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Guidance

## Determining a planning application

Sets out process and expectations on planning performance and decision making.

From:

Ministry of Housing, Communities & Local Government

(<https://www.gov.uk/government/organisations/ministry-of-housing-communities-and-local-government>)

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Where plans are being prepared under the transitional arrangements set out in Annex 1 to the revised National Planning Policy Framework (<https://www.gov.uk/government/publications/national-planning-policy-framework--2>), the policies in the previous version of the framework published in 2012

(<http://webarchive.nationalarchives.gov.uk/20180608095821/https://www.gov.uk/government/publications/national-planning-policy-framework--2>) will continue to apply, as will any previous guidance which has been superseded since the new framework was published in July 2018. If you'd like an email alert when changes are made to planning guidance please subscribe (<https://www.gov.uk/topic/planning-development/planning-officer-guidance/email-signup>).

### What are the time periods for determining a planning application?

Once a planning application has been validated, the local planning authority should make a decision on the proposal as quickly as possible, and in any event within the statutory time limit unless a longer period is agreed in writing with the applicant.

The statutory time limits (<http://www.legislation.gov.uk/ukxi/2015/595/article/34/made>) for applications for planning permission are set out in article 34 of the Town and Country Planning (Development Management Procedure (England) Order 2015 (as amended)). They are 13 weeks for applications for major development, 10 weeks for applications for technical details consent, and (from 1 August 2021) applications for public service infrastructure development, and 8 weeks for all other types of development (unless an application is subject to an Environmental Impact Assessment (<https://www.gov.uk/guidance/environmental-impact-assessment>), in which case a 16 week limit applies).

Where a planning application takes longer than the statutory period to decide, and an extended period has not been agreed with the applicant, the government's policy is that the decision should be made within 26 weeks at most in order to comply with the 'planning guarantee'.

Paragraph: 001 Reference ID: 21b-001-20140306

Revision date: 24 06 2021 See previous version

(<https://webarchive.nationalarchives.gov.uk/20210615154305/https://www.gov.uk/guidance/determining-a-planning-application>)

## **What is the government's 'planning guarantee'?**

The planning guarantee is the government's policy that no application should spend more than a year with decision-makers, including any appeal. In practice this means that planning applications should be decided in no more than 26 weeks, allowing a similar period for any appeal. The planning guarantee does not replace the statutory time limits for determining planning applications.

Paragraph: 002 Reference ID: 21b-002-20140306

Revision date: 06 03 2014

## **In what ways can a longer time period be agreed?**

Where it is clear at the outset that an extended period will be necessary to process an application, the local planning authority and the applicant should consider entering into a planning performance agreement (<https://www.gov.uk/guidance/before-submitting-an-application#planning-performance-agreements>) before the application is submitted.

If a valid application is already being considered and it becomes clear that more time than the statutory period is genuinely required, then the local planning authority should ask the applicant to consider an agreed extension of time. Any such agreement must be in writing and set out the timescale within which a decision is expected.

The timetable set out in a planning performance agreement or extension of time may be varied by agreement in writing between the applicant and the local planning authority.

Paragraph: 003 Reference ID: 21b-003-20140306

Revision date: 06 03 2014

## **What happens if an application is not dealt with on time?**

Where a valid application has not been determined within the relevant statutory period (or such other period as has been agreed in writing between the local planning authority and the applicant), the applicant has a right to appeal to the Secretary of State (<https://www.gov.uk/guidance/appeals>) against non-determination.

If the applicant has not exercised this right of appeal, and the application remains undetermined after 26 weeks, then the fee paid by the applicant will be refunded to them (unless a longer period for the decision has been agreed).

Applicants should not attempt to delay a decision on their application simply to obtain a fee refund. A local planning authority will be justified in refusing permission where an applicant causes deliberate delay and has been unwilling to agree an extension of time; and such behaviour will be taken into account in determining any claim for costs by the local planning authority if the applicant then goes to appeal.

