

A

Guide to Planning

**for Town and Parish Councils
and Parish Meetings**

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1. INTRODUCTION

In this Guide, town councils, parish councils and parish meetings are referred to collectively as 'local councils'.

All local councils seek to influence the planning decisions taken in their area. However, to do this effectively a local council needs to fully understand how the town and country planning system operates and, in particular, to understand what can, and cannot, be taken into account in planning decisions.

There are two main elements to the planning system – the preparation of development plans and the determination of planning applications. As explained later in this guide, planning applications are usually determined in accordance with the relevant development plans. It therefore follows that if a local council wants to influence planning decisions in its area, it must first influence the content of the development plans for its area. This guide gives advice to councils on how to influence both development plans and decisions on planning applications.

Within the scope of this guide it is not possible to cover all the intricacies of the planning system, nor the variations in procedure between different Local Planning Authorities. If you require further advice contact the CALC office or your Local Planning Authority.

2. OVERVIEW OF THE PLANNING SYSTEM

Local Planning Authorities (LPAs) in England operate within a complex framework of national planning legislation. This legislation provides the context for national planning policy which is expressed in the form of national **Planning Policy Statements and Government Circulars**.

These national policy documents provide guidance for the preparation of **Regional Spatial Strategies** which in turn provide the context for planning policies at the local level set down in **Local Development Frameworks**.

These policy documents then guide the consideration of **planning applications**. LPAs must determine planning applications in accordance with the statutory Development Plan (consisting of the Regional Spatial Strategy and the Local Development Framework for the area) unless other material planning considerations indicate otherwise.

Therefore decisions taken by LPAs when preparing a Local Development Framework and determining planning applications have to take account of policies at the regional and national levels. *As a consequence LPAs do not have a free hand in the decisions they take.*

At the present time (2008) the planning system is in a state of transition. Arising from the Planning and Compulsory Purchase Act 2004 the Regional Spatial Strategy and Local Development Frameworks described above will replace 'Regional Planning Guidance', 'Structure Plans' (e.g. the Cumbria and Lake District Joint Structure Plan) and 'Local Plans' (e.g. Eden Local Plan, Copeland Local Plan etc). The policies in the existing Structure Plan and Local Plans will continue to apply until replaced by the new form of plans.

In Cumbria responsibility for the preparation of the Regional Spatial Strategy lies with the North West Regional Assembly (soon to transfer to the North West Development Agency). Other planning responsibilities lie with the LPAs in Cumbria, as shown below

Local Planning Authority	Responsibilities
Allerdale Borough Council Barrow Borough Council Carlisle City Council Copeland Borough Council Eden District Council South Lakeland District Council	Local Development Frameworks (except minerals and waste) outside the National Parks All planning applications (except minerals and waste) outside the National Parks Participation in sub regional (Cumbria wide) development planning
Cumbria County Council	Minerals and Waste Development Framework outside the National Parks Minerals and waste planning applications outside the National parks Participation in sub regional (Cumbria wide) development planning
Lake District National Park Authority Yorkshire Dales National Park Authority	Local Development Framework within the National Park (including minerals and waste) All planning applications within the National Park (including minerals and waste) Participation in sub regional (Cumbria wide) development planning

3. THE DEVELOPMENT PLANNING SYSTEM

The Local Development Framework

A Local Development Framework (LDF) or a Minerals and Waste Development Framework (MWDF) comprise a 'folder' of documents which set down the spatial or minerals and waste planning policies for an area (in this context 'spatial' means the geographic distribution of development and other uses of land). For simplicity, subsequent references to a LDF should be taken to include also a MWDF. An LDF will include:

- 1) Development Plan Documents
- 2) Local Development Scheme
- 3) Statement of Community Involvement
- 4) Annual Monitoring Report
- 5) Supplementary Planning Documents

LDF documents fall into two categories: *Required and Optional*.

Development Plan Documents (Required)

Local Development Frameworks must include Development Plan Documents (DPDs) which outline the key development goals and proposals for an area. DPDs comprise:

- *a Core Strategy,*
- *Site-Specific Allocations of land,*
- *a Proposals Map*
- *and may also contain additional optional development documents such as Area Action Plans.*

DPDs are subject to rigorous procedures of community involvement, consultation and independent examination. Once adopted, development control decisions must be made in accordance with the DPDs unless material considerations indicate otherwise. DPDs are also subject to a Sustainability Appraisal to ensure economic, environmental and social effects of the plan are in line with sustainable development targets.

