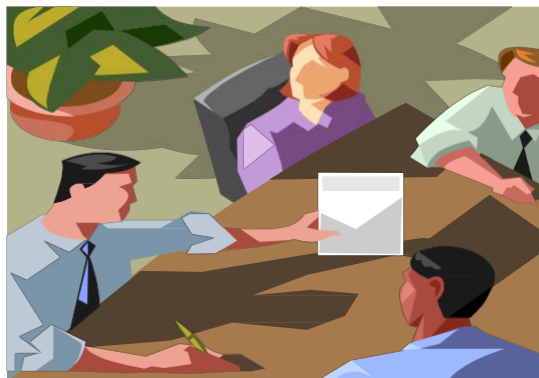


Determining a Planning Application

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Introduction

Planning applications will cover all types of development from garden walls and porches, to major schemes such as housing and industrial estates. Whatever the type of application, the stages it follows are broadly the same despite larger applications probably raising more complex issues.

This Advice Note sets out the key stages in the life of a planning application. At each stage, there are factors which allow the process to run more smoothly for everyone concerned.

How long does it take?

For most applications the Council has a period of 8 weeks to make a decision. In most cases this target is met. With major applications the Council normally has 13 weeks to determine applications although the period is 16 weeks for those applications accompanied by an Environmental Statement. This period taken to determine an application can vary depending upon circumstances and indeed the nature of the application. It is expected that house holder applications will take less than 8 weeks to determine.

The Council's 'Scheme of Delegation' delegates power to the Head of Planning Services and the Planning Service Manager to determine certain types of applications. The more major and/or controversial applications are considered by the Council's Development Management Panel, which is comprised of elected Councillors. The Scheme allows the majority of applications to be determined within a streamlined process and enables the Panel to concentrate on the more significant proposals.

A flow chart showing the various stages and the time taken to deal with a simple application (e.g. a new house) is set out in the following table. The various stages are covered in more detail elsewhere in this advice note.

Please note the flow chart is intended to be indicative only. The actual time and process will depend on many factors, some of which may be beyond the District Council's control.

Day	Principal stages
1 - 7	<p>Planning application is received. The Council will validate, register and acknowledge the application. Details will appear on the Council's web site. The application is plotted, the file made up and the site history is recorded.</p> <p>Standard consultations are carried out with the Town/Parish Council, neighbours and with any other statutory consultees.</p> <p>Arrangements are made to place a notice in a local newspaper if necessary.</p>
8 to 28	<p>The case officer will carry out a site visit, post any site notice that may be required and identify any additional neighbours that should be notified. The need for an Environmental Statement will be considered. Officers discuss the application. The policy implications, consultation</p>

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	responses and other material considerations are identified. The likely application route is identified (i.e delegated decision or DM Panel). Officers will decide whether additional consultations are required.
22 to 49	Officers will undertake any necessary negotiations and/or any necessary amendments and either prepare recommendations for a delegated decision or write a draft panel report.
50 to 56	Where a delegated decision is made → Within 2 days - Issue a decision notice and inform interested parties/consultees of the decision.
56+	Where a Panel decision is made → Within 2 days – If the decision is deferred at the meeting, further action will be required. Within 2 days – If a decision is made at the meeting, issue a decision notice and inform interested parties/consultees of the decision.

information is necessary. All plans should be submitted using metric units of measurement in accordance with the national adopted code of practice.

As part of registration, applications are “plotted” electronically. This allows details of the application and the location of the site to be viewed on the Council’s website. All applications are public documents and the information therein is available for public inspection. This is both during and after the application has been determined.

Consultation and publicity

(Further advice on consultation and publicity of applications is set out in Advice Note 5.)

Consultation with the Town/Parish Council and certain other agencies or public bodies (e.g. Highways Authority, Environment Agency) is a statutory requirement.

Receipt, validation and registration of the application

This is an important stage and the Council will check that the application is valid at the outset and that all the relevant information is submitted so that applications are dealt with quickly and fairly.

