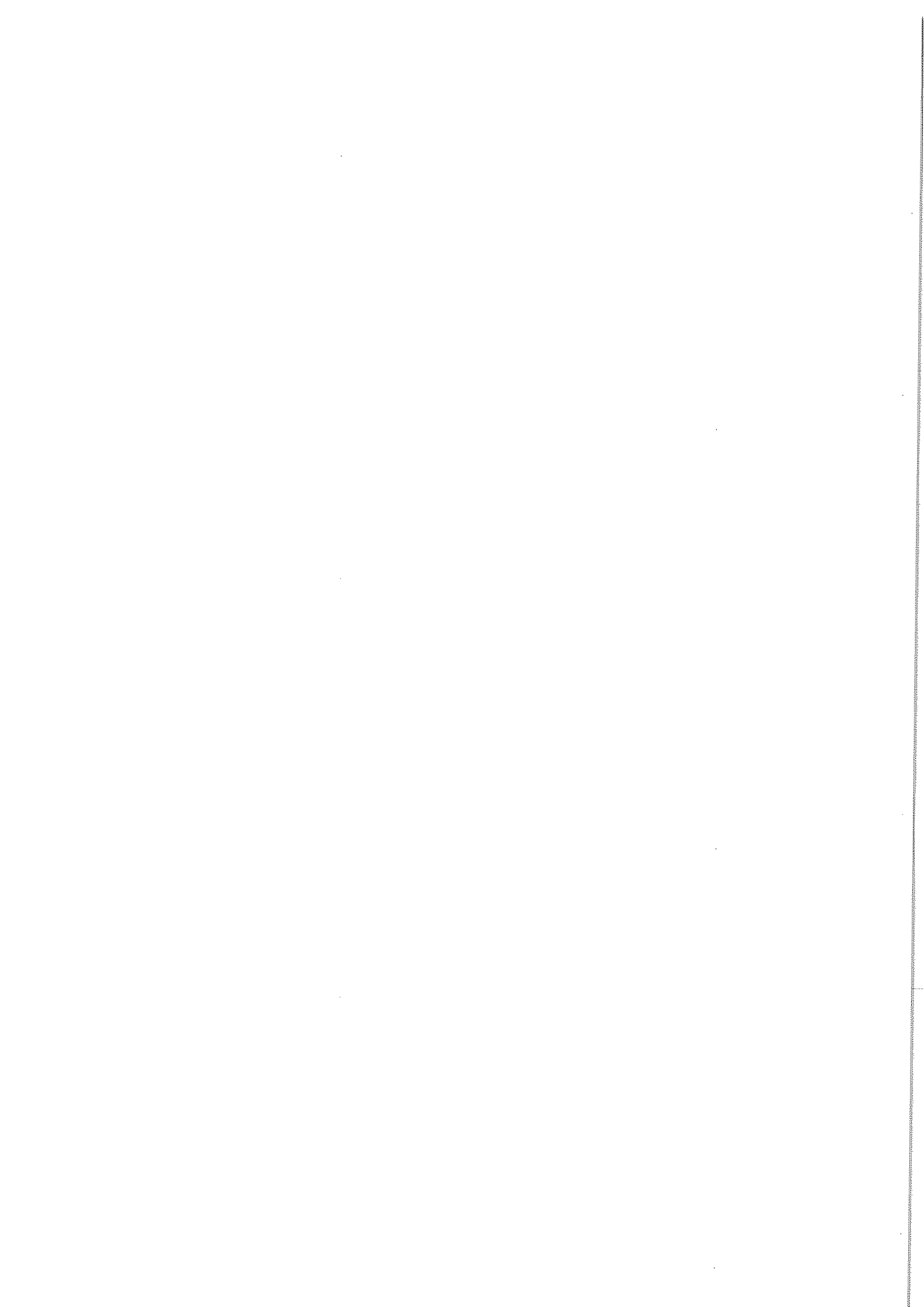


# Planning Practice Guidance

## Section One (A-C):

- Advertisement
- Air quality
- Appeals
- Before submitting an application
- Climate change
- Community Infrastructure Levy
- Conserving and enhancing the historic environment
- Consultation and pre-decision matters
- Crown Development





## Planning Practice Guidance (<http://planningguidance.communities.gov.uk>)

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Guidance

### Advertisements


Print 


#### 1. Definition of an advertisement

(<http://planningguidance.communities.gov.uk/blog/guidance/advertisements/what-is-the-definition-of-an-advertisement/>)

##### Definition of an advertisement

###### Background

The display of advertisements is subject to a separate consent process within the planning system. This is principally set out in the Town and Country Planning (Control of Advertisements) (England) Regulations 2007  (<http://www.legislation.gov.uk/ukSI/2007/783/contents/made>).

In this section, “the Regulations” means The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended)  (<http://www.legislation.gov.uk/ukSI/2007/783/contents/made>), and any reference to an individual regulation means the regulation as specified.

Advertisements are controlled with reference to their effect on **amenity** and **public safety** only, so the regime is lighter touch than the system for obtaining planning permission for development.

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##### What is the definition of an advertisement?

For planning purposes, ‘advertisement’ is defined in section 336(1) of the Town and Country Planning Act 1990 (as amended) as:

*“any word, letter, model, sign, placard, board, notice, awning, blind, device or representation, whether illuminated or not, in the nature of, and employed wholly or partly for the purposes of, advertisement, announcement or direction, and (without prejudice to the previous provisions of this definition) includes any hoarding or similar structure used or designed, or adapted for use and anything else principally used, or designed or adapted principally for use, for the display of advertisements.”*

Some additional detail on the meaning of the term ‘advertisement’ is provided in the Regulations.

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#### 2. Requirements for consent (<http://planningguidance.communities.gov.uk/blog/guidance/advertisements/is-consent-from-the-local-planning-authority-always-required-to-display-advertisements/>)

##### Requirements for consent

###### How is consent obtained to display advertisements?

There are three categories of advertisement consent:

- Those permitted without requiring either deemed or express consent from the local planning authority;
- Those which have deemed consent;
- Those which require the express consent of the local planning authority.

In detail:

***Advertisements which do not require deemed consent or express consent***

There are 9 different Classes (Class A to I) of advertisement, contained in **Schedule 1** [\[2\]](http://www.legislation.gov.uk/uksl/2007/783/schedule/1/made) (<http://www.legislation.gov.uk/uksl/2007/783/schedule/1/made>) (as amended [\[2\]](http://www.legislation.gov.uk/uksl/2012/2372/regulation/2/made) (<http://www.legislation.gov.uk/uksl/2012/2372/regulation/2/made>)) **to the Regulations**, which do not require express consent from the local planning authority, provided that certain criteria and conditions are met. Subject to meeting these, the advertisements can be displayed without requiring approval from the local planning authority.

#### ***Advertisements which have deemed consent***

There are another 17 Classes of advertisement (Class 1 to 17), contained in **Schedule 3** [\[2\]](http://www.legislation.gov.uk/uksl/2007/783/schedule/3/made) (<http://www.legislation.gov.uk/uksl/2007/783/schedule/3/made>) **to the Regulations** (as amended in 2011 [\[2\]](http://www.legislation.gov.uk/uksl/2011/2057/regulation/2/made) (<http://www.legislation.gov.uk/uksl/2011/2057/regulation/2/made>) and 2012 [\[2\]](http://www.legislation.gov.uk/uksl/2012/2372/regulation/2/made) (<http://www.legislation.gov.uk/uksl/2012/2372/regulation/2/made>)), which do not need consent from the local planning authority provided that they comply with further restrictions (referred to as “deemed consent” in the Regulations). Each class has its own criteria and conditions which must be met and provided that the advertisement in question conforms to all of the relevant provisions in a Class, consent is not required from the local planning authority. Local planning authorities can, however, restrict the use of deemed consent ([http://planningguidance.communities.gov.uk/blog/guidance/advertisements/additional-restrictions-on-the-display-of-advertisements/#paragraph\\_041](http://planningguidance.communities.gov.uk/blog/guidance/advertisements/additional-restrictions-on-the-display-of-advertisements/#paragraph_041)) which distinguishes these from the Classes of advertisement set out in Schedule 1 to the Regulations.

#### ***Advertisements which require express consent***

If a proposed advertisement does not fall into one of the Classes in Schedule 1 or Schedule 3 to the Regulations, consent must be applied for and obtained from the local planning authority (referred to as **express consent** in the Regulations). Express consent is also required to display an advertisement that does not comply with the specific conditions and limitations on the Class that the advertisement would otherwise have consent under.

It is criminal offence to display an advertisement without consent.

All advertisements are subject to the standard conditions set out in Schedule 2 to the Regulations. The only exception is Class F in Schedule 1 where condition 4 (maintaining structures or hoardings in a safe condition) does not apply.

Even if express consent is not required, all advertisements must comply with any other relevant statutory provisions. For example, listed building consent may be required under the Listed Building Regulations (<http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/>).

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### **Is planning permission required to display an advertisement as well as advertisement consent?**

The display of advertisements is controlled through a specific approval process and separate planning permission is not required in addition to advertisement consent. Under section 222 of the Town and Country Planning Act 1990 (as amended) [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/222) (<http://www.legislation.gov.uk/ukpga/1990/8/section/222>), planning permission is deemed to be granted for any development of land involved in the display of advertisements in accordance with the Regulations. Consent under section 222 would not grant consent for the erection of any structure unless its primary purpose is to display advertisements, although it would include development which is ancillary to the actual advertisement’s display but part of the same scheme.

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### **Do shroud and large ‘wrap’ advertisements need express consent?**

Buildings which are being renovated or are undergoing major structural work and which have scaffolding or netting around them may be considered suitable as temporary sites for shroud advertisements or large 'wrap' advertisements covering the face, or part of the face, of the building. In all cases, express consent from the local planning authority will be required for these advertisements. If the building to which the scaffolding is connected is included on the Statutory List of Buildings of Special Architectural or Historical Interest, listed building consent is likely to be required.

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### **Is express consent required to fly flags?**

Express consent is only required to fly certain flags. Many flags (such as national flags) are contained in Schedule 1 to the Regulations and can therefore be flown without the need for express consent. Other flags have deemed consent under Schedule 3 to the Regulations. The Government's plain English guide [\[2\]](https://www.gov.uk/government/publications/flying-flags-a-plain-english-guide) (<https://www.gov.uk/government/publications/flying-flags-a-plain-english-guide>) to flying flags provides more information on those flags which can be displayed without obtaining express consent.

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### **Do lasers, search lights, beams of light and projected illuminated advertisements need express consent?**

All illuminated advertisements projected onto buildings, landscapes or clouds created by means of lasers, search lights and beams of light require consent from the local planning authority.

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### **Do advertisements on utilities' equipment need express consent?**

The Government's view is that there are no deemed consent provisions in the Regulations that would apply to commercial advertising on utilities' equipment such as broadband cabinets, and that such commercial advertisements may only be placed on them with the express consent of the local planning authority. Functional advertisements (such as safety signs or warning notices) that fall within Class 1 of Schedule 3 to the Regulations may be displayed on utilities' equipment with deemed consent.

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### **Do advertisements on telephone kiosks need express consent?**

Subject to the conditions and limitations specified in class 16 of Schedule 3 to the Regulations [\[2\]](http://www.legislation.gov.uk/ukSI/2007/783/schedule/3/made) (<http://www.legislation.gov.uk/ukSI/2007/783/schedule/3/made>), advertisements displayed on the glazed (external) surface of telephone kiosks have deemed consent and therefore do not require express consent.

Telephone kiosks do not constitute 'buildings' for the purposes of class 12 of Schedule 3 to the Regulations [\[2\]](http://www.legislation.gov.uk/ukSI/2007/783/schedule/3/made) (<http://www.legislation.gov.uk/ukSI/2007/783/schedule/3/made>), which gives deemed consent to advertisements displayed inside buildings.

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### **Do aerial advertisements need express consent?**

Aerial advertising is regulated by the Civil Aviation (Aerial Advertising) Regulations 1995 [\[2\]](http://www.legislation.gov.uk/ukSI/1995/2943/made) (<http://www.legislation.gov.uk/ukSI/1995/2943/made>), which provide that any aircraft (apart from a captive balloon) may display any mark or inscription on its body other than an illuminated sign. A captive balloon may display any mark or inscription on its body if the balloon is no more than 7

metres in any linear dimension (and no more than 20 cubic metres in total capacity). Such captive balloons may display any mark or inscription on a banner or pennant attached to its mooring cables.

The Civil Aviation Authority's permission is required to fly a captive balloon more than 60 metres above ground level (see article 163 of the Air Navigation Order 2009 [\[2\]](http://www.legislation.gov.uk/uksi/2009/3015/article/163/made) (<http://www.legislation.gov.uk/uksi/2009/3015/article/163/made>)). If it appears that a balloon is being flown above 60 metres from the ground, a local planning authority should first check whether any permission for the balloon has been given by the Civil Aviation Authority.

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### **Do "A-boards" need express consent?**

"A-boards" on highways (including footways) where vehicular traffic is prohibited will require express advertisement consent. They will also require the consent of the relevant council under section 115E of the Highways Act 1980 [\[2\]](http://www.legislation.gov.uk/ukpga/1980/66/part/VIIA) (<http://www.legislation.gov.uk/ukpga/1980/66/part/VIIA>) for permission to place items such as "A-boards" in highways (including footways) where vehicular traffic is prohibited.

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### **How can an applicant check whether consent from the local planning authority is required?**

If there is uncertainty about whether consent is required, the relevant local planning authority should be contacted (<http://planningguidance.communities.gov.uk/blog/guidance/advertisements/applications-for-express-consent-procedure/>).

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### **Is consent required from anyone else to display advertisements?**

Yes. The standard conditions provide that you must have permission of the site owner/occupier to display an advert on that land. It is illegal to display any advertisement (even if it has deemed consent) without first obtaining the permission of the owner of the site, or any other person who is entitled to give their permission.

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### **Are there any conditions that apply to all advertisements?**

All advertisements, whether they require consent or not, are subject to the standard conditions in Schedule 2 to the Regulations [\[2\]](http://www.legislation.gov.uk/uksi/2007/783/schedule/2/made) (<http://www.legislation.gov.uk/uksi/2007/783/schedule/2/made>). These are:

- no advertisement is to be displayed without the permission of the owner of the site on which they are displayed (this includes the highway authority, if the sign is to be placed on highway land);
- no advertisement is to be displayed which would obscure, or hinder the interpretation of, official road, rail, waterway or aircraft signs, or otherwise make hazardous the use of these types of transport;
- any advertisement must be maintained in a condition that does not impair the visual amenity of the site;
- any advertisement hoarding or structure is to be kept in a condition which does not endanger the public; and
- if an advertisement is required to be removed, the site must be left in a condition that does not endanger the public or impair visual amenity.

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### **What happens if an advertisement is displayed without the**

### **necessary consent?**

Anyone who displays an advertisement in contravention of the Regulations commits an offence. For example, by displaying an advert without the necessary consent or without complying with the conditions attached to that consent. It is then immediately open to the local planning authority to bring a prosecution in the Magistrates' Court for an offence under section 224 of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/224)

(<http://www.legislation.gov.uk/ukpga/1990/8/section/224>). The penalty on conviction for the offence is at level 4 on the standard scale (current maximum £2,500) and in the case of a continuing offence a further daily fine of up to a maximum of one tenth of that amount (£250) until the contravention ends.

Where a local planning authority achieves a successful conviction for failure to comply with an enforcement notice, they can apply for a Confiscation Order, under the Proceeds of Crime Act 2002 [\[2\]](http://www.legislation.gov.uk/ukpga/2002/29/part/2)

(<http://www.legislation.gov.uk/ukpga/2002/29/part/2>), to recover the financial benefit obtained through unauthorised development.

Local planning authorities also have powers to remove any advertisement (and any structure used for its display) which in their view is displayed in contravention of the Regulations.

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### **3. Applications for express consent – procedure**

(<http://planningguidance.communities.gov.uk/blog/guidance/advertisements/applications-for-express-consent-procedure/>)

#### **Applications for express consent – procedure**

##### **Who is an application for express consent made to?**

An application should be made to the local planning authority for the area where the advertisement will be displayed. The relevant local planning authority can be found on the gov.uk website [\[2\]](https://www.gov.uk/find-your-local-council) (<https://www.gov.uk/find-your-local-council>).

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##### **What information has to accompany an application for express consent?**

The information that must accompany an application for express consent is specified in Regulation 9 [\[2\]](http://www.legislation.gov.uk/uksi/2007/783/regulation/9/made)

(<http://www.legislation.gov.uk/uksi/2007/783/regulation/9/made>). In addition to the completed application form, a scaled plan which identifies the location of the site and the proposed position of the advertisement must be provided. Photo montages showing the proposed advertisement on the site may be helpful.

Further guidance on the application fees can be found in Regulation 13 of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012. [\[2\]](http://www.legislation.gov.uk/uksi/2012/2920/regulation/13/made)

(<http://www.legislation.gov.uk/uksi/2012/2920/regulation/13/made>)

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##### **Who must an applicant notify prior to submission of an application?**

An application must confirm whether the site owner and everyone with an interest in the site have given their permission to display an advertisement.

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##### **What actions must a local planning authority take on receipt of an application?**

The steps which local planning authorities must take on receipt of an application for express consent are set out in Regulation 12 [\[2\]](http://www.legislation.gov.uk/ukxi/2007/783/regulation/12/made) (<http://www.legislation.gov.uk/ukxi/2007/783/regulation/12/made>). Local planning authorities should take a proportionate approach to the level of information they request from applicants.

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### **What information must a local planning authority place on the planning register?**

The information that must be kept on the planning register is specified in Regulation 24 [\[2\]](http://www.legislation.gov.uk/ukxi/2007/783/regulation/24/made) (<http://www.legislation.gov.uk/ukxi/2007/783/regulation/24/made>).

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### **Can an application for express consent be made which has already been refused?**

An application can be made for express consent even it has previously been refused. However, Regulation 14(1)(c) [\[2\]](http://www.legislation.gov.uk/ukxi/2007/783/regulation/14/made) (<http://www.legislation.gov.uk/ukxi/2007/783/regulation/14/made>) empowers a local planning authority to decline to determine repetitive similar applications for express consent. Where an appeal against the refusal of an application for express consent has been dismissed by the Secretary of State within the preceding two years, a local planning authority may decline to determine any similar application unless there has been a significant change in any material consideration. The two-year period runs from the date of the appeal decision.

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### **What constitutes a 'similar' application?**

Section 70A(8) of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukxi/2007/1739/schedule/made) (<http://www.legislation.gov.uk/ukxi/2007/1739/schedule/made>) (as modified by Schedule 4 [\[2\]](http://www.legislation.gov.uk/ukxi/2007/1739/schedule/made) (<http://www.legislation.gov.uk/ukxi/2007/1739/schedule/made>) to the Regulations) defines applications as 'similar', if (and only if) the local planning authority considers that the land and subject matter are the same, or substantially the same.

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### **What could constitute a significant change in any material consideration in the context of repeat applications?**

A local planning authority has discretion, but a significant change is likely to be one which alters the weight of any consideration of amenity (<http://planningguidance.communities.gov.uk/blog/guidance/advertisements/considerations-affecting-amenity/>) or public safety (<http://planningguidance.communities.gov.uk/blog/guidance/advertisements/considerations-affecting-public-safety/>) which was applied to the original application.

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### **Must a local planning authority decline to determine repeat application for express consent?**

Where an authority considers that an application is similar, it is not automatically obliged to decline to determine the application. The purpose of this power is to discourage the use of repeated applications that the local planning authority believes are submitted with the intention of exerting pressure, or as a delaying tactic to retain the display of unlawful advertisements. However, a local planning authority does not have to decline to determine an application, if it has been revised in a genuine attempt to take account of objections to an earlier proposal, or if there has been a change in local circumstances or any relevant material considerations.

The submission of repeated applications does not prevent a local planning

authority from prosecuting for the illegal display of an advert.

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### **Can an applicant appeal against a local planning authority's decision to decline to determine a repeat application?**


An application which a local planning authority declines to determine should be returned to the applicant along with the fee paid. Applicants have no right of appeal against a local planning authority's decision not to determine an application. An applicant may, however, apply to the High Court for judicial review of an authority's decision.

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4. Applications for express consent – determination, appeals, modification and revocation (<http://planningguidance.communities.gov.uk/blog/guidance/advertisements/applications-for-express-consent-determination-appeals-modification-and-revocation/>)

### **Applications for express consent – determination, appeals, modification and revocation**

#### **What factors can a local planning authority take into consideration when determining an advertisement application?**

Regulation 3  (<http://www.legislation.gov.uk/uksi/2007/783/regulation/3/made>) requires that local planning authorities control the display of advertisements in the interests of **amenity** and **public safety**, taking into account the provisions of the development plan, in so far as they are material, and any other relevant factors.

Unless the nature of the advertisement is in itself harmful to amenity or public safety, consent cannot be refused because the local planning authority considers the advertisement to be misleading (in so far as it makes misleading claims for products), unnecessary, or offensive to public morals.


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#### **How can 'amenity' be defined when considering applications for express consent?**

See the guidance on the consideration of, and consultation regarding, possible effect of advertisements on amenity (<http://planningguidance.communities.gov.uk/blog/guidance/advertisements/considerations-affecting-amenity/>).

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#### **What considerations should local planning authorities take into account in assessing public safety in relation to advertisement applications?**

Factors relevant to public safety are specified in Regulation 3  (<http://www.legislation.gov.uk/uksi/2007/783/regulation/3/made>). Public safety is not confined to road safety and includes all of the considerations which are relevant to the safe use and operation of any form of traffic or transport on land (including the safety of pedestrians), over water or in the air.

See further guidance on the consideration of, and consultation regarding, possible effect of advertisements on public safety (<http://planningguidance.communities.gov.uk/blog/guidance/advertisements/considerations-affecting-public-safety/>).

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### **Do local plans have to contain specific policies on advertisements?**

A local plan does not have to contain advertisement policies. If such policies are considered necessary to protect the unique character of a particular area, these should be evidence-based.

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### **What are the consultation requirements for applications for express consent?**

The bodies that local planning authorities must consult before granting express consent are specified in Regulation 13 [\[2\]](http://www.legislation.gov.uk/uksi/2007/783/regulation/13/made) (<http://www.legislation.gov.uk/uksi/2007/783/regulation/13/made>).

While there is no statutory requirement for a local planning authority to publicise applications for advertisement consent, it should consider whether any application would affect the amenity of neighbours. Where it would affect them, it is good practice for the views of neighbours to be sought before determining an application.

Further guidance on consultation about the public safety implications of advertisements

(<http://planningguidance.communities.gov.uk/blog/guidance/advertisements/considerations-affecting-public-safety/>).

Further guidance on amenity implications

(<http://planningguidance.communities.gov.uk/blog/guidance/advertisements/considerations-affecting-amenity/>).

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### **How long can a local planning authority take to determine an application for express consent?**

A local planning authority's decision on an application for express consent must be given in eight weeks, unless the applicant agrees in writing to a longer period.

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### **What additional considerations may apply when considering applications for sign posting in rural areas?**

In dealing with applications for 'advance signs', to be sited off highway land, directing potential customers to businesses or tourist attractions in scenically attractive rural areas, local planning authorities need to bear in mind that appropriate sign-posting can benefit the local economy and reflect this through the decision-taking process.

If consent for such signs has to be refused on amenity or public safety grounds, efforts should be made, where practicable, to suggest an alternative site or sign and to co-operate with the applicant in devising a sign posting scheme which is acceptable in the locality. Authorities are encouraged to develop well-designed, environmentally acceptable sign-posting schemes with other organisations such as Regional Tourist Boards and Natural England.

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### **What considerations may apply when considering applications for signs indicating the boundaries of historic or traditional counties?**

Local authorities may install signs indicating the boundary of a historic or traditional county on their land. Depending on circumstances, such signs may benefit from deemed consent [\[2\]](http://www.legislation.gov.uk/uksi/2007/783/schedule/3/made)

(<http://www.legislation.gov.uk/uksi/2007/783/schedule/3/made>) or the authority may



be able to grant itself express consent under regulation 15 [\[2\]](http://www.legislation.gov.uk/uksi/2007/783/regulation/15/made) (<http://www.legislation.gov.uk/uksi/2007/783/regulation/15/made>), these powers being exercised as usual in the interests of amenity and public safety. Authorities need to bear in mind how such sign-posting can benefit the local economy and reflect this through the decision-taking process, where such signs are appropriate and locally-supported.

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### **What conditions can be imposed on an express consent?**

All advertisements, whether they require express consent or not, are subject to standard conditions

([http://planningguidance.communities.gov.uk/blog/guidance/advertisements/is-consent-from-the-local-planning-authority-always-required-to-display-advertisements/#paragraph\\_014](http://planningguidance.communities.gov.uk/blog/guidance/advertisements/is-consent-from-the-local-planning-authority-always-required-to-display-advertisements/#paragraph_014)). If a local planning authority decides to impose additional conditions, these must be supported by specific and relevant planning reasons (<http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/>).

They should never be imposed because the local planning authority wishes, as a matter of general policy, to prevent the operation of Class 14 in Schedule 3 [\[2\]](http://www.legislation.gov.uk/uksi/2007/783/schedule/3/made) (<http://www.legislation.gov.uk/uksi/2007/783/schedule/3/made>) (advertisements displayed after expiry of express consent) in their area.

To require removal of an advertisement immediately at the end of the express consent period, a condition has to be attached to the consent by the local planning authority. This is because advertisements displayed after the expiry of express consent have deemed consent under Class 14 of Schedule 3 to the Regulations [\[2\]](http://www.legislation.gov.uk/uksi/2007/783/schedule/3/made) (<http://www.legislation.gov.uk/uksi/2007/783/schedule/3/made>).

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### **Who must a local planning authority notify of a decision on an application for express consent?**

The local planning authority must notify the applicant of its decision in accordance with the requirements in Regulation 16 [\[2\]](http://www.legislation.gov.uk/uksi/2007/783/regulation/16/made) (<http://www.legislation.gov.uk/uksi/2007/783/regulation/16/made>) when consent is granted or refused.

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### **How long does an express consent last?**

Consent usually lasts for five years but a local planning authority has discretion and can grant consent for a longer or shorter period. Unless the local planning authority has imposed a condition that an advertisement with express consent must be removed after the consent expires, it may normally continue to be displayed without submitting any further application (i.e. under Class 14 deemed consent).

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### **Is there a right of appeal if advertisement consent is refused?**

There is a right of appeal to the Secretary of State:

- against the refusal of consent for an advertisement; or
- against the grant of consent for an advertisement subject to a condition, or conditions, which the applicant considers unacceptable (other than the standard conditions); and
- if the local planning authority fails to make a decision within eight weeks of the date of the application (or a longer period if this has been agreed in writing).

An appeal must normally be made within eight weeks of the date of the receipt of the local planning authority's decision. See further guidance on the appeal process (<http://planningguidance.communities.gov.uk/blog/guidance/appeals/>) and the information that local planning authorities must supply to the Secretary of State when handling appeals [\[2\]](#)

(<http://www.legislation.gov.uk/ukxi/2007/783/regulation/17/made>).

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### **Can an advertisement with express consent be subsequently modified?**

The local planning authority has discretion over whether a change to an existing advertisement requires an application for express consent, taking into account whether the proposed modification would materially alter the site approved for advertising. It would be reasonable for a local planning authority to allow minor changes (for example, where the name of an occupier changes but the size and type of display remains substantially unaltered), without requiring a subsequent application.

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### **Can a local planning authority revoke or modify an express consent after it has been issued?**

A local planning authority has certain powers to revoke or modify an express consent after it has been issued under Regulation 18. This is a rarely-used reserve power mainly intended for correction of consents granted in error. Regulation 19 [\[2\]](#)

(<http://www.legislation.gov.uk/ukxi/2007/783/regulation/19/made>) provides details on compensation arrangements for revocation or modification.

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### **If necessary, when can an application for renewal of express consent be made?**

Regulation 9(11) [\[2\]](#) (<http://www.legislation.gov.uk/ukxi/2007/783/regulation/9/made>) states that an application for renewal of express consent may not be made more than six months before the date on which the consent is due to expire.

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## **5. Additional restrictions on the display of advertisements**

(<http://planningguidance.communities.gov.uk/blog/guidance/advertisements/additional-restrictions-on-the-display-of-advertisements/>)

### **Additional restrictions on the display of advertisements**

#### **What powers does a local planning authority have to further control advertisements in their area?**

A local planning authority can choose to place more stringent control over advertisements in three main ways, by:

- restricting deemed consent within a defined area;
- issuing a discontinuance notice; and
- defining an Area of Special Control.

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#### **How can a local planning authority restrict deemed consent?**

If a local planning authority considers it necessary to restrict deemed consent in a particular area, it must apply to the Secretary of State. Upon receipt of a proposal from a local planning authority, the Secretary of State can issue a direction under Regulation 7 [\[2\]](#)

(<http://www.legislation.gov.uk/ukxi/2007/783/regulation/7/made>) that requires express consent to be obtained for advertisements that normally benefit from deemed consent (with the exception of Classes 12 and 13 in Schedule 3 to the Regulations [\[2\]](#) (<http://www.legislation.gov.uk/ukxi/2007/783/schedule/3/made>).

To do this, it must be clear that one or more of the deemed consent provisions has had such adverse effects on the amenity or public safety of the area that there is no prospect of an improvement in the quality of advertising in the locality, unless the local planning authority are given the power to control that particular type of advertisement.

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### **What consultation must take place before a restriction is placed on deemed consent?**

The Secretary of State must publicise a local planning authority's proposal and allow an opportunity for representations to be made on the proposal, and take any representations into account, when making a decision. Where a proposal relates to a particular area, the Secretary of State must give public notice by publishing details of the proposed direction. Full details are set out in Regulation 7 [\[2\]](#) (<http://www.legislation.gov.uk/ukxi/2007/783/regulation/7/made>). In practice, the publicity arrangements are undertaken by the local planning authority on the Secretary of State's behalf.

Where there are objections, the Secretary of State may decide to offer the local planning authority and objectors the opportunity to be heard by a Planning Inspector.

When the Secretary of State gives a direction under Regulation 7 restricting deemed consent, written reasons must also be issued to the local planning authority and anyone who submitted representations. Details of the direction must be published and those owners / occupiers displaying advertisements which are affected by the direction must be notified.

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### **How is it possible to find out where deemed consent is restricted?**

A local planning authority can advise whether there are restrictions on deemed consent. Local planning authorities are also encouraged to have up to date information about any such area on their website.

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### **What is discontinuance action and when can it be taken?**

Discontinuance action is when a local planning authority serves a notice (a 'discontinuance notice') under Regulation 8 [\[2\]](#) (<http://www.legislation.gov.uk/ukxi/2007/783/regulation/8/made>), requiring that the display of a particular advertisement with deemed consent (or the use of a particular site for displaying advertisements with deemed consent) be discontinued.

A local planning authority may take discontinuance action if it is satisfied that such action is necessary to remedy a substantial injury to the amenity of the locality or a danger to members of the public. As "substantial injury" to the amenity of the locality is a more rigorous test than the "interests" of amenity, local planning authorities will need to justify this in their statement of reasons [\[2\]](#) (<http://www.legislation.gov.uk/ukxi/2007/783/regulation/8/made>).

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### **What advertisements can be the subject of discontinuance**

### **action?**

Only advertisements displayed with deemed consent, in accordance with one of the Classes of advertisements in Schedule 3 to the Regulations [\[2\]](http://www.legislation.gov.uk/uksi/2007/783/schedule/3/made) (<http://www.legislation.gov.uk/uksi/2007/783/schedule/3/made>).

When using this power against a site, local planning authorities need to define precisely the site, or part of the site to which the discontinuance notice relates.

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### **What alternatives to discontinuance action can a local planning authority consider?**

Prior to serving a discontinuance notice, a local planning authority should consider whether a modified display would be acceptable and if so, the authority should discuss this with the person displaying the advertisement.

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### **On whom must the discontinuance notice be served?**

The local planning authority must serve the discontinuance notice on:

- the owner of the site on which the advertisement is displayed; or
- the occupier of the site, if different;

and

- any other person who undertakes or maintains the display of the advertisement.

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### **What must be stated in a discontinuance notice?**

Regulation 8(3) [\[2\]](http://www.legislation.gov.uk/uksi/2007/783/regulation/8/made)

(<http://www.legislation.gov.uk/uksi/2007/783/regulation/8/made>) provides specific details on what a discontinuance notice must state, in summary:

- the advertisement or advertisements site whose display or use is to stop;
- the period within which the display or use must stop;
- the reasons why the display or use must stop (a 'statement of reasons');
- the effective day of the notice (at least eight weeks after it is served); and
- a list of the names and addresses of the persons served with a copy of the discontinuance notice.

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### **How much detail is needed in the statement of reasons?**

Regulation 8 [\[2\]](http://www.legislation.gov.uk/uksi/2007/783/regulation/8/made)

(<http://www.legislation.gov.uk/uksi/2007/783/regulation/8/made>) requires a statement of the reasons for taking discontinuance action. This must explain why the local planning authority considers that substantial injury to the amenity of the locality or a danger to members of the public, as the case may be, has been caused and also why it considers it necessary to serve the notice.

The reasons given should be specific to the site and leave the person displaying the advertisement in no doubt about exactly what makes the display unacceptable to the local planning authority. If the notice specifies a particular advertisement(s), the statement should specifically address that particular advertisement(s). If the notice refers to the use of the site, the statement must explain why the use of the site as a whole for the display of advertisements should cease.

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### **What is the period for the discontinuance notice to take**

**effect?**

The period for the notice to take effect must not be less than eight weeks after the date on which it is served. This means eight weeks after the date it is received by the person on whom it is served, not eight weeks after the date it is dispatched.

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**How long must be allowed for the display to be discontinued after the notice has taken effect?**

There is no statutory requirement but it needs to be a reasonable period of time, depending on the nature of any works which will have to be undertaken for the display to cease.

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**Can a discontinuance notice be withdrawn or varied?**

A discontinuance notice can be withdrawn or varied in accordance with Regulation 8(6) [\[2\]](http://www.legislation.gov.uk/ukxi/2007/783/regulation/8/made) (<http://www.legislation.gov.uk/ukxi/2007/783/regulation/8/made>).

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**Is there a right of appeal against a discontinuance notice?**

There is a right of appeal to the Secretary of State against a discontinuance notice, before the date it comes into effect. When the local planning authority has received notification of an appeal, not later than 14 days from the date of the notification, the local planning authority must send the Secretary of State a copy of the discontinuance notice and the names and addresses of those served with a copy. If an appeal is made and subsequently dismissed, the display of the advertisement(s) must stop on the date specified in the appeal decision.

See further guidance on the appeal process

(<http://planningguidance.communities.gov.uk/blog/guidance/appeals/>) and the Town and Country Planning (Control of Advertisements) (England) Direction 2013 [\[2\]](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236934/Letter_about_the_technical_review_of_plar)

([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/236934/Letter\\_about\\_the\\_technical\\_review\\_of\\_plar](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236934/Letter_about_the_technical_review_of_plar)) which sets out the information that local planning authorities must supply to the Secretary of State when handling appeals.

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**What is an area of special control?**

An area of special control order places additional restrictions on the display of advertisements. For example, some deemed consent classes are subject to reduced size limits if they are located in an area of special control. It may be appropriate to designate an area of special control in locations where the local planning authority considers these additional restrictions are necessary, above and beyond its powers to restrict deemed consent and take discontinuance action, such as in rural areas or other areas which appear to the Secretary of State to require special protection on the grounds of amenity.

A local planning authority can only make an area of special control order after it has been approved by the Secretary of State. Detail is set out in Regulations 20 [\[2\]](http://www.legislation.gov.uk/ukxi/2007/783/regulation/20/made) (<http://www.legislation.gov.uk/ukxi/2007/783/regulation/20/made>) and 21 [\[2\]](http://www.legislation.gov.uk/ukxi/2007/783/regulation/21/made) (<http://www.legislation.gov.uk/ukxi/2007/783/regulation/21/made>) of and Schedule 5 [\[2\]](http://www.legislation.gov.uk/ukxi/2007/783/schedule/5/made) (<http://www.legislation.gov.uk/ukxi/2007/783/schedule/5/made>) to the Regulations. Before making an order and applying for approval from the Secretary of State, local planning authorities are expected to consult local trade and amenity organisations about the proposal.

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**How frequently should an area of special control order be reviewed?**

Where an area of special control order is in force, a local planning authority shall consider at least once in every five years whether it should be revoked or modified. It is important to ensure that the standards adopted in first making the order are consistently maintained throughout the whole area of special control whilst it remains in effect. Local planning authorities are encouraged to consider the desirability of applying to add further areas to an existing order, and of applying to remove areas in which stricter control is no longer appropriate, whenever they review an order.

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### **How can any Areas of Special Control be identified?**

The local planning authority can advise on any areas of special control. Local planning authorities are encouraged to have up to date information on any such area on their website.

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## **6. Enforcement against specific unauthorised advertisements**

(<http://planningguidance.communities.gov.uk/blog/guidance/advertisements/enforcement-against-specific-unauthorised-advertisements/>)

### **Enforcement against specific unauthorised advertisements**

#### **How are unauthorised advertisements controlled?**

There are several provisions under which unauthorised advertisements can be controlled by local planning authorities. The principal mechanisms are in section 224 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/224) (<http://www.legislation.gov.uk/ukpga/1990/8/section/224>) and section 225 of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/225)

(<http://www.legislation.gov.uk/ukpga/1990/8/section/225>) (as amended). Local planning authorities have specific powers to deal with:

- illegal hoardings;
- fly-posting;
- graffiti; and
- unauthorised advertisements alongside highways.

See also "What happens if an advertisement is displayed without the necessary consent? ([http://planningguidance.communities.gov.uk/blog/guidance/advertisements/is-consent-from-the-local-planning-authority-always-required-to-display-advertisements/#paragraph\\_015](http://planningguidance.communities.gov.uk/blog/guidance/advertisements/is-consent-from-the-local-planning-authority-always-required-to-display-advertisements/#paragraph_015))".

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### **What action is possible in relation to display structures for illegal advertisements (i.e. hoardings)?**

Section 225A [\[2\]](http://www.legislation.gov.uk/ukpga/2011/20/section/127) (<http://www.legislation.gov.uk/ukpga/2011/20/section/127>) of the 1990 Act (as amended) allows local planning authorities to remove and dispose of any display structure – such as an advertisement hoarding – which, in their opinion, is used for the display of illegal advertisements. This provision does not apply to a structure in a building to which the public have no right of access.

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### **How does the removal process work?**

Before taking any action, the local planning authority must serve a 'removal notice' on the person responsible for the erection and maintenance of the structure, provided they can be identified. If not, the local planning authority must fix the removal notice to the structure or display it in the vicinity and serve a copy on the occupier of the land, if one is known, or if one can be identified.

If the removal notice is not complied with, within the time allowed (at least 22 days beginning with the date of the notice), the authority may remove the structure and recover expenses reasonably incurred in doing so from anyone served with the removal notice.

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### **Can an appeal be made against a removal notice?**

There is a right to appeal to the Magistrates' Court against a removal notice, both for a person on whom the notice was served (whether this is the person who appears responsible for the erection or maintenance of the display structure, or the occupier of the land on which a display structure is situated) and the owner or occupier of land upon whom no notice has been served.

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### **What action is possible against fly-posting?**

Local planning authorities can take action against persistent unauthorised advertisements on 'surfaces'. Action can be taken against those responsible for fly-posting, the beneficiaries of fly-posting and the owners of surfaces that are the subject of fly-posting. Local planning authorities are able to recover their costs of removing fly-posting by direct action.

Section 225 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/225) (http://www.legislation.gov.uk/ukpga/1990/8/section/225) of the 1990 Act enables a local planning authority to remove or obliterate any placard or poster displayed illegally in their area. Before this power can be exercised, advance written notice must be given to anyone who can be identified as the person responsible for the display, that:

- in the local planning authority's opinion it is displayed illegally; and
- the local planning authority intends to remove or obliterate it after the expiry of a period specified in the notice.

At least two clear days after the date when the notice is served must be allowed before a local planning authority proceeds to remove or obliterate the display. A local planning authority need not give notice where the placard or poster does not give the address of the person displaying it and the local planning authority does not know that address and is unable to ascertain the relevant address after making reasonable inquiry.

Local planning authorities may serve a defacement removal notice, under section 48 of the Anti-social Behaviour Act 2003 [\[2\]](http://www.legislation.gov.uk/ukpga/2003/38/section/48) (http://www.legislation.gov.uk/ukpga/2003/38/section/48), to require statutory undertakers and others responsible for street furniture and 'relevant surfaces' to remove fly-posters, and where street furniture and relevant surfaces are defaced by fly-posters in a manner that is detrimental to the amenity of the area or is offensive. If a defacement removal notice is not complied with, a local planning authority can remove fly-posters and reclaim the costs of doing so.

If the local planning authority decides to take action against the owner of a surface that is the subject of fly-posting, it may serve an 'action notice' under section 225C [\[2\]](http://www.legislation.gov.uk/ukpga/2011/20/section/127) (http://www.legislation.gov.uk/ukpga/2011/20/section/127) on the owner or occupier of the land where the surface is situated if they are known or can be discovered. If this is not possible after reasonable enquiry, it may fix the notice to the surface.

The action notice requires the owner or occupier to take any specified measures (provided these are reasonable) to prevent or reduce the frequency of the unauthorised advertisements on the surface concerned. At least 28 days must be allowed for action to be taken.

If action is not taken, the local planning authority may take the specified action itself and recover expenses reasonably incurred from the owner or occupier. If, however, damage is caused to land or chattels, compensation may be recovered by any person suffering the damage, but not if the damage was reasonably caused in carrying out the action.

Expenditure cannot be recovered if the surface is on, within the curtilage of, or

forms part of the curtilage boundary of, a dwellinghouse or forms part of a flat.

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### **Can an action notice be appealed?**

There is a right of appeal to the Magistrates' Court against an action notice for the owner or the occupier of the land on which the surface is situated (section 225D [\[a\]](http://www.legislation.gov.uk/ukpga/2011/20/section/127) (<http://www.legislation.gov.uk/ukpga/2011/20/section/127>)). As with the removal notice, there are fixed grounds of appeal.

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### **What action is possible against graffiti?**

Local planning authorities can take action against signs (such as graffiti) on surfaces which are readily accessible to the public, which it considers to be detrimental to the amenity of the area or offensive (section 225F [\[a\]](http://www.legislation.gov.uk/ukpga/2011/20/section/127) (<http://www.legislation.gov.uk/ukpga/2011/20/section/127>)).

The local planning authority may serve a notice on the occupier of the premises requiring them to remove or obliterate the sign allowing at least 15 days to comply. If there appears to be no occupier, the authority may fix the notice to the surface.

If action is not taken within the time specified, the local planning authority may take the action itself and recover its expenses from the person who should have done it. Expenses cannot be recovered if the surface is on, within the curtilage of, or forms part of the curtilage boundary of, a dwellinghouse.

Local planning authorities also have powers to require statutory undertakers and bodies responsible for street furniture to remove graffiti.

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### **Can an appeal be made against a defacement removal notice?**

The owner or the occupier of the land on which the surface is situated has a right of appeal against a defacement removal notice to the Secretary of State (section 225I [\[a\]](http://www.legislation.gov.uk/ukpga/2011/20/section/127) (<http://www.legislation.gov.uk/ukpga/2011/20/section/127>)).

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### **What action is possible against unauthorised advertisements alongside highways?**

Section 132 of the Highways Act 1980 [\[a\]](http://www.legislation.gov.uk/ukpga/1980/66/section/132) (<http://www.legislation.gov.uk/ukpga/1980/66/section/132>) enables the highway authority to remove unlawful advertisements such as pictures or signs attached to any trees, highway signs, structures or works in the highway.

Rural areas are often included in areas of special control, which means that advertisement hoardings alongside motorways, trunk roads and railways in these areas are prohibited. Advertisement hoardings in other areas require express consent before they can be lawfully displayed. Any advertisement, including any advertisement in the deemed consent classes, which does not comply with the conditions and limitations for its class also requires express consent.

Advertisements on vehicles or trailers parked in fields, on verges or in lay-bys require express consent. Only when the vehicle is used as a moving vehicle and is not used principally for the display of advertisements is any advertisement on it lawful without express consent. The site where the vehicle is parked for any length of time becomes a site for the display of advertisements. The 'site' can be regarded as all the land owned by the owner of the site, or the length of the highway in the local planning authority's area.

As there are road safety issues in displaying advertisements alongside motorways and other trunk roads, Highways England should be consulted about any application for express consent. Highways England is unlikely to support



any application for an advertisement which could distract drivers (<http://planningguidance.communities.gov.uk/blog/guidance/advertisements/considerations-affecting-public-safety/>). The road safety and amenity issues raised by these advertisements mean that it is unlikely that express consent to display them would be given.

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## 7. Considerations affecting public safety

(<http://planningguidance.communities.gov.uk/blog/guidance/advertisements/considerations-affecting-public-safety/>)

### Considerations affecting public safety

#### In what locations are advertisements more likely to affect public safety on the roads?

All advertisements are intended to attract attention but proposed advertisements at points where drivers need to take more care are more likely to affect public safety. For example, at junctions, roundabouts, pedestrian crossings, on the approach to a low bridge or level crossing or other places where local conditions present traffic hazards. There are less likely to be road safety problems if the advertisement is on a site within a commercial or industrial locality, if it is a shop fascia sign, name-board, trade or business sign, or a normal poster panel, and if the advertisement is not on the skyline.

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#### What are the main types of advertisement which may cause danger to road users?

The main types of advertisement which may cause danger to road users are:

- (a) those which obstruct or impair sight-lines at corners, bends or at a junction, or at any point of access to a highway;
- (b) those which, because of their size or siting, would obstruct or confuse a road-user's view, or reduce the clarity or effectiveness of a traffic sign or signal, or would be likely to distract road-users because of their unusual nature;
- (c) those which effectively leave insufficient clearance above any part of a highway, or insufficient lateral clearance for vehicles on the carriageway (due allowance being made for the camber of the road-surface);
- (d) those externally or internally illuminated signs (incorporating either flashing or static lights) including those utilising light emitting diode technology:
  - i. where the means of illumination is directly visible from any part of the road;
  - ii. which, because of their colour, could be mistaken for, or confused with, traffic lights or any other authorised signals;
  - iii. which, because of their size or brightness, could result in glare and dazzle, or distract road-users, particularly in misty or wet weather; or
  - iv. which are subject to frequent changes of the display;
- (e) those which incorporate moving or apparently moving elements in their display, or successive individual advertisements which do not display the whole message;
- (f) those requiring close study (such as Public Information Panels), which are situated so that people looking at them would be insufficiently protected from passing vehicles; or those advertisements sited on narrow footpaths where they may interfere with safe passage by causing pedestrians to step into the road;
- (g) those which resemble traffic signs, as defined in section 64 of the Road Traffic Regulation Act 1984 [\[2\]](http://www.legislation.gov.uk/ukpga/1984/27/section/64) (<http://www.legislation.gov.uk/ukpga/1984/27/section/64>), and may therefore be subject to removal by the traffic authority under section 69 [\[2\]](http://www.legislation.gov.uk/ukpga/1984/27/section/69) (<http://www.legislation.gov.uk/ukpga/1984/27/section/69>) of that Act, for example:

- i. those embodying red circles, crosses or triangles, or any traffic sign symbol; or those in combinations of colours which might otherwise be mistaken for traffic signs; or
  - ii. those incorporating large arrows or chevrons with only the arrow or chevron made of retroreflective material or illuminated, causing confusion with similar signs in use at, or approaching roundabouts.
- (h) those which embody directional or other traffic elements and which need special scrutiny because of possible resemblance to, or confusion with, traffic signs, for example, advertisements which:
- i. contain a large arrow or chevron (or have a pointed end and have only a few words of message);
  - ii. invite drivers to turn right on a main road, or where there is fast moving traffic;
  - iii. invite drivers to turn, but are sited so close to the turning that there is not enough time to signal and turn safely; or
  - iv. are so close to similar advertisements, or official traffic signs, that road-users might be confused in the vicinity of a road junction or other traffic hazard.

In many cases it may be possible for the hazardous traffic features of the display to be removed by, for example, re-siting the sign, screening of floodlights, changing the colours of lights or restricting the frequency with which the display changes. Such changes might be achieved by discussing a suitable alternative display with the advertiser.

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### What constitutes a 'traffic sign'?

Section 64 of the Road Traffic Regulation Act 1984 <sup>(a)</sup> (<http://www.legislation.gov.uk/ukpga/1984/27/section/64>) defines a 'traffic sign' as any object, device, line or mark for conveying, to traffic on roads or any specified class of traffic, warnings, information, requirements, restrictions or prohibitions of any description specified by reference to the regulations. The relevant regulations are the Traffic Signs Regulations and General Directions 2002 (as amended) <sup>(a)</sup> (<https://www.gov.uk/government/publications/the-traffic-signs-regulations-and-general-directions-tsrgd-2002>). Section 69 <sup>(a)</sup> (<http://www.legislation.gov.uk/ukpga/1984/27/section/69>) of the 1984 Act gives traffic authorities a discretionary power to remove anything which resembles but is not legally a 'traffic sign'. If therefore, a local planning authority, when considering an application for the display of an advertisement, think that it might resemble a traffic sign, they should consult the local traffic authority before granting express consent.

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### Under what circumstances is a local planning authority required to consult the Secretary of State for Transport?

Under Regulation 13(1)(c) <sup>(a)</sup> (<http://www.legislation.gov.uk/uksi/2007/783/regulation/13/made>), where a local planning authority considers that the safety of users of any trunk road may be affected by the display of an advertisement, the local planning authority must consult the Secretary of State for Transport before granting express consent. Applications for advertisements that may affect the safety of users of trunk roads should be referred to Highways England. Where the trunk road is in Greater London, applications should be referred to Transport for London. (A trunk road, by definition, includes a special road or motorway for which Highways England or the Secretary of State for Transport is the highway authority). Highways England or Transport for London, as appropriate, may be able to advise initially whether the safety of road-users is likely to be affected.

Land alongside trunk roads is landscaped for reasons of safety and appearance. Only prescribed or authorised traffic signs are permitted on land acquired for trunk roads. Advertisements may, however, be permitted within a 'service area'. Local planning authorities should ensure that on other land alongside trunk roads, no advertisements which could adversely affect amenity or constitute a danger to traffic are granted consent.

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### **Under what circumstances is a local planning authority required to consult the highway authority?**

Under Regulation 13(1)(e) 

(<http://www.legislation.gov.uk/uksi/2007/783/regulation/13/made>), the highway authority must be consulted by the local planning authority if an application for express consent relates to a proposed advertisement that is visible from the highway and has moving features, moving parts or flashing lights.

If the local planning authority has any doubt about the effect of any other advertisement on public safety, they should also consult the local highway authority. It is for the local planning authority to decide whether they agree with the advice from the highway authority on any particular case. They should not to rely on it automatically.

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### **In what ways can advertisements affect railway safety?**

Under certain conditions, advertisements, whether illuminated or not, can interfere with railway safety in the following ways:

- by interfering with the visibility or interpretation of fixed signals;
- by causing the illusion of a signal where no signal is situated;
- by being mistaken for hand signals;
- by interfering with warning boards, speed-restriction signs, tail-lights, or other signs or lights;
- by interfering with the visibility of level crossings;
- by interfering with the visibility of level crossing signs and signals for road and rail users.

Green, yellow or red illuminated advertisements are particularly liable to cause such difficulties.

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### **What are the consultation requirements for proposed advertisements that could affect the safe operation of a railway?**

Under Regulation 13(1)(d) 

(<http://www.legislation.gov.uk/uksi/2007/783/regulation/13/made>), the local planning authority must consult the person responsible for operating the railway (such as Network Rail or London Underground Limited) if it considers that granting express consent may affect the safety of persons using the railway. This includes illuminated advertisements visible from the railway track, or non-illuminated advertisements adjacent to the railway track.

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### **What consideration should local planning authorities give to public safety in relation to waterways, docks and harbours?**

Local planning authorities should consider whether any particular advertisement is likely to obstruct, or cause confusion in the interpretation of, navigation lights, beacons and similar signs and warnings to vessels using inland waterways, docks and harbours, and coastal waters. Advertisements should not

overhang or obstruct a waterway; nor should they be displayed or erected in such a manner as to obstruct or interfere with navigation by hindering a clear view of the waterway from a vessel, particularly at bends.

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### **What are the consultation requirements for proposed advertisements that may affect the safe operation of a waterway, dock or harbour?**

Where it appears to a local planning authority that granting express consent to display an advertisement may affect the safety of a waterway (including coastal waters), dock or harbour, the local planning authority must, under Regulation 13(1)(d) [\[2\]](http://www.legislation.gov.uk/uksi/2007/783/regulation/13/made) (<http://www.legislation.gov.uk/uksi/2007/783/regulation/13/made>), consult the responsible bodies.

The Canal & River Trust is the responsible body for inland waterways that they own or manage. For docks and harbours, consultation is with the appropriate dock or harbour authority. For harbour approaches (or other coastal waters where there are navigational lights), Trinity House must be consulted.

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### **In what ways can advertisements affect the safety of aircraft?**

An advertisement may endanger the safety of aircraft because:

- its glare may dazzle a pilot of an aircraft in flight or taking off/ landing at an aerodrome;
- it may be mistaken by a pilot for visual guidance signals (e.g. the visual glide path) on the approach to an aerodrome;
- it may constitute an obstacle to an aircraft if it is on high ground or in the immediate vicinity of an aerodrome;
- in the proximity of radar or other navigational aid equipment, it might impair the performance of the equipment.

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### **What are the consultation requirements for proposed advertisements that may affect the safe operation of an aerodrome?**

Where it appears to a local planning authority that granting express consent to display an advertisement may affect the safety of an aerodrome (civil or military), the local planning authority must, under Regulation 13(1)(d) [\[2\]](http://www.legislation.gov.uk/uksi/2007/783/regulation/13/made) (<http://www.legislation.gov.uk/uksi/2007/783/regulation/13/made>), consult the person responsible for operating the aerodrome.

If the aerodrome in question has been officially safeguarded, the address of the consultee will be shown on the safeguarding map. In the case of a military aerodrome, consultation must be undertaken with the Defence Infrastructure Organisation.

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### **Is crime prevention a public safety consideration in the control of advertisements?**

The prevention of crime is a public safety consideration and local planning authorities should consider whether granting express consent could block the view of CCTV cameras, or whether illumination from an advertisement would cause glare on such cameras.

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## 8. Considerations affecting amenity

(<http://planningguidance.communities.gov.uk/blog/guidance/advertisements/considerations-affecting-amenity/>)

### Considerations affecting amenity

#### What does “Amenity” mean?

“Amenity” is not defined exhaustively in the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 <sup>(2)</sup>

(<http://www.legislation.gov.uk/ukSI/2007/783/contents/made>). It includes aural and visual amenity (regulation 2(1) <sup>(2)</sup>

(<http://www.legislation.gov.uk/ukSI/2007/783/regulation/2/made>)) and factors relevant to amenity include the general characteristics of the locality, including the presence of any feature of historic, architectural, cultural or similar interest (regulation 3(2)(a) <sup>(2)</sup> (<http://www.legislation.gov.uk/ukSI/2007/783/regulation/3/made>)).

It is, however, a matter of interpretation by the local planning authority (and the Secretary of State) as it applies in any particular case. In practice, “amenity” is usually understood to mean the effect on visual and aural amenity in the immediate neighbourhood of an advertisement or site for the display of advertisements, where residents or passers-by will be aware of the advertisement.


So, in assessing amenity, the local planning authority would always consider the local characteristics of the neighbourhood: for example, if the locality where the advertisement is to be displayed has important scenic, historic, architectural or cultural features, the local planning authority would consider whether it is in scale and in keeping with these features.

