

## **Practice Note: Material planning considerations**

### **INTRODUCTION**

The purpose of this Practice Note is to give information on the matters that are material (relevant) to planning decisions and those that are not. Whilst of general interest it is intended that this practice note will assist local Members and Town/Parish Councils in exercising their right to refer planning applications to a Planning regulatory committee for determination on grounds based on clearly defined material planning considerations. It may also be of interest to members of the public considering their response to a planning application.

### **THE LEGAL BACKGROUND**

This section gives a brief outline of the law as it applies to material considerations. References to the Act(s) are to the Town and Country Planning Act(s) 1990 (as amended).

#### **General conformity with the law**

The LPA must conduct its planning functions in accordance with the Planning Acts (and Regulations made under them) and with the relevant case law (interpretations made by the courts). Failure to do so could result in the Council's actions being challenged in the courts.

#### **The public interest**

The purpose of the planning system is to regulate the development and use of land in the public interest. It is not to protect the private interests of one person (or a group of people) from the activities of another. The expression 'public interest' includes all public interests in the broadest sense including the national public interest. It must not be interpreted as referring only to the interests of the public locally.

#### **The Role of the First Secretary of State**

is the ultimate arbiter in most planning issues. Powers are exercised through:

- appeal decisions;
- called-in planning applications;
- the power to intervene if the LPA does not use its powers appropriately.
- LPAs must, therefore, be mindful of the First Secretary of State's interpretation of planning law and policy in coming to its decisions.

### **The Local Government Ombudsman**

The LPAs functions must not only be carried out in accordance with the law. They must also be administered fairly. Failure to manage its functions in a fair and open way could give rise to complaints of maladministration to the Local Government Ombudsman.

### **Section 54A of the Act (Section 38(6) of the Planning and Compulsory Purchase Act 2004)**

This provides that 'If regard is to be had to the Development Plan for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the Plan unless material considerations indicate otherwise'.

This statutory requirement gives great importance to the Development Plan in planning decisions but it does mean that local planning authorities (LPA's) can grant planning permissions contrary to the provisions of the development plan so long as there are material planning reasons for doing so.

## **THE DEVELOPMENT PLAN**

### **What is the Development Plan?**

The Development Plan is the Regional Spatial Strategy and saved policies in the Joint Structure Plan and Local Plans read together as updated and eventually replaced by the emerging Local Development Framework.

### **What does 'in accordance with the Plan' mean?**

The LPA has to:

- comply with section 38(6) of the Planning and Compulsory Purchase Act 2004;
- 'have regard' to the provisions of the Development Plan (section 70 of the Act);
- seek to achieve the general objectives of the Structure Plan (schedule 1, paragraph 7(1) of the Act).

Nevertheless, the LPA does not have to adhere slavishly to the Development Plan, but is bound to give considerable weight to its policies.

### **Plan, Monitor and Manage**

This term is used to describe the phasing of development in accordance with the Development Plan. While a proposal may not be contrary to the Plan, it may be refused because it is not required until a later date.

### **Development Plans in preparation**

References to the Development Plan are normally references to the adopted Plan(s) and saved policies. However, the LPA may take into account as a material consideration the provisions of a Plan document in preparation as part of the Local Development Framework, where the proposal would seriously prejudice the proposed policies.

### **Departures from the Development Plan**

LPAs may make decisions which are not in accordance with the Development Plan, where justified by other material considerations. Special procedures apply including reference to the First Secretary of State.

### **GOVERNMENT POLICY**

Because of the role of the First Secretary of State in planning decisions, LPAs must ensure that their decisions are consistent with Government policy. Government policy is issued in a number of forms.

#### **Statutory designations**

Some areas are subject to special designations under the Planning Acts. The ones affecting parts of Shropshire include:

- Areas of Outstanding Natural Beauty;
- Sites of Special Scientific Interest;
- Nature Reserves;
- Conservation Areas;
- Ancient Monuments

#### **Planning Policy Statements and Guidance Notes (PPSs and PPGs)**

These are the standard format for Government planning policy.

