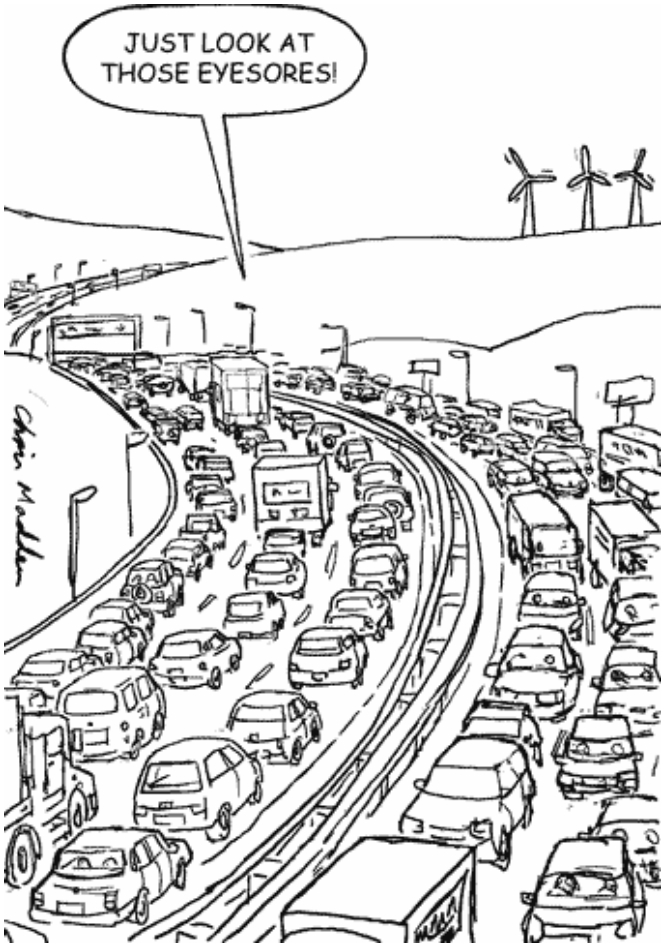
An introduction to planning for non-planners

Course notes

Charlie Falzon and David Mount



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Loseh II
LEARNING FOR COUNTRYSIDE AND ENVIRONMENTAL PROFESSIONALS

Charlie Falzon
chuckenviro@googlemail.com

David Mount
david@countrysidetraining.co.uk

1. Introduction

> *'The planning system is in many ways the most effective tool of environmental management available to us. It offers us choices. It is important that local communities are given the maximum opportunity to make those choices for themselves'*
>
> Department of Transport 1989

> *The British system of town and country planning is undoubtedly one of the most sophisticated systems of land use control in the world. It is exceptional in incorporating controls over the use of land as well as over the design and form of the built environment*
>
> Bell, S. & McGillivray, D (2000) *Environmental Law*

A Plan-Led System

There are two sides to planning –

- Setting policy – a proactive process, through which society can decide how it wants land to be used, and
- Using policies to manage development – still a reactive process, allowing local planning authorities to respond to proposals from anyone who wants to develop a piece of land e.g. land owners, developers, infrastructure providers, or you!

> *The basis of the system is that a planning authority produces a plan (following consultation with anyone and everyone) which identifies what development it expects / wishes to see over the next 10-15 years. This plan is tested before an inspector, and once accepted (maybe with amendments) it can be used as a basis for making decisions about development proposals.*
>
> *BUT…*
>
> *… just because something is in the plan, this doesn't mean it will happen, and because it is not in the plan does not mean that it won't happen. There may be other* ***material considerations****.*

Planning policy and planning law

- Politicians – working at local and national level - make decisions about planning policy and planning applications.
- **The courts** are responsible for upholding planning law, and in particular in ensuring that the politicians (and their officers) stick to the agreed procedures when carrying out their duties. For instance it may be possible to challenge the way in which a decision was made, irrespective of whether the decision was 'the right one'. It's the process that's challenged, not the outcome. For example, the current Secretary of State has been challenged in the High Court over his decision to remove the housing targets at regional levels.
- The courts are also responsible for interpreting and clarifying terms such as 'development' or 'material'.
- Under British law a judicial ruling sets a precedent that will have implications for other cases.
- Planning decisions in **public inquiries** do not set a precedent in law (although major developers often use previous inquiry decisions to put planning authorities). Every planning application is assessed on its own merits.

2. How the system came about: Key milestones in planning

The origins of the planning system lie in concerns about public health in the 18th and 19th century. Then in the first half of the 20th century parliament passed a number of laws relating to planning:

Town Planning Act 1909 - which forbade the building of back-to-back housing, local authorities to prepare schemes of town planning

Housing Act 1919 - as a result of which the Ministry of Health had powers to approve the design of houses

Housing Act 1930 - meant that slum housing could be cleared in designated improvement areas

Town and Country Planning Act 1932 - recognised the desirability of nation-wide rural planning

Restriction of Ribbon Development Act 1935 - to put an end to strings of houses alongside roads on the edges of towns

New Towns Act 1946 - in response to the Garden Cities movement; led to the creation of Milton Keynes and other new towns

The Town and Country Planning Act 1947

1947 was a big year for planning. In its Town and Country Planning Act the government took away individual development rights and effectively nationalised the right to develop land. This meant that people would not be compensated for being refused the right to develop their properties (which had previously been the case).

The point of the 1947 Act was that planning should operate in the public interest, rather than in the interests of private individuals. So individual financial losses, or the loss of individual enjoyment of views, were (and are) not valid reasons for refusing permission. It's the loss of public amenity that matters.

Many people assume that 'nationalisation' of development rights means that many planning decisions prevent development. In fact the reverse is true. Government policy has consistently stated that unless there are good reasons for refusal, applications should be allowed. Look at these two government circulars for instance:

> *'…always grant planning permission, having regard to all material considerations unless there are sound and clear cut reasons for refusal.'*
>
> **Circular 22/80 para 3**
>
> *'…always a presumption in favour of allowing applications for development, having regard to all material considerations, unless that development would cause demonstrable harm to interests of acknowledged importance.'*
>
> **Circular 14/85**

This is still the basis of the system. It's worth looking at the wording carefully.