Paragraph: 004 Reference ID: 21b-004-20140306

Revision date: 06 03 2014

## **What happens if a planning authority fails repeatedly to decide applications on time?**

Section 62B of the Town and Country Planning Act 1990 (as amended) (<http://www.legislation.gov.uk/ukpga/2013/27/section/1/enacted>) allows the Secretary of State to designate local planning authorities that “are not adequately performing their function of determining applications”, when assessed against published criteria (<https://www.gov.uk/government/publications/improving-planning-performance-criteria-for-designation>).

Those criteria relate to:

- the speed of decisions made by local planning authorities for applications for major and non-major development, measured by the percentage of applications that have been determined within the statutory period or such extended time as has been agreed between the local planning authority and the applicant
- the quality of decisions made by local planning authorities for applications for major and non-major development, measured by the proportion of decisions on applications that are subsequently overturned at appeal (including those arising from a ‘deemed refusal’ where an application has not been determined within the statutory period)

If a local planning authority falls below the performance thresholds set out in the criteria it may be designated for its performance in relation to applications for major development, non-major development, or both.

In this case, section 62A of the Town and Country Planning Act 1990 (as amended) (<http://www.legislation.gov.uk/ukpga/2013/27/section/1/enacted>) allows applications for the category of development for which the authority has been designated (i.e. major development, non-major development or both) to be submitted directly to the Secretary of State (if the applicant wishes) as long as the designation remains in place. This excludes householder and retrospective applications, which must still be made directly to the local planning authority.

Paragraph: 005 Reference ID: 21b-005-20170728

Revision date: 28 07 2017 See previous version

(<http://webarchive.nationalarchives.gov.uk/20170616235847/https://www.gov.uk/guidance/determining-a-planning-application>)

## **How must decisions on applications for planning permission be made?**

To the extent that development plan policies are material to an application for planning permission the decision must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (see section 70(2) of the Town and Country Planning Act 1990 (<http://www.legislation.gov.uk/ukpga/1990/8/section/70>) and section 38(6) of the Planning and Compulsory Purchase Act 2004 (<http://www.legislation.gov.uk/ukpga/2004/5/section/38>) – these provisions also apply to appeals).

The National Planning Policy Framework represents up-to-date government planning policy and is a material consideration that must be taken into account where it is relevant to a planning application or appeal. This includes the presumption in favour of development found at paragraph 14 of the Framework (<https://www.gov.uk/guidance/national-planning-policy-framework/2-achieving-sustainable-development#para014>). If decision takers choose not to follow the National Planning Policy Framework, where it is a material consideration, clear and convincing reasons for doing so are needed.

Paragraph: 006 Reference ID: 21b-006-20190315

Revision date: 15 03 2019 See previous version

(<https://webarchive.nationalarchives.gov.uk/20181208091555/https://www.gov.uk/guidance/determining-a-planning-application#how-decisions-on-applications>)

Paragraph: 007 - REMOVED - See previous version

(<https://webarchive.nationalarchives.gov.uk/20181208091555/https://www.gov.uk/guidance/determining-a-planning-application#how-decisions-on-applications>)

## **What is a material planning consideration?**

A material planning consideration is one which is relevant to making the planning decision in question (eg whether to grant or refuse an application for planning permission).

The scope of what can constitute a material consideration is very wide and so the courts often do not indicate what cannot be a material consideration. However, in general they have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property or loss of private rights to light could not be material considerations.

Paragraph: 008 Reference ID: 21b-008-20140306

Revision date: 06 03 2014

## **What weight can be given to a material consideration?**

The law makes a clear distinction between the question of whether something is a material consideration and the weight which it is to be given. Whether a particular consideration is material will depend on the circumstances of the case and is ultimately a decision for the courts. Provided regard is had to all material considerations, it is for the decision maker to decide what weight is to be given to the material considerations in each case, and (subject to the test of reasonableness) the courts will not get involved in the question of weight.

Paragraph: 009 Reference ID: 21b-009-20140306

Revision date: 06 03 2014

## **Can local planning authorities take the planning history of a site into account when determining an application for planning permission?**

The planning history of a site may be a relevant consideration in the determination of an application. In particular, when considering applications for major development involving the provision of housing, the National Planning Policy Framework indicates that local planning authorities should assess why an earlier grant of planning permission for similar development on the same site did not start. Relevant factors to take into consideration might include evidence as to the reasons why an earlier permission was not implemented, the time that has elapsed since the previous permission expired and the number of similar applications made for the same site.