Of special interest to Shropshire are:

- PPS1: Sustainable Development
- PPS3: Housing
- PPS7: Sustainable Development in Rural Areas;
- PPG15: Planning and the Historic Environment;
- PPG16 Archaeology and Planning;
- PPS9: Nature Conservation
- PPG25 Development and Flood Risk
- PPG21 Tourism

PPGs will gradually be replaced with PPSs under the government's programme for modernising the planning system.

#### **CLG Circulars**

The Government issues some policy guidance in the form of Circulars.

#### **Regional Spatial Strategies (RSS)**

The Government also issues planning guidance on a regional basis (RSSs) These were formerly known as Regional Planning Guidance. The RSS for the West Midlands is RPG11 and is subject to ongoing review.

- [West Midlands Regional Assembly Website - Regional Spatial Strategy](#) (External link)

### **SUPPLEMENTARY PLANNING GUIDANCE AND OTHER POLICY**

The LPA may take into account Supplementary Planning Guidance it has issued, and other policy including Interim planning policy guidance but the weight to be given to it will depend on the circumstances.

### **Supplementary Planning Guidance (SPG)**

SPG is formal LPA policy that has been prepared and adopted in accordance with accepted procedures including public consultation. It includes design guidance, development briefs and conservation area statements. SPG is given considerable weight in planning decisions. Under the new planning system, SPG will gradually be replaced by Supplementary Planning Documents (SPD). The weight to be given to SPD will be similar to that given to SPG.

### **Other policy**

The LPA may treat other policy as material to planning decisions. This can include policy contained in the Community Strategy or Corporate Plan, or may amount merely to custom and practice. However, the weight to be given to other policy will depend on the circumstances of the case and it will not be given much weight against the Development Plan, SPG or Government policy.

## **OTHER MATERIAL CONSIDERATIONS**

Guidance is set out below on the topics that may be considered material to planning decisions. The list is not exhaustive.

### **Planning history of the site**

This includes current and past uses of the site as well as the nature of previous planning permissions. Generally, existing uses can be expected to be retained unless their character has changed substantially. Lapsed planning permissions can generally be expected to be renewed unless there has been a change to planning policy, or other circumstances, in the meantime

### **Planning gain**

This is a term used to describe a planning advantage arising from a proposal that is not directly connected to it. Generally speaking, the LPA cannot require a developer to provide additional works or facilities that are not directly connected with his proposal. However, where there are adverse impacts on the public interest caused by a development, the LPA is justified in asking the developer to provide works, facilities or resources to minimise the effects of these impacts. Examples are affordable housing, open space and contributions to educational schemes. Planning gain is usually provided through a s106 Agreement.

### **Representations by Consultees**

The LPA must take into account representations made by statutory consultees such as The Environment Agency, the Highways Agency and English Heritage.

### **Representations by owners and tenants**

Applications for planning permission can be made by anyone. Where an application involves land owned or tenanted by somebody else, their comments or objections must be taken into account in the decision.

### **Environmental Impact Assessment**

Some major developments have to be subjected to a process known as Environmental Impact Assessment (EIA). Where this is required the EIA is a material consideration.

### **Other environmental matters**

When EIA is not required (as is usually the case), the environmental impacts of the proposal, such as noise, smell, pollution or effect on wildlife, are material considerations. Some species have statutory protection.

### **Water environment**

Planning decisions must not give rise to developments which risk the pollution of water resources or increase the risk of flooding or flood damage.

### **Listed Buildings**

The LPA has a duty to conserve buildings listed as being of special architectural or historic interest and their settings.

### **Conservation Areas**

The LPA has a duty to preserve or enhance the character or appearance of conservation areas.

### **General amenity**

Amenity is a general term that is used to describe the character of a place: its appearance, environmental quality and even its ambience. Factors that can affect amenity include the existing landscape or townscape of the area, land use, the siting, layout and external appearance of development, and the design and landscaping of buildings.

### **Residential amenity**

Although planning control does not protect private interests (see below), there is a public interest in protecting the amenity of residential property as a whole. Relevant factors include loss of privacy by excessive overlooking of windows or gardens, loss of light and overbearance by large new buildings that are too close to boundaries.

### **Design**

Until recently, Government advice did not allow the LPA to exercise any substantial degree of control over the design of new developments. Recent guidance in PPS1 now asks LPAs to require schemes to meet proper standards of urban design, sustainability and sense of place. This does not mean that new development must copy what exists in the locality. New developments should be designed to the highest possible standards of the day while respecting the massing, scale, proportion, and materials of their surroundings.

### **Highway Safety**

All development generates or attracts traffic. It is essential that any increases in traffic caused by a development are safely catered for. This issue usually affects the access to the development from the public highway, but can also involve works to the highway system itself.

### **Public Rights of Way**

As a rule, the LPA must protect public rights of way or be satisfied that suitable alternatives exist. The procedures are quite complicated.

### **Contaminated land**

The extent to which land is, or may be, contaminated by a previous use is a material consideration.

### **Archaeology**

The extent and nature of any possible archaeological remains on a site is material to planning decisions.

### **Public safety and crime prevention**

The need to address public safety and crime prevention measures is on the planning agenda.

### **Representations from the public**

The LPA must take into account representations that it receives from the public where they concern material planning considerations.

## **CONSIDERATIONS THAT ARE NOT MATERIAL**

Guidance is set out below on matters that are not generally material to planning decisions. Again, the list is not exhaustive.

### **Precedent**

Every planning decision must be reached on the merits of the case. The fact that previous cases have been decided in a particular way does not create a precedent for others. The LPA is entitled to consider the cumulative effect of similar decisions that would cause harm, but the possibility of precedent should not lead to a refusal where there are other good reasons for allowing a development.

### **Matters regulated by other statutory codes**

Generally speaking, LPAs cannot use the planning system to regulate matters covered by other statutes. The LPA may refuse planning permission or impose conditions only if the consideration is material in planning terms.

### **Alternative proposals**

LPAs may not take into account alternative proposals for a site to those submitted by the applicant unless the alternative is specifically supported by the Development Plan.

### **Retention of existing use**

The LPA has no power to require unviable uses to remain in operation. It cannot use its planning powers to require the continuation of an existing use unless:

- there is a clear public interest in retaining the existing use which is not otherwise catered for; and
- there is a fair chance that the existing use will be retained as a result of the decision.

### **Distinguishing between particular occupiers**

Planning is about the use of land. The identity of the occupier is usually irrelevant. An exception to this rule is where there is a mixed use of a dwelling with associated commercial activity that could be detrimental to the amenity of a separate householder.

### **Private interests**

Often representations on planning applications concern not a planning matter but a personal interest or a civil dispute. The LPA is not able to act as arbiter in civil disputes and must assume that a disagreement between neighbours is capable of resolution.

### **Private rights of way**

Private rights of way are in the control of the person holding the rights. Planning permission cannot grant private rights of way that otherwise do not exist, nor can planning permission override private rights of way that do exist. Nevertheless planning permission will not be granted for developments where the proposed access is inadequate.

### **Restrictive covenants and landowner's control**

Sometimes planning permission is granted for a proposal that is the subject of some restrictive covenant or control by a third party. As with civil disputes and private rights of way, the LPA is not able to assume that the matter is incapable of resolution. But if a landowner or holder of a covenant does not wish to relax it, planning permission does not override his civil right to refuse to allow the development to proceed.

### **The outlook from property**

Nobody has a right to a view from their property. The LPA cannot control the effects of new developments on the outlook from existing property except in the general case of residential amenity (see above).

### **Financial considerations**

The cost of a development is not a material consideration and the LPA has no jurisdiction to protect developers from expensive projects.

### **Personal circumstances**

Generally speaking, personal circumstances are not a material planning consideration. The courts have held that personal circumstances may 'tip the balance' when other material considerations are not decisive. However,

personal circumstances may not be weighed against the provisions of the Development Plan or other material considerations.

**Bias - applications by the LPA**

When dealing with applications submitted by the Council itself, the LPA must adopt procedures to ensure that the application is handled in the same way as it would have been for somebody else.

**Ulterior purpose**

Planning permission may not be refused or restricted so as to make a developer provide something that should be provided by the LPA or other public body. Nor must planning control be used to protect some other interest of the LPA.

**Discrimination**

The LPA may not discriminate against any applicant or objector on the grounds of race, religion, gender, sexual orientation, age or any other basis.

**CONTACTS**

For further information, please contact