After the 1947 Act, the system continued to evolve, with important events such as:

1948:	Areas of Special Control of Advertising were established to prevent the spread of poster panels alongside main roads in the countryside.
1955:	The national Green Belt system is put in place to prevent urban sprawl (the first Green Belts were designated around London before the Second World War)
1968:	County structure plans are introduced to co-ordinate and guide local plans
1988:	Regional planning guidance is introduced to act as a strategic guide for county structure plans

The next really significant Acts of Parliament were the **Town and Country Planning Act 1990** (often referred to as the 'Principal Act') and the **Planning and Compensation Act 1991.**

These:

- Divided planning into **forward planning** and **development control**. Forward planning is about setting out the authority's strategy for the future - through a development plan – while development control is about controlling the development that happens
- Made the production of local plans a statutory requirement.
- Introduced the plan-led system, affirming that the development plan (the county structure plan and the local plan) should be the key document for making decisions about planning (as long as there are no overriding material considerations).
- s. 106 of the 1990 act made it possible for planning authorities to enter into legal agreements for conservation, amenity or social purposes (see below).

The system was based on a **two-tier** structure for both development plans and planning decisions. Where local government was organised in two tiers, the county council was responsible for producing a Structure plan (which was supposed to be strategic in nature) while the district or borough council produced a site based local plan, which interpreted the structure plans to create local policies for development. Where there was a unitary authority these produced a two part 'Unitary Development Plan' – Part 1 was equivalent to a Structure Plan and Part 2 equivalent to a Local Plan.

County councils were also responsible for drawing up waste and mineral plans, and for deciding on applications relating to these matters. Unitary Authorities took on the functions of both counties and districts in terms of both plan production and development control.

Although the system has now moved on, some of these older plans are still in use and so are still of relevance.

The major pieces of legislation since 1991 are the Planning and Compensation act (2004) and the Planning Act (2008). These are dealt with below.

3. What is 'development'?

The Town and Country Planning Act, 1990 defines development as:

> *'…the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material changes in the use of any buildings or other land…the use of any land for purposes other than agriculture or forestry…and the use of any of those purposes of any building occupied together with land so used'*
>
> **TCPA (1990) s. 55 (1)**

While this definition of development is quite comprehensive, it should be noted that some development does not need planning permission, because permission is deemed to have been given for these activities. This is called a **permitted development right**. These types of development are listed in the **General Permitted Development Order (GDO)**, which is updated from time to time. The current version is the Town and Country Planning (General Permitted Development) Order 1995:

http://www.opsi.gov.uk/si/si1995/Uksi_19950418_en_1.htm

While the list of permitted developments looks generous at first glance, for example:

GDO 1995 – Domestic uses

- House enlargement, improvement or other alteration
- Addition/alteration to roof
- Porch
- Swimming pool
- Hard standing
- Oil tank
- Satellite antenna
- Gate, fence, wall
- House painting

On further inspection one realises it's not as simple as it might seem. For example while the rules concerned with putting up a porch are quite straightforward:

Class D Permitted development:

The erection or construction of a porch outside any external door of a dwellinghouse.

Development not permitted

D.1 Development is not permitted by Class D if:

(a) the ground area (measured externally) of the structure would exceed 3 square metres;

(b) any part of the structure would be more than 3 metres above ground level; or

(c) any part of the structure would be within 2 metres of any boundary of the curtilage of the dwellinghouse with a highway.

The situation in terms of satellite dishes is a bit more complex:

Class H Permitted development

The installation, alteration or replacement of a satellite antenna on a dwellinghouse or within the curtilage of a dwellinghouse.

H.1 Development is not permitted by Class H if:

(a) the size of the antenna (excluding any projecting feed element, reinforcing rim, mountings and brackets) when measured in any dimension would exceed:

(i) 45 centimetres in the case of an antenna to be installed on a chimney;

(ii) 90 centimetres in the case of an antenna to be installed on or within the curtilage of a dwellinghouse on article 1(4) land other than on a chimney;

(iii) 70 centimetres in any other case;

(b) the highest part of an antenna to be installed on a roof or a chimney would, when installed, exceed in height—

(i) in the case of an antenna to be installed on a roof, the highest part of the roof;

(ii) in the case of an antenna to be installed on a chimney, the highest part of the chimney;

(c) there is any other satellite antenna on the dwellinghouse or within its curtilage;

(d) in the case of article 1(5) land, it would consist of the installation of an antenna—

(i) on a chimney;

(ii) on a building which exceeds 15 metres in height;

(iii) on a wall or roof slope which fronts a waterway in the Broads or a highway elsewhere.

Conditions

H.2 Development is permitted by Class H subject to the following conditions—

(a) an antenna installed on a building shall, so far as practicable, be sited so as to minimise its effect on the external appearance of the building;

(b) an antenna no longer needed for the reception or transmission of microwave radio energy shall be removed as soon as reasonably practicable.

Interpretation of Part 1

I. For the purposes of Part 1:

"resulting building" means the dwellinghouse as enlarged, improved or altered, taking into account any enlargement, improvement or alteration to the original dwellinghouse, whether permitted by this Part or not; and

"terrace house" means a dwellinghouse situated in a row of three or more dwellinghouses used or designed for use as single dwellings, where—

(a) it shares a party wall with, or has a main wall adjoining the main wall of, the dwellinghouse on either side; or

(b) if it is at the end of a row, it shares a party wall with or has a main wall adjoining the main wall of a dwellinghouse which fulfils the requirements of sub-paragraph (a) above.

When does 'change of use' count as 'development'

The Town & Country Planning (Use Classes) Order 1987 lists 16 different types of use a building can be put to. A change from one use to another use within the same Class does not constitute development and consequently does not require planning permission. So for example changing the use of a shop from a clothing store to an electrical store might not need planning permission. Changing a clothing store into a shop that sells hot food for consumption off the premises however would require permission, as this is a different Use Class.

So what else doesn't count as development?

- As a matter of principle, anything that someone was doing before 1947 that might now require planning permission today is excluded.
- Ever since 1947 some sectors, most notably agriculture and forestry, were granted significant exemptions from planning controls – reflected in the definition of development given above.
- One of the things specifically excluded from planning in law is the *'maintenance, improvement, alteration or works which affect only the interior of a building'*, but this can be changed by subsequent regulations. For instance, mezzanine floors now require planning permission.

Removing permitted development rights

Where planning authorities wish to take away permitted development rights (say in conservation areas), they can do so using an Article 4 Direction (called this because it is referred to in Article 4 of the Town and Country Planning Act 1990). An increasingly common way in which planning authorities remove permitted development rights is by permitting development subject to a condition that suspends future permitted development rights at that property.

4. "Material Considerations"

A key word in planning is 'material'. You can basically do anything that does not materially change things. Whether the change is material depends on the context. That's why planning control can be so flexible.