Core Strategy - (Required). The core strategy sets out the general spatial vision and objectives for implementation in the Local Development Framework. The core strategy plays a key part in the implementation of the council's Community Strategy by setting out its spatial aspects and providing a long-term spatial vision. The core strategy should express those parts of the Community Strategy that relate to the development and use of land and outline the council's strategy for delivering strategic development needs, including housing, leisure and retail.

The core strategy must be kept up to date and all other development plan documents must be in conformity with it and the Regional Spatial Strategy.

Site Specific Allocations (Required). The allocation of land for specific uses must be set out in a DPD called Site Specific Allocations (and in other DPDs, as appropriate) which is separate from the Core Strategy. This allows the local authority to update allocations in the light of changes to other local development documents or implementation on the ground. Sites should be identified on a robust and credible assessment of the suitability, availability and accessibility of land for particular uses or a mixture of uses. Account will need to be taken of any requirements in the Regional Spatial Strategy.

Proposals Map (Required) The Proposals Map should illustrate all site-specific policies in all the adopted DPDs in map form. The Proposals Map should also identify areas of protection such as nationally protected landscape and local nature conservation areas, green belt land and conservation areas. Separate inset maps may be used to show policies for part of the authority's area, such as the policies for Area Action Plans. The Proposals Map must be revised as each new development plan document is adopted and should reflect the up-to-date spatial plan for the area.

Area Action Plans (Optional) An Area Action Plan (AAP) is a development plan document focused upon a specific location or an area subject to conservation or significant change. This could include a major regeneration project or a growth area. The AAP should focus on implementation - providing an important mechanism for ensuring development of an appropriate scale, mix and quality for key areas of opportunity, change or conservation. An AAP should outline protection for areas sensitive to change and aim to resolve conflicting objectives in areas subject to development pressures.

Other Development Plan Documents (Optional). These can include thematic documents concerned with housing, employment, retail development etc. Other DPDs can also include generic development control policies.

Local Development Scheme (Required)

The Local Development Scheme is a public 'project plan' identifying which local development documents will be produced, in what order and when. The Local Development Scheme acts as the starting point for the community to find out about the authority's planning policies in respect to a particular place or issue, and what the status of those policies. It also outlines the details of and timetable for the production of all documents that make up the Local Development Framework over a three-year period and can be updated as necessary.

Statement of Community Involvement (Required)

The Statement of Community Involvement (SCI) shows how and when planning authorities intend to consult local communities when preparing documents. The SCI will ensure that consultation begins at the earliest stages of each document's development so that communities are given the fullest opportunity to participate in plan making and to make a difference. Every Statement of Community Involvement must provide open access to information, actively encourage the contribution of ideas and representations from the community and provide regular and timely feedback on progress.

Annual Monitoring Report (Required)

This is a report submitted to the government by a local planning authority to assess the progress and the effectiveness of a Local Development Framework. The Annual Monitoring Report will assess:

- are policies achieving their objectives and is sustainable development being delivered?
- have policies had intended consequences?
- are the assumptions and objectives behind policies still relevant?
- are the targets set in the LDF being achieved?

Supplementary Planning Documents (Optional)

Supplementary Planning Documents (SPDs) expand or add details to policies laid out in DPDs, or a saved policy from an old Structure or Local Plan. These may take the form of design guides, area development briefs, a master plan or issue-based documents. These documents can use illustrations, text and practical examples to expand on how the authority's policies can be taken forward. Local authorities must involve the community in the preparation of SPDs. They are also subject to a Sustainability Appraisal to ensure economic, environmental and social effects of the plan are in line with sustainable development targets.

The “Development Plan”

The statutory “Development Plan” will consist of:

- I. the Regional Spatial Strategy, and
- II. Development Plan Documents prepared by District Councils, National Park Authorities, and the County Council.

(The old Structure Plan and Local Plans remain part of the Development Plan until they are replaced).

The statutory Development Plan is the starting point in the consideration of planning applications for the development or use of land, 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.

