# Planning for Constituency Cases

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This note provides a short introduction to planning, mainly to assist with replying to constituency questions.

Some points in this note are inevitably over-simplified, but there are numerous links to more detailed material. Much of the note consists of Frequently Asked Questions, with answers explaining how they relate to the planning system.

On 27 March 2012, DCLG published the final version of the National Planning Policy Framework (NPPF). It came into effect immediately, superseding the 2011 draft and almost all other planning guidance (except on waste and some of the guidance on minerals).The NPPF is the Government's main document on planning policy. It must be taken into account in the preparation of local and neighbourhood plans, and is a material consideration in planning decisions. It sets out for example, how new housing should be calculated for an area, what sort of development is appropriate or not for Green Belt land and the considerations needed to be taken into account when deciding on renewable energy development, such as wind turbines.

## Contents



## 1 The normal planning procedure

Planning applications are almost invariably determined by a local planning authority (LPA). A Library note (SN/SC/1205) explains the legal requirements on *Publicity for Planning Applications*. The public can make written submissions. Most applications are determined under delegated powers given to planning officers. When they go to the Planning Committee, a planning officer will write a report for the members, including a recommendation whether to reject the application, to accept it with conditions or to accept it without conditions. A Library note (SN/SC/1030) discusses *whether councillors have to follow the officer's recommendation*.

The Local Development Framework (also called the "local plan") is very important because an application has to be determined in accordance with the plan, unless material considerations indicate otherwise. Courts decide what are material considerations, but Government policy – mainly in the *National Planning Policy Framework* – forms an important part. Other material considerations must be planning issues, rather than personal issues.

If the application is rejected, then the disappointed applicant has the right of appeal to a planning inspector who will hear the appeal in the name of the Secretary of State and take the decision. There may be a public hearing or written representations. The vast majority of appeals are determined by the written representation method. After all, the procedure has to cover kitchen extensions as well as enormous capital projects. The appeal is mainly a matter between the LPA and the applicant. The LPA has an incentive to justify its decision to reject the original application. Indeed, if the planning inspector considers that the LPA acted unreasonably – for example ignoring relevant Government planning guidance – then he can

award costs against the LPA. Therefore those who opposed the original application can be confident that the LPA will take note of their arguments in the appeal.

# 2 Frequently Asked Questions

## 2.1 Third Party right of appeal

The local planning authority approves an undesirable development - can the local residents appeal?

There is no third party right of appeal. Why? Before the *1947 Town and Country Planning Act* a landowner could do what he pleased with his land. Suddenly he was restricted by the need to apply for planning consent. It was considered fair that an applicant should at least have the right to appeal to the Secretary of State if the local authority wanted to refuse consent. This was a special right of administrative appeal. It does not cover the case where anyone else objects to the fact that consent has been granted and wants to appeal against that decision. The Coalition Government has rejected the idea of third party rights of appeal. Further details in a Library note: *Planning appeals: policy* (SN/SC/1031)

## 2.2 The Planning Inspector

The local planning authority rejected a horrible application, but now a planning inspector has approved it on appeal. What is the next step?

A planning inspector is always looking at appeals against the rejection of an application by the local planning authority. There is no administrative appeal beyond a planning inspector. That is because he hears the appeal in the name of the Secretary of State. It is possible to challenge a decision by judicial review in the High Court. However, that is a very different process basically aimed at checking that the correct procedures have been followed. Further details in a Library note: *Planning appeals: procedure* (SN/SC/3256)

## 2.3 Planning Policy and the Green Belt

Planning policy is issued by the Government, mainly in the National Planning Policy Framework (NPPF). Important planning issues can often be changed in this way, without needing legislation. For example, the Government could change what sorts of development were appropriate for Green Belt land, by making a change to the NPPF.

Planning applications have to be determined in accordance with the local plan "unless material considerations indicate otherwise". Planning policy is the main material consideration.

Green belt is the most famous part of British planning policy, but it does not really appear in legislation. The NPPF defines a presumption against inappropriate development within the Green Belt. It also states that once the general extent of a Green Belt has been approved, it should be altered only in exceptional circumstances. Further details in a Library note: *Green Belt*, (SN/SC/934).

## 2.4 Paying for infrastructure

The Government says that we should build more houses but will not pay for the infrastructure.

Ever since the start of the planning system in 1948, there have been calls for a betterment levy to tax the profits made by those whose land increases in value as a result of gaining

planning consent. The *Planning Act 2008* provided for the introduction of Community Infrastructure Levy (CIL) - a betterment levy, but with rates set locally. It was introduced in April 2010. Further details in a Library note: *Community Infrastructure Levy* (SN/SC/3890).