> *Decisions on planning must be based on **material considerations**. These can technically be anything, because decisions always depend on individual circumstances, but usually there is a hierarchy:*
>
> - *What does the development plan say about this issue?*
> - *What does government guidance or policy say?*
> - *Are there any other material matters?*
>
> *What is deemed material changes over time, and so - for example - the Government has recently stated that statutory management plans (e.g. for AONBs and National Parks) may be more material than previously.*

The Courts are the arbiters of what constitutes a material consideration and over the years have come up with key rulings, for example:

"In principle ... any consideration which relates to the use and development of land is capable of being a planning consideration. Whether a particular consideration falling within that broad class is material in any given case will depend on the circumstances"

"Material considerations must be genuine planning considerations, i.e. they must be related to the development and use of land in the public interest."

"The Government's statements of planning policy are material considerations which must be taken into account, where relevant, in decisions on planning applications … If local planning authorities elect not to follow relevant statements of the Government's planning policy, they must give clear and convincing reasons."

Loss of property value or of a view, for example, is not a material consideration. Loss of amenity is. Hardship may be. In each individual case the planning authority will decide how much weight to attach to each material consideration.

5. The current approach to planning

The Planning and Compulsory Purchase Act 2004 brought in major changes in the way the planning system operates, and also crystallised a new philosophy regarding planning. This philosophy is summed up in the strap-line used on the front page of each of the government's Policy Planning Statements:

"Planning shapes the places where people live and work and the country we live in. It plays a key role in supporting the Government's wider social, environmental and economic objectives and for sustainable communities."

The focus now is very much on 'spatial planning' rather than just 'land-use planning'. Spatial planning goes beyond traditional land use planning to bring together and integrate policies for the development of land use with other policies and programmes which influence the nature of places and how they function, including economic and social regeneration.

The Planning and Compulsory Purchase Act 2004 introduced fundamental changes to the planning system, including the following elements:

- Takes a positive view of the need for sustainable development
- Goal is to speed up the decision making process
- Increases the scope for community involvement and consultation in planning

- Engages with all the other agendas within a given area – both public and private.
- Envisages a continuous and more flexible process of plan production
- Embeds strategic environmental assessment and sustainability appraisal processes into the plan and strategy making processes (and so hopefully improving the integration of environmental and rural issues in the plans and strategies)
- Plans and strategies are to be informed by a comprehensive evidence base.

One of the concerns about planning in the 20th century was that it was seen as too defensive, and there wasn't enough consultation. It tended to be based on the notion of

"Deciding, Announcing and Defending"

This and the previous governments agree that planning must be positive and must enable things to happen, based on the notion of

"Planning, Monitoring and Managing"

While the ethic of the planning profession is to be systematic, open and fair, in practice planning often operates in a highly charged and highly politicised context:

- People may gain or lose huge sums of money as a result of planning decisions;
- Planning decisions can sometimes contribute to environmental sustainability, and at other times may result in environmental damage.
- Planning has a role in supporting 'good design', and in maintaining local distinctiveness and local landscape character.

The statements in the box below are taken from various official documents. It's worth asking how compatible they are with each other!

'…a system that is fast, fair, open, positive, cost-effective and adaptable … early engagement with stakeholders …'

'… sustainable development is the core principle underpinning land use planning.'

"The planning system encompasses four objectives:

- *Maintenance of high and stable levels of economic growth and employment*
- *Social progress that recognises the needs of everyone*
- *Effective protection of the environment*
- *Prudent use of natural resources"*

The role of the planning system is to

…harness the strategies and funding programmes of partners to help ensure delivery.

…showing the links between their policies and other local initiatives so they 'join-up' what is planned by key organisations

Development plans

…need expressly to demonstrate their links with other appropriate strategies.

6. The Development Plan

As a result of the 2004 Act a completely new set of development plans was introduced across the country. The initial intention was that there should be a transitional period lasting three years – in practice it's taking much longer than that to implement all the changes.

Headline changes under the Act included the following:

- Regional Planning Bodies would be responsible for producing a regional level strategic plan – previously this role was undertaken at county level by county (or unitary) councils.
- County Structure Plans would be replaced by Regional Spatial Strategies (RSS)
- A different form of local plan is being rolled out, known as the Local Development Framework (LDF). This is a whole set of documents, rather than a single plan, and contains a strategic element, as well as site based plans.
- There is a stronger focus on consultation. Local planning authorities are required to produce Statements of Community Involvement (SCI) setting out how people can have a say on the content of the full range of plans.
- There is a requirement to subject all policies to a sustainability appraisal.
- All local and regional bodies are to monitor the impact their plans annually and to submit an Annual Monitoring Report (AMR). There is an emphasis on flexibility year on year, in that if the AMR shows targets are not being met, or are no longer appropriate, amendments to plans and targets can be negotiated.

Under the 2004 Act, a statutory development plan for any given area in England comprises:

a) Development Plan Documents prepared by district councils, unitary authorities, and National Park authorities;

b) The Regional Spatial Strategy, prepared by a Regional Planning Body; and

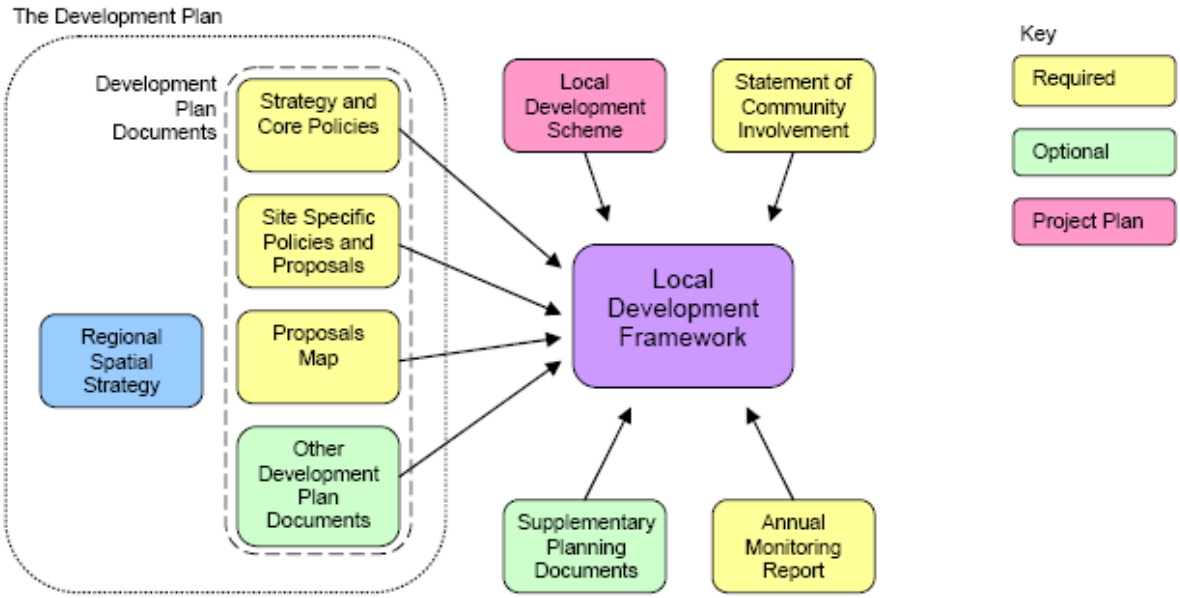
c) Minerals and Waste Development Plan Documents prepared by county councils.