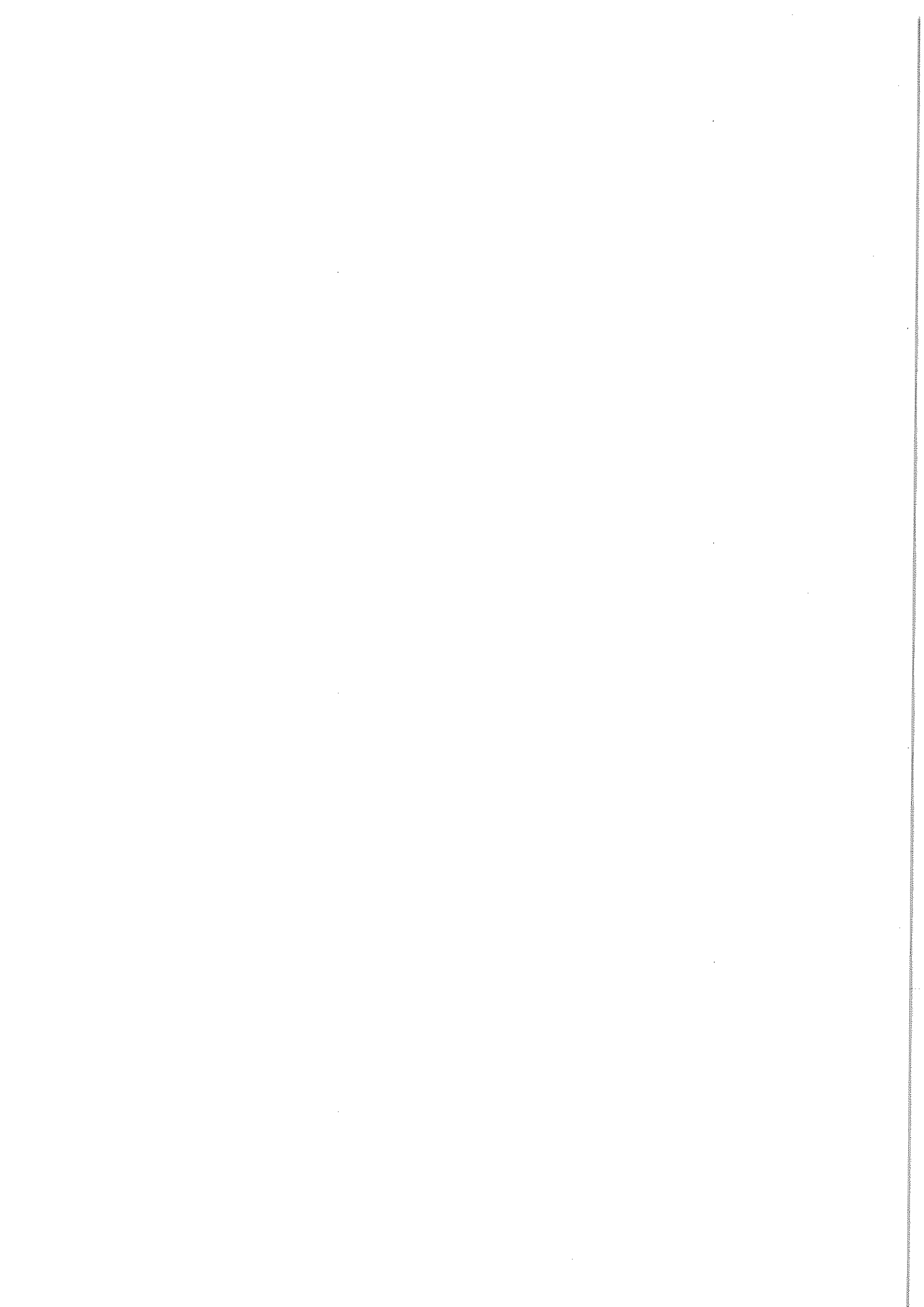
This might mean that a large poster-boarding would be refused where it would dominate a group of listed buildings, but would be permitted in an industrial or commercial area of a major city (where there are large buildings and main highways) where the advertisement would not adversely affect the visual amenity of the neighbourhood of the site.

If the advertisement makes a noise, aural amenity would also be taken into account before express consent would be given.

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 Department for Communities & Local Government  
(<https://www.gov.uk/government/organisations/department-for-communities-and-local-government>)



# Planning Practice Guidance <http://planningguidance.communities.gov.uk>

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Guidance

## Air quality

Print 

### 1. Why should planning be concerned about air quality?

<http://planningguidance.communities.gov.uk/blog/guidance/air-quality/why-should-planning-be-concerned-about-air-quality/>

#### Why should planning be concerned about air quality?

Action to manage and improve air quality is largely driven by EU legislation. The 2008 Ambient Air Quality Directive [\[1\]](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:152:0001:0044:EN:PDF) sets legally binding limits for concentrations in outdoor air of major air pollutants that impact public health such as particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>) and nitrogen dioxide (NO<sub>2</sub>). As well as having direct effects, these pollutants can combine in the atmosphere to form ozone, a harmful air pollutant (and potent greenhouse gas) which can be transported great distances by weather systems.

Defra carries out an annual national assessment of air quality using modelling and monitoring to determine compliance with EU Limit Values [\[2\]](http://ec.europa.eu/environment/air/quality/standards.htm). It is important that the potential impact of new development on air quality is taken into account in planning where the national assessment indicates that relevant limits have been exceeded or are near the limit.

The local air quality management (LAQM) regime requires every district and unitary authority to regularly review and assess air quality in their area. These reviews identify whether national objectives have been, or will be, achieved at relevant locations, by an applicable date. Further guidance on LAQM can be found here [\[3\]](https://www.gov.uk/government/publications/local-air-quality-management-technical-guidance-laqm-tg-09).

If national objectives [\[4\]](http://aqma.defra.gov.uk/aqma/objectives.html) are not met, or at risk of not being met, the local authority concerned must declare an air quality management area [\[5\]](http://aqma.defra.gov.uk/aqma/home.html) and prepare an air quality action plan. This identifies measures that will be introduced in pursuit of the objectives and can have implications for planning.

Air quality can also affect biodiversity <http://planningguidance.communities.gov.uk/blog/guidance/natural-environment/> and may therefore impact on our international obligations under the Habitats Directive [\[6\]](http://ec.europa.eu/environment/nature/legislation/habitatsdirective/index_en.htm).


Odour and dust can also be a planning concern, for example, because of the effect on local amenity.

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### 2. What is the role of Local Plans with regard to air quality?

<http://planningguidance.communities.gov.uk/blog/guidance/air-quality/what-is-the-role-of-local-plans-with-regard-to-air-quality/>

#### What is the role of Local Plans with regard to air quality?

Local Plans (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>) can affect air quality in a number of ways, including through what development is proposed and where, and the encouragement given to sustainable transport. Therefore in plan making, it is important to take into account air quality management areas  (<http://aqma.defra.gov.uk/aqma/home.html>) and other areas where there could be specific requirements or limitations on new development because of air quality. Air quality is a consideration in Strategic Environmental Assessment and sustainability appraisal (<http://planningguidance.communities.gov.uk/blog/guidance/strategic-environmental-assessment-and-sustainability-appraisal/>) can be used to shape an appropriate strategy, including through establishing the 'baseline', appropriate objectives for the assessment of impact and proposed monitoring.

Drawing on the review of air quality carried out for the local air quality management regime, the Local Plan may need to consider:

- the potential cumulative impact of a number of smaller developments on air quality as well as the effect of more substantial developments;
- the impact of point sources of air pollution (pollution that originates from one place); and,
- ways in which new development would be appropriate in locations where air quality is or likely to be a concern and not give rise to unacceptable risks from pollution. This could be through, for example, identifying measures for offsetting the impact on air quality arising from new development including supporting measures in an air quality action plan or low emissions strategy where applicable.

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### 3. Are air quality concerns relevant to neighbourhood planning?

(<http://planningguidance.communities.gov.uk/blog/guidance/air-quality/are-air-quality-concerns-relevant-to-neighbourhood-planning/>)

#### **Are air quality concerns relevant to neighbourhood planning?**

Air quality concerns can be relevant to neighbourhood planning (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/>), and it is important to consider air quality when drawing up a neighbourhood plan or considering a neighbourhood development order. The local planning and environmental health departments will be able to advise whether air quality could be a concern.

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### 4. What information is available about air quality?

(<http://planningguidance.communities.gov.uk/blog/guidance/air-quality/what-information-is-available-about-air-quality/>)

#### **What information is available about air quality?**

In addition to the information on local air quality held by environmental health departments in local authorities, Defra also publishes information and there is a range of other potential sources which can be drawn on, depending on the development and its proposed location.

##### *Information published by Defra*

- the UK Air Information Resource (UK-AIR)  (<http://uk-air.defra.gov.uk/>), which contains information on historic and current air quality across the UK, including a GIS portal  (<http://uk-air.defra.gov.uk/data/gis-mapping/>) of Defra's national assessment against EU Limit Values and air quality management areas;



- air quality management area [\[2\]](http://aqma.defra.gov.uk/aqma/home.html) (<http://aqma.defra.gov.uk/aqma/home.html>) records and modelled background pollution concentrations [\[2\]](http://aqma.defra.gov.uk/aqma/home.html) (<http://aqma.defra.gov.uk/aqma/home.html>);
- the National Atmospheric Emissions Inventory [\[2\]](http://naei.defra.gov.uk/) (<http://naei.defra.gov.uk/>) for emissions of air pollution including maps at a 1km by 1km resolution for a wide range of pollutants;
- the Pollutant and Release Transfer Register [\[2\]](http://prtr.defra.gov.uk/) (<http://prtr.defra.gov.uk/>), which has links to emissions from installations permitted under the Environmental Permitting Regulations, which is useful for point sources.

#### *Other sources of information*

- the Geostore Datashare [\[2\]](http://www.geostore.com/environment-agency/) (<http://www.geostore.com/environment-agency/>) published by the Environment Agency, which has information about pollution incidents and sites registered under the Environmental Permitting Regulations;
- information about the impact of air quality on habitats and species, (including critical loads and levels) such as that held by the Air Pollution Information System [\[2\]](http://www.apis.ac.uk/) (<http://www.apis.ac.uk/>). This has been developed in partnership by the UK conservation agencies and regulatory agencies and the Centre for Ecology and Hydrology;
- the Sustainability Appraisal informing the local plan where air quality has been a concern;
- recent environmental statements that may include updated baseline assessments.

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## 5. When could air quality be relevant to a planning decision?

(<http://planningguidance.communities.gov.uk/blog/guidance/air-quality/when-could-air-quality-be-relevant-to-a-planning-decision/>)

### **When could air quality be relevant to a planning decision?**

Whether or not air quality is relevant to a planning decision will depend on the proposed development and its location. Concerns could arise if the development is likely to generate air quality impact in an area where air quality is known to be poor. They could also arise where the development is likely to adversely impact upon the implementation of air quality strategies and action plans and/or, in particular, lead to a breach of EU legislation (including that applicable to wildlife). The steps a local planning authority might take in considering air quality are set out here

(<http://planningguidance.communities.gov.uk/blog/guidance/air-quality-new/how-do-considerations-about-air-quality-fit-into-the-development-management-process/>).

When deciding whether air quality is relevant to a planning application, considerations could include whether the development would:

- Significantly affect traffic in the immediate vicinity of the proposed development site or further afield. This could be by generating or increasing traffic congestion; significantly changing traffic volumes, vehicle speed or both; or significantly altering the traffic composition on local roads. Other matters to consider include whether the proposal involves the development of a bus station, coach or lorry park; adds to turnover in a large car park; or result in construction sites that would generate large Heavy Goods Vehicle flows over a period of a year or more.
- Introduce new point sources of air pollution. This could include furnaces which require prior notification to local authorities; or extraction systems (including chimneys) which require approval under pollution

control legislation or biomass boilers or biomass-fuelled CHP plant; centralised boilers or CHP plant burning other fuels within or close to an air quality management area or introduce relevant combustion within a Smoke Control Area;

- Expose people to existing sources of air pollutants. This could be by building new homes, workplaces or other development in places with poor air quality.
- Give rise to potentially unacceptable impact (such as dust) during construction for nearby sensitive locations.
- Affect biodiversity. In particular, is it likely to result in deposition or concentration of pollutants that significantly affect a European-designated wildlife site, and is not directly connected with or necessary to the management of the site, or does it otherwise affect biodiversity, particularly designated wildlife sites.

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## 6. Where to start if bringing forward a proposal where air quality could be a concern?

(<http://planningguidance.communities.gov.uk/blog/guidance/air-quality/where-to-start-if-bringing-forward-a-proposal-where-air-quality-could-be-a-concern/>)

### **Where to start if bringing forward a proposal where air quality could be a concern?**

When there are concerns about air quality, the local planning authority may want to know about:

- the 'baseline' local air quality;
- whether the proposed development could significantly change air quality during the construction and operational phases; and/or
- whether there is likely to be a significant increase in the number of people exposed to a problem with air quality, such as when new residential properties are proposed in an area known to experience poor air quality.

Early engagement with the local planning and environmental health departments is therefore important including to establish the need and, where appropriate, scope of any assessment that will be needed to support the application.

For large and complex industrial processes, the Environment Agency should also be able to help by identifying:

- if an environmental permit is also required before the proposed development can start operating (they have published guidance for developments requiring planning permission and environmental permits);
- if they are aware of any significant air quality issues that may arise at the permitting stage (so there are 'no surprises'); and
- advising whether there are any special requirements that might affect the likelihood of getting planning permission (such as the height of chimneys).

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## 7. How detailed does an air quality assessment need to be?

(<http://planningguidance.communities.gov.uk/blog/guidance/air-quality/how-detailed-does-an-air-quality-assessment-need-to-be/>)

### **How detailed does an air quality assessment need to be?**

Assessments should be proportionate to the nature and scale of development proposed and the level of concern about air quality, and because of this are likely to be locationally specific. The scope and content of supporting

information is therefore best discussed and agreed between the local planning authority and applicant before it is commissioned. Air quality is a consideration in Environmental Impact Assessment

(<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/>), if one is required, and also in a Habitats Regulations Appropriate Assessment  (<https://www.gov.uk/government/publications/guidance-on-competent-authority-coordination-under-the-habitats-regulations>).

The following could figure in assessments and be usefully agreed at the outset:

- a description of baseline conditions and how these could change;
- relevant air quality concerns;
- the assessment methods to be adopted and any requirements around verification of modelling air quality;
- sensitive locations;
- the basis for assessing impact and determining the significance of an impact;
- construction phase impact; and/or
- acceptable mitigation measures.

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## 8. How can an impact on air quality be mitigated?

(<http://planningguidance.communities.gov.uk/blog/guidance/air-quality/how-can-impacts-on-air-quality-be-mitigated/>)

### How can an impact on air quality be mitigated?

Mitigation options where necessary will be locationally specific, will depend on the proposed development and should be proportionate to the likely impact. It is important therefore that local planning authorities work with applicants to consider appropriate mitigation so as to ensure the new development is appropriate for its location and unacceptable risks are prevented. Planning conditions (<http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/>) and obligations

(<http://planningguidance.communities.gov.uk/blog/guidance/planning-obligations/>) can be used to secure mitigation where the relevant tests are met.

Examples of mitigation include:

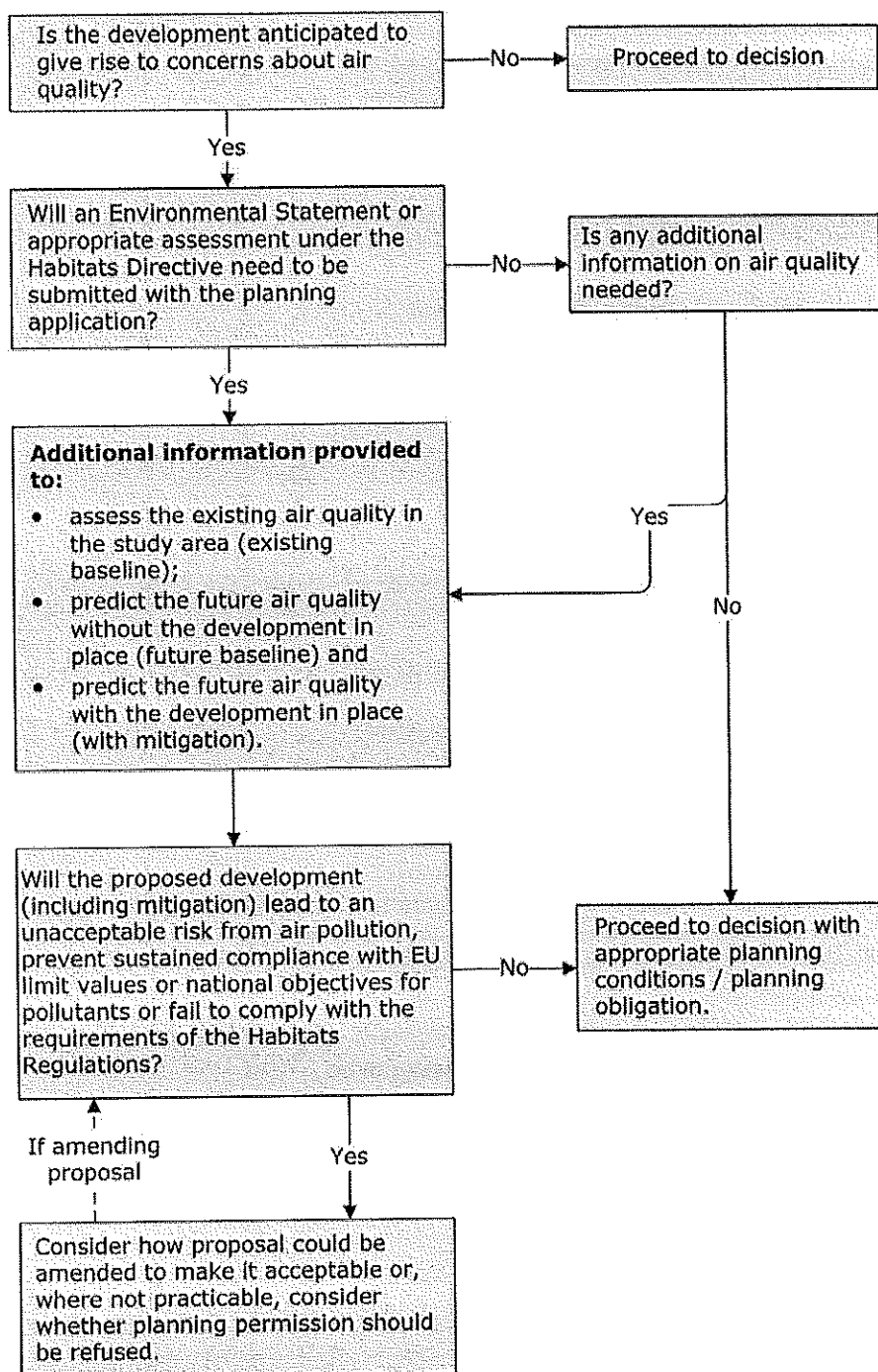
- the design and layout of development to increase separation distances from sources of air pollution;
- using green infrastructure, in particular trees, to absorb dust and other pollutants;
- means of ventilation;
- promoting infrastructure to promote modes of transport with low impact on air quality;
- controlling dust and emissions from construction, operation and demolition; and
- contributing funding to measures, including those identified in air quality action plans and low emission strategies, designed to offset the impact on air quality arising from new development.

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## 9. How do considerations about air quality fit into the development management process?

(<http://planningguidance.communities.gov.uk/blog/guidance/air-quality/how-do-considerations-about-air-quality-fit-into-the-development-management-process/>)

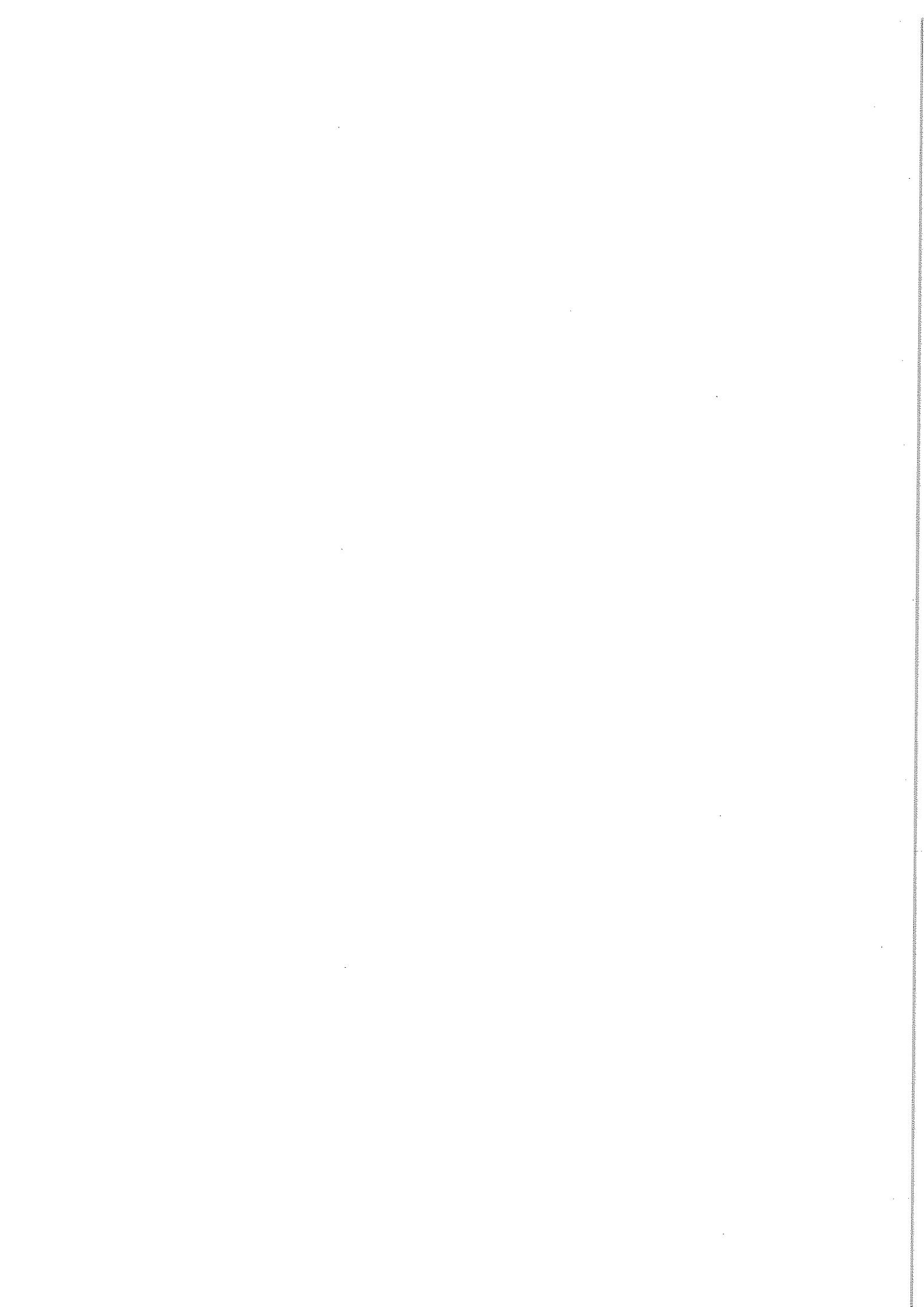
### How do considerations about air quality fit into the development management process?



(<http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/air-quality.jpg>)

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## Planning Practice Guidance (<http://planningguidance.communities.gov.uk>)

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Guidance

### Appeals

Print 

1. Planning appeals – general (<http://planningguidance.communities.gov.uk/blog/guidance/appeals/planning-appeals-general/>)

#### Planning appeals – general

##### Is there a right of appeal against decisions on planning permission and other planning decisions?

There is a right of appeal against most local authority decisions on planning permission and other planning decisions, such as advertisement consent, listed building consent, prior approval of permitted development rights, and enforcement.

Further information on appeals against decisions on planning permission can be found in section 2

(<http://planningguidance.communities.gov.uk/blog/guidance/appeals/appeals-against-refusal-of-planning-permission/>).

Further information on appeals against other planning decisions can be found in section 3 (<http://planningguidance.communities.gov.uk/blog/guidance/appeals/appeals-against-other-planning-decisions/>).

Before making any appeal the party seeking permission should first consider re-engaging with the local planning authority to discuss whether any changes to the proposal would make it more acceptable and likely to gain permission. It is possible that a further planning application may be submitted without charge. However, this will depend on the circumstances of each case, so parties should ask the local planning authority for further details.

Applicants should give consideration to the merits of the case, and whether there are strong grounds to contest the reasons for refusal of permission, or the conditions attached to a permission, before submitting an appeal. Parties who pursue an appeal unreasonably without sound grounds for appeal may have an award of costs made against them; see section 4 for more information.

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##### Is there a right of appeal if the local planning authority does not make a decision within the statutory time period?

Yes, applicants may appeal if the local planning authority does not make a decision on the application within the deadline

(<http://planningguidance.communities.gov.uk/blog/guidance/determining-a-planning-application/what-are-the-time-periods-for-determining-a-planning-application/>). Different deadlines apply, depending on the type of planning decision.

Further information on appeals against decisions about planning permission under section 78 of the Town and Country Planning Act 1990 [\[2\]](#)

(<http://www.legislation.gov.uk/ukpga/1990/8/contents>) can be found in section 2 (<http://planningguidance.communities.gov.uk/blog/guidance/appeals/appeals-against-refusal-of-planning-permission/>).

Further information on appeals against other planning decisions can be found in section 3 (<http://planningguidance.communities.gov.uk/blog/guidance/appeals/appeals-against-other-planning-decisions/>).

However, applicants should first consider engaging with the local planning authority to establish when an application might be decided, before deciding whether to appeal against non-determination.

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### **What is the deadline for submitting an appeal against refusal of permission or unacceptable conditions?**

Different deadlines apply to the various types of appeal. Further information on appeals against decisions about planning permission can be found in section 2 (<http://planningguidance.communities.gov.uk/blog/guidance/appeals/appeals-against-refusal-of-planning-permission/>).

Further information on appeals against other planning decisions can be found in section 3 (<http://planningguidance.communities.gov.uk/blog/guidance/appeals/appeals-against-other-planning-decisions/>).

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### **Who decides the appeal?**

Most appeals are determined by Planning Inspectors on behalf of the Secretary of State. However, the Secretary of State has the power to make the decision on an appeal rather than it being made by a Planning Inspector – this is referred to as a ‘recovered appeal’.

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### **When might an appeal be recovered?**

Recovery can occur at any stage of the appeal, even after the site visit, a hearing or an inquiry has taken place. In recovered cases, a report will be passed to the Secretary of State to make the final decision, taking into account the Inspector’s recommendation. Guidance on propriety in Ministerial decision taking on planning matters has been published [\[2\]](https://www.gov.uk/government/publications/planning-propriety-issues-guidance)

(<https://www.gov.uk/government/publications/planning-propriety-issues-guidance>) separately.

The Secretary of State will consider recovery in line with the criteria below, set out in a Parliamentary Statement [\[2\]](http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm080630/wmstext/80630m0001.htm) (<http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm080630/wmstext/80630m0001.htm>) on 30 June 2008. There may be other cases which merit recovery because of the particular circumstances:

- Proposals for development of major importance having more than local significance.
- Proposals giving rise to substantial regional or national controversy.
- Proposals which raise important or novel issues of development control, and/or legal difficulties.
- Proposals against which another Government department has raised major objections or has a major interest.
- Proposals of major significance for the delivery of the Government’s climate change programme and energy policies.
- Proposals for residential development of over 150 units or on sites of over 5 hectares, which would significantly impact on the Government’s objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.
- Proposals which involve any main town centre use or uses where that use or uses comprise(s) over 9,000m<sup>2</sup> gross floorspace (either as a single proposal or as part of or in combination with other current proposals) and which are proposed on a site in an edge of centre or out of centre location that is not in accordance with an up-to-date development plan document.
- Proposals for significant development in the Green Belt.
- Major proposals involving the winning and working of minerals.
- Proposals which would have an adverse impact on the outstanding universal value, integrity, authenticity and significance of a World Heritage Site.
- Proposals involving traveller sites in the Green Belt, as set out in a statement to Parliament [\[2\]](#)



(<http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140117/wmstext/140117m0001.htm>) on 17 January 2014.

- Proposals for residential development of over 10 units in areas where a qualifying body has submitted a neighbourhood plan proposal to the local planning authority; or where a neighbourhood plan has been made, as set out in a statement to Parliament [\[2\]](#)  
(<http://www.publications.parliament.uk/pa/cm201516/cmhansrd/cm160111/wmstext/160111m0001.htm>) on 11 January 2016.
- Proposals for exploring and developing shale gas, as set out in a statement to Parliament [\[2\]](#)  
(<http://www.publications.parliament.uk/pa/cm201516/cmhansrd/cm150916/wmstext/150916m0001.htm#15091631000002>) on 16 September 2015.

A recovered appeal will be determined via written representations, a hearing or an inquiry in the same way as other planning appeals. Where an appeal case has been recovered, the Inspector will not make the decision but instead will write a report and include a recommendation to the Secretary of State who will make the decision.

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### How are appeals determined?

In general, appeals are determined on the same basis as the original application. The decision will be made taking into account national and local policies, and the broader circumstances in place at the time of the decision. Where any change between the original planning decision and the appeal has the potential to affect the outcome, all parties will have an opportunity to comment on the new material.

The appeal will be determined as if the application for permission had been made to the Secretary of State in the first instance. This means that the Inspector (or the Secretary of State) will come to their own view on the merits of the application. The Inspector (or the Secretary of State) will consider the weight to be given to the relevant planning considerations and come to a decision to allow or refuse the appeal. As Inspectors (or the Secretary of State) are making the decision as if for the first time, they may refuse the permission on different grounds to the local planning authority. Where an appeal is made against the grant of permission with conditions, the Inspector (or the Secretary of State) will make a decision in regard to both the granting of the permission and the imposition of conditions.

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### What procedure will the appeal follow?

The procedure to be followed at the appeal will depend on the complexity of the planning matters to be considered:

- The Householder Appeals Service [\[2\]](#) (<https://www.gov.uk/appeal-householder-planning-decision>) provides an expedited appeal process for appeals on most householder planning applications (see Annex C of the Planning Inspectorate Procedural Guide [\[2\]](#) (<https://www.gov.uk/government/publications/planning-appeals-procedural-guide>)).
- The Commercial Appeals Service provides an expedited appeal process for some less complex appeals related to shop fronts and advertisement consent (see Annex C of the Planning Inspectorate Procedural Guide [\[2\]](#) (<https://www.gov.uk/government/publications/planning-appeals-procedural-guide>)).
- The majority of appeals are determined via written representations (see Annex D of the Planning Inspectorate Procedural Guide [\[2\]](#) (<https://www.gov.uk/government/publications/planning-appeals-procedural-guide>)).
- Hearings provide an opportunity for the Inspector to ask questions about the evidence in more complex cases (see Annex E of the Planning Inspectorate Procedural Guide [\[2\]](#) (<https://www.gov.uk/government/publications/planning-appeals-procedural-guide>)).

- Inquiries provide an opportunity for evidence to be tested in the most complex cases (see Annex F of the Planning Inspectorate Procedural Guide [\[2\]](https://www.gov.uk/government/publications/planning-appeals-procedural-guide) (<https://www.gov.uk/government/publications/planning-appeals-procedural-guide>)).
- The Commercial Appeals Service provides an expedited appeal process for some less complex appeals related to shop fronts and advertisement consent. This procedure applies to appeals relating to certain types of planning application or applications for advertisement consent submitted on or after 1 October 2013. (see Annex C of the Planning Inspectorate Procedural Guide [\[2\]](https://www.gov.uk/government/publications/planning-appeals-procedural-guide) (<https://www.gov.uk/government/publications/planning-appeals-procedural-guide>)).

Appellants will be asked to indicate their view of the most appropriate procedure for their case, following the criteria laid down by the Secretary of State (see Annex K of the Planning Inspectorate Procedural Guide [\[2\]](https://www.gov.uk/government/publications/planning-appeals-procedural-guide) (<https://www.gov.uk/government/publications/planning-appeals-procedural-guide>)). However, in most appeals, the Planning Inspectorate has the power to determine that a different procedure be used.

All parties are expected to behave reasonably at all stages of the planning and appeal process, and ensure that they provide all the required information by due deadlines. Failure to behave reasonably may give rise to an award of costs; see section 4 for more information (<http://planningguidance.communities.gov.uk/blog/guidance/appeals/the-award-of-costs-general/>).

ID 16-007-20140306 Last updated 06 03 2014

### **Is there a right of appeal against permission granted to someone else?**

Once the local planning authority has granted planning permission, there is no right of appeal to the Secretary of State against the decision, except by the original applicant where they are appealing against a condition.

A decision by the local planning authority can only be challenged in the courts on a point of law; for example, the way in which the decision has been made and whether the correct procedures have been followed. A challenge in the courts has to be brought within 6 weeks. Further information about applying for judicial review is provided by the Ministry of Justice [\[2\]](http://www.justice.gov.uk/courts/rcj-rolls-building/administrative-court/applying-for-judicial-review) (<http://www.justice.gov.uk/courts/rcj-rolls-building/administrative-court/applying-for-judicial-review>).

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### **Can an appeal decision be challenged?**

An appeal decision may only be challenged through the courts on certain statutory grounds. Proceedings to quash an appeal decision relating to the grant of planning permission must be brought within 6 weeks.

Further information about applications under section 288 of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/288) (<http://www.legislation.gov.uk/ukpga/1990/8/section/288>) can be found here [\[2\]](http://www.justice.gov.uk/courts/rcj-rolls-building/administrative-court/guidance-documents) (<http://www.justice.gov.uk/courts/rcj-rolls-building/administrative-court/guidance-documents>).

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### **Is there an opportunity for interested parties to submit comments or objections regarding a proposal at appeal?**

People who are interested in the outcome of an appeal have an important role to play in the planning process. Their representations indicating support for, or opposition to, a proposed scheme are taken into account by the Inspector along with other material considerations.

There are opportunities for interested parties, such as neighbours, to make comments on the majority of types of appeals. The local planning authority will normally advise interested parties of the appeal start date, and the date by which any representations should be made where applicable.

Further information on appeals against decisions on planning permission under section 78 of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/78) (<http://www.legislation.gov.uk/ukpga/1990/8/section/78>) can be found in section 2 (<http://planningguidance.communities.gov.uk/blog/guidance/appeals/appeals-against-refusal-of-planning-permission/>).

Further information on appeals against other planning decisions can be found in section 3 (<http://planningguidance.communities.gov.uk/blog/guidance/appeals/appeals-against-other-planning-decisions/>).

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## 2. Appeals against refusal of planning permission

(<http://planningguidance.communities.gov.uk/blog/guidance/appeals/appeals-against-refusal-of-planning-permission/>)

### Appeals against refusal of planning permission

#### Is there a right of appeal against decisions on planning applications?

If an application for planning permission (<http://planningguidance.communities.gov.uk/blog/guidance/making-an-application-2/types-of-application/>) is refused by the local planning authority, or if it is granted with conditions, an appeal can be made to the Secretary of State against the decision, or the conditions, under section 78 of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/78) (<http://www.legislation.gov.uk/ukpga/1990/8/section/78>).

Before making any appeal the applicant should first consider re-engaging with the local planning authority to discuss whether any changes to the proposal would make it more acceptable and likely to gain planning permission. A revised planning application could then be submitted.

Applicants should give consideration to the merits of the case, and whether there are strong grounds to contest the conditions or reasons for refusal of planning permission before submitting an appeal. Parties who pursue an appeal unreasonably without sound grounds for appeal may have an award of costs made against them; see section 4 for more information (<http://planningguidance.communities.gov.uk/blog/guidance/appeals/the-award-of-costs-general/>).

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#### Is there a right of appeal if the local planning authority does not make a decision within the statutory time period?

Applicants for planning permission may appeal if the local planning authority does not make a decision on the application within the deadline [\[2\]](https://www.gov.uk/planning-permission-england-wales/after-you-apply) (<https://www.gov.uk/planning-permission-england-wales/after-you-apply>) (8 weeks for non-major applications, 13 weeks for major applications or 16 weeks for applications subject to an environmental impact assessment), in the absence of the written agreement of the parties to extend the decision-making period.

However, applicants should first consider engaging with the local planning authority to establish when an application might be decided, before deciding whether to appeal against non-determination.

For details on appeals against non-validation of the planning application see the guidance on delay in the validation of a planning application (<http://planningguidance.communities.gov.uk/blog/guidance/making-an-application-2/receipt-of-application/delay-in-the-validation-of-an-application/>).

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#### What is the deadline for submitting an appeal against refusal of planning permission or permission with conditions?

Most planning appeals must be received within six months of the date on the decision notice. Where the appeal relates to an application for householder planning consent, and is to be determined via the fast track Householder

Appeals Service [\[2\]](https://www.gov.uk/appeal-householder-planning-decision) (<https://www.gov.uk/appeal-householder-planning-decision>), there are only 12 weeks to make the appeal (see Annex C of the Planning Inspectorate Procedural Guide [\[2\]](https://www.gov.uk/government/publications/planning-appeals-procedural-guide) (<https://www.gov.uk/government/publications/planning-appeals-procedural-guide>)).

There are different deadlines by which to submit an appeal under the Commercial Appeals Service:

- appeals related to shop fronts must be submitted within 12 weeks
- advertisement consent appeals must be submitted within 8 weeks.

For more detail see Annex C of the Planning Inspectorate Procedural Guide [\[2\]](https://www.gov.uk/government/publications/planning-appeals-procedural-guide) (<https://www.gov.uk/government/publications/planning-appeals-procedural-guide>).

If an appeal on an application for planning permission is linked to enforcement action (<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/>), there are only 28 days to make the appeal.

All appeals must be accompanied by the relevant application documents, including the full statement of case. For further information see the Planning Inspectorate Procedural Guide [\[2\]](https://www.gov.uk/government/publications/planning-appeals-procedural-guide) (<https://www.gov.uk/government/publications/planning-appeals-procedural-guide>).

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### How long will it take to receive a decision?

The Planning Inspectorate will endeavor to determine every appeal as efficiently as possible, and will aim to do so in line with performance targets.

Procedure	Time to determine
Householder Appeals Service	80% within 8 weeks
Commercial Appeals Service	80% within 8 weeks
Written Representations	80% within 14 weeks
Hearings	80% within 14 weeks
Inquiries (non-bespoke)	80% within 22 weeks

All parties must provide the evidence required and meet the procedural deadlines for these decision timescales to be achieved. Full details of the information required and the deadlines are in the Planning Inspectorate Procedural Guide [\[2\]](https://www.gov.uk/government/publications/planning-appeals-procedural-guide) (<https://www.gov.uk/government/publications/planning-appeals-procedural-guide>).

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### Is there an opportunity for interested parties to submit comments or objections regarding a planning application, once at appeal?

There are opportunities for interested parties, such as neighbours, to make comments on the majority of planning appeals. The local planning authority will normally advise interested parties of the appeal start date and the opportunity to make comment.

For appeals determined via written representations and hearings such written representations must be made before the end of the fifth week after the start date of the appeal.

Certain parties have the right to appear at a hearing or inquiry under rule 11 of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000 [\[2\]](http://www.legislation.gov.uk/ukSI/2000/1624/article/11/made) (<http://www.legislation.gov.uk/ukSI/2000/1624/article/11/made>), rule 11 of the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000 [\[2\]](http://www.legislation.gov.uk/ukSI/2000/1625/article/11/made) (<http://www.legislation.gov.uk/ukSI/2000/1625/article/11/made>) and rule 9 of the Town and Country Planning (Hearings Procedure) (England) Rules 2000 [\[2\]](http://www.legislation.gov.uk/ukSI/2000/1626/article/9/made) (<http://www.legislation.gov.uk/ukSI/2000/1626/article/9/made>). The Inspector may also allow other interested parties to speak at a hearing or inquiry. Interested parties

may occasionally want to take a more substantive role in an inquiry by submitting a statement of case. They would then be entitled to appear at the inquiry, call their own witnesses and in turn would be open to cross-examination. Further information can be found in the Planning Inspectorate's Guide to Rule 6 for interested parties involved at an inquiry [\[2\]](#)

(<https://www.gov.uk/government/publications/planning-appeals-dealt-with-by-an-inquiry-taking-part>), and Annex F of the Planning Inspectorate's Procedural Guide [\[2\]](#) (<https://www.gov.uk/government/publications/planning-appeals-procedural-guide>).

In the case of householder, advertisement consent and minor commercial appeals, representations from interested parties made at the application stage will be provided to the Inspector by the local planning authority, but no new representations will be considered. Further information can be found in Annex C of the Planning Inspectorate's Procedural Guide [\[2\]](#)

(<https://www.gov.uk/government/publications/planning-appeals-procedural-guide>).

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### 3. Appeals against other planning decisions

(<http://planningguidance.communities.gov.uk/blog/guidance/appeals/appeals-against-other-planning-decisions/>)

#### Appeals against other planning decisions

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It is possible to appeal against other planning decisions, including those listed below, but they may involve different grounds for appeal and deadlines.

- Advertisement consent
- Community Infrastructure Levy
- Enforcement
- Hazardous substances consent
- Lawful development certificates
- Listed building consent
- Listed building enforcement notices  
([http://planningguidance.communities.gov.uk/blog/guidance/appeals/appeals-against-other-planning-decisions/#paragraph\\_022](http://planningguidance.communities.gov.uk/blog/guidance/appeals/appeals-against-other-planning-decisions/#paragraph_022))
- Planning obligations and affordable housing requirements  
([http://planningguidance.communities.gov.uk/blog/guidance/appeals/appeals-against-other-planning-decisions/#paragraph\\_023](http://planningguidance.communities.gov.uk/blog/guidance/appeals/appeals-against-other-planning-decisions/#paragraph_023))
- Prior approval for permitted development, including the neighbours' consultation scheme
- Tree Preservation Orders
- Non-validation of planning applications  
([http://planningguidance.communities.gov.uk/blog/guidance/appeals/appeals-against-other-planning-decisions/#paragraph\\_026](http://planningguidance.communities.gov.uk/blog/guidance/appeals/appeals-against-other-planning-decisions/#paragraph_026))

#### Appeals against refusal of advertisement consent

In relation to advertisement consents an applicant may appeal under section 78 of the Town and Country Planning Act 1990, as modified by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, where the local planning authority:

- refuses consent;
- grants consent subject to unacceptable conditions;
- serves a notice requiring the discontinuance of the advertising;
- fails to give notice of its decision within eight weeks of the application for consent.

Appeals against refusal of advertisement consent will generally be dealt with under the expedited Commercial Appeals Service, which allows for faster determination of less complex cases using a simplified written representations

procedure. For more detail see Annex C of the Planning Inspectorate Procedural Guide [\[2\]](https://www.gov.uk/government/publications/planning-appeals-procedural-guide) (<https://www.gov.uk/government/publications/planning-appeals-procedural-guide>).

Advertisement consent appeals will be dealt with under the standard written representations procedure or by a hearing or inquiry (for more detail see Annex R of the Planning Inspectorate Procedural Guide [\[2\]](https://www.gov.uk/government/publications/planning-appeals-procedural-guide) (<https://www.gov.uk/government/publications/planning-appeals-procedural-guide>)) where the local planning authority:

- refuses consent in complex cases considered by the Secretary of State or the Inspector to be unsuitable for the expedited Commercial Appeals Service;
- grants consent subject to unacceptable conditions;
- serves a notice requiring the discontinuance of the advertising;
- fails to give notice of its decision within eight weeks of the application for consent.

Advertisement consent appeals must be submitted within eight weeks of receipt of the decision notice, or in non-determination cases within 8 weeks of the date on which the local planning authority should have given its decision. Where a party is appealing against a discontinuance notice, the appeal must be submitted before the notice is due to take effect.

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### Appeals in relation to the Community Infrastructure Levy

There is no right of appeal against the principle of liability to pay the levy; all qualifying development is liable for the appropriate charge. There is however a right of appeal, with time-limits, against some aspects of the levy process. More information can be found here

(<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/cil-appeals/>).

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### Appeals against an enforcement notice

There is a right of appeal for anyone who has an interest in the land to which the enforcement notice relates, or who is a relevant occupier, whether or not they have been served with a copy of the notice. Anyone occupying the land by virtue of a licence is a relevant occupier.

An appeal must be received before the enforcement notice comes into effect. This date will be on the enforcement notice, and should be at least 28 days from the date of issue of the enforcement notice which should also be shown on the notice.

Under section 174(2) of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/174) (<http://www.legislation.gov.uk/ukpga/1990/8/section/174>), an appeal may be made on one or more of the following grounds:

- planning permission ought to be granted or the condition or limitation concerned ought to be discharged;
- the matters stated in the enforcement notice have not occurred;
- the matters stated in the enforcement notice (if they occurred) do not constitute a breach of planning control;
- at the date when the notice was issued, no enforcement action could be taken;
- copies of the enforcement notice were not served in accordance with the relevant statutory requirements;
- the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary either to remedy any breach of a planning control or to remedy any injury to amenity which has been caused by any such breach; and/or

- any period specified in the notice falls short of what should reasonably be allowed.

An appeal on ground (a) is not possible where a related application for planning permission has been made and the local planning authority issued an enforcement notice before the time for determining the application has expired.

A ground of appeal that is cited unreasonably, even if later withdrawn, may be subject to a claims for costs where it has caused unnecessary expense for the local planning authority; see section 4 for more information

(<http://planningguidance.communities.gov.uk/blog/guidance/appeals/the-award-of-costs-general/>).

See the guidance here [\[2\]](https://www.gov.uk/appeal-enforcement-notice) (<https://www.gov.uk/appeal-enforcement-notice>) for further details.

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### Appeals in relation to hazardous substances consent

An appeal against the decision on an application for hazardous substances consent ([http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/planning-for-hazardous-substances/#paragraph\\_002](http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/planning-for-hazardous-substances/#paragraph_002)) can be made to the Secretary of State if the hazardous substances authority:

- refuses to grant consent;
- refuses an application for a continuation of consent upon change in ownership of part of the land;
- refuses to grant any consent, agreement or approval required by a condition imposed on a consent;
- refuses an application to vary or remove conditions attached to a previous grant of consent;
- grants consent but imposes conditions which are unacceptable to the appellant; or
- fails to reach a decision within the statutory time limit of eight weeks, or any longer period which the appellant and the authority have agreed.

Appeals may be made at any time within six months of the decision or, if no decision has been made, within six months from when a decision should have been given. This gives the applicant time to discuss matters with the hazardous substances authority to see if there is any possibility of finding a way of overcoming its objections bearing in mind that an appeal is intended to be a last resort.

Further information about hazardous substances consent appeals can be found here [\[2\]](https://www.gov.uk/government/publications/hazardous-substances-consent-appeal-form) (<https://www.gov.uk/government/publications/hazardous-substances-consent-appeal-form>).

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### Appeals against refusal of a lawful development certificate

An appeal can be made to the Secretary of State under section 195 of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/195)

(<http://www.legislation.gov.uk/ukpga/1990/8/section/195>) if an application for a lawful development certificate

(<http://planningguidance.communities.gov.uk/blog/guidance/lawful-development-certificates/establishing-whether-a-proposed-or-existing-development-is-lawful/>) is:

- wholly or partly refused (including cases where the local planning authority issues a certificate in a different form); or
- not determined within the statutory eight week period unless an extension has been agreed upon in writing.

There is no time limit in which to appeal.

See the guidance here [\[2\]](https://www.gov.uk/appeal-lawful-development-certificate-decision) (<https://www.gov.uk/appeal-lawful-development-certificate-decision>) for further details

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### Appeals against refusal of listed building consent

An appeal can be made to the Secretary of State under section 20 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/9/section/20) (<http://www.legislation.gov.uk/ukpga/1990/9/section/20>) of the Planning (Listed Buildings and Conservation Areas) Act 1990 where:

- an application for listed building consent is refused or granted subject to conditions;
- an application for the variation or discharge of conditions imposed on a grant of consent is refused or granted subject to new conditions;
- an application for approval required by a condition imposed on the granting of consent with respect to details of works is refused or granted subject to conditions; and/or
- the local planning authority has failed to determine the application within the prescribed time period of eight weeks or such longer period as may have been agreed.

Such appeals must be submitted within six months of the date of the decision notice or expiry of the determination period.

See the guidance here [\[2\]](https://www.gov.uk/appeal-listed-building-consent-decision) (<https://www.gov.uk/appeal-listed-building-consent-decision>) for further details.

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### Appeals against a listed building enforcement notice

A person having an interest in the building to which the enforcement notice relates or a relevant occupier may appeal to the Secretary of State. A relevant occupier is anyone occupying the building to which the notice relates by virtue of a licence. Appeals may be made under section 39 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/9/section/39) (<http://www.legislation.gov.uk/ukpga/1990/9/section/39>) of the Planning and Listed Buildings Act 1990, on any of the following grounds:

- the building referred to in the listed building enforcement notice is not of special architectural or historic interest;
- the matters alleged in the enforcement notice have not taken place or do not constitute a contravention;
- that the following criteria are all satisfied:
  - the works were urgently necessary in the interests of safety, health or the preservation of the building;
  - it was not practicable to secure safety, health or the preservation of the building through works of repair or works affording temporary support or shelter; and
  - the works undertaken were the minimum measures immediately necessary;
- consent ought to be granted or any relevant condition imposed on the grant of consent ought to be discharged or different conditions substituted;
- copies of the notice were not properly served; and/or
- certain grounds relating to excessive requirements of the enforcement notice are excessive e.g. period for compliance is unreasonable.

Such appeals must be made before the date on which the enforcement notice comes into effect. This date will be specified in the enforcement notice.

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### Appeals on modification and discharge of planning obligations and affordable housing requirements



For further information see the guidance on planning obligations (<http://planningguidance.communities.gov.uk/blog/guidance/planning-obligations/planning-obligations/>), and the guidance on affordable housing requirements [\[2\]](https://www.gov.uk/government/publications/section-106-affordable-housing-requirements-review-and-appeal) (<https://www.gov.uk/government/publications/section-106-affordable-housing-requirements-review-and-appeal>).

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### **Prior approval appeals, including the neighbours' consultation scheme**

Applicants may appeal under section 78 of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/contents) (<http://www.legislation.gov.uk/ukpga/1990/8/contents>) against a local planning authority's refusal or non-determination of an application for prior approval for development permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 [\[2\]](http://www.legislation.gov.uk/uksi/2015/596/contents/made) (<http://www.legislation.gov.uk/uksi/2015/596/contents/made>).

Prior approval appeals generally follow the same procedures and timetables as appeals relating to ordinary planning permissions. Appeals against refusal of prior approvals relating to dwellinghouses, including the neighbours' consultation scheme for larger home extensions under Class A of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995, will be made under the householder appeals process (see Annex C of the Planning Inspectorate Procedural Guide [\[2\]](https://www.gov.uk/government/publications/planning-appeals-procedural-guide) (<https://www.gov.uk/government/publications/planning-appeals-procedural-guide>)). Such appeals must be submitted within 12 weeks.

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### **Appeals against decisions in relation to Tree Preservation Orders**

Following an application for consent to cut down or carry out work on a tree subject to a Tree Preservation Order ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/tree-preservation-orders-general/#paragraph\\_001](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/tree-preservation-orders-general/#paragraph_001)), applicants can appeal to the Secretary of State [\[2\]](http://www.legislation.gov.uk/uksi/2012/605/part/5/made) (<http://www.legislation.gov.uk/uksi/2012/605/part/5/made>) under section 208 of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/208) (<http://www.legislation.gov.uk/ukpga/1990/8/section/208>) and regulation 19 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 [\[2\]](http://www.legislation.gov.uk/uksi/2012/605/regulation/19/made) (<http://www.legislation.gov.uk/uksi/2012/605/regulation/19/made>). An appeal may be made if the authority:

- refuses consent;
- grants consent subject to a conditions;
- refuses an application for any consent, agreement or approval required under the terms of a condition of consent, or grants it subject to conditions;
- fails to determine the application for consent within eight weeks from the day after they received the application; or
- serves a tree replacement notice

(<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/>)

The appeal must be received by the Planning Inspectorate within 28 days of the date of notification of the authority's decision, or such later date as may be allowed, except:

- in relation to (d) above, where following the eight weeks an appeal can be made at any time until the applicant is notified of the authority's decision, when the 28 day limit applies
- in relation to (e) above, where the appeal must be made before the tree replacement notice takes effect

Detailed guidance on the procedures for appeals made to the Secretary of State under regulation 19 of the 2012 Regulations [\[2\]](http://www.legislation.gov.uk/uksi/2012/605/regulation/19/made) (<http://www.legislation.gov.uk/uksi/2012/605/regulation/19/made>) can be found here [\[2\]](https://www.gov.uk/appeal-decision-about-tree-order) (<https://www.gov.uk/appeal-decision-about-tree-order>).

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## Appeals against the non-validation of an application

For further information see the guidance on delay in the validation of an application (<http://planningguidance.communities.gov.uk/blog/guidance/making-an-application-2/receipt-of-application/delay-in-the-validation-of-an-application/>).

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4. The award of costs – general (<http://planningguidance.communities.gov.uk/blog/guidance/appeals/the-award-of-costs-general/>)

### The award of costs – general

#### What is an award of costs?

An award of costs is an order which states that one party shall pay to another party the costs, which may be in full or in part, which have been incurred by the receiving party during the process by which the Secretary of State's or Inspector's decision is reached. The costs order states the broad extent of the expense the party can recover from the party against whom the award is made. It does not determine the actual amount.

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#### Why do we have an award of costs?

Parties in planning appeals and other planning proceedings normally meet their own expenses. All parties are expected to behave reasonably to support an efficient and timely process, for example in providing all the required evidence and ensuring that timetables are met. Where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.

The aim of the costs regime is to:

- encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case
- encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, not to add to development costs through avoidable delay,
- discourage unnecessary appeals by encouraging all parties to consider a revised planning application which meets reasonable local objections.

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#### Who can apply for an award of costs and who can have costs awarded against them?

Local planning authorities, appellants and interested parties who have taken part in the process, including statutory consultees, may apply for costs, or have costs awarded against them. A party applying for costs may have costs awarded against them, if they themselves have behaved unreasonably.

An Inspector or the Secretary of State may, on their own initiative, make an award of costs, in full or in part, in regard to appeals and other proceedings under the Planning Acts if they consider that a party has behaved unreasonably resulting in unnecessary expense and another party has not made an application for costs against that party.

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### **In what circumstances may costs be awarded?**

Costs may be awarded where:

- a party has behaved unreasonably; and
- the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

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### **What does “unreasonable” mean?**

The word “unreasonable” is used in its ordinary meaning, as established by the courts in *Manchester City Council v SSE & Mercury Communications Limited* [1988] JPL 774.

Unreasonable behaviour in the context of an application for an award of costs may be either:

- procedural – relating to the process; or
- substantive – relating to the issues arising from the merits of the appeal.

The Inspector has discretion when deciding an award, enabling extenuating circumstances to be taken into account.

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### **What counts as unnecessary or wasted expense?**

An application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. This could be the expense of the entire appeal or other proceeding or only for part of the process.

Costs may include, for example, the time spent by appellants and their representatives, or by local authority staff, in preparing for an appeal and attending the appeal event, including the use of consultants to provide detailed technical advice, and expert and other witnesses.

Costs applications may relate to events before the appeal or other proceeding was brought, but costs that are unrelated to the appeal or other proceeding are ineligible. Awards cannot extend to compensation for indirect losses, such as those which may result from alleged delay in obtaining planning permission.

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### **Can costs be claimed for the period during the determination of the planning application?**

No, but all parties are expected to behave reasonably throughout the planning process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of the planning application can be taken into account in the Inspector’s consideration of whether or not costs should be awarded.