An invalid application may be returned.

Applications are submitted on nationally standardised forms to suit the application type. The forms and guidance notes on how to complete them and what information is expected to be provided can be downloaded from the Council’s website www.huntingdonshire.gov.uk. Alternatively, applications can now be completed and submitted electronically by visiting the Government’s Planning Portal. The guidance notes should be read carefully as they explain what locally required

The other main source of consultation is with local people who might be affected by the proposal. Those adjacent and opposite an application site will normally be notified. In addition, anyone else whose interests the Council feels might be affected will also be notified.

Certain types of application (e.g. those affecting the setting of a Conservation Area or Listed Building) are required by statute to be advertised by means of a site notice and an advertisement placed in the local press (normally the Hunts Post)

The case officer

The case officer has prime responsibility for handling planning and related applications allocated to him/her. Every planning application will be dealt with by a case officer working within an area team.

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The case officer will carry out an inspection of the site and will view the proposal from neighbouring land if necessary. Neighbours can ask that a proposed development be viewed from their property. This helps the case officer to assess the proposal fully and ensures that neighbour interests are properly considered.

The case officer will undertake negotiations or amendments with applicants or their agents. This is an important part of the process as amendments could lead to a better scheme and a more satisfactory outcome for all concerned.

It is not unusual for the case officer to discuss the application before it is formally submitted. Indeed, such an approach is encouraged in order that possible objections can be resolved at an early stage.

The case officer will prepare recommendations on the application. A written report will always be placed on the file which will be the basis for referral to the Head of Service or the Planning Service Manager as a delegated decision or for a report to the next available Panel meeting.

How and when decision is taken

Councils have a statutory duty to deal with an application within a certain timescale. This is eight weeks, unless the application is for 'major development'. In these cases, the period is 13 weeks (or 16 weeks if the application is accompanied by an Environmental Statement).

'Major development' includes applications for 10 or more dwellings or, where no number is provided, on sites of more than 0.5 of a hectare. It also includes buildings of more than 1000 square metres of floorspace or proposals involving a site of

more than one hectare. (An acre of land is about 0.4 of a hectare).

Applications are determined either by the Development Management Panel, but usually by the Head of Planning Services or the Planning Service Manager under "delegated powers". Approximately 90% of applications are determined under delegated powers.

Householder applications and certain other types of minor application are all delegated to the Head of Service or Planning Service Manager.

For other types of applications, where the Town/Parish Council's recommendation is consistent with the officers' recommendation, the application will also normally be determined under delegated powers. However, where the officer's recommendation would conflict with or would not substantially satisfy through the imposition of conditions written representations received from a Town/Parish Council (where such representations are supported by material planning issues for the recommendation and are received within the stipulated timescale) the application will be referred to the Panel.

Other than those minor applications that are all delegated to the Head of Service or Planning Service Manager, a District Councillor can also request that any other application is referred to the Panel for determination. This should be done in writing and within 21 days of the date of publication of the weekly list of planning applications and must be for planning reasons.

Applications determined under delegated powers are often dealt with in well under eight weeks. The Panel meets each month and applications considered in this way often take longer to determine.

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The Panel meeting is open to the public, and a limited right of public address is allowed by the applicant or his agent and objectors. An elected member of the District Council and Town/Parish Council may also speak. Full details are set out in 'Your Right to Speak at Development Management Panel on Planning Applications' on the Council's website. In addition, Advice Note 9 offers some guidance on speaking at meetings.

Advance notice of a potential Panel item is given to the Parish Council and thereafter a copy of the particular agenda item is sent. They are also available on the Council's website.

This gives a reasonable time for all interested parties to consider a report, its accuracy and conclusions. These can be confirmed or challenged as necessary before a decision is taken.

The case officer therefore needs to ensure that reports on applications are carefully prepared. They will be made public and may be referred to in any subsequent appeal or legal challenge.