This will change by the introduction of the Localism Act, which (amongst other proposals) will remove the Regional Spatial Strategy from the suite of statutory plans.

7. Local Development Framework

District or unitary authorities, in their role as Local Planning Authorities prepare a Local Development Framework (LDF). This comprises a folder of documents for delivering the spatial planning strategy for the area, all of which are known as Local Development Documents (LDD).

It is vital however to note that only some of these – the Development Plan Documents (DPDs) are part of the Development Plan, and as such are the primary tools used in making decisions about planning applications.



The Development Plan Documents in an LDF are:

- The **Core Strategy** – containing the planning vision and strategy covering a period of at least ten years. The core strategy will set out the council's intentions in terms – for example - of overall levels for new housing and employment land, and explains the Council's preferred general distribution of these developments.
- **Area action plans**, which provide the detailed planning framework for areas where significant change or conservation is needed. They may be prepared in order to:
  * Deliver planned growth areas or stimulate regeneration; or
  * Protect areas particularly sensitive to change, or resolve conflicting objectives in areas subject to development pressures;

  Area Action plans should include a timetable for the implementation of the proposals.

  Site specific allocations and policies identify sites where land has been allocated for specific uses, founded on a robust and credible assessment of the suitability, availability and accessibility of land for particular uses or mix of uses (these are likely to form part of the area action plan).
- The LDF must include a **proposals map** showing on a detailed OS base map the adopted development plan policies. The proposals map is updated as each new development plan document is adopted, but if there is a conflict between a written document and the map, the written document will take precedence.
- The LDF may include other DPDs such as **simplified planning zones** (though these are also likely to be incorporated into the suite of area action plans).

Other Local Development Documents – those which are not Development Plan documents – include:

- The **Local Development Scheme** which sets out a proposed timetable for production of the different LDDs

- A **Statement of Community Involvement** sets out the local planning authority's policy for involving the community in the preparation and revision of local development documents and planning applications.
- The **Annual Monitoring Report** (AMR) provides information about the effectiveness of local development documents, in terms – for example – of whether policies and related targets are being met. There is a specific requirement of include information the number of additional dwellings completed each year. The AMR also identifies where policies might need to be adjusted or replaced.
- **Supplementary Planning Documents** (SPDs) that provide greater policy detail than the DPDs. These can be very varied: some SPDs take the form of a development or design brief, or a master plan; some are community based documents, such as Parish Plans or village design statements. SPDs are seen as more material than their predecessors (Supplementary Planning Guidance - SPG), as they will only be adopted as SPD if they should reflect and build upon national and regional policies, taking into account local needs and variations, and have been subject to full community consultation.

Minerals and waste

Where local government is organised in two tiers (i.e. counties and districts / boroughs) the upper tier (county councils) prepare minerals and waste development plan documents that are included in a minerals and waste development framework.

Development plan documents in unitary authority and National Park authority areas however need to include minerals and waste policies, which are sometimes prepared as separate minerals and waste development plan documents.

8. Regional Spatial Strategy

The inclusion of this section is for information. A considerable amount of data has been gathered in the production of Regional Spatial Strategies (RSS), which is invaluable evidence. It is certain that planning inquiries and the courts will see these recently produced RSS as material, though their status has been reduced.

The goal of a Regional Spatial Strategy (RSS) is to reflect the needs and aspirations for development and land use by bringing together economic, social and environmental issues linked to planning in a coherent framework. An RSS – which typically has a 15/20-year horizon - includes the regional transport strategy, as well as addressing a range of other issues including:

- The scale and distribution of new housing and employment
- Priorities for the environment, such as countryside enhancement
- Key infrastructure to support development
- How waste will be dealt with.

Each RSS sets a vision for the region, sets objectives, outcomes and targets to be achieved, and explains how these will be implemented and monitored. The aim is to add as much economic, social and environmental value as possible. The RSS can include policies relating to parts of the region allowing for sub-regional planning. These sub-regional strategies form part of the RSS.

Under the 2004 Act, the RSS was important in determining planning applications, as well as for preparing both Local Development Documents and Local Transport Plans. An RSS includes elements that go beyond what were previously seen as the scope of development, because the intention is that they have a strong relation with regional regeneration. For this reason, they are explicitly linked to other regional agendas, for example regional economic and housing Strategies.

Regional Planning Body

Under the PCPA (2004) Regional Assemblies in each of the eight English regions outside London were designated as Regional Planning Bodies with a duty to prepare the regional spatial strategy.

Regional Assemblies were appointed (not elected) from a mix of county/local authority politicians (up to 70%) plus at least 30% of its membership drawn from other regional stakeholders. Regional Assemblies have also had a role in scrutinising the work of Regional Development Agencies (who produce the Regional Economic Strategy and have responsibility for the work of the Regional Housing Boards, taking an overview of the housing markets, producing the Regional Housing Strategies)

However all of this is about to change: Under the Regional Development Agencies Act 1998 Local Authority Leaders' Boards are being established in England to replace the Regional Assemblies, which will be abolished in 2010. The Localism Act is likely to remove entirely the planning function of these bodies.

9. Planning Policy Statements

These are issued by the Department of Communities and Local Government (CLG) and set the national policies for a range of planning related themes. These documents are a material consideration. There is nothing in law that says they must be adhered to, but authorities that fail to do so will encounter challenges. Their plans are likely to be rejected if they do not take

sufficient account of PPSs, and their decisions may be called into question by the inspector on appeal.

All PPS's are currently under review and/or revision, and some significant changes are likely to the current suite, which includes:

PPS 1: Delivering Sustainable Development (general policies and principles) (2005)
Supplement: Planning and Climate Change (2007)
PPS 3: Housing (2006)
PPS 4: Sustainable economic growth (Dec. 2009)
PPS 5: Planning for the Historic Environment (2010)
PPS 7: Sustainable Development in Rural Areas (2004)
PPS 9: Biodiversity and Geological Conservation (2005)
PPS 10: Planning for Sustainable Waste Management (2005)
PPS 11: Regional Spatial Strategies (2004)
PPS 12: Local Spatial Planning (2010)
PPS 22: Renewable energy (2004)
PPS 23: Planning and pollution control (2004)
Annex 1 – air and water quality (2004)
Annex 2 – development on contaminated land (2004)
PPS 25: Development and Flood Risk (2006 with amendments 2010)

The Government has issued a number of good practice guides and explanatory notes to accompany these PPSs, and these are a considerable length. However they are not material.