Paragraph: 010 Reference ID: 21b-010-20190315

Revision date: 15 03 2019 See previous version

(<https://webarchive.nationalarchives.gov.uk/20181208091555/https://www.gov.uk/guidance/determining-a-planning-application#how-decisions-on-applications#para010>)

## **When should a 'local finance consideration' be taken into account as a material planning consideration?**

Section 70(2) of the Town and Country Planning Act 1990 (as amended)

(<http://www.legislation.gov.uk/ukpga/2011/20/section/143/enacted>) provides that a local planning authority must have regard to a local finance consideration as far as it is material. Section 70(4) of the 1990 Act (as amended) (<http://www.legislation.gov.uk/ukpga/2011/20/section/143/enacted>) defines a local finance consideration as a grant or other financial assistance that has been, that will or that could be provided to a relevant authority by a Minister of the Crown (such as New Homes Bonus payments), or sums that a relevant authority has received, or will or could receive, in payment of the Community Infrastructure Levy.

Whether or not a 'local finance consideration' is material to a particular decision will depend on whether it could help to make the development acceptable in planning terms. It would not be appropriate to make a decision based on the potential for the development to raise money for a local authority or other government body.

In deciding an application for planning permission or appeal where a local financial consideration is material, decision takers need to ensure that the reasons supporting the decision clearly state how the consideration has been taken into account and its connection to the development.

New Homes Bonus payments recognise the efforts made by authorities to bring residential development forward. Even where anticipated Bonus payments are not a material consideration in making planning decisions, they can be noted for information in committee reports on applications for housing. Where this is done, care will be required not to imply that Bonus payments are relevant to the decision before the committee.

Paragraph: 011 Reference ID: 21b-011-20140612

Revision date: 12 06 2014 See previous version

([http://webarchive.nationalarchives.gov.uk/20140606222214/http://planningguidance.planningportal.gov.uk/blog/guidance/determining-a-planning-application/how-must-decisions-on-applications-for-planning-permission-be-made/#paragraph\\_011](http://webarchive.nationalarchives.gov.uk/20140606222214/http://planningguidance.planningportal.gov.uk/blog/guidance/determining-a-planning-application/how-must-decisions-on-applications-for-planning-permission-be-made/#paragraph_011))

## **What approach must be taken where development plan policies conflict with one another?**

Under section 38(5) of the Planning and Compulsory Purchase Act 2004

(<http://www.legislation.gov.uk/ukpga/2004/5/section/38>) if a policy contained in a development plan for an area conflicts with another policy in the development plan, the conflict must be resolved in favour of the policy which is contained in the last document to be adopted, approved or published.

Conflicts between development plan policies adopted, approved or published at the same time must be considered in the light of all material considerations, including local priorities and needs, as guided by the National Planning Policy Framework.

Paragraph: 012 Reference ID: 21b-012-20140306

Revision date: 06 03 2014

## **Can the local planning authority decide not to follow the policies in the development plan?**

The local planning authority may depart from development plan policy where material considerations indicate that the plan should not be followed, subject to any conditions prescribed by direction by the Secretary of State. This power to depart from development plan policy is confirmed in article 32 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (<http://www.legislation.gov.uk/ukSI/2015/595/article/32/made>).

In cases where the local planning authority intends to depart from development plan policy, article 15(3) of the Development Management Procedure Order (<http://www.legislation.gov.uk/ukSI/2015/595/article/15/made>) sets out the publicity requirements which must be followed before the decision is taken.

Paragraph: 013 Reference ID: 21b-013-20150327

Revision date: 27 03 2015 See previous version

([http://webarchive.nationalarchives.gov.uk/20140606222214/http://planningguidance.planningportal.gov.uk/blog/guidance/determining-a-planning-application/how-must-decisions-on-applications-for-planning-permission-be-made/#paragraph\\_013](http://webarchive.nationalarchives.gov.uk/20140606222214/http://planningguidance.planningportal.gov.uk/blog/guidance/determining-a-planning-application/how-must-decisions-on-applications-for-planning-permission-be-made/#paragraph_013))

## **In what circumstances might it be justifiable to refuse planning permission on the grounds of prematurity?**

Paragraphs 48-50 (<https://www.gov.uk/guidance/national-planning-policy-framework/4-decision-making#para48>) of the National Planning Policy Framework explain how weight may be given to policies in emerging plans, and the limited circumstances in which it may be justified to refuse an application on the basis that it is premature.

