



Northumberland Association of Local Councils

NALC promotes the interests of Parish and Town Councils and provides specialist training, advice and other support to its members

Briefing – Introduction to Planning

30 June 2021

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Northumberland Association's website

<https://northumberlandalc.uk/>

National NALC website (log-in required – available from this association)

<http://www.nalc.gov.uk/>

Legislation

<http://www.legislation.gov.uk/>

MHCLG

<https://www.gov.uk/topic/planning-development>

The National Planning Policy Framework

<https://www.gov.uk/guidance/national-planning-policy-framework>

Planning Inspectorate

<https://www.gov.uk/guidance/object-to-a-public-right-of-way-order>

Planning Portal

<https://www.planningportal.co.uk/>

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Introduction

The aim of this briefing is to provide a general overview of the Town & Country Planning System.

Issues to touch on

1. Background
2. The framework
3. Planning Authorities
4. The Local Plan and Neighbourhood Plans
5. Areas with special planning regimes
6. What is “Development”
7. Permitted Development
8. Use Classes
9. Applications
10. Consultation
11. Material & Non-Material Considerations
12. Community Infrastructure Levy and S106s
13. Enforcement
14. Listed Buildings
15. Appeals
16. Advertisements
17. The August 2020 White Paper – “Planning for the future”

There are no fixed boundaries between those areas and we may well move into other aspects.

As is always the case with local government, legislation can change or an interpretation by the Courts can alter the generally accepted understanding of a rule. Planning is also an area where Govt. policy frequently changes, sometimes with very little notice. **A Planning Bill is expected in the near future.**

Legislation uses the term “Parish Council” as including English Town and Community Councils. I will use “Parish” in the body of this note.

This is a complex area of law, policy and practice with many caveats and differences between areas of England. This note is just a short summary of some of the key areas.

We are only dealing with England outside London. The planning regimes in Scotland and Wales increasingly differ as they are devolved functions.

Terminology

CIL = Community Infrastructure Levy

The Local Plan = The development plan documents

The LPA = The Local Planning Authority

MHCLG = Ministry of Housing, Communities & Local Govt.

The NPPF = The National Planning Policy Framework (Feb 2019 Version)

PINS = The Planning Inspectorate

The SoS = The Secretary of State at the MHCLG

S106 = Section 106 Planning Obligations (aka Planning Agreements)

The TCPA = The Town & County Planning Act 1990 – as amended

1: Background

The statutory control of land development began in the mid-19th Century with restrictions arising from cholera and typhoid epidemics in the industrial slums. The current comprehensive system in England dates from the Town & Country Planning Act 1947. In subsequent years legislation has been amended, repealed and consolidated and is now referred to as The Planning Acts.

It is a departure from the common law that an owner was generally free to do what they wished with their land, subject to no adverse effects on their neighbours. This concept is embodied in the Article 1 Protocol 1 of the European Convention on Human Rights (not an EU Convention).

(1) Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

(2) The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

It is often useful to remember that there has to be a good planning reason to refuse an application, not that the applicant has failed to prove there is a reason to grant permission.

2: The framework

The current principal Planning Acts are

- Town and Country Planning Act 1990
- Planning (Listed Buildings and Conservation Areas) Act 1990
- Planning (Hazardous Substances) Act 1990
- Planning (Consequential Provisions) Act 1990

These have been amended on many occasions since 1990 and are supplemented by a raft of statutory instruments. Alongside this note is a list of the main Acts and SIs.

The legislation is then overlaid by guidance issued by Govt., usually the MHCLG.

The [National Planning Policy Framework](#) (NPPF) was first published on 27 March 2012 with a revised version published on 19 February 2019. It sets out the government's planning policies for England and how these are expected to be applied by LPAs.

The NPPF is itself supplemented by further guidance available via <https://www.gov.uk/government/collections/planning-practice-guidance>

At the heart of national planning policy is the Govt.'s view that house building is one of the key drivers for a successful economy, a view held by Govt., of all colours, for the past few decades.

Appendix 1 is a list of the current areas of extensive additional guidance

3: Planning Authorities

There are three local planning authorities in our area

- Newcastle City Council
- Northumberland County Council
- Northumberland National Park Authority

There are other public bodies with quasi-planning powers which can allow development, including

- The Dept. for Business, Energy and Industrial Strategy
- National Infrastructure Planning via the Planning Inspectorate

At the current time, the North of Tyne Combined Authority has no specific planning powers, neither does the North-East Local Enterprise Partnership, unlike the Development Corporations of the past.

