

Commenting On Planning Applications

Introduction

Public consultation is an important part of the planning system. This advice note sets out the need for consultation on planning applications. It explains how you can best make your views known and what sorts of objections are likely to carry the most weight.

People often only come into contact with the planning department when they feel the need to complain. This advice note is therefore arguably the most important in this Pack in providing the help you need.



The need for consultation

The law requires that planning applications be subject to some form of consultation before they can be determined. This may be carried out in several ways and includes sending individual letters, posting a site notice, an advertisement in a local newspaper and the internet.

The District Council publishes a weekly list of all applications received. Copies of which are available on its website at <http://www.scams.gov.uk/Environment/Planning/DevelopmentPlanning/>

Parish Councils (and other interested parties, for example, neighbours) are always consulted in some form so that their views can be considered. In South Cambridgeshire, where the views of the

Parish Council lead to an application being considered by the planning committee, their representations are reported in full in the officer's report.

What are you consulted on?

o **Planning and Listed building applications**

Consultation will only occur where representations may have a bearing on the outcome of the application. This will apply to all planning applications and includes those required by a condition of a previous permission (e.g. time-limited consent), applications for approval of reserved matters, prior notifications and advertisements.

o **Amendments to applications**

Amendments are often made to applications. These may be while the application is being determined, or sometimes after it has been approved.

Where this amounts to only a minor change, a copy of the amendment is sent to the Parish Council for information. Other parties are not notified. In all other cases, the Parish Council and other parties would be consulted in the normal way. The Council's letter will explain what the amendment is.

o **Lawful Development Certificates**

An application for a Lawful Development Certificate is made to establish whether existing or proposed development is lawful. If a certificate is granted, it means that planning permission is not required or has effectively been given.

The merits of the proposal are not open to consideration. Consultees can therefore only comment on the validity of any evidence or information that has been submitted.

o **Retrospective planning applications**

Sometimes, the District Council will receive planning applications, which seek to retain buildings, works or uses that already exist or are already being carried out. This is called a "retrospective planning application".

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Understandably, Parish Councils and the public often raise objections when this happens. Nonetheless, the Town and Country Planning Act allows such an application to be made.

The government has issued guidelines, which confirm that a retrospective planning application can be the correct approach if development has occurred without the benefit of planning permission.

It is not an offence, therefore, to carry out development where planning permission has not been obtained.

However, if building or other work continues while a retrospective planning application is being considered, the applicant will be advised that this work is being undertaken at his or her own risk.

The application will be determined like any other application. All relevant planning issues and circumstances will be considered. The fact that development has already taken place makes no difference to the Council's consideration of its merits.

Objections that the development has already started, or that the applicant is trying to flout planning regulations, will therefore not be taken into account.

People are therefore encouraged to comment on a retrospective application as they would do for any other application. It is important to concentrate on the planning issues rather than the fact that the applicant may appear to be trying to obtain permission by underhand means.

A retrospective application may be granted unconditionally, granted with conditions or refused. If the application is refused, or approved with conditions, the Council will consider whether to issue an enforcement notice. This will set out the steps to be taken to overcome the harm which the development has caused, or which may be caused if the conditions are not complied with.

o **Discharge of conditions**

There may be times when a condition prevents certain works or activities which would not usually require planning permission. For instance, permission may be given for a restaurant which prohibits it from opening late in the evening. An application may be made to remove the condition and consultation will be the same as any other planning application.

When permission is granted subject to conditions, the developer may need to submit further details to remove or "discharge" them. Typical examples include submission of a landscaping scheme or noise insulation measures.

In these cases, Parish Councils and residents are not usually consulted. There is no statutory basis to consult and any comments made on such matters when the application was first considered are taken into account.

o **Prior Notification Applications**

Parish Councils and other parties are consulted in the usual way, although the relevant consultation periods will differ.

o **Waste applications and mineral related development**

The County Council determines these types of applications. It will carry out the necessary consultations and will consider any responses.

Making effective representations

Parish Councils are asked to respond on a standard form. This is sent to them along with details of the application when they are first consulted on the application.

The recommendation of the Parish Council can be "approve", "refuse" or "No recommendation". Supporting comments can also be added. Whichever box is ticked on the form, ensure that any supporting comments do not make your views seem ambiguous. Be clear as to what your recommendation really is and don't rely on earlier comments unless these are spelt out again.