Applicants for planning permission should not attempt to delay a decision on their application, simply to obtain a fee refund. A local planning authority will be justified in refusing permission where an applicant causes deliberate delay and has been unwilling to agree an extension of time; such behaviour will be taken into account in determining any claim for costs if the applicant then makes an appeal.

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### **How does the award of costs apply to called-in planning applications?**

When a planning application is “called-in”, it is determined by the Secretary of State rather than by the local planning authority. This places the parties at a called-in proceeding in a different position from that in a planning appeal. The

local planning authority is not defending a decision to refuse planning permission, or a failure to determine the application within the prescribed period.

In these circumstances, it is not envisaged that a party would be at risk of an award of costs for unreasonable behaviour relating to the substance of the case or action taken prior to the call-in decision. However, a party's failure to comply with the normal procedural requirements of inquiries, including aborting the process by withdrawing the application without good reason, risks an award of costs for unreasonable behaviour.

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## 5. How to make an application for an award of costs

(<http://planningguidance.communities.gov.uk/blog/guidance/appeals/how-to-make-an-application-for-an-award-of-costs/>)

### How to make an application for an award of costs

#### How does a party make an application for costs?

Applications for costs should be made as soon as possible, and no later than the deadlines below:

- In the case of appeals determined via the Householder Appeals Service, Commercial Appeals Service, and appeals against tree preservation orders the costs application must be made in writing when the appeal is submitted, if the application is made by the appellant, or within 14 days of the date of the 'start date' letter for the appeal if the application is made by the local authority.
- In the case of appeals determined via written representations, the costs application must be made in writing by any party no later than the final comments stage. The Planning Inspectorate has the flexibility to set an alternative deadline, which would be notified to all parties. Where the costs application concerns conduct relating to the site visit itself, applications should be received no later than 7 days after the date of the site visit.
- In the case of hearings and inquiries:
  - All costs applications must be formally made to the Inspector before the hearing or inquiry is closed, but as a matter of good practice, and where circumstances allow, costs applications should be made in writing before the hearing or inquiry. Any such application must be brought to the Inspector's attention at the hearing or inquiry, and can be added to or amended as necessary in oral submissions.
  - If the application relates to behaviour at a hearing or inquiry, the applicant should tell the Inspector before the hearing is adjourned to the site, or before the inquiry is closed, that they are going to make a costs application. The Inspector will then hear the application, the response by the other party, and the applicant will have the final word. The decision on the award of costs will be made after the hearing or inquiry.
- For all procedures, no later than 4 weeks after receiving notification of the withdrawal of the appeal or enforcement notice or other planning matter which is the subject of the proceedings, irrespective of procedure.

An application for costs can be made by letter, or by using the Planning Inspectorate's application form [📄](https://www.gov.uk/claim-planning-appeal-costs/how-to-claim) (<https://www.gov.uk/claim-planning-appeal-costs/how-to-claim>).

Anyone making a late application for an award of costs outside of these timings will need to show good reason for having made the application late, if it is to be accepted by the Secretary of State for consideration.

ID 16-035-20140306 Last updated 06 03 2014

#### When may Inspectors initiate an award of costs?

The award of costs supports an effective and timely planning system in which all parties are required to behave reasonably. In order to support this aim further, Inspectors may use their existing legal powers to make an award of

costs where they have found unreasonable behaviour, including in cases where no application has been made by another party. Inspectors, or the Secretary of State, will apply the same guidance when deciding an application for an award of costs, or making an award at their own initiative.

ID 16-036-20140306 Last updated 06 03 2014

### **Can I apply for costs in other types of appeals or planning proceedings?**

It may be possible to apply for an award of costs in regard to appeals under legislation made by other Government Departments. A full list of appeals where costs may be sought is available here [\[2\]](#)

(<https://www.gov.uk/government/publications/illustrative-list-of-case-types-for-which-costs-awards-are-available>). Information on the award of costs as it relates to major infrastructure can be found on GOV.UK [\[2\]](#)

(<https://www.gov.uk/government/publications/awards-of-costs-examinations-of-applications-for-development-consent-orders>).

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### **Is there an opportunity for the party against which the application of costs is made to provide comment?**

Yes. A written application for costs will be disclosed to the party against whom the application is made, so that they can respond in writing. Where a party has made a written application for costs, clearly setting out the basis for the claim in advance, their case will be strengthened if the opposing party is unable to, or does not offer evidence to counter the case. The applicant then has the opportunity to make a final reply in writing.

For hearings and inquiries, the party against whom an application is made will have the opportunity to reply, either at the event or in writing. Similarly, a party will be given an opportunity to comment, where an Inspector is considering initiating an award of costs against them.

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### **Who makes the decision about the award of costs?**

Most cost applications are determined by Inspectors. However, the Planning Inspectorate's Costs and Decisions Team may deal with some cases. This includes applications arising from withdrawal of an appeal or enforcement notice. The Team also decides on the admissibility of late applications for costs.

ID 16-039-20140306 Last updated 06 03 2014

### **What is a full award of costs?**

A full award of appeal costs means the party's whole costs for the statutory process, including the preparation of the appeal statement and supporting documentation. It also includes the expense of making the costs application.

Where the process concerns a called-in planning application, the eligible costs start from the date of the letter notifying the applicant of the decision to call-in the application.

In other non-appeal cases, the eligible costs start from the date of the notification or statutory publication of, for example, the relevant order. This is the point at which the applicant for costs begins to incur expense in the ensuing statutory process.

ID 16-040-20140306 Last updated 06 03 2014

### **What is a partial award of costs?**

Some cases do not justify a full award of costs, for example where the appeal is one of several joint appeals with evidence in common. Where the application for costs relates to one or some of the grounds of refusal but not all of them, an award might relate to the attendance of only particular witnesses. In these

circumstances, a partial award may be made. The partial award may also be limited to a part of the appeal process. For example, where an unnecessary adjournment is caused by the unreasonable conduct of one of the parties, the award of costs may be limited to the abortive costs of attending the event on the day of the adjournment. A partial award may result from an application for either a full or a partial award.

ID 16-041-20140306 Last updated 06 03 2014

### **What happens if the appeal or an enforcement notice is withdrawn and the appeal is not decided?**

If the appeal or enforcement notice is withdrawn without sound reason, or with avoidable delay, giving rise to unnecessary or wasted expense for another party, an application for costs can be made. Such applications should be made in writing to the Planning Inspectorate's Costs and Decisions Team no later than 4 weeks after receiving confirmation from the Planning Inspectorate or the local planning authority that no further action is being taken.

In such cases the decision on the award of costs will be taken by an officer in the Planning Inspectorate's Costs and Decisions Team, on behalf of the Secretary of State, following an exchange of written comments from the parties.

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### **Can a claim for an award of costs be withdrawn?**

Yes, if the party who applied for an award of costs formally notifies the Planning Inspectorate of the withdrawal. This does not prevent another party from seeking costs, nor the potential for an Inspector to initiate an award against either party.

ID 16-043-20140306 Last updated 06 03 2014

### **How is the amount settled where an award is made?**

The Inspector or Secretary of State can only address the principle of whether costs should be awarded in full or in part, and not the amount – this is settled subsequently between the parties.

Where a costs order is made, the party awarded should first send details of their costs to the other party, with a view to reaching agreement on the amount. Where costs are awarded against a party and the parties cannot agree on a sum, the successful party can apply to the Senior Courts Costs Office  (<http://www.justice.gov.uk/courts/rcj-rolls-building/senior-courts-costs-office>).

ID 16-044-20140306 Last updated 06 03 2014

### **What if the party does not pay?**

Once the Planning Inspectorate has made an award of costs, it has no further role and it is for the parties to negotiate the amount and to agree on the arrangements for payment. Failure to settle an award of costs is enforceable through the Courts as a civil debt. If a party has any doubt about how to proceed in a particular case, they should seek legal advice.

ID 16-045-20140306 Last updated 06 03 2014

## **6. Behaviour that may lead to an award of costs against appeal parties**

(<http://planningguidance.communities.gov.uk/blog/guidance/appeals/behaviour-that-may-lead-to-an-award-of-costs-against-appeal-parties/>)

### **Behaviour that may lead to an award of costs against appeal parties**

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- Local planning authorities
- Appellants
- Statutory consultees
- Interested parties

## Local planning authorities

### When might an award of costs be made against a local planning authority?

Awards against a local planning authority may be either procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal. The examples below relate mainly to planning appeals and are not exhaustive. The Planning Inspectorate will take all evidence into account, alongside any extenuating circumstances.

ID 16-046-20140306 Last updated 06 03 2014

### What type of behaviour may give rise to a procedural award against a local planning authority?

Local planning authorities are required to behave reasonably in relation to procedural matters at the appeal, for example by complying with the requirements and deadlines of the process. Examples of unreasonable behaviour which may result in an award of costs include:

- lack of co-operation with the other party or parties
- delay in providing information or other failure to adhere to deadlines
- only supplying relevant information at appeal when it was previously requested, but not provided, at application stage
- not agreeing a statement of common ground in a timely manner or not agreeing factual matters common to witnesses of both principal parties
- introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen
- prolonging the proceedings by introducing a new reason for refusal
- withdrawal of any reason for refusal or reason for issuing an enforcement notice
- failing to provide relevant information within statutory time limits, resulting in an enforcement notice being quashed without the issues on appeal being determined
- failing to attend or to be represented at a site visit, hearing or inquiry without good reason
- withdrawing an enforcement notice without good reason
- providing information that is shown to be manifestly inaccurate or untrue
- deliberately concealing relevant evidence at planning application stage or at subsequent appeal
- failing to notify the public of an inquiry or hearing, where this leads to the need for an adjournment

(This list is not exhaustive).

ID 16-047-20140306 Last updated 06 03 2014

### When might a local planning authority's handling of the planning application or enforcement notice prior to the appeal lead to an award of costs?

If it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. In any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period.

If an appeal in such cases is allowed, the local planning authority may be at risk of an award of costs, if the Inspector or Secretary of State concludes that there were no substantive reasons to justify delaying the determination and better

communication with the applicant would have enabled the appeal to be avoided altogether. Such a decision would take into account any unreasonable behaviour on the part of the appellant in causing or adding to the delay.

For enforcement action, local planning authorities must carry out adequate prior investigation. They are at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the notice in the first place, or ensured that it was accurate.

ID 16-048-20140306 Last updated 06 03 2014

### **What type of behaviour may give rise to a substantive award against a local planning authority?**

Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. Examples of this include:

- preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
- failure to produce evidence to substantiate each reason for refusal on appeal
- vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
- refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead
- acting contrary to, or not following, well-established case law
- persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable
- not determining similar cases in a consistent manner
- failing to grant a further planning permission for a scheme that is the subject of an extant or recently expired permission where there has been no material change in circumstances
- refusing to approve reserved matters when the objections relate to issues that should already have been considered at the outline stage
- imposing a condition that is not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, and thus does not comply with the guidance in the National Planning Policy Framework [\[2\]](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf)  
([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/6077/2116950.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf)) on planning conditions and obligations
- requiring that the appellant enter into a planning obligation which does not accord with the law or relevant national policy in the National Planning Policy Framework [\[2\]](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf)  
([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/6077/2116950.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf)), on planning conditions and obligations
- refusing to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal
- not reviewing their case promptly following the lodging of an appeal against refusal of planning permission (or non-determination), or an application to remove or vary one or more conditions, as part of sensible on-going case management.
- if the local planning authority grants planning permission on an identical application where the evidence base is unchanged and the scheme has not been amended in any way, they run the risk of a full award of costs for an abortive appeal which is subsequently withdrawn



(This list is not exhaustive).

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### **When might an award of costs not be made against a local planning authority?**

Where local planning authorities have exercised their duty to determine planning applications in a reasonable manner, they should not be liable for an award of costs.

Where a local planning authority has refused a planning application for a proposal that is not in accordance with the development plan policy, and no material considerations including national policy indicate that planning permission should have been granted, there should generally be no grounds for an award of costs against the local planning authority for unreasonable refusal of an application.

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## **Appellants**

### **When might an award of costs be made against an appellant?**

Awards against appellants may be either procedural in regard to behaviour in relation to completing the appeal process or substantive which relates to the planning merits of the appeal. The examples below are not exhaustive. The Planning Inspectorate will take all evidence into account, alongside any extenuating circumstances.

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### **What type of behaviour may give rise to a procedural award against an appellant?**

Appellants are required to behave reasonably in relation to procedural matters on the appeal, for example by complying with the requirements and deadlines of the appeals process. Examples of unreasonable behaviour which may result in an award of costs include:

- resistance to, or lack of co-operation with the other party or parties in providing information, discussing the application or appeal, or in responding to a planning contravention notice
- delay in providing information or other failure to adhere to deadlines
- only supplying relevant information at appeal when it was requested, but not provided, at application stage
- introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen
- prolonging the proceedings by introducing a new ground of appeal or issue
- not completing a timely statement of common ground or not agreeing factual matters common to witnesses of both principal parties
- failing to attend or to be represented at a site visit, hearing or inquiry without good reason
- providing information that is shown to be manifestly inaccurate or untrue
- deliberately concealing relevant evidence at planning application stage or at a subsequent appeal.
- withdrawal of an appeal without good reason

(This list is not exhaustive).

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### **What type of behaviour may give rise to a substantive award**

### **against an appellant?**

The right of appeal should be exercised in a reasonable manner. An appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding. This may occur when:

- the development is clearly not in accordance with the development plan, and no other material considerations such as national planning policy are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence
- the appeal follows a recent appeal decision in respect of the same, or a very similar, development on the same, or substantially the same site where the Secretary of State or an Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period
- in enforcement and lawful development certificate appeals, the onus of proof on matters of fact is on the appellant. Sometimes it is made plain by a recent appeal decision relating to the same, or a very similar development on the same, or substantially the same site, that development should not be allowed. The appellant is at risk of an award of costs, if they persist with an appeal against an enforcement notice on the ground that planning permission ought to be granted for the development in question
- lack of co-operation on any planning obligation

(This list is not exhaustive).

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### **Can an award of costs be made if the appellant withdraws an appeal?**

Yes, if the appeal is withdrawn without good reason. Appellants are encouraged to withdraw their appeal at the earliest opportunity if there is good reason to do so, for example, as soon as they become aware that it stands little prospect of success.

If an appeal is withdrawn without any material change in the planning authority's case, or any other material change in circumstances relevant to the planning issues arising on the appeal, an award of costs may be made against the appellant if the claiming party can clearly show that they have incurred wasted expense as a result.

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### **Statutory consultees**

#### **When might an award of costs be made against a statutory consultee?**

Statutory consultees play an important role in the planning system: local authorities often give significant weight to the technical advice of the key statutory consultees. Where a local planning authority has relied on the advice of the statutory consultee in refusing an application, there is a clear expectation that the consultee in question will substantiate its advice at any appeal.

Where the statutory consultee is a party to the appeal, they may be liable to an award of costs to or against them.

Where a local planning authority has placed significant weight on the view of the statutory consultee in its reasons for refusal, the local planning authority may wish to request the statutory consultee attends the inquiry or hearing, or makes written representations, to defend its position as an interested party.

Where it is considered that the evidence of the statutory consultee is relevant to the determination of the appeal, the Inspector may use powers under section 250(2) and (3) of the Local Government Act 1972 to summon the statutory consultee to an appeal held as an inquiry, which may make them a party at the inquiry.

Where the Mayor of London or any other statutory consultee exercises a power to direct a planning authority to refuse planning permission, this party will be treated as a principal party at the appeal, and may be liable for an award of costs if they behave unreasonably or have an award of costs made to them.

Any allegations of unreasonable behaviour directed at a statutory consultee should be drawn to their attention at an early stage.

Statutory consultees must, at the earliest opportunity, notify the planning authority if their evidence or advice changes from that provided during the determination of the application to which the appeal relates.

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## Interested parties

### When might an award of costs be made against an interested party?

Interested parties who choose to be recognised as Rule 6 parties under the inquiry procedure rules, may be liable to an award of costs if they behave unreasonably. They may also have an award of costs made to them. See the Planning Inspectorate guide [\[2\]](https://www.gov.uk/government/collections/taking-part-in-a-planning-listed-building-or-enforcement-appeal) (https://www.gov.uk/government/collections/taking-part-in-a-planning-listed-building-or-enforcement-appeal) on Rule 6 for more detail.

It is not anticipated that awards of costs will be made in favour of, or against, other interested parties, other than in exceptional circumstances. An award will not be made in favour of, or against interested parties, where a finding of unreasonable behaviour by one of the principal parties relates to the merits of the appeal. However an award may be made in favour of, or against, an interested party on procedural grounds, for example where an unnecessary adjournment of a hearing or inquiry is caused by unreasonable conduct. In cases dealt with by written representations, it is not envisaged that awards of costs involving interested parties will arise.

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## 7. The award of costs and compulsory purchase and analogous orders

(<http://planningguidance.communities.gov.uk/blog/guidance/appeals/the-award-of-costs-and-compulsory-purchase-and-analogous-orders/>)

### The award of costs and compulsory purchase and analogous orders

#### How does the award of costs apply in the case of compulsory purchase and analogous orders?

Compulsory purchase and analogous orders seek to take away a party's rights or interest in land. Further information on compulsory purchase orders can be found in the Department's Guidance on Compulsory purchase process and The Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion [\[2\]](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/472726/151027_Updated_guidance_for_publication)

([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/472726/151027\\_Updated\\_guidance\\_for\\_publication](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/472726/151027_Updated_guidance_for_publication))

Where objectors are defending their rights, or protecting their interests, which are the subject of a compulsory purchase or analogous order, they may have costs awarded in their favour if the order does not proceed or is not confirmed.

For the purposes of this Part, "remaining objector" means a person who is defending their rights, or protecting their interests, which are the subject of a compulsory purchase or analogous order, and who has made a "remaining objection" within the meaning of section 13A(1) of the Acquisition of Land Act 1981.

Costs will be awarded in favour of a successful remaining objector unless there are exceptional reasons for not making an award. The award will be made by the Secretary of State against the authority which made the order.

Normally, the following conditions must be met for an award to be made on the basis of a successful objection:

(a) the claimant must have made a remaining objection and have either:

- attended (or been represented at) an inquiry (or, if applicable, a hearing at which the objection was heard); or
- submitted a written representation which was considered as part of the written procedure; and

(b) the objection must have been sustained by the confirming authority's refusal to confirm the order or by its decision to exclude the whole or part of the claimant's property from the order.

In addition, a remaining objection will be successful and an award of costs may be made in the claimant's favour if an inquiry is cancelled because the acquiring authority have decided not to proceed with the order, or a claimant has not appeared at an inquiry having made an arrangement for their land to be excluded from the order. For more detail see section 5(4) of the Acquisition of Land Act 1981 as inserted by section 3 of the Growth and Infrastructure Act 2013 [\[2\]](http://www.legislation.gov.uk/ukpga/2013/27/contents/enacted) (<http://www.legislation.gov.uk/ukpga/2013/27/contents/enacted>).

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### **How are objectors notified of the award of costs?**

When notifying successful objectors of the decision on the order under the appropriate rules or regulations, the confirming authority, usually the Secretary of State, will tell them that they may be entitled to claim costs and invite them to submit an application for an award of costs on the basis of their successful objection. The details of the level of costs are then a matter for negotiation between parties.

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### **Can an award be made for unreasonable behaviour?**

An award of costs cannot be made both on grounds of success and unreasonable behaviour in such cases; but an award to a successful objector may be reduced if they have acted unreasonably and caused unnecessary expense in the proceedings – as, for example, where their conduct leads to an adjournment which ought not to have been necessary

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### **Can an award of costs be made to an unsuccessful objector?**

Yes, an award of costs may be made to an unsuccessful remaining objector or to an order-making authority because of unreasonable behaviour by the other party. In practice, such an award is likely to relate to procedural matters, such as failing to submit grounds of objection or serve a statement of case, resulting in unnecessary expense – for example, because the inquiry has to be adjourned or is unnecessarily prolonged.

An application for costs (on the grounds of unreasonable behaviour) should be made to the Inspector at the inquiry or hearing, or in writing if appropriate. The Inspector may also initiate an award of costs if they consider a party has behaved unreasonably and an application is not made. The Inspector will provide a recommendation to the confirming authority, usually the Secretary of State, for a decision on whether to award costs.

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### **Can an award of costs be made against interested parties?**

Yes. Interested parties may attend the inquiry and may be allowed to be heard. If they behave unreasonably at the event, they may have an award of costs made against them.

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### **What if the objection is partly successful?**

Where a remaining objector is partly successful in opposing a compulsory purchase order, the confirming authority will normally make a partial award of costs. Such cases arise, for example, where the authority, in confirming an order, excludes part of the objector's land.

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### **What if the compulsory purchase or analogous order is linked to another application?**

Sometimes joint inquiries or hearings are held into two or more proposals, only one of which is a compulsory purchase (or analogous) order, for example an application for planning permission and an order for the compulsory acquisition of land included in the application. Where a remaining objector, who also makes representations about a related application, appears at such inquiries or hearings and is successful in objecting to the compulsory purchase order, the objector will be entitled to an award in respect of the compulsory purchase or analogous order only.

An objector is not, however, precluded from applying for the costs relating to the other matter on the grounds that the authority has acted unreasonably.

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### **What orders are analogous to compulsory purchase orders?**

In general an order or proposal will be considered to be analogous to a compulsory purchase order if its making, or confirmation, takes away from the objector some right or interest in land for which the statute gives them a right to compensation. The analogous orders are:


- Orders under sections 97 and 98 of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/contents) (http://www.legislation.gov.uk/ukpga/1990/8/contents) revoking or modifying a planning permission
- Orders under sections 23 and 24 of the Planning (Listed Buildings and Conservation Areas) Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/9/contents) (http://www.legislation.gov.uk/ukpga/1990/9/contents) revoking or modifying listed building consent
- Orders under regulation 18 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 [\[2\]](http://www.legislation.gov.uk/uksl/2007/783/contents/made) (http://www.legislation.gov.uk/uksl/2007/783/contents/made) revoking or modifying a grant of advertisement consent
- Orders under sections 102 and 103 of, and Schedule 9 to, the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/contents) (http://www.legislation.gov.uk/ukpga/1990/8/contents) –
  - requiring discontinuance of a use of land (including the winning and working of minerals), or imposing conditions on the continuance of a use of land or
  - requiring the removal or alteration of buildings or works or
  - requiring the removal or alteration of plant or machinery used for winning or working of minerals or
  - prohibiting the resumption of winning or working of minerals or
  - requiring steps to be taken for the protection of the environment, after suspension of winning and working of minerals
- Orders under sections 14 and 15 of the Planning (Hazardous Substances) Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/10/contents) (http://www.legislation.gov.uk/ukpga/1990/10/contents) revoking or modifying a hazardous substances consent, or refusal of an application under section 17 (1) of the Act for continuation of a consent, on change of control of land

A petition under section 125 of the Local Government Act 1972 [\[2\]](http://www.legislation.gov.uk/ukpga/1972/70/contents) (http://www.legislation.gov.uk/ukpga/1972/70/contents) as substituted by section 43 of the Housing and Planning Act 1986 [\[2\]](http://www.legislation.gov.uk/ukpga/1986/63/contents) (http://www.legislation.gov.uk/ukpga/1986/63/contents) relating to compulsory acquisition of land on behalf of parish or community councils.

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 Department for Communities & Local Government  
(<https://www.gov.uk/government/organisations/department-for-communities-and-local-government>)

# Planning Practice Guidance (<http://planningguidance.communities.gov.uk>)

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Guidance

## Before submitting an application

Print 

### 1. The value of pre-application engagement

(<http://planningguidance.communities.gov.uk/blog/guidance/before-submitting-an-application/the-value-of-pre-application-engagement/>)

#### The value of pre-application engagement

##### How can pre-application engagement improve the efficiency and effectiveness of the planning application system?

Pre-application engagement by prospective applicants offers significant potential to improve both the efficiency and effectiveness of the planning application system and improve the quality of planning applications and their likelihood of success. This can be achieved by:

- providing an understanding of the relevant planning policies and other material considerations associated with a proposed development
- working collaboratively and openly with interested parties at an early stage to identify, understand and seek to resolve issues associated with a proposed development
- discussing the possible mitigation of the impact of a proposed development, including any planning conditions
- identifying the information required to accompany a formal planning application, thus reducing the likelihood of delays at the validation stage. The information requested must be reasonable (more information can be found in [Making an Application](http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/) (<http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/>)).
- putting in place a Planning Performance Agreement where this would help with managing the process and agreeing any dedicated resources for progressing the application

The approach to pre-application engagement needs to be tailored to the nature of the proposed development and the issues to be addressed.

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### 2. Parties involved at the pre-application stage

(<http://planningguidance.communities.gov.uk/blog/guidance/before-submitting-an-application/who-can-be-involved-at-the-pre-application-stage/>)

#### Parties involved at the pre-application stage

##### Who can be involved at the pre-application stage?

Pre-application engagement is a collaborative process between a prospective applicant (<http://planningguidance.communities.gov.uk/blog/guidance/before-submitting-an-application/who-can-be-involved-at-the-pre-application-stage/the-prospective-applicant-at-the-pre-application-stage/>) and other parties which may include:

- the local planning authority  
(<http://planningguidance.communities.gov.uk/blog/guidance/before-submitting-an->

application/who-can-be-involved-at-the-pre-application-stage/the-local-planning-authority-at-the-pre-application-stage/)

- statutory and non-statutory consultees  
(<http://planningguidance.communities.gov.uk/blog/guidance/before-submitting-an-application/who-can-be-involved-at-the-pre-application-stage/statutory-and-non-statutory-consultees-at-the-pre-application-stage/>)
- elected members
- local people (<http://planningguidance.communities.gov.uk/blog/guidance/before-submitting-an-application/who-can-be-involved-at-the-pre-application-stage/local-people-at-the-pre-application-stage/>)

It is recognised that the parties involved at the pre-application stage will vary on a case by case basis, and the level of engagement needs to be proportionate to the nature and scale of a proposed development. Each party involved has an important role to play in ensuring the efficiency and effectiveness of pre-application engagement.

ID 20-002-20140306 Last updated 06 03 2014

- The local planning authority at the pre-application stage  
(<http://planningguidance.communities.gov.uk/blog/guidance/before-submitting-an-application/who-can-be-involved-at-the-pre-application-stage/the-local-planning-authority-at-the-pre-application-stage/>)

## **The local planning authority at the pre-application stage**

### **What pre-application services can local planning authorities offer?**

There is no one-size fits all approach to providing efficient and effective pre-application services. Local planning authorities are encouraged to take a flexible, tailored and timely approach to the pre-application services they offer, which are appropriate to the nature and scale of a proposed development. The National Planning Policy Framework recognises that the local planning authority has a key role to play in encouraging other parties to take maximum advantage of the pre-application stage.

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### **Can the local planning authority charge for pre-application services?**

Local planning authorities may charge for providing discretionary services under section 93 of the Local Government Act 2003 [\[2\]](http://legislation.gov.uk/ukpga/2003/26/section/93) (<http://legislation.gov.uk/ukpga/2003/26/section/93>). Where charges are made they must not exceed the cost of providing the service. It is important that any charging does not discourage appropriate pre-application discussions. In this context, local planning authorities need to consider whether charging is appropriate in all cases, given the potential for pre-application engagement to save time and improve outcomes later in the process. Where possible, local planning authorities are strongly encouraged to provide at least a basic level of service without charge.

To ensure transparency, where local planning authorities opt to charge for certain pre-application services, they are strongly encouraged to provide clear information online about:

- the scale of charges for pre-application services applicable to different types of application (e.g. minor or major and other)
- the level of service that will be provided for the charge, including:



- the scope of work and what is included (e.g. duration and number of meetings or site visits)
- the amount of officer time to be provided (recognising that some proposed development requires input from officers across the local authority; or from other statutory and non statutory bodies)
- the outputs that can be expected (eg a letter or report) and firm response times for arranging meetings and providing these outputs
- It is also helpful for local planning authorities to provide links to any charges that statutory consultees (<http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/statutory-consultees/>) may levy for pre-application advice, where this is known.

ID 20-004-20150326 Last updated 26 03 2015

### **What information does a prospective applicant need to provide at pre-application stage?**

It is important to see the pre-application stage, as a two-way process between the local planning authority and the prospective applicant, although the nature and location of particular schemes may justify other parties being involved (such as statutory consultees). The level of information necessary for effective pre-application engagement will vary depending on the scale and nature of the proposed development. In all cases, the level of information requested by the local planning authority needs to be proportionate to the development proposed. A prospective applicant would not necessarily be expected to provide all of the information that would accompany a formal planning application, but it needs to be sufficient information to allow the local planning authority to take an informed view.


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### **How do planning performance agreements relate to the pre-application stage?**

A planning performance agreement ([http://planningguidance.communities.gov.uk/blog/guidance/before-submitting-an-application/planning-performance-agreements/#paragraph\\_016](http://planningguidance.communities.gov.uk/blog/guidance/before-submitting-an-application/planning-performance-agreements/#paragraph_016)) can be a useful tool to focus pre-application discussions on the issues that will need to be addressed throughout the course of preparing and determining a planning application, and the timescales and resources that are likely to be required.

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### **What involvement could the local planning authority's elected members have at the pre-application stage?**

Democratically elected members are strongly encouraged to participate at the pre-application stage, where it is appropriate and beneficial for them to do so. Section 25 of the Localism Act 2011 

(<http://www.legislation.gov.uk/ukpga/2011/20/section/25>) confirms that elected members do not have a 'closed mind' just because they have historically indicated a view on a matter relevant to the proposal. Further information on elected member involvement in the decision-making process can be found here (<http://planningguidance.communities.gov.uk/blog/guidance/determining-a-planning-application/what-are-the-time-periods-for-determining-a-planning-application/>).

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- **Statutory and non statutory consultees at the pre-application stage**

(<http://planningguidance.communities.gov.uk/blog/guidance/before-submitting-an-application/who-can-be-involved-at-the-pre-application-stage/statutory-and-non-statutory-consultees-at-the-pre-application-stage/>)

## **Statutory and non statutory consultees at the pre-application stage**

### **What role do statutory consultees have at the pre-application stage?**

The National Planning Policy Framework is clear that statutory consultees have an important role to play at the pre-application stage. In order for their role to be effective and positive, statutory consultees will need to take an early, pro-active approach and provide advice in a timely manner.

Where different statutory consultees share an interest in a particular development, they are encouraged to engage with each other at an early stage and be pro-active in seeking to resolve any issues together.

Local planning authorities also have a role to play in encouraging statutory consultees to be as co-ordinated as possible.

Where charges are levied by statutory consultees for pre-application advice, they are encouraged to make information available online on the charges, the services to be delivered and the response times that apply.

Further information about the role of statutory consultees is set out here (<http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/>).

ID 20-008-20150326 Last updated 26 03 2015

- **Local people at the pre-application stage**

(<http://planningguidance.communities.gov.uk/blog/guidance/before-submitting-an-application/who-can-be-involved-at-the-pre-application-stage/local-people-at-the-pre-application-stage/>)

## **Local people at the pre-application stage**

### **Is pre-application community consultation compulsory?**

Pre-application engagement with the community is encouraged where it will add value to the process and the outcome. It is mandatory to carry out pre-application consultation with the local community for planning applications for wind turbine development involving more than 2 turbines or where the hub height of any turbine exceeds 15 metres

([http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph\\_025](http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph_025)).

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- **The prospective applicant at the pre-application stage**

(<http://planningguidance.communities.gov.uk/blog/guidance/before-submitting-an-application/who-can-be-involved-at-the-pre-application-stage/the-prospective-applicant-at-the-pre-application-stage/>)

## **The prospective applicant at the pre-application stage**

### **What should a prospective applicant expect from the local planning authority at the pre-application stage?**

A prospective applicant should expect a clear, timely, and authoritative, view on the merits of a proposed development – as well as clear advice on consultation requirements and the information to be submitted with a formal planning application.

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## **Related policy**

### **National Planning Policy Framework**

- Paragraph 190 ([http://planningguidance.com/sustainable-development/decision-taking/#paragraph\\_190](http://planningguidance.com/sustainable-development/decision-taking/#paragraph_190))

ID 20-010-20150326 Last updated 26 03 2015

### **Is pre-application advice binding?**

Pre-application advice provided by the local planning authority cannot pre-empt the democratic decision making process or a particular outcome, in the event that a formal planning application is made. The advice could, however, be a material consideration to be taken into account and given weight in the planning application process.

ID 20-011-20140306 Last updated 06 03 2014

### **Is a prospective applicant able to make changes to a proposed development during or after undertaking pre-application engagement?**

If pre-application advice is to be meaningful then a proposed development may change prior to the submission of a formal planning application. This could resolve issues identified at the pre-application stage and/or it may raise new issues that need to be discussed.

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### **What can a prospective applicant do if they are unhappy with the pre-application service provided?**

If the level of service received is considered by the prospective applicant to have fallen below expectations, they may wish to raise the matter directly with the local planning authority, if necessary through its formal complaints procedure. Where a fee has been paid for pre-application advice, the scope for a full or partial refund will depend on the terms and conditions of any agreement that has been entered into.

ID 20-013-20150326 Last updated 26 03 2015

3. The importance of considering design and environmental issues at the pre-application stage (<http://planningguidance.communities.gov.uk/blog/guidance/before-submitting-an-application/what-is-design-review/>)

### **The importance of considering design and environmental issues at the pre-application stage**

#### **How can design review relate to the pre-application stage?**

The National Planning Policy Framework recognises the benefits of design review in appropriate cases (see paragraph 62 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/7-requiring-good-design/#paragraph\\_62](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/7-requiring-good-design/#paragraph_62))). The local planning authority should consider offering design review when appropriate, as part of their pre-application service. While a design review can take place at any point during the pre-application or planning application process, it is particularly beneficial if undertaken once the site's constraints and opportunities have been established and before a proposal has been developed in any great detail. Being able to inform and influence the design of a proposed development at this early stage is more efficient than trying to implement suggested revisions at a later stage – particularly if this relates to a major proposal and/or one that will require an Environmental Impact Assessment (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/>).

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#### **Related policy**

##### **National Planning Policy Framework**

- Paragraph 62 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/7-requiring-good-design/#paragraph\\_62](http://planningguidance.com/sustainable-development/delivering-sustainable-development/7-requiring-good-design/#paragraph_62))

If undertaken at the pre-application stage, a prospective applicant is encouraged to articulate the findings and outcomes of the design review process when making a formal planning application. This explanation could be included in a Design and Access Statement

([http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/national-information-requirements/#paragraph\\_029](http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/national-information-requirements/#paragraph_029)) in instances where one is required. Design and Access Statements can help local planning authorities and other interested parties understand the evolution and rationale behind the proposed design.

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### **What is a design review?**

More information on design review can be found in the design guidance (<http://planningguidance.communities.gov.uk/blog/guidance/design/>).

ID 20-015-20140306 Last updated 06 03 2014

## **4. Planning performance agreements (<http://planningguidance.communities.gov.uk/blog/guidance/before-submitting-an-application/planning-performance-agreements/>)**

### **Planning performance agreements**

#### **What is a planning performance agreement?**

A planning performance agreement is a project management tool which the local planning authorities and applicants can use to agree timescales, actions and resources for handling particular applications. It should cover the pre-application and application stages but may also extend through to the post-application stage. Planning performance agreements can be particularly useful in setting out an efficient and transparent process for determining large and/or complex planning applications. They encourage joint working between the applicant and local planning authority, and can also help to bring together other parties such as statutory consultees. A planning performance agreement is agreed voluntarily between the applicant and the local planning authority prior to the application being submitted, and can be a useful focus of pre-application discussions about the issues that will need to be addressed.

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#### **When can a planning performance agreement be used?**

In principle planning performance agreements can be used for any application, although whether an agreement is justified will depend on the size and complexity of the proposal. It may be possible to use a simple form of agreement for smaller schemes, based on the key milestones that need to be adhered to.

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#### **What does a planning performance agreement comprise?**

There is no one model. It is for the local planning authority and the applicant to discuss and agree a suitable process, format and content which is proportionate to the scale of the project and the complexity of the issues to be addressed.

As with all project management approaches, it is always sensible to keep the content of planning performance agreements as straightforward as possible and the guiding principle should be that the parties agree the way forward. As a minimum, a simple approach, such as one built around an agreed timetable, development objectives and responsibility for tasks could be sufficient. In very complex schemes of strategic importance there may be a need to develop a

shared vision to encourage greater collaborative working. There will always need to be a clear and agreed timescale for reaching a decision on the application once it is submitted.

A planning performance agreement can extend to matters beyond the formal application process – such as programming the negotiation of any section 106 agreement and related non-planning consents. For very large or complex schemes the agreement may also provide a basis for any voluntary contributions which the applicant has offered to pay to assist with abnormal costs of processing the application. The parties will want to ensure that such payments do not exceed the cost of the additional work involved, are not seen to have any implications for the decision on the application, and do not deflect resources from processing other cases; any additional resource provided in this way needs to be used for additional capacity that is genuinely required to ensure a timely and effective service.

ID 20-018-20150326 Last updated 26 03 2015

### **How much should a planning performance agreement cost?**

Local planning authorities may make a charge for the administrative work involved in agreeing and implementing the planning performance agreement itself, to the extent that this goes beyond an authority's statutory responsibilities. Any charges need to reflect the wider principles for charging for pre-application advice

([http://planningguidance.communities.gov.uk/blog/guidance/before-submitting-an-application/who-can-be-involved-at-the-pre-application-stage/the-local-planning-authority-at-the-pre-application-stage/#paragraph\\_005](http://planningguidance.communities.gov.uk/blog/guidance/before-submitting-an-application/who-can-be-involved-at-the-pre-application-stage/the-local-planning-authority-at-the-pre-application-stage/#paragraph_005)), – where possible forming part of a clear menu of pre-application services – and will be in addition to any subsequent planning application fee for the proposed development.

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### **How can planning performance agreements and community involvement relate?**

Planning performance agreements provide an ideal opportunity for identifying the preferred approach to community engagement, including the identification of the communities to involve, the process of engagement and the best approach to incorporating their views.

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### **Who needs to sign the planning performance agreement?**

A planning performance agreement will need to be signed by appropriate representatives of the local planning authority and the applicant or their agent. Where appropriate, any third party who will play a key role in progressing the proposals will also need to be a party to the agreement (such as a statutory consultee).

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### **Can a planning performance agreement be put in place after an application has been submitted?**

A planning performance agreement needs to be put in place prior to the submission of a planning application in order for the application to be exempted from the statutory time limit for a decision (although a written extension of time agreement can be entered into after an application has been submitted).

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### **What is the status of a planning performance agreement once it has been signed?**

Planning performance agreements are intended to be agreed in the spirit of a 'memorandum of understanding'. They are not intended to be a legally binding contract, unless the parties wish to approach it in this way. It is helpful to be clear about its status in the planning performance agreement itself. The parties are encouraged to make the existence and content of a planning performance agreement publicly available, so that the agreed process and timescale are transparent.

ID 20-023-20150326 Last updated 26 03 2015

### **Who is responsible for adhering to a planning performance agreement?**

All parties will need to regularly review progress on the implementation of the planning performance agreement and take shared responsibility for addressing any problems or slippage.

ID 20-024-20150326 Last updated 26 03 2015

### **What implications does a planning performance agreement have for deciding a planning application?**

A planning performance agreement does not differ from other forms of pre-application engagement. It does not commit the local planning authority to a particular outcome. It is instead a commitment to a process and timetable for determining an application.

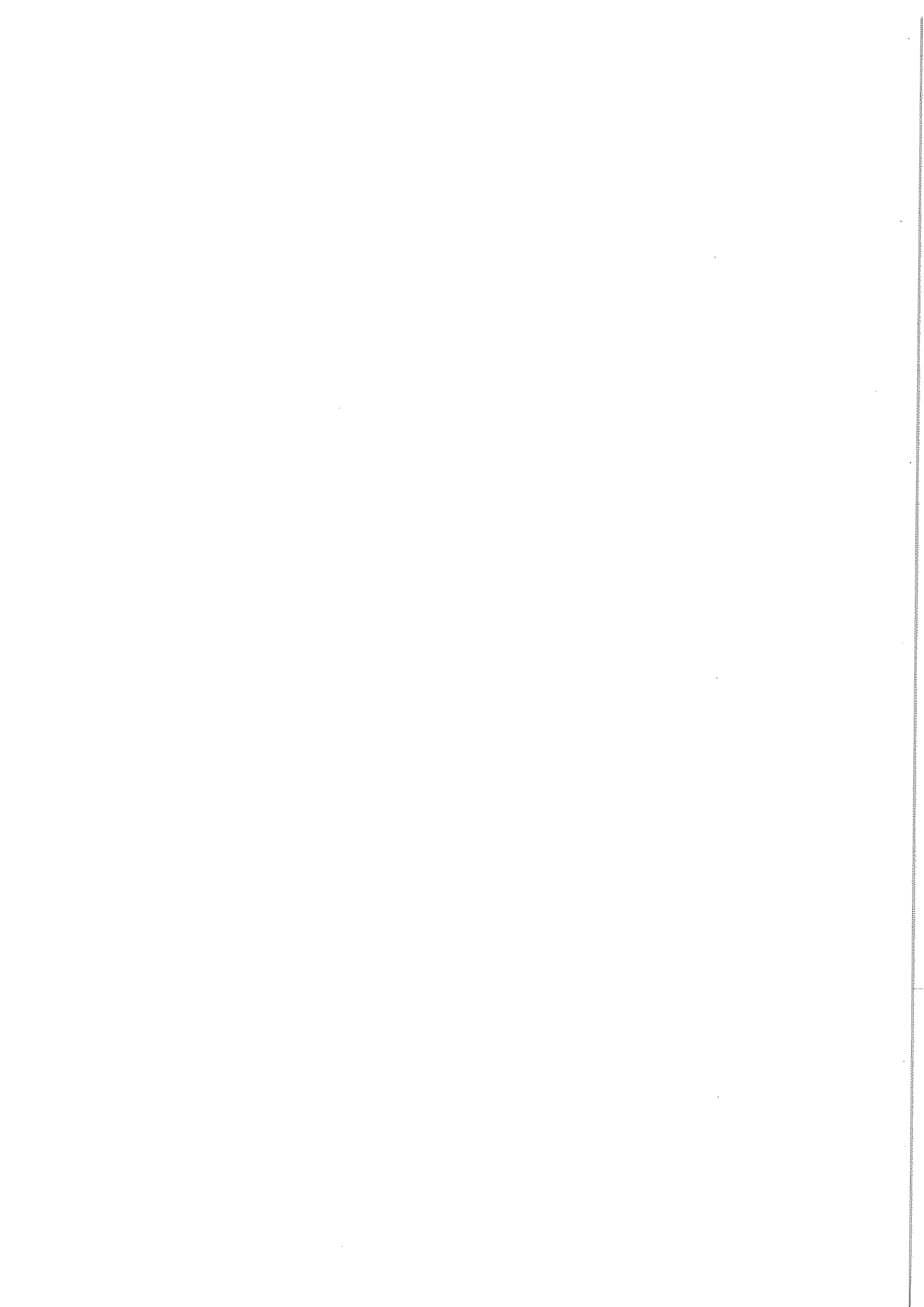
ID 20-025-20140306 Last updated 06 03 2014

### **How does a planning performance agreement relate to the statutory time limits for determining a planning application?**

The existence of a planning performance agreement means that the statutory time limits for determining the application no longer apply (to the extent that the agreement specifies a longer period for the decision, in which case the agreement will count in the same way as an agreed extension of time). If an authority fails to determine the application by the agreed date, then the applicant may appeal. Likewise, if an applicant does not abide by the agreement, the local planning authority may not be able to follow the agreed process. However, in many cases there will be good reasons to try and address what has happened and renegotiate the planning performance agreement, as the reason for a problem may not be any one party's fault and may have arisen from unexpected issues. It is important that the agreement is sufficiently flexible to cope with potential changes in circumstances.

ID 20-026-20150326 Last updated 26 03 2015







# Planning Practice Guidance <http://planningguidance.communities.gov.uk>

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## Guidance

# Climate change

Print 

### 1. Why is it important for planning to consider climate change?


(<http://planningguidance.communities.gov.uk/blog/guidance/climate-change/why-is-it-important-for-planning-to-consider-climate-change/>)

#### Why is it important for planning to consider climate change?

In addition to supporting the delivery of appropriately sited green energy (<http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/>), effective spatial planning is an important part of a successful response to climate change as it can influence the emission of greenhouse gases. In doing so, local planning authorities should ensure that protecting the local environment is properly considered alongside the broader issues of protecting the global environment. Planning can also help increase resilience to climate change impact through the location, mix and design of development.

Addressing climate change is one of the core land use planning principles which the National Planning Policy Framework expects to underpin both plan-making and decision-taking. To be found sound, Local Plans

(<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>) will need to reflect this principle and enable the delivery of sustainable development in accordance with the policies in the National Planning Policy Framework (<http://planningguidance.communities.gov.uk/blog/policy/>). These include the requirements for local authorities to adopt proactive strategies to mitigate and adapt to climate change

([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph\\_94](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph_94)) in line with the provisions and objectives of the Climate Change Act 2008 

(<http://www.legislation.gov.uk/ukpga/2008/27/contents>), and co-operate to deliver strategic priorities which include climate change.

In addition to the statutory requirement to take the Framework into account in the preparation of Local Plans

(<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>), there is a statutory duty (<http://planningguidance.communities.gov.uk/blog/guidance/climate-change-2/what-climate-change-legislation-should-planners-be-aware-of/>) on local planning authorities to include policies in their Local Plan designed to tackle climate change and its impacts. This complements the sustainable development duty on plan-makers and the expectation that neighbourhood plans will contribute to the achievement of sustainable development. The National Planning Policy Framework emphasises that responding to climate change is central to the economic, social and environmental dimensions of sustainable development.

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## Related policy

### National Planning Policy Framework

- Paragraph 93 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph\\_93](http://planningguidance.com/sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph_93))
- Paragraph 94 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph\\_94](http://planningguidance.com/sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph_94))

## 2. What climate change legislation should planners be aware of?

(<http://planningguidance.communities.gov.uk/blog/guidance/climate-change/what-climate-change-legislation-should-planners-be-aware-of/>)

### What climate change legislation should planners be aware of?

Section 19 (1A) of the Planning and Compulsory Purchase Act 2004 <sup>(a)</sup> (<http://www.legislation.gov.uk/ukpga/2008/29/section/182>) requires local planning authorities to include in their Local Plans (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>) “policies designed to secure that the development and use of land in the local planning authority’s area contribute to the mitigation of, and adaptation to, climate change”. This will be a consideration when a Local Plan is examined.

The Climate Change Act 2008 <sup>(a)</sup> (<http://www.legislation.gov.uk/ukpga/2008/27/contents>) establishes a legally binding target to reduce the UK’s greenhouse gas emissions by at least 80% in 2050 from 1990 levels. To drive progress and set the UK on a pathway towards this target, the Act introduced a system of carbon budgets including a target that the annual equivalent of the carbon budget for the period including 2020 is at least 34% lower than 1990. More information is available from the DECC website <sup>(a)</sup> (<https://www.gov.uk/government/policies/reducing-the-uk-s-greenhouse-gas-emissions-by-80-by-2050/supporting-pages/carbon-budgets>).

The Climate Change Act 2008 also requires the government:

- to assess regularly the risks to the UK of the current and predicted impact of climate change;
- to set out its climate change adaptation objectives; and
- to set out its proposals and policies for meeting these objectives.

These requirements are fulfilled by the UK Climate Change Risk Assessment <sup>(a)</sup> (<https://www.gov.uk/government/publications/uk-climate-change-risk-assessment-government-report>) and the National Adaptation Programme Report <sup>(a)</sup> (<https://www.gov.uk/government/publications/adapting-to-climate-change-national-adaptation-programme>) respectively, which may provide helpful information for plan-making.

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## 3. How can the challenges of climate change be addressed through the Local Plan?

(<http://planningguidance.communities.gov.uk/blog/guidance/climate-change/how-can-the-challenges-of-climate-change-be-addressed-through-the-local-plan/>)

### How can the challenges of climate change be addressed through the Local Plan?

There are many opportunities to integrate climate change mitigation and adaptation objectives into the Local Plan (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>). Sustainability appraisal (<http://planningguidance.communities.gov.uk/blog/guidance/strategic-environmental-assessment-and-sustainability-appraisal/>) can be used to help shape appropriate strategies in line with the statutory duty on climate change and ambition in the Climate Change Act 2008 <sup>(a)</sup> (<http://www.legislation.gov.uk/ukpga/2008/27/contents>).

#### Examples of mitigating climate change by reducing emissions:

- Reducing the need to travel and providing for sustainable transport (<http://planningguidance.communities.gov.uk/blog/guidance/travel-plans-transport-assessments-and-statements-in-decision-taking/>)

- Providing opportunities for renewable and low carbon energy technologies (<http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/>)
- Providing opportunities for decentralised energy and heating
- Promoting low carbon design approaches (<http://planningguidance.communities.gov.uk/blog/guidance/design/>) to reduce energy consumption in buildings, such as passive solar design ([http://planningguidance.communities.gov.uk/blog/guidance/design/what-planning-objectives-can-good-design-help-achieve/#paragraph\\_013](http://planningguidance.communities.gov.uk/blog/guidance/design/what-planning-objectives-can-good-design-help-achieve/#paragraph_013))

#### Examples of adapting to a changing climate:

- Considering future climate risks when allocating development sites to ensure risks are understood over the development's lifetime (<http://planningguidance.communities.gov.uk/blog/guidance/assessment-of-land-availability/what-is-the-purpose-of-the-assessment-of-land-availability/>)
- Considering the impact of and promoting design responses to flood risk and coastal change (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/>) for the lifetime of the development
- Considering availability of water and water infrastructure ([http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality/water-supply-wastewater-and-water-quality-introduction/#paragraph\\_001](http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality/water-supply-wastewater-and-water-quality-introduction/#paragraph_001)) for the lifetime of the development and design responses to promote water efficiency and protect water quality (<http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality/what-is-the-role-of-local-plans-with-regard-to-water/water-quality/>)
- Promoting adaptation approaches in design policies (<http://planningguidance.communities.gov.uk/blog/guidance/design/>) for developments and the public realm

Engaging with appropriate partners, including utility providers, communities, health authorities, regulators and emergency planners, statutory environmental bodies, Local Nature Partnerships, Local Resilience Forums, and climate change partnerships will help to identify relevant local approaches.

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#### 4. How can adaptation and mitigation approaches be integrated?

(<http://planningguidance.communities.gov.uk/blog/guidance/climate-change/how-can-adaptation-and-mitigation-approaches-be-integrated/>)

#### How can adaptation and mitigation approaches be integrated?

When preparing Local Plans

(<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>) and taking planning decisions local planning authorities should pay particular attention to integrating adaptation and mitigation approaches and looking for 'win-win' solutions that will support sustainable development. This could be achieved in a variety of ways, for example:

- by maximising summer cooling through natural ventilation in buildings and avoiding solar gain;
- through district heating networks that include tri-generation (combined cooling, heat and power); or
- through the provision of multi-functional green infrastructure (<http://planningguidance.communities.gov.uk/blog/guidance/natural-environment/green-infrastructure/>), which can reduce urban heat islands, manage flooding and

help species adapt to climate change – as well as contributing to a pleasant environment which encourages people to walk and cycle.

Local planning authorities should be aware of and avoid the risk of maladaptation (adaptation that could become more harmful than helpful). For example, designing buildings to maximise solar gain in winter without thinking through the implications for overheating in summer.

Sustainability appraisal

(<http://planningguidance.communities.gov.uk/blog/guidance/strategic-environmental-assessment-and-sustainability-appraisal/>) and, where required, Environmental Impact Assessment (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/>), can be useful for testing the integration of mitigation and adaptation measures and the long term implications of decisions.

ID 6-004-20140612 Last updated 12 06 2014

5. How can planning deal with the uncertainty of climate risks when promoting adaptation in particular developments? (<http://planningguidance.communities.gov.uk/blog/guidance/climate-change/how-can-planning-deal-with-the-uncertainty-and-variability-of-climate-risks-when-promoting-adaptation-in-particular-developments/>)

### **How can planning deal with the uncertainty of climate risks when promoting adaptation in particular developments?**

The impact of climate change needs to be taken into account in a realistic way. In doing so, local planning authorities will want to consider:

- identifying no or low cost responses to climate risks that also deliver other benefits, such as green infrastructure that improves adaptation, biodiversity and amenity
- building in flexibility to allow future adaptation if it is needed, such as setting back new development from rivers so that it does not make it harder to improve flood defences in future
- the potential vulnerability of a development to climate change risk over its whole lifetime

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6. What evidence of risks arising from climate change is available to support local plan-making? (<http://planningguidance.communities.gov.uk/blog/guidance/climate-change/what-evidence-of-risks-arising-from-climate-change-is-available-to-support-local-plan-making/>)

### **What evidence of risks arising from climate change is available to support local plan-making?**

Climate change risk assessments 

(<https://www.gov.uk/government/policies/adapting-to-climate-change>) can support the production of Local Plans

(<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>) by informing the Sustainability appraisal

(<http://planningguidance.communities.gov.uk/blog/guidance/strategic-environmental-assessment-and-sustainability-appraisal/>).

Local risk assessments can be used to identify those climate risks, including those arising from severe weather events, the planning system can address. Risk assessments could consider the implications for the built environment and development, infrastructure, services and biodiversity, and their subsequent implications for vulnerable groups and community cohesion. Identifying those

impacts which pose most potential risk or disruption to the provision of local services will enable vulnerability to be assessed and areas suitable for development to be identified and adaptation responses to be put in place.

Other parts of a Local Plan's evidence base will also include information on climate change risks, such as the Strategic Flood Risk Assessment ([http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/strategic-flood-risk-assessment/#paragraph\\_009](http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/strategic-flood-risk-assessment/#paragraph_009)) and Water Resource Management Plan and water cycle studies ([http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality/information-about-the-water-environment/#paragraph\\_012](http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality/information-about-the-water-environment/#paragraph_012)). Infrastructure providers hold information on the extent of supply and network constraints and their existing plans to reinforce those networks and capacity. Other service providers may also have carried out risk assessments that have implications for planning, such as health and social service providers.

Local studies can also be undertaken to provide a more detailed assessment of local vulnerability to climate impacts and the effects of extreme weather events. Further information is available from the Environment Agency's Climate Ready Support Service and on the climate adaptation pages of GOV.UK [\[2\]](https://www.gov.uk/government/policies/adapting-to-climate-change) (<https://www.gov.uk/government/policies/adapting-to-climate-change>).

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7. How can local planning authorities identify appropriate mitigation measures in plan-making? (<http://planningguidance.communities.gov.uk/blog/guidance/climate-change/how-can-local-planning-authorities-identify-appropriate-mitigation-measures-in-plan-making/>)

### **How can local planning authorities identify appropriate mitigation measures in plan-making?**

Every area will have different challenges and opportunities for reducing carbon emissions from new development such as homes, businesses, energy, transport and agricultural related development.