Paragraph: 014 Reference ID: 21b-014-20190315

Revision date: 15 03 2019 See previous version

(<https://webarchive.nationalarchives.gov.uk/20181208091555/https://www.gov.uk/guidance/determining-a-planning-application#who-in-a-local-planning-authority-makes-a-planning-decision>)

## **Should children's best interests be taken into account when determining planning applications?**

Local authorities need to consider whether children's best interests are relevant to any planning issue under consideration. In doing so, they will want to ensure their approach is proportionate. They need to consider the case before them, and need to be mindful that the best interests of a particular child will not always outweigh other considerations including those that impact negatively on the environment or the wider community. This will include considering the scope to mitigate any potential harm through non-planning measures, for example through intervention or extra support for the family through social, health and education services.

Paragraph: 028 Reference ID: 21b-028-20150901

Revision date: 01 09 2015

## Who in a local planning authority makes a planning decision?

Section 101 of the Local Government Act 1972 (<http://www.legislation.gov.uk/ukpga/1972/70/section/101>) allows the local planning authority to arrange for the discharge any of its functions by a committee, sub-committee, or an officer or by any other local authority. An exception where this power may not apply is where the local authority's own application for development could give rise to a conflict of interest, when regulation 10 of the Town and Country Planning General Regulations 1992 (<http://www.legislation.gov.uk/uksi/1992/1492/body/made>) applies.

The exercise of the power to delegate planning functions is generally a matter for individual local planning authorities, having regard to practical considerations including the need for efficient decision-taking and local transparency. It is in the public interest for the local planning authority to have effective delegation arrangements in place to ensure that decisions on planning applications that raise no significant planning issues are made quickly and that resources are appropriately concentrated on the applications of greatest significance to the local area.

Local planning authority delegation arrangements may include conditions or limitations as to the extent of the delegation, or the circumstances in which it may be exercised.

Paragraph: 015 Reference ID: 21b-015-20140306

Revision date: 06 03 2014

## How must elected councillors and other members of the local authority consider planning applications?

Local authority members are involved in planning matters to represent the interests of the whole community and must maintain an open mind when considering planning applications. Where members take decisions on planning applications they must do so in accordance with the development plan unless material considerations indicate otherwise. Members must only take into account material planning considerations, which can include public views where they relate to relevant planning matters. 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 material planning reasons.

Paragraph: 016 Reference ID: 21b-016-20140306

Revision date: 06 03 2014

## How is the conduct of elected members regulated?

Under Part 1 of the Localism Act 2011 (<http://www.legislation.gov.uk/ukpga/2011/20/part/1/enacted>) each local authority is required to adopt a local Code of Conduct that sets out the expectations as to the conduct of members in carrying out their official duties. The local authority must also keep a register of members' interests.

The publication *Openness and transparency on personal interests: a guide for councillors* (<https://www.gov.uk/government/publications/openness-and-transparency-on-personal-interests-guidance-for-councillors>) gives practical information about members' personal interests and the standards arrangements introduced by the Localism Act 2011.

Paragraph: 017 Reference ID: 21b-017-20140306

Revision date: 06 03 2014

## **Can an elected member who has represented constituents interested in a planning application be accused of pre-determination or bias, if he or she subsequently speaks or votes on that application?**

Section 25 of the Localism Act 2011 (<http://www.legislation.gov.uk/ukpga/2011/20/section/25/enacted>) clarifies that a member is not to be regarded as being unable to act fairly or without bias if they participate in a decision on a matter simply because they have previously expressed a view or campaigned on it. Members may campaign and represent their constituents – and then speak and vote on those issues – without fear of breaking the rules on pre-determination. Members may also speak with developers and express positive views about development.

