

Development - making your views known

Introduction

Most councils are 'Local Planning Authorities' (LPA's). This means that they have a statutory duty to deal with planning issues within their area, including deciding planning applications. Taking action against unauthorised development is discretionary, but most LPA's will enforce planning controls and sometimes this will result in a planning application being submitted.

The planning application process is complex, and is governed by numerous Acts of Parliament, Government regulations, and national policy statements which all have to be taken into account. In addition, the LPA has to prepare local development plans, and development plan policies are important considerations when decisions are made. In essence, if a development is in line with national and local policy then the presumption is that permission should be granted.

However, the views of 'interested parties' are also important. There is a legal requirement for the LPA to involve various third parties when applications are being considered. This includes members of the public and LPA's have a duty to publicise planning applications so that details can be viewed and a decision made as to whether representations should be made supporting or objecting to the proposal. Publicity is usually either by a site notice or letter to adjoining occupiers, or if the development is significant by a notice in the local press. Kirklees also offers a [SMS \(text\) or email alert service](#) too.

Details of planning applications are posted on our web site and you can comment direct using ['Your views on planning applications'](#)

Whilst it's important that you let us know what you think about a planning proposal, it's also important to explain that not all factors can be taken into account and why. These notes explain –

- **What's meant by 'material planning consideration'**
- **What sort of things we can and can't take into account**
- **The relationship between the applicant and the council**
- **Whether a petition would be worthwhile**
- **How we deal with planning applications that are submitted after development has started or has finished ('retrospective planning applications')**
- **What to do if you want to report development which you don't think has planning permission**
- **Summarises what types of enforcement action we would be likely to take if development has been carried out without permission**

Material planning considerations - what we can take into account

Government advice to LPA's says that "Material considerations must be genuine planning considerations, i.e. they must be related to the development and use of land in the public interest. The considerations must also fairly and reasonably relate to the application concerned" ("The Planning System: General Principles")

Representations on a planning application can only be taken into account if they relate to 'material planning considerations'. There is no legal definition of this but the following are the main considerations that are generally regarded as being 'material':

- ✓ **Development Plans, which include regional guidance documents and the Councils' Development Plan**
- ✓ **Draft plans (the weight to be attached depends on how far they have progressed through the statutory stages)**
- ✓ **Government Planning Policy Guidance/Statements (PPG's/PPS's)**
- ✓ **Government Circulars**
- ✓ **Any Supplementary Planning Guidance/Policy published by the Council, particularly if it has been the subject of public consultation before adoption**
- ✓ **The environmental qualities of the surrounding area or the visual character of a street (this includes the scale, design and materials of buildings and the landscaping of a site)**
- ✓ **The amenity and privacy of dwellings**
- ✓ **The character of an area in other senses (in terms of noise or other forms of pollution);**
- ✓ **Road safety (both directly as in the case of a dangerous access or indirectly in terms of car parking and traffic generation)**
- ✓ **Public services, such as drainage**
- ✓ **Public Proposals for using the same land.**
- ✓ **Representations made by members of the public which raise issues relative to 'material' planning considerations.**

If you are unsure whether the comment is a planning matter it is better to include it, provided you are aware that it may not be possible to take it into account.

What can't we take into account?

- × The fact that development has already begun - people can carry out development at their own risk before getting permission and the Council has to judge the development on its own merits
- × That an applicant has carried out unauthorised development in the past
- × Trade objections from potential competitors

- × Moral objections, for instance against betting shops, lottery kiosks or amusement arcades
- × The belief that an application is submitted by an owner with the intention of selling the property at an enhanced value
- × The loss of an attractive private view, for instance when development is proposed on the opposite side of the road to or at the rear of an objectors' house
- × The fear that an objector's house or property might be devalued
- × The fact that the applicant does not own the land to which his application relates - this can be overcome by agreement with the owner
- × Concern if an objector is a tenant of land where development is proposed - the owner of the land can terminate the tenancy whether or not he carries out the development, and any consequences are therefore unrelated to the application
- × Allegations that a proposal might affect private rights, e.g. land ownership, restrictive covenants, property maintenance, private rights of way, or boundary disputes. These are legal matters and council officers are unable to provide advice. You would need to consult your own solicitor or advisor.
- × Concerns that the applicant may be seeking approval for a small development with the intention of submitting something more significant later ('salami slicing'). Every application has to be dealt with on its merits and what might happen in the future isn't relevant to the consideration of the application in hand.
- × Arguments of a personal kind relating to the circumstances of the applicant.

The Government's publication "The Planning System: General Principles" includes the following advice:

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

The relationship between the Council and the applicant

Not everyone fully appreciates the relationship between the Council and the applicant. It is the applicant, not the Council, who decides what proposal to submit. The Council then has to determine that application on its merits, whatever other form it would prefer the application to take. The applicant has a right to approval unless his application is contrary to the Development Plan or unless the Council can show that the proposal would cause demonstrable harm to interests of acknowledged importance.

The exception is in areas designated as Green Belt by the Development Plan (not to be confused with "green fields") where only very limited categories of development are acceptable.

- The Council has in most cases only 8 weeks from the date of submission to determine the application (unless an extension of time is agreed) before the applicant gains a right of appeal.
- The applicant has a right of appeal to the Secretary of State if his application is refused or conditions are imposed which he or she does not agree with, or if the Council has not decided the application in the required period (usually 8 weeks, or 13 weeks for 'major' development).
- The Council cannot refuse an application unless it can put forward good reasons that could be supported at appeal. If it acts unreasonably (e.g. cannot support its case at appeal) then it may have to pay costs
- If an objection can be overcome by imposing a condition, that is the appropriate course of action rather than refusal.

