Determining A Planning Application

Introduction

Planning applications will cover all types of development from garden walls and porches, to major schemes such as housing estates and science parks. Whatever the nature of the application, there are a number of similar stages, even though larger applications may raise issues that are more complex.

This Advice Note spells out the key stages in the life of a planning application. At each stage, there are factors, which allow the process to run more smoothly for everyone concerned.

How long does it take?

A flow chart showing the various stages and the time taken to deal with a simple application (e.g. an extension) is set out in the following table. The various stages are covered in more detail elsewhere in this advice note.

Please note the flow chart is intended to be indicative only. The actual time will depend on many factors, some of which may be beyond the District Council's control.

Day	Principal stages
1	Planning application is received.
3	The Council will validate, register and acknowledge the application. Details will appear on the Council's web site.
6	The application is plotted, the file made up and the site history is recorded.
7	Standard consultations carried out with the Parish Council, neighbours and with any other statutory consultees.
10 – 17	Carry out publicity in local newspaper if necessary.
10 - 17	The case officer will carry out site visit and post any site notice that may be required.
15	Identify need for any Environmental Statement (see section 7).
25 - 29	Officers discuss the application. The policy implications, consultation responses and other material considerations are identified. The application status is confirmed (i.e delegated decision or committee). Officers will decide whether additional consultations are required, undertake negotiations and/or any necessary amendments.
29 - 56	Officers will either prepare recommendations for a delegated decision or write a draft committee report. Where a delegated decision is made → Within 2 days - Issue a decision notice. Within 5 days - Inform interested parties/consultees of the decision. Where a committee decision is made → Within 2 days – If application is deferred, further action will be required. Within 3 days - Issue a decision notice. Within 5 days - Inform interested parties/consultees of the decision.

Receipt and registering of the application

This is an important stage and the Council will check that the details of the application are complete at the outset. It is vital that all the relevant information is submitted so that applications are dealt with quickly and fairly.

An incomplete application may be returned. The time taken to come to a decision will therefore be delayed.

Applications are submitted on forms provided by the Council and are accompanied by 'Notes for Applicants'. These should be read carefully as they explain what information is required. All plans should be submitted using metric units of measurement in accordance with the national adopted code of practice.

As part of registration, applications are "plotted" electronically. This allows details of the application and the location of the site to be viewed on the Council's website. All applications are public documents and the information therein is available for public inspection. This is both during and after the application has been determined.

Consultation and publicity

Advice on consultation and publicity of applications is set out in Advice Note 5.

Some consultation is a statutory requirement, involving technical aspects with public bodies and agencies (e.g. Highways Authority, Environment Agency, English Heritage). The Council is not bound to accept their advice, but invariably will due to its technical nature.

The other main source of consultation is with local people who might be concerned by the proposal. This will always be immediate neighbours and anyone else whose interests the Council feel might be affected.

The case officer

The case officer has prime responsibility for handling planning and related applications allocated to him/her. Every planning application will be dealt with by a case officer working within an area team.

The case officer will carry out an inspection of the site and will view the proposal from neighbouring land if necessary. Neighbours can ask that a proposed development be viewed from their property. This helps the case officer to assess the proposal fully and ensures that neighbour interests are properly considered.

The case officer will undertake negotiations or amendments with applicants or their agents. This is an important part of the process as amendments could lead to a better scheme and a more satisfactory outcome for all concerned.

It is not unusual for the case officer to discuss the application before it is formally submitted. Indeed, such an approach is encouraged in order that possible objections can be resolved at an early stage.

The case officer will prepare recommendations on the application. Where appropriate, a report will be prepared for the next available committee meeting or a meeting of officers.

How and when decision is taken

Councils have a statutory duty to deal with an application within a certain timescale. This is eight weeks, unless the application is for 'major development'. In these cases, the period is 13 weeks. South Cambridgeshire District Council takes these timescales seriously and does all it can to stick to them.

'Major development' includes applications for more than 10 dwellings or where no number is provided, on sites of more than 0.5 of a hectare. It also includes buildings of more than 1000 square metres of floorspace or proposals involving a site of more than one hectare. (An acre of land is about 0.4 of a hectare).