Main Components of the Development Plan and Local Development Framework

	The Statutory Development Plan	Local Development Framework
Regional Spatial Strategy (R)	●	
Core Strategy (R)	●	●
Site Specific Allocations (R)	●	●
Adopted Proposals Map (R)	●	●
Area Action Plans (O)	●	●
Other Development Plan Documents (O)	●	●
Supplementary Planning Documents (O)		●
Statement of Public Involvement (R)		●

(R) = required

(O) = optional

Guidance for Local Councils

Local councils can, and should, get involved in the preparation of the Local Development Framework for their area. The planning system is 'plan-led'. This means that development will usually be permitted if it is in accord with the relevant agreed plan for the area. Influence the plan and a local council will have influenced how its local environment will change. This is far more effective than waiting until a developer applies for planning permission on a specific site because the planning application will usually be determined in accordance with the plan.

The government is keen that citizens should take an active part in decisions affecting them and their communities. Personal involvement in planning requires access to information and a willingness to contribute an opinion, either as an individual or in a group.

The law requires that both local and regional planning bodies prepare a 'statement of community involvement', which sets out their policy on involving the community in preparing regional spatial strategies, local development documents and consulting on planning applications. Every local council should make sure it sees this document.

When a local council becomes aware that a plan (e.g. a Local Development Framework) is being prepared which affects its area, it should consider putting in place some arrangements which will help the council decide what it would like to see in the plan. A council should consider:

- Sending a representative to meetings and seminars about the plan which have been arranged by the LPA
- Asking a councillor or the Clerk to study the background papers issued by the LPA and to recommend to the council what the council's contribution to the plan should be (e.g. observations on draft proposals)
- Setting up a small working group (which can include non-members of the council) to study the background papers and advise the council.
- Set up a joint working group with adjacent parish councils – this can spread the load of reading weighty background papers.
- Inviting a planning officer to address the council, or even a public meeting, about the proposed plan.
- Make sure the LPA takes account of any Parish/Community Plan

Getting involved in the preparation of a plan like the Local Development Framework, can be quite complicated and time consuming, so it is important to find some way of sharing the burden along the lines indicated above. The task should not simply be left to the Clerk. The Clerk may not have the time to study all the background documents and advise the council and when this is the case it should not be an excuse for doing nothing. The options of asking councillors or interested members in the community to get involved and advise the council should always be explored.

The critical thing is – **get involved** – respond positively to consultations and invitations to participate in the Development Planning system. It will probably be too late if you wait until that big planning application comes in!

4. THE DEVELOPMENT CONTROL SYSTEM

What is “Development”

Most forms of “development” require planning permission. Development is defined under the 1990 Town and Country Planning Act as "the carrying out of building, engineering, mining or other operation in, on, over or under land, or the making of any material change in the use of any building or other land."

Some types of minor building work do not need planning permission. This is because the effect of these developments on neighbours or the environment is likely to be small, and the government has issued a general planning permission to authorise them. This is known as ‘permitted development’ (what constitutes ‘permitted development’ is currently under review).

Consideration of Planning Applications

Before a Planning Application is submitted

An application for planning permission is made to the LPA for the area. The application must include enough detail for the authority to see what effect the development could have on the area. The application will either be submitted as an ‘Outline’ application (which after approval would be followed by the submission of ‘Reserved Matters’ to the LPA), or as a ‘Full’ application.

The Government encourages pre-application discussions between the applicant for planning permission, the LPA and others with an interest. These can help to guide an applicant through the process, clarify what is required and help them to formulate acceptable proposals, particularly for larger schemes.

As part of pre-application discussions, the applicant may decide to consult the local council. During this consultation the applicant will be looking to ensure that the development proposed is fully understood, gain local knowledge that may be useful and an understanding of any local concerns and what might be done to overcome them. The local council needs to take care that such consultations are undertaken in an open and transparent way, involving the local community where appropriate. A local council should not agree to confidential discussions with a prospective developer.

Submission of the Planning Application

On submission the planning application and planning fee will be checked by the LPA. Depending on the application additional information may be required. If the application is complete it will be registered and an acknowledgement letter sent to the applicant or their agent. The application is then available for inspection by members of the public

The Authority will then consult on the application. They will consult with other interested organisations, including local councils and publicise the application in accordance with their publicity code. The LPA is required to notify occupiers of adjacent land and buildings of the application and this will either involve a site notice or letters to neighbours (or both). Information about the application will be published on

the LPA's website and in some cases a public notice about the application is also published in the local newspaper. **For most classes of application consultees, including local councils, are given 21 days in which to reply** (some LPAs give more time).