- Robust evaluation of future emissions will require consideration of different emission sources, likely trends taking into account requirements set in national legislation, and a range of development scenarios.
- Information on carbon emissions at local authority level [\[2\]](https://www.gov.uk/government/collections/uk-greenhouse-gas-emissions-statistics) (<https://www.gov.uk/government/collections/uk-greenhouse-gas-emissions-statistics>) is published by DECC for 2005 onwards, and can be drawn on to inform emission reduction options. Information is also available on [www.gov.uk](http://www.gov.uk) [\[2\]](https://www.gov.uk/government/policies/reducing-the-uk-s-greenhouse-gas-emissions-by-80-by-2050) (<https://www.gov.uk/government/policies/reducing-the-uk-s-greenhouse-gas-emissions-by-80-by-2050>) on how emissions are reported against the national target to reduce the UK's greenhouse gas emissions by at least 80% (from the 1990 baseline) by 2050.
- The distribution and design of new development and the potential for servicing sites through sustainable transport solutions, are particularly important considerations that affect transport emissions. Sustainability appraisal (<http://planningguidance.communities.gov.uk/blog/guidance/strategic-environmental-assessment-and-sustainability-appraisal/>) should be used to test different spatial options in plans on emissions.
- Different sectors may have different options for mitigation. For example, measures for reducing emissions in agricultural related development include anaerobic digestion, improved slurry and manure storage and improvements to buildings. In more energy intensive sectors, energy efficiency and generation of renewable energy can make a significant contribution to emissions reduction.

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8. How can local planning authorities support energy efficiency improvements to existing buildings? (<http://planningguidance.communities.gov.uk/blog/guidance/climate-change/how-can-local-planning-authorities-support-energy-efficiency-improvements-to-existing-buildings/>)

### **How can local planning authorities support energy efficiency improvements to existing buildings?**

Where energy efficiency improvements require planning permission local planning authorities should ensure any advice to developers is co-ordinated to ensure consistency between energy, design and heritage matters.

Many improvements to homes and other buildings may not require planning permission. Further guidance can be found on the Planning Portal's interactive house guide [\[2\]](http://www.planningportal.gov.uk/permission/house) (<http://www.planningportal.gov.uk/permission/house>) in 'When is permission required?' (<http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/%20>).

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9. What are Government's national standards for a building's sustainability and for zero carbon buildings? (<http://planningguidance.communities.gov.uk/blog/guidance/climate-change/what-are-governments-national-standards-for-a-buildings-sustainability-and-for-zero-carbon-buildings/>)

### **What are Government's national standards for a building's sustainability and for zero carbon buildings?**

The National Planning Policy Framework

([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph\\_95](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph_95)) expects local planning authorities when setting any local requirement for a building's sustainability to do so in a way consistent with the Government's zero carbon buildings policy and adopt nationally described standards. Local requirements should form part of a Local Plan (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>) following engagement with appropriate partners, and will need to be based on robust and credible evidence and pay careful attention to viability (<http://planningguidance.communities.gov.uk/blog/guidance/viability-guidance/>). In this respect, planning authorities will need to take account of Government decisions on the Housing Standards Review [\[2\]](https://www.gov.uk/government/policies/providing-effective-building-regulations-so-that-new-and-altered-buildings-are-safe-accessible-and-efficient/supporting-pages/technical-housing-standards-review) (<https://www.gov.uk/government/policies/providing-effective-building-regulations-so-that-new-and-altered-buildings-are-safe-accessible-and-efficient/supporting-pages/technical-housing-standards-review>) when considering a local requirement relating to new homes.

If considering policies on local requirements for the sustainability of other buildings, local planning authorities will wish to consider if there are nationally described standards and the impact on viability of development. Further guidance can be found under Viability (<http://planningguidance.communities.gov.uk/blog/guidance/viability-guidance/>).

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10. What is passive solar design? (<http://planningguidance.communities.gov.uk/blog/guidance/climate-change/what-is-passive-solar-design/>)

### **What is passive solar design?**

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#### **Related policy**

##### **National Planning Policy Framework**

- Paragraph 95 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph\\_95](http://planningguidance.com/sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph_95))

Guidance on passive solar design is available under Design – ‘Planning should promote efficient use of natural resources’ ([http://planningguidance.communities.gov.uk/blog/guidance/design/what-planning-objectives-can-good-design-help-achieve/#paragraph\\_013](http://planningguidance.communities.gov.uk/blog/guidance/design/what-planning-objectives-can-good-design-help-achieve/#paragraph_013)).



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## 11. Where can I find out more about climate change mitigation and adaptation?


(<http://planningguidance.communities.gov.uk/blog/guidance/climate-change/where-can-i-find-out-more-about-climate-change-mitigation-and-adaptation/>)


### Where can I find out more about climate change mitigation and adaptation?

The Department of Energy & Climate Change 

(<https://www.gov.uk/government/organisations/department-of-energy-climate-change>) and Defra  (<https://www.gov.uk/government/organisations/department-for-environment-food-rural-affairs>) websites provide information on the Government’s climate change policy, including the National Adaptation Programme  (<https://www.gov.uk/government/publications/adapting-to-climate-change-national-adaptation-programme>) and the UK Climate Change Risk Assessment, which is updated every 5 years.


The Committee for Climate Change  (<http://www.theccc.org.uk/>) (including the Adaptation Sub-Committee) is an independent, statutory body established under the Climate Change Act 2008  (<http://www.legislation.gov.uk/ukpga/2008/27/contents>) to advise the UK Government on emissions targets and reports to Parliament on progress made in reducing greenhouse gas emissions and preparing for climate change.

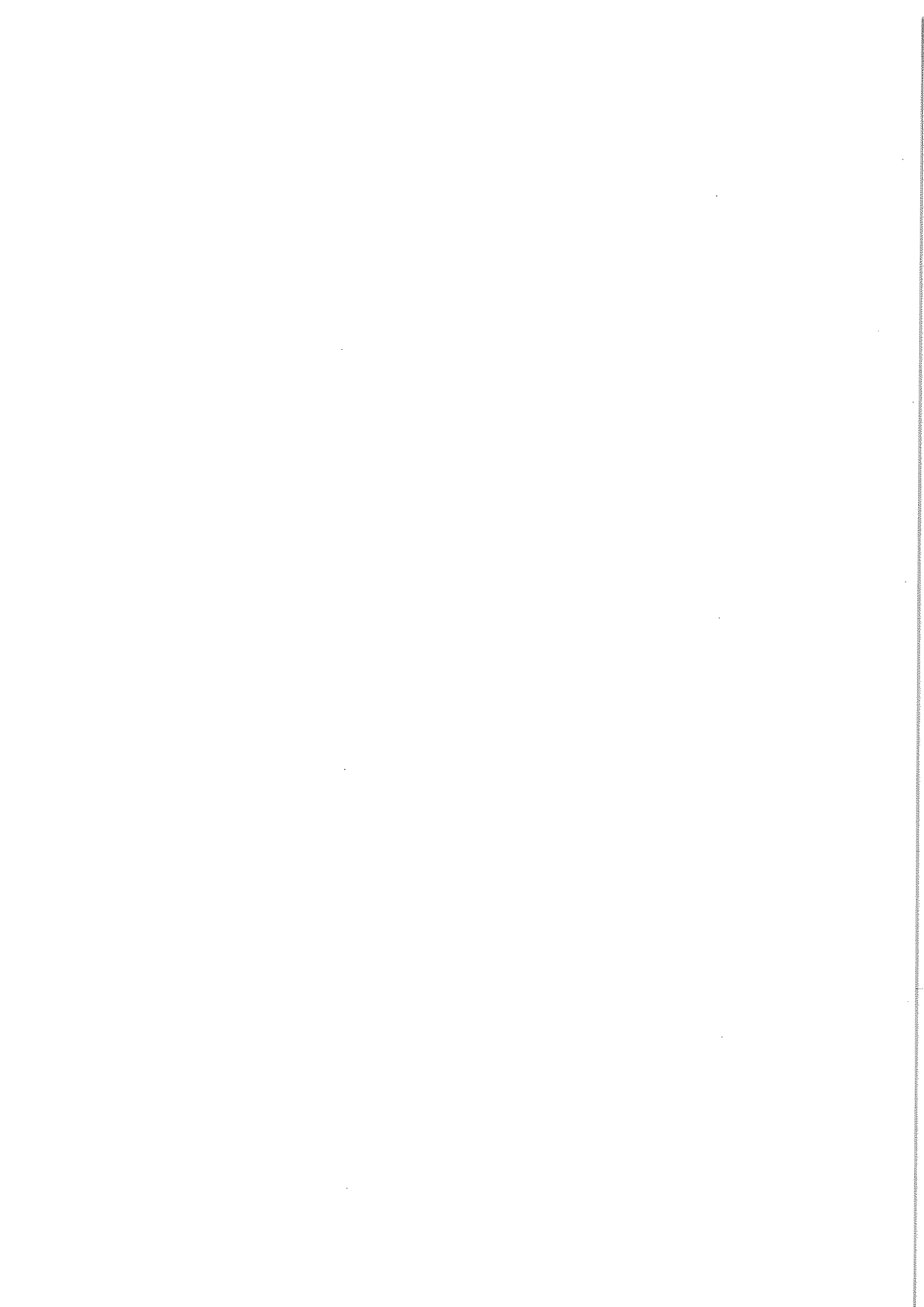
Natural England’s website  (<http://www.naturalengland.org.uk/>) provides information on using green infrastructure to help places and communities mitigate and adapt to climate change.

Local planning authorities may also find it useful to read *Keeping the Country Running: Natural Hazards and Infrastructure (2011)*  (<https://www.gov.uk/government/publications/keeping-the-country-running-natural-hazards-and-infrastructure>), which is a guide to improving the resilience of critical infrastructure and essential services, published by Cabinet Office.

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 Department for Communities & Local Government  
(<https://www.gov.uk/government/organisations/department-for-communities-and-local-government>)





## Planning Practice Guidance (<http://planningguidance.communities.gov.uk>)

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Guidance

### Community Infrastructure Levy

Print 

1. Introduction (<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/cil-introduction/>)

#### Introduction

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Guidance on the Community Infrastructure Levy was added to this website on 12 June 2014. This replaced the standalone guidance that was published in February 2014. Read more about the changes to the guidance (<http://planningguidance.communities.gov.uk/about/#cil>).

#### What is the Community Infrastructure Levy, and who has to pay it

The Community Infrastructure Levy (the levy) is a tool for local authorities in England and Wales to help deliver infrastructure to support the development of the area.

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#### What kind of development is liable for the levy?

The levy may be payable on development which creates net additional floor space, where the gross internal area of new build exceeds 100 square metres (the 'Rates' section (<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/rates/>) explains how this is calculated). That limit does not apply to new houses or flats, and a charge can be levied on a single house or flat of any size, unless it is built by a 'self builder' (see 'Self Build Exemption' (<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/self-build-exemption/>) and Regulation 54A and 54B (<http://www.legislation.gov.uk/uksi/2014/385/regulation/7/made>)).

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#### What kind of development does not pay the levy?

The following do not pay the levy:

- development of less than 100 square metres (see Regulation 42 on Minor Development Exemptions (<http://www.legislation.gov.uk/uksi/2010/948/regulation/42/made>)) – unless this is a whole house, in which case the levy is payable
- houses, flats, residential annexes and residential extensions which are built by 'self builders' (see Regulations 42A, 42B, 54A and 54B, inserted by the 2014 Regulations (<http://www.legislation.gov.uk/uksi/2014/385/regulation/7/made>))
- social housing that meets the relief criteria set out in Regulation 49 (<http://www.legislation.gov.uk/uksi/2010/948/regulation/49/made>) or 49A (<http://www.legislation.gov.uk/uksi/2014/385/regulation/7/made>) (as amended by the 2014 Regulations)

- charitable development that meets the relief criteria set out in Regulations 43 to 48 [\[2\]](http://www.legislation.gov.uk/ukSI/2010/948/part/6/made) (<http://www.legislation.gov.uk/ukSI/2010/948/part/6/made>)
- buildings into which people do not normally go (see Regulation 6(2) [\[2\]](http://www.legislation.gov.uk/ukSI/2010/948/regulation/6/made) (<http://www.legislation.gov.uk/ukSI/2010/948/regulation/6/made>))
- buildings into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery (see Regulation 6(2) [\[2\]](http://www.legislation.gov.uk/ukSI/2010/948/regulation/6/made) (<http://www.legislation.gov.uk/ukSI/2010/948/regulation/6/made>))
- structures which are not buildings, such as pylons and wind turbines
- specified types of development which local authorities have decided should be subject to a 'zero' rate and specified as such in their charging schedules
- vacant buildings brought back into the same use ([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/collecting-the-levy/#paragraph\\_057](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/collecting-the-levy/#paragraph_057)) (see Regulation 40 as amended by the 2014 Regulations [\[2\]](http://www.legislation.gov.uk/ukSI/2014/385/regulation/6/made) (<http://www.legislation.gov.uk/ukSI/2014/385/regulation/6/made>))

Where the levy liability is calculated to be less than £50, the chargeable amount is deemed to be zero so no levy is due.

Mezzanine floors of less than 200 square metres, inserted into an existing building, are not liable for the levy unless they form part of a wider planning permission that seeks to provide other works as well.

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## Who can charge and collect the levy?

In England, levy charging authorities are district and metropolitan district councils, London borough councils, unitary authorities, national park authorities, The Broads Authority, Mayoral Development Corporations and the Mayor of London. In Wales, the county and county borough councils and the national park authorities have the power to charge the levy. These bodies all prepare relevant Plans (the Local Plan in England, Local Development Plan in Wales, and the London Plan in London) for their areas, which include assessments of the infrastructure needs for which the levy may be collected.

The levy is collected by the 'collecting authority' (as defined by Regulation 10 [\[2\]](http://www.legislation.gov.uk/ukSI/2010/948/regulation/10/made) (<http://www.legislation.gov.uk/ukSI/2010/948/regulation/10/made>)). In most cases this is the charging authority but, in London, the boroughs collect the levy on behalf of the Mayor. County councils collect the levy charged by district councils on developments for which the county gives consent. The Homes and Communities Agency, urban development corporations and enterprise zone authorities can also be collecting authorities for development, with the agreement of the relevant charging authority, where they grant permission.

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## Who is liable to pay?

Landowners are ultimately liable for the levy, but anyone involved in a development may take on the liability to pay. In order to benefit from payment windows and instalments, someone must assume liability in this way. Where no one has assumed liability to pay the levy, the liability will automatically default to the landowners and payment becomes due as soon as development commences (see Regulation 7 [\[2\]](http://www.legislation.gov.uk/ukSI/2010/948/regulation/7/made) (<http://www.legislation.gov.uk/ukSI/2010/948/regulation/7/made>), and section 56(4) of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/56) (<http://www.legislation.gov.uk/ukpga/1990/8/section/56>), for the definition of 'commencement of development'). Liability to pay the levy can also default to

the landowners where the collecting authority has been unable to recover the levy from the party that assumed liability for the levy, despite making all reasonable efforts.

For further information see 'How does someone assume liability for the levy?' ([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/collecting-the-levy/#paragraph\\_051](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/collecting-the-levy/#paragraph_051)).

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### **How does the levy relate to planning permission?**

The levy is charged on new development. Normally, this requires planning permission from the local planning authority, the Planning Inspectorate, or the Secretary of State on appeal.

Planning permission can also be granted through local planning orders. Examples are simplified planning zones and local development orders (see related National Planning Policy Guidance on Local Development Orders (<http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-types-of-area-wide-local-planning-permission-are-there/>)). Development can also be granted consent by Neighbourhood Development Orders (see related guidance here (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/what-is-neighbourhood-planning/>)), including Community Right to Build Orders. Some Acts of Parliament, such as the Crossrail Act 2008, also grant planning permission for new buildings.

The levy applies to all these types of planning consent.

The levy may also be payable on permitted development (see related guidance on the General Permitted Development Order here (<http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/>)).

Development which is the subject of a Lawful Development Certificate may be liable for the levy, depending on the circumstances. A lawful development certificate (granted under section 191 or 192 of the Town and Country Planning Act 1990) is often sought to confirm permitted development rights. It does not by itself trigger a levy payment because it is not a planning permission as defined in Regulation 5 [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/regulation/5/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/5/made>). It simply confirms that no further application for planning permission is needed for the development described in the certificate. So where a certificate is sought to confirm permitted development rights, the normal levy provisions in respect of permitted development rights apply, and the grant of such a certificate is not relevant to whether or not, or when, the levy may be payable.

Where a planning permission is phased, each phase of the development is treated as if it were a separate chargeable development for levy purposes (see Regulation 8(3A) as amended by 2014 Regulations [\[3\]](http://www.legislation.gov.uk/uksi/2014/385/regulation/4/made) (<http://www.legislation.gov.uk/uksi/2014/385/regulation/4/made>)). This may apply to schemes which have full planning permission as well as to outline permissions. For further details, see 'When does a charging schedule come into effect?' ([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/rates/approving-and-implementing-the-charging-schedule/#paragraph\\_042](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/rates/approving-and-implementing-the-charging-schedule/#paragraph_042)) and 'Is there another way to allow phased payments' ([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/collecting-the-levy/#paragraph\\_056](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/collecting-the-levy/#paragraph_056)).

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### **What is the impact of a section 73 application to amend a**

## planning condition?

Developers can amend a condition attached to a planning consent, under section 73 of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/73) (<http://www.legislation.gov.uk/ukpga/1990/8/section/73>).

If the section 73 permission does not change the liability to the levy, only the original consent will be liable.

If the section 73 permission does change the levy liability, the most recently commenced scheme is liable for the levy. In these circumstances, levy payments made in relation to the previous planning permission are offset against the new liability, and a refund is payable if the previous payment was greater than the new liability.

There may be transitional cases, where the original planning permission was granted before a levy charge came into force in the area, and a section 73 permission is granted after the charge comes into force. In these circumstances, regulation 128A [\[2\]](http://www.legislation.gov.uk/uksi/2012/2975/regulation/9/made) (<http://www.legislation.gov.uk/uksi/2012/2975/regulation/9/made>) (as amended by the 2014 Regulations [\[2\]](http://www.legislation.gov.uk/uksi/2014/385/regulation/13/made) (<http://www.legislation.gov.uk/uksi/2014/385/regulation/13/made>)) provides for the section 73 consent to only trigger levy liability for any additional liability it introduces to the development. The Government's intention is that the provisions set out in regulation 128A should apply to all subsequent section 73 permissions granted in respect of such a development where these transitional circumstances have arisen.

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## 2. Rates (<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/rates/>)

### Rates

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Guidance on the Community Infrastructure Levy was added to this website on 12 June 2014. This replaced the standalone guidance that was published in February 2014. Read more about the changes to the guidance (<http://planningguidance.communities.gov.uk/about/#cil>).

### How are Community Infrastructure Levy rates set?

The charging authority sets out its levy rates in a charging schedule (<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/rates/charging-schedules/>) (see Section 211(1) of the Planning Act 2008 [\[2\]](http://www.legislation.gov.uk/ukpga/2008/29/section/211) (<http://www.legislation.gov.uk/ukpga/2008/29/section/211>)).

Levy rates are expressed as pounds per square metre. These figures are applied to the gross internal floorspace of the net additional development liable for the levy.

Liable development is the type of development specified in the charging schedule as incurring a particular levy charge. Where an existing building is being redeveloped, the nature of the redevelopment may impact on the levy charge (see 'Can existing buildings be taken into account when calculating a new levy charge?' ([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/collecting-the-levy/#paragraph\\_057](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/collecting-the-levy/#paragraph_057))).

Charging authorities should set a rate which does not threaten the ability to develop viably the sites and scale of development identified in the relevant Plan (the Local Plan in England, Local Development Plan in Wales, and the London Plan in London). They will need to draw on the infrastructure planning evidence that underpins the development strategy for their area. Charging authorities

should use that evidence to strike an appropriate balance between the desirability of funding infrastructure from the levy and the potential impact upon the economic viability of development across their area.

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### What is meant by an appropriate balance?

The levy is expected to have a positive economic effect on development across a local plan area. When deciding the levy rates, an appropriate balance must be struck between additional investment to support development and the potential effect on the viability of developments.

This balance is at the centre of the charge-setting process. In meeting the regulatory requirements (see Regulation 14(1) [\[2\]](http://www.legislation.gov.uk/ukxi/2010/948/regulation/14/made) (<http://www.legislation.gov.uk/ukxi/2010/948/regulation/14/made>), as amended by the 2014 Regulations [\[3\]](http://www.legislation.gov.uk/ukxi/2014/385/regulation/5/made) (<http://www.legislation.gov.uk/ukxi/2014/385/regulation/5/made>)), charging authorities should be able to show and explain how their proposed levy rate (or rates) will contribute towards the implementation of their relevant plan and support development across their area.

As set out in the National Planning Policy Framework in England (paragraphs 173 – 177 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph\\_173](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph_173))), the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. The same principle applies in Wales.

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- **Charging Schedules** (<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/rates/charging-schedules/>)

### Charging Schedules

Guidance on the Community Infrastructure Levy was added to this website on 12 June 2014. This replaced the standalone guidance that was published in February 2014. Read more about the changes to the guidance (<http://planningguidance.communities.gov.uk/about/#cil>).

### What is a charging schedule?

A charging schedule sets out the levy rates for a charging authority area.

Charging authorities should consider relevant national planning policy when drafting their charging schedules. This includes the National Planning Policy Framework (<http://planningguidance.communities.gov.uk/blog/policy/>) in England and Planning Policy Wales [\[4\]](http://wales.gov.uk/topics/planning/policy/ppw/?lang=en) (<http://wales.gov.uk/topics/planning/policy/ppw/?lang=en>) in Wales.

Charging schedules should be consistent with, and support the implementation of, up-to-date relevant Plans.

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### What is a 'relevant Plan'?

In relation to the levy, the relevant Plan is the Local Plan in England, Local Development Plan in Wales, and the London Plan in London.

Charging schedules are not formally part of the relevant Plan, but charging schedules and relevant Plans should inform and be generally consistent with each other. The National Planning Policy Framework in England (paragraph 175 (<http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable->

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### Related policy

#### National Planning Policy Framework

- Paragraphs 173-177 ([http://planningguidance.com/sustainable-development/plan-making/#paragraph\\_173](http://planningguidance.com/sustainable-development/plan-making/#paragraph_173))

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### Related policy

#### National Planning Policy Framework

- Paragraph 175 (<http://planningguidance.com/sustainable->

development/plan-making/#paragraph\_175)) provides that, where practical, charging schedules should be worked up and tested alongside the Local Plan. The same principles apply in Wales (see paragraph 2.1.1 of Planning Policy Wales [\[2\]](http://wales.gov.uk/topics/planning/policy/ppw/?lang=en) (<http://wales.gov.uk/topics/planning/policy/ppw/?lang=en>)). A charging authority may use a draft plan if they are proposing a joint examination of their relevant Plan and their levy charging schedule.

development/plan-making/#paragraph\_175)

The process for preparing a charging schedule is similar to that which applies to relevant Plans. Charging authorities may work together when preparing their charging schedules, and Government supports this approach as a means to share knowledge and costs and to support strategic thinking in the use of the levy, linking the use of the levy to activities such as growth planning. Charging schedules do not require a Sustainability Appraisal.

Charging authorities should think strategically in their use of the levy to ensure that key infrastructure priorities are delivered to facilitate growth and the economic benefit of the wider area. This may for example include working with neighbouring authorities, Local Enterprise Partnerships and other interested parties and involve consideration of other funding available that could be combined with the levy to enable the delivery of strategic infrastructure, including social and environmental infrastructure, and facilitate the delivery of planned development.

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### How is a charging schedule prepared?

In summary, a charging schedule is prepared and adopted as follows. Each of these stages is discussed in more detail in the rest of this section.

- the charging authority prepares its evidence base in order to prepare its draft levy rates, and collaborates with neighbouring/overlapping authorities (and other stakeholders)
- the charging authority prepares a preliminary draft charging schedule and publishes this for consultation
- consultation process takes place
- the charging authority prepares and publishes a draft charging schedule
- period of further representations based on the published draft
- an independent person (the “examiner”) examines the charging schedule in public
- the examiner’s recommendations are published
- the charging authority considers the examiner’s recommendations
- the charging authority approves the charging schedule

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### What is the role of the county council?

County councils are responsible for the delivery of key strategic infrastructure. Charging authorities must consult and should collaborate with them in setting the levy, and should work closely with them in setting priorities for how the levy will be spent in two-tier areas.

Collaborative working between county councils and charging authorities is especially important in relation to the preparation or amendment of the regulation 123 infrastructure list ([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/other-developer-contributions/#paragraph\\_096](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/other-developer-contributions/#paragraph_096)), bearing in mind the potential impact on the use of highway agreements by the county council (see ‘What is

the relationship between the levy and section 278 highway agreements?' ([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/other-developer-contributions/#paragraph\\_107](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/other-developer-contributions/#paragraph_107))).

ID 25-013-20140612 Last updated 12 06 2014

### Should other interested groups be involved?

Charging authorities should seek early engagement with local developers, others in the property industry and infrastructure providers when preparing their charging schedules. As part of this they should consider consulting with Business Improvement District bodies in the area covered by the levy proposals.

ID 25-014-20150323 Last updated 23 03 2015

- Evidence and setting rates (<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/rates/evidence-and-setting-rates/>)

### Evidence and setting rates

Guidance on the Community Infrastructure Levy was added to this website on 12 June 2014. This replaced the standalone guidance that was published in February 2014. Read more about the changes to the guidance (<http://planningguidance.communities.gov.uk/about/#cil>).

### What evidence is required to inform levy rates?

The evidence base for a charging schedule is examined in public prior to the adoption of the levy. Care must be taken to ensure that it is robust.

ID 25-015-20140612 Last updated 12 06 2014

### How does the levy charge relate to infrastructure planning?

Charging authorities must identify the total cost of infrastructure they wish to fund wholly or partly through the levy. In doing so, they must consider what additional infrastructure is needed in their area to support development, and what other sources of funding are available, based on appropriate evidence.

Information on the charging authority area's infrastructure needs should be drawn from the infrastructure assessment that was undertaken as part of preparing the relevant Plan (the Local Plan in England, Local Development Plan in Wales, and the London Plan in London). This is because the plan identifies the scale and type of infrastructure needed to deliver the area's local development and growth needs (see paragraphs 162

([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph\\_162](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph_162)) and 177

([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph\\_177](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph_177)) of the National Planning Policy Framework in England).

In determining the size of its infrastructure funding gap, the charging authority should consider known and expected infrastructure costs and the other possible sources of funding to meet those costs. This process will help the charging authority to identify a levy funding target.

The Government recognises that there will be uncertainty in pinpointing other infrastructure funding sources, particularly beyond the short-term. Charging authorities should focus on providing evidence of an aggregate funding gap that demonstrates the need to put in place the levy.

The Community Infrastructure Levy examination should not re-open infrastructure planning issues that have already been considered in putting in place a sound relevant Plan.

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### Related policy

#### National Planning Policy Framework

- Paragraph 162 ([http://planningguidance.com/sustainable-development/plan-making/#paragraph\\_162](http://planningguidance.com/sustainable-development/plan-making/#paragraph_162))
- Paragraph 177 ([http://planningguidance.com/sustainable-development/plan-making/#paragraph\\_177](http://planningguidance.com/sustainable-development/plan-making/#paragraph_177))

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## **What infrastructure planning evidence is required at examination?**

At examination, the charging authority should set out a draft list of the projects or types of infrastructure that are to be funded in whole or in part by the levy ([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/other-developer-contributions/#paragraph\\_096](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/other-developer-contributions/#paragraph_096)). The charging authority should also set out any known site-specific matters for which section 106 contributions may continue to be sought. This is to provide transparency about what the charging authority intends to fund through the levy and where it may continue to seek section 106 contributions. The role of the list is to help provide evidence on the potential funding gap – it is not the purpose of the examination to challenge the list.

A charging authority may undertake additional infrastructure planning to identify its infrastructure funding gap, if it considers that the infrastructure planning underpinning its relevant Plan (the Local Plan in England, Local Development Plan in Wales, and the London Plan in London) is weak or does not reflect its latest priorities. This work may be limited to those projects requiring funding from the levy.

Where infrastructure planning work which was undertaken specifically for the levy setting process has not been tested as part of another examination, it will need to be tested at the levy examination. The examiner will need to test that the evidence is sufficient in order to confirm the aggregate infrastructure funding gap and the total target amount that the charging authority proposes to raise through the levy.

Other infrastructure planning work, which was submitted in support of a sound relevant Plan, should not be re-appraised.

Further information about examinations is provided in the 'Draft Charging Schedule' section

(<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/rates/draft-charging-schedule/>).

ID 25-017-20140612 Last updated 12 06 2014

## **How do local authorities prepare their evidence to support a levy charge?**

A charging authority should be able to explain how their proposed levy rate or rates will contribute towards the implementation of the relevant Plan (the Local Plan in England, Local Development Plan in Wales, and the London Plan in London), and support development across their area. Charging authorities will need to summarise their economic viability evidence. This evidence should be presented in a document (separate from the charging schedule) that shows the potential effects of the proposed levy rate or rates on the economic viability of development across the authority's area.

As background evidence, the charging authority should also provide information about the amount of funding collected in recent years through section 106 agreements. This should include information on the extent to which their affordable housing and other targets have been met.

ID 25-018-20140612 Last updated 12 06 2014

## **How should development be valued for the purposes of the levy?**



A charging authority should use an area-based approach, involving a broad test of viability across their area, as the evidence base to underpin their charge. The authority will need to be able to show why they consider that the proposed levy rate or rates set an appropriate balance

([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/rates/#paragraph\\_009](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/rates/#paragraph_009)) between the need to fund infrastructure and the potential implications for the economic viability of development across their area.

There are a number of valuation models and methodologies available to charging authorities to help them in preparing this evidence. There is no requirement to use one of these models, but charging authorities may find it helpful in defending their levy rates if they do.

A charging authority must use 'appropriate available evidence' (as defined in the Planning Act 2008 section 211(7A) )

(<http://www.legislation.gov.uk/ukpga/2011/20/section/114>) to inform their draft charging schedule. The Government recognises that the available data is unlikely to be fully comprehensive. Charging authorities need to demonstrate that their proposed levy rate or rates are informed by 'appropriate available' evidence and consistent with that evidence across their area as a whole.

A charging authority should draw on existing data wherever it is available. They may consider a range of data, including values of land in both existing and planned uses, and property prices – for example, house price indices and rateable values for commercial property. They may also want to build on work undertaken to inform their assessments of land availability.

In addition, a charging authority should directly sample an appropriate range of types of sites across its area, in order to supplement existing data. This will require support from local developers. The exercise should focus on strategic sites on which the relevant Plan (the Local Plan in England, Local Development Plan in Wales, and the London Plan in London) relies, and those sites where the impact of the levy on economic viability is likely to be most significant (such as brownfield sites).

The sampling should reflect a selection of the different types of sites included in the relevant Plan, and should be consistent with viability assessment undertaken as part of plan-making.

Charging authorities that decide to set differential rates

([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/rates/evidence-and-setting-rates/#paragraph\\_021](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/rates/evidence-and-setting-rates/#paragraph_021)) may need to undertake more fine-grained sampling, on a higher proportion of total sites, to help them to estimate the boundaries for their differential rates. Fine-grained sampling is also likely to be necessary where they wish to differentiate between categories or scales of intended use.

The focus should be in particular on strategic sites on which the relevant Plan relies and those sites (such as brownfield sites) where the impact of the levy is likely to be most significant.

The outcome of the sampling exercise should be to provide a robust evidence base about the potential effects of the rates proposed, balanced against the need to avoid excessive detail.

A charging authority's proposed rate or rates should be reasonable, given the available evidence, but there is no requirement for a proposed rate to exactly mirror the evidence. For example, this might not be appropriate if the evidence pointed to setting a charge right at the margins of viability. There is room for some pragmatism. It would be appropriate to ensure that a 'buffer' or margin is included, so that the levy rate is able to support development when economic circumstances adjust. In all cases, the charging authority should be able to explain its approach clearly.

ID 25-019-20140612 Last updated 12 06 2014

### **How should development costs be treated?**

A charging authority should take development costs into account when setting its levy rate or rates, particularly those likely to be incurred on strategic sites or brownfield land. A realistic understanding of costs is essential to the proper assessment of viability in an area.

Development costs include costs arising from existing regulatory requirements, and any policies on planning obligations in the relevant Plan, such as policies on affordable housing and identified site-specific requirements for strategic sites.

For England, further guidance on viability can be found here (<http://planningguidance.communities.gov.uk/blog/guidance/viability-guidance/viability-and-decision-taking/>).

ID 25-020-20140612 Last updated 12 06 2014

### **Can differential rates be set?**

The regulations allow charging authorities to apply differential rates in a flexible way, to help ensure the viability of development is not put at risk. Differences in rates need to be justified by reference to the economic viability of development. Differential rates should not be used as a means to deliver policy objectives.

Differential rates may be appropriate in relation to

- geographical zones within the charging authority's boundary
- types of development; and/or
- scales of development.

A charging authority that plans to set differential rates should seek to avoid undue complexity. Charging schedules with differential rates should not have a disproportionate impact on particular sectors or specialist forms of development. Charging authorities should consider the views of developers at an early stage.

If the evidence shows that the area includes a zone, which could be a strategic site, which has low, very low or zero viability, the charging authority should consider setting a low or zero levy rate in that area. The same principle should apply where the evidence shows similarly low viability for particular types and/or scales of development.

In all cases, differential rates must not be set in such a way that they constitute a notifiable state aid under European Commission regulations (see 'State aid' section (<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/state-aid/>) for further information). One element of state aid is the conferring of a selective advantage to any 'undertaking'. A charging authority which chooses to differentiate between classes of development, or by reference to different areas, should do so only where there is consistent economic viability evidence to justify this approach. It is the responsibility of each charging authority to ensure that their charging schedules are state aid compliant.

ID 25-021-20140612 Last updated 12 06 2014

### **How can rates be set by type of use?**

Charging authorities may also set differential rates by reference to different intended uses of development. The definition of "use" for this purpose is not tied to the classes of development in the Town and Country Planning Act (Use

Classes) Order 1987, although that Order does provide a useful reference point. Charging authorities taking this approach will need to ensure that the differential rates are supported by robust evidence on economic viability.

For example, to reflect viability and encourage greater provision and innovation in delivery of social housing, authorities may wish to consider applying a zero or reduced rate of levy charge to alternative models for provision of social housing, as defined locally, which will not otherwise be eligible for social housing or charitable relief from the levy.

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### **How can rates be set by scale?**

Charging authorities may also set differential rates by scale. Rates can be set by reference to either floor area or the number of units or dwellings in a development. Again, any differential rates must be justified by reference to economic viability.

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### **Can different rates be combined?**

Charging authorities may choose to set differential rates by combining several of the above approaches. They must be consistent in the way that appropriate available evidence on economic viability informs the treatment of each proposed rate, striking a balance between the desirability of funding infrastructure through the levy and the impact on economic viability of development across the area. They should be aware that it is likely to be harder to ensure that more complex patterns of differential rates are state aid compliant.

ID 25-024-20140612 Last updated 12 06 2014

### **Can Charging Authorities claim the administrative costs of the levy?**

Charging authorities may take account of their related administrative expenses when setting their levy. For example, an authority may set levy rates slightly higher than the levels required to meet their infrastructure funding needs, in order to cover administration costs, but will need to take this impact into account in fulfilling their responsibilities to set an appropriate balance ([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/rates/#paragraph\\_009](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/rates/#paragraph_009)), and the limits on the amount which can be applied to administrative expenses contained in Regulation 61 [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/regulation/61/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/61/made>), as amended by the 2014 Regulations [\[2\]](http://www.legislation.gov.uk/uksi/2014/385/regulation/8/made) (<http://www.legislation.gov.uk/uksi/2014/385/regulation/8/made>).

View further guidance on administrative expenses

([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/spending-the-levy/#paragraph\\_084](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/spending-the-levy/#paragraph_084)).

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### **How does the operation of the levy differ in London?**

At present, London is the only place where a strategic tier authority (the Mayor) may set a levy in addition to the local tier authority (London boroughs and Mayoral Development Corporations). The Mayor and the Boroughs should work closely in setting and running the Levy in London, through mutual co-operation and the sharing of relevant information.

When they set their own levy, the London Boroughs and Mayoral Development Corporations must take into account any levy rates set by the Mayor (as set out in Regulations 14(3) and 14(4) [\[2\]](#)

(<http://www.legislation.gov.uk/ukSI/2010/948/regulation/14/made>), as amended by the 2013 Regulations [\[3\]](#) (<http://www.legislation.gov.uk/ukSI/2013/982/regulation/6/made>)). This is to ensure that rates are set in a way which retains viability across London for local and strategic infrastructure and allows both the boroughs and the Mayor to implement their development strategies.

The Mayor's levy is mandatory. When setting their own levy rates, London boroughs must take into account any proposals for new Mayoral levy rates that have been published in a draft or preliminary draft charging schedule. Similarly, when reviewing his levy rates, the Mayor should also take account of borough levies that are in force at the time.

Further information about the operation of the levy in London can be found in:

- Who can charge and collect the levy?  
([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/cil-introduction/#paragraph\\_004](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/cil-introduction/#paragraph_004))
- Can Mayoral Development Corporations charge the levy?  
([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/rates/evidence-and-setting-rates/#paragraph\\_027](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/rates/evidence-and-setting-rates/#paragraph_027))
- Approving and implementing the charging schedule  
(<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/rates/approving-and-implementing-the-charging-schedule/>)
- Payments to charging authorities in London  
([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/collecting-the-levy/#paragraph\\_059](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/collecting-the-levy/#paragraph_059))
- Is the Mayor of London also required to pass a share to neighbourhoods?  
([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/spending-the-levy/#paragraph\\_077](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/spending-the-levy/#paragraph_077))
- Exceptional Circumstances Relief  
(<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/exceptional-circumstances/>)

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## Can Mayoral Development Corporations charge the levy?

Mayoral Development Corporations can be given local planning functions. Where they take on all the plan making functions in Part 2 of the Planning and Compulsory Purchase Act 2004 [\[4\]](#)

(<http://www.legislation.gov.uk/ukpga/2004/5/part/2>) for the whole of their area they will be the charging authority for their area. They can develop a charging schedule in the same way as other charging authorities – subject to the same requirements.

It is important to ensure that communities and local authorities do not lose out when a Mayoral Development Corporation becomes or ceases to be the charging authority for an area, or is dissolved.

In advance of formally establishing a Mayoral Development Corporation, the Mayor of London may carry out the preparatory work for it to approve a charging schedule. This will enable the Mayoral Development Corporation to start charging the Levy as soon as possible after it becomes the charging authority for its area.

After a Mayoral Development Corporation becomes the charging authority for an area, London Borough Councils that have granted planning permission for a development in that area are still able to collect any levy due in relation to that

development. Equally if the Mayoral Development Corporation ceases to be the charging authority for an area, provided that it has a charging schedule in place and has granted planning permission for a development in that area, it will still be entitled to receive the levy due in respect of that development.

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- **Preliminary draft charging schedules**

(<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/rates/preliminary-draft-charging-schedules/>)

### **Preliminary draft charging schedules**

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Guidance on the Community Infrastructure Levy was added to this website on 12 June 2014. This replaced the standalone guidance that was published in February 2014. Read more about the changes to the guidance (<http://planningguidance.communities.gov.uk/about/#cil>).

### **What is a preliminary draft charging schedule?**

A preliminary draft charging schedule is a document which sets out the charging authority's initial proposals for the levy, for public consultation. The authority must take into account the comments it receives when firming up its proposals in the form of the draft charging schedule

(<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/rates/draft-charging-schedule/>). This document then goes forward for examination (<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/rates/examination-of-the-charging-schedule/>).

The preliminary draft charging schedule should go beyond broad proposals for the levy. It should be based on evidence about the infrastructure needs of the area and the ability of development in that area to fund that infrastructure in whole or in part. Providing sufficient detail at the preliminary draft stage will reduce the need for later amendments.

It is good practice for charging authorities to also publish their draft infrastructure lists and proposed policy for the associated scaling back of section 106 agreements at this stage, in order to provide clarity about the extent of the financial burden that developments will be expected to bear so that viability can be robustly assessed. The list now forms part of the 'appropriate available evidence' for consideration at the examination.

ID 25-028-20140612 Last updated 12 06 2014

### **What consultation is required on the preliminary draft charging schedule?**

The charging authority must consult the bodies listed in Regulation 15 [\[2\]](http://www.legislation.gov.uk/ukSI/2010/948/regulation/15/made) (<http://www.legislation.gov.uk/ukSI/2010/948/regulation/15/made>), (as amended by the 2012 Regulations [\[3\]](http://www.legislation.gov.uk/ukSI/2012/2975/regulation/4/made)) (<http://www.legislation.gov.uk/ukSI/2012/2975/regulation/4/made>) sending them a copy of the preliminary draft charging schedule and inviting them to comment. They must also invite comments from local residents, businesses and voluntary organisations (under Regulation 15(5)).

The regulations do not specify how charging authorities should consult, because charging authorities are best placed to decide how best to engage with their local communities and other relevant parties. Charging authorities may also decide how long a consultation period to offer, although they should consider an appropriate period to ensure that respondents have enough time to comment.

ID 25-029-20140612 Last updated 12 06 2014

- Draft charging schedule (<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/rates/draft-charging-schedule/>)

## Draft charging schedule

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Guidance on the Community Infrastructure Levy was added to this website on 12 June 2014. This replaced the standalone guidance that was published in February 2014. Read more about the changes to the guidance (<http://planningguidance.communities.gov.uk/about/#cil>).

### What is a draft charging schedule?

A draft charging schedule is prepared by the charging authority, in light of comments received on the preliminary draft and other updated evidence where applicable. It is subject to further public consultation before going forward for a formal independent examination.

ID 25-030-20140612 Last updated 12 06 2014

### What consultation is required on the draft charging schedule?

Before being examined, a draft charging schedule must be formally published. Alongside the draft charging schedule, the charging authority must also publish the appropriate available evidence on infrastructure costs, other funding sources and economic viability.

The consultation period must be at least four weeks long. It is good practice to allow at least six weeks, and longer if the issues under consideration are particularly complex. A copy of the draft charging schedule must be sent to all the bodies consulted during the preliminary drafting stage. Other parties who commented on the preliminary draft charging schedule should also be notified when the draft charging schedule is published.

During the consultation period, any person may comment on the draft charging schedule, and may ask to be heard by the examiner if they wish (under Regulation 21 [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/regulation/21/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/21/made>)).

ID 25-031-20140612 Last updated 12 06 2014

### Can the draft charging schedule be modified after publication?

Charging authorities should avoid making substantive changes to the draft charging schedule between publication and submission to the examiner. Substantive changes should always be avoided, unless they have been sufficiently consulted on.

Where any changes are made to a draft charging schedule after publication, the charging authority must set these out in a 'statement of modifications' (as defined in Regulation 11(1) [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/regulation/11/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/11/made>)). Charging authorities should take any steps they consider necessary to inform people who were invited to make representations on the draft charging schedule that this statement has been published (see also Regulation 15 [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/regulation/15/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/15/made>) and Regulation 19 [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/regulation/19/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/19/made>), as amended by the 2011 Regulations [\[2\]](http://www.legislation.gov.uk/uksi/2011/987/regulation/5/made) (<http://www.legislation.gov.uk/uksi/2011/987/regulation/5/made>)).

Anyone wishing to comment on the statement of modifications may ask to be heard by the examiner, within four weeks of the statement being published (under Regulation 21(5) [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/regulation/21/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/21/made>)). Charging authorities

may ask anyone wishing to be heard to provide additional details where appropriate; for example, whether they support or oppose the modification(s) and why. These details may be submitted to the examiner, along with the requests to be heard, where the authority considers they will help the examiner or if the examiner has asked for them.

ID 25-032-20140612 Last updated 12 06 2014

- **Examination of the Charging Schedule**

(<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/rates/examination-of-the-charging-schedule/>)

## **Examination of the Charging Schedule**

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Guidance on the Community Infrastructure Levy was added to this website on 12 June 2014. This replaced the standalone guidance that was published in February 2014. Read more about the changes to the guidance (<http://planningguidance.communities.gov.uk/about/#cil>).

### **How will the charging schedule be examined?**

A charging schedule must be examined in public by an independent person appointed by the charging authority. Any person asking to be heard before the examiner at the examination must be heard in public. The independent examiner may determine the examination procedures and set time limits for those wishing to be heard to ensure that the examination is conducted efficiently and effectively.

Where a charging authority has chosen to work collaboratively with other charging authorities, they may opt for a joint examination of their charging schedule with those of the other charging authorities. In addition, an examination of one or more charging schedules may be conducted as an integrated examination with a draft development plan document.

View further details on the evidence presented at the examination (<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/rates/evidence-and-setting-rates/>).

View more information on the role of the Regulation 123 infrastructure list ([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/other-developer-contributions/#paragraph\\_096](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/other-developer-contributions/#paragraph_096)).

ID 25-033-20140612 Last updated 12 06 2014

### **How are the examiner and the examiner's assistants appointed?**

The charging authority must appoint an examiner to examine its draft charging schedule. The charging authority must consider that this examiner is independent and has appropriate qualifications and experience. The Government believes that a Planning Inspector is likely to meet these criteria.

If the charging authority and the examiner agree it is necessary, the charging authority may appoint an assistant. For example, this might be an expert assessor from the Valuation Office Agency or another suitably qualified and experienced independent person. This appointment can be made by an exchange of letters.

ID 25-034-20140612 Last updated 12 06 2014

### **How much should the examiner charge?**

The charging authority must meet the cost of the examination. The regulations do not specify what the examiner's fees should be. It will be for the market to determine what rates are appropriate.

Where the examiner or assistant is an employee of the Crown or under contract to an executive agency of Government, such as the Planning Inspectorate, the Secretary of State can recover their costs from the charging authority (under Regulation 30 [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/regulation/30/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/30/made>)). In practice, the examiner should be able to provide a reasonable estimate of the likely costs prior to the examination, based on their assessment of its anticipated length and complexity.

In all other cases, the examiner or assistant should simply agree their fees and expenses with the charging authority prior to the examination (under Regulation 29 [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/regulation/29/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/29/made>)).

Where there is a 'joint examination' ([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/rates/examination-of-the-charging-schedule/#paragraph\\_037](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/rates/examination-of-the-charging-schedule/#paragraph_037)) of one or more charging schedules and a Development Plan Document (in England), Local Development Plan (in Wales) or the London Plan, any cost savings achieved by carrying out a joint examination are passed to the charging authority or split between the charging authorities. For example, where the same Inspector examines a relevant Plan and a Community Infrastructure Levy charging schedule at a 'joint examination', the Secretary of State would first recover costs of the relevant Plan examination using the statutory daily rate, before recovering any additional costs under Community Infrastructure Levy Regulation 30 [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/regulation/30/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/30/made>).

ID 25-035-20140612 Last updated 12 06 2014

### How should the charging schedule examination be run?

Regulation 21(8) [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/regulation/21/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/21/made>) sets out what steps the charging authority must take to notify interested parties about a forthcoming examination. They should do this as early as possible and at least four weeks before a hearing takes place. If the authority published a statement of modifications ([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/rates/draft-charging-schedule/#paragraph\\_032](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/rates/draft-charging-schedule/#paragraph_032)), and one or more people asked to comment on it at the examination, this period can be shortened to two weeks (under Regulation 21(11) [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/regulation/21/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/21/made>)).

Examiners may hold a pre-hearing meeting, where they consider it appropriate. The examiner may use this pre-hearing meeting to undertake an initial check that the charging authority has complied with the legislation when preparing its charging schedule, and that the appropriate available evidence is sufficient. This can help to identify potential problems prior to the examination and save time and effort. The examiner may also use a pre-hearing meeting to discuss how the examination will be managed, to identify the main issues to be considered, and to outline the structure and draft programme. Whether or not a pre-hearing meeting is held, examiners should share the draft programme for the hearings at an early stage to ensure that those who wish to attend are clear when to do so.

An informal hearing format is usually the most appropriate form of examination for the Community Infrastructure Levy. If no-one has requested the right to be heard, the examiner also has the option of conducting the examination by written representations.

Regulation 21(12) [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/regulation/21/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/21/made>) allows the examiner to decide how the hearing will be conducted and to set time limits for representations from the participants who wish to speak. The



examiner may refuse to allow representations if they consider that these may be repetitious, irrelevant, vexatious or frivolous, although the legislation does not allow an examiner to deny a participant's right to be heard altogether. The examiner may decide whether cross-examination of participants will be allowed. The examiner may also make any necessary arrangements to accommodate participants who are unable to attend the examination during normal working hours.

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### What are joint examinations (for charging schedules and local plans)?

Joint examinations of a charging schedule and a Development Plan Document (in England), Local Development Plan (in Wales) or the London Plan provide an opportunity for issues that are relevant to the charging schedule and the plan to be considered in a holistic way. This may involve the submission of joint evidence documents or the holding of a joint pre-hearing meeting. Joint hearing sessions may also cover issues such as infrastructure planning and the economic viability evidence. The charging schedule examiner and the plan inspector, where this is a different person, may decide to collaborate when writing their final examination reports.

Joint examinations must ensure there is transparency, so that all the participants are aware of exchanges of information between the two examinations and have an opportunity to comment where appropriate. A joint pre-hearing meeting and joint hearing sessions will help to achieve this. Where other exchanges of information take place, such as after the hearings have ended, the relevant authorities should take steps to ensure that they place relevant information their website and make the examination participants aware of this.

Joint examinations are optional. Two or more charging schedules can be examined together if each of the charging authorities that prepared a draft agree to this approach. If the joint examination is to assess one or more charging schedules and a plan document, the charging authorities must get approval from the Secretary of State (in England) or Welsh Ministers (in Wales) in advance (under Regulation 22 [\[2\]](#)

(<http://www.legislation.gov.uk/ukxi/2010/948/regulation/22/made>), as amended by the 2013 Regulations [\[3\]](#) (<http://www.legislation.gov.uk/ukxi/2013/982/regulation/6/made>)). This may be agreed through an exchange of letters.

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### What is in the examiner's report?

The examiner must report their recommendations to the charging authority in writing. The examiner may recommend that the draft charging schedule should be approved, rejected, or approved with specified modifications. The examiner must give reasons for those recommendations.

**Approval:** the examiner must recommend approval of the draft charging schedule if a charging authority has complied with the requirements in the Planning Act and the levy regulations (collectively known as the “drafting requirements” as defined by Section 212(4) of the Planning Act 2008 [\[4\]](#) (<http://www.legislation.gov.uk/ukpga/2008/29/section/212>), as amended by the Localism Act 2011 [\[5\]](#) (<http://www.legislation.gov.uk/ukpga/2011/20/section/114/enacted>)). In doing so, the examiner should establish that:

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### Related policy

#### National Planning Policy Framework

- Paragraph 173 ([http://planningguidance.com/sustainable-development/plan-making/#paragraph\\_173](http://planningguidance.com/sustainable-development/plan-making/#paragraph_173))

- the charging authority has complied with the legislative requirements set out in the Planning Act 2008 [\[2\]](http://www.legislation.gov.uk/ukpga/2008/29/part/11) and the Community Infrastructure Levy Regulations as amended;
- the draft charging schedule is supported by background documents containing appropriate available evidence;
- the proposed rate or rates are informed by and consistent with the evidence on economic viability across the charging authority's area; and
- evidence has been provided that shows the proposed rate or rates would not threaten delivery of the relevant Plan as a whole (for England, see National Planning Policy Framework paragraph 173 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph\\_173](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph_173)))

Note that the changes to the rate setting and examination processes made by the 2014 Regulations do not apply to authorities who have already published a draft charging schedule on the date when those regulations come into force.

**Approval subject to modifications:** if the charging schedule can be modified so as to comply with the drafting requirements, the examiner must recommend appropriate modifications. This could be the case where the proposed rate or rates would be inconsistent with the evidence, or would put the delivery of the relevant Plan at risk. As long as the charging authority addresses the non-compliance, they do not have to make the specific modifications recommended by the examiner.

If the examiner does not recommend rejection of the draft charging schedule, they can also make non-binding recommendations.

**Rejection:** where the charging authority has not complied with the drafting requirements, and this could not be remedied by modifying the draft charging schedule, the examiner must recommend that the schedule is rejected. For example, this may occur where the charging authority has not complied with a procedural requirement in preparing it.

Where the examiner has recommended rejection, their recommendations will be binding on the charging authority, which means that the charging authority must make any modifications recommended if they intend to adopt the charging schedule. The charging authority cannot adopt a schedule in its original form if the examiner rejects it. However, the charging authority is not obliged to adopt the final charging schedule. If it prefers, it may submit a revised charging schedule to a fresh examination.

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### How are any errors in the examiner's report corrected?

Examiners should encourage charging authorities to 'fact check' the final report before it is published. The examiner may remedy any 'correctable errors' (under Regulation 24 [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/regulation/24/made)) in their recommendations before the charging schedule is approved. However, after such errors are corrected, the charging authority must republish the recommendations in accordance with Regulation 24 [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/regulation/24/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/24/made>) and give notice of these corrections to anyone who asked to be notified of the examiner's recommendations.

For the purposes of Regulation 24 [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/regulation/24/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/24/made>), there are two types of 'correctable error'. The first is an error which 'does not alter the substance of the examiner's recommendations or reasons'. For example, this could be a minor typographical or factual error, but not one that would affect levy liability. The second is an error which 'must be corrected to make the recommendation

consistent with the reasons given for those recommendations'. These more significant errors, which would give rise to a different levy rate or affect levy liability, may be corrected but only if the error in the recommendations is clearly traceable from the examiner's reasons within the same report and the correction is needed to make the recommendations consistent with the reasons.

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- **Approving and Implementing the Charging Schedule**

(<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/rates/approving-and-implementing-the-charging-schedule/>)

## **Approving and Implementing the Charging Schedule**

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Guidance on the Community Infrastructure Levy was added to this website on 12 June 2014. This replaced the standalone guidance that was published in February 2014. Read more about the changes to the guidance (<http://planningguidance.communities.gov.uk/about/#cil>).

### **How is the charging schedule approved and implemented?**

The charging schedule must be formally approved by a resolution of the full council of the charging authority. The resolution should include an appropriate commencement date, following or on approval. In London, the Mayor must make a formal decision to approve his or her charging schedule.

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### **Can any errors in the approved charging schedule be corrected?**

Generally, the charging schedule should not be amended after an examination, until an authority chooses to undertake a full review and consult on a new schedule. However, certain errors in the charging schedule may be corrected for a period of up to six months after the charging schedule has been approved (under Regulation 26 [\[2\]](#)

(<http://www.legislation.gov.uk/ukSI/2010/948/regulation/26/made>)). If the charging authority corrects errors it must republish the charging schedule (under Regulation 27 [\[2\]](#) (<http://www.legislation.gov.uk/ukSI/2010/948/regulation/27/made>)).

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### **When does a charging schedule come into effect?**

An approved charging schedule must be published by the charging authority. The date the charging schedule comes into effect is chosen by the charging authority and is specified within the charging schedule, but this must be at least one day after the date of publication. The charging schedule remains in effect until the charging authority either brings into effect a revised version or decides to stop charging the levy.

Planning permissions which first permit development on a day when the charging schedule is in effect will be liable for the levy. Regulation 8 [\[2\]](#) (<http://www.legislation.gov.uk/ukSI/2010/948/regulation/8/made>) defines the time at which a planning permission is treated as first permitting development. In most cases it will be the day that planning permission is granted. However, this will vary with different types of permission – see Regulation 8, as amended by the 2011 Regulations [\[2\]](#) (<http://www.legislation.gov.uk/ukSI/2011/987/regulation/4/made>) and the 2014 Regulations [\[2\]](#) (<http://www.legislation.gov.uk/ukSI/2014/385/regulation/4/made>) for further details.

For outline planning permissions, if there is a charging schedule in force at the time when the outline planning permission is granted, each phase of that permission is subject to that charging schedule, or to any replacement schedule which the charging authority may bring into force.

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### **When should the charging schedule be reviewed and revised?**

Charging authorities must keep their charging schedules under review and should ensure that levy charges remain appropriate over time. For example charging schedules should take account of changes in market conditions, and remain relevant to the funding gap for the infrastructure needed to support the development of the area.

When reviewing their charging schedule, charging authorities should take account of the impact of revised levy rates on approved phased developments, as well as future planned development.