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The following points are useful when making comments on an application. They apply equally to neighbours or other parties interested in making their views known.

- o Study the plans, forms and details submitted with the application carefully. Make sure you understand the nature and type of application that has been made. For convenience, members of the public can view the details of an application at Parish Council offices.
- o Members of the public can request a photocopy of the plans if they need them (note the District Council will charge for this).
- o Make sure you fully understand what is proposed and where it is. Visit the site to assess the likely impact if you need to.
- o Talk to the case officer if you are unsure of any details. He or she will be happy to talk about any aspect of the proposal. Make an appointment if you need to call in person. Ask the case officer to visit you so that you can be sure the impact of a proposal is seen from your point of view. Details of the area planning teams in South Cambridgeshire can be found at <http://www.scambs.gov.uk/Environment/Planning/DevelopmentPlanning/planningareas.htm>
- o Contact the applicant for more information if you need it.
- o Details of any previous applications for the site may be relevant. Details of these can quickly be found on the Council's website at <http://egov.scambs.gov.uk/planningapps/pa.php>
- o Find out what the statutory agencies think. Contact them direct if necessary. The local planning authority will almost certainly be bound by the advice it receives as this will be technical in nature. This means that where a third party disagrees with such advice, they will need to provide their own technical evidence to back up their objections
- o Seek advice if you need to. The local Planning Aid service can provide free and independent advice in many cases.
- o Give adequate reasons for your objection. For example, it is not enough to say that as something has already been done without permission, it should therefore be refused. You must identify the **harm** that will be caused.
- o Stick to planning matters. These cover a wide area and are outlined elsewhere in this note.
- o Don't refer to non-planning issues. They will not add anything and can sometimes undermine your case.
- o Quote Development Plan policies if you know them. These are the "starting point" for considering the merits of an application.
- o Where the development plan is being reviewed, the new plan will also be important. This importance will steadily increase as the plan nears adoption. Where policies are proposed that have led to objections, the policies will only have limited weight until the objections have been considered as part of the plan process.
- o There will be occasions when policies in an adopted plan conflict with those in an emerging plan. Those in the adopted plan will take priority until the replacement policies are at a stage where no further objections or changes are likely.
- o Be aware of government advice (PPGs, PSSs) and regional spatial strategy (RSS). The Council must have regard to these in all cases. Government policy will take preference

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- over the Council's policies where there is conflict between them.
- o Suggest conditions which could be imposed should an application be approved. This does **not** weaken any objections you have and can help to ensure that development is properly controlled should it take place. Any conditions that the Parish Council may have discussed with an applicant must be included in the approval notice if they are to be legally binding. Some conditions, however, may always be unacceptable (see below).
 - o It is very important to observe the time limit for the receipt of representations. Responses are usually required within *14 or 21 days* depending on the type of application. You may have more than one opportunity to comment on an application (e.g. in response to a letter, site notice, online etc.). Because the different consultation methods may not always start on the same day, closing dates for responses may vary on the same application. While this may be confusing, it is often unavoidable. It may, however, give you longer to make any response.
 - o Ask for an extension of time if you cannot reply within the given time. A holding reply is sometimes useful and alerts the planning officer of your concerns.
 - o Parish Councils should consult local residents and vice versa, particularly in controversial cases. The Parish Council should fully reflect local feeling about a site or proposal.
 - o If there is widespread objection or support for a proposal, individual letters are more effective than a petition or a circular letter. The receipt of individual letters suggests people are properly concerned.
 - o If there are other groups who oppose the application, it may pay to pool resources. This is especially so with a major development. It may be worthwhile forming an action group.
 - o Contact your District Councillor(s). Let them know what you think.
 - o Consider other forms of publicity for the application. Use the media, especially the local press. Making an issue out of an application is likely to make the Committee more responsive to your point of view
 - o Read the officer's report to Committee. Ask for any mistakes to be corrected before a decision is taken.
 - o You may attend the Committee meeting, although in South Cambridgeshire only a nominated parish Council representative can speak.
 - o Finally, you should be remember that any letter submitted would be available for inspection by other people including the applicant. Letters that are written on a confidential basis will not be open to public inspection and may therefore have only a limited influence on any decision.

Making Valid Representations

Objections that are clear, concise and accurate stand more chance of being accepted than those that are not. The use of headings for each point, for example, can help in this respect.