A planning officer of the LPA will then make a site visit. He/she will visit the site to assess the impact of the proposal on the site, neighbouring properties and the surrounding area.

The planning officer may then, after assessing the proposal, negotiate amendments to ensure it complies with all the relevant planning policies.

Decision on the Planning Application

The planning officer will then prepare a report with a recommendation. For most applications, the report and recommendation is considered by a senior planning officer under delegated powers. In certain cases the Development Control Committee will consider the report and recommendations. Applications that are sent to committee are usually large or complex applications that are considered controversial (every LPA has a policy about which applications have to be determined by a committee rather than an officer).

If the application is to be determined by a Committee, both the applicant and any objectors or supporters can attend the meeting. Both have the opportunity to address the Committee provided they give advance notice of their wish to speak and follow the specific procedure set down by the Committee. Guidance on the procedure can be obtained from the LPA.

The decision made by a senior planning officer of the LPA or the Development Control Committee on the planning application must be based on the provisions of the statutory Development Plan and other 'material planning considerations' (see page 13). A decision notice will be issued to the applicant. Permission will either be granted, be granted with conditions, or refused. If it is refused or there are conditions attached which the applicant does not agree with, he/she can appeal to the Secretary of State. Some conditions may require further details to be submitted to and agreed by the LPA before work is started.

If the planning application is in line with the statutory Development Plan and subject to detailed considerations, the applicant can usually expect to receive planning permission within eight weeks for a householder's application; longer for a larger, residential or commercial development.

In exceptional cases the Secretary of State will decide to 'call in' an application if he/she thinks that planning issues of more than local importance are involved. In such cases the Secretary of state will usually order a Public Inquiry into the application before making a decision.

Appeals Against the Decision

Only the person who made the application for planning permission can appeal against the decision. There is no right of appeal for third parties, such as consultees. Appeals are made to the Planning Inspectorate which is part of the Department for Communities & Local Government.

There is a choice of procedure for determining an appeal. If everyone agrees, the Planning Inspectorate will decide the case on the basis of written exchanges of information from the appellant, the LPA and anyone else who has an opinion on the planning application. If the appellant, the LPA or the Planning Inspectorate do not agree to the written procedure, the Inspectorate will arrange an informal public hearing or a Public Inquiry. A local council is entitled to participate in whichever procedure is used. Guidance on the procedures can be obtained from the LPA or the Planning Inspectorate.

Guidance for Local Councils

Local councils have a legal right to ask for copies of planning applications and to express their views to the LPA before a decision is taken. In practice local councils in Cumbria are automatically consulted on all planning applications received in their area. The LPA is required by law to take into account (but not necessarily agree with) the observations of a local council.

A local council is entitled to see all documentation which has been submitted as part of a planning application. This includes business plans which are integral to the application. Where such documentation is very bulky it will not always be sent to the local council as part of the consultation, but it can be requested from the LPA or arrangements made to view it.

Responding to the Consultation

The role of the local council is to assist the LPA in making its decision by submitting views on behalf of the community and providing any local information which might be helpful to the LPA.

When a consultation on a planning application is received by a local council, a last date for receipt of the council's views by the LPA will be given. Because the LPA is working within statutory time frames, this date cannot normally be changed. It is the responsibility of the local council to work to the LPA's timetable – not the other way round. *It is very important that a local council has a standard procedure in place that enables it to submit its views within the timescale set by the LPA.*

There are three ways in which a local council can deal with planning applications in the time available:

- At a meeting of the whole council;
- At a Planning Committee meeting; and
- By delegation to an officer.

Each of these methods is considered below.

By the whole council. Considering planning applications at a meeting of the whole council enables all councillors to participate in the decision. However, it is quite possible that the council's timetable of meetings will not always fit with the deadline set by the LPA for the receipt of observations on a particular planning application. It is therefore necessary for the Clerk to have been authorised to call an additional (not "extraordinary") meeting of the whole council to consider the planning application.

Such a meeting should be convened in the usual way and should have the usual agenda format (e.g., approval of the minutes of the previous meeting, a 'public participation' item). In other words it should be run like any other meeting, except that it will have only one substantive item of business – the planning application.