### 2.5 Buying planning consent

A developer has offered the local authority so much "section 106" money that they cannot afford to refuse the planning application.

This issue follows on from the previous one. In the long period before Community Infrastructure Levy, someone had to pay for infrastructure. An informal solution arose. It started with good planning applications being turned down because the local authority could not afford to pay for the infrastructure. Developers were then allowed to build or pay for infrastructure directly related to the project. This is allowed under the *Town and Country Planning Act 1990* s.106. Other names such as planning gain and planning obligations are also used.

From small beginnings, the system grew and grew, especially in the 1990s. Both Government guidance and legal judgements were clear that section 106 should not be a general tax on development. Planning authorities, however, were willing to push the definition of what was closely related to the project. They needed money for infrastructure and used section 106 as a way of getting it. Developers did not necessarily like this procedure, but they preferred to pay what was asked rather than appeal. The delay of a year – typically - before an appeal hearing on a major project can be far more costly than the section 106 payment. Developers co-operate with section 106, in a way that they have not co-operated with a development tax.

The guidance makes it clear that planning consent should not be bought. In addition, the regulations providing for CIL also restrict the scope of section 106 agreements. The CIL will be paid at a rate set by the local authority for all developments of that type in that area. Thus there will not be scope for a developer to offer more money, unless it is genuinely needed for infrastructure related to the proposed development. Further details in a Library note: *Planning Obligations (planning gain or planning contribution)* (SN/SC/1298).

### 2.6 Housing Targets

Local Authority says it has been forced to accept many more houses than local residents want

This was a major issue under the Labour Government. However, the Coalition Government has now abolished regional planning, including housing targets, thorough the *Localism Act 2011* and Orders made under it.

However, planning authorities still have to provide enough land to satisfy housing demand. They must now calculate future housing demand for themselves and set out how this will be met in the local plan. The difference is that they no longer have to accept a regional planning body's estimate of how much housing that would be. Further details in a Library note: *Planning for housing* (SN/SC3741).

### 2.7 Garden Grabbing

Local Authority still wants to approve a planning application for garden grabbing, despite the policy of the Coalition Government

Under the Labour Government, local councils had to provide enough land for housing targets; to build 60% of houses on brownfield sites; and to follow a minimum density target for urban areas. Taken together these were considered to encourage the demolition of houses with large gardens and their replacement by several smaller dwellings. The Coalition Government has changed the definition of brownfield to exclude private gardens and abolished the minimum housing density. In addition, they have abolished the target of building 60% of new housing on brownfield land. However, they have not told councils that they should not build on gardens. Further details in a Library note *Housing Density and Gardens*, (SN/SC/3827).

### 2.8 Permitted Development Rights

A neighbour has built an ugly extension that blocks light over a constituent's garden. Planning authority says that under new rules it can do nothing about it

There are three categories of action recognised by the planning system. Some actions are not development at all. Examples include internal changes to a house. Some actions are development and require full (or express) planning consent, following a planning application.

In between, there is a category covered by Permitted Development Rights. No planning application is required and the local planning authority cannot intervene. In some circumstances, particularly in conservation areas, certain permitted development rights can be suspended. The Labour Government changed the household part of permitted development rights in 2008 so as to reduce the number of planning applications for things like loft extensions. Further details in a Library note: *Permitted Development Rights* (SN/SC/485).

### 2.9 Calling in/ recovered inquiries

A planning inspector recommended rejection after a public inquiry but the Secretary of State approved the application.

One feature of the planning system is that the procedure is similar for very small and very large applications. The local planning authority determines the applications and the disappointed applicant can appeal to the Secretary of State. The way round this for large applications is the right of the Secretary of State to call in an application to determine it himself.

This has to take place before the local planning authority determines the application. Major applications of more than local importance have to be notified to the Secretary of State. The local planning authority does the preliminary work and notifies the Government when it is minded to approve the application. The Government can institute a further delay by means of an "article 14 declaration". There are no statutory criteria stating which applications have to be called in, or those that cannot be called in. Examples of certain types of cases which may be called in have been given in Parliament.[1] If an application is called in, there is a public inquiry after which the inspector sends the Secretary of State a recommendation and a summary of the evidence. Civil servants then look at that summary and make a second recommendation to the Secretary of State. However, he can properly reject both recommendations, provided that he gives good reasons for so doing.

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1 HC Deb 16 June 1999 c138

If the application is to be rejected by the planning authority, the disappointed applicant already has a right of appeal to the Secretary of State. There is a procedure for the Secretary of State to recover the application so that he takes the decision himself after a public inquiry.