Applications are determined either by the Planning Committee, but usually by planning officers under "delegated powers".

Where the Parish Council objects to a proposal and the officers' recommendation is one of refusal, the application will be determined under delegated powers. Where the officer's recommendation of approval would conflict with or would not substantially satisfy through the imposition of conditions, written representations received from a Parish Council, the application will normally be referred to the Committee.

The exception to this rule is that officers have also been granted powers to determine advertisement, permitted development, prior notification and householder applications. These are considered at a meeting with the Chair and Vice-chair of the Committee. Local members are also invited.

A District Councillor can also request that the Committee determines an application. This should be done within 28 days of the date of publication of the weekly list of planning applications.

Applications determined under delegated powers are often dealt with in well under eight weeks. The Committee meets each month and so applications considered in this way may take longer to determine.

The Committee is open to the public, although no right of public address is allowed. The one exception is that an elected member of the Parish Council (or the Chairman or duly nominated person of a Parish Meeting) may speak, so long as the Parish Council itself is not the applicant. The parish representative can speak for up to three minutes and is not allowed to express any personal views. Full details are available on the SCDC website.

In addition, Advice Note 9 offers some guidance on speaking at meetings.

Copies of the agenda are sent out to the relevant Parish Council. They are also available on the Council's website at http://www.scambs.gov.uk/CouncilAndDemocracy/CommitteesandMeetings/
This gives a reasonable time to consider a report, its accuracy and conclusions. These can be confirmed or challenged as necessary before a decision is taken.

The case officer therefore needs to ensure that reports on applications are carefully prepared. They will be made public and may be referred to in any subsequent appeal or legal challenge.

Any representations received after the committee report has been written, are still considered. They are handed to the Chair, however, before the meeting and reported verbally. A copy of each representation is also pinned up with the plans outside the Council Chamber on the day of the meeting.

Members of the Committee must ensure they have sufficient information to determine an application. Applications may therefore be subject to a Committee site visit before the meeting. If Parish Councils consider this is necessary, they can ask their District Councillor to request this.

Predetermination

Parish councils have their own meetings to consider planning applications on which they have been consulted. As a parish councillor, you should not make your mind up about an issue before you come to a decision on it.

You can still form a provisional view but you must be willing to consider all arguments presented at a meeting and you must be genuinely open to persuasion on the merits of the case.

If you do not have a genuinely open mind about a matter, this will leave the decision potentially susceptible to legal challenge because of the common law concept of predetermination. This is a legal concept

that predates the Code of Conduct (covered further in advice note 10).

Your statements and activities should not create the impression that your views on a matter are fixed, and that you will not fairly consider the evidence or arguments presented to you when you are making a decision. Public confidence in the probity of decision-making is paramount.

You can participate on the same issue at more than one tier of Local Government e.g. Parish or District, but you should:

- At parish level, make it clear that you will reconsider the matter at District level taking into account all relevant evidence and representations at the District tier
- At District level declare a personal (rather than a prejudicial) interest arising from membership of the Parish Council, which has already expressed a view on the matter, but make it clear you are considering the matter afresh

These guidelines on pre-determination apply even if a proposal has a direct impact on a particular location. For example there is no objection, in principle, to someone who is both a parish and district councillor speaking and voting on issues in the district council's development plan that particularly affect their parish. Of course, they must still consider if they have a prejudicial interest arising from the impact of the proposals on their well-being or financial position.

In such circumstances it would not be appropriate for them to rely on the Code of Conduct.

In all cases, parish councillors should take legal advice if they feel their actions are likely to be challenged.

Types of decision

Applications may be approved (with or without conditions), or refused. If the Committee cannot determine the application as it is presented to them, it will be deferred and reconsidered later.

Your view on the outcome of an application may differ from that of the case officer. If so, you will need to persuade the Committee that the officer's view is wrong.

Where an application is recommended for approval, it may sometimes be better to argue that the application could be approved, but only after further negotiation on certain matters of detail. This compromise approach can convince the Committee to defer an application as it potentially leads to a solution, which satisfies all the parties involved.