A distinction can be drawn between pre-determination and pre-disposition. Members must not have a closed mind when they make a decision, as decisions taken by those with pre-determined views are vulnerable to successful legal challenge. At the point of making a decision, members must carefully consider all the evidence that is put before them and be prepared to modify or change their initial view in the light of the arguments and evidence presented. Then they must make their final decision at the meeting with an open mind based on all the evidence.

Paragraph: 018 Reference ID: 21b-018-20140306

Revision date: 06 03 2014

## **Who must the local planning authority notify once it has made a decision on a planning application?**

The local planning authority must formally notify the applicant of their decision using a written decision notice. Under article 33(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (<http://www.legislation.gov.uk/uksi/2015/595/article/33/made>) the local planning authority must also give notice of their decision to every person who has made a representation who is an owner of the land or a tenant of an agricultural holding on the land or an adjoining owner or occupier.

The local planning authority may take a flexible approach and make a judgement about whether additional publication of the decision is needed on a case by case basis, weighing up factors such as the level of public interest in the application and the cost of additional notification. It is particularly important that the local planning authority notifies the Environment Agency of any decision taken on a planning application where the Agency has objected on flood risk grounds.

In the case of any decision against the advice of HSE there is guidance on notifying the Executive in advance of any decision being issued (<http://www.hse.gov.uk/landuseplanning/advice.htm>).

Paragraph: 019 Reference ID: 21b-019-20190315

Revision date: 15 03 2019 See previous version

(<https://webarchive.nationalarchives.gov.uk/20181208091555/https://www.gov.uk/guidance/determining-a-planning-application#para019>)

## **What information must the local planning authority include on their written decision notices of planning applications to applicants?**

The information that the local planning authority must provide on their decision notices is set out in article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (<http://www.legislation.gov.uk/uksi/2015/595/article/35/made>). This includes the requirement, where planning permission is refused, to state clearly and precisely the full reasons for the refusal, specifying all policies and proposals in the development plan that are relevant to the decision. While

the local planning authority is no longer required to give reasons for approval on decision notices, it is important that the other paperwork that supports such decisions clearly shows how that decision has been reached.

The local planning authority must also include a notification to the applicant with the decision notice in the terms (or substantially in the terms) set out in Schedule 5 to the Development Management Procedure Order (<http://www.legislation.gov.uk/ukxi/2015/595/schedule/5/made>) in the following cases:

- where planning permission is granted subject to conditions;
- where planning permission is refused;
- where the Secretary of State has given a direction restricting the grant of planning permission; and
- where the Secretary of State or a government department has expressed the view that permission should not be granted (either wholly or in part) or should be granted subject to conditions.

Paragraph: 020 Reference ID: 21b-020-20140306

Revision date: 06 03 2014

### **What is the decision date that the local planning authority should put on decision notices?**

To ensure consistency in the preparation of statistics, the decision date to be inserted on decision notices by the local planning authority is taken as the date when notice of the decision is issued to the applicant. This includes cases where the decision has been taken by an officer or a planning committee.

Paragraph: 021 Reference ID: 21b-021-20140306

Revision date: 06 03 2014

### **When must a local planning authority in London notify the Mayor prior to making a decision?**

Local planning authorities in London are required to notify the Mayor of London if they receive applications of 'potential strategic importance' for the capital. This provides the Mayor with an opportunity to consider the proposal's compliance with the spatial development strategy (the London Plan (<http://www.london.gov.uk/priorities/planning/london-plan>)), and if necessary direct that he should determine the application himself, or that the application should be refused. What constitutes an application of potential strategic importance is set out in the Town and Country Planning (Mayor of London) Order 2008 (<http://www.legislation.gov.uk/ukxi/2008/580/made>), along with the procedural requirements that apply.