When planning applications are considered, the following matters can all be relevant. These are sometimes referred to as "material planning considerations"

- o Central government policy and guidance - Acts, Circulars, Planning Policy Guidance and Statements etc.
- o The development plan. The importance of this has already been explained. In South Cambridgeshire, the development plan currently consists of:

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- Cambridgeshire and Peterborough Structure Plan (adopted October 2003)
- South Cambridgeshire Local Plan (February 2004)
- South Cambridgeshire Local Development Framework Core Strategy (January 2007)
- Cambridgeshire and Peterborough Waste Local Plan 2003
- Cambridgeshire Aggregates (Minerals) Local Plan 1991

Development Framework (LDF). It will fully supersede the existing development plan when it is adopted.

- o Replies from statutory and non-statutory undertakers (e.g. Environment Agency, Highway Authority)
- o Representations from neighbours, amenity groups and other interested parties so long as they relate to land use matters.
- o Adopted supplementary planning guidance (e.g. Village Design Statements, Conservation Area appraisals, car parking standards).
- o Effects on an area. This includes the availability of infrastructure, density, layout, siting, design and external appearance of buildings and landscaping.
- o Highway safety issues such as traffic generation, road capacity, means of access, visibility and car parking.
- o Effects on individual buildings, such as overlooking, loss of light, overshadowing, visual intrusion and noise and disturbance.
- o Effects on a specially designated area or building (e.g. Green Belt, conservation areas, listed buildings, ancient monuments, SSSIs).
- o Effects on existing tree cover and hedgerows.
- o Nature conservation interests (e.g. protection of badgers, great crested newts).
- o Public rights of way. Advice on these is available from the County Council Countryside Services Team.
- o Flooding or pollution.

The Importance of the Development Plan

When determining a planning application, the local planning authority should adopt certain principles laid down in legislation and government guidance.

These principles are very important and form the basis of all decisions on planning applications and subsequent appeals. The effect of these principles is that:

- Applications should be determined in accordance with the development plan when there are no other material considerations. If the development plan therefore says something that either supports or prevents a proposal, the decision should follow the plan.
- If there are other material considerations, the development plan should be the starting point and the other considerations weighed up against it.
- Where the development plan is not relevant, or contains conflicting policies, the application should be treated on its merits.

- o Any review of the development plan. The Structure Plan and Local Plan are being replaced by a Local

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- o Planning history of the site (including existing permissions and appeal decisions).
- o A desire to retain or promote certain uses (e.g. playing fields, village shops and pubs).
- o Whether there is a need for the development (e.g. motorway service areas).
- o Precedent can sometimes be a relevant consideration, but only where it can be shown there would be a real danger that a proposal would inevitably lead to other inappropriate development (e.g. isolated housing in the countryside). It will not usually be a reason for refusal and the old adage that each application is treated on its merits still holds true.
- o Prevention of crime and disorder.
- o The presence of a hazardous substance directly associated with a development.
- o Loss of a private view. Public views are relevant, for instance views of an important landmark such as a village church which may contribute to the character and appearance of the area.
- o Devaluation of property.
- o Matters controlled by other legislation (e.g. internal space standards for dwellings, fire prevention).
- o Religious or moral issues.
- o The fact that the development has already been carried out and the applicant is seeking to regularise the situation.

Advice on how some of these matters can be resolved is set out in Advice Note 10.

The Use of Conditions

The applicant has to provide enough information for the application to be determined. He does not, however, have to provide every single detail before an application can be approved. This is because certain matters can be resolved by way of conditions included as part of the permission.

Because of this, certain 'objections' will not normally be considered as such. Matters that might be treated as conditions include details of the proposed type or colour of the materials to be used or the exact nature of any proposed planting or boundary treatment

Even so, it is entirely reasonable to raise concerns on such issues and to ask to be kept informed before they are approved.

Further advice on the use of conditions is set out in Advice Note 6.

Irrelevant Matters

Certain matters do not amount to material planning considerations and *cannot* be taken into account. It therefore follows that they cannot be used as a reason for refusal. They include:

- o The identity of the applicant or occupant, unless there are strong compassionate or personal grounds (e.g. gypsy sites, granny annexes).
- o Unfair competition (e.g. between two restaurants vying for the same trade).
- o Boundary disputes.
- o Breach of covenants and personal property rights including private rights of way. The granting of planning permission does not override these concerns and they are matters which may still have to be resolved by the parties themselves.

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.