4: The Local Plan and Neighbourhood Plans

Local plans are prepared by the Local Planning Authority (LPA), usually the Council or the national park authority for the area.

The National Planning Policy Framework (NPPF) states that the planning system should be genuinely plan-led. Succinct and up-to-date plans should provide a positive vision for the future of each area and a framework for addressing housing needs and other economic, social and environmental priorities.

Once the Local Planning Authority has finished preparing and consulting on a local plan it must be submitted to the Secretary of State who will appoint an Inspector to carry out an independent examination. This process is dealt with by the Planning Inspectorate.

The examination will assess whether the plan has been prepared in accordance with legal and procedural requirements and if it is sound. The four tests of soundness are set out in the NPPF

The Inspector will consider the evidence provided by the LPA to support the plan and any representations which have been put forward by local people and other interested parties. In most cases the examination will include hearing sessions which are held in public.

At the end of the examination the Inspector will send a report to the LPA recommending whether or not they can adopt the plan. In most cases the report will recommend some changes that are necessary to allow the plan to be adopted. These are known as 'main modifications'.

It cannot be emphasised too strongly that Parish Councils must comment on emerging plans during the informal and formal consultation stages. Unlike the previous system, the examining inspector has no power to substitute their decisions in the adopted plan. "Holding your powder dry" is not an option.

The local plan is one of the key factors in determining whether planning permission is granted. Section 70 (2) of the TCPA 1990 makes it clear

(2) In dealing with an application for planning permission or permission in principle the authority shall have regard to—

(a) the provisions of the development plan, so far as material to the application,

(aza) a post-examination draft neighbourhood development plan, so far as material to the application,

(aa) any considerations relating to the use of the Welsh language, so far as material to the application;

(b) any local finance considerations, so far as material to the application, and

(c) any other material considerations.

This is underlined by the NPPF in para. 47

Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. Decisions on applications should be made as quickly as possible, and within statutory timescales unless a longer period has been agreed by the applicant in writing.

5: Areas with special planning regimes

- Green Belt - The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Appendix 2 has the extract from the NPPF relevant to new buildings with the Green Belt
- National Parks
- Conservation Areas
- Areas of Outstanding Natural Beauty
- Listed Buildings
- Church of England Churches

6: What is “Development”

“Development” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land

(taken from section 55 of the TCPA)

The TCPA excludes certain operations from the definition of Development of land

(a) the carrying out for the maintenance, improvement or other alteration of any building of works which—

(i) affect only the interior of the building, or

(ii) do not materially affect the external appearance of the building,

and are not works for making good war damage or works begun after 5th December 1968 for the alteration of a building by providing additional space in it underground;

(b) the carrying out on land within the boundaries of a road by a highway authority of any works required for the maintenance or improvement of the road but, in the case of any such works which are not exclusively for the maintenance of the road, not including any works which may have significant adverse effects on the environment;

(c) the carrying out by a local authority or statutory undertakers of any works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus, including the breaking open of any street or other land for that purpose;

(d) the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such;

(e) the use of any land for the purposes of agriculture or forestry (including afforestation) and the use for any of those purposes of any building occupied together with land so used;

(f) in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class.

(g) the demolition of any description of building specified in a direction given by the Secretary of State to local planning authorities generally or to a particular local planning authority.

7: Permitted Development

As seen from (f) above, the SoS has the power to make orders allowing certain types of development without the need for a planning application, although in some cases there has to be “prior notification to the LPA so the scheme can be confirmed as being within the precise terms of the legislation.

This is a widely used and often varied power. Examples of Permitted Development and their conditions/limitations in the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended include

PART 1 Development within the curtilage of a dwellinghouse

Class A – enlargement, improvement or other alteration of a dwellinghouse

Class D – porches

PART 2 Minor operations

Class A – gates, fences, walls etc

Class C – exterior painting

PART 3 Changes of use

PART 3 Changes of use

Class A – restaurants, cafes, takeaways or pubs to retail

Class B – takeaways or pubs to restaurants and cafes

Class D – shops to financial and professional

Class O – offices to dwellinghouses

Class R – agricultural buildings to a flexible commercial use

PART 8 Transport related development

PART 9 Development relating to roads

PART 12 Development by local authorities – which includes Parish Councils

Class A Permitted development

A. The erection or construction and the maintenance, improvement or other alteration by a local authority or by an urban development corporation of—

- (a) any small ancillary building, works or equipment on land belonging to or maintained by them required for the purposes of any function exercised by them on that land otherwise than as statutory undertakers;
- (b) lamp standards, information kiosks, passenger shelters, public shelters and seats, telephone boxes, fire alarms, public drinking fountains, horse troughs, refuse bins or baskets, barriers for the control of people waiting to enter public service vehicles, electric vehicle charging points and any associated infrastructure, and similar structures or works required in connection with the operation of any public service administered by them.