Charging authorities may revise their charging schedule in whole or in part. Any revisions must follow the same processes as the preparation, examination, approval and publication of a charging schedule (as specified under the Planning Act 2008 [\[2\]](http://www.legislation.gov.uk/ukpga/2008/29/part/11) (<http://www.legislation.gov.uk/ukpga/2008/29/part/11>), particularly sections 211-214 as amended by the Localism Act 2011 [\[2\]](http://www.legislation.gov.uk/ukpga/2011/20/part/6/chapter/2/enacted) (<http://www.legislation.gov.uk/ukpga/2011/20/part/6/chapter/2/enacted>), and the levy Regulations).

Government does not prescribe when reviews should take place. However, in addition to taking account of market conditions and infrastructure needs, charging authorities should also consider linking a review of their charging schedule to any substantive review of the evidence base for the relevant Plan (the Local Plan in England, Local Development Plan in Wales, and the London Plan in London). Even if the original charging schedule was not examined together with the relevant Plan, there may be advantages in coordinating the review of both.

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### **Can authorities stop charging the levy?**

A charging authority that wishes to stop charging the levy may do so at any time by making a formal resolution to do so. If an authority ceases to charge, any levy liability relating to a development that has not yet commenced will be dissolved, and no levy will be payable for it [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/regulation/129/made)

(<http://www.legislation.gov.uk/uksi/2010/948/regulation/129/made>). See Regulation 7 [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/regulation/7/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/7/made>), and section 56(4) of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/56) (<http://www.legislation.gov.uk/ukpga/1990/8/section/56>), for the definition of 'commencement of development'.

In London, where there may be more than one charging authority for any area, if one charge ceases, development will still be liable for the remaining charge.

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3. Collecting the levy (<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/collecting-the-levy/>)

### **Collecting the levy**

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Guidance on the Community Infrastructure Levy was added to this website on 12 June 2014. This replaced the standalone guidance that was published in February 2014. Read more about the changes to the guidance (<http://planningguidance.communities.gov.uk/about/#cil>).

## How is the Community Infrastructure Levy collected?

The charging authority sets the charging schedule. The collecting authority calculates individual levy payments and is responsible for ensuring that payment is made. The charging and collecting authority is usually the same body, except in London, where the boroughs collect the levy on the Mayor's behalf.

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## What are the stages in the collection process?

Part 8 of the Community Infrastructure Levy Regulations [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/part/8/made) (<http://www.legislation.gov.uk/uksi/2010/948/part/8/made>), as amended, sets the legal framework for calculating and collecting the levy.

The collection process steps are:

- in areas where the levy is in force, applicants for planning permission should include a completed copy of the **Additional CIL Information form** with their application – this will help the collecting authority to calculate the amount payable
- where planning permission is granted for development by way of a general consent – such as via the General Permitted Development Order or through a Local Development Order, the developer or landowner submits a **notice of chargeable development** to the collecting authority (unless the development is less than 100 square metres, or the levy rate for the development is £zero per square metre)
- where planning permission is necessary, or permission is granted for development by way of a general consent, the collecting authority will expect the developer, landowner or another interested party to assume liability for the levy by submitting an **assumption of liability form**. It may speed up the process of issuing a liability notice if this form is submitted before planning permission is granted
- the collecting authority then issues a **liability notice** to the applicant, the developer, and whoever has assumed liability for the scheme, which sets out the charge due and details of the payment procedure
- the relevant person(s) then submit a notice to the collecting authority setting out when development is going to start – a **commencement notice**
- the collecting authority issues a **demand notice** to the landowner, or whoever has assumed liability, setting out the payment due dates in line with the payment procedure
- on commencement of the development, the landowner, or whoever has assumed liability, should follow the correct **payment procedure** ([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/collecting-the-levy/#paragraph\\_055](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/collecting-the-levy/#paragraph_055))
- the collecting authority must issue a **receipt** for each payment received, and transfer the funds to the charging authority (if that is a different body).

Anyone wishing to claim relief or an exemption from the levy should make sure that they submit their claim in good time. Most forms of relief or exemption must be claimed and approved prior to the commencement of development.

View further details of relief and exemptions

(<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/>).

Download the relevant forms and template notices

(<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/forms-and-templates/>).

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## When does a development become liable to pay the levy?

Part 4 of the Community Infrastructure Levy Regulations [\[2\]](#)

(<http://www.legislation.gov.uk/uksi/2010/948/part/4/made>) sets out how liability for a levy charge is attributed to the relevant person or people.

Charges will become due from the date that a chargeable development is commenced. The definition of commencement of development (see section 56 (4) of the Town and Country Planning Act 1990 [\[3\]](#)

(<http://www.legislation.gov.uk/ukpga/1990/8/section/56>)) for levy purposes is the same as that used in planning legislation (i.e. 'material operations' on the site), unless planning permission has been granted after commencement, in which cases the development may be deemed liable when permission is granted.

If a charging authority wishes to set its own levy payment deadlines and/or offer the option of paying by instalments

([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/collecting-the-levy/#paragraph\\_055](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/collecting-the-levy/#paragraph_055))[link to para 055], it must publish an instalments policy on its website and make it available for inspection at its principal offices. If the charging authority wishes to publish a new instalments policy, or withdraw the policy, it must give at least 28 days notice before the new policy takes effect and/or old policy is withdrawn.

Some planning permissions may be implemented in phases, in which case charges may be payable over an extended period of time (see more information on phased payments

([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/collecting-the-levy/#paragraph\\_056](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/collecting-the-levy/#paragraph_056))).

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## What information may be requested to help calculate the levy liability?

Local planning authorities are entitled to ask for relevant information when the planning application is submitted. Applicants should submit the 'Additional CIL Information' form alongside their planning application (see 'Forms and templates' section

(<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/forms-and-templates/>)). Planning authorities may refuse to validate the planning application if this information is not provided.

When a local planning authority grants planning permission for what it considers to be a chargeable development, it must pass the details to the collecting authority within 14 days. In most cases, the planning authority and the collecting authority will be the same body, so this is simply an internal matter.

If a local planning authority is unsure whether a planning permission is chargeable or not, it may wish to discuss details of the permission with the collecting authority or team.

Collecting authorities may request relevant information from charging authorities, local planning authorities, or the Secretary of State. Collecting authorities may also use any other information to determine the correct charge, as long as it was not obtained by an authority elected member in their capacity as a member of a police and crime panel, or obtained by the authority in its capacity as an employer.

For further details, see Regulation 77 [\[2\]](#)

(<http://www.legislation.gov.uk/ukxi/2010/948/regulation/77/made>) and Regulation 78 [\[2\]](#)

(<http://www.legislation.gov.uk/ukxi/2010/948/regulation/78/made>).

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### **What is indexation and how does it affect the levy calculation?**

In calculating individual charges for the levy, Regulation 40 (as amended by the 2014 Regulations) [\[2\]](#) (<http://www.legislation.gov.uk/ukxi/2014/385/regulation/6/made>) requires collecting authorities to apply an index of inflation to keep the levy responsive to market conditions. The index is the national All-In Tender Price Index of construction costs published by the Building Cost Information Service (BCIS) of the Royal Institution of Chartered Surveyors.

This index presents forecast figures, which are updated and finalised periodically. Some collecting authorities seek to reduce the need for repeated re-calculation by applying the most recent finalised figure published before the previous 1 November.

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### **What is a notice of chargeable development?**

Most developments are liable to pay the levy. This includes new developments that are granted permission by way of a general consent

([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/cil-introduction/#paragraph\\_006](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/cil-introduction/#paragraph_006)).

Where development is granted by way of a general consent, the landowner, or other person(s) liable to pay, must issue a notice of chargeable development to the collecting authority. This requirement does not apply if the development is less than 100 square metres, or the levy rate for the development is £zero per square metre.

The purpose of the notice is to give the collecting authority enough information to calculate the amount of the charge due. The procedural requirements are set out in Regulation 64 [\[2\]](#)

(<http://www.legislation.gov.uk/ukxi/2010/948/regulation/64/made>) (as amended by the

2011 Regulations [\[2\]](#) (<http://www.legislation.gov.uk/ukxi/2011/987/regulation/9/made>)

and the 2014 Regulations [\[2\]](#)

(<http://www.legislation.gov.uk/ukxi/2014/385/regulation/9/made>)).

Where the collecting authority does not receive a notice of chargeable development but is aware that development has started, it must prepare the notice and serve it on each person known to them as an owner of land – Regulation 64A [\[2\]](#) (<http://www.legislation.gov.uk/ukxi/2011/987/regulation/9/made>) (as amended by the 2014 Regulations [\[2\]](#)

(<http://www.legislation.gov.uk/ukxi/2014/385/regulation/9/made>)) covers this situation.

Development granted permission by a development order, a local development order, or an enterprise zone scheme (under section 32 of the Local Government, Planning and Land Act 1980) is liable to pay the levy if it commenced on or after 6 April 2013.

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### **How does someone assume liability for the levy?**

Anyone may assume liability to pay the levy for a proposed development scheme. For example, this may be the developer who has applied for planning permission or the development's major landowner.

If no party assumes liability to pay the levy before development commences, the owners of land will be liable to pay the levy and will not be able to benefit from any instalment regime the authority may have in place – see Regulation 33 [\[2\]](http://www.legislation.gov.uk/ukSI/2010/948/regulation/33/made) (<http://www.legislation.gov.uk/ukSI/2010/948/regulation/33/made>) for further details. If no party comes forward to assume liability, collecting authorities may wish to contact potential persons who may wish to assume liability and point out the benefits of assuming liability.

Any party wishing to assume liability should submit an 'Assumption of Liability' form to the collecting authority. Once the form has been received, the collecting authority must send an acknowledgement to the liable person(s).

Where no-one has assumed liability to pay and the collecting authority is aware that development has started, the liability defaults to the owner(s) of any material interest in the land (under Regulation 4 [\[2\]](http://www.legislation.gov.uk/ukSI/2010/948/regulation/4/made)) (<http://www.legislation.gov.uk/ukSI/2010/948/regulation/4/made>). Where it is one person, they are responsible for all payments. Where it is more than one person, the authority must apportion liability following the formula set out in Regulation 34 [\[2\]](http://www.legislation.gov.uk/ukSI/2010/948/regulation/34/made) (<http://www.legislation.gov.uk/ukSI/2010/948/regulation/34/made>) (as amended by the 2011 Regulations [\[2\]](http://www.legislation.gov.uk/ukSI/2011/987/regulation/6/made)) (<http://www.legislation.gov.uk/ukSI/2011/987/regulation/6/made>).

Under Regulation 35 [\[2\]](http://www.legislation.gov.uk/ukSI/2010/948/regulation/35/made) (<http://www.legislation.gov.uk/ukSI/2010/948/regulation/35/made>), collecting authorities can require any relevant information from owners of a material interest in the land in order to determine how to apportion liability.

Where a party has assumed liability yet failed to pay all its charge (despite the collecting authority making all reasonable efforts), the collecting authority may issue a default liability notice to the owners of any material interest in the land within the chargeable development. View further details of enforcement action ([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/collecting-the-levy/#paragraph\\_060](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/collecting-the-levy/#paragraph_060)).

Parties may transfer liability to pay at any time up to the day before the date when final payment is due. This is done by submitting a 'Transfer of Assumed Liability' form to the collecting authority. The collecting authority must send an acknowledgement to both the person liable to pay, and the person applying for the transfer of liability.

For further details, see Regulations 31 to 39 [\[2\]](http://www.legislation.gov.uk/ukSI/2010/948/part/4/made) (<http://www.legislation.gov.uk/ukSI/2010/948/part/4/made>).

Download the relevant forms (<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/forms-and-templates/>).

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## What is a liability notice and when is it issued?

Once a collecting authority has determined the amount due, based on information in the planning permission documents or the notice of chargeable development, they must issue a liability notice to the parties that are liable to pay the charge.

Collecting authorities should use the 'Liability Notice' template published by the Secretary of State (available on the Planning Portal website [\[2\]](http://www.planningportal.gov.uk/planning/infopas/cil)) (<http://www.planningportal.gov.uk/planning/infopas/cil>). The details required in the notice are set out in Regulation 65 [\[2\]](http://www.legislation.gov.uk/ukSI/2010/948/regulation/65/made) (<http://www.legislation.gov.uk/ukSI/2010/948/regulation/65/made>), as amended by the



2011 Regulations [\[2\]](http://www.legislation.gov.uk/ukSI/2011/987/regulation/9/made) (<http://www.legislation.gov.uk/ukSI/2011/987/regulation/9/made>) and the 2014 Regulations [\[2\]](http://www.legislation.gov.uk/ukSI/2014/385/regulation/9/made) (<http://www.legislation.gov.uk/ukSI/2014/385/regulation/9/made>).

The collecting authority must serve the liability notice on the person(s) who have assumed liability to pay, the owners of any material interest in the relevant land and the person who applied for the planning permission or submitted the notice of chargeable development.

Regulation 65 covers the processes for issuing revised liability notices or withdrawing a notice. A collecting authority must issue a revised liability notice where circumstances relating to the development or the chargeable amount change, and must inform the recipient of their intention to withdraw a notice. This way, collecting authorities may correct the details of a charge if it becomes necessary to do so. Where a collecting authority issues a revised liability notice, any previous notice is automatically cancelled.

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### **What is a commencement notice and when is it issued?**

Once the liability notice has been issued by the collecting authority, the liable parties must submit a commencement notice (download notice templates (<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/forms-and-templates/>)). Once they have received the notice, the collecting authority must send an acknowledgement to the sender.

The purpose of the commencement notice is to inform the collecting authority about the start date of the development. The collecting authority must receive this notice at least one day before development is due to commence.

Otherwise, the liable parties may be liable for a surcharge and may lose any ability to pay by instalments. Regulation 67 [\[2\]](http://www.legislation.gov.uk/ukSI/2010/948/regulation/67/made)

(<http://www.legislation.gov.uk/ukSI/2010/948/regulation/67/made>) (as amended by the 2011 [\[2\]](http://www.legislation.gov.uk/ukSI/2011/987/regulation/9/made) (<http://www.legislation.gov.uk/ukSI/2011/987/regulation/9/made>), 2012 [\[2\]](http://www.legislation.gov.uk/ukSI/2012/2975/regulation/8/made) (<http://www.legislation.gov.uk/ukSI/2012/2975/regulation/8/made>) and 2014 [\[2\]](http://www.legislation.gov.uk/ukSI/2014/385/regulation/9/made) (<http://www.legislation.gov.uk/ukSI/2014/385/regulation/9/made>) Regulations) sets out the detailed requirements for parties who must submit a commencement notice.

If a collecting authority knows development has commenced, but has not received a commencement notice – or has received a notice, but considers that the development began earlier – it must determine when the development commenced. This is known as “the deemed commencement date” (under Regulation 68 [\[2\]](http://www.legislation.gov.uk/ukSI/2010/948/regulation/68/made) (<http://www.legislation.gov.uk/ukSI/2010/948/regulation/68/made>)). The authority uses this date as the basis for subsequent demand notices.

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### **What is a demand notice, and how can it be challenged?**

The next stage in the process is for the collecting authority to issue a demand notice. This is a reminder to liable parties of how much they owe and by when. A collecting authority must serve a demand notice following the receipt of a commencement notice, or a decision by the collecting authority to deem that development has commenced.

Collecting authorities should use the ‘Demand Notice’ template published by the Secretary of State (available on the Planning Portal website [\[2\]](http://www.planningportal.gov.uk/planning/infopas/cil) (<http://www.planningportal.gov.uk/planning/infopas/cil>)). Regulation 69 [\[2\]](http://www.legislation.gov.uk/ukSI/2010/948/regulation/69/made) (<http://www.legislation.gov.uk/ukSI/2010/948/regulation/69/made>) (as amended by the 2011 Regulations [\[2\]](http://www.legislation.gov.uk/ukSI/2011/987/regulation/9/made) (<http://www.legislation.gov.uk/ukSI/2011/987/regulation/9/made>)) sets out in detail what this notice must cover.

A collecting authority may issue a revised demand notice under certain circumstances. A revised notice must be issued where the commencement date, levy amount or instalment options subsequently change. It may also be revised in other circumstances, for example if the liable parties change, or if there is any change to the amount payable.

### Challenge and suspension

The planning system in England and Wales allows people to apply for planning permission regardless of whether they own the land in question, and without the consent of the actual owner(s). Landowners are liable to pay the levy where no one has assumed liability before development commences. This means that it is possible that landowners could find themselves liable to pay the levy because planning permission for a development which includes their land has been obtained and work commenced on nearby land, and no-one has assumed liability (or the person who assumed liability has defaulted).

To address this situation, Regulation 69A [\[2\]](http://www.legislation.gov.uk/ukxi/2011/987/regulation/9/made) (<http://www.legislation.gov.uk/ukxi/2011/987/regulation/9/made>) allows a person who has been served with a demand notice to ask their collecting authority to suspend it. The person requesting the suspension must own a material interest in the land (as defined in Regulation 4 [\[2\]](http://www.legislation.gov.uk/ukxi/2010/948/regulation/4/made) (<http://www.legislation.gov.uk/ukxi/2010/948/regulation/4/made>)). The effect of suspending a demand notice is that no levy is due under that notice until development is commenced upon that person's land.

The authority may only agree to a request for suspension if it is satisfied that the strict conditions set out in Regulation 69A(3) [\[2\]](http://www.legislation.gov.uk/ukxi/2011/987/regulation/9/made) (<http://www.legislation.gov.uk/ukxi/2011/987/regulation/9/made>) are met. These conditions are that:

- no development has commenced on the part of the chargeable development owned by the person requesting the suspension, and
- the person has not agreed to transfer ownership of his/her material interest to another party.

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### Can payment be made in instalments?

The demand notice must explain the payment periods. Where a charging authority wishes to allow payment by instalments, they must have published an instalment policy on their website (under Regulation 69B [\[2\]](http://www.legislation.gov.uk/ukxi/2011/987/regulation/9/made) (<http://www.legislation.gov.uk/ukxi/2011/987/regulation/9/made>)). An instalment policy can assist the viability and delivery of development by taking account of financial restrictions, for example in areas such as development of homes within the buy to let sector. Few if any developments generate value until they are complete either in whole or in phases. Willingness to allow an instalments policy can be a material consideration in assessing the viability of proposed levy rates. The authority has freedom to decide the number of payments, the amount and the time due. The authority may revise or withdraw the policy when appropriate.

Regulation 70 [\[2\]](http://www.legislation.gov.uk/ukxi/2011/987/regulation/9/made) (<http://www.legislation.gov.uk/ukxi/2011/987/regulation/9/made>) (as amended by the 2012 [\[2\]](http://www.legislation.gov.uk/ukxi/2012/2975/regulation/8/made) (<http://www.legislation.gov.uk/ukxi/2012/2975/regulation/8/made>) and 2013 [\[2\]](http://www.legislation.gov.uk/ukxi/2013/982/regulation/9/made) (<http://www.legislation.gov.uk/ukxi/2013/982/regulation/9/made>) Regulations) provides for payment by instalment where an instalment policy is in place. Where no instalment policy is in place, payment is due in full at the end of 60 days after development commenced (see Regulation 7 [\[2\]](http://www.legislation.gov.uk/ukxi/2010/948/regulation/7/made) (<http://www.legislation.gov.uk/ukxi/2010/948/regulation/7/made>), and section 56(4) of

the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/56) (<http://www.legislation.gov.uk/ukpga/1990/8/section/56>), for the definition of 'commencement of development').

If instalment terms are broken, or payment is not made after 60 days where there is no instalment policy, the authority must issue a demand notice ([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/collecting-the-levy/#paragraph\\_054](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/collecting-the-levy/#paragraph_054)) requiring the full amount of money immediately.

Where an authority has to set the "deemed commencement" date (under Regulation 68 [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/regulation/68/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/68/made>)), the demand notice must require the full amount of money immediately. Regulation 71 [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/regulation/71/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/71/made>) provides further details.

Collecting authorities must acknowledge receipt of any money received.

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### **Is there another way to allow phased payments?**

Where the planning authority is willing to accept it, a planning application can be subdivided into 'phases' for the purposes of the levy (see 'How does the levy relate to planning permission?' ([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/cil-introduction/#paragraph\\_006](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/cil-introduction/#paragraph_006))). This is expected to be especially useful for large scale, locally planned development, which is an essential element of increasing housing supply.

Large scale developments which are delivered over a number of years face particular issues in relation to cashflow and the delivery of on-site infrastructure. The regulations allow for both detailed and outline permissions (and therefore 'hybrid' permissions as well) to be treated as phased developments for the purposes of the levy. This means that each phase would be a separate chargeable development and therefore liable for payment in line with any instalment policy that may be in force.

The principle of phased delivery must be apparent from the planning permission. Local authorities should work positively with developers to allow such developments to be delivered in phases.

Phased developments may also benefit from abatement (<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/collecting-the-levy/abatements/>).

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### **Can existing buildings be taken into account when calculating a new levy charge?**

In certain circumstances the floorspace of an existing building can be taken into account in calculating the chargeable amount. Each case is a matter for the collecting authority to judge.

Where part of an existing building has been in lawful use for a continuous period of 6 months within the past three years, parts of that building that are to be demolished or retained can be taken into account. The way those parts are taken into account is set out in the formula in Regulation 40(7) (as amended by the 2014 Regulations) [\[2\]](http://www.legislation.gov.uk/uksi/2014/385/regulation/6/made)

(<http://www.legislation.gov.uk/uksi/2014/385/regulation/6/made>).

Where an existing building does not meet the six-month lawful use requirement, its demolition (or partial demolition) is not taken into account. However, parts of that building that are to be retained as part of the chargeable development can still be taken into account if the intended use matches a use that could have lawfully been carried out without requiring a new planning permission. The detailed requirements are set out in Regulation 40 (as amended by the 2014 Regulations) [\[2\]](http://www.legislation.gov.uk/ukxi/2014/385/regulation/6/made) (<http://www.legislation.gov.uk/ukxi/2014/385/regulation/6/made>). Because there must be a lawful use, parts of that building where the use has been abandoned cannot be taken into account here.

### **When is a use considered to have been abandoned?**

The courts have held that, in deciding whether a use has been abandoned, account should be taken of all relevant circumstances, such as:

- the condition of the property
- the period of non-use
- whether there is an intervening use; and
- any evidence regarding the owner's intention.

Each case is a matter for the collecting authority to judge.

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### **Can I claim back any overpayment?**

Collecting authorities are required to pay back any overpayments, unless the overpayment is so small that it would cost more in administrative costs, is the result of a land or infrastructure payment, or the payment was credited against a new liability in accordance with the abatement provisions. Regulation 75 [\[2\]](http://www.legislation.gov.uk/ukxi/2010/948/regulation/75/made) (<http://www.legislation.gov.uk/ukxi/2010/948/regulation/75/made>) (as amended by the 2012 [\[2\]](http://www.legislation.gov.uk/ukxi/2012/2975/regulation/8/made) (<http://www.legislation.gov.uk/ukxi/2012/2975/regulation/8/made>) and 2014 [\[2\]](http://www.legislation.gov.uk/ukxi/2014/385/regulation/9/made) (<http://www.legislation.gov.uk/ukxi/2014/385/regulation/9/made>) Regulations) provides full details.

Where a person is entitled to a repayment, the authority must pay interest. The interest rate is either 0.5 per cent per annum, or a percentage equal to the Bank of England base rate less one percentage point, whichever is higher.

Where an overpayment has arisen because a Section 73 consent (see 'How does the levy relate to planning permission?' ([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/cil-introduction/#paragraph\\_006](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/cil-introduction/#paragraph_006))) has been granted and this has reduced the levy liability of the scheme, no interest is payable.

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### **Payments to charging authorities in London**

In most cases the charging authority and the collecting authority are the same body. An exception is in London, where local authorities are collecting the money for a charge put in place separately by the Mayor.

In all circumstances where the charging authority and collecting authority are different, the collecting authority must transfer the money received during each financial quarter to the charging authority by the end of that quarter (see Regulation 76 [\[2\]](http://www.legislation.gov.uk/ukxi/2010/948/regulation/76/made) (<http://www.legislation.gov.uk/ukxi/2010/948/regulation/76/made>), as amended by the 2012 Regulations [\[2\]](http://www.legislation.gov.uk/ukxi/2012/2975/regulation/8/made) (<http://www.legislation.gov.uk/ukxi/2012/2975/regulation/8/made>), for details). However, the collecting authority is allowed to retain a portion relating to administrative expenses. The amounts that may be retained for administrative expenses are set out in Regulation 61 [\[2\]](http://www.legislation.gov.uk/ukxi/2010/948/regulation/61/made) (<http://www.legislation.gov.uk/ukxi/2010/948/regulation/61/made>).

(<http://www.legislation.gov.uk/uksi/2010/948/regulation/61/made>) (as amended by the 2014 Regulations [\[2\]](http://www.legislation.gov.uk/uksi/2014/385/regulation/8/made) (<http://www.legislation.gov.uk/uksi/2014/385/regulation/8/made>)) and discussed in the administrative costs section of this guidance.

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## How is payment of the Community Infrastructure Levy enforced?

Enforcement procedures are set out in Part 9 of the Regulations [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/part/9/made) (<http://www.legislation.gov.uk/uksi/2010/948/part/9/made>).

Almost all parties liable to pay the levy are likely to pay their liabilities without problem or delay, guided by the information sent by the collecting authority in the liability notice. However, where there are problems in collecting the levy, it is important that collecting authorities are able to penalise late payment and discourage future non-compliance.

The regulations provide for a range of proportionate enforcement measures, such as **surcharges** on late payments (as set out in Regulations 80 – 86 [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/part/9/made) (<http://www.legislation.gov.uk/uksi/2010/948/part/9/made>)). In most cases, these measures should be sufficient.

In cases of persistent non-compliance, collecting authorities may take more direct action to recover the amount due. For example, a collecting authority may issue a **Community Infrastructure Levy Stop Notice** (under Regulations 89 – 94 [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/part/9/made) (<http://www.legislation.gov.uk/uksi/2010/948/part/9/made>)), which prohibits development from continuing until payment is made and the stop notice is withdrawn.

The collecting authority may, after issuing a reminder notice to the party liable for the levy, apply to a magistrates' court to make a liability order allowing it to **seize and sell assets** of the liable party. A party may also apply for a charging order if there is at least £2,000 owing. The court can issue an order imposing a charge on a relevant interest to secure the amount due.

In the very small number of cases where a collecting authority can demonstrate that recovery measures have been unsuccessful, they may apply to a magistrates court to send the liable party to **prison** for up to three months (under Regulations 100 and 101 [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/part/9/made) (<http://www.legislation.gov.uk/uksi/2010/948/part/9/made>)).

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- **Payment in kind** (<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/collecting-the-levy/payment-in-kind/>)

### Payment in kind

Guidance on the Community Infrastructure Levy was added to this website on 12 June 2014. This replaced the standalone guidance that was published in February 2014. Read more about the changes to the guidance (<http://planningguidance.communities.gov.uk/about/#cil>).

### Can the levy be paid 'in kind' rather than in cash?

There may be circumstances where the charging authority and the person liable for the levy will wish land and/or infrastructure to be provided, instead of money, to satisfy a charge arising from the levy. For example, where an authority has already planned to invest levy receipts in a project there may be time, cost and efficiency benefits in accepting completed infrastructure from the party

liable for payment of the levy. Payment in kind can also enable developers, users and authorities to have more certainty about the timescale over which certain infrastructure items will be delivered.

Subject to relevant conditions, and at its discretion, an authority may enter into an agreement for a land payment to discharge part or all of a levy liability. Charging authorities may also enter into agreements to receive infrastructure as payment.

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### **Under what conditions may a land or infrastructure agreement be entered into?**

Where a charging authority chooses to adopt a policy of accepting infrastructure payments, they must publish a policy document which sets out conditions in detail. This document should confirm that the authority will accept infrastructure payments and set out the infrastructure projects, or types of infrastructure, they will consider accepting as payment (this list may be the same list provided for the purposes of Regulation 123

([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/other-developer-contributions/#paragraph\\_096](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/other-developer-contributions/#paragraph_096))).

Before a land payment agreement is entered into, relevant charging authorities must be satisfied that the criteria in Regulation 73 [\[X\]](#)

(<http://www.legislation.gov.uk/ukxi/2010/948/regulation/73/made>) (as amended [\[X\]](http://www.legislation.gov.uk/ukxi/2011/987/regulation/9/made) (<http://www.legislation.gov.uk/ukxi/2011/987/regulation/9/made>)) are met. Similarly, before entering into an infrastructure payment agreement, they must be satisfied that the criteria in Regulation 73A (inserted by the 2014 Regulations) [\[X\]](#) (<http://www.legislation.gov.uk/ukxi/2014/385/regulation/9/made>) are met.

Where the levy is to be paid as land or infrastructure, a land or infrastructure agreement must be entered into before development commences. This must include the information specified in Regulation 73A [\[X\]](#)

(<http://www.legislation.gov.uk/ukxi/2014/385/regulation/9/made>).

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### **What can be covered by a land or infrastructure agreement?**

Land that is to make up a payment in kind may contain existing buildings and structures.

Land or infrastructure must be valued by an independent valuer who, in the case of land, will ascertain its 'open market value', and in the case of infrastructure the cost (including related design cost) to the provider. This will determine how much liability the 'in-kind' payment will off-set.

Payments in kind must be provided to the same timescales as cash payments, or otherwise on an agreed basis, subject to the provisions in the regulations and any other state aid considerations. View further details about state aid (<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/state-aid/>).

Land and infrastructure may be given to charging authorities in instalments, in the same way as cash can be given in instalments ([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/collecting-the-levy/#paragraph\\_055](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/collecting-the-levy/#paragraph_055)). The same rules on payment periods apply.

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### **Who needs to be party to land or infrastructure agreements?**

Payments in kind may only be made with the agreement of the liable party, the charging authority, and any other relevant authority that will need to assume a responsibility for the land or infrastructure. Charging and collecting authorities and any other relevant authorities should agree the infrastructure projects or types which will form part of an authority's infrastructure payment policy and the terms of any relevant infrastructure payment agreement entered into.

Authorities must refer back to the relevant regulations (including Regulations 73 [\[2\]](http://www.legislation.gov.uk/ukxi/2010/948/regulation/73/made) (<http://www.legislation.gov.uk/ukxi/2010/948/regulation/73/made>), as amended [\[2\]](http://www.legislation.gov.uk/ukxi/2011/987/regulation/9/made) (<http://www.legislation.gov.uk/ukxi/2011/987/regulation/9/made>), and 73A [\[2\]](http://www.legislation.gov.uk/ukxi/2014/385/regulation/9/made) (<http://www.legislation.gov.uk/ukxi/2014/385/regulation/9/made>)) when considering adopting a policy on accepting payments in kind and in considering entering into and in drawing up relevant land or infrastructure agreements. An authority wishing to amend or withdraw its policy on land or infrastructure payments must give appropriate notice, in line with the regulations.

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- **Abatements** (<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/collecting-the-levy/abatements/>)

## Abatements

Guidance on the Community Infrastructure Levy was added to this website on 12 June 2014. This replaced the standalone guidance that was published in February 2014. Read more about the changes to the guidance (<http://planningguidance.communities.gov.uk/about/#cil>).

### Can past levy payments be credited against future levy liability?

Levy payments made in respect of a development that has commenced but has not been completed can be credited against the levy liability for a revised scheme under a new planning permission, on all or part of the same land. This levy credit is known as abatement. This provision is to ensure that the charge is not inappropriately levied twice (or more) as schemes change during the course of development of a site. However, once a development is completed, a developer cannot apply for abatement of levy paid.

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### When can abatement be applied for?

Development must have commenced (see Regulation 7 [\[2\]](http://www.legislation.gov.uk/ukxi/2010/948/regulation/7/made) (<http://www.legislation.gov.uk/ukxi/2010/948/regulation/7/made>), and section 56(4) of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/56) (<http://www.legislation.gov.uk/ukpga/1990/8/section/56>), for the definition of 'commencement of development') under one planning permission, but not been completed, and the levy must have been paid in relation to that development. Abatement can be sought in relation to a different planning permission that covers all or part of the same land. Abatement can only be sought before development commences under the alternative planning permission.

Where a person has assumed liability to pay the levy in relation to a new planning permission, they can ask the charging authority to credit the levy paid in relation to the earlier scheme. The request must be accompanied by proof of the amount of levy already paid.

Further detail is set out at Regulation 74B as inserted by the Community Infrastructure Levy Regulations 2014 [\[2\]](http://www.legislation.gov.uk/ukxi/2014/385/regulation/9/made) (<http://www.legislation.gov.uk/ukxi/2014/385/regulation/9/made>).

Separate arrangements apply to permissions granted under section 73 of the

Town and Country Planning Act 1990.

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### **If a revised development has a lower liability than the earlier planning permission, is a refund payable?**

No refund is payable under the abatement provisions if a later development scheme has a lower levy liability than the one which was first paid on the site. This is to avoid potentially significant and long term financial liabilities to charging authorities on schemes which are not completed.

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### **Can abatement apply to phased development?**

Abatement can apply to phased development. Where the amount to be credited to the new development is greater than the amount due for the first phase of the new development, the remainder must be credited against the next phase or phases until there is none left. Any excess will not be refunded by the charging authority.

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### **What about buildings that were demolished in relation to the first development on site?**

The floorspace of a building which is demolished during the development of a previous scheme can be taken into account in calculating the levy charge for the revised scheme, in certain circumstances

([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/collecting-the-levy/#paragraph\\_057](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/collecting-the-levy/#paragraph_057)).

This demolition 'credit' can be carried forward to an alternative development on the same land under a new planning permission, provided that abatement is granted in relation to this new development. Two main criteria must be met in order for this 'credit' to be claimable. First, the request for abatement must be made within 3 years of the date of grant of the original planning permission under which the buildings were demolished. Second, the demolished buildings would have been taken into account in calculating the levy liability for the alternative development if they had not already been demolished.

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### **What happens if some or all of the original development is completed after abatement is granted?**

A developer may complete buildings which were commenced under an earlier planning permission, after abatement has been claimed for levy paid on these buildings. However, in those circumstances, the person granted abatement must pay to the collecting authority an amount equal to the abatement granted for the levy paid on these buildings.

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## **4. Spending the levy (<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/spending-the-levy/>)**

### **Spending the levy**

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Guidance on the Community Infrastructure Levy was added to this website on 12 June 2014. This replaced the standalone guidance that was published in February 2014. Read more about the changes to the guidance (<http://planningguidance.communities.gov.uk/about/#cil>).

### **What can the Community Infrastructure Levy be spent on (and by whom)?**

The levy can be used to fund a wide range of infrastructure, including transport, flood defences, schools, hospitals, and other health and social care facilities (for further details, see Section 216(2) of the Planning Act 2008 [\[2\]](http://www.legislation.gov.uk/ukpga/2008/29/section/216) (<http://www.legislation.gov.uk/ukpga/2008/29/section/216>), and Regulation 59 [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/regulation/59/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/59/made>), as amended by the 2012 [\[2\]](http://www.legislation.gov.uk/uksi/2012/2975/regulation/7/made) (<http://www.legislation.gov.uk/uksi/2012/2975/regulation/7/made>) and 2013 [\[2\]](http://www.legislation.gov.uk/uksi/2013/982/regulation/8/made) (<http://www.legislation.gov.uk/uksi/2013/982/regulation/8/made>) Regulations). This definition allows the levy to be used to fund a very broad range of facilities such as play areas, parks and green spaces, cultural and sports facilities, academies and free schools, district heating schemes and police stations and other community safety facilities. This flexibility gives local areas the opportunity to choose what infrastructure they need to deliver their relevant Plan (the Local Plan in England, Local Development Plan in Wales, and the London Plan in London). Charging authorities may not use the levy to fund affordable housing.

Local authorities must spend the levy on infrastructure needed to support the development of their area, and they will decide what infrastructure is needed. The levy is intended to focus on the provision of new infrastructure and should not be used to remedy pre-existing deficiencies in infrastructure provision unless those deficiencies will be made more severe by new development.

The levy can be used to increase the capacity of existing infrastructure or to repair failing existing infrastructure, if that is necessary to support development.

In London, the regulations restrict spending by the Mayor to funding roads or other transport facilities, including Crossrail, to ensure a balance between the spending priorities of the boroughs and the Mayor.

Local authorities must allocate **at least 15%** of levy receipts to spend on priorities that should be agreed with the local community in areas where development is taking place. This can increase to a minimum of 25% in certain circumstances (see below for further details ([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/spending-the-levy/#paragraph\\_072](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/spending-the-levy/#paragraph_072))).

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### **What is the neighbourhood portion of the levy?**

**Fifteen per cent** of Community Infrastructure Levy charging authority receipts are passed directly to those Parish and Town Councils (in England) and Community Councils (in Wales) where development has taken place (see Regulation 59A [\[2\]](http://www.legislation.gov.uk/uksi/2013/982/regulation/8/made) (<http://www.legislation.gov.uk/uksi/2013/982/regulation/8/made>) for details). Where chargeable development takes place within the local council area, up to £100 per existing council tax dwelling can be passed to the Parish, Town or Community Council (see Regulation 58A [\[2\]](http://www.legislation.gov.uk/uksi/2013/982/regulation/8/made) (<http://www.legislation.gov.uk/uksi/2013/982/regulation/8/made>) for details) this way each year to be spent on local priorities (see Regulation 59C [\[2\]](http://www.legislation.gov.uk/uksi/2013/982/regulation/8/made) (<http://www.legislation.gov.uk/uksi/2013/982/regulation/8/made>) for details). Areas could use some of the neighbourhood pot to develop a neighbourhood plan (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/>) where it would support development by addressing the demands that development places on the area.

In England, communities that draw up a neighbourhood plan or neighbourhood development order (including a community right to build order), and secure the consent of local people in a referendum, will benefit from **25 per cent** of the levy revenues arising from the development that takes place in their area. This amount will not be subject to an annual limit. For this to apply, the neighbourhood plan must have been made (see section 61E of the Town and Country Planning Act 1990 as applied to neighbourhood plans by section 38C of the Planning and Compulsory Purchase Act 2004) before a relevant planning permission first permits development (as defined by Regulation 8 [\[a\]](http://www.legislation.gov.uk/uksi/2010/948/regulation/8/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/8/made>), as amended by the 2011 Regulations [\[b\]](http://www.legislation.gov.uk/uksi/2011/987/regulation/4/made) (<http://www.legislation.gov.uk/uksi/2011/987/regulation/4/made>) and the 2014 Regulations [\[c\]](http://www.legislation.gov.uk/uksi/2014/385/regulation/4/made) (<http://www.legislation.gov.uk/uksi/2014/385/regulation/4/made>) of the Community Infrastructure Levy Regulations). This higher amount will also apply when the levy is paid in relation to developments which have been granted permission by a neighbourhood development order (including a community right to build order) (see related guidance here (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/what-is-neighbourhood-planning/>)). Neighbourhood planning does not apply in Wales, so neither does the enhanced neighbourhood funding element linked to it.

**Figure: relationship between the levy and neighbourhood plans in England**

Parish Council ✓ Neighbourhood Plan ✓ = 25% uncapped, paid to Parish	Parish Council ✓ Neighbourhood Plan ✗ = 15% capped at £100/dwelling, paid to Parish
Parish Council ✗ Neighbourhood Plan ✓ = 25% uncapped, local authority consults with community	Parish Council ✗ Neighbourhood Plan ✗ = 15% capped at £100/dwelling, local authority consults with community

In areas where there is a neighbourhood plan or neighbourhood development order in place, charging authorities can choose to pass on more than 25% of the levy, although the wider spending powers that apply to the neighbourhood funding element of the levy will not apply to any additional funds passed to a Parish, Town or Community Council. Those additional funds can only be spent on infrastructure, as defined in the Planning Act 2008 for the purposes of the levy.

Charging authorities do not have to pass on a neighbourhood portion of a levy charge if they issued the liability notice ([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/collecting-the-levy/#paragraph\\_052](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/collecting-the-levy/#paragraph_052)) for that development before 25 April 2013.

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### **Where there is no Parish, Town or Community Council, who receives the neighbourhood portion?**

Communities without a Parish, Town or Community Council will still benefit from the 15% neighbourhood portion (or 25% portion, if a neighbourhood plan or neighbourhood development order has been made). If there is no Parish, Town or Community Council, the charging authority will retain the levy receipts but should engage with the communities where development has taken place and agree with them how best to spend the neighbourhood funding. Charging authorities should set out clearly and transparently their approach to engaging

with neighbourhoods using their regular communication tools e.g. website, newsletters, etc. The use of neighbourhood funds should therefore match priorities expressed by local communities, including priorities set out formally in neighbourhood plans.

The Government does not prescribe a specific process for agreeing how the neighbourhood portion should be spent. Charging authorities should use existing community consultation and engagement processes. This should include working with any designated neighbourhood forums preparing neighbourhood plans that exist in the area, theme specific neighbourhood groups, local businesses (particularly those working on business led neighbourhood plans), and using networks that ward councillors use. Crucially this consultation should be at the neighbourhood level. It should be proportionate to the level of levy receipts and the scale of the proposed development to which the neighbourhood funding relates.

Where the charging authority retains the neighbourhood funding, they can use those funds on the wider range of spending that are open to local councils (see 'Can the levy be used to deliver Suitable Alternative Natural Greenspace?' ([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/spending-the-levy/#paragraph\\_081](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/spending-the-levy/#paragraph_081)), and Regulation 59C (<http://www.legislation.gov.uk/uksi/2013/982/regulation/8/made>)). In deciding what to spend the neighbourhood portion on, the charging authority and communities should consider such issues as the phasing of development, the costs of different projects (e.g. a new road, a new school), the prioritisation, delivery and phasing of projects, the amount of the levy that is expected to be retained in this way and the importance of certain projects for delivering development that the area needs. Where a neighbourhood plan has been made, the charging authority and communities should consider how the neighbourhood portion can be used to deliver the infrastructure identified in the neighbourhood plan as required to address the demands of development. They should also have regard to the infrastructure needs of the wider area.

The charging authority and communities may also wish to consider appropriate linkages to the growth plans for the area and how neighbourhood levy spending might support these objectives.

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### **When is the neighbourhood portion paid?**

Charging authorities and Parish, Town and Community Councils are free to decide the timing of neighbourhood funding payments themselves. However, in the absence of such an agreement, Regulation 59D (<http://www.legislation.gov.uk/uksi/2013/982/regulation/8/made>) specifies that the neighbourhood portion of levy receipts must be paid every six months, at the end of October and the end of April.

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### **Can the neighbourhood portion be paid 'in kind', as land or infrastructure, as well as cash?**

Developers may offer to pay the levy as land or infrastructure as well as by cash, if the charging authority chooses to accept these alternatives (<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/collecting-the-levy/payment-in-kind/>). However, the relevant percentage of the cash value of levy receipts must be passed on to a Parish, Town or Community Council in cash.

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## **What happens where development straddles a Parish, Town or Community Council administrative boundary?**

Where development straddles the boundaries of Parish, Town or Community Councils' administrative areas, each council receives a share of the levy which is proportionate to the gross internal area of the development within their administrative area. For example, if a development crosses two Parish, Town or Community Council administrative areas with 50 per cent in one parish and 50 per cent in the other, each council receives 50 per cent of the neighbourhood portion, up to the level of the annual limit for their area. The total Levy liability across the development is used to calculate the neighbourhood funding figure, to take account of sites with variable rates.

There may be occasions when development crosses more than one Parish or Town Council administrative area and where one or more of those areas has a neighbourhood development plan in place (so receives 25 per cent) and one or more of those areas does not. There may also be occasions where part of a development is granted planning permission by a neighbourhood development order, and part is not. In these cases, the Parish or Town Council receives a proportionate amount of the levy payment based on how much of the gross internal area of the development is in an area for which there is a neighbourhood plan, or was granted permission by a neighbourhood development order.

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## **Is the Mayor of London also required to pass a share to neighbourhoods?**

The Mayor of London is not required to allocate any levy receipts to neighbourhoods. The Mayor must only spend the levy on strategic transport infrastructure.

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## **What can neighbourhood funding be spent on?**

The neighbourhood portion of the levy can be spent on a wider range of things than the rest of the levy, provided that it meets the requirement to 'support the development of the area' (see Regulation 59C [\[2\]](#)

(<http://www.legislation.gov.uk/ukxi/2013/982/regulation/8/made>) for details). The wider definition means that the neighbourhood portion can be spent on things other than infrastructure (as defined in the Community Infrastructure Levy regulations). For example, the pot could be used to fund affordable housing where it would support the development of the area by addressing the demands that development places on the area.

Parish, Town and Community Councils should discuss their priorities with the charging authority during the process of setting the Levy rate(s).

Once the levy is in place, Parish, Town and Community Councils should work closely with their neighbouring councils and the charging authority to agree on infrastructure spending priorities. If the Parish, Town or Community Council shares the priorities of the charging authority, they may agree that the charging authority should retain the neighbourhood funding to spend on that infrastructure. It may be that this infrastructure (e.g. a school) is not in the Parish, Town or Community Council's administrative area, but will support the development of the area.

If a Parish, Town or Community Council does not spend its levy share within five years of receipt, or does not spend it on initiatives that support the development of the area, the charging authority may require it to repay some or all of those funds to the charging authority (see Regulation 59E(10) [\[2\]](http://www.legislation.gov.uk/ukxi/2013/982/regulation/8/made) (<http://www.legislation.gov.uk/ukxi/2013/982/regulation/8/made>) for details).

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### **Do the planning obligations restrictions apply to neighbourhood funds?**

Regulation 123(2) [\[2\]](http://www.legislation.gov.uk/ukxi/2010/948/regulation/123/made)

(<http://www.legislation.gov.uk/ukxi/2010/948/regulation/123/made>), as amended by the 2014 Regulations [\[2\]](http://www.legislation.gov.uk/ukxi/2014/385/regulation/12/made) (<http://www.legislation.gov.uk/ukxi/2014/385/regulation/12/made>), prevents section 106 planning obligations being used in relation to those things that are intended to be funded through the Levy by the charging authority. While Parish, Town and Community Councils are not required to spend their neighbourhood funding in accordance with the charging authority's priorities, we expect Parish, Town and Community Councils to work closely with the charging authority to agree priorities for spending the neighbourhood funding element.

Parish, Town and Community Councils should consider publishing their priorities for spending the neighbourhood funding element, highlighting those that align with the charging authority. Where a neighbourhood plan has been made, it should be used to identify these priorities.

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### **How should the Parish, Town or Community Council report on its levy spending?**

Parish, Town and Community Councils must make arrangements for the proper administration of their financial affairs (see Section 151 of the Local Government Act 1972 [\[2\]](http://www.legislation.gov.uk/ukpga/1972/70/section/151) (<http://www.legislation.gov.uk/ukpga/1972/70/section/151>)). They must have systems in place to ensure effective financial control (see Accounts and Audit (England) Regulations 2011 [\[2\]](http://www.legislation.gov.uk/ukxi/2011/817/made) (<http://www.legislation.gov.uk/ukxi/2011/817/made>) and Accounts and Audit (Wales) Regulations 2005 [\[2\]](http://www.legislation.gov.uk/wsi/2005/368/contents/made) (<http://www.legislation.gov.uk/wsi/2005/368/contents/made>)). These requirements also apply when dealing with neighbourhood funding payments under the levy.

For each year when they have received neighbourhood funds through the levy, Parish, Town and Community Councils must publish the information specified in Regulation 62A [\[2\]](http://www.legislation.gov.uk/ukxi/2013/982/regulation/8/made) (<http://www.legislation.gov.uk/ukxi/2013/982/regulation/8/made>). They should publish this information on their website or on the charging authority's website. If they haven't received any money they do not have to publish a report, but may want to publish some information to this effect in the interests of transparency.

There is no prescribed format. Parish, Town and Community Councils may choose to combine reporting on the levy with other reports they already produce. The levy neighbourhood funding income and spending will also be included in their overall published accounts but are not required to be identified separately in those accounts.

Where a charging authority holds and spends the neighbourhood portion on behalf of the local community, it should ensure that it reports this as a separate item in its own accounts (see 'How do charging authorities report their levy income and spending?' ([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/spending-the-levy/#paragraph\\_087](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/spending-the-levy/#paragraph_087))).

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## Can the levy be used to deliver Suitable Alternative Natural Greenspace?

European legislation (the Habitats and Wild Birds Directives), transposed into the Conservation of Habitats and Species Regulations 2010 [\[2\]](http://www.legislation.gov.uk/ukxi/2010/490/pdfs/ukxi_20100490_en.pdf) ([http://www.legislation.gov.uk/ukxi/2010/490/pdfs/ukxi\\_20100490\\_en.pdf](http://www.legislation.gov.uk/ukxi/2010/490/pdfs/ukxi_20100490_en.pdf)), as amended, requires local authorities to avoid or mitigate the impact of increased human activity on certain habitats and species in European protected areas, namely Special Areas of Conservation [\[3\]](http://www.naturalengland.org.uk/ourwork/conservation/designations/sac/) (<http://www.naturalengland.org.uk/ourwork/conservation/designations/sac/>) and Special Protection Areas [\[4\]](http://www.naturalengland.org.uk/ourwork/conservation/designations/spa/) (<http://www.naturalengland.org.uk/ourwork/conservation/designations/spa/>). For more information on legal obligations regarding European sites, see 'What are the legal obligations on local planning authorities and developers regarding European sites designated under the Birds or Habitats Directives, protected species and Sites of Special Scientific Interest?' ([http://planningguidance.communities.gov.uk/blog/guidance/natural-environment/biodiversity-ecosystems-and-green-infrastructure/#paragraph\\_011](http://planningguidance.communities.gov.uk/blog/guidance/natural-environment/biodiversity-ecosystems-and-green-infrastructure/#paragraph_011)).

Local authorities are responsible for securing adequate mitigation for European site impacts. They may choose to use their levy income to provide new or improved areas of open space (such as Suitable Alternative Natural Greenspace (SANGS) or similar approaches) which provide recreation space to deflect visitors, as part of a suite of measures to reduce the impacts on protected sites arising from development. Suitable Alternative Natural Greenspaces are open space and are within the levy definition of infrastructure.

If delivering Suitable Alternative Natural Greenspace, local authorities must put in place a system which ensures that mitigation is delivered at a time and place when it will be effective. In order to ensure compliance with the Directives, the local authority must be clear that it intends to prioritise the use of the levy to deliver Suitable Alternative Natural Greenspace and maintain their effectiveness in the long term. Where it is appropriate to do so, this should be set out in the relevant Plan (the Local Plan in England, Local Development Plan in Wales, and the London Plan in London) and could also be included in the published Regulation 123 list ([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/other-developer-contributions/#paragraph\\_096](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/other-developer-contributions/#paragraph_096)).

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## Can the levy be spent outside a charging area?

Charging authorities may pass money to bodies outside their area to deliver infrastructure that will benefit the development of the area. For example, these bodies may include the Environment Agency for flood defence or, in two tier areas, the county council, for education infrastructure.

If they wish, charging authorities may pool funds from their respective levies to support the delivery of infrastructure that benefits the wider area, for example, a larger transport project where they are satisfied that this would also support the development of their own area. This could include, for instance, funds to support the delivery of Suitable Alternative Natural Greenspace ([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/spending-the-levy/#paragraph\\_081](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/spending-the-levy/#paragraph_081)). Authorities are strongly encouraged to consider growth planning priorities for their area at Local Enterprise Partnership or equivalent broad area level in determining levy spending priorities.

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### **Are charging authorities allowed to borrow against future levy income?**

Charging authorities are not currently allowed to borrow against future levy income. However, the levy can be used to repay expenditure on infrastructure that has already been incurred. Charging authorities may not use the levy to pay interest on money they raise through loans.

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### **What about administrative costs?**

Charging authorities can use funds from the levy to recover the costs of administering the levy. Regulation 61 [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/regulation/61/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/61/made>), as amended by the 2014 Regulations [\[2\]](http://www.legislation.gov.uk/uksi/2014/385/regulation/8/made) (<http://www.legislation.gov.uk/uksi/2014/385/regulation/8/made>) allows them to spend up to five per cent of their total levy receipts on administrative expenses. This is to ensure that the overwhelming majority of revenue from the levy is directed towards infrastructure provision.

Where an authority spends less than its permitted allowance on administrative expenses, it must transfer the remaining allowance for use on capital infrastructure projects.

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### **What can administrative expenses include?**

Administrative expenses associated with the levy include the costs of the functions required to establish and run a levy charging scheme. These functions include levy set-up costs, such as consultation on the levy charging schedule, preparing evidence on viability or the costs of the levy examination. They also include ongoing functions like establishing and running billing and payment systems, enforcing the levy, the legal costs associated with payments in-kind and monitoring and reporting on levy activity.

To help charging authorities with initial set up costs, the regulations allow for a 'rolling cap' on administrative expenses (see Regulation 61 [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/regulation/61/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/61/made>), as amended by the 2014 Regulations [\[2\]](http://www.legislation.gov.uk/uksi/2014/385/regulation/8/made) (<http://www.legislation.gov.uk/uksi/2014/385/regulation/8/made>)). This covers the period comprising the first part year that an authority sets a levy and the following three financial years taken as a whole. From year four onwards of an authority's levy operation, the restriction works as a fixed in-year cap, meaning that an authority may spend up to five per cent of receipts received in-year by the end of that year on its administrative expenses.

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### **What about areas where the collecting authority and the charging authority are different?**

In London, where boroughs collect the levy on behalf of the Mayor, a borough may keep up to four per cent of those receipts to fund its administrative costs. The remainder is passed to the Mayor, up to the five per cent cap.

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### **How do charging authorities report their levy income and spending?**

To ensure that the levy is open and transparent, charging authorities must prepare short reports on the levy. Charging authorities must publish a report on their website by 31 December each year, for the previous financial year. They

may prepare a bespoke report or use an existing reporting mechanism, such as the annual monitoring report which reports on their development plan. Where a charging authority holds and spends the neighbourhood portion on behalf of the local community, it should ensure that it reports this as a separate item.

Regulation 62(4) [\[a\]](http://www.legislation.gov.uk/ukSI/2010/948/regulation/62/made) (as amended by the 2013 Regulations [\[a\]](http://www.legislation.gov.uk/ukSI/2013/982/regulation/8/made) (to include the neighbourhood share and the 2014 Regulations [\[a\]](http://www.legislation.gov.uk/ukSI/2014/385/regulation/8/made))) sets out what charging authorities must include in their reports.

Authorities may pool levy funding, and/or combine it with other sources of funding for investment in strategic infrastructure, such as the Growing Places Fund. In such cases, charging authorities should report on committed funding in a way that illustrates the respective contributions from different sources

Parish, Town and Community Councils must also report on their levy income and spending ([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/spending-the-levy/#paragraph\\_080](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/spending-the-levy/#paragraph_080)).

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## 5. Appeals (<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/cil-appeals/>)

### Appeals

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Guidance on the Community Infrastructure Levy was added to this website on 12 June 2014. This replaced the standalone guidance that was published in February 2014. Read more about the changes to the guidance (<http://planningguidance.communities.gov.uk/about/#cil>).

### Is there a right of appeal against a Community Infrastructure Levy charge?

Appeals can be lodged against some aspects of a levy charge.

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### What kind of appeals are possible?

The full range of appeals is shown in the table below:

Type of appeal	Who should appellants contact?	Who may appeal, and on what grounds?	What time restrictions apply?