If a council receives a large number of planning applications for comment, the amount of time taken up in considering them at regular council meetings can be excessive. In these circumstances an alternative method should be considered.

By a committee of the council. For many councils establishing a small committee to deal with planning applications is the most efficient method. The council will establish the committee, who sits on it and its terms of reference, including the limits on its powers. These might cover how often it meets and which planning applications must be referred to full council for consideration (e.g. all proposals for more than x dwellings; all applications in excess of a certain planning application fee level, etc). Notwithstanding the powers delegated to the committee, the council should always retain the reserve power to call in *any* planning application for determination by the whole council. The committee will agree the observations to be sent to the LPA and the Clerk will send them off without waiting for a full council meeting. Such committee meetings must be properly advertised with three clear days notice; they must be open to the public and must be minuted. The minutes of the committee will be presented to the next meeting of the full council for information.

The difficulty with a committee is that councillors who are not on the committee can sometimes feel disenfranchised. Many councils will choose to live with this drawback in the interests of the efficiency of the council's whole business agenda. In any event, assuming the committee has a 'Public Participation' item on its agenda, a councillor not on the committee could turn up and speak, but not vote. Another approach adopted by some councils is to place all members of the council on to the Planning Committee.

It should be noted that the opportunity to use a committee *does* apply to Parish Meetings.

Delegation to the Clerk (not applicable to Parish Meetings). Sometimes it may be necessary to delegate responsibility for deciding on the council's observations on a planning application to the Clerk. This will most commonly happen when a council does not meet before the LPA's consultation deadline and the council does not wish to convene an additional meeting. (It is legal for a council to delegate decision making to an officer, i.e. the Clerk, but *not* to a councillor or councillors, not even the Chairman). The Clerk acting under delegated powers submits observations to the LPA as the observations of the council, not of him/herself.

The terms of the delegation arrangement with respect to planning applications should be agreed by the council. It should clearly specify the circumstances and the types of planning applications where the Clerk can exercise delegated powers. It would be usual for the Clerk to be required to consult with the council's Chairman before making a decision. However, the Clerk, in exercising his/her delegated powers is required to make an *objective* decision, i.e. the Chairman or any councillor cannot instruct the Clerk how to exercise his/her delegated authority. If a council doesn't have confidence that the Clerk can make good decisions on behalf of the council, then the council should not give the Clerk the delegated power. Decisions taken by the Clerk must be reported to the next full meeting of the council and minuted.

It is bad practice (and possibly not lawful) as a *substitute for a meeting*, to pass planning applications around councillors with a pro forma for individual comments that are later summarised by the Clerk and sent to the LPA. A councillor's view (in effect, vote) on whether or not to object to a planning application can only be validly expressed during a properly convened council meeting (after listening to the views of fellow councillors), *not* on a pro forma circulated with a planning application. Furthermore a councillor, or councillors collectively, cannot instruct the Clerk, through the completed pro forma, how to exercise his/her delegated powers. It is, however, reasonable for the Clerk to find a way to consult informally with appropriate councillors to clarify issues and information before exercising his/her judgement with respect to a planning application. (A further pitfall with the use of a pro forma for councillors' comments is that, if requested, it has to be revealed to the general public under the Freedom of Information Act).

In circumstances where there is a genuine difficulty in meeting the LPA's deadline the Clerk should discuss the situation with the planning officer. It may be that the LPA's consideration of the application is going to be delayed and it is possible to give the local council more time.

“Material Planning Considerations”

The LPA must base its decision on a planning application on what are known as “material planning considerations” *and on no other matters or considerations*. It therefore follows that the observations submitted by a local council to the LPA must be restricted to “material planning considerations” otherwise they will be ignored by the LPA. *It is vitally important that councillors understand this if they want their views to be taken seriously by the LPA.*

There is no simple definition of what constitutes a “material planning consideration”. It must, however, relate to the use and development of land (i.e. a physical land-use/environmental consideration, not a social or financial one) and to the ‘public interest’ (i.e. not a private interest). Material planning considerations include:

- the Development Plan
- roads and parking
- design

but exclude:

- impact on property values
- private view
- personal circumstances of applicant.

A fuller list of examples of what are and are not material planning considerations is given in the Annex.