Panel reports are prepared 2-3 weeks before the meeting. Any representations received after the Panel report has been written but before the meeting are notified to the Panel Members either in writing on the Friday before the Panel meeting or at the meeting. The officer recommendation will be reconsidered in the light of any additional comments received and the Panel will have regard to them when making the decision.

Members of the Panel must ensure they have sufficient information to determine an application and will often visit the site(s) before the meeting.

Predetermination

Town/parish councils have their own meetings to consider planning applications

on which they have been consulted. Just like District Councillors who will determine the application at the Development Management Panel, Town/parish councillors should not make their mind up about an issue before they come to a decision on it.

They can still form a provisional view but they must be willing to consider all arguments presented at a meeting and must be genuinely open to persuasion on the planning merits of the case.

If they do not have a genuinely open mind about a matter, this will leave the decision potentially susceptible to legal challenge because of the common law concept of predetermination. This is a legal concept that predates the Code of Conduct (covered further in advice note 10).

Statements and activities should not create the impression that views on a matter are fixed or that the evidence or arguments presented will not be fairly considered when a decision is made. Public confidence in the probity of decision-making is paramount.

In all cases, like District Councillors, Town/Parish Councillors should take legal advice if they feel their actions are likely to be challenged.

The decision

Applications may be approved (with or without conditions and may be tied to a S.106 Legal Agreement) or refused. If the application is to be determined by Panel and it cannot determine the application as it is presented to them, it will be deferred for further information and reconsidered later.

Your view on the outcome of an application may differ from the officer recommendation. If so, you will need to persuade the Panel that, based on planning reasons, your views should be

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afforded more weight in the particular case.

In most cases the Panel will agree with the recommendations of the planning officer. However, Members are perfectly entitled to take a different view despite the technical advice they may have been given. What is important is that they give adequate reasons and that the Panel can justify its decision.

A report explaining the reason for a decision is available for all applications on the Council's website.

Conditions

A permission should only be subject to conditions where the alternative would be to refuse the application. They might include a requirement to agree the precise details of the scheme to ensure that the development is acceptable. They may cover a wide range of issues such as submission of sample materials, hours of working and restrictions on occupancy.

Certain conditions will always be unacceptable. The law requires that all conditions meet a number of tests. Conditions must be:

- o Necessary – i.e. they should not be imposed for the sake of it or because they would do no harm. The test is such that without the condition, the application would have to be refused.
- o Relevant to planning – conditions cannot be used to control the future ownership of the land or matters that are subject to control under other legislation.
- o Relevant to the development to be permitted – e.g., it would be wrong to impose conditions requiring additional parking facilities to be provided for a

factory simply to meet a need that already exists from other buildings.

- o Enforceable – a condition should not be imposed where it is in practice impossible to detect a contravention (e.g. restricting the number of occupants in a block of flats).
- o Precise – it would be wrong, for instance, to require a site to be “kept tidy at all times”. This is too vague and does not tell the developer what he has to do to satisfy the condition
- o Reasonable in all other respects – e.g. it would normally be reasonable to restrict the hours during which an industrial use may be carried on if the use of the premises outside these hours would affect the amenities of the neighbourhood. It would be unreasonable however to do so to such an extent as to make it impossible for the occupier to run the business properly. (In such a case, if it were considered necessary to restrict operating hours, the correct approach would be to refuse the application). Nor is it reasonable to grant a temporary permission for the erection of a new building if this requires a significant investment on behalf of the developer and may have to be taken down at the end of the permission.

Other conditions that will never be acceptable include:

- o To require a development to be completed within a time limit.
- o To require that loading/unloading or parking shall not take place on the public highway. The applicant would have no control over this.
- o Personal permissions, unless there are exceptional reasons (e.g. strong compassionate grounds). Even then, such a condition should not be applied

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in the case of a new permanent building, especially where a substantial investment may be necessary.

