



## Planning 7: Application process

The Local Planning Authority (LPA) is responsible for determining planning applications. The *Town and Country Planning Act 1990* (TCPA 1990)<sup>1</sup> stipulates the manner in which a LPA may deal with planning applications. LPAs may grant planning permission unconditionally, or with conditions, or refuse it. The development plan should be regarded in determining planning applications (see Quick Guide 44: Local Development Plans).

There are two major types of planning application; outline and full. An application for outline permission is usually to secure approval of proposals for a certain development in principle, with some 'reserved matters' to be the subject of a further application at a later date (see Quick Guide 46: Planning Permission).

Under certain circumstances, some changes of land use or minor works may be done without planning permission. The General Permitted Development Order sets out a total of 84 separate classes of permitted development. See Quick Guide 45: Permitted Development for more information.

### How are planning applications determined?

The LPA determines planning applications in accordance with the development plan and other material considerations (see below). If it approves development which is a departure from the development plan, it must have good reason to do so.

LPAs have usually made arrangements for their planning function to be delegated to a committee; in some cases LPAs have also arranged for a discharge of these functions to planning officers.

### Planning applications and 'material considerations'

By subsection 70(2) of the TCPA 1990, when determining planning applications, LPAs must have regard to the provisions of the development plan for the area – so far as material to the application – and to *any other material considerations*. The application must be determined in accordance with policies in the development plan, unless material considerations indicate otherwise. Planning authorities may, however, grant permission for development which does not accord with the provisions of the plan (known as departure applications).<sup>2</sup>

Any consideration which relates to the use and development of land is capable of being a planning consideration; whether or not it is "material" depends on the circumstances. In the context of planning applications, the term "material consideration" means a relevant consideration;<sup>3</sup> the test of materiality is objective.<sup>4</sup>

<sup>1</sup> The *Town and Country Planning Act 1990*,  
<http://www.lexisnexis.com/uk/legal/results/docview>

<sup>2</sup> See the *Town and Country Planning (General Development Procedure) Order 1995*, SI 1995/419, article 17,  
<http://www.lexisnexis.com/uk/legal/results/pubTreeViewDoc.do?nodeId=TAAFACHAANABB&pubTreeWidth=23%25>

<sup>3</sup> *Tesco Stores Ltd. v. Secretary of State for the Environment* [1995] 2 All ER 636, [1995] 1 WLR 759, HL.

<sup>4</sup> *R (on the application of Kides) v. South Cambridgeshire District Council* [2002] EWCA Civ 1370, [2003] 1 P & CR 298, [2002] All ER (D) 114 (Oct).



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Chapter 4 of *Planning Policy Wales* (2002) provides—

4.1.2 Applications for planning permission, or for the renewal of planning permission, should be determined in accordance with the approved or adopted UDP<sup>5</sup>, unless material considerations indicate otherwise. Material considerations could include current circumstances, policies in an emerging UDP<sup>4</sup>, and planning policies of the Assembly Government and the UK Government. All applications should be considered in relation to up to date policies.

4.1.3 Factors to be taken into account in making planning decisions (material considerations) must be genuine planning matters, that is, they must be relevant to the regulation of the development and use of land in the public interest, towards the goal of sustainability.

4.1.4 Material considerations must also be fairly and reasonably related to the development concerned. The Courts are the final arbiters of what may be regarded as material considerations in relation to any particular application, but they include the number, size, layout, design and appearance of buildings, the means of access, landscaping, service availability and the impact on the neighbourhood and on the environment. The effects of a development on, for example, health, public safety and crime can also be material considerations, as, in principle, can public concerns in relation to such effects.

4.1.5 The local planning authority should have good reasons if it approves a development which is a departure from the UDP, contrary to the Assembly Government's stated planning policies, or against the advice of a statutory consultee or the written advice of its officers, and these reasons should be recorded in the Committee's minutes. Where an application is refused the local planning authority must state clearly the reasons for the refusal.

The Courts have held the following matters capable of constituting material considerations—

- development plans in course of preparation;
- ministerial policies (e.g. in Wales, *Planning Policy Wales*, *Technical Advice Notes*, circulars);
- existing development rights;
- retention of existing use;
- fear of setting a precedent;
- availability of alternative sites;
- alternative powers of control;
- previous appeal decisions;
- noise levels;
- fear of crime;
- the financial consequences of the grant of planning permission may be a material consideration if there is a likelihood of some planning gain;
- personal hardship to an applicant for planning permission may constitute special circumstances so as to override planning policies;
- the impact of a proposed development upon the use of and activities upon neighbouring land.

<sup>5</sup> Unitary Development Plans (UDPs) are being replaced by Local Development Plans (LDPs)



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### What is the process of notification regarding planning applications?

The *Town and Country Planning (General Development Procedure) Order 1995 (SI 1995/419)* Sections 6 and 8 state that when a planning application is made, requisite notice must be given to certain parties. Landowners and tenants of land where a planning application is submitted must be notified of the application.

When determining the planning application, representations from these parties must be taken into account. Once a decision has been made, all persons who have made a representation must be notified.

### Are there time limits on determination of a planning application?

The *Town and Country Planning (General Development Procedure) Order 1995 (SI 1995/419)*, Section 20, states that most planning applications should be determined within 8 weeks. An exception to this is when an application must undergo an Environmental Impact Assessment; there the determination period is increased to 16 weeks<sup>6</sup>. Further, the eight-week period may be extended by agreement in writing between the applicant and the LPA.

### May conditions be imposed on planning permissions?

Conditions may be imposed on planning permission. *Planning Policy Wales*, section 4.6 "Imposing Planning Conditions" covers the instances in which planning permission is granted conditionally:

4.6.2 Conditions should only be imposed where they are:

- necessary
- relevant to planning
- relevant to the development being planned
- enforceable
- precise; and
- reasonable in all other respects.



#### Further Information:

The statutory provisions cited above may be subject to subsequent amendment; the consolidated text of those provisions can be obtained from Butterworths' *Lexis/Nexis* service:

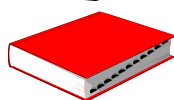
[http://assembly/presidingoffic/mrs/resources/electronic/qlinks\\_lexisnexis.htm](http://assembly/presidingoffic/mrs/resources/electronic/qlinks_lexisnexis.htm)

A comprehensive guide to the planning application process is available from the Planning Portal at: <http://www.planningportal.gov.uk/wales/genpub/en/1105619048874.html>



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<sup>6</sup> *Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (SI 1999/293)*, regulation 32(2)(a): 'Where it falls to an authority to determine an EIA application, article 20 (time periods for decision) of the Order shall have effect as if [...] for the reference in paragraph (2)(a) of that article to a period of 8 weeks there were substituted a reference to a period of 16 weeks'.