



a million voices for nature

The planning system

The role of the planning system is to regulate land use in the long-term public interest.

The planning system plays an important role in helping to protect our wildlife from harmful development. It may also provide opportunities to enhance biodiversity.

What needs planning permission?

The rules about what needs planning permission are complicated. However, any new 'development' generally needs permission.

Development is defined in legislation as the carrying out of building, engineering, mining or other operations in, on or over land, or the material change of use of any buildings or other land. The normal boundary of 'land' in relation to coastal development is low water mark.

Permitted Development

Some activities and works are specifically excluded from the definition of 'development'. These include the use of land for agriculture or forestry and internal alterations to buildings.

In addition, a wide range of development types are automatically granted planning consent. This is known as 'permitted development'.

Permitted development is defined by law and includes minor building works such as extensions to individual houses and factories (within prescribed limits) and certain changes of use of property. It also includes permitted development rights for certain users of land, such as agriculture, forestry and utilities, to undertake building works on their own land.

Permitted development rights are more limited in sensitive areas such as National Parks, Areas of Outstanding Natural Beauty (AONBs), Sites of Special Scientific Interest (SSSIs).

Who makes planning decisions?

In Wales, most applications for development are made by the Local Planning Authority. An important exception is major infrastructure development, known as Nationally Significant Infrastructure Projects (NSIPs), which in Wales includes applications for energy projects that would generate over 50MW. For further information on NSIPs, see our PDF *Nationally Significant Infrastructure Projects* or visit the IPC website (infrastructure.independent.gov.uk).

When a Local Planning Authority refuses planning permission, imposes conditions which an applicant finds unacceptable, or delays making the decision, an applicant has the right to appeal to the Welsh Ministers.

Most planning appeals are in fact determined by Planning Inspectors under powers transferred to them from the Welsh Ministers, although major and/or complex proposals may be determined by the Ministers themselves after receiving a recommendation from the Planning Inspector. The Welsh Ministers also have the power to 'call in' applications if they feel the application raises issues of more than local importance, although this power is used sparingly.

The Local Planning Authority

The Local Planning Authority (LPA) is responsible for making decisions on planning applications through its planning officers and planning committee. The planning committee is made up of elected members (councillors).

Planning officers, in particular the case officer, are responsible for processing the application. Based on their assessment they make a recommendation for approval or refusal to the planning committee. For less contentious applications, officers often have delegated powers to make the decision themselves.

Each of the 22 councils in Wales is a LPA, although where there is a National Park (Brecon Beacons, Pembrokeshire Coast and Snowdonia) within their area the role of LPA is taken by the National Park Authority. As the statutory purpose of National Parks includes conserving and enhancing their natural beauty, wildlife and cultural heritage, planning controls are stricter.

Town and community councils

These councils represent local communities at the 'grassroots' level, although not every community in Wales is represented by either a town or community council. Where a town or community council is present, they have a right to be consulted on all planning applications in their area. However, they do not have power to make a decision on them.

Planning policy

Government and local planning policy is the basis for making decisions on planning applications.

- **National policy**

Planning Policy Wales (PPW), published in February 2011, sets out the land use planning policies of the Welsh Government. It is supplemented by a series of Technical Advice Notes (TANs). Procedural advice is given in circulars and policy clarification letters.

PPW, the TANS, circulars and policy clarification letters comprise national planning policy. National planning policy together with the Wales Spatial Plan (*People, Places, Future*, updated May 2011) should be taken into account by Local Planning Authorities in the preparation of development plans and in making decisions on individual planning applications. They are also taken into account by the Welsh Ministers and Planning Inspectors in the determination of called-in planning applications and appeals.

Although national policy does not deal with local specifics, such as allocation of sites for development, it does set out broad objectives such as promoting the conservation of wildlife and habitats, and the generation of energy from renewable resources.

The Welsh Government website (www.wales.gov.uk/topics/planning/policy/ppw) provides a comprehensive overview of the planning system and policies in Wales, as well as providing useful references and links to other relevant policy, legislation and guidance.

- **UK policy**

The UK government is preparing a series of National Policy Statements (NPSs) for all types of infrastructure development. The energy and ports NPSs were all published in 2011; NPSs covering other infrastructure such as roads are due shortly.