Prior to 2004, the equivalent documents were Planning Policy Guidance (PPG). These are gradually being replaced by PPSs, which are designed to have greater clarity, to be simpler and to give a stronger steer to local planning authorities.

The old PPGs were seen as too long (e.g. 852 pages!), too confusing and too inconsistent in what they say. PPGs that are still current include:

PPG 2: Green belts
PPG 8: Telecommunications
PPG 13: Transport
PPG 14: Development on unstable land
PPG 15: Planning and the historic environment
PPG 16: Archaeology and planning
PPG 17: Planning for Open Space, Sport and Recreation
PPG 18: Enforcing planning control (Dec. 1991)
PPG 19: Outdoor Advertisement Control
PPG 20: Coastal planning (Oct. 1992)
PPG 24: Planning and noise

10. Infrastructure Planning

The Planning Act, 2008 introduced the Infrastructure Planning Commission (IPC), whose function was to have been the supervision and decision of applications for nationally significant infrastructure projects for energy, transport, water and waste. It was expected to contain up to 35 commissioners consisting of experts, along with a larger secretariat. The intention was to

speed up the process for building certain major developments. The present government has **abolished the IPC, and will introduce an Infrastructure Planning Unit within the Planning Inspectorate. The final decision on major applications will revert to the relevant minister.**

National Policy Statements will be the primary consideration in decision-making on 'nationally significant' infrastructure projects. Projects are 'nationally significant' if they are for energy, transport, water and waste and are above certain thresholds. Up to twelve NPSs are expected to be produced:

1. New Nuclear Power
2. Over-arching Energy
3. Fossil Fuel Electricity Generation
4. Renewable Electricity Generation
5. Gas Supply Infrastructure
6. Electricity Networks
7. Aviation
8. Ports
9. National Transport Networks
10. Water Supply
11. Waste
12. Waste Water Treatment

Under the 2008 Act there is a minimum 12 week period for consultation for all NPS's. Beyond this, there is likely to be wide variation between different NPSs in terms of the levels of consultation and scrutiny required (or allowed). After the close of the public consultation, parliamentary scrutiny, which will run parallel to public consultation, will then have a further 6 to 8 weeks to monitor the response to the consultation. This should allow the outcome of the public consultation to inform a parliamentary resolution or the recommendations of any Select Committee. However, this is likely to depend on the level of media and parliamentary interest.

Applications will be for a 'development consent order', which will combine a grant of planning permission with a range of other separate consents, such as listed building consent, and may override certain protective designations if the public interest in development overrides that for protection.

11. Development Control

Some interesting points to make about development control.

- It is not technically illegal to fail to apply for planning permission. However, it is illegal not to, once a person is notified of the need to do so. This will be a retrospective application, and it does not guarantee permission.
- Applications are assessed on their individual merits, on the basis of prevailing policy and other material considerations.
- If people do not comply with the planning requirements, it is possible to enforce them to restore the situation. But this is discretionary. Normally the planning authority has to enforce within four years (there are exceptions though!).
- If an operation is likely to do damage, it is possible for an authority to enforce a notice to stop it. This is a judicial process, and is rarely used.
- The process is strictly regulated. The planning authority is bound by law to maintain strict timescales. It must also ensure that the relevant interests are notified and given the right information.
- Generally, development requires planning permission. It must also comply with building regulations. If the development is in a conservation area, or has trees with a Tree Preservation Order, or involves a listed building, it requires separate permissions.
- Other agencies have statutory roles in planning, for example, if the development is likely to have an impact on a badger's sett, it will require a licence from Natural England. Development in the open country may also require clearance from the Environment Agency for water and waste, the Highways Authority will have a view about the impact of a development on traffic levels or road safety.
- It is now a requirement that authorities give reasons for approval/conditions as well as reasons for refusal. If a proposal is approved, there is no right for third parties to object, and if the approval is subsequently taken away (once development has begun) the developer can be compensated.
- The Government wants to speed up the process. It has introduced powers for the Secretary of State to intervene to determine applications if the authority is too slow. It has also indicated that it might assess future funding for statutory consultees on the basis of their response rates!
- A number of uncontroversial applications are delegated to the Chief Planning Officer to determine. Some councils have delegated this to relevant Parish Councils. The Government target is that 90% of decisions should be delegated.
- If a developer does something that is beyond the approval or fails to comply with conditions, there may be enforcement without compensation.

Overview of the process

Applications need to:

- Use the right forms
- Come with plans
- Come with the right fee

The authority will validate the application and provide a unique reference number. It then has 8 weeks to determine the application, provided the details are correct. During that time it has to consult with interested bodies/individuals and make the application public, usually on-line.

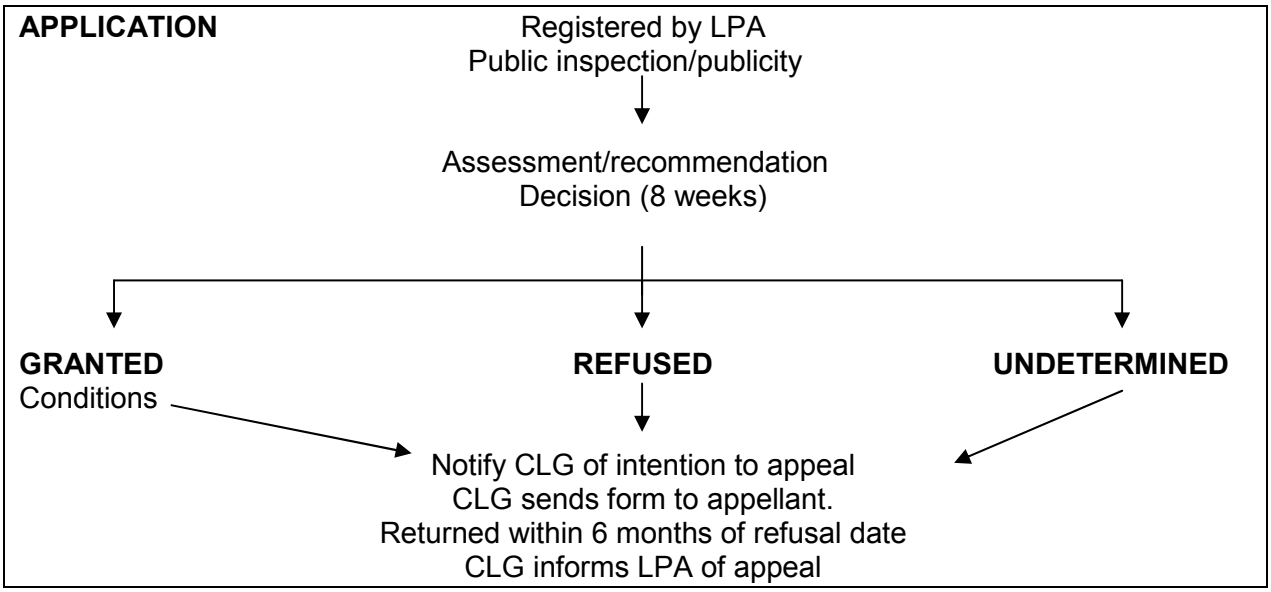
It is extremely unusual for applications to be approved without conditions