The Committee will usually agree with the recommendations of the planning officer. However, Members are perfectly entitled to take a different view, despite the technical advice they may have been given. What is important, is that adequate reasons are given and that the committee can justify its decision.

Conditions

Conditions should only be used where the alternative would be to refuse the application. They may cover a wide range of issues such as submission of sample materials, hours of working and restrictions on occupancy.

Certain conditions will always be unacceptable. The law requires that all conditions meet a number of tests. Conditions must be:

- Necessary – i.e. they should not be imposed for the sake of it or because they would do no harm. The test is such that without the condition, the application would have to be refused.
- Relevant to planning – conditions cannot be used to control the future ownership of the land or matters that are subject to control under other legislation.
- Relevant to the development to be permitted – e.g., it would be wrong to

impose conditions requiring additional parking facilities to be provided for an existing factory simply to meet a need that already exists from other buildings.

- Enforceable – a condition should not be imposed where it is in practice impossible to detect a contravention (e.g. restricting the number of occupants in a block of flats).

- Precise – it would be wrong, for instance, to require a site to be "kept tidy at all times". This is too vague and does not tell the developer what he has to do to satisfy the condition

- Reasonable in all other respects – e.g. it would normally be reasonable to restrict the hours during which an industrial use may be carried on if the use of the premises outside these hours would affect the amenities of the neighbourhood. It would be unreasonable to do so to such an extent as to make it impossible for the occupier to run the business properly. (In such a case, if it were considered necessary to restrict operating hours, the correct approach would be to refuse the application). Nor is it reasonable to grant a temporary permission for the erection of a new building if this requires a significant investment on behalf of the developer.

Other conditions that will never be acceptable include:

- To require a development to be completed within a time limit.

- To require that loading/unloading or parking shall not take place on the public highway. The applicant would have no control over this.

- Personal permissions, unless there are exceptional reasons (e.g. strong compassionate grounds). Even then, such a condition should not be applied in the case of a permanent building, especially where a substantial investment may be necessary.

- To require money from the developer to pay for a facility (e.g. car parking, village hall). This is nevertheless a situation where the Council can still request a financial contribution from the developer. This is achieved through the use of a legal agreement. Advice on this is set out below.

Legal Agreements

There may be times when it is desirable to control the impact of a development, but the desired restrictions go beyond the bounds conditions may cover. In such cases, it is possible to enter into a legal agreement with the applicant and anyone else interested in the land. This is called a "planning obligation" or Section 106 agreement.

Such an agreement is only possible if it can be shown that the need for a facility or infrastructure is required as a direct result of the development.

As third parties do not have an interest in the land, they are usually excluded from discussions on a potential agreement. There is currently no statutory requirement that allows them to become more involved at an early stage.

Matters that may be covered, include contributions to education facilities and provision of open space, ongoing landscape maintenance in areas of public open space, restoration of land and restrictions on the use or occupation of land.

Parish Councils will usually agree to the future maintenance of open space where it is required as part of a planning permission. This is therefore one instance where they will need to be a party to the agreement between the District Council and the developer. The agreement will set out the terms on which the Parish Council will acquire the land.

This will include any financial contribution provided by the developer for its future maintenance. Clearly, where a Parish Council is involved in such an agreement, it will need to satisfy itself that the payment offered by the developer will be sufficient to pay for the necessary long-term maintenance.

Reasons for approval and refusal

When an application is approved, the decision notice will briefly explain why and the policies with which it complies. When it is refused, the reasons should be stated clearly and precisely. Reasons for refusal should be supported by all relevant development plan policies. In all cases, care will be taken to cite the correct policies. In this way, all parties know with more certainty the reasons behind the decision.

In particular, all reasons for refusal should make it clear what harm would be caused if the development were allowed.

Call-in

Very occasionally, an application may be "called in" by the government. In such cases, the local authority no longer makes the decision. Instead the application proceeds by way of a public inquiry.

This will only happen if it is felt that the application raises more than just local issues. Recent examples of this in South Cambridgeshire are issues regarding density, the best use of land and major design issues.