NPSs set out the UK government's commitment to delivering essential infrastructure without undue delay, and clearly set out the 'need' case for such infrastructure. NPSs take precedence for all Nationally Significant Infrastructure Projects unless the development would result in adverse impacts that would outweigh the benefits. Government advice is that, even for infrastructure development that is not a NSIP, NPSs are likely to be a material consideration in decision making on planning applications.

NPSs can be found on the Department for Communities and Local Government website (www.communities.gov.uk).

- **Local policy**

Local planning policy is contained in the development plan (Local Development Plan) and any Supplementary Planning Guidance (SPG) prepared by the local authority. SPGs do not have the same status as the development plan, but can be material considerations in making decisions on planning applications. SPGs may relate to specific sites (eg a proposed wind farm development) or issues (eg availability of housing land).

The development plan

The development plan sets out a vision for an area and how much, and what type of, development may take place, where it is likely to be allowed and where it is unlikely to be allowed.

Since 2005, every Local Planning Authority in Wales must prepare a Local Development Plan (LDP) for its area. The LDP will be the development plan for its area, superseding the Unitary Development Plan (UDP) and the Structure Plan. The LDP must conform generally with national, UK and EU policy and legislation, but will also set out specific proposals for the area, including proposals relating to specific sites.

Only a few LDPs are currently in place ('adopted') and in the meantime the development plan is formed by the UDP and Structure Plan for the area. These plans can be quite out of date. In deciding whether planning permission should be granted the weight to be attached to an emerging draft LDP will in general depend on the stage it has reached. For further details see our PDF *How to get involved with local development plans*.

Sustainability Appraisals

Plans, policies and strategies produced by government are generally accompanied by a Sustainability Appraisal (SA) and a Strategic Environmental Assessment (SEA). These aim to improve the sustainability of plan-making by assessing the environment, social and economic impacts of the plan, policy or strategy. The public are entitled to see these documents and comment on the findings.

Planning applications

Planning applications can take different forms. Full planning applications include every detail needed for the local authority to decide if the proposal can go ahead. Applications for outline planning permission need only contain enough information for the local authority to decide if the principle of the development is acceptable. Once the principle is established the applicant is required to submit a further application showing all the details of the proposal. Development cannot start until the details are approved.

Local Planning Authorities have eight weeks in which to decide a planning application, after which the applicant can appeal against 'non-determination'. In the case of applications that require EIA, the LPA has 16 weeks to determine the application. These target deadlines can be extended by agreement with the applicant, in particular if the LPA is waiting for additional information from the applicant to allow it to assess the proposals properly.

Environmental Impact Assessment

The purpose of an Environmental Impact Assessment (EIA) is to evaluate the potential impacts of a development on the environment. An EIA may be necessary for any planning application whose location, scale or nature is likely to have significant effects on the environment.

Regulations determine the types of development that will always require an EIA. They also determine the types of development that may require an EIA if the scale of the development exceeds certain thresholds or if it is to be sited in a particularly sensitive location such as a SSSI.

EIAs enable risks to the environment to be identified early in the planning process so damage can be avoided or mitigated. Normally developers will use the information they gather from the EIA to improve their proposals and so reduce the impact of the proposed development before submitting a planning application.

A report on the EIA must be submitted with every planning application that requires one. This is known as the Environmental Statement (ES). The ES is an important tool for decision makers in considering complex developments as it allows consideration of the risks and benefits of the development to be assessed in a systematic way. The methodology for preparing EIAs is the subject of much detailed guidance and has been tested rigorous in the courts. For more information, see the Planning Portal website (www.planningportal.gov.uk).

Publicity

Once a planning application has been submitted, it must be made public so that interested parties can comment on it.

All planning applications (apart from those for advertisements) need to be publicised locally. The planning authority does this by sending a letter to neighbouring occupiers and/or by putting up a public notice in a prominent place on or near the application site.

A planning application for a larger development, or an application which is not in line with the planning policies in an 'adopted' development plan (which is known as a 'departure' from the plan), must be publicised in a local newspaper as well as notified to neighbours directly. Examples include a proposal to build ten or more houses, and non-housing development of more than 1,000 square metres of floor space.

Plans can be viewed at the local planning office. The Local Planning Authority cannot determine an application until a minimum 21-day period for making comments or objections has passed. Usually, if requested, a Local Planning Authority will agree to give more time to allow comment on an application.

