed by officers and councillors;
- It was adopted by the Planning Board in November 2014;
- It centres on the consideration of conflicting views;
- It seeks to ensure that:
 - the majority of decisions are delegated to officers.
 - the Planning Board only considers major, contentious or complex proposals that **really** need public debate.

[The Process](#)
[Guide](#)

Consequences and Risks of Decisions

Granting planning permission

=  Applicant  Objector/s

- Formal complaint to the Council and Local Government Ombudsman (procedural fault, maladministration) – review of process, apology, compensation
- Judicial review – cost, re-consideration if quashed

Refusing planning permission

=  Objector/s  Applicant

- Right of appeal to the Secretary of State - reputation
- Unreasonable behaviour – costs

Granting Permission



- No third party right of appeal;
- Only challenge through the courts;
- A high court challenge has to be lodged within 6 weeks;
- The Local Government Ombudsman review decisions but cannot change them;
- They can only look at how a decision has been reached;
- The LGO can order payment of compensation where someone has been prejudiced by a fault;
- Complaints are inevitable but can be very time-consuming;

Planning Conditions

“yes.... BUT!”

- Planning permission can be granted subject to conditions;
- Conditions can regulate a development (e.g. days/hours of use) or require further detail for approval (e.g. finished materials, landscaping, drainage);
- Planning permission must not be refused if conditions can mitigate the harm identified by the proposed development (no matter how many conditions may be required);
- Government tests for imposing conditions are:
 - **Necessary** – refuse without, required by policy
 - **Relevant to planning** – matters of non-planning legislation
 - **Relevant to the development permitted** – cannot remedy current issues or problems
 - **Enforceable** – must be possible/practical to detect a breach
 - **Precise** – clear about what is required and include triggers for action
 - **Reasonable in all other respects**
- Officers have a list of ‘standard’ conditions imposed on permissions.

Planning Appeals



- Applicants have a right of appeal against refusal of permission, conditions or non-determination.
- Appeals are heard by way of written representations, informal hearing or public inquiry.
- Appeals are determined by an Inspector appointed by the Secretary of State.
- The Planning Inspectorate in Bristol administers the appeals process.
- The Inspector will determine the appeal based on the proposal considered by the council and any comments made.
- The Appellant and LPA submits a statement of evidence to support their cases, and third parties can make further representations.
- Each party is expected to meet their own costs;
- A party's appeal costs can, however, be awarded by an Inspector where there has been unreasonable behaviour;

Examples of Unreasonable Behaviour

(source: National Planning Practice Guidance)

- preventing or delaying acceptable development;
- failure to produce evidence to substantiate each refusal reason;
- vague, generalised or inaccurate assertions about a proposal's impact;
- refusing permission where conditions could mitigate the impact;
- acting contrary to, or not following, well-established case law;
- persisting in objections which the Secretary of State have addressed;

Unreasonable Behaviour (...cont)

- not determining similar cases in a consistent manner;
- refusing a similar scheme previously approved and no change;
- refusing reserved matters on issues relevant to the outline stage;
- imposing a condition that does not meet the 6 tests;
- requiring a planning obligation (S106) that does not meet the 3 tests;
- withdrawing grounds for refusing permission without any change in circumstance.

Section 106 Agreements



- A Sections 106 Agreement is a legal agreement between a developer and the council to secure 'planning obligations';
- They are used to secure matters which need to be mitigated or controlled, but cannot be conditioned (government guidance).
- They must be site-specific.
- Legislative tests for planning obligations (Community Infrastructure Regulations 2010) are as follows:
 - **Necessary** to make the development acceptable in planning terms
 - **Directly related** to the development
 - **Fairly and reasonably** related in kind and scale to the development
- S106 guidance and the council's S106 protocol is available on at <http://www.mendip.gov.uk/s106agreements>

Section 106 Agreements



Main Purposes

1. Payment of money
 - only to mitigate a site-specific impact, relevant to planning policy.
 - not a mechanism to simply extract money from a developer or to accept money offered by developers (buy/sell myth)

2. Control of private land
 - Transfer/use by others (e.g. public space/property);
 - Prevent disposal of land/property to avoid otherwise conflicting uses.

3. Revocation of previous permissions/lawful rights
 - Only permitting implementation of one or another permission;
 - Giving up rights that would otherwise compromise development.

Making Your Recommendation – Key Points -

- start with policies in the Local Plan;
- consider any other relevant policy context, if necessary;
- recognise that certain issues are objectively assessed and require technical expertise;
- look at the application on its own merits, and in its particular context;
- give reasons for recommendation;
- do not refer to non-material considerations;
- contact your District Ward Councillor/s if you feel strongly about a particular recommendation.

Useful References

Planning Portal (www.planningportal.gov.uk)

MDC website (www.mendip.gov.uk/planning)

- View planning applications
- How applications are determined
- Planning appeals process
- Local Plan (www.mendip.gov.uk/localplan)

National Planning Policy Framework

National Planning Practice Guidance

(www.planningguidance.planningportal.gov.uk)