Appeals

If a proposal is refused, undetermined or has conditions, it is possible to appeal against the decision. Most appeals are by written representations. In these cases all parties state their cases in writing to an inspector, who then weighs them up against policy and other material considerations, before making a recommendation.

Although the timescale for appeals is strictly defined up to any hearing, the actual length of an inquiry, and the time it takes for an inspector to report, can be considerable

The basic process looks like this:



12. Planning obligations

These are legal undertakings entered into in connection with a planning permission under Section 106 of the Town and Country Planning Act 1990. They are normally agreed between the local planning authority and a developer with interest in the land, but they can also be a unilateral undertaking on the part of the developer/owner of the land.

Planning Obligations

Town and Country Planning Act 1990 s106

Circular 05/2005

- Private legal agreement between LPA and developer / other parties
- Enables or prohibits what can be done (e.g. occupation of dwellings until service roads completed

s.106 agreements can be used to secure environmental or social benefits as part of a scheme. They may restrict development or use of land; require operations or activities to be carried out in, on, under or over the land; require the land to be used in any specified way; or require payments to be made to the planning authority either in a single sum or periodically.

They can therefore be used to fund a project officer, or for a community building or materials. They might be used to designate nature conservation sites, and to pay for their management.

s. 106 agreements are effectively deeds of covenant, and so are subject to contract law rather then planning law. It is normally the authority's solicitor who signs on behalf of the authority.

Their use must be transparent – they have been criticised in the past as a form of bribery, but the law is strict in saying that they can only be used to add value or make feasible to a scheme that should in any case be permitted according to the system, and where conditions can't be used. Planning authorities should state in their development plans where and how they would seek s106 agreements for particular proposals.

Planning obligations, policy and legal validity

"…the question of whether or not an obligation is valid and material in a particular case is ultimately a matter for the Courts. On a number of occasions, the Courts have held that planning obligations that go beyond the policy tests nevertheless meet the statutory requirements of the 1990 Act and are therefore still valid and material

Circular 05/2005

The **Community Infrastructure Levy** (CIL) is a levy on new development that will be set by local planning authorities. The power to charge CIL is set out in the Planning Act 2008 but it is entirely at the discretion of local planning authorities as to whether to have a CIL scheme. Local authorities that implement CIL would use the money raised from it, rather than a Section 106 agreement, to fund infrastructure schemes across their area, such as schools and roads. This means in turn that such authorities could only use Section 106 agreements to fund affordable housing or environmental improvements on the development site.

CIL will be levied in pounds per square metre of the net additional increase in floorspace of any development. This will ensure that charging CIL does not discourage the redevelopment of sites. Any new build – that is a new building or an extension – is only liable for CIL if it has 100 square metres, or more, of gross internal floor space.

As well as district councils and unitary authorities, national park authorities, the Broads Authority and the Mayor of London has the power to charge CIL.

From 6 April 2010 it is unlawful for a planning obligation to be taken into account when determining a planning application for a development, or any part of a development, that is capable of being charged CIL, whether there is a local CIL in operation or not, if the obligation does not 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.

It is possible that the CIL will either take a considerable period to bed into the system (and may well be subject to many judicial reviews), and may well be abolished in due course.

Environmental Impact Assessment

In the UK this is essentially a two-sided process. On the one part, the developer produces an environmental statement. On the other, the planning authority carries out an appraisal of the statement. The Environmental Impact Assessment (EIA) does not make the decision for the LPA (remember, in planning there may be other material considerations), but it helps provide the information needed to make a decision.

This can be a highly technical process, although it should be presented in such a way that all interested parties can understand it and make informed decisions.

The first thing to consider is does this proposal need and EIA? This hinges on:

- The proposal itself
- The location

Some proposals will always need an EIA by their nature, e.g. major infra-structural projects or environmentally significant operations such as proposals involving nuclear, coal or chemicals (these are known as schedule 1 projects). Some proposals may need an EIA depending on their scale (these are listed as schedule 2 projects).

In terms of wind energy projects for example:

Statutory Instruments 1999 No. 293

The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999

SCHEDULE 2

Regulation 2(1)

DESCRIPTIONS OF DEVELOPMENT AND APPLICABLE THRESHOLDS AND CRITERIA FOR THE PURPOSES OF THE DEFINITION OF "SCHEDULE 2 DEVELOPMENT"

Installations for the harnessing of wind power for energy production (wind farms).

(i) The development involves the installation of more than 2 turbines; or

(ii) the hub height of any turbine or height of any other structure exceeds 15 metres.

http://www.opsi.gov.uk/SI/si1999/99029305.htm

Some operations/projects will always require an EIA because of their location. For example, operations likely to impact on internationally/ nationally designated sites (natural and/or cultural) will need an EIA.

Sometimes an EIA might have to be negotiated, and it may be necessary to ask CLG to decide.

Once agreed that an EIA is needed, the next issue is what should it cover? This may also need to be negotiated. Nobody wants to spend more time and energy (and money) than is necessary, but it should cover enough matters to be credible. It needs to ensure that on-site and off-site issues are covered, and should also take account of timescales. It should analyse impacts at development/build stage, and also at operational and decommissioning stages. There may also be seasonal and day/night factors.

The possible list of topics is probably obvious, but these are provided in schedule 4 of the EIA regulations. It is important to be aware of the overlap between some of these topics.

SCHEDULE 4

Regulation 2(1)

INFORMATION FOR INCLUSION IN ENVIRONMENTAL STATEMENTS

PART I

1. Description of the development, including in particular -

a description of the physical characteristics of the whole development and the land-use requirements during the construction and operational phases;

a description of the main characteristics of the production processes, for instance, nature and quantity of the materials used;

an estimate, by type and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation, etc.) resulting from the operation of the proposed development.

2. An outline of the main alternatives

3. A description of the aspects of the environment likely to be significantly affected by the development, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors.