- o To require money from the developer to pay for a facility. If this is necessary, it is achieved through the use of a S.106 legal agreement. Advice on this is set out below.

Legal Agreements

There may be times when it is necessary to control the impact of a development, but the desired restrictions go beyond the bounds that conditions may cover. This may include for example a financial contribution towards Education, play areas and open space maintenance. In such cases, it is possible to enter into a legal agreement with the applicant and anyone else with an interest in the land. This is called a "planning obligation" or Section 106 agreement.

Such an agreement is only possible if it can be shown that the need for a facility or infrastructure is required as a direct result of the development.

The Town/Parish Council can have an important role to play in this process, particularly so when it comes to seeking the provision of local infrastructure or community benefits which directly affect them e.g. play area provision.

Presently, this normally applies to major applications, *i.e.* residential schemes of over 10 dwellings (or on a site of more than 0.5ha) or commercial schemes of over 1000sq m floorspace (or on a site of

this scale is to be focused in the Market Towns or larger settlements, it is recognised that only a few Towns/Parishes will have such a scale of

those that do, the extent of infrastructure and/or community benefit that can

reasonably be sought does depend upon the nature and scale of the proposal – the larger the scheme the greater the likely impacts and the greater the mitigation/benefits that can be sought, although it has to be said not always achieved.

The Parish or Town Council's input can be at different times in the process.

Applicants for planning permission for major schemes are required to submit with their application proposed heads of terms on what they are prepared to offer to support the needs of the development. This can extend from a financial contribution towards enhancement of existing play facilities to the provision of land and equipped facilities or substantial payments towards transportation strategy in the Market Towns. Such heads of terms will of course be part of the application and the consultation process. So, in the first instance, any interested parties including the Parish or Town Council can make comments either on the proposed benefits or indeed suggest alternatives, provided that they can be justified. Such comments should be made irrespective of the recommendation that is made on the application and in no way 'dilutes' any recommendation of refusal. It simply ensures that all the local community's views are taken into account should the application be approved.

Once the application has been assessed and there is a probability of recommending approval, discussions will focus upon any infrastructure or community benefits that are required to support the proposed development. Depending upon the nature

be asked to comment thereon.

For those applications where benefits exceed £100,000:00 in value, advice is

Advisory Group and for completeness any Parish or Town Council comments will be

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reported to that Group. Ward members are invited to this meeting so the Parish or Town Council can at this stage seek the support of their local Member(s).

The final opportunity for a Parish or Town Council to comment on the proposal or infrastructure/community benefits is by presenting an argument to the Development Management Panel.

For those applications where benefits are less than £100,000:00 and the proposal is supported both by the Parish or Town Council and the Head of Planning Services, these are dealt with under the delegation procedure. Therefore, it is important for the Parish or Town Council to make their comments known at the early stages.

The District Council is in the process of preparing a supplementary planning document on planning obligations which may change the process in the future.

Reasons for approval and refusal

When an application is approved, a note(s) on the decision notice will summarise the reason(s) for approval. When it is refused, the reasons for refusal should be stated clearly and precisely. Reasons for refusal should be supported by all relevant development plan policies. In all cases, care will be taken to cite the correct policies. In this way, all parties know with certainty the reasons behind the decision.

In particular, all reasons for refusal should make it clear what harm would be caused if the development were allowed.

Call-in

Very rarely, prior to its determination by the District Council, an application may be "called in" by the Secretary of State. In such cases, the local authority no longer

makes the decision. Instead the application proceeds by way of a public inquiry.

This will only happen if it is felt that the application raises more than just local issues and is a rare occurrence.

Those applications relating to listed buildings and demolition in conservation areas made by the District Council on land which it owns are decided by the Secretary of State.

After the decision

Once an application is approved and any pre-commencement conditions and S.106 obligations have been satisfied, the development may be commenced. In most cases, however, the developer has up to three years to begin the work. There may also be other controls such as building regulations approval or legal covenants, which need to be satisfied before the development can proceed. Some of these matters are covered in Advice Note 10.