Paragraph: 027 Reference ID: 21b-027-20140306

Revision date: 06 03 2014

### **When does the local planning authority need to consult with the Secretary of State prior to taking a decision?**

## The Town and Country Planning (Consultation) (England) Direction 2021

(<https://www.gov.uk/government/publications/the-town-and-country-planning-consultation-england-direction-2021>) sets out the applicable criteria and arrangements that must be followed for consulting the Secretary of State once the local planning authority has resolved to grant planning permission for certain types of development that are set out in paragraphs 3-8 of the Direction. The purpose of the Direction is to give the Secretary of State an opportunity to consider using the power to call in an application under section 77 of the Town and Country Planning Act 1990 (<http://www.legislation.gov.uk/ukpga/1990/8/section/77>). If a planning application is called in, the decision on whether or not to grant planning permission will be taken by the Secretary of State, usually after a public inquiry, rather than the local planning authority..

The information that the local planning authority must submit with the consultation is set out in paragraph 10 of the Direction. Where consultation with the Secretary of State under the Direction is required, the local planning authority cannot grant planning permission on the application until the expiry of a period of 21 days beginning with the date which the Secretary of State notifies the local planning authority that the consultation has been received and he has all the information necessary to consider the matter.

The local planning authority must send consultations under the Town and Country Planning (Consultation) (England) Direction 2021 (<https://www.gov.uk/government/publications/the-town-and-country-planning-consultation-england-direction-2021>) to the Ministry of Housing, Communities and Local Government's Planning Casework Unit at the following:

PCU@communities.gov.uk

### Information on coronavirus

All Planning Casework Unit staff are following the Prime Minister's advice aimed at limiting the spread of the Covid-19 virus and are largely working from home. Please note that during this time PCU will not be able to process hard copy correspondence and therefore all contact will need to be via email. The unit will try to respond to your email as quickly as possible but please understand that this may take longer than usual.

The Direction is separate from, and does not affect or prejudice, the Secretary of State's general power under section 77 of the Town and Country Planning Act 1990 (<http://www.legislation.gov.uk/ukpga/1990/8/section/77>) to direct that any particular planning application should be called in for determination by the Secretary of State. In addition to the requirements under the Direction there may also be additional, locally applicable arrangements set out in safeguarding directions.

Paragraph: 022 Reference ID: 21b-022-20140306

Revision date: 06 03 2014

## When must a local planning authority in London notify the Mayor prior to making a decision?

Local planning authorities in London are required to notify the Mayor if they receive applications of 'potential strategic importance' for the capital. This provides the Mayor with an opportunity to consider the proposal's compliance with the spatial development strategy (the London Plan (<http://www.london.gov.uk/priorities/planning/london-plan>)), and if necessary direct that he should determine the application himself, or that the application should be refused. What constitutes an

application of potential strategic importance is set out in the Town and Country Planning (Mayor of London) Order 2008 (<http://www.legislation.gov.uk/ukxi/2008/580/made>), along with the procedural requirements that apply.

Paragraph: 027 Reference ID: 21b-027-20140306

Revision date: 06 03 2014

## What are the Secretary of State's powers of intervention to call in a planning application?

Section 77 of the Town and Country Planning Act 1990

(<http://www.legislation.gov.uk/ukpga/1990/8/section/77>) empowers the Secretary of State to call in a planning application for his own determination. The power can be exercised at any time up to planning permission being issued by a local planning authority. In considering whether to call in a planning application, the Secretary of State is generally concerned with whether the application involves planning issues of more than local importance that warrant the decision being made by him rather than the local planning authority. However each case will be considered on its merits. The call in policy was updated on 26 October 2012 in a written ministerial statement (<https://publications.parliament.uk/pa/cm201213/cmhansrd/cm121026/wmstext/121026m0001.htm>).

Any person may ask the Secretary of State to call in an application for his own determination. Applications may also be referred to the Secretary of State by the local planning authority under the Town and Country Planning (Consultation) (England) Direction 2021 (<https://www.gov.uk/government/publications/the-town-and-country-planning-consultation-england-direction-2021>). Requests for call in should be sent to the Ministry of Housing, Communities and Local Government's Planning Casework Unit at the following:

PCU@communities.gov.uk

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1. 24 June 2021

Paragraph 001 revised in relation to Public Service Infrastructure Development.

2. 15 March 2019

Amended paragraphs 006, 010, 014, 019 and 024. Deleted paragraph 007.

3. 28 July 2017

Updated paragraphs 005 and 007.

4. 6 March 2014

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