Interpretation of Class A

A.1. For the purposes of Class A, “urban development corporation” has the same meaning as in Part 16 of the Local Government, Planning and Land Act 1980 (urban development).

A.2. The reference in Class A to any small ancillary building, works or equipment is a reference to any ancillary building, works or equipment not exceeding 4 metres in height or 200 cubic metres in capacity.

Class B Permitted development

B. The deposit by a local authority of waste material on any land comprised in a site which was used for that purpose on 1st July 1948 whether or not the superficial area or the height of the deposit is extended as a result.

Development not permitted

B.1. Development is not permitted by Class B if the waste material is or includes material resulting from the winning and working of minerals.

Interpretation of Part 12

C. For the purposes of Part 12, “local authority” includes a parish council.

PART 14 Renewable energy

PART 16 Communications

There is a range of exclusions which apply to permitted development rights in England. For instance, there are protected areas known as article 2(3) land, which include:

- Conservation Areas
- Areas of Outstanding Natural Beauty
- National Parks
- World Heritage Sites

There are other land areas known as article 2(4) land. Article 2(4) land covers land within a National Park, the Broads or certain land outside the boundaries of a National Park.

8: Use Classes

The Town and Country Planning (Use Classes) Order 1987 (as amended) essentially categorises different types of property and land into classes. Change between uses within the same class does not constitute development and therefore does not require planning permission. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) identifies some permitted development rights allowing the change of use from one class to another, subject to conditions, limitations and/or a prior approval process

9: Applications

Applications can be made in writing or electronically and will almost invariably be placed into the public domain.

10: Consultation

Parish Councils are entitled to require the LPA to notify them of planning applications but there is no requirement for the LPA to supply a copy.

Some types of application require a press notice and/or a site notice and fees are payable but are in essence set by Govt.

11: Material and Non-Material Considerations

Whilst there is no legal reason for a Parish Council not to comment on an application on any ground, the LPA will only take into account those which are material. This association prepared a guide which accompanies this note.

12: Community Infrastructure Levy and S106 Planning Obligations

Newcastle City Council is the only LPA in our area who applies CiL in parts of their area. It is a form of tax calculated in advance on certain types of development.

S106s are more restrictive than was previously the practice. NPPF states

Para 54 Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.

Planning obligations must only be sought where they meet all of the following tests

- a) necessary to make the development acceptable in planning terms;
- b) directly related to the development; and
- c) fairly and reasonably related in scale and kind to the development.

13: Enforcement

Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control.

In many cases this will be by seeking a retrospective application. The LPA and or PINS do not take account of the retrospective nature of the application

14: Listed Buildings

Listed Buildings require Listed Building Consent for adaptations in addition to Planning Permission

15: Appeals

An applicant can appeal against a refusal of an application or the imposition of a condition. In England there is no third-party right of appeal to PINS against the grant of a permission. The only way to challenge a grant is to judicially review the decision-maker. This is expensive and complex. The Court does not substitute its decision, it merely sends the issue back to the decision-maker for reconsideration. The ultimate effect can be the grant of permission albeit on slightly different grounds.

16: Advertisements

These are dealt with under the Control of Advertisement Regulations as amended and include information signs and flags. Advertisements should be subject to control only in the interests of amenity and public safety, taking account of cumulative impacts.

There are a number of “advertisements” permitted by the regulations as either being excluded from the scope or given deemed consent including

- advertisement is not readily visible from outside the enclosed land or from any place to which the public have a right of access
- An advertisement displayed on or in a vehicle normally employed as a moving vehicle.
- A flag of any island, county, district, borough, burgh, parish, city, town or village within the United Kingdom
- Temporary advertisements
- Information about certain events

16: The August 2020 White Paper – “Planning for the future”

In August 2020 MHCLG published The Planning for the future, a White Paper which Govt. says

“proposes reforms of the planning system to streamline and modernise the planning process, bring a new focus to design and sustainability, improve the system of developer contributions to infrastructure, and ensure more land is available for development where it is needed.”

The White Paper is at the following link and consultation closed on 29 October 2020

<https://www.gov.uk/government/consultations/planning-for-the-future>

Concerns and points raised by this association include

- The current planning system is perceived as ignoring the views of local communities
- The current proposals do not however simplify the current system, as recognised by the Secretary of State promising new funds for implementation
- The proposed formula for housing allocations will not achieve the number of truly affordable homes needed in our area
- A main concern is the removal of input from local councils, who represent their local communities into individual applications

Other points

The suggested division of a local planning authority's area in three planning zone is a blunderbuss weapon seemingly designed to deal with some perceived problems in the South of England.