Type of appeal	Who should appellants contact?	Who may appeal, and on what grounds?	What time restrictions apply?
Calculation of chargeable amount (Regulation 114 )	<p>First: ask the levy collecting authority for a review, in accordance with the procedures in Regulation 113</p> <p>Second: appeal to the Valuation Office Agency</p>	<p>The Valuation Office Agency can only accept an appeal from the person who asked the collecting authority to review the chargeable amount under Regulation 113. An appeal to the Valuation Office Agency can only be made on the ground that the chargeable amount has been calculated incorrectly.</p>	<p>Development must not have commenced.</p> <p>The first review to the charging authority must be made within 28 days</p> <p>A subsequent appeal to the Valuation Office Agency must be made within 60 days of the date when the original liability notice was issued.</p> <p>An appeal to the Valuation Office Agency cannot be made until at least 14 days after the collecting authority has been asked for a review.</p>
Apportionment of liability (Regulation 115)	<p>First: ask the levy collecting authority for a review</p> <p>Second: appeal to the Valuation Office Agency</p>	<p>The appeal can only be made by the 'owner of a material interest' (defined in Regulation 4(2)) in the 'relevant land' (defined in Regulation 2). An appeal to the Valuation Office Agency can only be made against an apportionment of the liability made under Regulation 34.</p>	<p>Within 28 days of the date when the demand notice stating the amount payable by the appellant was issued.</p>

Type of appeal	Who should appellants contact?	Who may appeal, and on what grounds?	What time restrictions apply?
Charitable relief (Regulation 116)	<p>First: ask the levy collecting authority for a review</p> <p>Second: appeal to the Valuation Office Agency</p>	<p>The appeal can only be made by an 'interested person' (defined in Regulation 112(2)(b)).</p> <p>An appeal can be made to the Valuation Office Agency only if it is considered that the collecting authority has incorrectly determined the value of the interest in land used in an apportionment assessment.</p>	<p>Within 28 days of the collecting authority's decision on the claim for charitable relief.</p> <p>Development must not have commenced (see Regulation 7, and section 56(4) of the Town and Country Planning Act 1990, for the definition of 'commencement of development').</p>
Residential annexe exemption (Regulation 116A, inserted by the 2014 Regulations)	Appeals can be lodged directly with the Valuation Office Agency	<p>The appeal can only be made by the person who was granted the exemption. An appeal can be made to the Valuation Office Agency only if it is considered that the collecting authority has incorrectly determined that the annexe is not wholly within the grounds of the main dwelling.</p>	<p>Within 28 days of the collecting authority's decision on the claim for an exemption.</p> <p>Development must not have commenced (see Regulation 7, and section 56(4) of the Town and Country Planning Act 1990, for the definition of 'commencement of development').</p>
Self build exemption (Regulation 116B, inserted by the 2014 Regulations)	Appeals can be lodged directly with the Valuation Office Agency	<p>The appeal can only be made by the person who was granted the exemption for self-build housing, on the grounds that the collecting authority has incorrectly determined the value of the exemption allowed</p>	<p>Within 28 days of the collecting authority's decision on the claim for an exemption.</p> <p>Development must not have commenced (see Regulation 7, and section 56(4) of the Town and Country Planning Act 1990, for the definition of 'commencement of development')</p>

Type of appeal	Who should appellants contact?	Who may appeal, and on what grounds?	What time restrictions apply?
Surcharges (Regulation 117)	Planning Inspectorate	The appeal can be made by a person who is aggrieved at a decision of a collecting authority to impose a surcharge	Within 28 days of the surcharge being imposed
Commencement of development (Regulation 118 )	Planning Inspectorate	The appeal can be made by a person on whom a demand notice is served, on the grounds that the date of commencement has been wrongly determined	Within 28 days of the date the demand notice was issued
Issuing of a stop notice (Regulation 119 )	Planning Inspectorate	The appeal can be made by a person who is aggrieved at a decision of a collecting authority to impose a levy stop notice	Within 60 days of the date when the stop notice takes effect

Relevant Regulations can be found here:

- Regulation 114 [❏](http://www.legislation.gov.uk/uksi/2010/948/regulation/114/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/114/made>)
- Regulation 115 [❏](http://www.legislation.gov.uk/uksi/2010/948/regulation/115/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/115/made>)
- Regulation 116 [❏](http://www.legislation.gov.uk/uksi/2010/948/regulation/116/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/116/made>)
- Regulation 117 [❏](http://www.legislation.gov.uk/uksi/2010/948/regulation/117/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/117/made>)
- Regulation 118 [❏](http://www.legislation.gov.uk/uksi/2010/948/regulation/118/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/118/made>)
- Regulation 119 [❏](http://www.legislation.gov.uk/uksi/2010/948/regulation/119/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/119/made>)
- Regulation 11 (as amended) [❏](http://www.legislation.gov.uk/uksi/2014/385/regulation/11/made) (<http://www.legislation.gov.uk/uksi/2014/385/regulation/11/made>)

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### What are the requirements for lodging appeals?

A liable person can ask the levy collecting authority for a review of the chargeable amount, within 28 days from the date on which the liability notice (that outlines the chargeable amount) was issued. The collecting authority is required to review the calculation. This review must be carried out by someone who is senior to the person who made the original calculation, and who had no involvement in that original calculation. A decision must be issued within 14 days, and this decision cannot be reviewed again. Following this review, the liable person may submit an appeal to the Valuation Office Agency [❏](http://www.voa.gov.uk/cil/index.html) (<http://www.voa.gov.uk/cil/index.html>).

Appeals made in connection with the calculation of the chargeable amount, an apportionment of liability, charitable relief and self build exemptions should be submitted to the independent Valuation Office Agency, on a form provided by the Agency [\[2\]](http://www.voa.gov.uk/cil/index.html) (<http://www.voa.gov.uk/cil/index.html>).

Appeals related to enforcement (surcharges, commencement notices and stop notices) should be submitted to the Planning Inspectorate [\[2\]](http://www.planningportal.gov.uk/planning/appeals/otherappealscasework/cilappeals) (<http://www.planningportal.gov.uk/planning/appeals/otherappealscasework/cilappeals>). All appeals to the Planning Inspectorate must be made using the form published by the Secretary of State (or forms substantially to the same effect). This can be found on the Planning Portal website [\[2\]](http://www.planningportal.gov.uk/planning/appeals/otherappealscasework/cilappeals) (<http://www.planningportal.gov.uk/planning/appeals/otherappealscasework/cilappeals>).

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### Can an appeal be made if development has already started?

If a person intends to request a review of a liability notice (under Regulation 113 [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/regulation/113/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/113/made>), as amended [\[2\]](http://www.legislation.gov.uk/uksi/2014/385/regulation/11/made) (<http://www.legislation.gov.uk/uksi/2014/385/regulation/11/made>), or lodge an appeal under Regulation 114(4) [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/regulation/114/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/114/made>), as amended [\[2\]](http://www.legislation.gov.uk/uksi/2014/385/regulation/11/made) (<http://www.legislation.gov.uk/uksi/2014/385/regulation/11/made>), (except in respect of retrospective apps), Regulation 116(3) [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/regulation/116/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/116/made>), Regulation 116A or Regulation 116B [\[2\]](http://www.legislation.gov.uk/uksi/2014/385/regulation/11/made) (<http://www.legislation.gov.uk/uksi/2014/385/regulation/11/made>), they must do this before development begins. The appeal will lapse if development is commenced before the appeal decision is received. See Regulation 7 [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/regulation/7/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/7/made>), and section 56(4) of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/56) (<http://www.legislation.gov.uk/ukpga/1990/8/section/56>), for the definition of 'commencement of development'.

In some circumstances, however, this may not be possible. For example, if an apportionment of liability has been made after development has commenced or where planning permission is sought retrospectively, the liability notice can only be issued once the scheme is underway or complete. In such circumstances, relevant people may still request a review or appeal of the chargeable amount or the apportionment of liability. This applies to appeals lodged under Regulation 114 [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/regulation/114/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/114/made>) (as amended [\[2\]](http://www.legislation.gov.uk/uksi/2014/385/regulation/11/made) (<http://www.legislation.gov.uk/uksi/2014/385/regulation/11/made>)) in respect of retrospective planning permissions, and Regulation 115 [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/regulation/115/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/115/made>).

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### Are levy appeal decisions published?

Appeal decision notices issued by the Valuation Office Agency are published in redacted form on the agency's website [\[2\]](http://www.voa.gov.uk/cil/cil-Appeals.html) (<http://www.voa.gov.uk/cil/cil-Appeals.html>).

Appeal decision notices issued by the Planning Inspectorate will be published in redacted form on the Planning Portal website [\[2\]](http://www.planningportal.gov.uk/planning/appeals/otherappealscasework/cilappeals) (<http://www.planningportal.gov.uk/planning/appeals/otherappealscasework/cilappeals>).

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6. Other developer contributions (<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/other-developer-contributions/>)

## Other developer contributions

Guidance on the Community Infrastructure Levy was added to this website on 12 June 2014. This replaced the standalone guidance that was published in February 2014. Read more about the changes to the guidance (<http://planningguidance.communities.gov.uk/about/#cil>).

### How does the Community Infrastructure Levy relate to other developer contributions?

Developers may be asked to provide contributions for infrastructure in several ways. This may be by way of the Community Infrastructure Levy and planning obligations in the form of section 106 agreements (see National Planning Policy Guidance on planning obligations

(<http://planningguidance.communities.gov.uk/blog/guidance/planning-obligations/planning-obligations-guidance/>) and section 278 highway agreements (under section 278 of the Highways Act 1980 as amended). Developers will also have to comply with any conditions attached to their planning permission (see National Planning Policy Guidance on planning conditions

(<http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/application-of-the-six-tests-in-nppf-policy/>)). Local authorities should ensure that the combined total impact of such requests does not threaten the viability of the sites and scale of development identified in the development plan (see paragraph 173 of the National Planning Policy Framework for details ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph\\_173](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph_173))).

Where the levy is in place for an area, charging authorities should work proactively with developers to ensure they are clear about the authorities' infrastructure needs and what developers will be expected to pay for through which route. There should be not actual or perceived 'double dipping' with developers paying twice for the same item of infrastructure.

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### When can planning obligations be used?

The levy is intended to provide infrastructure to support the development of an area, rather than making individual planning applications acceptable in planning terms. As a result, some site specific impact mitigation may still be necessary in order for a development to be granted planning permission. Some of these needs may be provided for through the levy but others may not, particularly if they are very local in their impact. Therefore, the Government considers there is still a legitimate role for development specific planning obligations to enable a local planning authority to be confident that the specific consequences of a particular development can be mitigated.

However, in order to ensure that planning obligations and the levy can operate in a complementary way, the levy Regulations 122 and 123 [\(http://www.legislation.gov.uk/uksi/2010/948/part/11/made\)](#) place limits on the use of planning obligations in three respects:

- they put the Government's policy tests on the use of planning obligations (also found in paragraph 204 of the National Planning Policy Framework ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/decision-taking/#paragraph\\_204](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/decision-taking/#paragraph_204))) on a statutory basis, for developments that are capable of being charged the levy
- they ensure the local use of the levy and planning obligations does not overlap; and
- they impose a limit on pooled contributions from planning obligations towards infrastructure that may be funded by the levy.

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## Related policy

### National Planning Policy Framework

- Paragraph 173 ([http://planningguidance.com/sustainable-development/plan-making/#paragraph\\_173](http://planningguidance.com/sustainable-development/plan-making/#paragraph_173))

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## Related policy

### National Planning Policy Framework

- Paragraph 204 ([http://planningguidance.com/sustainable-development/decision-taking/#paragraph\\_204](http://planningguidance.com/sustainable-development/decision-taking/#paragraph_204))

A planning obligation can only be taken into account when determining a planning application for a development, or any part of a development, if the obligation meets all of the following tests:

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

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### **How can planning obligations and the levy operate together?**

The levy delivers additional funding for charging authorities to carry out a wide range of infrastructure projects that support growth and benefit the local community. It cannot be expected to pay for all the infrastructure required, but it is expected to make a significant contribution.

Charging authorities should work proactively with developers to ensure they are clear about the authorities' infrastructure needs and what developers will be expected to pay for through which route. There should be no actual or perceived 'double dipping', with developers paying twice for the same item of infrastructure.

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### **What is a regulation 123 infrastructure list?**

Regulation 123 [\[a\]](http://www.legislation.gov.uk/uksi/2010/948/regulation/123/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/123/made>) of the Community Infrastructure Levy Regulations, as amended by the 2011 [\[a\]](http://www.legislation.gov.uk/uksi/2011/987/regulation/12/made) (<http://www.legislation.gov.uk/uksi/2011/987/regulation/12/made>), 2013 [\[a\]](http://www.legislation.gov.uk/uksi/2013/982/regulation/11/made) (<http://www.legislation.gov.uk/uksi/2013/982/regulation/11/made>) and 2014 [\[a\]](http://www.legislation.gov.uk/uksi/2014/385/regulation/12/made) (<http://www.legislation.gov.uk/uksi/2014/385/regulation/12/made>) Regulations, provides for charging authorities to set out a list of those projects or types of infrastructure that it intends to fund, or may fund, through the levy. This list should be based on the draft list that the charging authority prepared for the examination of their draft charging schedule.

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### **How does the regulation 123 list relate to section 106 contributions?**

When a charging authority introduces the levy, section 106 requirements should be scaled back to those matters that are directly related to a specific site, and are not set out in a regulation 123 list. For transparency, charging authorities should have set out at examination how their section 106 policies will be varied, and the extent to which they have met their section 106 targets. Relevant local policy changes should be implemented at the same time that the charging schedule is introduced, and integrated as soon as practical into the relevant Plan (the Local Plan in England, Local Development Plan in Wales, and the London Plan in London).

When the levy is introduced (and nationally from April 2015), regulation 123 limits the use of planning obligations ([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/other-developer-contributions/#paragraph\\_099](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/other-developer-contributions/#paragraph_099)). An agreement entered into for the purposes of section 106 may contain more than one planning obligation to which regulation 123 relates.

Where the regulation 123 list includes a generic type of infrastructure (such as 'education' or 'transport'), section 106 contributions should not be sought on any specific projects in that category. Site-specific contributions should only be

sought where this can be justified with reference to the underpinning evidence on infrastructure planning which was made publicly available at the charging schedule examination

(<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/rates/examination-of-the-charging-schedule/>).

The charging authority's proposed approach to section 106 contributions should be set out at examination and should be based on evidence. Where a regulation 123 list includes project-specific infrastructure, the charging authority should not seek any planning obligations in relation to that infrastructure.

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### **How should a regulation 123 list be amended?**

When charging authorities wish to revise their regulation 123 list, they should ensure that these changes are clearly explained and subject to appropriate local consultation.

See 'How does the levy charge relate to infrastructure planning?' ([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/rates/evidence-and-setting-rates/#paragraph\\_016](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/rates/evidence-and-setting-rates/#paragraph_016)) and 'Is there a limit on the pooling of section 106 contributions?' ([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/other-developer-contributions/#paragraph\\_099](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/other-developer-contributions/#paragraph_099)) for further details on the relationship between the levy and infrastructure planning.

Charging authorities should not remove an item from the regulation 123 list just so that they can fund this item through a new section 106 agreement. Authorities may amend the regulation 123 list without revising their charging schedule, subject to appropriate consultation. However, where a change to the regulation 123 list would have a very significant impact on the viability evidence that supported examination of the charging schedule, this should be made as part of a review of the charging schedule.

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### **Is there a limit on the pooling of section 106 contributions?**

When the levy is introduced (and nationally from April 2015), the regulations restrict the use of pooled contributions towards items that may be funded via the levy. At that point, no more may be collected in respect of a specific infrastructure project or a type of infrastructure through a section 106 agreement, if five or more obligations for that project or type of infrastructure have already been entered into since 6 April 2010, and it is a type of infrastructure that is capable of being funded by the levy. Where a section 106 agreement makes provision for a number of staged payments as part of a planning obligation, these payments will collectively count as a single obligation in relation to the pooling restriction.

For provision that is not capable of being funded by the levy, such as affordable housing, local planning authorities are not restricted in terms of the numbers of obligations that may be pooled, but they must have regard to the wider policies on planning obligations set out in the National Planning Policy Framework (in England) and Planning Policy Wales (in Wales).

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### **How does this work in relation to an individual infrastructure project?**

Individual projects on the charging authority's list of infrastructure that it proposes to fund from the levy (commonly known as a 'Regulation 123 list' in reference to the relevant levy regulation) cannot be funded by s106 contributions.

Contributions may be pooled from up to five separate planning obligations for a specific item of infrastructure (e.g. a local school) that is not included on the charging authority's infrastructure.

Site-specific contributions like this should only be sought through planning obligations where this can be justified with reference to the underpinning evidence on infrastructure planning that was presented at the charging schedule examination.

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### **How does this work in relation to generic tariffs and funding pots for types of infrastructure?**

In effect, the levy regulations restrict the use of generic section 106 tariffs for items that are capable of being funded by the levy. Authorities who refer to generic types of infrastructure (e.g. 'education'), rather than specific projects, in their s106 agreements, will be unable to collect more than 5 contributions towards those generic funding pots once the pooling restriction is in force.

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### **Which section 106 agreements count towards the pooling limit?**

All section 106 agreements that have been entered into since 6 April 2010 must be counted towards the pooling limit. Planning obligations attached to applications made under Section 73 to vary a planning condition must also be included.

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### **Does the pooling restriction apply to Crossrail?**

Crossrail will bring benefits to communities across London and beyond and its funding will be met by a range of sources, including contributions from the levy and planning obligations. To effectively maintain the ability of planning obligations to raise monies for Crossrail, this restriction will not apply to planning obligations that relate to the funding of Crossrail.

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### **Does the pooling restriction apply to section 278 highway agreements?**

Contributions for highway works that are secured through section 278 of the Highways Act are not subject to the pooling restriction. View further details of the interaction between the levy and section 278 agreements ([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/other-developer-contributions/#paragraph\\_107](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/other-developer-contributions/#paragraph_107)).

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### **How do section 106 agreements relate to items that are funded through the neighbourhood portion of the levy?**



See 'Do the planning obligations restrictions apply to neighbourhood funds?' ([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/spending-the-levy/#paragraph\\_079](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/spending-the-levy/#paragraph_079)).

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## How can planning conditions and the levy operate together?

In England, the National Planning Policy Framework (paragraph 206 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/decision-taking/#paragraph\\_206](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/decision-taking/#paragraph_206))) sets out that planning conditions (including Grampian conditions) should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. In Wales, Planning Policy Wales  (<http://wales.gov.uk/topics/planning/policy/ppw/?lang=en>) (paragraph 3.6) sets out the same tests for the use of conditions. When setting conditions, local planning authorities should consider the combined impact of those conditions and any Community Infrastructure Levy charges that the development will be liable for.

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## What is the relationship between the levy and section 278 highway agreements?

Section 278 agreements (under the Highways Act 1980) are made between a highway authority and a person who agrees to pay all or part of the cost of highway works. The regulations help to ensure that section 278 agreements cannot be required for works that are intended to be funded through the levy. The regulations do this by placing restrictions on the use of planning obligations and conditions where a local authority has an infrastructure list. Planning obligations and conditions should not be used to require a developer to enter into section 278 agreements to provide items that appear on the charging authority's Regulation 123 infrastructure list ([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/other-developer-contributions/#paragraph\\_096](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/other-developer-contributions/#paragraph_096)).

These restrictions do not apply to highway agreements drawn up by the Highways Agency (or any subsequent body on behalf of the Secretary of State for Transport), the Welsh Ministers or Transport for London. These bodies are responsible for the strategic road network, undertaking works that in terms of their scale and nature are not suitable for funding through receipts from the levy.

Charging authorities should take care to ensure that their existing or forthcoming infrastructure list does not inadvertently rule out the use of section 278 agreements for highway schemes that are already planned or underway, or where there would be clear merit in retaining the ability for developers to contribute towards specific local highway works through section 278 agreements. This is especially important in two-tier areas where the charging authority and the local highway authority are separate bodies: in such areas, charging authorities should discuss and seek to agree their intentions with the highway authority prior to publishing their infrastructure list. Any necessary amendments to an existing infrastructure list should be considered in light of the guidance 'How should a regulation 123 list be amended?' ([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/other-developer-contributions/#paragraph\\_098](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/other-developer-contributions/#paragraph_098)).

Where section 278 agreements are used, there is no restriction on the number of contributions that can be pooled.

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## Related policy

### National Planning Policy Framework

- Paragraph 206 ([http://planningguidance.com/sustainable-development/decision-taking/#paragraph\\_206](http://planningguidance.com/sustainable-development/decision-taking/#paragraph_206))

## 7. Relief (<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/>)

### Relief

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Guidance on the Community Infrastructure Levy was added to this website on 12 June 2014. This replaced the standalone guidance that was published in February 2014. Read more about the changes to the guidance (<http://planningguidance.communities.gov.uk/about/#cil>).

### What forms of relief are available from the Community Infrastructure Levy?

The Community Infrastructure Levy Regulations make a number of provisions for charging authorities to give relief from the levy. Some types of relief are compulsory; others are offered at the charging authority's discretion.

'Community Infrastructure Levy relief' means any exemption or reduction in liability to pay the levy.

People who are considered to be an 'owner of a material interest in the relevant land' can claim relief.

A 'material interest' is a freehold interest or a leasehold interest the term of which expires more than seven years after the date on which planning permission first permits development (as defined in Regulation 4(2) [\[2\]](http://www.legislation.gov.uk/ukSI/2010/948/regulation/4/made)) (<http://www.legislation.gov.uk/ukSI/2010/948/regulation/4/made>).

The 'relevant land' in which such an interest must be owned is the land which will be developed when building the chargeable development. Specifically:

- for general consents (such as via the General Permitted Development Order (see 'What are permitted development rights?' (<http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/>)' for details) or through a Local Development Order (see related National Planning Policy Guidance on Local Development Orders (<http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-types-of-area-wide-local-planning-permission-are-there/>) for details)); the land which is identified in the plan submitted to the collecting authority as part of the Notification of Chargeable Development
- for outline planning permissions, and full permissions to be implemented in phases: the land to which the phase relates
- for other cases: the land to which the planning permission relates

Depending on the circumstances, the following forms of relief may be available:

- minor development exemption ([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/#paragraph\\_109](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/#paragraph_109))
- mandatory charitable relief (<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/charities/>)
- discretionary charitable relief ([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/charities/#paragraph\\_115](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/charities/#paragraph_115))
- mandatory social housing relief (<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/social-housing/>)
- discretionary social housing relief ([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/social-housing/#paragraph\\_123](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/social-housing/#paragraph_123))

- exceptional circumstances relief (<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/exceptional-circumstances/>)
- self build exemption (for a whole house) ([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/self-build-exemption/#paragraph\\_135](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/self-build-exemption/#paragraph_135))
- self build exemption (for a residential annexe or extension) ([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/self-build-exemption/#paragraph\\_149](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/self-build-exemption/#paragraph_149))

A collecting authority must satisfy itself that by granting relief or an exemption it is not breaching State aid rules

(<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/state-aid/>).

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### What is a minor development exemption?

Minor development, with a gross internal area of less than 100 square metres, is generally exempt from the levy. However, where minor development will result in a whole new dwelling, it will be liable for the levy unless it is built by a 'self builder' (<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/self-build-exemption/>).

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- Charities (<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/charities/>)

### Charities

Guidance on the Community Infrastructure Levy was added to this website on 12 June 2014. This replaced the standalone guidance that was published in February 2014. Read more about the changes to the guidance (<http://planningguidance.communities.gov.uk/about/#cil>).

### What relief is available for charities?

Two forms of relief may be available for charities.

First, a charitable institution which owns a material interest in the land (a charity landowner) will get full relief from their share of the liability where the chargeable development will be used 'wholly, or mainly, for charitable purposes' and they meet the requirements of Regulation 43 [\[2\]](#)

(<http://www.legislation.gov.uk/ukxi/2010/948/regulation/43/made>).

A charging authority can also choose to offer discretionary relief ([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/charities/#paragraph\\_115](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/charities/#paragraph_115)) to a charity landowner where the greater part of the chargeable development will be held as an investment, from which the profits are applied for charitable purposes (see Regulation 44 [\[2\]](#) (<http://www.legislation.gov.uk/ukxi/2010/948/regulation/44/made>) for details). The charging authority must publish its policy for giving relief in such circumstances.

Second, the regulations provide 100 per cent relief from the levy on those parts of a chargeable development which are intended to be used as social housing. Charitable Private Registered Providers (alongside other providers set out in Regulation 49 [\[2\]](#) (<http://www.legislation.gov.uk/ukxi/2014/385/regulation/7/made>)) will be eligible for this reduction (Private Registered Providers are defined in the Housing and Regeneration Act 2008 as amended: see the Housing and Regeneration Act 2008 (Registration of Local Authorities) Order 2010 [\[2\]](#) (<http://www.legislation.gov.uk/ukxi/2010/844/schedule/1/made>) for details. Social

housing relief may also be available to parties that are not charities. See more details about social housing relief

(<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/social-housing/>).

Relief must not be claimed as a way of avoiding proper liability for the levy. Any relief must be repaid, a process known as 'clawback', if a 'disqualifying event' (defined in Regulation 48 [\[2\]](#))

(<http://www.legislation.gov.uk/ukxi/2010/948/regulation/48/made>) happens within seven years of the commencement of the chargeable development. See Regulation 7 [\[2\]](#) (<http://www.legislation.gov.uk/ukxi/2010/948/regulation/7/made>), and section 56(4) of the Town and Country Planning Act 1990 [\[2\]](#) (<http://www.legislation.gov.uk/ukpga/1990/8/section/56>), for the definition of 'commencement of development'.

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### What is charitable relief?

Charitable relief is the collective term for all Community Infrastructure Levy relief offered to charities under the Community Infrastructure Levy Regulations 2010.

To qualify for any charitable relief, the following criteria must be fulfilled:

- the claimant must be a charitable institution
- the claimant must own a material interest in the relevant land and
- the claimant must not own this interest jointly with a person who is not a charitable institution

Relief is not limited to only one charitable institution. Where charitable relief conditions are met, every charitable institution owning a material interest in the relevant land can benefit from relief from their portion of the charge.

There is a difference between a mandatory exemption offered via Regulation 43 [\[2\]](#) (<http://www.legislation.gov.uk/ukxi/2010/948/regulation/43/made>) and discretionary relief offered via Regulations 44 [\[2\]](#)

(<http://www.legislation.gov.uk/ukxi/2010/948/regulation/44/made>) and 45 [\[2\]](#) (<http://www.legislation.gov.uk/ukxi/2010/948/regulation/45/made>). If a claimant meets the criteria in Regulation 43(1) and (2) [\[2\]](#)

(<http://www.legislation.gov.uk/ukxi/2010/948/regulation/43/made>), a collecting authority must grant that claimant an exemption on its share of the land.

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### Who can claim charitable relief?

Charitable reliefs apply only to 'charitable institutions'. This is defined in Regulation 41 [\[2\]](#) (<http://www.legislation.gov.uk/ukxi/2010/948/regulation/41/made>) as either:

- a charity (defined as "any person or trust established for charitable purposes only") – for a definition of 'charitable purposes', see section 2 of the Charities Act 2011)
- a trust of which all the beneficiaries are charities or
- a unit trust scheme in which all the unit holders are charities

More detailed information on charitable purposes can be found on the Charity Commission website [\[2\]](#) (<http://www.charitycommission.gov.uk/>).

In practice there are three main groups of charities which may benefit from relief:

- registered charities: charities which are registered with the Charity Commission
- exempt charities: charities which cannot register under the Charities Act 2011 and are not subject to the Charity Commission's supervisory powers. They are listed in Schedule 3 of the 2011 Charities Act [\[2\]](http://www.legislation.gov.uk/ukpga/2011/25/schedule/3) (<http://www.legislation.gov.uk/ukpga/2011/25/schedule/3>) and include some educational institutions, and most universities and national museums
- excepted charities: charities excepted from the need to register but which are still supervised by the Charity Commission.

Bodies which do not fall into these categories may still be eligible for relief where they are established for charitable purposes only. A body which has a Her Majesty's Revenue and Customs charity reference number will usually meet this requirement. Academy and Free School Trusts which are not yet exempt charities but which are charitable institutions as defined in Regulation 41 [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/regulation/41/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/41/made>) are also exempt from the levy.

Levy charging and collecting authorities must treat EU charities in the same way as UK charities for the purposes of charitable relief. The levy regulations do not preclude non-UK charities from the definition, so any decision on the eligibility of a non-UK charity must be made on the merit of the charitable purpose.

Charitable relief may also apply to trusts or unit trusts whose only beneficiaries or unit holders are charities. The most usual arrangements of this type are collective investment schemes – for example, unit trusts and common investment funds. The Claiming Exemption and Relief form [\[2\]](http://www.planningportal.gov.uk/uploads/1app/forms/form_2_claiming_exemption_and_or_relief.pdf) ([http://www.planningportal.gov.uk/uploads/1app/forms/form\\_2\\_claiming\\_exemption\\_and\\_or\\_relief.pdf](http://www.planningportal.gov.uk/uploads/1app/forms/form_2_claiming_exemption_and_or_relief.pdf)) requires a claimant to indicate whether it qualifies for relief in this context – in particular whether all beneficiaries or unit holders are charities – and supply detail on the type of organisation that it is. It is then for the collecting authority to determine whether the claimant qualifies for the relief.

The Claiming Exemption and Relief form requires the claimant to demonstrate what its charitable purposes are – for example through production of its constitution or articles of association.

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## How is charitable relief claimed?

Charitable institutions wishing to claim relief should use this form [\[2\]](http://www.planningportal.gov.uk/uploads/1app/forms/form_2_claiming_exemption_and_or_relief.pdf) ([http://www.planningportal.gov.uk/uploads/1app/forms/form\\_2\\_claiming\\_exemption\\_and\\_or\\_relief.pdf](http://www.planningportal.gov.uk/uploads/1app/forms/form_2_claiming_exemption_and_or_relief.pdf)). The claim form should be submitted with the planning application or notification of chargeable development. However, a claim for relief will lapse if works are commenced on the chargeable development before the collecting authority has notified the claimant of its decision.

If there is more than one material interest in the relevant land, the claimant must submit an 'apportionment assessment' alongside its claim. Apportionment must be carried out in accordance with Regulation 34 [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/regulation/34/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/34/made>), as amended by the 2011 Regulations [\[2\]](http://www.legislation.gov.uk/uksi/2011/987/regulation/6/made) (<http://www.legislation.gov.uk/uksi/2011/987/regulation/6/made>).


A claimant must inform the collecting authority if a disqualifying event (defined in Regulation 48(1) [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/regulation/48/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/48/made>)) occurs prior to commencement of the chargeable development.

When it determines a claim for relief, the collecting authority must write to the claimant setting out its decision, the reasons for it, and the amount of relief granted.

A party claiming charitable relief must submit a commencement notice to the collecting authority for development that is granted charitable relief. The date of commencement determines when the seven-year clawback period expires. If development begins without a commencement notice, the claimant is no longer eligible for charitable relief and the full charge plus any surcharge is immediately payable. The claimant may be eligible to pay its portion of this charge, plus any surcharge, where no party has assumed liability for the development ([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/collecting-the-levy/#paragraph\\_051](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/collecting-the-levy/#paragraph_051)).

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### **What are the specific requirements for a mandatory charitable exemption?**

To qualify for a mandatory charitable exemption under Regulation 43  (<http://www.legislation.gov.uk/ukxi/2010/948/regulation/43/made>) the following criteria must be met:

- a material interest in the land must be owned by a charitable institution;
- the chargeable development will be used wholly or mainly for charitable purposes (whether of the claimant or of the claimant and other charitable institutions)
- that part of the chargeable development to be used for charitable purposes will be occupied by, or under the control of, a charitable institution;
- the material interest cannot be owned jointly with a person who is not a charitable institution; and
- the exemption must not constitute a state aid

These criteria apply alongside any procedural requirements.

Under the mandatory charitable exemption, the chargeable development must be used 'wholly or mainly for charitable purposes' once it is completed. This is a similar formulation to that used for business rates charitable relief. There is no statutory definition of this requirement. However, the courts have held 'mainly' to mean 'more than half.' The chargeable development must be used to 'directly facilitate the carrying out of the charitable institution's charitable purposes' – or those of itself and other charitable institutions. Use of a chargeable development for trading could qualify, but is unlikely where the link to furthering charitable purposes is purely through raising money. Qualifying use could also include a charity using the chargeable development to house its employees, under certain circumstances.


In practice, a charitable institution is likely to have control over a portion of a development where it has a right of entry to that portion.

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### **What are the specific requirements for discretionary charitable relief?**

A charging authority may give discretionary relief from the levy where:

- a charitable institution will claim the relief, and the whole or greater part of that institution's share of the chargeable development will be held as a charitable investment, or
- a charitable institution has been refused a mandatory charitable exemption on state aid grounds, but granting relief for the institution's share of the chargeable development would not constitute a notifiable state aid

Regulation 45  (<http://www.legislation.gov.uk/ukxi/2010/948/regulation/45/made>) sets out the qualifying criteria in more detail.

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### **What are the specific requirements for discretionary charitable investment relief?**

A charging authority may decide to operate a policy for giving discretionary charitable investment relief, under Regulation 44 [\[2\]](#)

(<http://www.legislation.gov.uk/ukksi/2010/948/regulation/44/made>).

A collecting authority may give discretionary investment relief where:

- the charging authority has given notice that discretionary charitable investment relief is available in the area and
- the whole or 'greater part' of the chargeable development will be held by the claimant, or by the claimant and other charitable institutions, as an investment from which the profits will be applied for charitable purposes and
- that portion of the chargeable development to be held as an investment will not be occupied by the claimant for ineligible trading activities and
- relief does not constitute a notifiable state aid

'Greater part' – 51 per cent or more of the monetary value of the chargeable development is likely to constitute its 'greater part'.

Only charitable investment activities are eligible for this relief. Regulation 44 [\[2\]](#) (<http://www.legislation.gov.uk/ukksi/2010/948/regulation/44/made>) specifies that relief cannot apply where a charity intends to occupy the greater part of the chargeable development and use it for any trading activity, other than to sell donated goods to use the proceeds for its charitable purposes.

A charging authority may choose to further narrow the scope of this relief through its relief policy.

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### **How do discretionary charitable relief policies operate?**

A charging authority that decides to introduce or revise a discretionary charitable relief policy must publish a document setting out that policy. The document is not part of the charging schedule. The charging authority may publish the relief policy separately and at a different time to the publication of the charging schedule. The document must:

- give notice that discretionary relief is available in its area (or is available under a revised policy), and whether it is available under Regulation 44 [\[2\]](#) (<http://www.legislation.gov.uk/ukksi/2010/948/regulation/44/made>), Regulation 45 [\[2\]](#) (<http://www.legislation.gov.uk/ukksi/2010/948/regulation/45/made>) or both
- state the dates the collecting authority will begin accepting claims for relief under its latest policy and
- include a policy statement setting out the circumstances in which discretionary charitable relief will be granted in its area.

It is at the discretion of the charging authority to decide what percentage of relief from the levy it will provide. The charging authority also has the flexibility to develop the criteria it considers suitable to assess eligibility for discretionary relief. Examples could include:

- the benefit the charitable institution gives to the local community
- the annual income of the charitable institution
- the annual rent payable on the charitable investment (a minimum threshold may protect against abuse)

In London, where the Mayor and a London borough have opted to charge the levy, both bodies could legitimately have policies for giving discretionary charitable relief. It is for the collecting authority (in most cases the London borough) to apply each policy to the appropriate portion of the claimant's charge. The claimant's share – of either the Mayor or borough's levy – will be the same percentage as its overall share of the charge.

Discretionary charitable relief is only available where the charging authority has published its policy. The collecting authority must not consider claims for discretionary charitable relief where the charging authority has no policy on offering such relief.

A charging authority wishing to withdraw discretionary relief must publicise on its website the last date on which it will accept claims for relief.

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### **Under what circumstances can charitable relief be 'clawed back'?**

For seven years after the commencement of development (the 'clawback period'), a charitable relief claimant must inform the collecting authority where a disqualifying event happens. This must be done within 14 days of the disqualifying event. Where this is not done, a surcharge equal to 20 per cent of the chargeable amount or £2,500, whichever is the lesser, may be applied.

A disqualifying event is one or more of the following:

- change of purpose: the owner of the interest in the land in which relief was given ceases to be eligible for charitable relief (i.e. the owner ceases to be a charitable institution or uses the building for an ineligible use),
- change of ownership: the whole of the interest in the land in which relief was given is transferred to a person who is not eligible for charitable relief, or
- change of leasehold: the lease under which the interest in the land is held is terminated, and the owner of the reversion is not eligible for charitable relief

If a disqualifying event happens before the development commences, the relief is cancelled and the full levy charge applies, unless a new claim is submitted by the charitable institution. If the disqualifying event occurs after commencement, the claimant's share of the charge becomes due. In either instance, the collecting authority must issue a revised liability notice showing what is payable and must issue a demand notice to collect the relief that is clawed back.

If a claimant does not inform the collecting authority in writing of a disqualifying event within 14 days of the disqualifying event occurring, they will immediately be liable to pay back the charitable relief and a surcharge.

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### **What are charitable relief appeals?**

A charitable relief claimant, or the party who has assumed liability for the chargeable development, may appeal to the Valuation Office Agency if they consider that the collecting authority has incorrectly determined the value of the charity's interest in the land.

An appeal must be submitted within 28 days of the date of the collecting authority's decision on the claim. See further details on appeals (<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/cil-appeals/>).

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### How does State aid apply to charitable relief?

A mandatory charitable exemption cannot be granted where it would constitute a state aid. However, if a mandatory charitable exemption would otherwise have been allowed, and such a policy on discretionary charitable relief under Regulation 45 [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/regulation/45/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/45/made>) exists, a charitable institution could benefit from relief which was not a notifiable state aid.

Charging authorities may wish to formulate policies which automatically ensure that mandatory charitable exemption claims which fail solely on state aid grounds are considered for relief under Regulation 45 [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/regulation/45/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/45/made>). Discretionary charitable investment relief can also be given where relief is not a notifiable state aid.

View more details on this and the de minimis block exemption (<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/state-aid/>).

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### How does the default of liability apply to charitable relief?

Where a party assuming liability for the levy fails to pay the full amount that is owed, the collecting authority may transfer the liability to the owners of the relevant land within the chargeable development. This is known as 'default of liability' – see Regulation 36 [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/regulation/36/made)

(<http://www.legislation.gov.uk/uksi/2010/948/regulation/36/made>) for details. A collecting authority may only transfer the liability after it has taken all reasonable efforts to recover the outstanding amount.

Where the outstanding amount is defaulted, it will be apportioned between the owners of the relevant land according to their material interest in the relevant land. ('Material interest' is defined in Regulation 4(2) [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/regulation/4/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/4/made>)). A charity benefiting from discretionary charitable relief may be liable to pay a share of the outstanding amount based on its material interest in the land. In order to manage the risk of a default of liability by another party, charities should carefully select development partners and make appropriate contractual arrangements to safeguard their interests.

A charity receiving a mandatory charitable exemption (under Regulation 43 [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/regulation/43/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/43/made>)) will continue to be exempt from any liability to pay the outstanding charge.

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- **Social Housing** (<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/social-housing/>)

### Social Housing

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Guidance on the Community Infrastructure Levy was added to this website on 12 June 2014. This replaced the standalone guidance that was published in February 2014. Read more about the changes to the guidance (<http://planningguidance.communities.gov.uk/about/#cil>).

### What relief is available for social housing?

Social housing relief is a mandatory discount that applies to most social rent, affordable rent, intermediate rent provided by a local authority or Private Registered Provider, and shared ownership dwellings. Subject to meeting

specific conditions

([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/social-housing/#paragraph\\_172](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/social-housing/#paragraph_172)), social housing relief can also apply to discounted rental properties provided by bodies which are neither a local authority nor a private registered provider. Regulation 49 [\[2\]](#) (<http://www.legislation.gov.uk/uk/si/2014/385/regulation/7/made>) (as amended by the 2015 Regulations [\[2\]](#) (<http://www.legislation.gov.uk/uk/si/2015/836/contents/made>)) defines where social housing relief applies.

To qualify for social housing relief, the claimant must own a material interest (defined in Regulation 4(2) [\[2\]](#) (<http://www.legislation.gov.uk/uk/si/2010/948/regulation/4/made>)) in the relevant land (the area granted planning permission) and have assumed liability to pay the levy for the whole chargeable development.

A charging authority may offer separate, discretionary, relief for affordable housing types which do not meet the criteria required for mandatory social housing relief and are not regulated through the National Rent Regime.

When applying for relief, a claimant must provide evidence that the chargeable development qualifies for social housing relief. The Regulations provide that dwellings no longer meeting these requirements must pay the levy.

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### **Can a dwelling let by a body which is neither a local authority nor a private registered provider qualify for mandatory social housing relief?**

A dwelling which is to be let by a body which is neither a local housing authority nor a private registered provider of social housing (registered social landlord in Wales) qualifies for mandatory social housing relief (Regulation 49(7A)), [\[2\]](#) (<http://www.legislation.gov.uk/uk/si/2015/836/regulation/4/made>) if it is let to a tenant whose needs are not adequately served by the commercial housing market; if the rent (including any service charge) is no more than 80% of market rent; and a planning obligation ensuring the dwelling is let on this basis is entered into.

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### **How should need be established for the purposes of dwellings which qualify for social housing relief under Regulation 49(7A)?**

Dwellings which qualify for mandatory social housing relief under Regulation 49 (7A) ([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/social-housing/#paragraph\\_172](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/social-housing/#paragraph_172)) must be let to those persons whose needs are not served by the commercial housing market. Eligibility should be based on criteria agreed between the provider and the relevant local housing authority, and secured via a planning obligation.

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### **How should market rent be calculated?**

Market rent should be calculated in accordance with a Royal Institution of Chartered Surveyors recognised method. Its principles for valuations are set out in "Royal Institution of Chartered Surveyors Valuation – Professional Standards" (known as the Red Book).

ID 25-174-20150401 Last updated 01 04 2015

## What is discretionary relief for social housing?

If a charging authority wishes to offer discretionary social housing relief, it must set out what is required to qualify for this relief, including the criteria governing who is eligible to occupy the homes and how these will be allocated.

Discretionary social housing relief will apply to affordable dwellings which meet the criteria set out in Regulation 49A (inserted by the 2014 Regulations) [\[2\]](http://www.legislation.gov.uk/uksi/2014/385/regulation/7/made) (<http://www.legislation.gov.uk/uksi/2014/385/regulation/7/made>). Anyone can provide these homes, as long as measures are in place to ensure that the homes, if sold, will continue to be affordable for future purchasers at a maximum of 80% of market price.

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## What is the procedure for claiming mandatory or discretionary social housing relief?

The levy collecting authority handles claims for social housing and discretionary social housing relief. In most cases (except in London), the collecting authority and the charging authority are the same.

A claimant wishing to apply for social housing relief should use this form [\[2\]](http://www.planningportal.gov.uk/uploads/1app/forms/form_2_claiming_exemption_and_or_relief.pdf) ([http://www.planningportal.gov.uk/uploads/1app/forms/form\\_2\\_claiming\\_exemption\\_and\\_or\\_relief.pdf](http://www.planningportal.gov.uk/uploads/1app/forms/form_2_claiming_exemption_and_or_relief.pdf)).

To qualify for relief, the claimant must be an owner of a material interest in the relevant land (defined by Regulation 4(2) [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/regulation/4/made)) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/4/made>) and have assumed liability ([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/collecting-the-levy/#paragraph\\_051](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/collecting-the-levy/#paragraph_051)) to pay the levy on the chargeable development. The claimant must provide a map showing where on the chargeable development the social housing will be built, and a 'relief assessment' which is part of the form.

Social housing relief is calculated according to three formulae in Regulation 50 (as amended by the 2014 Regulations) [\[2\]](http://www.legislation.gov.uk/uksi/2014/385/regulation/7/made)

(<http://www.legislation.gov.uk/uksi/2014/385/regulation/7/made>). The 'index' referred to in Regulation 50(5) is the national All-in Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors. The figure for a given year is the figure for 1 November of the preceding year. In the event that the index ceases to be published, the Retail Prices Index must be used instead.

When it determines a claim for relief, the collecting authority must write to the claimant setting out its decision, the reasons for it, and the amount of relief granted.

A party claiming social housing relief must submit a commencement notice to the charging authority for a development that is granted relief. The date of commencement determines when the seven-year clawback period expires, apart from dwellings granted social housing relief under Regulation 49(7A) [\[2\]](http://www.legislation.gov.uk/uksi/2015/836/regulation/4/made) (<http://www.legislation.gov.uk/uksi/2015/836/regulation/4/made>) for which the clawback period expires seven years after the dwelling is first let. If development begins without a commencement notice, the claimant is no longer eligible for social housing relief and the full charge plus any surcharge is immediately payable.

A claim for relief will also lapse if development commences before the collecting authority has notified the claimant of its decision.

Can mandatory or discretionary social housing relief be claimed for communal areas?

The 2014 Regulations provide relief for communal areas that are associated with social housing developments. Regulation 49C [\[2\]](#) (<http://www.legislation.gov.uk/ukxi/2014/385/regulation/7/made>) sets out the formula for calculating this.

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### **How is the beneficiary identified when disposing of land?**

The effective enforcement of social housing relief – which applies to social housing and discretionary social housing relief – relies on identifying the beneficiary or beneficiaries of that relief.

The initial beneficiary of all social housing relief on a chargeable development is the party who submitted the claim – regardless of whether he or she owns some or all of the land on which the social housing will be built. However, the relief attached to each qualifying dwelling is transferred if the land on which they sit, or will sit, is sold before they are ready for occupation. The relief for those dwellings is calculated and transferred from the old to the new beneficiary under Regulation 52 [\[2\]](#)

(<http://www.legislation.gov.uk/ukxi/2010/948/regulation/52/made>), as amended by the 2014 Regulations [\[2\]](#) (<http://www.legislation.gov.uk/ukxi/2014/385/regulation/7/made>).

The seller must notify the collecting authority in writing of the sale, copying this to the buyer and the previous beneficiary of relief for those dwellings (if this is not the seller). As the claimant may only own one of the material interests in the relevant land, the seller of the land might not be the current beneficiary of relief. He or she will in most cases know about the social housing relief attached to that land, however, through the liability notice.

The notification must give details of:

- the gross internal area of the qualifying dwellings that will be situated on the land being sold
- the location of those dwellings through a map or plan and
- the name and address of the seller, the buyer and the former beneficiary of relief from those dwellings (if not the seller)

The new owner's relief is then calculated, as is the revised relief (if any) of the former beneficiary. Under Regulation 54 [\[2\]](#)

(<http://www.legislation.gov.uk/ukxi/2010/948/regulation/54/made>), a collecting authority may serve an information notice on the claimant to enable it to calculate this. After calculating the revised relief, the collecting authority must issue an updated liability notice that identifies all social housing relief beneficiaries and what relief they benefit from. The charging authority can choose to include within the liability notice a map demonstrating where the beneficiaries' qualifying dwellings sit within the chargeable development.

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### **What happens if the social housing no longer qualifies for relief?**

Social housing relief can be withdrawn for any qualifying dwelling if a disqualifying event occurs up to seven years from the commencement of development (known as the "clawback period"). The relief for that dwelling must be repaid by the beneficiary. The occupant of the dwelling will never pay clawback – liability falls on the owner of the land immediately prior to the dwelling being made available for occupation.

If a disqualifying event occurs before the commencement of development, social housing relief will cease to apply.

A disqualifying event is any change to a qualifying dwelling causing it to no longer qualify for social housing relief – Regulation 53 [\[2\]](http://www.legislation.gov.uk/ukSI/2010/948/regulation/53/made) (<http://www.legislation.gov.uk/ukSI/2010/948/regulation/53/made>), as amended by the 2014 Regulations [\[2\]](http://www.legislation.gov.uk/ukSI/2014/385/regulation/7/made) (<http://www.legislation.gov.uk/ukSI/2014/385/regulation/7/made>) and the 2015 Regulations [\[2\]](http://www.legislation.gov.uk/ukSI/2015/836/contents/made) (<http://www.legislation.gov.uk/ukSI/2015/836/contents/made>), provides further details. In the case of a dwelling that was granted social housing relief under Regulation 49(7A) [\[2\]](http://www.legislation.gov.uk/ukSI/2015/836/regulation/4/made) (<http://www.legislation.gov.uk/ukSI/2015/836/regulation/4/made>), the beneficiary must repay the value of the relief plus late payment interest calculated from the date on which the chargeable development commenced.

The sale of a qualifying dwelling is not a disqualifying event if the proceeds of sale are spent on another dwelling that qualifies for the relief. Transferring the sale proceeds to the Secretary of State, the Welsh Ministers, a local housing authority or the Homes and Communities Agency are also not disqualifying events. Disqualifying events do not include the purchase of social housing by the Welsh Ministers or the Regulator of Social Housing.

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### **Does state aid apply to social housing relief?**

The UK Government considers that the provision of social housing is a Service of a General Economic Interest. Relief from the levy for social housing has been designed so that it complies with the requirements of the EU Block Exemption for Services of a General Economic Interest. Charging and collecting authorities will need to be aware of this block exemption when implementing these regulations. View more information on state aid (<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/state-aid/>).

The European Commission recognises the importance of State support for social housing, which is deemed to be 'a service of general economic interest' meaning that relief from a tax or levy can be granted without breaching the State aid rules. However, to fit within the exemption, any housing benefiting from the State aid (relief) must meet three criteria:

- Entrustment – there must be legislative provision, a contract or other legally binding method to ensure that the housing is used in a certain way;
- The housing must be for those people whose needs are not met by the market – “disadvantaged citizens or socially less advantaged groups, who due to solvency constraints are unable to obtain housing at market conditions”; and
- The total aid must not exceed the cost of providing the social housing.

Local policies granting discretionary social housing relief need to comply with the European Commission criteria set out above.

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### **When does the default of liability for social housing relief apply?**

Where a party assuming liability for the levy fails to pay the full amount that is owed, the collecting authority may transfer the liability to the owners of the relevant land within the chargeable development. This is known as 'default of liability' – see Regulation 36 [\[2\]](http://www.legislation.gov.uk/ukSI/2010/948/regulation/36/made)

(<http://www.legislation.gov.uk/ukSI/2010/948/regulation/36/made>) for details. A collecting authority may only transfer the liability after it has taken all reasonable efforts to recover the outstanding amount.

Where the outstanding amount is defaulted, it will be apportioned between the owners of the relevant land according to their material interest in the relevant land (defined in Regulation 4(2) [\[2\]](#)

(<http://www.legislation.gov.uk/uksi/2010/948/regulation/4/made>). A person or organisation building or owning social housing within the development will still be required to pay a share of the amount based on its material interest in the land. In order to manage the risk of a default of liability by another party, social housing providers should carefully select development partners and make appropriate contractual arrangements to safeguard their interests.

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- **Exceptional Circumstances** (<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/exceptional-circumstances/>)

## Exceptional Circumstances

Guidance on the Community Infrastructure Levy was added to this website on 12 June 2014. This replaced the standalone guidance that was published in February 2014. Read more about the changes to the guidance (<http://planningguidance.communities.gov.uk/about/#cil>).

### What is exceptional circumstances relief?

Charging authorities may offer relief from the levy in exceptional circumstances where a specific scheme cannot afford to pay the levy.

A charging authority wishing to offer exceptional circumstances relief in its area must first publish a notice of its intention to do so. A charging authority can then consider claims for relief on chargeable developments from landowners on a case by case basis, provided the conditions set out in Regulation 55 [\[2\]](#) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/55/made>) (as amended by the 2013 [\[2\]](#) (<http://www.legislation.gov.uk/uksi/2013/982/regulation/7/made>) and 2014 Regulations [\[2\]](#) (<http://www.legislation.gov.uk/uksi/2014/385/regulation/7/made>)) are met:

- a section 106 agreement must exist on the planning permission permitting the chargeable development and
- the charging authority must consider that paying the full levy would have an unacceptable impact on the development's economic viability and
- the relief must not constitute a notifiable state aid (<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/state-aid/>)

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### When can exceptional circumstances relief be offered?

The powers to offer relief can be activated and deactivated at any point after the charging schedule

(<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/rates/charging-schedules/>) is approved. If a charging authority wishes to offer exceptional circumstances relief, it must specify a date from when this will apply, and must follow the procedures for offering relief set out in Regulations 55 – 58 [\[2\]](#) (<http://www.legislation.gov.uk/uksi/2010/948/part/6/made>) (as amended by the 2013 [\[2\]](#) (<http://www.legislation.gov.uk/uksi/2013/982/regulation/7/made>) and 2014 Regulations [\[2\]](#) (<http://www.legislation.gov.uk/uksi/2014/385/regulation/7/made>)).

ID 25-130-20140612 Last updated 12 06 2014

### What are the eligibility considerations for exceptional

### circumstances relief?

A claim cannot be made after development has commenced.

Exceptional circumstances relief can be considered where a Section 106 agreement is in place as well as a levy charging schedule. A charging authority can give relief from the levy if it deems that the levy would have an unacceptable impact on the economic viability of a development. There is no statutory definition of what constitutes the economic viability of a development. The charging authority has the discretion to make judgements about the viability of the scheme in economic terms (for example, see National Planning Policy Guidance on viability

(<http://planningguidance.communities.gov.uk/blog/guidance/viability-guidance/viability-and-decision-taking/>)). However, it is important to ensure that any exceptional circumstances relief is based on an objective assessment of economic viability.

Relief is granted for a chargeable development. This can mean the whole development or a part of a scheme where a development proceeds in phases as separate chargeable developments.

Even if exceptional circumstances relief is available in a charging authority area, each case is considered individually by the authority and it is at their discretion whether they wish it to apply in that case or not. However, use of an exceptions policy enables charging authorities to avoid rendering sites with specific and exceptional cost burdens unviable.

Regulations 55-57 [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/part/6/made) (<http://www.legislation.gov.uk/uksi/2010/948/part/6/made>), as amended by the 2013 [\[2\]](http://www.legislation.gov.uk/uksi/2013/982/regulation/7/made)

(<http://www.legislation.gov.uk/uksi/2013/982/regulation/7/made>) and 2014 Regulations [\[2\]](http://www.legislation.gov.uk/uksi/2014/385/regulation/7/made) (<http://www.legislation.gov.uk/uksi/2014/385/regulation/7/made>), set out the requirements for claiming and granting exceptional circumstances relief.

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### How do the eligibility considerations for exceptional circumstances relief apply to London?

London boroughs and the Mayor of London may each offer exceptional circumstances relief. Where only the borough offers relief, the above general procedure applies. Where the Mayor decides to make relief available on his levy, additional procedures apply – these are set out in Regulation 58 [\[2\]](http://www.legislation.gov.uk/uksi/2010/948/regulation/58/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/58/made>), as amended by the 2013 Regulations [\[2\]](http://www.legislation.gov.uk/uksi/2013/982/regulation/7/made) (<http://www.legislation.gov.uk/uksi/2013/982/regulation/7/made>).

All claims for exceptional circumstances relief in London must be made to the relevant borough. If only the Mayor makes exceptional circumstances relief available, the borough must refer the claim and supporting documentation to the Mayor as soon as possible. If both the Mayor and the borough make relief available, the borough must first consider whether to offer relief and if so how much. The borough only needs to refer the claim to the Mayor where the relief it proposes to give would still result in an unacceptable overall impact of levy charges on the economic viability of the development.

In either situation, where a claim is referred, the Mayor must determine whether to give relief and if so how much to give, and must inform the borough of his decision as soon as possible. The borough is not bound to any proposal it originally made to the Mayor on how much relief it may grant. It could, for instance, increase its offer to ensure the total relief given by the borough and the Mayor returns the development to an acceptable level of viability. The borough could withdraw its offer if the Mayor is not willing to offer sufficient relief along with the borough's proposed relief to bring the scheme back into viability.