Petitions

The Council can only take into account either opposition to or support for a proposal, however many people are expressing a view, and this has to be based on issues which relate to material planning considerations. It is the merits of the application in those terms, not the weight of public opinion, which leads to the decision. Although petitions are a good way of letting the Council know that there is a great deal of interest in a proposal, a single letter from one person can be just as effective if it raises valid planning matters which support that view.

Retrospective planning applications

Sometimes we receive planning applications which relate to development that has already started or has been completed. These may have been submitted following discussions with planning enforcement staff, or the developer may have been advised independently (e.g. by a solicitor) that permission should have been sought and an application will then be submitted to regularise the development.

In these circumstances the development has to be considered in the same way as any other proposal. The fact that the development is there (or has started without permission) should not have any effect on whether the application is approved or refused and any comments need to be about the merits of the proposal, and not about any perceived irregularities of process. Although the developer may have breached planning regulations this is not an issue which would have any bearing on the decision.

Carrying out development without planning permission is not usually a criminal or civil offence (although see later) and it will not follow in every case that development that needs planning permission will have to be 'regularised' by submitting a planning application. A judgement has to be made as to whether the development causes such harm that it is expedient to take action. If development is not in accordance with a planning permission the same judgement has to be made. The Council has discretion as to whether formal action needs to be taken or not, depending on the individual planning merits of the case, and advice on this is provided in the Governments Planning Policy Guidance Note 18. This says -

"While it is clearly unsatisfactory for anyone to carry out development without first obtaining the required planning permission, an enforcement notice should not normally be issued solely to "regularise" development which is acceptable on its planning merits, but for which permission has not been sought.

(Continues).....it will generally be regarded as "unreasonable" for the LPA to issue an enforcement notice, solely to remedy the absence of a valid planning permission, if it is concluded, on an enforcement appeal to the Secretary of State, that there is no significant planning objection to the breach of control alleged in the enforcement notice. Accordingly, LPAs who issue a notice in these circumstances will remain at risk of an award against them of the appellant's costs in the enforcement appeal."

Retrospective applications are most commonly requested for development that needs to be brought within planning control and there is no other way to do this other than the imposition of planning conditions (e.g. opening hours) which of course cannot be applied if there is no permission. Alternatively it may be thought that there needs to be some modification to the development to make it acceptable and that the best way to achieve this is through the planning process, where comments made by consultees and members of the public would assist the Council in arriving at a view as to what is acceptable.

Retrospective applications will not be asked for if the development is clearly unacceptable, as there is no point in asking for an application if it's known that it will be refused. However, if the person responsible chooses to submit an application then the Council has no option but to consider it properly and determine the application in relation to its planning merits. The applicant would have the opportunity to appeal against the decision if they are not satisfied with the outcome.

Enforcement action – reporting development

The Council does not monitor all development but it does respond to members of the public who report apparent breaches of control. However, it must be borne in mind that the object of the planning system is to protect the public interest. If a breach of control has taken place but there is no harm to the public interest, then it is not appropriate to take action. Consequently the priority of enforcement complaints are proportional to harm caused. It is therefore quite possible for a situation to arise where development is neither authorised, nor the subject of enforcement. The majority of breaches of control are successfully dealt with informally through the cooperation of the owner or developer.

However, where there is significant harm to living conditions, or a heritage asset, the Council will move swiftly to serve an Enforcement Notice and/or instigate prosecution in the Courts.

There are a limited range of circumstances where, if no prior written consent has been obtained, a criminal offence has been committed. These include unauthorised works to listed buildings, protected trees (where the health and amenity value of the particular tree need to be considered), the removal of hedgerows in the countryside, and the display of some types of advertisements.

Please note that in all cases we need formal complaints to be made in writing to ensure we are clear about what the complaint is about, and so we have a written record of when the complaint was made. This helps us if we have to resort to legal action later. However urgent complaints (e.g. possible demolition of a listed building or felling a protected tree) will be acted on immediately, although we will ask for this to be confirmed in writing later. Complaints can be made by letter, email or via the Council's web site. The name and address of any complainant will be kept confidential, although if you decide to comment on any subsequent planning applications, these comments will be available for the public to read. For more information see 'Enforcement: - a brief guide' on the Council's web site or request a hard copy to be sent to you.

Summary of Enforcement Options –

- Developer is requested to submit a retrospective application – unlikely if there is no prospect of the development being approved
- Developer submits a retrospective application without being asked – no action is likely to be taken until the application is decided
- Development is unauthorised but complies with Council policy and would be approved as carried out – no further action
- Enforcement notice served requiring remedial action to be taken within a reasonable period of time (e.g. remove a building or stop using land for a specific purpose).
- Stop Notice – served at the same time as an Enforcement Notice and has an immediate effect. This is only used in extreme circumstances where severe harm is being caused by the unauthorised development.
- Breach of Condition Notice – used if planning conditions are not being complied with (no appeal can be made)

In most cases there is a right of appeal to the Planning Inspectorate, in the same way as if an application has been refused or if conditions are imposed which the applicant disagrees with. The timescale is similar to that for an appeal against a planning decision, i.e. several months. Appeals are dealt with by an independent inspector appointed by the Planning Inspectorate which is an executive agency of the Government.

If the inspector dismisses the appeal there is still the possibility that the enforcement notice will not be complied with. This may then result in the need for a prosecution and again the timescales for action in the courts can be protracted.