5. A description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment.

6. A non-technical summary of the information provided under paragraphs 1 to 5 of this Part.

7. An indication of any difficulties (technical deficiencies or lack of know-how) encountered by the applicant in compiling the required information.

PART II

1. A description of the development comprising information on the site, design and size of the development.

2. A description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects.

3. The data required to identify and assess the main effects which the development is likely to have on the environment.

4. An outline of the main alternatives studied by the applicant or appellant and an indication of the main reasons for his choice, taking into account the environmental effects.

5. A non-technical summary of the information provided under paragraphs 1 to 4 of this Part.

For the full text of this section see: http://www.opsi.gov.uk/SI/si1999/99029306.htm

Some key points in appraising a statement might include:

- What was the source for each item of information? Is it recent? Is it credible?
- Has anything been omitted between source and presentation?
- Are there any gaps in knowledge, and have they been stated?
- Have the benefits been reasonably balanced against negative impacts?
- Has the report sufficiently quantified the impacts e.g. materials, waste, personnel, times, traffic movements etc?
- Is enough consideration given to qualitative aspects e.g. loss of amenity, wildlife values, access/recreation opportunities etc?
- Is the report full of jargon? Does it have an executive summary that fairly reflects the full report?

As well as ensuring that the factual information is accurate and appropriately analysed, the report should also contain some other key elements:

- Does the report discuss the need for this project? Has it considered alternative projects? Alternative locations? Alternative ways of achieving the objectives that the project is to achieve? A 'do nothing' option?
- Does the report discuss how each impact can be mitigated at each stage of the operation?
- Does the report contain information on monitoring and reporting impacts? Who is going to do this? When? How? (Different aspects may require different forms of monitoring/reporting by different agencies with specialist capabilities).

Generally, the size of the report reflects the nature of the project.

13. Glossary

Amenity: A positive element or elements which contribute to the overall character of an area, for example open land, trees, historic buildings and the inter-relationship between all elements in the environment.

Article 4 Direction: A direction granted by the local planning authority following public consultation under the Town and Country Planning (General Permitted Development) Order 1995. It can be used to remove "Permitted Development" rights for certain forms of householder development in conservation areas. The removal of permitted development rights outside these categories and/or outside conservation areas still requires the confirmation of the Secretary of State for the Environment under Article 4(1).

Conservation area: An area designated by the Council under the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 as possessing special architectural or historical interest. The Council will seek to preserve and enhance the character and appearance of these areas. Buildings in such areas are protected from unauthorised demolition in part or in full, and trees may not be felled or pruned without 14 days notice.

Curtilage: A small area forming part or parcel with the house or building which it contains or to which it is attached.

Permitted development: Minor types of development and certain changes between use classes which are automatically granted planning permission under the General Permitted Development Order and for which no planning application need thus be submitted.

Planning Obligation: An agreement under section 106 of the Town and Country Planning Act entered into regarding the use or development of land. An obligation can either be made by agreement between the local planning authority and a developer or by a unilateral undertaking by the developer. Obligations may be used to enhance development proposals.

Prematurity: In some circumstances, it may be justifiable to refuse planning permission on grounds of prematurity where a Development Plan Document (DPD) is being prepared or is under review, but it has not yet been adopted. This may be appropriate where a proposed development is so substantial, or where the cumulative effect would be so significant, that granting permission could prejudice the DPD by predetermining decisions about the scale, location or phasing of new development which are being addressed in the policy in the DPD.

Sequential Test or Approach: Refers to a planning authority's preferred sequence of land release for development. For example, an authority might state that their policy will be to release brownfield sites before greenfield ones for the purpose of housing, or town centres before edge of town sites for shopping. This has been tested in the courts, where permission has been refused on sequential grounds, and some challenges have been successful, where other material considerations could be shown to override this approach.

Listed Building: The Secretary of State for Culture, Media and Sport compiles a list of buildings of special architectural or historic interest for the guidance of local planning authorities in the exercise of their planning functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Town and Country Planning Act 1990. Buildings are graded as follows:

- Grade I - Buildings of exceptional interest
- Grade II* - Particularly important buildings of more than special interest
- Grade II - Buildings of special interest.

General Development Order (GDO) / permitted development: Identifies types of, usually minor, development for which planning permission is automatically granted and which therefore do not require a planning application to be submitted to the Council. There are 33 classes of permitted development under the GDO. The types of permitted development most

relevant to farmers include: temporary uses of land; agricultural buildings below a certain size; forestry buildings and forestry roads; caravan sites and related buildings in some circumstances. Permitted development rights are not available for farm or forestry dwellings, or for livestock units sited near residential and similar buildings.

Use Classes Order (UCO): The Town & Country Planning (Use Classes) Order 1987 lists 16 classes of use. A change from one use to another use within the same Class does not constitute development and consequently does not require planning permission. Some of the most widely used use classes include:

Class A1 Shops

Class A2 Financial or Professional Services Financial or Professional Services (other than health or medical services), being services which it is appropriate to provide in a shopping area, and where the services are provided principally to visiting members of the public.

Class A3 Food and Drink Use for the sale of food or drink for consumption on the premises or of hot food for consumption off the premises.

Class B1 Business Use for all or any of the following purposes-

(a) as an office other than a use within Class A2,

(b) for research and development of products or processes, or

(c) for any industrial process, being a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

Class B2 General Industrial Use for the carrying on of an industrial process other than one falling with-in Class B1, or special industrial groups Classes B3 to B7.

Class B8 Storage or Distribution

Class C1 Hotels Use as a hotel, boarding or guesthouse or as a hostel where, in each case, no significant element of care is provided.

Class C2 Residential Institutions Use for the provision of residential accommodation and care to people in need of care (other than a use in Class C3), or use as a hospital or nursing home, or use as a residential school, college or training centre.

Class C3 Dwelling house Use as a dwelling house (whether or not as a sole or main residence):

(a) by a single person or by people living together as a family; or

(b) by not more than six residents living together as a single household (including a household where care is provided for residents).

Class D1 Non Residential Institutions Places of worship, day nurseries, medical services, museums etc.

Class D2 Assembly and Leisure Use as cinemas, bingo halls and indoor sports etc.

Commuted Payment: Agreement may be reached whereby a developer, instead of providing the full amount of parking spaces required by the overall parking standard, provides only the on-site operational spaces, provided a commuted payment is made to the Council for the provision of public car parking spaces and/or towards the provision of public transport.

Green Belt: Areas of predominantly open land around up areas which have the strategic role of checking the unrestricted sprawl of the built up area, safeguarding the countryside from encroachment, assisting in urban regeneration and providing areas where open air

recreational activities can take place and wildlife habitat maintained. NB Green Belts have never been created as a landscape designation per se.