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### **What are the disqualifying events for exceptional circumstances relief?**

Exceptional circumstances relief must be withdrawn if there is a 'disqualifying event' as defined in Regulation 57(11) [\[2\]](http://www.legislation.gov.uk/ukSI/2010/948/regulation/57/made) (<http://www.legislation.gov.uk/ukSI/2010/948/regulation/57/made>), as amended by the 2014 Regulations [\[3\]](http://www.legislation.gov.uk/ukSI/2014/385/regulation/7/made) (<http://www.legislation.gov.uk/ukSI/2014/385/regulation/7/made>). These include the granting of charitable or social housing relief to the chargeable development, the sale of relevant land, or if the chargeable development does not commence within one year.

If there is a disqualifying event, the owner of the material interest in the relevant land must notify the charging authority in writing within 14 days. Where this is not done, a surcharge equal to 20 per cent of the chargeable amount or £2,500, whichever is the lesser, may be applied to the claimant. He or she must also send a copy of the notification to all owners of material interests in the relevant land. When it receives this notification, the charging authority must copy it to the collecting authority, if this is not the same body. If the person responsible for enforcing the section 106 agreement is not the charging or collecting authority, the charging authority must also send a copy of the notification to that person.

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### **Does State aid apply to exceptional circumstances relief?**

Exceptional circumstances relief cannot be granted if it would constitute a notifiable state aid (<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/state-aid/>).

ID 25-134-20140612 Last updated 12 06 2014

- Self build exemption (<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/self-build-exemption/>)

### **Self build exemption**

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Guidance on the Community Infrastructure Levy was added to this website on 12 June 2014. This replaced the standalone guidance that was published in February 2014. Read more about the changes to the guidance (<http://planningguidance.communities.gov.uk/about/#cil>).

### **How does the self build exemption work (for a whole new home)?**

The Government is keen to support and encourage individuals and communities who want to build their own homes, and is taking proactive steps to stimulate the growth of the self build market. One measure to help self builders has been to grant them an exemption from the Community Infrastructure Levy.

The exemption will apply to anybody who is building their own home or has commissioned a home from a contractor, house builder or sub-contractor. Individuals claiming the exemption must own the property and occupy it as their principal residence for a minimum of three years after the work is completed.

ID 25-135-20140612 Last updated 12 06 2014

### **Who can claim a self build exemption?**



The exemption is applicable to homes built or commissioned by individuals for their own use. Community group self build projects also qualify for the exemption where they meet the required criteria.

There is also an exemption for people who extend their homes or build residential annexes

([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/self-build-exemption/#paragraph\\_149](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/self-build-exemption/#paragraph_149)).

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### When can a self build exemption be claimed?

Applicants can apply for a self build exemption at any time, as long as their development has not commenced (see Regulation 7 [\[2\]](#) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/7/made>), and section 56(4) of the Town and Country Planning Act 1990 [\[2\]](#) (<http://www.legislation.gov.uk/ukpga/1990/8/section/56>), for the definition of 'commencement of development').

The self build exemption does not apply retrospectively: if a levy payment has already been made before the 2014 regulations come into force, no refund will be given.

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### What are the specific requirements to qualify for a self build exemption?

A self build exemption is available to anyone who builds or commissions their own home for their own occupation. On completion, they must provide the requested supporting evidence, and the property must remain their principal residence for a minimum of three years.

If personal circumstances change and the applicant wants to dispose of the property before the three year occupancy limit expires, they can do so, but they must notify the charging authority and the levy then becomes payable in full. Failure to notify the charging authority will result in enforcement action against the applicant and surcharges will become payable. View more information on disqualifying events

([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/self-build-exemption/#paragraph\\_146](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/self-build-exemption/#paragraph_146)).

Full details are set out in Regulations 54A, 54B, 54C and 54D as inserted by the 2014 Regulations [\[2\]](#)

(<http://www.legislation.gov.uk/uksi/2014/385/regulation/7/made>).

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### What is the procedure for claiming a self build exemption?

Applicants wishing to claim must take two steps before commencing their development.

Firstly, the applicant must assume the liability

([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/collecting-the-levy/#paragraph\\_051](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/collecting-the-levy/#paragraph_051)) to pay levy in relation to the development.

This is done by completing an **Assumption of Liability form** [\[2\]](#)

([http://www.planningportal.gov.uk/uploads/1app/forms/form\\_1\\_assumption\\_of\\_liability.pdf](http://www.planningportal.gov.uk/uploads/1app/forms/form_1_assumption_of_liability.pdf)).

If the original levy liability was in the name of a developer, the self build applicant must complete a **Transfer of Assumed Liability form** [\[2\]](#)

([http://www.planningportal.gov.uk/uploads/1app/forms/form\\_4\\_transfer\\_of\\_assumed\\_liability.pdf](http://www.planningportal.gov.uk/uploads/1app/forms/form_4_transfer_of_assumed_liability.pdf)) and submit this to the collecting authority.

Secondly, the applicant must certify that the scheme will meet the criteria to qualify as a 'self build' development. He or she must submit a **Self Build Exemption Claim Form – Part 1** to the collecting authority (available on the Planning Portal website [\[2\]](#))

(<http://www.planningportal.gov.uk/planning/applications/howtoapply/whattosubmit/cil/>). At this stage, the applicant must self certify:

- the name and address of the person(s) claiming liability
- that the project is a "self build project" for purposes of the exemption set out within the regulations
- that the applicant will occupy the premises as their principal residence for a period of 3 years from completion
- that the applicant will provide the required supporting documentation on project completion to confirm their development qualifies for relief; and
- the amount of de minimis State aid received by the applicant in the last three years prior to the submission of the application for relief (View more information on state aid (<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/state-aid/>)).

On receipt of the form, the charging authority must notify the applicant in writing as soon as practicable, confirming the amount of exemption granted.

If the development commences before the collecting authority has notified the claimant of its decision on the claim, the levy charge must be paid in full within the time period specified by the charging authority. See Regulation 7 [\[2\]](#) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/7/made>), and section 56(4) of the Town and Country Planning Act 1990 [\[2\]](#) (<http://www.legislation.gov.uk/ukpga/1990/8/section/56>), for the definition of 'commencement of development'.

Further information must also be provided by the applicant once their self build home is complete ([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/self-build-exemption/#paragraph\\_141](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/self-build-exemption/#paragraph_141)).

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### **If a self build exemption is granted, what happens next?**

The chargeable amount (i.e. the levy that would have been payable if the exemption had not been granted) will be registered as a 'local land charge' on the property for three years from completion.

Before commencing the development, the applicant must submit a **Commencement Notice** [\[2\]](#) ([http://www.planningportal.gov.uk/uploads/1app/forms/form\\_6\\_commencement\\_notice.pdf](http://www.planningportal.gov.uk/uploads/1app/forms/form_6_commencement_notice.pdf)) to the charging authority. This must state the date on which the development will commence, and the collecting authority must receive it on or before that date. An applicant who fails to submit the commencement notice in time will immediately become liable for the full levy charge.

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### **What evidence does the applicant need to provide on completing the building?**

Within six months of completing the home, the applicant must submit additional supporting evidence to confirm that the project is self build. Completion for the purposes of the self build exemption is defined as the issuing of a compliance certificate for this development under either Regulation 17 of the Building

Regulations 2010 or Section 51 of the Building Act 1984. If the evidence is not submitted to the collecting authority within the 6 month time period, the full levy charge becomes payable.

The applicant must provide further supporting evidence that the levy exemption granted prior to commencement should be upheld, along with a **Self Build Exemption Claim Form – Part 2** (available on the Planning Portal website <http://www.planningportal.gov.uk/planning/applications/howtoapply/whattosubmit/cil/>).

This evidence must comprise:

- Proof of the date of completion – a copy of the building completion or compliance certificate for the home issued by Building Control
- Proof of ownership – a copy of the title deeds (freehold or leasehold)
- Proof of occupation of the dwelling as the applicant's principal residence – a Council Tax certificate – and two further proofs of occupation of the home as a principal residence (a utility bill or bank statement or confirmation that the applicant is on the local electoral roll)

In addition to the above, applicants must also provide a copy of one of the following:

- An approved claim from HM Revenue and Customs under 'VAT431NB: VAT refunds for DIY housebuilders'; or
- A Specialist Self Build Warranty; or
- An approved Self Build Mortgage from a bank or building society.

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### **What is a self build warranty?**

A Self Build Warranty is warranty and Certificate of Approval issued by a Warranty provider which provides a 'latent defects insurance' policy and which is accompanied by certified Stage Completion Certificates issued to the owner/occupier of the home.

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### **What is a self build mortgage?**

A Self Build Mortgage is an approved mortgage arranged to purchase land and/or fund the cost of erecting a house where the loan funds are paid out to the owner/occupier in stages as the building works progress to completion.

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### **How does the self build exemption work for multi-unit schemes?**

For multi-unit schemes (for example, where a builder sells serviced plots or a community group works with a developer), applicants should consider applying for a phased planning permission, to allow each plot to be a separate chargeable development. This will prevent the charge being triggered for all plots within the wider development as soon as development commences on the first dwelling. This will also ensure that if a disqualifying event occurs affecting one unit, it does not trigger a requirement for all to repay the exemption. Under the 2014 Regulations, schemes can be 'phased' for levy purposes even if they do not benefit from 'outline' planning permission. See more about phased payments ([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/collecting-the-levy/#paragraph\\_056](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/collecting-the-levy/#paragraph_056)).

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## Is self build communal development covered by this exemption? ...

Self build communal development benefits from the levy exemption if it is for the use of the occupants of more than one self build home. Such development may include, for example, shared facilities or guest accommodation. An exemption from the levy will not be granted to communal development for the use of the general public or for commercial development such as a retail unit.

How is the amount of exemption for self build communal development calculated?

The self build communal development exemption is calculated using the formula in Regulation 54A [\[2\]](http://www.legislation.gov.uk/ukSI/2014/385/regulation/7/made) (<http://www.legislation.gov.uk/ukSI/2014/385/regulation/7/made>). The gross internal area of the communal development is apportioned to the individual self build units on the site, based on the gross internal floor space of the self build dwellings.

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## What happens in the case of a disqualifying event?

A self build exemption is revoked if a disqualifying event occurs during the three year occupancy period.

A disqualifying event for self build exemption is:

- any change in relation to the self build housing or self build communal development such that it ceases to meet the criteria set out in regulations;
- failure to comply with the evidence requirements on completion;
- the letting out of a whole dwelling or building that is self build housing or self build communal development; or
- the sale of the self build housing or self build communal development

If a disqualifying event occurs, the claimant of the self build exemption must notify the charging authority in writing within 14 days. Where this is not done, a surcharge equal to 20 per cent of the chargeable amount or £2,500, whichever is the lesser, may be applied to the claimant in addition to the chargeable levy amount. A copy of the notification must be sent to all owners of material interests in the relevant land. When it receives this notification, the charging authority must copy it to the collecting authority, if this is not the charging authority.

The only exception is where the claimant of the exemption fails to comply with the evidence requirements on completion. In such cases, the collecting authority must give the claimant at least 28 days to submit the necessary form and evidence before taking any further action.

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## Is there a right of appeal?

Applicants have a right to appeal against the amount of levy exemption granted, under Regulation 116B [\[2\]](http://www.legislation.gov.uk/ukSI/2014/385/regulation/11/made)

(<http://www.legislation.gov.uk/ukSI/2014/385/regulation/11/made>). Appeals should be lodged with the Valuation Office Agency.

View more information on appeals

(<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/cil-appeals/>).

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## Are there any State aid considerations?

A self build exemption cannot be granted if it would constitute a notifiable state aid (<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/state-aid/>).

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## How does the self build exemption work (for extensions and residential annexes)?

People who extend their own homes or erect residential annexes within the grounds of their own homes are exempt from the levy, provided that they meet the criteria laid down in Regulations 42A and 42B (inserted by the 2014 Regulations): [☒](http://www.legislation.gov.uk/uksi/2014/385/regulation/7/made) (<http://www.legislation.gov.uk/uksi/2014/385/regulation/7/made>)

- the main dwelling must be the self builder's principal residence, and they must have a material interest in it (as defined in Regulation 4(2) [☒](http://www.legislation.gov.uk/uksi/2010/948/regulation/4/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/4/made>));
- residential annexes are exempt from the levy if they are built within the curtilage of the principal residence and comprise one new dwelling; and
- residential extensions are exempt from the levy if they enlarge the principal residence and do not comprise an additional dwelling

There is no requirement for the occupier of the annex to be related to the owner of the main dwelling, or to commit to staying there for a specified period.

Residential extensions under 100 square metres are already exempt from the levy under the minor development exemption ([http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/#paragraph\\_109](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/#paragraph_109)).

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## What evidence is required?

The applicant must submit a claim for the exemption to the charging authority before development commences (see Regulation 7 [☒](http://www.legislation.gov.uk/uksi/2010/948/regulation/7/made) (<http://www.legislation.gov.uk/uksi/2010/948/regulation/7/made>), and section 56(4) of the Town and Country Planning Act 1990 [☒](http://www.legislation.gov.uk/ukpga/1990/8/section/56) (<http://www.legislation.gov.uk/ukpga/1990/8/section/56>), for the definition of 'commencement of development'). This claim must be submitted on the **Self Build Annex or Extension Claim Form** (available on the Planning Portal website [☒](http://www.planningportal.gov.uk/planning/applications/howtoapply/whattosubmit/cil) (<http://www.planningportal.gov.uk/planning/applications/howtoapply/whattosubmit/cil>)).

Upon receipt of a valid application, the collecting authority must notify the applicant of the amount of exemption that is granted, as soon as practicable.

In order to benefit from the exemption, the applicant must submit a **commencement notice** [☒](http://www.planningportal.gov.uk/uploads/lapp/forms/form_6_commencement_notice.pdf)

([http://www.planningportal.gov.uk/uploads/lapp/forms/form\\_6\\_commencement\\_notice.pdf](http://www.planningportal.gov.uk/uploads/lapp/forms/form_6_commencement_notice.pdf)) to the authority before starting work on site.

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## Under what circumstances can the exemption be withdrawn?

Someone who is granted an exemption for a residential extension or annex will cease to be eligible if a commencement notice is not submitted to the collecting authority at least one day before work begins on site.

A residential annex ceases to qualify for a self build exemption if any of the following disqualifying events occur within three years of completion:

- the main house is used for any purpose other than as a single dwelling,
- the annex is let, or
- either the main residence, or the annex, is sold separately from the other

Completion for the purposes of this exemption is defined as the issuing of a compliance certificate for the annex under either Regulation 17 of the Building Regulations 2010 or Section 51 of the Building Act 1984.

If there is a disqualifying event, the person benefitting from the exemption must notify the charging authority in writing within 14 days. The exemption will be withdrawn and that person is then liable for the levy charge specified by the charging authority that would have been payable at the time when the exemption was first claimed (or the amount of relief granted, if lower).

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### Is there a right of appeal?

An interested party may appeal against the grant of self build relief for a residential annex under Regulation 116A [\[2\]](http://www.legislation.gov.uk/ukxi/2014/385/regulation/11/made) (<http://www.legislation.gov.uk/ukxi/2014/385/regulation/11/made>). Such appeals are submitted to the Valuation Office Agency (view more information on appeals (<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/cil-appeals/>)). There is no right of appeal in relation to extensions.

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### Further details

Regulations 42A, 42B and 42C (inserted by the 2014 Regulations) [\[2\]](http://www.legislation.gov.uk/ukxi/2014/385/regulation/7/made) (<http://www.legislation.gov.uk/ukxi/2014/385/regulation/7/made>) set out the legislative provisions for residential extensions and annexes.

ID 25-153-20140612 Last updated 12 06 2014

- **State Aid** (<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/state-aid/>)

### State Aid

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Guidance on the Community Infrastructure Levy was added to this website on 12 June 2014. This replaced the standalone guidance that was published in February 2014. Read more about the changes to the guidance (<http://planningguidance.communities.gov.uk/about/#cil>).


This section is only an overview of state aid matters. It is the responsibility of aid givers to reassure themselves that the actions they take are state aid compliant.

The Government's primary guidance on state aid can be found on GOV.UK [\[2\]](https://www.gov.uk/state-aid) (<https://www.gov.uk/state-aid>). Further references are set out below.

ID 25-154-20140612 Last updated 12 06 2014

### What is state aid?

State aid is a European Union member state's support to 'undertakings' which meets all the criteria in Article 107(1) of the Treaty on the Functioning of the European Union (Lisbon Treaty 2009). Article 107(1) declares that state aid, in whatever form, which could distort competition and affect trade by favouring

certain parties or the production of certain goods, is incompatible with the common market, unless the Treaty allows otherwise. View a copy of the most recent advice on state aid  (<https://www.gov.uk/state-aid>).

All exemptions or relief from the Community Infrastructure Levy must be given in accordance with state aid rules. A collecting or charging authority must determine whether or not giving the exemption or relief would constitute a state aid.


ID 25-155-20140612 Last updated 12 06 2014

### How does state aid relate to the levy?

The state aid criteria need to be considered carefully when deciding whether an exemption or relief is a state aid.

The collecting authority must bear the following in mind:

- Criterion 1: Is the relief granted by the state or through **state resources**? Relief from the levy will always be granted by the State and therefore this criterion is always met.
- Criterion 2: Does the relief **favour certain undertakings** or the production of certain goods? Charging and collecting authorities should determine whether the claimant is an entity engaged in economic activity i.e. the putting of goods or services on a given market.
- Criterion 3: Does relief distort or threaten to **distort competition**? Relief from the levy is by its nature a selective aid and will invariably have the potential to distort competition where a body is engaged in economic activity. Where criterion 2 is met it is likely that this criterion is also met.
- Criterion 4: Does relief **affect trade** between Member States? Again, where criterion 2 is met, it is likely that this will also be met. It may be possible to argue that aid will not affect trade between Member States, as the organisation's activities are purely local, but charging and collecting authorities will need to manage this risk. While the European Commission's interpretation of this test is broad and the legal threshold low there are examples of Commission decisions which identify certain economic activities as local. They include small scale businesses serving the local community only such as local garages, retail shops, hairdressers, childcare facilities and cafes. Local small scale cultural or heritage venues are also considered not to affect trade between Member States. However, it is rare to find a good or service that is traded that is purely local. A charity, for example, is most likely not to be operating as an undertaking at all where its activities are purely local.

The Claiming Exemption or Relief form 

([http://www.planningportal.gov.uk/uploads/1app/forms/form\\_2\\_claiming\\_exemption\\_and\\_or\\_relief.pdf](http://www.planningportal.gov.uk/uploads/1app/forms/form_2_claiming_exemption_and_or_relief.pdf)) contains a questionnaire designed to elicit information that will help the charging or collecting authority in identifying state aid. The information will not always provide a clear indication of relief constituting state aid. The collecting authority may need to ask the claimant for further information.

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### Permissible state aid

If a public authority wants to give an identified state aid, it must usually notify the European Commission and obtain its prior approval before giving the aid. This is not permissible for relief from the levy. A mandatory charitable exemption cannot be given at all where relief would constitute a notifiable state aid. Meanwhile discretionary charitable relief and exceptional circumstances relief can only be given where relief would not need to be notified to, and

approved by, the European Commission. State aid in these situations is not notifiable because it uses **block exemption regulations** designed for this purpose. These block exemptions have specific requirements. Charging authorities using them must be careful to ensure these requirements are met.

The latest version of the **de minimis exemption regulations** is the European Commission Regulation (EC) No 1998/2006 [\[2\]](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:379:0005:0010:EN:PDF) (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:379:0005:0010:EN:PDF>).

Further information is available from the European Commission [\[2\]](http://ec.europa.eu/competition/state_aid/legislation/block.html) ([http://ec.europa.eu/competition/state\\_aid/legislation/block.html](http://ec.europa.eu/competition/state_aid/legislation/block.html)).

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### **What is the de minimis block exemption?**

This is only a summary of the requirements of the de minimis block exemption.

De minimis is a generic term for small amounts of public funding to a single recipient. The de minimis block exemption makes relief permissible in the following circumstances:

- discretionary relief under Community Infrastructure Levy Regulation 45 (where a mandatory charitable exemption is prohibited because it would constitute a state aid)
- discretionary charitable investment relief where this would constitute a state aid and
- discretionary exceptional circumstances relief where this would constitute a state aid
- self build exemption where this would constitute a state aid

Charging authorities may formulate policies which automatically ensure mandatory charitable exemption claims failing solely on state aid grounds are considered for relief under Regulation 45 [\[2\]](http://www.legislation.gov.uk/ukxi/2010/948/regulation/45/made) (<http://www.legislation.gov.uk/ukxi/2010/948/regulation/45/made>).

ID 25-158-20140612 Last updated 12 06 2014

### **How does the de minimis block exemption work?**

De minimis funding is exempt from notification requirements because the European Commission considers that such a small amount of aid will have a negligible impact on trade and competition. The current de minimis threshold is set at €200,000 (€100,000 for undertakings active in the road transport sector) over a rolling three fiscal year period. The threshold is gross, applying before the deduction of tax or any other charge. The threshold applies cumulatively to all public assistance received from all sources and not to individual schemes or projects. The block exemption does not apply in certain sectors, including fisheries and coal sector, certain agriculture and transport activities.

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### **What sources of aid should be considered as part of the threshold?**

All de minimis aid for any purpose, including relief from the levy, must be cumulated. Recipients must be informed of the de minimis nature of any aid they have previously received. For example this could include business rates relief to charitable institutions. Recipients are responsible for keeping records of any de minimis aid they receive over any rolling three fiscal year period.

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### What must an authority do to comply with this block exemption?

European Commission guidance requires public bodies giving de minimis relief to do three things:

- inform the recipient in writing of the prospective amount of aid and of its de minimis character, referring to the de minimis Regulation
- obtain from the recipient full information about any other de minimis aid received during the previous two fiscal years and the current fiscal year and
- only grant the new de minimis aid after having checked that this will not raise the total amount of de minimis aid received by the undertaking during the relevant period of three years to a level above the permitted ceiling

Charging or collecting authorities wishing to apply the de minimis block exemption to relief from the levy must write to the claimant asking what de minimis aid it has already received. Further information is available on the Planning Portal website [☒](http://www.planningportal.gov.uk/planning/infoportalpas/cil) (<http://www.planningportal.gov.uk/planning/infoportalpas/cil>).

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### What records must be kept?

The de minimis regulation requires member states to record information necessary to demonstrate that the de minimis Regulation has been complied with. Records of all de minimis aid paid must be retained for ten years from the last payment.

On written request, Member States must provide the European Commission with all the information that the Commission considers necessary for assessing whether the conditions of the de minimis regulation have been complied with. This must be provided within 20 working days, or within a longer period fixed in the request. The Department for Communities and Local Government would co-ordinate any such request in relation to the Community Infrastructure Levy.

**Charging and collecting authorities must therefore ensure that information on all de minimis relief granted is readily available at short notice.**

View further information about the de minimis exemption [☒](https://www.gov.uk/state-aid#de-minimis-aid-regulations) (<https://www.gov.uk/state-aid#de-minimis-aid-regulations>).

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### What is the Service of a General Economic Interest Block Exemption (for social housing relief)?

The Service of a General Economic Interest Block Exemption is used to give **social housing relief** from the levy. It is applied automatically. The relief procedures and documentation have been designed to comply with this block exemption but charging and collecting authorities must still be aware of their responsibilities (see below and in the social housing relief section (<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/social-housing/>)).

This is only a summary of the requirements of the Service of a General Economic Interest Block Exemption. Further information can be found on GOV.UK [☒](https://www.gov.uk/state-aid#general-block-exemption-regulation) (<https://www.gov.uk/state-aid#general-block-exemption-regulation>).

Charging and collecting authorities should familiarise themselves with the terms of the Service of a General Economic Interest Block Exemption before using it.

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## Which relief systems is the Service of a General Economic Interest Block Exemption applicable to?

The Service of a General Economic Interest Block Exemption is used to give social housing relief from the levy. **The Service of a General Economic Interest Block Exemption could also be used in the event that housing provided by charities cannot qualify for social housing relief.** Where such housing qualified for discretionary charitable relief under Regulation 45 [\[2\]](http://www.legislation.gov.uk/ukxi/2010/948/regulation/45/made) (<http://www.legislation.gov.uk/ukxi/2010/948/regulation/45/made>), a collecting authority could use the Service of a General Economic Interest Block Exemption to give relief beyond the de minimis block exemption.

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## What is the Service of a General Economic Interest Block Exemption?

A Service of a General Economic Interest is usually a service which the market does not provide or does not provide to the extent or at the quality which the state requires. It must also be in the general and not the particular interest. This means that the **beneficiaries of the service should be the community at large and not a specific sector of industry. Social housing is a well established example** of a Service of a General Economic Interest.

Three criteria need to be fulfilled for the Service of a General Economic Interest Block Exemption to be complied with:

- the undertaking must have been 'entrusted' to perform this public service obligation
- the state aid may compensate the undertaking for the costs of performing this public service obligation, allowing for a reasonable profit and
- it cannot however overcompensate for these costs and where it does, arrangements must exist for the repayment of this overcompensation

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## How does the Service of a General Economic Interest Block Exemption work in relation to social housing relief?

The Community Infrastructure Levy's social housing regime is designed to comply with the requirements of the Service of a General Economic Interest Block Exemption. A claimant will be informed through the liability notice that it has a public service obligation to deliver where it chooses to build out the planning permission. The public service obligation is the building of the quantity of social housing for which it has been given relief from the levy. This 'entrustment' is updated to include all future beneficiaries of social housing relief on that chargeable development. The charge arising from the levy on its own will never be sufficient to exceed the costs of building the development. However, total aid could potentially exceed those costs where social housing grant, or other state assistance, has also been claimed. The Homes and Communities Agency will take into account the value of relief from the levy and other state assistance when giving social housing grant and will adjust the amount of grant accordingly.

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## What must an authority do to comply with this block exemption?

No additional action is necessary from collecting authorities to comply with the Service of a General Economic Interest Block Exemption when giving social housing relief itself. However, collecting authorities must ensure they rigorously administer and enforce the terms of social housing relief. Where the claimant of relief changes, or there are additional claimants, the liability notice must be updated to reflect this and ensure these beneficiaries are entrusted to provide that housing. Clawback must be enforced properly so that no one benefits from relief for buildings which are not social housing units. Finally a thorough monitoring regime is advisable to guard against the misuse of relief in a way that creates unfairness and deprives authorities of funding for infrastructure.

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### What records must be kept?

As with the de minimis block exemption, collecting authorities should keep accurate records of all relief given under the Service of a General Economic Interest Block Exemption – in practice, all social housing relief from the levy. These records must be retained for 10 years from the payment of relief. The UK Government is required to report every three years on the sources and quantities of aid paid through the Service of a General Economic Interest Block Exemption. Charging and collecting authorities must ensure that this information is readily available at short notice.

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### What is the Financial Transparency Directive and why is it relevant to Service of a General Economic Interest Block Exemption relief?

The European Commission's Financial Transparency Directive has a number of requirements. One of these relates to public or private **bodies engaged in commercial activities and in receipt of certain aid** from public authorities for carrying out services of general economic interest. Such bodies must ensure that their management accounts are sufficiently separate to **distinguish between these activities**. The directive underpins the state aid regime by requiring Service of a General Economic Interest aid to be made transparent. Without such transparency, there is a risk that legitimate state support may seep into an organisation's commercial activities, thereby cross-subsidising those areas with public funds. It is essential the directive is complied with when giving aid under Service of a General Economic Interest. **Consequently, no social housing relief can be given to an organisation which does not keep separate accounts for its public service and commercial activities.** Claimants are asked to confirm they comply with directive when they apply for relief but collecting authorities should request further evidence if necessary.

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### Sources of further information

The Government has published 'State aid: the basics' [\[2\]](https://www.gov.uk/government/publications/state-aid-the-basics) (<https://www.gov.uk/government/publications/state-aid-the-basics>). Further guidance on state aid is available on GOV.UK [\[3\]](http://www.gov.uk/state-aid) (<http://www.gov.uk/state-aid>).

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8. Forms and templates (<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/forms-and-templates/>)

### Forms and templates

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Guidance on the Community Infrastructure Levy was added to this website on 12 June 2014. This replaced the standalone guidance that was published in February 2014. Read more about the changes to the guidance (<http://planningguidance.communities.gov.uk/about/#cil>).

## Where are the relevant forms?

In areas where the levy is operational, applicants for planning permission should submit the **Additional CIL Information form** [\[2\]](http://www.planningportal.gov.uk/uploads/1app/forms/cil_questions.pdf) ([http://www.planningportal.gov.uk/uploads/1app/forms/cil\\_questions.pdf](http://www.planningportal.gov.uk/uploads/1app/forms/cil_questions.pdf)) alongside their application, to enable the collecting authority to establish whether or not the proposed development will be liable for CIL.

Applicants should refer to the **associated guidance note** [\[2\]](http://www.planningportal.gov.uk/uploads/1app/cil_guidance.pdf) ([http://www.planningportal.gov.uk/uploads/1app/cil\\_guidance.pdf](http://www.planningportal.gov.uk/uploads/1app/cil_guidance.pdf)) when completing this form.

The other relevant forms are listed below.

In all cases, it is an offence for a person to 'knowingly or recklessly' supply false or misleading information to a charging or collecting authority in response to a requirement under the levy regulations (under Regulation 110 [\[2\]](http://www.legislation.gov.uk/ukxi/2010/948/regulation/110/made) (<http://www.legislation.gov.uk/ukxi/2010/948/regulation/110/made>), as amended by the 2011 Regulations [\[2\]](http://www.legislation.gov.uk/ukxi/2011/987/regulation/10/made) (<http://www.legislation.gov.uk/ukxi/2011/987/regulation/10/made>)).

### Form 1: Assumption of Liability [\[2\]](http://www.planningportal.gov.uk/uploads/1app/forms/form_1_assumption_of_liability.pdf)

([http://www.planningportal.gov.uk/uploads/1app/forms/form\\_1\\_assumption\\_of\\_liability.pdf](http://www.planningportal.gov.uk/uploads/1app/forms/form_1_assumption_of_liability.pdf))

This form should be used by parties wishing to assume liability for the levy, before a specified development commences.

### Form 2: Claiming Charitable Relief, Exceptional Circumstances Relief or Social Housing Relief [\[2\]](http://www.planningportal.gov.uk/uploads/1app/forms/form_2_claiming_exemption_and_or_relief.pdf)

([http://www.planningportal.gov.uk/uploads/1app/forms/form\\_2\\_claiming\\_exemption\\_and\\_or\\_relief.pdf](http://www.planningportal.gov.uk/uploads/1app/forms/form_2_claiming_exemption_and_or_relief.pdf))

This form should be used to claim Charitable Relief, Exceptional Circumstances Relief or Social Housing Relief, before a specified development commences.

### Self build forms (for whole dwellings, residential annexes or extensions) – available from the Planning Portal website [\[2\]](http://www.planningportal.gov.uk/planning/applications/howtoapply/whattosubmit/cil)

(<http://www.planningportal.gov.uk/planning/applications/howtoapply/whattosubmit/cil>):

These forms should be used by parties wishing to claim a Self Build Exemption for either a whole dwelling, a residential annex or extension. Claimants for a whole house exemption should note that they will need to submit **Part 1** before they start work on site, and **Part 2** within 6 months of completing the project.

### Form 3: Withdrawal of Assumption of Liability [\[2\]](http://www.planningportal.gov.uk/uploads/1app/forms/form_3_withdrawal_of_assumption_of_liability.pdf)

([http://www.planningportal.gov.uk/uploads/1app/forms/form\\_3\\_withdrawal\\_of\\_assumption\\_of\\_liability.pdf](http://www.planningportal.gov.uk/uploads/1app/forms/form_3_withdrawal_of_assumption_of_liability.pdf))

This form should be used by parties wishing to relinquish liability for the levy in relation to a specified development.

### Form 4: Transfer of Assumed Liability [\[2\]](http://www.planningportal.gov.uk/uploads/1app/forms/form_4_transfer_of_assumed_liability.pdf)

([http://www.planningportal.gov.uk/uploads/1app/forms/form\\_4\\_transfer\\_of\\_assumed\\_liability.pdf](http://www.planningportal.gov.uk/uploads/1app/forms/form_4_transfer_of_assumed_liability.pdf))

This form should be used by parties wishing to transfer liability for the levy in relation to a specified development, and by the parties willing to assume the liability.

### Form 5: Notice of Chargeable Development [\[2\]](http://www.planningportal.gov.uk/uploads/1app/forms/form_5_notice_of_chargeable_development.pdf)

([http://www.planningportal.gov.uk/uploads/1app/forms/form\\_5\\_notice\\_of\\_chargeable\\_development.pdf](http://www.planningportal.gov.uk/uploads/1app/forms/form_5_notice_of_chargeable_development.pdf))

This form should be used by landowners wishing to notify a charging authority that they intend to start work on a development which does not need planning permission but which may be liable for the levy (see Regulation 64 [\[2\]](http://www.legislation.gov.uk/ukxi/2010/948/regulation/64/made) (<http://www.legislation.gov.uk/ukxi/2010/948/regulation/64/made>), as amended by the

2011 [\[2\]](http://www.legislation.gov.uk/ukxi/2011/987/regulation/9/made) and 2014 [\[2\]](http://www.legislation.gov.uk/ukxi/2014/385/regulation/9/made) Regulations, for details).

It should also be used by charging authorities wishing to notify all known owners of a development site that for the purposes of the levy, the charging authority believes that development has commenced there and is liable for the levy (see Regulation 64A [\[2\]](http://www.legislation.gov.uk/ukxi/2011/987/regulation/9/made), as amended by the 2014 Regulations [\[2\]](http://www.legislation.gov.uk/ukxi/2014/385/regulation/9/made), for details).

#### **Form 6: Commencement Notice** [\[2\]](#)

([http://www.planningportal.gov.uk/uploads/1app/forms/form\\_6\\_commencement\\_notice.pdf](http://www.planningportal.gov.uk/uploads/1app/forms/form_6_commencement_notice.pdf))

This form should be used by parties wishing to notify a charging authority of their intention to start work on a development which is liable for the levy (see Regulation 67 for details).

### **Information for levy authorities**

The Secretary of State also provides templates for three further documents: liability notices, demand notices and default of liability notices. Details on how these should be used are provided on the Planning Portal website [\[2\]](http://www.planningportal.gov.uk/planning/infoforlpas/cil) (<http://www.planningportal.gov.uk/planning/infoforlpas/cil>).

#### **Template 1: Liability Notice** [\[2\]](#)

([http://www.planningportal.gov.uk/uploads/1app/forms/cil\\_template\\_1\\_liability\\_notice.doc](http://www.planningportal.gov.uk/uploads/1app/forms/cil_template_1_liability_notice.doc))

A liability notice must be sent to all those parties who have assumed liability to pay the levy, following receipt of an assumption of liability form.

#### **Template 2: Demand Notice** [\[2\]](#)

([http://www.planningportal.gov.uk/uploads/1app/forms/cil\\_template\\_2\\_demand\\_notice.doc](http://www.planningportal.gov.uk/uploads/1app/forms/cil_template_2_demand_notice.doc))

A demand notice must be issued on commencement of development to all those parties who have assumed liability.


#### **Template 3: Default of Liability** [\[2\]](#)

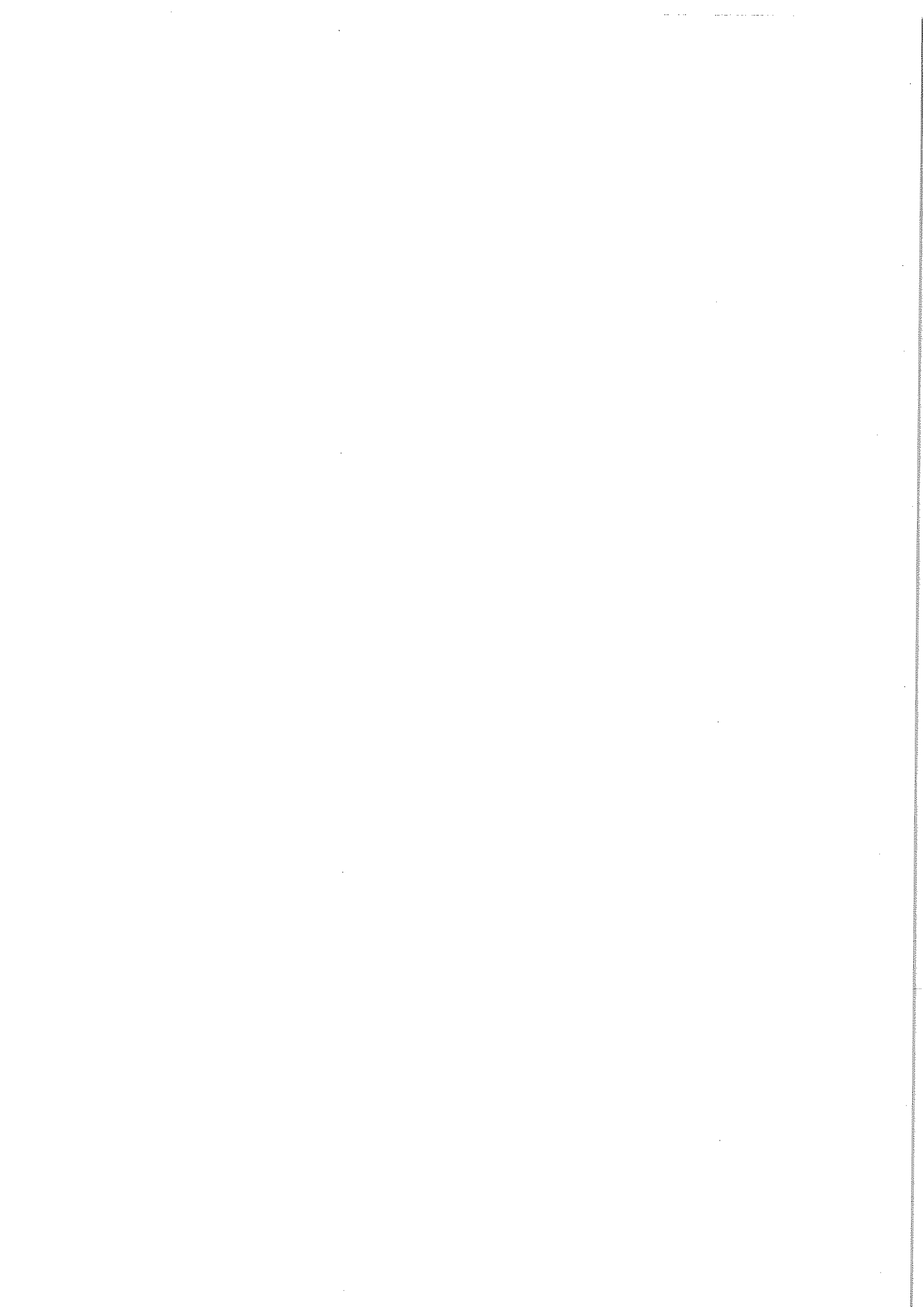
([http://www.planningportal.gov.uk/uploads/1app/forms/cil\\_template\\_3\\_default\\_of\\_liability.doc](http://www.planningportal.gov.uk/uploads/1app/forms/cil_template_3_default_of_liability.doc))

A default of liability notice must be sent to all persons known as having a material interest in the land when the collecting authority has been unable to recover the outstanding levy charge in connection with the chargeable development.

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 Department for Communities & Local Government  
(<https://www.gov.uk/government/organisations/department-for-communities-and-local-government>)



## Planning Practice Guidance (<http://planningguidance.communities.gov.uk>)

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Guidance

# Conserving and enhancing the historic environment

Print 

1. Overview: historic environment (<http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/overview/>)

## Overview: historic environment

### What is the policy for the historic environment?

Protecting and enhancing the historic environment (<http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/annex-2-glossary/>) is an important component of the National Planning Policy Framework's drive to achieve sustainable development (as defined in Paragraphs 6-10 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/#paragraph\\_6](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/#paragraph_6))). The appropriate conservation of heritage assets forms one of the 'Core Planning Principles' (Paragraph 17 bullet 10 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/#paragraph\\_17](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/#paragraph_17))) that underpin the planning system. This is expanded upon principally in Paragraphs 126-141 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/12-conserving-and-enhancing-the-historic-environment/#paragraph\\_126](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/12-conserving-and-enhancing-the-historic-environment/#paragraph_126)) but policies giving effect to this objective appear elsewhere in the National Planning Policy Framework.

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## Related policy

### National Planning Policy Framework

- Glossary (<http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/annex-2-glossary/>)
- Paragraph 6-10 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/#paragraph\\_6](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/#paragraph_6))
- Paragraph 17 – bullet 10 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/#paragraph\\_17](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/#paragraph_17))
- Paragraph 126-141 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/12-conserving-and-enhancing-the-historic-environment/#paragraph\\_126](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/12-conserving-and-enhancing-the-historic-environment/#paragraph_126))

### What is the main legislative framework for planning and the historic environment?

In addition to normal planning framework set out in the Town and Country Planning Act 1990  (<http://www.legislation.gov.uk/ukpga/1990/8/contents>):

- the Planning (Listed Buildings and Conservation Areas) Act 1990  (<http://www.legislation.gov.uk/ukpga/1990/9/contents>) provides specific protection for buildings and areas of special architectural or historic interest
- the Ancient Monuments and Archaeological Areas Act 1979  (<http://www.legislation.gov.uk/ukpga/1979/46/contents>) provides specific protection for scheduled monuments
- the Protection of Wrecks Act 1973  (<http://www.legislation.gov.uk/ukpga/1973/33/contents>) provides specific protection for protected wreck sites

Any decisions relating to listed buildings and their settings and conservation areas must address the statutory considerations of the Planning (Listed Buildings and Conservation Areas) Act 1990 (see in particular sections 16, 66 and 72) as well as satisfying the relevant policies within the National Planning Policy Framework and the Local Plan.

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### **What is meant by the conservation and enhancement of the historic environment?**

The conservation (<http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/annex-2-glossary/>) of heritage assets (<http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/annex-2-glossary/>) in a manner appropriate to their significance (<http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/annex-2-glossary/>) is a core planning principle. Heritage assets are an irreplaceable resource and effective conservation delivers wider social, cultural, economic and environmental benefits.

Conservation is an active process of maintenance and managing change. It requires a flexible and thoughtful approach to get the best out of assets as diverse as listed buildings in every day use to as yet undiscovered, undesignated buried remains of archaeological interest.

In the case of buildings, generally the risks of neglect and decay of heritage assets are best addressed through ensuring that they remain in active use that is consistent with their conservation. Ensuring such heritage assets remain used and valued is likely to require sympathetic changes to be made from time to time. In the case of archaeological sites, many have no active use, and so for those kinds of sites, periodic changes may not be necessary.

Where changes are proposed, the National Planning Policy Framework sets out a clear framework for both plan-making and decision-taking to ensure that heritage assets are conserved, and where appropriate enhanced, in a manner that is consistent with their significance and thereby achieving sustainable development.

Part of the public value of heritage assets is the contribution that they can make to understanding and interpreting our past. So where the complete or partial loss of a heritage asset is justified, the aim then is to capture and record the evidence of the asset's significance which is to be lost, interpret its contribution to the understanding of our past, and make that publicly available.

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## **2. Plan making: historic environment (<http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/plan-making-historic-environment/>)**

### **Plan making: historic environment**

#### **What is a positive strategy for conservation and enjoyment of the historic environment?**

In line with the National Planning Policy Framework, local authorities should set out their Local Plan a positive strategy for the conservation and enjoyment of the historic environment. Such a strategy should recognise that conservation is not a passive exercise. In developing their strategy, local planning authorities should identify specific opportunities within their area for the conservation and enhancement of heritage assets. This could include, where appropriate, the delivery of development within their settings that will make a positive contribution to, or better reveal the significance of, the heritage asset.

The delivery of the strategy may require the development of specific policies, for example, in relation to use of buildings and design of new development and infrastructure. Local planning authorities should consider the relationship and impact of other policies on the delivery of the strategy for conservation.

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### **Related policy**

#### **National Planning Policy Framework**

- Glossary (<http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/annex-2-glossary/>)



### What about the evidence base for Local Plan-making?

Policy on this is set out in paragraph 169 of the National Planning Policy Framework ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph\\_169](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph_169)).

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### Should non-designated heritage assets be identified in the Local Plan?

While there is no requirement to do so, local planning authorities are encouraged to consider making clear and up to date information on their identified non-designated heritage assets, both in terms of the criteria used to identify assets and information about the location of existing assets, accessible to the public.

In this context, the inclusion of information about non-designated assets in Local Plans can be helpful, as can the identification of areas of potential for the discovery of non-designated heritage assets with archaeological interest.

Further information on Local Plans

(<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>).

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### How should heritage issues be addressed in neighbourhood plans?

Where it is relevant, neighbourhood plans (<http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/annex-2-glossary/>) need to include enough information about local heritage to guide decisions and put broader strategic heritage policies from the Local Plan into action at a neighbourhood scale.

Where it is relevant, designated heritage assets (<http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/annex-2-glossary/>) within the plan area should be clearly identified at the start of the plan-making process so they can be appropriately taken into account. In addition, and where relevant, neighbourhood plans need to include enough information about local non-designated heritage assets including sites of archaeological interest


(<http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/annex-2-glossary/>) to guide decisions.

The local planning authority heritage advisers should be able to advise on local heritage issues that should be considered when preparing a neighbourhood plan.

The local Historic environment record

(<http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/annex-2-glossary/>) and any local list will be important sources of information on non-designated heritage assets.

Further information on:

- Neighbourhood planning generally can be found in the neighbourhood planning section (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/>)
- Heritage specific issues and neighbourhood planning is provided by Historic England  (<https://www.historicengland.org.uk/advice/>).

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### Related policy

#### National Planning Policy Framework

- Paragraph 169 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph\\_169](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph_169))

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### Related policy

#### National Planning Policy Framework

- Annex 2 – Glossary (<http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/annex-2-glossary/>)

### 3. Decision-taking: historic environment

(<http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/why-is-significance-important-in-decision-taking/>)

#### Decision-taking: historic environment

##### What is “significance”?

“Significance (<http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/annex-2-glossary/>)” in terms of heritage policy is defined in the Glossary of the National Planning Policy Framework.

In legislation and designation criteria, the terms ‘special architectural or historic interest’ of a listed building and the ‘national importance’ of a scheduled monument are used to describe all or part of the identified heritage asset’s significance. Some of the more recent designation records are more helpful as they contain a fuller, although not exhaustive, explanation of the significance of the asset.

Further commentary on the significance of World Heritage Sites ([http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/how-do-heritage-assets-become-designated/#paragraph\\_026](http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/how-do-heritage-assets-become-designated/#paragraph_026)).

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##### Why is ‘significance’ important in decision-taking?

Heritage assets may be affected by direct physical change or by change in their setting. Being able to properly assess the nature, extent and importance of the significance of a heritage asset, and the contribution of its setting, is very important to understanding the potential impact and acceptability of development proposals (see [How to assess if there is substantial harm](http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/why-is-significance-important-in-decision-taking/#paragraph_017) ([http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/why-is-significance-important-in-decision-taking/#paragraph\\_017](http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/why-is-significance-important-in-decision-taking/#paragraph_017))).

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##### Where can local planning authorities get help to assess the significance of heritage assets?

In most cases the assessment of the significance of the heritage asset by the local planning authority is likely to need expert advice in addition to the information provided by the historic environment record, similar sources of information and inspection of the asset itself. Advice may be sought from appropriately qualified staff and experienced in-house experts or professional consultants, complemented as appropriate by consultation with National Amenity Societies and other statutory consultees (<http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/consultation-and-notification-requirements-for-heritage-related-applications/>).

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##### What is a historic environment record?

Historic environment records (<http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/annex-2-glossary/>) are publicly-accessible and dynamic sources of information about the local historic environment. They provide core information for plan-making and designation decisions (such as information about designated and non-designated heritage assets, and information that helps predict the likelihood of current unrecorded assets being discovered during development) and will also assist in informing planning decisions by providing appropriate information about the historic environment to communities, owners and developers as set out in the National Planning Policy Framework. Details of how to access historic environment records can be found on Historic England’s website [\(https://www.historicengland.org.uk/advice/\)](https://www.historicengland.org.uk/advice/).

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#### Related policy

##### National Planning Policy Framework

- Glossary (<http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/annex-2-glossary/>)

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#### Related policy

##### National Planning Policy Framework

- Glossary (<http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/annex-2-glossary/>)

## How do Design and Access Statement requirements relate to heritage assessments?

A Design and Access Statement

([http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/national-information-requirements/#paragraph\\_030](http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/national-information-requirements/#paragraph_030)) is required to accompany certain applications for planning permission and applications for listed building consent.

Design and Access Statements provide a flexible framework for an applicant to explain and justify their proposal with reference to its context. In cases where both a Design and Access Statement and an assessment of the impact of a proposal on a heritage asset are required, applicants can avoid unnecessary duplication and demonstrate how the proposed design has responded to the historic environment through including the necessary heritage assessment as part of the Design and Access Statement.

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## What is the setting of a heritage asset and how should it be taken into account?

The “setting of a heritage asset

(<http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/annex-2-glossary/>)” is defined in the Glossary of the National Planning Policy Framework.

A thorough assessment of the impact on setting needs to take into account, and be proportionate to, the significance of the heritage asset under consideration and the degree to which proposed changes enhance or detract from that significance and the ability to appreciate it.

Setting is the surroundings in which an asset is experienced, and may therefore be more extensive than its curtilage. All heritage assets have a setting, irrespective of the form in which they survive and whether they are designated or not.

The extent and importance of setting is often expressed by reference to visual considerations. Although views of or from an asset will play an important part, the way in which we experience an asset in its setting is also influenced by other environmental factors such as noise, dust and vibration from other land uses in the vicinity, and by our understanding of the historic relationship between places. For example, buildings that are in close proximity but are not visible from each other may have a historic or aesthetic connection that amplifies the experience of the significance of each.

The contribution that setting makes to the significance of the heritage asset does not depend on there being public rights or an ability to access or experience that setting. This will vary over time and according to circumstance.

When assessing any application for development which may affect the setting of a heritage asset, local planning authorities may need to consider the implications of cumulative change. They may also need to consider the fact that developments which materially detract from the asset’s significance may also damage its economic viability now, or in the future, thereby threatening its ongoing conservation.

Further guidance on setting of heritage assets and wind turbine development ([http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph\\_019](http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph_019))

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## Should the deteriorated state of a heritage asset be taken into account in reaching a decision on an application?

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### Related policy

#### National Planning Policy Framework

- Annex 2 – Glossary (<http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/annex-2-glossary/>)

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### Related policy

#### National Planning Policy Framework

Disrepair and damage and their impact on viability can be a material consideration in deciding an application. However, where there is evidence of deliberate damage to or neglect of a heritage asset in the hope of making consent or permission easier to gain the local planning authority should disregard the deteriorated state of the asset (National Planning Policy Framework Paragraph 130

([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/12-conserving-and-enhancing-the-historic-environment/#paragraph\\_130](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/12-conserving-and-enhancing-the-historic-environment/#paragraph_130))). Local planning authorities may need to consider exercising their repair and compulsory purchase powers to remedy deliberate neglect or damage.

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### What is a viable use for a heritage asset and how is it taken into account in planning decisions?

The vast majority of heritage assets are in private hands. Thus, sustaining heritage assets in the long term often requires an incentive for their active conservation. Putting heritage assets to a viable use is likely to lead to the investment in their maintenance necessary for their long-term conservation.

By their nature, some heritage assets have limited or even no economic end use. A scheduled monument in a rural area may preclude any use of the land other than as a pasture, whereas a listed building may potentially have a variety of alternative uses such as residential, commercial and leisure.

In a small number of cases a heritage asset may be capable of active use in theory but be so important and sensitive to change that alterations to accommodate a viable use would lead to an unacceptable loss of significance.

It is important that any use is viable, not just for the owner, but also the future conservation of the asset. It is obviously desirable to avoid successive harmful changes carried out in the interests of repeated speculative and failed uses.

If there is only one viable use, that use is the optimum viable use. If there is a range of alternative viable uses, the optimum use is the one likely to cause the least harm to the significance of the asset, not just through necessary initial changes, but also as a result of subsequent wear and tear and likely future changes.

The optimum viable use may not necessarily be the most profitable one. It might be the original use, but that may no longer be economically viable or even the most compatible with the long-term conservation of the asset. However, if from a conservation point of view there is no real difference between viable uses, then the choice of use is a decision for the owner.

Harmful development may sometimes be justified in the interests of realising the optimum viable use of an asset, notwithstanding the loss of significance caused provided the harm is minimised. The policy in addressing substantial and less than substantial harm is set out in paragraphs 132 – 134 of the National Planning Policy Framework

([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/12-conserving-and-enhancing-the-historic-environment/#paragraph\\_132](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/12-conserving-and-enhancing-the-historic-environment/#paragraph_132)).

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### What evidence is needed to demonstrate that there is no viable use?

Appropriate marketing is required to demonstrate the redundancy of a heritage asset in the circumstances set out in paragraph 133, bullet 2 of the National Planning Policy Framework

([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/12-conserving-and-enhancing-the-historic-environment/#paragraph\\_133](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/12-conserving-and-enhancing-the-historic-environment/#paragraph_133)). The aim of such marketing is to reach all

- Paragraph 130 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/12-conserving-and-enhancing-the-historic-environment/#paragraph\\_130](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/12-conserving-and-enhancing-the-historic-environment/#paragraph_130))

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#### Related policy

##### National Planning Policy Framework

- Paragraph 132 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/12-conserving-and-enhancing-the-historic-environment/#paragraph\\_132](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/12-conserving-and-enhancing-the-historic-environment/#paragraph_132))

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#### Related policy

##### National Planning Policy Framework

- Paragraph 133 – bullet 2 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/delivering-sustainable-development/12-conserving-and-enhancing-the-historic-environment/#paragraph\\_133](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/delivering-sustainable-development/12-conserving-and-enhancing-the-historic-environment/#paragraph_133))

potential buyers who may be willing to find a use for the site that still provides for its conservation to some degree. If such a purchaser comes forward, there is no obligation to sell to them, but redundancy will not have been demonstrated.

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development/12-conserving-and-enhancing-the-historic-environment/#paragraph\_133)

### How to assess if there is substantial harm?

What matters in assessing if a proposal causes substantial harm is the impact on the significance of the heritage asset. As the National Planning Policy Framework makes clear, significance

(<http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/annex-2-glossary/>) derives not only from a heritage asset's physical presence, but also from its setting.

Whether a proposal causes substantial harm will be a judgment for the decision taker, having regard to the circumstances of the case and the policy in the National Planning Policy Framework. In general terms, substantial harm is a high test, so it may not arise in many cases. For example, in determining whether works to a listed building constitute substantial harm, an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic interest. It is the degree of harm to the asset's significance rather than the scale of the development that is to be assessed. The harm may arise from works to the asset or from development within its setting.

While the impact of total destruction is obvious, partial destruction is likely to have a considerable impact but, depending on the circumstances, it may still be less than substantial harm or conceivably not harmful at all, for example, when removing later inappropriate additions to historic buildings which harm their significance. Similarly, works that are moderate or minor in scale are likely to cause less than substantial harm or no harm at all. However, even minor works have the potential to cause substantial harm.

Policy on substantial harm to designated heritage assets is set out in paragraphs 132 and 133 to the National Planning Policy Framework ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/12-conserving-and-enhancing-the-historic-environment/#paragraph\\_132](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/12-conserving-and-enhancing-the-historic-environment/#paragraph_132)).

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### What about harm in relation to conservation areas?

An unlisted building that makes a positive contribution to a conservation area is individually of lesser importance than a listed building (paragraph 132 of the National Planning Policy Framework

([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/12-conserving-and-enhancing-the-historic-environment/#paragraph\\_132](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/12-conserving-and-enhancing-the-historic-environment/#paragraph_132))). If the building is important or integral to the character or appearance of the conservation area then its demolition is more likely to amount to substantial harm to the conservation area, engaging the tests in paragraph 133 of the National Planning Policy Framework

([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/12-conserving-and-enhancing-the-historic-environment/#paragraph\\_133](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/12-conserving-and-enhancing-the-historic-environment/#paragraph_133))). However, the justification for its demolition will still be proportionate to the relative significance of the building and its contribution to the significance of the conservation area as a whole.

