Making Defensible Planning Decisions
What is Planning Advisory Service for?

The Planning Advisory Service exists to provide support to local planning authorities in England to provide efficient and effective planning services, to drive improvement in those services and to respond to and deliver changes in the planning system.
We need your feedback
Objectives for this session

- Think about how decisions are made
- And how they might be improved
- So that you can justify them to:
  - Applicants
  - Residents
  - Inspectorate
- Avoid costly mistakes
- Enhance Council’s reputation as ‘good people to do business with’
We will look at

- Context for planning decision making
- Councillors role
- Taking defensible decisions and avoiding unreasonable behaviour
- Consequences
- A case study from here
The job of the planning decisions

• Planning isn’t just about stopping bad stuff from happening

• It’s proactive, encouraging development that delivers the right stuff for your community and accords with your plan and strategic objectives
Planning creates headlines

Heavy-handed council workers order couple to apply for planning permission... for their daughter's Wendy house

Planning reforms: developers 'will wreck countryside'

The leaders of the two biggest countryside campaigns are warning that planning reforms coming into force will “wreck the countryside” and leave large parts of England at their most vulnerable to builders for 70 years.

Councillor sorry for planning error

Written by CHRIS HAVERGAL

A top councillor has apologised for breaking planning rules after a bike shed was installed without permission outside her home.

No planning application was submitted before the 12ft-wide wooden shed was built outside the Bulstrode Gardens home of Cllr Lucy Nethsingha, who represents Newnham on Cambridgeshire County Council.

08/05/13 Councillor's unauthorised bike shed - Newnham, Cambridge08/06/13 Soamesetter Bulstrode Gardens , Cambridge.
The context for decision making

- Development requires planning permission. Some of which is ‘permitted’ (PD)
- Nearly all decisions (99%) are taken by local authorities
- Some are taken by Government (major infrastructure), the Inspectorate (for government), the Greater London Authority, and agencies (joint planning units, development corporations)
- Refusals (and conditions) are open to appeal
- Costs for unreasonable behaviour
- Judicial Review and Ombudsman
Planning in England is policy-led

- national policy
  - National Planning Policy Framework (NPPF)
  - National Policy Statements
  - G&T policy
  - Planning Practice Guidance
- local policy
  - development plan
- neighbourhood policies
  - neighbourhood plans
The Councillors role

- Officers deal with over 90% of all applications (delegated)
- Leaving you to deal with the most contentious (where the weight given to the balance of planning issues needs Committee involvement)
- Each development proposal considered by the Council involves an assessment of the balance of all material considerations based on evidence
What is a councillor’s role and does your role change?

• As a member of the planning committee
• As a ward member
• As a member of the Cabinet
• As a member of scrutiny panel
• As a member of a political group
Duty of an elected member

• Dealing with decisions on planning proposals your duty is to the whole community
  – Avoid bias: predisposition v predetermination
  – Consider the implications for the wider community not just those making representations
  – Only take into account material planning considerations including precedents and previous decisions – “benchmarks”
  – Base decisions on evidence not hunch – reasonableness
  – Jurist or elected representative?
Localism in Planning

“Reference has been made to the Government’s localism agenda.....Any decision-maker must determine planning applications on planning grounds.......... in accordance with the development plan unless material considerations indicate otherwise. Decisions should not be made solely on the basis of the number of representations or signatures on a petition, whether they are for or against a proposal. The Localism Act has not changed ...(this). Nor has it changed the advice .........., namely, that local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission unless it is founded on valid planning reasons. “

Eric Pickles 28 June 2012
Basic principle: start with the plan

- “……have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations”.

Town and Country Planning Act 1990, section 70
The presumption in favour of development

- At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development which should be seen as a golden thread running through both plan-making and decision taking.
NPPF and decision making

• Local planning authorities should:
  – approve development proposals that accord with statutory plans without delay; and
  – grant permission where the plan is absent, silent, indeterminate or where relevant policies are out of date;
    – unless….adverse impacts of allowing development would *significantly and demonstrably* outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
What is the development plan?

• Local Plans: development plan documents adopted by local planning authority

• Neighbourhood plans: where supported by the local community at referendum and subsequently ‘made’ by the local planning authority.

• The London Plan (London only): spatial development strategy prepared by the Mayor.

• Any ‘saved policies’ from the former Regional Strategies, until such time as these are replaced by Local Plan policies.
Plymouth Local Development Framework

- Core Strategy        April 2007
- Area Action Plans
- Sustainable neighbourhoods DPD
- Waste DPD
- Plymouth and South West Devon Joint LP
- Supplementary Planning Documents
- Neighbourhood plans
Paragraph 49:
Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.
National Planning Policy Framework

Paragraph 14

Presumption in favour of sustainable development means where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:

• any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or

• specific policies in this Framework indicate development should be restricted
“Can we *ignore* the Development Plan?”