In our area the fear is that the proposals would lead to volume house builders land-banking even more than they already do, and not using land with existing permissions.

There is also great concern the reliance on IT yet to be developed. This would require sophisticated systems in order to examine and comment on proposed plans thereby deterring local councils and communities from participating in the planning system.

Appendix 1 - Planning practice guidance categories

- [Advertisements](#) 22 July 2019
-

- [Air quality](#) 1 November 2019
-

- [Appeals](#) 3 March 2014
-

- [Appropriate assessment](#) 22 July 2019
-

- [Before submitting an application](#) 15 March 2019
-

- [Brownfield land registers](#) 28 July 2017
-

- [Build to rent](#) 13 September 2018
-

- [Climate change](#) 15 March 2019
-

- [Community Infrastructure Levy](#) 16 November 2020
-

- [Consultation and pre-decision matters](#) 4 December 2020
-

- [Crown development](#) 28 July 2017
-

- [Design: process and tools](#) 1 October 2019

- [Determining a planning application](#) 15 March 2019

- [Effective use of land](#) 22 July 2019

- [Enforcement and post-permission matters](#) 22 July 2019

- [Environmental Impact Assessment](#) 13 May 2020

- [Fees for planning applications](#) 18 September 2020
- [First Homes](#) 24 May 2021

- [Flexible options for planning permissions](#) 6 March 2014

- [Flood risk and coastal change](#) 6 March 2014

- [Green Belt](#) 22 July 2019

- [Hazardous substances](#) 1 November 2019

- [Healthy and safe communities](#) 1 November 2019

- [Historic environment](#) 23 July 2019

- [Housing and economic land availability assessment](#) 22 July 2019 December 2020

- [Housing and economic needs assessment](#) 16 December 2020

- [Housing needs of different groups](#) 24 May 2021

- [Housing for older and disabled people](#) 26 June 2019

- [Housing: optional technical standards](#) 27 March 2015

- [Housing supply and delivery](#) 22 July 2019

- [Land affected by contamination](#) 22 July 2019

- [Land stability](#) 22 July 2019

- [Lawful development certificates](#) 6 March 2014

- [Light pollution](#) 1 November 2019

- [Making an application](#) 15 June 2018

- [Minerals](#) 17 October 2014

- [Natural environment](#) 21 July 2019

- [Neighbourhood planning](#) 25 September 2020

- [Noise](#) 22 July 2019

- [Open space, sports and recreation facilities, public rights of way and local green space](#) 6 March 2014

- [Permission in principle](#) 15 March 2019

- [Plan-making](#) 21 July 2020

- [Planning obligations](#) 1 September 2019

- [Renewable and low carbon energy](#) 18 June 2015

- [Rural housing](#) 19 May 2016

- [Self-build and custom housebuilding](#) 8 February 2021

- [Strategic environmental assessment and sustainability appraisal](#) 31 December 2020

- [Town centres and retail](#) 18 September 2020

- [Transport evidence bases in plan making and decision taking](#) 13 March 2015

- [Travel Plans, Transport Assessments and Statements](#) 6 March 2014

- [Tree Preservation Orders and trees in conservation areas](#) 6 March 2014

- [Use of planning conditions](#) 23 July 2019

- [Viability](#) 1 September 2019

- [Waste](#) 15 October 2015

- [Water supply, wastewater and water quality](#) 22 July 2019

- [When is permission required?](#) 27 April 2021

Appendix 2 – New Buildings in the Green Belt

Paragraph numbers are from the NPPF

143. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

144. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

145. A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are:

- a) buildings for agriculture and forestry;
- b) the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it;
- c) the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;
- d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;
- e) limited infilling in villages;
- f) limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites); and

g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:

- not have a greater impact on the openness of the Green Belt than the existing development; or
- not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.

146. Certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These are:

- a) mineral extraction;
- b) engineering operations;
- c) local transport infrastructure which can demonstrate a requirement for a Green Belt location;
- d) the re-use of buildings provided that the buildings are of permanent and substantial construction;
- e) material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds); and
- f) development brought forward under a Community Right to Build Order or Neighbourhood Development Order.

147. When located in the Green Belt, elements of many renewable energy projects will comprise inappropriate development. In such cases developers will need to demonstrate very special circumstances if projects are to proceed. Such very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources.