

Parish Training

PLANNING

Wednesday 13 July 2016

What requires permission?

- “Development” requires planning permission
- Defined in Town and Country Planning Act 1990 section 55 except where the context otherwise requires as:
 - a) “the carrying out of building, engineering, mining or other operations in, on, over or under land, OR*
 - b) the making of any material change in the use of any buildings or other land”*

What requires permission? (cont)

- Some matters that people often think require planning permission, is not development: e.g. internal works to buildings, changes of use within a use class
- Sometimes other forms of permission are required.
- Listed Building Consent
- Advertisement consent
- Works to some trees

Permitted development

- Some development is permitted by order of Parliament: Permitted Development aka “PD”
- Set out in the General Permitted Development Order (GPDO)
- Some changes are permitted following a prior notification procedure
- For householder PD refer to Planning Portal interactive house (google “*planning portal house*”)
<http://www.planningportal.gov.uk/permission/house>

Permitted development

- PD is often complex but examples include:
 - minor house extensions, walls and fences, garages etc.
 - temporary buildings and use
 - agricultural buildings and operations
 - some “acceptable” material changes of use (ever increasing list!)
 - minor works by statutory undertakers

Certificates of Lawful Development



- “Proposed”: can establish whether proposed operational development or a change of use requires planning permission or not (i.e. that it is development, but is permitted (often “PD”), or not)
- “Existing”: can establish whether operational development or a change of use which has already been undertaken is lawful by virtue of the passage of time.

Planning Applications: General Process

Pre-application Advice

- Optional
- Fee chargeable since April 2013 & raised in 2016
- Commercially sensitive so advice not available to wider audience
- Undertaken by Officers
- Advice given is not binding on the Council

Planning Applications

- Applications must contain certain information to be valid
- If valid, public consultation is carried out, and comments sought from Parish/Town Council, statutory consultees, internal consultees, etc.

Consultation

- 21 day period of consultation on most applications
- Regard had to all representations received
- Further comments on weight to be attached to representations in sections below
- If material amendments are made to an application then Officers will undertake re-consultation (7 or 14 days)
- If amendments are not material (i.e. are slight) then re-consultation not necessary

Determination



- Officers will sometimes negotiate improvements to proposals:
 - To make an unacceptable proposal acceptable
 - To reduce the number of reasons for which a proposal will be refused
- Government set target dates:
 - Major development with Environmental Statement: 16 weeks
 - Major development: 13 weeks
 - Minor and others: 8 weeks
- Extensions of time can be agreed
- Punitive measures if LPA is poor performing

Who Makes the Decisions?

- TWBC determines c. 1500 - 1800 planning/Listed Building etc applications each year
- About 95% are dealt with under delegated powers where a recommendation is made by the Case Officer and “signed off” by a Delegated Panel of senior Officers
- Constitution sets out which applications are determined by the Committee

Who Makes the Decisions? (cont)



- Committee determination:
 - Significant major applications
 - Applications made by TWBC/on TWBC land
 - Applications made by current/recent TWBC Councillors and Officers
 - Applications referred by the Head of Service
 - Applications “called in” by Borough Councillors
- PC’s / TC’s can request a decision is made by Committee – if not agreed by Officers then PC/TC will be advised and have 5 days to request Borough Councillor to “call in”

Planning Applications: Determination

Requirement of the Act(s)

- Section 70(2) of the Town and Country Planning Act 1990 states that,

“In dealing with an application the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations.”

Requirement of the Act(s)

- Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states 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.”

National and Local Planning Policy

Why does it matter?



Policy Context



- The National Planning Policy Framework (NPPF) 2012
- National Planning Practice Guidance (NPPG)
- Local Development Plan
 - Local Plans and other development plan documents
 - Neighbourhood Plans
- Legislation – statute and regulations

National Planning Policy Framework (NPPF)



- Brings together all the existing policy into one much shorter policy document
- Golden thread – presumption in favour of sustainable development
- 3 mutually dependent elements:
 - economic, social, environmental
- Pro-growth without delay – para 14 says it all

NPPF – Decision Making In Practice



- Objectively assessed needs – evidence is key
- Having a 5 year housing land supply is essential to retain local decision making
- Even where there is an adopted core strategy, councils need to make sure the 5 year supply is there.
- Where an adopted plan is out of sync (out of date or silent) with the NPPF, the NPPF will ‘trump’ the adopted plan

NPPF – and National Planning Practice Guidance (NPPG)



- NPPG provides the guidance for interpreting the NPPF;
- Online based document – periodically updated;
- Government increasingly looking to bring in incremental changes through NPPG;
- Changes also through Ministerial statements, appeal decisions and legal judgements
- Both NPPF and NPPG available here:
<http://planningguidance.planningportal.gov.uk/>

Local Planning Policy - TW



Existing:

- Tunbridge Wells Local Plan 2006 (saved policies)
- Core Strategy, 2010 - provides overarching policies for development in Borough
- Site Allocations (due to be adopted)
- SPDs (Affordable Housing, Conservation Area Appraisals, Alterations & Extensions etc.)

All documents can be accessed here:

<http://www.tunbridgewells.gov.uk/residents/planning/planning-policy>

Material Considerations

- Relate to the purpose of planning legislation “to regulate the development and use of land in the public interest”
- Relate to the application concerned.

Material Considerations Include...

- Overlooking/loss of privacy
- Loss of light or overshadowing
- Parking, highway safety and traffic
- Noise
- Can include financial considerations
- Effect on listed building and conservation area
- Layout and density of building
- Design, appearance and materials
- Nature conservation
- Previous planning decisions at site

Non Material Considerations

- Matters that should not be taken into account in deciding planning applications include:
 - Loss of view
 - Negative effect on the value of properties
 - Land ownership or restrictive covenants
 - Applicant's personal circumstances (unless exceptional such as relating to a physical disability)
 - Business competition
 - Matters controlled under building regulations or other non-planning legislation

Application determination – **A** summary



- Have regard to site context (Officers visit the site for each application), development proposed, consultee and neighbour comments;
- Start with the development plan policies:
 - To what extent is proposal in accordance with policies?
- Take into account other material considerations, including National policy, other council strategies, etc;
- Do any of these considerations warrant a decision not in accordance with Development Plan policy?

The Decision

- Grant planning permission
 - subject to conditions
 - subject to planning obligations
- Special types of approval or consent e.g. prior approval, Listed Building Consent (LBC), etc
- Majority of applications to be determined by Committee are for planning permission or LBC
- Refuse planning permission (or prior approval, LBC, etc)

Conditions

- Paragraph 203 of the NPPF states:
- “Planning conditions should only be imposed where they are:
 - necessary;
 - relevant to planning and;
 - to the development to be permitted;
 - enforceable;
 - precise and;
 - reasonable in all other respects.”

S106 Obligations

- Site specific to that development
- Used where it is not possible to use conditions
- Often in mitigation of an impact, or to support provision of infrastructure
- For affordable housing contributions
- Must be necessary, directly relevant, reasonable, fair and related in scale/kind to the development
- The use of planning obligations must be governed by the fundamental principle that planning permission may not be bought or sold

Refusals

- Must be lawful
- Must be justified by reasons, based on the Development Plan & any other material considerations in the case
- May be subject to **appeal**, so reasons should be defensible & based on credible evidence
- Unreasonable or invalid refusals may result in **cost awards** against the council; but considered decisions properly defended will not, even if lost at appeal