Planning appeals can also be "recovered" for decision by the Secretary of State for similar reasons. As with applications, the decision for an appeal to be "recovered" is made having regard to *published policy.*

Further details in a Library note: *Calling in of planning applications* (SN/SC/930).

### 2.10 Consent given on the basis of false information

The planning application had a misleading drawing and some factual errors, but consent was granted. What can be done?

Once consent has been granted, it is extremely difficult to overturn it. It might be possible to challenge the decision by judicial review in the High Court but that is potentially very expensive. It is not normally a suitable option for a constituent wishing to overturn a local consent. The Court would consider whether the correct procedure had been followed, rather than reconsidering the planning merits of the case. It is also possible that the Court might consider that a particular mistake was not important enough to declare the consent invalid. Very occasionally, the Secretary of State can revoke planning consent that has been granted. Further details in a Library note: *Revocation of planning permission* (SN/SC/905).

### 2.11 Enforcement

Other people are building without planning consent, but the council does nothing about it.

The local planning authority has considerable enforcement powers, but cannot normally be forced to use them. It is not a criminal offence to carry out development without planning consent. However, if the planning authority can issue an enforcement notice it is a criminal offence to fail to comply with it. Enforcement has to take place within time limits: four years for building or conversion of a building to use as a single dwelling without planning consent; ten years for other breaches of planning consent. Further details in a Library note, *Enforcement of Planning Law*, (SN/SC/1579).

## 5 The Role of an MP in planning

An MP does not have any formal role in the planning process. Constituents often write to MPs about planning issues but they should not have unrealistic expectations of what an MP can do. Those taking decisions – planning officers, councillors, planning inspectors and planning ministers - have to follow strict procedural rules. These rules do not allow decisions to be influenced by informal, private discussions with anyone outside the formal process.

### The normal procedure for planning applications

Planning applications are almost always determined by the local planning authority. Local councillors and planning officers have to follow strict rules relating to their conduct in handling a planning application. They can receive submissions relating to applications, but these have to be open to public scrutiny and are often placed on the internet.

- An MP can only make a public submission in response to the application, like anybody else. They cannot use informal pressure upon the planning committee or planning officers.

**Applications called in by the Secretary of State**

The Secretary of State will sometimes "call in" applications of more than local importance so as to determine them himself. The local planning authority does the preliminary work and notifies the Government Office for the Region when it is minded to approve the application. If they decide to call in the application, there is a public inquiry. The planning inspector sends the Secretary of State a summary of the evidence and a recommendation whether to refuse the application, to approve it with conditions or to approve it without conditions. The final decision is genuinely for the Secretary of State, who can reject the recommendation provided that he gives reasons for so doing.

- An MP can write to the Secretary of State asking that a controversial application be called in. He cannot have a private meeting with the Secretary of State either to argue that an application should be called in or to suggest how the application should be determined. The DCLG publication, *Guidance on Planning Propriety Issues*, February 2012 states what Ministers are allowed to do in taking decisions relating to planning applications.

**Appeals**

When an application is refused, the disappointed applicant has the right of appeal to the Secretary of State for Communities and Local Government, under the *Town and Country Planning Act 1990.* The vast majority of appeals are automatically delegated to planning inspectors without any ministerial intervention at all. Most are decided by written representations, although there are some informal hearings. A very few appeals are recovered by the Secretary of State. In these cases, there will be a public inquiry, after which the planning inspector will send the Secretary of State a summary of the evidence along with a recommendation whether to accept or reject the application. The Secretary of State has the final decision.

- An MP has no role in a planning appeal. The Guidance on Planning Propriety Issues applies.

**When something has been wrongly decided**

Constituents often complain that a local planning authority has failed to carry out some part of the correct procedure. That will not invalidate planning consent that has been granted. It may be worth the constituent referring the case to the Local Government Ombudsman, who investigates maladministration. Their website has a page on Complaint outcomes: Planning, which shows how they handle planning cases, which sometimes lead to payment of compensation.

- An MP cannot get a decision overturned even if it is based upon failure to carry out some aspect of the procedure. Of course, if there are genuine irregularities at the local planning authority, an MP might be interested to know about them.

**A major proposed development in the constituency**

- An MP may campaign openly for or against some major proposed development such as a housing estate or a supermarket. That is very different from exerting private influence

upon those making the decisions. Such a campaign would not be appropriate for a smaller-scale application.

**The Local Plan**

The Local Development Framework (local plan) is important because individual planning applications are decided in accordance with it "unless material considerations indicate otherwise". Consultation takes place on the draft Local Development Framework before it is approved. That is often the most effective stage at which to intervene over major local issues, such as the appropriate number of houses to build. Information about it will be on the local council website.

- An MP may choose to campaign in public about the draft Local Development Framework. There is no scope for private influence.