A failure to properly understand what are “material planning considerations” is one of the main reasons why local councils' views on planning applications do not always carry the weight with LPAs that councils would wish. As one planning officer observed;

"there are those parish councils who understand the system and have influence...and there are those that don't."

Source: 'The Good Councillor's Guide' NALC 2006

Councillors sometimes find it very difficult to understand why considerations which they believe are very relevant in their particular community cannot be taken into account by the LPA. However, there is little point in railing against 'the rules' or, even worse, including in a council's response to the LPA a matter which is plainly not a material planning matter just for the sake of it or to satisfy a vocal councillor – it only undermines the credibility of the local council in the eyes of the LPA.

It is highly desirable that councillors and clerks undertake some form of training in planning – this is provided periodically by the LPA and CALC.

Handling a Big or Controversial Planning Application

When a local council is used to handling fairly small and relatively uncontentious planning applications, the unexpected arrival of a 'big one' can sometimes cause mayhem. There are a number of matters which a local council should take into account when faced with such a situation.

Firstly, it is vital that the council's meetings' procedures are 'by the book'. Controversial planning applications have a habit of encouraging articulate and forceful individuals within a community to come to the fore and pounce on any poor procedural practice. It is therefore particularly important that the calling of meetings, agendas, minutes, conduct of meetings, declarations of interests etc is all done correctly, otherwise the council (particularly the Chairman and Clerk) could find itself subject to criticism. Check procedures and the provisions of the Code of Conduct with the CALC office, if necessary.

When a planning application is controversial it is important that the council hears the views of the community before finalising its own view. Often it is appropriate for the council to arrange a public meeting where the community can be given details of the planning application and views can be expressed. Such a meeting can be chaired by the Chairman of the council or another appropriate person. The LPA should be consulted about when it is expected the application will be going before a committee for decision to ensure that there is time available for the public meeting to be held and the council to meet to decide on its views.

It would be usual for the applicant (or the applicant's representative) to be invited to the meeting to make a presentation of the planning application and then to answer questions. In some circumstances a planning officer may be willing to attend either as an observer or to give a factual statement about the matters the LPA will be taking into account. The planning officer will *not* at this stage express any views about the application.

The council should also make use of the 'Public Participation' item on its usual meetings agenda to listen to the views of the community. Even after a public meeting has been held, further information and issues may come to the fore and this item enables the Chairman to brief the audience on the council's latest information and to hear views.

During the sometimes frenzied period when the planning application is being discussed within the community, councillors should be wary about taking a firm position at an early stage, for example, by joining an Action Group. What a councillor has to bear in mind is that he/she is required to look at the planning application objectively in the public interest; to listen to and take account of the views of fellow councillors expressed at the council meeting and to take account of the very latest information about the application given to the council by the council's Clerk. Nevertheless, the new Code of Conduct does relax on the constraints on councillors who are members of lobby groups – for more guidance go the Standards Board for England website www.standardsboard.gov.uk

When it comes to the meeting when the council makes its decision on the planning application a number of matters need to be taken into account. It will usual to have the 'Public Participation' item on the agenda before the item where the planning application will be considered. The Chairman should make it clear to the meeting that once the Public Participation item is over members of the public may no longer speak and can only listen to the council's deliberations.

It is vital that all personal and prejudicial interests of councillors are properly declared. Although the declaration of an interest is the responsibility of the individual councillor, a high profile planning application might prompt a wise Chairman and Clerk to ensure beforehand that all councillors are clear about any interest they should declare and the procedure to follow, including those arising from paragraph 12(2) in the model Code of Conduct.

Sometimes, when an application has generated ill-feeling within a community, some councillors may feel intimidated by the presence of members of the public at the meeting and may ask for the council's discussions to be held in private. The law allows meetings to be held in private in only very specific circumstances and it is very hard to envisage a situation when they would apply during the consideration of a planning application. A possible, alternative measure might be for the vote taken by the council to be by ballot. The law allows voting by signed ballot, but only where this is expressly allowed for in the council's Standing Orders. Such a procedure should only be followed in extreme circumstances because it is contrary to the usual open and transparent practice followed by local councils.

Occasionally a situation may arise where a councillor is particularly keen to cast his/her vote with respect to a planning application, but for some reason is unable to attend the meeting and asks the Chairman to allow a postal vote. This is not permissible – only councillors present at the meeting may vote.