There is no right of appeal for third parties against a planning decision.

In those cases where the application is refused, the applicant has several options open to him. These include:

- o Talking to the case officer to negotiate another solution. Reducing the size of an extension, for example, may lead to an approval; and/or
- o Submitting a repeat or alternative application. It is possible for an applicant to submit amended proposals as many times as he/she wishes. Often, no further fee is required for the first resubmission. This is often seen by many as a developer's attempt

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to wear down opposition over a period of time.

Local planning authorities can, however, decline to determine similar applications where there has been no appeal to the Secretary of State on at least two previous refusals in the last two years. Alternatively, where, within the previous two years, the Secretary of State has called in and refused, or has dismissed an appeal, the local planning authority can refuse to determine a similar application; and/or

- o Submitting an appeal. This is supposed to be a last resort when all else has failed. In some cases, however, it is clear that appeals are lodged before the applicant has properly considered the Council's objections. It is also not unusual for an appeal and amended scheme to be submitted at the same time. This may be seen by the developer as a way to reduce delays in obtaining a favourable decision; and/or
- o In extreme cases, seeking redress by way of judicial review. This will only apply when it can be shown that the local planning authority has acted improperly in determining the application. More advice on this is found in Advice Note 10.

Appeals

An applicant may appeal against a refusal, non-determination of an application or against the imposition of conditions. This is done by submitting the appropriate form and information to the Planning Inspectorate.

The Planning Inspectorate is an executive agency of central government and is based in Bristol. Its inspectors therefore act independently from local authorities.

An appeal must be made within twelve weeks for refusals of householder applications, within two months for advertisement applications and six months of the date of the decision for other types of applications.

Appeals will be dealt with in one of three ways:

- o Written representations - where the appeal is determined after an exchange of written statements. This is followed by a site visit by a planning inspector. This is the quickest method and most suitable for more modest applications.
- o Hearing – where the merits of the appeal are discussed relatively informally in front of the inspector. This is followed by a site visit.
- o Public inquiry – where evidence is formally presented in front of an inspector. Cases are normally put forward by a solicitor or barrister who calls witnesses to give evidence. This will be subject to cross-examination from the other side. The inquiry concludes with a site visit.

Town and Parish Councils and members of the public will be notified of and invited to comment on an appeal. This will be done through a standard consultation letter at the start of the appeal. The one exception to this is the new fast-track householder appeals procedure where the appeal is determined solely on the application and comments received at the time the decision was made by the Local Planning Authority.

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Members of the public can speak at hearings and inquiries. Evidence from residents and district and Town/Parish Councillors can be useful, especially if they have detailed local knowledge and backed up by evidence.

Town/Parish Councils and the general public can also play a major role at public inquiries. Their own advocate or consultant may represent them.

Throughout the appeal process, there are strict timetables. This is notwithstanding that it can sometimes take a considerable period for an appeal to be determined. Failure to observe the timetables may result in evidence not being accepted.

An appeal decision may uphold the Council's decision (dismiss the appeal) or grant permission. Nationally, around two-thirds of appeals are dismissed (although this figure is much higher in Huntingdonshire). The reasons for the decision must be clearly stated so that the inspector's reasoning is fully understood.

If an appeal is dismissed on grounds of principle, the Council can refuse to accept a similar application on the same site, for two years after the date of the decision.

Occasionally, an inspector may award the other main party an award of costs. This will only be the case where it can be shown that the other party has acted unreasonably.

This is usually where either the Council is unable to adequately support a reason for refusal, or the appellant has pursued an appeal which is clearly contrary to adopted policies.

This final point highlights what has been said in other Advice Notes. There is a need to ensure that decisions are based only on proper planning considerations. Without this principle, the planning system would be brought into disrepute.

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Please Note: This advice note is intended as a general guide. It should not be relied upon, or taken to be a full interpretation of the law.