Parks and Gardens of Special Historic Interest (GSHI): Parks and gardens containing historic features dating from 1939 or earlier and registered by English Heritage. These parks and gardens are graded I, II* or II in the same way as listed buildings.

Public open space: Urban space, designated by the Council, defined where public access is generally not formally established, but which fulfils or is capable of fulfilling a recreational and/or non-recreational role (for example, amenity, ecological, educational, social or cultural). Includes most nature reserves, city farms, cemeteries, reservoirs (including covered reservoirs) and some private institutional and housing estate grounds which are not considered suitable for built development. Public open space does not include school playing fields nor the amenity areas associated with the development of homes or flats or pedestrian precincts (Local Government Act 1966 Section 8).

Scheduled ancient monument: A building included in the Schedule of Monuments compiled under Section 1 of the Ancient Monuments, and Archaeological Area Act 1979. Schedule monuments have statutory protection under this Act (Section 2) and an application for scheduled monument consent must be made to the Secretary of State for the Environment if work to a schedule monument is proposed. The Secretary of State for the Environment is responsible for the scheduling under the provisions of the Ancient Monuments and Archaeological Areas Act 1979. Scheduled ancient monuments are excluded from listed building control procedures. Prior notice of works to schedule ancient monuments must be given to the Secretary of State.

Statutory undertaker: Persons authorised by enactment to carry out any railway, light railway, tramway, road transport, water transport etc. undertaking. Any public gas supplier, water or sewerage undertaker, the Environment Agency, the Post Office and the Civil Aviation Authority are deemed to be Statutory Undertakers (Town and Country Planning Act 1990, 262).

Interim Development Order (IDO): These were permissions granted after 21 July 1943 and before 1 July 1948, which have been preserved by successive planning Acts as valid planning permissions in respect of development which had not been carried out by 1 July 1948. They are referred to in the 1990 Act as "old mining permissions". The Act requires holders of such permissions to apply to the mineral planning authority (MPA) for registration of the permission and subsequently to apply for determination of the conditions to which the permission is to be subject, if they wish the permission to continue to have effect. Minerals Planning Guidance 8 provides advice on this subject.

Tree Preservation Order (TPO): An order applied by the planning authority for amenity purposes. It may apply to a single tree or a group, or an entire wood. Basically it makes it an offence to cut down, top, lop, uproot or wilfully damage or destroy a tree, or permit these actions, without first seeking the Department's consent to do so. It does not apply to hedges, nor to trees under FC grant schemes.

Local Development Order: Local authorities may produce such an order to make it easier to develop in a specific area in accordance with an action plan already adopted as a Development plan document. There are strict procedures for producing LDOs, which can be found in amendments to the Town and Country Planning (General Development Procedure) (England) Order 1995. These have just come into effect (2005).

Development Plan Document: A document in a local development framework that is part of the statutory plan.

Departure application: The local planning authority has to decide planning applications in line with policies in the approved development plan for the area. If the authority permits a large-scale or controversial planning application that goes against, or 'departs from', the development plan it must inform the Department for Communities and Local Government.

Once the DCLG has looked at the detail of an application, the secretary of state can decide to 'call in' the application, and then the decision to approve or reject the application is made by the Government and taken out of the local authority's hands.

Breach of Conditions Notice (BCN): A Council will serve this notice when a developer has failed to comply with conditions attached to planning permission. The notice will specify the steps necessary to comply with the conditions. There is no right of appeal against this notice because there is a right of appeal against conditions imposed when the Council grants consent and the applicant ought to have appealed then.

Planning Contravention Notice (PCN): This is a preliminary notice which tells people of a breach of control and enables the Council to ask about land ownership, unauthorised activities and changes of use on the land.

Enforcement Notice: This is the notice to deal with most unauthorised development. The notice will specify the time when the notice becomes effective and it will specify the steps and timescale to correct the breach. The person in breach however can appeal before the notice takes effect thus suspending the notice until the Secretary of State determines the appeal.

Stop Notice: Requires people to cease activities in accordance with the terms of the Stop Notice and seek legal advice immediately. A Stop Notice is issued in conjunction with an Enforcement Notice in order to secure the cessation of a use before the period specified for compliance in the enforcement notice; i.e. before the enforcement notice takes effect. In fact a Stop Notice may not be issued once the Enforcement Notice becomes effective.

A Stop Notice may prohibit:-

- a use of land, whether ancillary or incidental to the main use of land
- a particular activity taking place on part of the land
- intermittent or seasonal uses.

However, a Stop Notice may not prevent:-

- the use of any building as a dwelling house
- the carrying out of any activity which is not 'operational development' or the deposit of refuse or waste materials, if that activity has been undertaken for more than 4 years prior to the date of the notice.

Section 106 agreement: A legal undertaking entered into in connection with a planning permission under Section 106 of the Town and Country Planning Act 1990. Such obligations may restrict development or use of land; require operations or activities to be carried out in, on, under or over the land; require the land to be used in any specified way; or require payments to be made to the planning authority either in a single sum or periodically. Planning obligations may be created by agreement or by unilateral undertakings on the part of the developer/owner of the land.

Supplementary Planning Document: may cover a range of issues, both thematic and site specific, which may expand policy or provide further detail to policies in a development plan document. They are not to be used to allocate land, which must be through development plan documents. Supplementary planning documents may take the form of design guides, area development briefs, master plan or issue-based documents, which supplement policies in a development plan document.

14. Some useful websites

These days everything you could possibly want to know about planning is available on the web. Here are some recommended starting points:

- The Communities and Local Government website for the government's official line on planning, including the latest on Planning Policy Statements

http://www.communities.gov.uk/planningandbuilding/planning/

- The Planning Portal is the UK Government's online planning and building regulations resource for England and Wales. Use this site to learn about planning and building regulations, apply for planning permission, find out about development near you, appeal against a decision and research government policy

http://www.planningportal.gov.uk/

- The Planning Inspectorate website - an authoritative guide written by those who ensure the planning system operates as it should:

http://www.planning-inspectorate.gov.uk/pins/index.htm

- The Campaign to Protect Rural England (CPRE) has established the Planning Help website. This aims to show people how they can use the planning system to protect the countryside and promote urban regeneration.

http://www.planninghelp.org.uk

- The Planning Advisory Service website exists to support members of the planning profession. It delivers forward-thinking and in-depth content on improvement issues, shares examples of good practice from councils across England. Its goal i s to stimulate and support self-sustaining improvement within local planning authorities.

http://www.pas.gov.uk/pas/core/page.do?pageId=1