• No, that would be unlawful (s38)
• And anyway it’s *your* plan, so why would you?
• Can you take a decision which seems to *conflict* with the Plan?
• Yes – so long as it is based on the merits of the case, in the light of all other material considerations, for example:
  - a policy is out of date compared with national policy
  - the monitoring information shows that the situation “on the ground” has changed
  - an unforeseen opportunity has arisen
Material Considerations

• what they are and are not - decided by statements of national policy or by decisions of the courts

• the **weight** that should be attached to each consideration in any particular case is for the decision maker
Committee application and determination

- Preparation before planning committee?
- How much weight should be given to the various issues?
- Useful to have considered conditions/reasons prior to the meeting and taken advice on their legality/enforceability/reasonableness
- What does the decision making process look like to interested parties?
Avoiding unreasonableness

- Lack of bias and personal taste
- Precedents from appeal decisions after detailed examination of evidence
- Precedents from Council decisions - consistency
- Like a jury you can only base decisions on evidence (and material considerations)
- NE Derbyshire Planning Protocol
Bad evidence

“the density is much higher than the surrounding area”
xx: what do you mean by “the surrounding area”? and higher by how much, exactly?
xx: and what if it is? That’s not evidence of harm, is it?

“there is a lot of vacancy in the high street”
xx: are you talking about total floorspace? Or do you mean volume? Or percentage of total frontage? Or perhaps of the number of units?
xx: and how long has this floorspace been vacant?
xx: there’ll always be some natural turnover of occupancy, won’t there? So it’s not really a problem at all, is it?

“the site is a considerable distance from local facilities and the bus service is poor”
xx: which “local facilities”? how far is “a considerable distance”? how frequent is the bus service?
Good evidence is a combination of...

verifiable fact and informed and reasonable commentary upon the facts

• “the net density of the scheme is 90dph. This compares with an average of 22 dph within the area shown on my plan no 5. In my opinion this great discrepancy, while perhaps not conclusive, is an indication of the incompatibility of the design with the existing character of the area”

• “in the section of the high street from…to…(both sides), there are roughly 40 ground floor business units, of which six occupy double frontages. At 30.5.2012, eight of these (20%) were vacant, six of them for at least a year. In my opinion, this level of vacancy has a harmful effect on…..”

• “the nearest primary school / shop / etc to the site is about…..miles away along an unlit road with no separate footway. I consider it highly unlikely that anyone would make the journey on foot. There is a bus service, but it runs only twice a day. I conclude from this that the vast majority of trips to and from the development will be by private car.”
The Committee Decision

• You are not expected to be experts
• You are expected to listen to the experts and then apply judgement (within the parameters)
• Then either accept the recommendation
• Or explain your ‘rebalancing’ (the weight) of policies and material considerations to reach a different decision
• The officer report and the full minute of any decision not to accept the recommendation then provides a transparent audit of how the decision was arrived at
Overtures/different decisions

• Councillors can come to a decision that differs from the recommendation

• But it must be justified on planning grounds (based on the plan and material considerations)

• Committee must give justified planning reasons for decision (it cannot be left to officers)

• May be subject to appeal (or other challenge), so reasons must be defensible
The decision can be challenged

• Appeal - SoS is a higher authority and PINS stand in his stead – more forensic examination of issues from national policy position

• Costs for unreasonable behaviour (even when not sought) – decisions based on evidence?

• Judicial Review and Ombudsman
Reasons for refusal

• Must be:

✓ Accurate
✓ Directly related to the development proposal
✓ Have regard to the development plan
✓ Relate to material considerations

You can always ask officers for advise
Ask yourself......

• Is there a sufficient “evidential basis” for the decision?
• Would anyone reading the decision – especially the applicant – understand why permission was refused?
• Can you describe the harm that would result if the development went ahead? And why conditions would not be sufficient to mitigate that harm?
• Is it clear what the policy support is for the decision?
• Have all the other material considerations been given the appropriate weight?
Managing meetings

• It is important for members to be able to take advice on precedents and reasonableness of reasons/conditions if moving a proposal contrary to officer recommendations

• Some authorities decide they are minded to reach a decision with the broad reasons for the officers to report back working up those putative reasons/conditions or explaining any risks of costs when full consideration given

• Better if trust to seek advice before the meeting
Managing meetings

• During the debate, where the committee has reached a different balance of material considerations (to the officer recommendation) officers could be asked to explain to the committee before a motion is made:
  – Which issues raised by the members/public can be given weight and why others cannot
  – What conditions/reasons are likely to be found reasonable if challenged
  – However as public sessions and appeal rights officers inhibited and advice before the event is better
Development at Rusty Shilling
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Proposal: 35 dwellings together with the refurbishment of Grade 2 listed farmhouse

Issues:  
Listed building  
Character and appearance  
Increase in traffic/road safety  
Density  
Outlook from existing properties  
Property values  
Nature Conservation  
Planning obligations
Key issues to address

• Members involvement in pre application discussions?
• Communication between officers and members?
• Obtaining and challenging evidence
• Clear and evidential reasons for decisions
Summary: reasonableness and balancing material considerations

- Decisions on behalf of whole community
- Consistency expected - precedents
- Presumption in favour of sustainable development - needs explaining often
- Officer reports set out material considerations and recommendation but what if your balance is different to the recommendation?
- Will you take advice and discuss this and putative reasons/conditions in advance?
Making a planning decisions: key points

• start with the policies in the development plan
• consider any other relevant policy context, if necessary
• take into account the assessment of your officers
• take into account all other views – if material
• look at the application on its own merits, and in its particular context
• come to your view in the light of the officers’ assessment and recommendation
Take away tips

• Follow codes of conduct
• Start with the development plan
• Take everything relevant into account
• Seek advice from officers (planning and legal)
• Carefully consider the evidence that might be needed to defend a decision at appeal
• Reach a decision that a reasonable decision maker, properly directed, could have reached
• If you refuse, make sure you have sound planning reasons which are reasonable
• Visit the results of your decisions - to improve quality and consistency of decision making
Next .....
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