Applications that require an EIA have specific publicity requirements.

Consultees

The Local Planning Authority (LPA) will consult with a range of bodies before considering some planning applications and when preparing or amending development plans. Statutory consultees are legally required to be consulted in some circumstances and can include Countryside Council for Wales (CCW), the Environment Agency Wales (EAW), Cadw and Community Councils.

Other (on-statutory) consultees may also be consulted by the LPA if it considers they may have an interest in a proposal or plan. The RSPB is often consulted as a non-statutory consultee.

Objections

Any interested parties are able to object to planning applications. Objections can take the form of trying to prevent the development from going ahead, or can be used to improve the proposal. Proposals can often be improved to avoid harming wildlife, or to include measures that will enhance biodiversity (see our PDF *Getting involved in planning applications*).

Making planning decisions

Planning applications must be decided in line with the policies set out in the development plan for the area, unless there are very good reasons not to. This is called a 'plan-led' system.

Factors to be taken into account in making planning decisions are called material considerations. A wide range of considerations can be material and they will be different for each case. Material considerations must be planning matters; that is, they must be relevant to the use of land in the public interest.

Material considerations must also be fairly and reasonably related to the specific development concerned. The Courts are the final arbiters of what may be regarded as material considerations, but in addition to national, UK and EU policy and legislation they include the size and appearance of buildings, the means of access, landscaping, service availability and the impact on the neighbourhood and on the environment. The effects of a development on, for example, health, public safety and crime can also be material considerations, as, in principle, can public concerns in relation to such effects.

After the decision

Planning applications can be granted or refused. In both cases, the Local Planning Authority (LPA) must give its reasons for the decision.

Planning permissions are subject to conditions that regulate how the development is carried out. More complex developments are likely to have a large number of conditions, many of which require the submission of further details to be agreed by the LPA. The development must be carried out in accordance with all the conditions. Permissions for more complex developments may also be accompanied by a 'planning obligation', which is a legal agreement that deals with matters that cannot legally be covered by planning conditions, such as financial contributions to necessary infrastructure.

Third parties have no right of appeal against a planning permission. However, there is a process known as judicial review whereby third parties can apply to the courts if they believe that the correct process was not followed. A judicial review does not consider the planning merits of the proposals.

Appealing against a decision

Only the applicant has the right to appeal against a decision. This right is usually exercised against a refusal of permission, but appeals can also be made against any conditions that the applicant feels are unreasonable. The applicant cannot appeal against a planning obligation, as this is an agreement that can only have been entered into with the applicant's consent.

Appeals may take one of three forms: written representations, hearing or public inquiry. A hearing is a less formal version of a public inquiry, presided over by the Planning Inspector who will decide the appeal. A public inquiry is normally only used for very complex proposals, and will usually involve legal representation for the applicant and the Local Planning Authority, and possibly for third parties.

Although third parties (eg the general public) cannot appeal against a planning decision, anyone who has made an objection to a planning application where the applicant then appeals has the right to make further representations. If a hearing or public inquiry is held, you also have the right to appear to make your case. You always have the right to put your case directly; legal representation is never a requirement.

The Planning Inspectorate or Local Planning Authority should get in contact with you about what you have to do when the appeal is lodged.

Enforcement action

The Local Planning Authority may take action when development takes place without the necessary planning permission, or when a development breaches the conditions of its permission. This may result in an enforcement notice being sent to the offender outlining what has to be done to remedy the situation and gives the right to appeal against the notice. Depending on the outcome of the appeal, the enforcement notice could be 'upheld' (confirmed) or the developer may be allowed to continue with the development.

Local Government Ombudsmen

The Local Government Ombudsmen deal with complaints about the procedure that a planning application has gone through, rather than the application itself. He only deal with complaints about the conduct of a council, for example that a council has not followed the planning procedures properly.

For more information see the Local Government Ombudsmen website (www.lgo.org.uk). There is also more information in our PDFs *Getting involved in planning applications* and *How to get involved with local development plans*.

Useful planning links

Welsh Government - Planning: www.wales.gov.uk/topics/planning

Planning Aid: www.planningaidwales.org.uk

The Planning Portal: www.planningportal.gov.uk