After the decision

Once an application is approved, the development may be commenced. In most cases, however, the developer has up to three years to begin the work. There may also be other controls such as building regulations approval or legal covenants, which need to be satisfied before the development can proceed. Some of these matters are covered in Advice Note 10. There is no right of appeal for third parties against a planning approval. The government has consistently resisted pressure to introduce such an appeal.

In those cases where the application is refused, however, the applicant has several options open to him. These include:

- Talking to the case officer to negotiate another solution. Reducing the size of an extension, for example, may lead to an approval.

- Submitting a repeat or alternative application. It is possible for an applicant to submit amended proposals as many times as he likes. Often, no further fee is required. This is often seen by many, as a developer's attempt to wear down opposition over a period of time.

  Local planning authorities can, however, decline to determine similar applications where there has been no appeal to the Secretary of State on at least two previous refusals in the last two years. Alternatively, where, within the previous two years, the Secretary of State has called in and refused, or has dismissed an appeal, the local planning authority can refuse to determine a similar application.

- Submitting an appeal. This is supposed to be a last resort when all else has failed. In some cases, however, it is clear that appeals are lodged before the applicant has properly considered the Council's objections. It is also not unusual that an appeal and amended scheme are submitted at the same time. This may help to reduce delays in obtaining a favourable decision.

- In extreme cases, seeking redress by way of judicial review. This will only apply when it can be shown that the local planning authority has acted improperly in determining the application. More

advice on this is found in Advice Note 10.

Appeals

An applicant may appeal against a refusal or non-determination of an application or against the imposition of conditions. This is done by submitting the appropriate form and information to the Planning Inspectorate.

The Planning Inspectorate is an executive agency of central government and is based in Bristol. Its inspectors therefore act independently from local authorities. An appeal must be made within six months of the date of the decision. (The one exception is an advertisement appeal, which must be made within two months of the Council's decision).

The appeal must relate to the application that has been refused. Appellants cannot introduce new drawings if these materially change what was included in the application.

Appeals will be dealt with in one of three ways:

- Written representations - where the appeal is determined after an exchange of written statements by the two main parties. This is followed by a site visit by a planning inspector. This is the quickest method and most suitable for more modest applications.

- Hearing – where the merits of the appeal are discussed relatively informally in front of the inspector. This is followed by a site visit.

- Public inquiry – where evidence is formally presented in front of an inspector. Cases are normally put forward by a solicitor or barrister who calls witnesses to give evidence. This will be subject to cross-examination from the other side. The inquiry concludes with a site visit.

Parish Councils and members of the public will be consulted and invited to comment on an appeal. This will be done through a standard consultation letter at the start of the appeal. The Council's appeals section will later invite Parish Councils to become more involved in the appeal.

Members of the public can speak at hearings and inquiries. Evidence from district and parish councillors can be useful, especially if they have detailed local knowledge.

Parish Councils and the general public can also play a major role at public inquiries. Their own advocate or consultant may represent them.

Throughout the appeal process, there are strict timetables. This is notwithstanding that it can sometimes take over a year for an appeal to be determined. Failure to observe the timetables may result in evidence not being accepted.

An appeal decision may uphold the Council's decision or grant permission. Nationally, around two-thirds of appeals are dismissed (although this figure is higher in South Cambridgeshire). The reasons for the decision must be clearly stated so that the inspector's reasoning is fully understood.

If an appeal is dismissed on grounds of principle, the Council can refuse to accept a similar application on the same site, for two years after the date of the decision.

Occasionally, an inspector may award the other main party an award of costs. This will only be the case where it can be shown that the other party has acted unreasonably.

This is usually where either the Council is unable to adequately support a reason for refusal, or the appellant has pursued an appeal which is clearly contrary to adopted policies. The costs regime does not generally apply to appeals conducted by written representations.

This final point highlights what has been said in other Advice Notes. There is a need to ensure that decisions are based only on proper planning considerations. Without this principle, the planning system would be brought into disrepute.

Please Note: This advice note is intended as a general guide. It should not be relied upon, or taken to be a full interpretation of the law.