Consideration of the Local Council's Views

The views of the local council will be submitted to the LPA by the Clerk. The law requires that these views are considered and taken into account by the LPA, but it does not follow that the LPA will necessarily agree with them. There may be other wider material planning considerations that the LPA has to take into account. The LPA will always give more weight to the views expressed by a local council if they are based on material planning considerations and not on other matters.

If the conclusion of the planning officer about the acceptability of a planning application differs from the views of the local council, then the application may sometimes be

referred to a Committee for decision rather than being determined through officer delegation. If the final decision is contrary to the views of the local council a written explanation will normally be provided and if not should be requested. This explanation should provide a proper account of the LPA's reasoning in relation to the local council's views. Sometimes the planning officer's report on the application will provide what the local council requires; on other occasions it will not provide sufficient detail of the LPA's reasoning. Local councils should press for proper explanations and CALC will support councils in their requests where necessary. However, it is important that a local council distinguishes between inadequate provision of the LPA's reasoning and a genuine difference of opinion.

In some circumstances a local council may be invited by the LPA to send a representative to a site visit (not all LPAs in Cumbria invite local councils to site visits). It is important that the representative is briefed on the purpose of the site visit – is it to explain the council's views or simply to provide local information, if requested? *Under no circumstances should a representative attend a site visit and give personal views – if views are requested they should be the previously agreed views of the council.* It is the responsibility of the local council to ensure it's representative is properly briefed.

'Reserved Matters' and Amended Plans

After the determination of a planning application further plans may be submitted to the LPA either as detailed plans ('reserved matters') following an outline planning permission or as amendments to what has already been approved. Other than for very minor changes, the local council should be consulted again by the LPA.

An outline planning permission is not a permission to start development work on the site; work may only begin after approval of all 'reserved matters'. A 'reserved matters' application deals with the outstanding details of the outline application. These matters may include the appearance of the building or development, the means of access, landscaping, layout of buildings and spaces, etc. Details of reserved matters should comply with those of the outline approval, including any conditions that may have been imposed.

In some instances 'minor' changes to approved plans can be approved by the LPA without the need to submit a formal planning application. However, what the LPA considers to be minor the local council may consider to be significant. An amended plan is not acceptable if it raises new material considerations or issues that have not previously been considered; if the plan proposes a development materially different in nature from that approved or if it would require the imposition of different conditions from those pertaining to the approved plan. Pre decision amendments are obviously easier to deal with than post approval amendments. It is important for local councils to ensure that they are notified of amendments.

5. Other General Matters

Some Other Types of Consent

a) Listed Building Consent

Certain buildings have been identified by the Department of Culture, Media and Sport as having special architectural or historic interest. They are set out in lists, on a parish by parish basis, giving information on the main features of architectural and historic interest. The buildings on these lists are referred to as "listed buildings". These buildings are graded according to their architectural and historic importance, from Grade I as the most significant, to Grade II* and Grade II. If an owner wishes to demolish, alter or extend a listed building in a way that is considered by the LPA to affect its 'special character or appearance' (including internal alterations) then Listed Building Consent must be obtained.

b) Conservation Area Consent

Conservation Areas are "areas of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance". Conservation Area Consent is required for most kinds of development, including the demolition of buildings and work affecting trees within such areas. As befits such areas, particularly high standards of design are required.

c) Advertisement Consent

Many kinds of advertisement require Advertisement Consent. Advertisements can be controlled only on the basis of visual amenity and public safety. The content or wording of an advertisement is not subject to control by the LPA.

d) Tree Preservation Orders

A Local Authority may make Tree Preservation Orders for the purpose of:

- protecting important trees or groups of trees, which are under threat.
- strengthening a planning condition for the protection of existing trees or trees to be planted as a requirement of a planning condition.
- protecting trees, considered to be of special value in a particular area, even though there is no direct threat to them.
- protecting a woodland area by securing the replanting of trees, which have been felled with the Authority's consent.

Consent is required from the LPA for the felling or other works on trees protected by a Tree Preservation Order.

'Departure Applications'

A 'Departure Application' is an application that does not comply with the Development Plan, but the LPA is minded to approve it having taken into account

other material considerations. Where the application exceeds certain specified limits the LPA must refer the application to the Government Office for consideration as to whether or not to refer it to the Secretary of State for possible 'calling in'.

Conditions

Conditions are attached to planning permissions to exercise some control over the way a planning permission is implemented. However, LPAs can impose conditions on planning permissions only where there is a clear land-use planning justification for doing so. Conditions have to be used in a way which is clearly seen to be fair, reasonable and practicable. One key test is whether planning permission would have to be refused if the condition were not imposed. Otherwise, such a condition would need special and precise justification.

'Planning Gain'

When it is not possible for conditions alone to allow the granting of permission the LPA may negotiate a planning obligation, or obligations, under section 106 of the Town and Country Planning Act. These are agreements negotiated between the LPA and the applicant. When an application may be otherwise be unacceptable in planning terms a section 106 agreement may alter the circumstances of the application sufficiently for it to become acceptable. The results of such agreements are often termed 'Planning Gain'

The guiding principle in negotiating planning obligations is that planning permission may not be bought or sold. Therefore an LPA must not approve an application, that would otherwise be refused, because of any benefits or inducements offered by a developer that are not strictly necessary on planning grounds. Planning obligations should be necessary, relevant to planning, directly related to the proposed development, fairly and reasonably related in scale and kind to the proposed development and reasonable in all other respects.

It is permissible, for example, for the LPA to require a developer to make financial contributions towards the cost of provision of public infrastructure (such as road improvements) and site specific community facilities (such as play or amenity areas). The rules surrounding this are complex and currently subject to change. Further information can be obtained from the LPA

Breach and Enforcement

A planning breach is committed when development takes place without the necessary consent or when a condition attached to a planning consent is not followed. A planning breach in itself is not illegal and the LPA will often permit a retrospective planning application. In the event of a retrospective planning application being refused, the LPA can serve an Enforcement Notice. It is illegal to disobey an Enforcement Notice. A local council can often assist by alerting the LPA of planning breaches.

Parish Plans

Many communities now prepare Community or Parish Plans. Providing there is close liaison with the LPA, such plans can make a useful contribution to the content of the Local Development Framework. It is important that Parish Plans take

account of existing planning policies and involve the local community fully if they are to have any influence with the LPA. In some circumstances where there is particularly close working with the LPA it is possible for a Parish Plan (or elements of it) to become a Supplementary Planning Document within the Local Development Framework.

6. How to Get Further Advice and Help

From a Planning Officer

It is important that the Clerk to a local council gets to know the planning officers in their local Planning Department and develops a good working relationship with them. For consultations on a Local Development Framework there will be a named contact officer and for planning applications it will usually be the same Case Officer who deals with all applications in your parish. These officers will be able to provide you with guidance and advice. However, like all human relationships, if you make life easier for them – like meeting their deadlines with observations that are relevant – the more likely they are to give you that extra bit of advice and assistance.

From CALC

The CALC office can give general advice on the handling of planning matters and can elaborate as necessary on the contents of this Guide. It is not in a position, however, to advise in detail on the merits and demerits of particular local planning issues.

From a Planning Consultant

If, having talked to your local Planning Department, they are unable to provide the assistance you need, you could consider commissioning a planning consultant. An Online Directory lists approximately 500 consultancies providing expertise in every field of planning. Go to www.rtpiconsultants.co.uk

From the Internet

There is a considerable amount of information about planning available on the Internet. However, it is important to make sure that only information and advice from trustworthy sources is used.

Useful sources of information are;

www.communities.gov.uk/planningandbuilding

www.planningportal.gov.uk

www.planninghelp.org.uk

ANNEX

Material Planning Considerations.

Examples of material planning considerations:

- National and local planning policy and guidance
- Impact on the environment and amenity of the area and neighbouring properties
- Impact on the character of the area
- Layout and design, including density and landscaping
- Access, parking and servicing
- Special designations, eg conservation area, listed building
- Creation of a precedent (only where a genuine risk of proliferation)
- Planning history (but not necessarily binding)
- Demonstrable need for affordable housing

Examples of matters that are not material planning considerations:

- Effect on property values
- Protection of a private view
- Character and motives of the applicant
- Personal circumstances of the applicant
- Land ownership
- Private covenants and agreements
- Private neighbour disputes
- Aspects covered by other legislation
- Financial impacts
- Impact of construction works (can be controlled by conditions)

These examples are intended to be a guide and are not exhaustive or definitive.

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