Guidance on how trees are protected in conservation areas can be found here (<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/protecting-trees-in-conservation-areas/>).

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### Related policy

#### National Planning Policy Framework

- Annex 2 – Glossary (<http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/annex-2-glossary/>)
- Paragraph 132 – 133 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/12-conserving-and-enhancing-the-historic-environment/#paragraph\\_132](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/12-conserving-and-enhancing-the-historic-environment/#paragraph_132))

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### Related policy

#### National Planning Policy Framework

- Paragraph 132 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/12-conserving-and-enhancing-the-historic-environment/#paragraph\\_132](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/12-conserving-and-enhancing-the-historic-environment/#paragraph_132))
- Paragraph 133 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/12-conserving-and-enhancing-the-historic-environment/#paragraph\\_133](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/12-conserving-and-enhancing-the-historic-environment/#paragraph_133))

## How can proposals avoid or minimise harm to the significance of a heritage asset?

A clear understanding of the significance of a heritage asset and its setting is necessary to develop proposals which avoid or minimise harm. Early appraisals, a conservation plan or targeted specialist investigation can help to identify constraints and opportunities arising from the asset at an early stage. Such studies can reveal alternative development options, for example more sensitive designs or different orientations, that will deliver public benefits in a more sustainable and appropriate way.

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## What is meant by the term public benefits?

Public benefits may follow from many developments and could be anything that delivers economic, social or environmental progress as described in the National Planning Policy Framework (Paragraph 7 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/#paragraph\\_7](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/#paragraph_7))). Public benefits should flow from the proposed development. They should be of a nature or scale to be of benefit to the public at large and should not just be a private benefit. However, benefits do not always have to be visible or accessible to the public in order to be genuine public benefits.

Public benefits may include heritage benefits, such as:

- sustaining or enhancing the significance of a heritage asset and the contribution of its setting
- reducing or removing risks to a heritage asset
- securing the optimum viable use of a heritage asset in support of its long term conservation

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4. Designated heritage assets (<http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/how-do-heritage-assets-become-designated/>)

## Designated heritage assets

### How do heritage assets become designated?

The Department for Culture, Media and Sport (DCMS) is responsible for the identification and designation of listed buildings, scheduled monuments and protected wreck sites.

Historic England identifies and designates registered parks, gardens and battlefields.

World Heritage Sites are inscribed by the United Nations Educational, Scientific and Cultural Organisation (UNESCO).

In most cases, conservation areas are designated by local planning authorities.

Historic England administers all the national designation regimes. Further information on selection criteria and processes can be found on Department for Culture, Media and Sport's website [\[2\]](#)

(<https://www.gov.uk/government/policies/protecting-conserving-and-providing-access-to-the-historic-environment-in-england>).

ID 18a-021-20140306 Last updated 06 03 2014

## What is a listed building?

A listed building is a building which has been designated because of its special architectural or historic interest and (unless the list entry indicates otherwise) includes not only the building itself but also:

- any object or structure fixed to the building

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## Related policy

### National Planning Policy Framework

- Paragraph 7 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/#paragraph\\_7](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/#paragraph_7))

- any object or structure within the curtilage of the building which, although not fixed to the building, forms part of the land and has done so since before 1 July 1948

ID 18a-022-20140306 Last updated 06 03 2014

### **What is a conservation area?**

A conservation area is an area which has been designated because of its special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance.

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### **What do planning authorities need to consider before designating new conservation areas?**

Local planning authorities need to ensure that the area has sufficient special architectural or historic interest to justify its designation as a conservation area.

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### **Do local planning authorities need to review conservation areas?**

Local planning authorities must review their conservation areas from time to time (Section 69(2) (a) (<http://www.legislation.gov.uk/ukpga/1990/9/section/69>)) of the Planning (Listed Buildings and Conservation Areas) Act 1990).

A conservation area appraisal can be used to help local planning authorities develop a management plan and appropriate policies for the Local Plan. A good appraisal will consider what features make a positive or negative contribution to the significance of the conservation area, thereby identifying opportunities for beneficial change or the need for planning protection.

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### **How are World Heritage Sites protected and managed in England?**

England protects its World Heritage Sites and their settings, including any buffer zones or equivalent, through the statutory designation process and through the planning system.

The Outstanding Universal Value of a World Heritage Site, set out in a Statement of Outstanding Universal Value, indicates its importance as a heritage asset of the highest significance to be taken into account by:

- the relevant authorities in plan-making, determining planning and related consents (including listed building consent, development consent and Transport and Works Act Orders)
- and by the Secretary of State in determining such cases on appeal or following call in

Effective management of World Heritage Sites involves the identification and promotion of positive change that will conserve and enhance their Outstanding Universal Value, authenticity, integrity and with the modification or mitigation of changes which have a negative impact on those values.

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### **How is the importance of World Heritage Sites reflected in the National Planning Policy Framework?**

World Heritage Sites are defined as designated heritage assets (<http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/annex-2-glossary/>) in the National Planning Policy Framework. The

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#### **Related policy**

##### **National Planning Policy Framework**

- Annex 2 – Glossary ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/annex-2-glossary/)

National Planning Policy Framework sets out detailed policies for the conservation and enhancement of the historic environment, including World Heritage Sites, through both plan-making and decision-taking.

development/annex-2-glossary/)

Further guidance on World Heritage Sites

(<http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/how-do-heritage-assets-become-designated/further-guidance-on-world-heritage-sites/>).

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- **Further guidance on World Heritage Sites**

(<http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/how-do-heritage-assets-become-designated/further-guidance-on-world-heritage-sites/>)

## **Further guidance on World Heritage Sites**

### **Why are World Heritage Sites important?**

The United Nations Educational, Scientific and Cultural Organisation (UNESCO) World Heritage Committee inscribes World Heritage Properties onto its World Heritage List for their Outstanding Universal Value – *cultural and/or natural significance which is so exceptional as to transcend national boundaries and to be of common importance for present and future generations of all humanity*. World Heritage Properties are referred to in the National Planning Policy Framework and in this guidance as 'World Heritage Sites' and are defined as designated heritage assets in the National Planning Policy Framework.

The Government is a State Party to the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage (known as the World Heritage Convention) and it was ratified by the UK in 1984.

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### **How is the importance of each Site recognised internationally?**

A Statement of Outstanding Universal Value is agreed and adopted by the World Heritage Committee for each Site on inscription. The Statement sets out what the World Heritage Committee considers to be of Outstanding Universal Value about the Site in relation to the World Heritage Convention and includes statements of integrity and, in relation to cultural sites or the cultural aspects of 'mixed' Sites, authenticity, and the requirements for protection and management.

Statements of Outstanding Universal Value are key reference documents for the protection and management of each Site and can only be amended or altered by the World Heritage Committee.

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### **How many World Heritage Sites are there and where are they?**

There are currently 17 cultural World Heritage Sites wholly or partly in England and one natural World Heritage Site. Details of each can be found on the National Heritage List for England available on the Historic England website [\(https://www.historicengland.org.uk/advice/\)](https://www.historicengland.org.uk/advice/).

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### **How does the terminology used by UNESCO relate to the policies of the National Planning Policy Framework?**

The international policies concerning World Heritage Sites use different terminology to that in the National Planning Policy Framework. World Heritage Sites are inscribed for their 'Outstanding Universal Value' and each World Heritage Site has defined its 'attributes and components' the tangible remains, visual and cultural links that embody that value. The cultural heritage within the



description of the Outstanding Universal Value will be part of the World Heritage Site's heritage significance and National Planning Policy Framework policies will apply to the Outstanding Universal Value as they do to any other heritage significance they hold. As the National Planning Policy Framework makes clear, the significance of the designated heritage asset derives not only from its physical presence, but also from its setting.

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### **What principles should inform the development of a positive strategy for the conservation and enjoyment of World Heritage Sites?**

In line with the National Planning Policy Framework, policy frameworks at all levels should conserve the Outstanding Universal Value, integrity and authenticity (where relevant for cultural or 'mixed' sites) of each World Heritage Site and its setting, including any buffer zone or equivalent. World Heritage Sites are designated heritage assets of the highest significance. Appropriate policies for the protection and sustainable use of World Heritage Sites, including enhancement where appropriate, should be included in relevant plans. These policies should take account of international and national requirements as well as specific local circumstances.

When developing Local Plan policies to protect and enhance World Heritage Sites and their Outstanding Universal Value, local planning authorities, should aim to satisfy the following principles:

- protecting the World Heritage Site and its setting, including any buffer zone, from inappropriate development
- striking a balance between the needs of conservation, biodiversity, access, the interests of the local community, the public benefits of a development and the sustainable economic use of the World Heritage Site in its setting, including any buffer zone
- protecting a World Heritage Site from the effect of changes which are relatively minor but which, on a cumulative basis, could have a significant effect
- enhancing the World Heritage Site and its setting where appropriate and possible through positive management
- protecting the World Heritage Site from climate change but ensuring that mitigation and adaptation is not at the expense of integrity or authenticity

Planning authorities need to take these principles and the resultant policies into account when making decisions.

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### **How is the setting of a World Heritage Site protected?**

The UNESCO *Operational Guidelines* seek protection of "the immediate setting" of each World Heritage Site, of "important views and other areas or attributes that are functionally important as a support to the Property" and suggest designation of a buffer zone wherever this may be necessary. A buffer zone is defined as an area surrounding the World Heritage Site which has complementary legal restrictions placed on its use and development to give an added layer of protection to the World Heritage Site. The buffer zone forms part of the setting of the World Heritage Site.

It may be appropriate to protect the setting of World Heritage Sites in other ways, for example by the protection of specific views and viewpoints. Other landscape designations may also prove effective in protecting the setting of a World Heritage Site. However it is intended to protect the setting, it will be essential to explain how this is to be done in the Local Plan.

Decisions on buffer zones are made on a case by case basis at the time of nomination and reviewed subsequently through the World Heritage Site Management Plan review process. Proposals to add or amend buffer zones following inscription are submitted by government for approval by the World Heritage Committee who will consider and adopt the proposals as appropriate.

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### **What are World Heritage Site management plans?**

Each World Heritage Site has a management plan which contains both long term and day to day actions to protect, conserve and present the Site. Steering Groups, made up of key representatives from a range of national and local bodies, are responsible for the formulation and implementation of the plan, and public consultation at key stages of its development. The relevant planning authority will often lead the Steering Group.

Management plans need to be developed in a participatory way, fully involving all interested parties and in particular those responsible for managing, owning or administering the Site. Each plan should be attuned to the particular characteristics and needs of the site and incorporate sustainable development principles. Each plan will:

- contain the location and Site boundary details
- specify how the Outstanding Universal Value, authenticity and integrity of each site is to be maintained
- identify attributes
- examine issues affecting its conservation and enjoyment

Management plans will usually cover topics such as its boundaries, development, tourism, interpretation, education and transport.

Given their importance in helping to sustain and enhance the significance of the World Heritage Site, relevant policies in management plans need to be taken into account by local planning authorities in developing their strategy for the historic or natural environment (as appropriate) and in determining relevant planning applications.

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### **What approach should be taken to assessing the impact of development on World Heritage Sites?**

Applicants proposing change that might affect the Outstanding Universal Value, integrity and, where applicable, authenticity of a World Heritage Site through development within the Site or affecting its setting or buffer zone (or equivalent) need to submit sufficient information with their applications to enable assessment of impact on Outstanding Universal Value. This may include visual impact assessments, archeological data or historical information. In many cases this will form part of an Environment Statement. Applicants may find it helpful to use the approach set out in the International Council on Monuments and Sites's *Heritage Impact Assessment* guidelines [\[2\]](http://www.international.icomos.org/world_heritage/HIA_20110201.pdf)

([http://www.international.icomos.org/world\\_heritage/HIA\\_20110201.pdf](http://www.international.icomos.org/world_heritage/HIA_20110201.pdf)) and *Historic England's guidance on setting and views*. [\[3\]](https://www.historicengland.org.uk/) (<https://www.historicengland.org.uk/>)

World Heritage Sites are 'sensitive areas' for the purposes of determining if an Environmental Impact Assessment

(<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/>) is required for a particular development proposal. Lower development size thresholds apply to the requirement for Design and Access Statements ([http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/national-information-requirements/#paragraph\\_030](http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/national-information-requirements/#paragraph_030)) within World Heritage Sites as compared with the norm.

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## What consultation is required in relation to proposals that affect a World Heritage Site?

The World Heritage Committee Operational Guidelines ask governments to inform it at an early stage of proposals that may affect the Outstanding Universal Value of the Site and “before making any decisions that would be difficult to reverse, so that the Committee may assist in seeking appropriate solutions to ensure that the Outstanding Universal Value is fully preserved”. Therefore, it would be very helpful if planning authorities could consult Historic England (for cultural Sites) or Natural England (for natural Sites) and Department for Culture, Media and Sport (DCMS) at an early stage and preferably pre-application.

Planning authorities are required to consult the Secretary of State for Communities and Local Government before approving any planning application to which Historic England maintains an objection and which would have an adverse impact on the Outstanding Universal Value, integrity, authenticity and significance of a World Heritage Site or its setting, including any buffer zone or its equivalent. The Secretary of State then has the discretion as to whether to call-in the application for his/her own determination. Further information on the Secretary of State's involvement in deciding an application can be found in Determining a planning application

([http://planningguidance.communities.gov.uk/blog/guidance/determining-a-planning-application/who-must-the-local-planning-authority-notify-once-its-has-made-a-decision-on-a-planning-application/#paragraph\\_022](http://planningguidance.communities.gov.uk/blog/guidance/determining-a-planning-application/who-must-the-local-planning-authority-notify-once-its-has-made-a-decision-on-a-planning-application/#paragraph_022)) section of guidance.

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## Are permitted development rights restricted in World Heritage Sites?

World Heritage Sites are defined as Article 2(3) land ([http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/#paragraph\\_018](http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/#paragraph_018)) in the Town and Country Planning (General Permitted Development) Order 2015. This means that certain permitted development rights are restricted within the Site. Planning authorities can restrict further development by using article 4 ([http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/#paragraph\\_036](http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/#paragraph_036)) and article 5 (minerals operations) directions under the 2015 Order.

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## Where can I find further information about World Heritage Sites?

Further information on World Heritage Sites can be found on the Department for Culture, Media and Sport's website <https://www.gov.uk/government/policies/protecting-conserving-and-providing-access-to-the-historic-environment-in-england/supporting-pages/nominating-places-in-the-uk-for-world-heritage-site-status>) and on the UNESCO website. <http://whc.unesco.org/>)

(<https://www.gov.uk/government/policies/protecting-conserving-and-providing-access-to-the-historic-environment-in-england/supporting-pages/nominating-places-in-the-uk-for-world-heritage-site-status>) and on the UNESCO website. <http://whc.unesco.org/>)

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5. Non-designated heritage assets (<http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/what-are-non-designated-heritage-assets-and-how-important-are-they/>)

### Non-designated heritage assets

#### What are non-designated heritage assets and how important are they?

Local planning authorities may identify non-designated heritage assets. These are buildings, monuments, sites, places, areas or landscapes identified as having a degree of significance meriting consideration in planning decisions but which are not formally designated heritage assets

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### Related policy

#### National Planning Policy Framework

- Annex 2 – Glossary (<http://planningguidance.communities.gov.uk/sustainable/>)

(<http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/annex-2-glossary/>). In some areas, local authorities identify some non-designated heritage assets as 'locally listed'.

development/annex-2-glossary/)

A substantial majority of buildings have little or no heritage significance and thus do not constitute heritage assets. Only a minority have enough heritage interest for their significance to be a material consideration in the planning process.

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## What are non-designated heritage assets of archaeological interest and how important are they?

The National Planning Policy Framework identifies two categories of non-designated site of archaeological interest:

(1) Those that are demonstrably of equivalent significance to scheduled monuments and are therefore considered subject to the same policies as those for designated heritage assets (National Planning Policy Framework Paragraph 139 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/12-conserving-and-enhancing-the-historic-environment/#paragraph\\_139](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/12-conserving-and-enhancing-the-historic-environment/#paragraph_139))). They are of three types:

- those that have yet to be formally assessed for designation
- those that have been assessed as being nationally important and therefore, capable of designation, but which the Secretary of State has exercised his discretion not to designate usually because they are given the appropriate level of protection under national planning policy
- those that are incapable of being designated by virtue of being outside the scope of the Ancient Monuments and Archaeological Areas Act 1979 because of their physical nature

The reason why many nationally important monuments are not scheduled is set out in the document *Scheduled Monuments*, published by the Department for Culture, Media and Sport (DCMS). Information on location and significance of such assets is found in the same way as for all heritage assets. Judging whether sites fall into this category may be assisted by reference to the criteria for scheduling monuments. Further information on scheduled monuments can be found on the Department for Culture, Media and Sport's website [\[2\]](https://www.gov.uk/government/policies/protecting-conserving-and-providing-access-to-the-historic-environment-in-england/supporting-pages/protecting-ancient-monuments-through-the-scheduling-system) (<https://www.gov.uk/government/policies/protecting-conserving-and-providing-access-to-the-historic-environment-in-england/supporting-pages/protecting-ancient-monuments-through-the-scheduling-system>).

(2) Other non-designated heritage assets of archaeological interest. By comparison this is a much larger category of lesser heritage significance, although still subject to the conservation objective. On occasion the understanding of a site may change following assessment and evaluation prior to a planning decision and move it from this category to the first

Where an asset is thought to have archaeological interest, the potential knowledge which may be unlocked by investigation may be harmed even by minor disturbance, because the context in which archaeological evidence is found is crucial to furthering understanding.

Decision-taking regarding such assets requires a proportionate response by local planning authorities. Where an initial assessment indicates that the site on which development is proposed includes or has potential to include heritage assets with archaeological interest, applicants should be required to submit an appropriate desk-based assessment and, where necessary, a field evaluation. However, it is estimated following an initial assessment of archaeological interest only a small proportion – around 3 per cent – of all planning applications justify a requirement for detailed assessment.

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## How are non-designated heritage assets identified?

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### Related policy

#### National Planning Policy Framework

- Paragraph 139 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/12-conserving-and-enhancing-the-historic-environment/#paragraph\\_139](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/12-conserving-and-enhancing-the-historic-environment/#paragraph_139))

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### Related policy

Local lists incorporated into Local Plans can be a positive way for the local planning authority to identify non-designated heritage assets against consistent criteria so as to improve the predictability of the potential for sustainable development.

It is helpful if Local Plans note areas of potential for the discovery of non-designated heritage assets with archaeological interest. The historic environment record will be a useful indicator of archaeological potential in the area. In judging if non-designated sites of archaeological interest are demonstrably of equivalent significance to scheduled monuments, and therefore considered subject to the same policies as those for designated heritage assets, local planning authorities should refer to Department for Culture, Media and Sport's criteria for scheduling monuments.

When considering development proposals, local planning authorities should establish if any potential non-designated heritage asset meets the definition in the National Planning Policy Framework at an early stage in the process. Ideally, in the case of buildings, their significance should be judged against published criteria, which may be generated as part of the process of producing a local list. For non-designated heritage assets with archaeological interest, local planning authorities should refer to 'What are non-designated heritage assets of archaeological interest and how important are they?'

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### **How should Neighbourhood Development Orders and Community Right to Build Orders take account of heritage conservation?**

The policies in the National Planning Policy Framework, and the associated guidance, which relate to decision-taking on planning applications which affect the historic environment, apply equally to the consideration of what planning permission should be granted through Neighbourhood Development Orders and Community Right to Build Orders.

Neighbourhood Development Orders and Community Right to Build Orders can only grant planning permission, not heritage consents (ie listed building consent or scheduled monument consent).

Historic England must be consulted on all Neighbourhood Development Orders and Community Right to Build Orders to allow it to assess the impacts on the heritage assets, and determine whether an archaeological statement (definition in Regulation 22(2) [\[2\]](http://www.legislation.gov.uk/ukxi/2012/637/regulation/22/made) (<http://www.legislation.gov.uk/ukxi/2012/637/regulation/22/made>) of the Neighbourhood Planning (General) Regulations 2012) is required. This, and other consultation requirements relating to development affecting heritage assets, are set out in Regulation 21 of, and Schedule 1 to, the Neighbourhood Planning (General) Regulations 2012 [\[2\]](http://www.legislation.gov.uk/ukxi/2012/637/contents/made) (<http://www.legislation.gov.uk/ukxi/2012/637/contents/made>).

Further information on making these Orders can be found:

- in the Neighbourhood Planning section of guidance (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/>)
- in the When is permission required? section of guidance (<http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/>)
- on [Historic England's website](https://www.historicengland.org.uk/) [\[2\]](https://www.historicengland.org.uk/) (<https://www.historicengland.org.uk/>)

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6. **Heritage consent processes** (<http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/is-an-application-for-planning-permission-required-to-carry-out-works-to-a-listed-building/>)

### **Heritage consent processes**

#### **Is listed building consent the same as planning permission?**

### **National Planning Policy Framework**

- Paragraph 89 – 91 ([http://planningguidance.communit-sustainable-development/delivering-sustainable-development/9-protecting-green-belt-land/#paragraph\\_89](http://planningguidance.communit-sustainable-development/delivering-sustainable-development/9-protecting-green-belt-land/#paragraph_89))

Listed building consent and planning permission are two separate regimes. So for some proposed works both planning permission and listed building consent will be needed and sometimes only one, or neither, is required.

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### **When is an application for planning permission required to carry out works to a listed building?**

This will depend on the particular works involved, but in general terms:

- an application for planning permission is required if the works would usually require a planning application if the building was not listed
- an application for planning permission is not required if the works would normally be permitted development and there are no restrictions on the permitted development rights in respect of listed buildings and the permitted development rights (<http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/>) have not been removed locally
- an application for planning permission is not required if the works would not constitute 'development' (<http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-is-development/>)' e.g. internal works to listed buildings

The requirement for listed building consent is not the same as for planning permission. So for some proposed works both planning permission and listed building consent will be needed and sometimes only one, or neither, is required.

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### **When is listed building consent required?**

Any works to demolish any part of a listed building or to alter or extend it in a way that affects its character as a building of special architectural or historic interest require listed building consent, irrespective of whether planning permission is also required. It is important to note that it may be a criminal offence to fail to apply for consent when it is required. For all grades of listed building, unless the list entry indicates otherwise, the listing status covers the entire building, internal and external, objects fixed to it and sometimes also attached and curtilage buildings or other structures.

Undertaking works, or causing works to be undertaken, to a listed building which would affect its character as a building of special historic or architectural interest, without first obtaining listed building consent is an offence under section 9 [\[9\]](http://www.legislation.gov.uk/ukpga/1990/9/section/9) (<http://www.legislation.gov.uk/ukpga/1990/9/section/9>) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

There is no fee for submitting an application for listed building consent.

The requirement for listed building consent is not the same as for planning permission. So for some proposed works both planning permission and listed building consent will be needed and sometimes only one, or neither, is required.

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### **What is a Listed Building Heritage Partnership Agreement?**

A Listed Building Heritage Partnership Agreement is an Agreement between a local planning authority and the owner(s) of a listed building or group of listed buildings which grants listed building consent. It allows the local planning authority to grant listed building consent for the duration of the Agreement for specified works of alteration or extension (but not demolition) of those listed buildings covered by the Agreement (see sections 26A and 26B of the Planning (Listed Buildings and Conservation Areas) Act 1990 [\[60\]](http://www.legislation.gov.uk/ukpga/2013/24/section/60)) (<http://www.legislation.gov.uk/ukpga/2013/24/section/60>).

Listed Building Heritage Partnership Agreements remove the need for the owner (s) concerned to submit repetitive applications for listed building consent for works covered by an Agreement.

When considering whether to grant listed building consent in a Listed Building Heritage Partnership Agreement local authorities are required to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest possessed by the listed building(s) to be included in the Agreement and should take account of the relevant policies in the National Planning Policy Framework.

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### **How long will a Listed Building Heritage Partnership Agreement last?**

A Listed Building Heritage Partnership Agreement must make provision for its termination. The duration of a Listed Building Heritage Partnership agreement will be a matter for the local planning authority and the other parties to the Agreement to decide. Setting a time limit for a Listed Building Heritage Partnership Agreement is recommended to ensure that the Agreement continues to meet appropriate standards and principles for conservation, and continues to have regard to the special interest of the building.

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### **What procedures does a local planning authority need to follow for a Listed Building Heritage Partnership Agreement?**

The procedures, including those around consultation and publicity, which local planning authorities must follow for Listed Building Heritage Partnership Agreements, are set out in The Planning (Listed Buildings and Conservation Areas) (Heritage Partnership Agreements) Regulations 2014 [\[2\]](http://www.legislation.gov.uk/uksl/2014/550/contents/made) (<http://www.legislation.gov.uk/uksl/2014/550/contents/made>). Good practice advice on Listed Building Heritage Partnership Agreements can be found on Historic England's website [\[3\]](https://www.historicengland.org.uk/) (<https://www.historicengland.org.uk/>).

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### **What is a Local Listed Building Consent Order?**

Local Listed Building Consent Orders are made by local planning authorities and grant listed building consent for works of any description for the alteration or extension (but not demolition) of listed buildings in their area (see sections 26D-26G, 28A and Schedule 2A of the Planning (Listed Buildings and Conservation Areas) Act 1990 [\[4\]](http://www.legislation.gov.uk/ukpga/2013/24/section/60) (<http://www.legislation.gov.uk/ukpga/2013/24/section/60>)). This means that owners and developers do not need to submit repetitive applications for listed building consent for works covered by an Order.

When considering making a Local Listed Building Consent Order local authorities are required to have special regard to the desirability of preserving the listed building(s) to which the Order applies, their setting or any features of special architectural or historic interest they possess and should take account of the relevant policies in the National Planning Policy Framework.

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### **How long will a Local Listed Building Consent last?**

There is no time limit on the duration of Local Listed Building Consent Orders set out in the regulations. Local planning authorities may consider it expedient to set a time limit for the Order.

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### **What procedures does a local planning authority need to follow when making a Local Listed Building Consent Order?**

The procedures, including those around consultation and publicity, which local planning authorities must follow when making a Local Listed Building Consent Order are set out in The Planning (Local Listed Building Consent Orders)

(Procedure) Regulations 2014 [\[2\]](#)

(<http://www.legislation.gov.uk/uksi/2014/551/contents/made>) and good practice advice can be found on Historic England's website [\[3\]](https://www.historicengland.org.uk/) (<https://www.historicengland.org.uk/>).

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### **What is the difference between a Listed Building Heritage Partnership Agreement and a Local Listed Building Consent Order?**

Listed Building Heritage Partnership Agreements are Agreements made between the local planning authority and the owner(s) of a listed building or group of listed buildings. There may be additional parties to the Agreement. As well as granting a general listed building consent for agreed works of alteration or extension to the listed building(s) to which the Agreement relates, they can cover other matters such as public access or management issues. They might be used for example, to cover university campuses or large office buildings.

Local Listed Building Consent Orders are made by the local planning authority and grant a general listed building consent for specified works of alteration or extension to listed buildings of a specified description or in a specified part of the authority's area. They do not cover any other matters relating to the listed buildings. They are likely to be used for groups of similar or related listed buildings in multiple ownership, for example, estate villages or rows of terraced houses.

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### **What is a Listed Building Consent Order?**

A Listed Building Consent Order is made by the Secretary of State to grant listed building consent for works of any description for the alteration or extension (but not demolition) of listed buildings of any description in England (see sections 26C, 26F, 26G and 28A of the Planning (Listed Buildings and Conservation Areas) Act 1990 [\[4\]](#)

(<http://www.legislation.gov.uk/ukpga/2013/24/section/60>)).

When considering making a Listed Building Consent Order the Secretary of State is required to have special regard to the desirability of preserving the listed building(s) to which the Order applies, their setting or any features of special architectural or historic interest they possess and should take account of the relevant policies in the National Planning Policy Framework.

A pilot Listed Building Consent Order is currently being developed with the Canal and River Trust to help inform the approach to future Orders. Further information on Listed Building Consent Orders can be found on Historic England's website [\[5\]](https://www.historicengland.org.uk/) (<https://www.historicengland.org.uk/>).

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### **What is a Certificate of Lawfulness of Proposed Works?**

A Certificate of Lawfulness of Proposed Works provides formal confirmation that proposed works of alteration or extension (but not demolition) of a listed building do not require listed building consent because they do not affect the character of the listed building as a building of special architectural or historic interest (see section 26H of the Planning (Listed Buildings and Conservation Areas) Act 1990 [\[6\]](#) (<http://www.legislation.gov.uk/ukpga/2013/24/section/61>)).

Certificates of Lawfulness of Proposed Works are only available in respect of works which have not yet been carried out – they cannot be obtained retrospectively.

Works for which a Certificate of Lawfulness of Proposed Works is issued must be undertaken within 10 years from the date of issue of the Certificate.



Any person wishing to obtain a Certificate must submit an application to their local planning authority. The procedures for applications, and appeals against refusal or non-determination of an application, are set out in The Planning (Listed Buildings) (Certificates of Lawfulness of Proposed Works) Regulations 2014 [\[2\]](http://www.legislation.gov.uk/uksi/2014/552/contents/made) (<http://www.legislation.gov.uk/uksi/2014/552/contents/made>).

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### **Is it necessary to apply for a Certificate of Lawfulness of Proposed Works before carrying out minor works to a listed building?**

There is no obligation on anyone to apply for a Certificate of Lawfulness of Proposed Works.

Where a person is satisfied that the works they want to carry out do not require listed building consent they can, if they wish, proceed with those works without obtaining any confirmation from the local planning authority.

In order to avoid unnecessary applications, if there is any doubt about whether listed building consent is required, we would encourage owners and developers to discuss the matter with the local planning authority before submitting any application.

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### **Is an application for planning permission required to carry out works to an unlisted building in a conservation area?**

Planning permission is required for the demolition of certain unlisted buildings in conservation areas (known as 'relevant demolition') – see 'When is permission required ([http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/#paragraph\\_064](http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/#paragraph_064))' section of the guidance.

Generally the requirement for planning permission for other works to unlisted buildings in a conservation area is the same as it is for any building outside a conservation area, although some permitted development rights are more restricted in conservation areas. Further information in 'When is permission required (<http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/>)' section of guidance.

Demolishing an unlisted building in a conservation area, without first obtaining planning permission where it is needed, is an offence under section 196D of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/2013/24/schedule/17) (<http://www.legislation.gov.uk/ukpga/2013/24/schedule/17>).

There is no fee for submitting an application for planning permission for the "relevant demolition" of certain unlisted buildings in conservation areas.

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### **What permissions/consents are needed for works to scheduled monuments and protected wreck sites?**

Planning permission may be required (<http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-is-development/>) for works to these kinds of designated heritage assets depending on whether they constitute 'development' and whether any permitted development rights apply.

Irrespective of any requirement to obtain planning permission, works to scheduled monuments may require scheduled monument consent and works relating to protected wreck sites may require licences. These consent/licence regimes are outside the planning system and are the responsibility of the Department for Culture, Media and Sport (DCMS) advised and administered by Historic England. Further information on these regimes, including any

consultation arrangements, can be found on the Department for Culture, Media and Sport's website [\[2\]](https://www.gov.uk/government/policies/protecting-conserving-and-providing-access-to-the-historic-environment-in-england) (<https://www.gov.uk/government/policies/protecting-conserving-and-providing-access-to-the-historic-environment-in-england>).

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## What permissions/consents are needed for registered parks and gardens, and battlefields?

Registered parks and gardens and registered battlefields are subject to the usual requirements to obtain planning permission. As they are designated heritage assets, the policies on designated heritage assets in the National Planning Policy Framework apply both in relation to plan-making and decision-taking. As paragraph 132 of the National Planning Policy Framework ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/12-conserving-and-enhancing-the-historic-environment/#paragraph\\_132](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/12-conserving-and-enhancing-the-historic-environment/#paragraph_132)) makes clear, substantial harm to or loss of:

- any designated heritage asset of the highest significance, which includes protected wreck sites, battlefields and grade I and II\* parks and gardens, should be "*wholly exceptional*"
- any grade II park or garden should be "*exceptional*"

Local authorities are required to consult Historic England

([http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/consultation-and-notification-requirements-for-heritage-related-applications/#paragraph\\_057](http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/consultation-and-notification-requirements-for-heritage-related-applications/#paragraph_057)) and The Gardens Trust (formerly known as The Garden History Society)

([http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/consultation-and-notification-requirements-for-heritage-related-applications/#paragraph\\_060](http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/consultation-and-notification-requirements-for-heritage-related-applications/#paragraph_060)) on certain applications for planning permission in respect of registered parks and gardens and registered battlefields.

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## 7. Consultation and notification requirements for heritage related applications

(<http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/consultation-and-notification-requirements-for-heritage-related-applications/>)

### Consultation and notification requirements for heritage related applications

#### When should local planning authorities consult or notify other organisations about heritage related applications?

Local planning authorities are required to consult or notify Historic England, The Gardens Trust (formerly known as The Garden History Society) and the National Amenity Societies (ie the Ancient Monuments Society, the Council for British Archaeology, the Georgian Group, the Society for the Protection of Ancient Buildings, the Victorian Society and the Twentieth Century Society) on certain applications.

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#### When does Historic England need to be consulted or notified on applications for planning permission and listed building consent?

The requirements for consulting or notifying Historic England for different types of applications are set out at the following links:

- applications for planning permission ([http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/consultation-and-notification-requirements-for-heritage-related-applications/#paragraph\\_057](http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/consultation-and-notification-requirements-for-heritage-related-applications/#paragraph_057))
- applications for listed building consent (<http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing->

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### Related policy

#### National Planning Policy Framework

- Paragraph 132 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/12-conserving-and-enhancing-the-historic-environment/#paragraph\\_132](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/12-conserving-and-enhancing-the-historic-environment/#paragraph_132))

[the-historic-environment/consultation-and-notification-requirements-for-heritage-related-applications/#paragraph\\_058](http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/consultation-and-notification-requirements-for-heritage-related-applications/#paragraph_058))

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### **When do National Amenity Societies need to be notified of listed building consent applications?**

National Amenity Societies need to be notified of certain listed building consent applications. The requirements are set out here

([http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/consultation-and-notification-requirements-for-heritage-related-applications/#paragraph\\_059](http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/consultation-and-notification-requirements-for-heritage-related-applications/#paragraph_059)).

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### **When does The Gardens Trust (formerly known as The Garden History Society) need to be consulted on applications for planning permission?**

The Gardens Trust needs to be consulted on certain planning applications. The requirements are set out here

([http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/consultation-and-notification-requirements-for-heritage-related-applications/#paragraph\\_060](http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/consultation-and-notification-requirements-for-heritage-related-applications/#paragraph_060)).

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### **When should local planning authorities notify the Secretary of State for Communities and Local Government on heritage applications?**

The current requirements for notifying the Secretary of State for Communities and Local Government are set out here

([http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/consultation-and-notification-requirements-for-heritage-related-applications/#paragraph\\_061](http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/consultation-and-notification-requirements-for-heritage-related-applications/#paragraph_061)).

ID 18a-054-20140306 Last updated 06 03 2014

### **Are applications where the applicant is Historic England or a local planning authority treated differently?**

Some applications where the applicant is Historic England or a local planning authority are treated differently and are determined by the Secretary of State for Communities and Local Government rather than the local planning authority. Details are set out in Table 6

([http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/consultation-and-notification-requirements-for-heritage-related-applications/#paragraph\\_062](http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/consultation-and-notification-requirements-for-heritage-related-applications/#paragraph_062)).

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### **Where should applications which need to be referred to Secretary of State for Communities and Local Government be sent?**

They should be sent to the National Planning Casework Unit:

Address:







5 St Philips Place  
Colmore Row  
Birmingham  
B3 2PW

Enquiry number: 0303 444 8050

E-mail: [npcu@communities.gsi.gov.uk](mailto:npcu@communities.gsi.gov.uk)  (<mailto:npcu@communities.gsi.gov.uk>)

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**Table 1: Applications for planning permission: requirements to consult or notify Historic England**

Broad requirements	Detailed requirements
For development that would affect the setting of a Grade I or Grade II* listed building	<a href="#">Regulation 5A(3) of the Town and Country Planning (Listed Buildings and Conservation Areas) Regulations 1990 (as amended)</a>  ( <a href="http://www.legislation.gov.uk/ukxi/2015/809/contents/made">http://www.legislation.gov.uk/ukxi/2015/809/contents/made</a> )
For development involving the demolition, in whole or part, or the material alteration of Grade I or II* listed buildings	Article 18 of and Schedule 4 to the Town and Country Planning (Development Management Procedure)(England) Order 2015  ( <a href="http://www.legislation.gov.uk/ukxi/2015/595/contents/made">http://www.legislation.gov.uk/ukxi/2015/595/contents/made</a> )
For development that would affect the character and appearance of a conservation area where the development involves the erection of a new building or the extension of an existing building, and the area of land in respect of which the application is made is more than 1,000 square metres	<a href="#">Regulation 5A(3) of the Planning (Listed Buildings and Conservation Areas) Regulations 1990 (as amended)</a>  ( <a href="http://www.legislation.gov.uk/ukxi/2015/809/contents/made">http://www.legislation.gov.uk/ukxi/2015/809/contents/made</a> )
For development likely to affect the site of a scheduled monument	Article 18 of and Schedule 4 to the Town and Country Planning (Development Management Procedure)(England) Order 2015  ( <a href="http://www.legislation.gov.uk/ukxi/2015/595/contents/made">http://www.legislation.gov.uk/ukxi/2015/595/contents/made</a> )
For development likely to affect a registered battlefield or a grade I or II* park or garden on Historic England's <i>Register of Historic Parks and Gardens of Special Historic Interest in England</i>	Article 18 of and Schedule 4 to the Town and Country Planning (Development Management Procedure)(England) Order 2015  ( <a href="http://www.legislation.gov.uk/ukxi/2015/595/contents/made">http://www.legislation.gov.uk/ukxi/2015/595/contents/made</a> )
For development likely to affect certain strategically important views in London	Secretary of State for Communities and Local Government Directions relating to Protected Vistas  ( <a href="https://www.london.gov.uk/priorities/planning/supplementary-planning-guidance/view-management">https://www.london.gov.uk/priorities/planning/supplementary-planning-guidance/view-management</a> )

All applications by local planning authorities for demolition of an unlisted building in a conservation area	Regulation 4A of the Town and Country Planning General Regulations 1992 (as amended) <a href="http://www.legislation.gov.uk/ukSI/2015/807/contents/made">http://www.legislation.gov.uk/ukSI/2015/807/contents/made</a> )
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ID 18a-057-20140306 Last updated 06 03 2014

**Table 2: Applications for listed building consent: requirements to notify Historic England**

Broad requirements	Detailed requirements (link)
To give notice of applications and decisions for works in respect of a Grade I or II* listed building	Arrangements For Handling Heritage Applications – Notification To Historic England And National Amenity Societies And The Secretary Of State (England) Direction 2015 <a href="https://www.gov.uk/government/publications/arrangements-for-handling-heritage-applications-direction-2015">https://www.gov.uk/government/publications/arrangements-for-handling-heritage-applications-direction-2015</a> .
To give notice of applications and decisions for certain works to Grade II (unstarred) listed buildings. To notify where an application is made to a London borough, and the authority has not determined to refuse it	Arrangements For Handling Heritage Applications – Notification To Historic England And National Amenity Societies And The Secretary Of State (England) Direction 2015 <a href="https://www.gov.uk/government/publications/arrangements-for-handling-heritage-applications-direction-2015">https://www.gov.uk/government/publications/arrangements-for-handling-heritage-applications-direction-2015</a> Section 14 of the Planning (Listed Buildings and Conservation Areas) Act 1990 <a href="http://www.legislation.gov.uk/ukpga/1990/9/section/14">http://www.legislation.gov.uk/ukpga/1990/9/section/14</a> .

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**Table 3: Applications for listed building consent: requirements to notify the National Amenity Societies**

Broad requirements	Detailed requirements
To give notice of applications and decisions for works which comprise or include the demolition of the whole or any part of a listed building	Arrangements For Handling Heritage Applications – Notification To Historic England And National Amenity Societies And The Secretary Of State (England) Direction 2015 <a href="https://www.gov.uk/government/publications/arrangements-for-handling-heritage-applications-direction-2015">https://www.gov.uk/government/publications/arrangements-for-handling-heritage-applications-direction-2015</a>

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**Table 4: Applications for planning permission: requirements to consult The Gardens Trust (formerly known as The Garden History Society)**

Broad requirements	Detailed requirements
For development likely to affect any park or garden on Historic England's <i>Register of Historic Parks and Gardens of Special Historic Interest in England</i>	Article 18 of and Schedule 4 to the Town and Country Planning (Development Management Procedure)(England) Order 2015 <a href="http://www.legislation.gov.uk/uksi/2015/595/contents/made">[2]</a> ( <a href="http://www.legislation.gov.uk/uksi/2015/595/contents/made">http://www.legislation.gov.uk/uksi/2015/595/contents/made</a> )

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**Table 5: Applications for planning permission and listed building consent: requirements to notify the Secretary of State for Communities and Local Government**


Type of application	Broad requirements	Detailed requirements
Application for planning permission	Where the local planning authority intends to grant consent for proposals to which Historic England objects because it would have an adverse impact on a World Heritage Site	Circular 02/09 <a href="https://www.gov.uk/government/publications/the-town-and-country-planning-consultation-england-direction-2009-circular-02-2009">[2]</a> ( <a href="https://www.gov.uk/government/publications/the-town-and-country-planning-consultation-england-direction-2009-circular-02-2009">https://www.gov.uk/government/publications/the-town-and-country-planning-consultation-england-direction-2009-circular-02-2009</a> ): The Town and Country Planning (Consultation)(England) Direction 2009
Application for listed building consent	<b>Outside Greater London only, or in Greater London where the application is made by Historic England</b> , where the local planning authority intend to grant consent for works to any Grade I or II* listed building or certain works to Grade II (unstarred) listed buildings where Historic England or any of the National Amenity Societies are notified and object	Section 13 <a href="http://www.legislation.gov.uk/ukpga/1990/9/section/13">[2]</a> ( <a href="http://www.legislation.gov.uk/ukpga/1990/9/section/13">http://www.legislation.gov.uk/ukpga/1990/9/section/13</a> ) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and Arrangements For Handling Heritage Applications – Notification To Historic England And National Amenity Societies And The Secretary Of State (England) Direction 2015 <a href="https://www.gov.uk/government/publications/arrangements-for-handling-heritage-applications-direction-2015">[2]</a> ( <a href="https://www.gov.uk/government/publications/arrangements-for-handling-heritage-applications-direction-2015">https://www.gov.uk/government/publications/arrangements-for-handling-heritage-applications-direction-2015</a> )

	<p><b>In Greater London only</b>, where Historic England intend to direct the authority to grant consent or authorise it to determine the application as it sees fit, in relation to Grade I and II* listed buildings and certain works to Grade II (unstarred) listed buildings</p>	<p>Section 14 <a href="http://www.legislation.gov.uk/ukpga/1990/9/section/14">[2]</a> of the Planning (Listed Buildings and Conservation Areas) Act 1990 and Arrangements For Handling Heritage Applications – Notification To Historic England And National Amenity Societies And The Secretary Of State (England) Direction 2015 <a href="https://www.gov.uk/government/publications/arrangements-for-handling-heritage-applications-direction-2015">[2]</a> (https://www.gov.uk/government/publications/arrangements-for-handling-heritage-applications-direction-2015)</p>
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**Table 6: Applications for listed building consent and planning permission for demolition of an unlisted building in a conservation area from Historic England and local planning authorities: requirement to refer to the Secretary of State**

Type of application	Broad requirements	Detailed requirements
<p>Application for listed building consent by Historic England where Historic England or a national amenity society are notified and object to the work</p>	<p>To refer for determination applications</p>	<p>Arrangements For Handling Heritage Applications – Notification To Historic England And National Amenity Societies And The Secretary Of State (England) Direction 2015 <a href="https://www.gov.uk/government/publications/arrangements-for-handling-heritage-applications-direction-2015">[2]</a> (https://www.gov.uk/government/publications/arrangements-for-handling-heritage-applications-direction-2015)</p>
<p>Application for listed building consent by local planning authorities, where Historic England or a national amenity society are notified and object to the proposed works, and the local authority do not propose to refuse the application</p>	<p>To refer for determination applications</p>	<p><u>Regulation 13 of the Planning (Listed Buildings and Conservation Areas) Regulations 1990 (as amended)</u> <a href="http://www.legislation.gov.uk/uksi/2015/809/contents/made">[2]</a> (http://www.legislation.gov.uk/uksi/2015/809/contents/made)</p>

<p>Application for planning permission for demolition of unlisted building in a conservation area by local planning authorities where Historic England objects to the proposed works, and the local authority do not propose to refuse the application</p>	<p>To refer for determination applications</p>	<p><a href="#">Regulation 4A of the Town and Country Planning General Regulations 1992 (as amended)</a>   <a href="http://www.legislation.gov.uk/uksi/2015/807/contents/made">http://www.legislation.gov.uk/uksi/2015/807/contents/made</a></p>
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### 8. Further information on heritage and planning issues

(<http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/further-information-on-heritage-and-planning-issues/>)


#### Further information on heritage and planning issues

#### Where can I find further information on heritage planning issues?

- Listed building consent enforcement  
 (<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/listed-building-enforcement/>)
- Listed building consent appeals  
 (<http://planningguidance.communities.gov.uk/blog/guidance/appeals/appeals-against-other-planning-decisions/>)
- Compulsory purchase in Section 10 of the Department's Guidance on Compulsory purchase process and The Crichton Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion   
 ([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/472726/151027\\_Updated\\_guidance\\_for\\_publicat](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/472726/151027_Updated_guidance_for_publicat))

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 Department for Communities & Local Government  
 (<https://www.gov.uk/government/organisations/department-for-communities-and-local-government>)



## Planning Practice Guidance (<http://planningguidance.communities.gov.uk>)

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Guidance

### Consultation and pre-decision matters

Print 

1. What local planning authority consultation takes place before a planning application is decided, and with who? (<http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/what-local-planning-authority-consultation-takes-place-before-a-planning-application-is-decided-and-with-who/>)

#### **What local planning authority consultation takes place before a planning application is decided, and with who?**

After a local planning authority has received a planning application, it will undertake a period of consultation where views on the proposed development can be expressed. The formal consultation period will normally last for 21 days, and the local planning authority will identify and consult a number of different groups.

The main types of local planning authority consultation are:

- Public consultation ([http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/public-consultation/#paragraph\\_002](http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/public-consultation/#paragraph_002)) – including consultation with neighbouring residents and community groups.
- Statutory consultees ([http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/statutory-consultees/#paragraph\\_009](http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/statutory-consultees/#paragraph_009)) – where there is a requirement set out in law to consult a specific body, who are then under a duty to respond providing advice on the proposal in question.
- Any consultation required by a direction ([http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/consultation-and-safeguarding-directions/#paragraph\\_020](http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/consultation-and-safeguarding-directions/#paragraph_020)) – where there are further, locally specific, statutory consultation requirements as set out in a consultation direction.
- Non statutory consultees ([http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/other-organisations-non-statutory-consultees/#paragraph\\_022](http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/other-organisations-non-statutory-consultees/#paragraph_022)) where there are planning policy reasons to engage other consultees who – whilst not designated in law – are likely to have an interest in a proposed development.

Following the initial period of consultation, it may be that further additional consultation on changes submitted by an applicant, prior to any decision being made ([http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/re-consultation-after-an-application-has-been-amended/#paragraph\\_025](http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/re-consultation-after-an-application-has-been-amended/#paragraph_025)), is considered necessary.

Finally, once consultation has concluded, the local planning authority will consider the representations made by consultees, and proceed to decide the application. See here ([http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/is-it-possible-for-a-statutory-or-non-statutory-consultee-to-direct-refusal-of-an-application/#paragraph\\_027](http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/is-it-possible-for-a-statutory-or-non-statutory-consultee-to-direct-refusal-of-an-application/#paragraph_027)) for more information on the role that consultees' views play in making a decision.

Local planning authority consultation does not remove or affect the requirement for the applicant to complete and submit an ownership certificate and agricultural land declaration with an application for planning permission ([http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/national-information-requirements/#paragraph\\_025](http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/national-information-requirements/#paragraph_025)).

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2. **Public consultation** (<http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/public-consultation/>)

### **Public consultation**

#### **What steps must the local planning authority take to involve members of the public on planning applications?**

Local planning authorities are required to undertake a formal period of public consultation, prior to deciding a planning application. This is prescribed in Article 15 of the Development Management Procedure Order [\[2\]](http://www.legislation.gov.uk/ukxi/2015/595/article/15/made) (<http://www.legislation.gov.uk/ukxi/2015/595/article/15/made>). There are separate arrangements for listed buildings which are set out in Regulation 5 [\[2\]](http://www.legislation.gov.uk/ukxi/1990/1519/regulation/5/made) (<http://www.legislation.gov.uk/ukxi/1990/1519/regulation/5/made>) and Regulation 5A [\[2\]](http://www.legislation.gov.uk/ukxi/2004/2210/regulation/2/made) (<http://www.legislation.gov.uk/ukxi/2004/2210/regulation/2/made>) of the Listed Buildings and Conservation Area Regulations 1990 (as amended).

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#### **Who is eligible to respond to a consultation?**

Anyone can respond to a planning consultation. In addition to individuals who might be directly affected by a planning application, community groups and specific interest groups (national as well as local in some cases) may wish to provide representations on planning applications.

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#### **What publicity will take place to let the public know that a planning application has been submitted?**

Local Authorities have discretion about how they inform communities and other interested parties about planning applications. Article 15 of the Development Management Procedure Order [\[2\]](http://www.legislation.gov.uk/ukxi/2015/595/article/15/made) (<http://www.legislation.gov.uk/ukxi/2015/595/article/15/made>) sets out minimum statutory requirements. These are summarised in Table 1 ([http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/table-1-statutory-publicity-requirements-for-planning-and-heritage-applications/#paragraph\\_029](http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/table-1-statutory-publicity-requirements-for-planning-and-heritage-applications/#paragraph_029)).

In addition, local authorities may set out more detail on how they will consult the community on planning applications in their Statement of Community Involvement, prepared under Section 18 of the Planning and Compulsory Purchase Act 2004 [\[2\]](http://www.legislation.gov.uk/ukpga/2004/5/section/18) (<http://www.legislation.gov.uk/ukpga/2004/5/section/18>). See also the Local Plans (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>) guidance.

Publishing information online in an open data format can help facilitate engagement with the public on planning applications.

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#### **What is the time period for making comments?**

The time period for making comments will be set out in the publicity accompanying the planning application. This will be not less than 21 days, or 14 days where a notice is published in a newspaper.

Once the consultation period has concluded a local planning authority can proceed to determine the planning application. To ensure comments are taken in to account it is important to make comments before the statutory deadline.

ID 15-005-20140306 Last updated 06 03 2014

#### **Will the Parish Council be informed of the planning application?**

If the Parish Council has notified the local planning authority in question that it wishes to be consulted, yes.

The Development Management Procedure Order also sets out a legal requirement for local planning authorities to notify Parish Councils of the decision on planning applications within the parish council area, where the parish council have requested that they do so. Both requirements are set out in Article 25 of the Development Management Procedure Order [\[2\]](http://www.legislation.gov.uk/ukSI/2015/595/article/25/made) (<http://www.legislation.gov.uk/ukSI/2015/595/article/25/made>).

Where a parish council is consulted on a planning application, they should respond within the 21 day consultation period.

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### **Why are consultees' views important?**

It is important that local planning authorities identify and consider all relevant planning issues associated with a proposed development. Consultees may be able to offer particular insights or detailed information which is relevant to the consideration of the application. Further information on the type of issues local authorities consider when making a decision is set out in the guidance on 'determining an application

(<http://planningguidance.communities.gov.uk/blog/guidance/determining-a-planning-application/what-are-the-time-periods-for-determining-a-planning-application/>)'.

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### **What happens where an application is on land falling within two (or more) local authorities?**

Where an application straddles the boundaries of two or more local planning authorities, publicity should be undertaken separately in each local planning authority area. The authorities will need to agree between themselves whether publicity beyond the statutory minimum in each area is appropriate.

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## **3. Statutory consultees** (<http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/statutory-consultees/>)

### **Statutory consultees**

#### **Who are the statutory consultees and why have they been designated?**

Planning law prescribes circumstances where consultation must take place between a local planning authority and certain organisations, prior to a decision being made on an application. The organisations in question are under a duty to respond to the local planning authority within a set deadline and must provide a substantive response to the application in question.

A list of the statutory consultees is set out in Table 2

(<http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/table-2-statutory-consultees-on-applications-for-planning-permission-and-heritage-applications/>).

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#### **How should statutory consultees engage with the planning system?**

The National Planning Policy Framework makes clear that statutory consultees should provide advice in a timely manner throughout the development process. This assists local planning authorities in issuing timely decisions, helping to ensure that applicants do not experience unnecessary delays and costs.

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### **How long do statutory consultees have to respond to a consultation?**

Where statutory consultation is required, statutory consultees are under a duty to respond to consultations within 21 days (Article 22 of the Development Management Procedure Order [20](http://www.legislation.gov.uk/uksl/2015/595/article/22/made)) (<http://www.legislation.gov.uk/uksl/2015/595/article/22/made>), or such longer period as may be specified in other legislation. The 21 day period does not begin until the statutory consultee in question has such information as will enable it to provide a substantive response.

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### **What happens where a statutory consultee considers that it does not have the information it needs to provide a substantive response?**

It is important for statutory consultees to inform the local planning authority without delay if they require additional information, and that they have procedures in place to enable this to occur as soon as possible after they receive a consultation. It is not acceptable for a statutory consultee to wait until the 21 day period would otherwise have come to a close to notify the local planning authority that it believes it does not have enough information to provide a substantive response.

Where a statutory consultee requests additional information it needs to set out clearly and precisely what the additional information is, and the reasons why it is required. As with local planning authorities, statutory consultees may only request information that is relevant, necessary and material to the application in question.

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### **How can delays in the statutory consultation phase be avoided?**

Statutory consultees need to provide clear, positive and transparent information to both local planning authorities and applicants about the information they require to provide a substantive response to consultations. It is important for local planning authorities to work closely with statutory consultees in preparing their local lists of information requirements.

Early and timely engagement between developers, statutory consultees and local authorities at the pre application phase is important in helping avoid delays occurring at the formal application stage.

ID 15-013-20140306 Last updated 06 03 2014

### **Can statutory consultees charge for pre application advice?**

Where a prospective development raises complex issues some statutory consultees are legally able to charge a fee for an enhanced level of service at the pre-application stage, some are not.

To ensure transparency, where a statutory consultee opts to charge for certain pre-application services, it is strongly encouraged to provide information online about:

- the scale of charges for pre-application services applicable to different types of application (minor/ major and other);
- the level of service that will be provided for the charge, including:
  - the scope of work and what is included (e.g. duration and number of meetings or site visits);
  - the amount of officer time;
  - the outputs (e.g. a letter or report); and
  - the guaranteed response times.

Statutory consultees should not charge for a pre-application request to advise on the likely scope of information necessary to enable them to provide a substantive response at application stage, and should respond to such requests within no more than 21 days.

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### **What should local planning authorities expect from a statutory consultee in terms of a response?**

The legal definition of a substantive response is prescribed in Article 22 of the Development Management Procedure Order [\[2\]](http://www.legislation.gov.uk/uksi/2015/595/article/22/made) (<http://www.legislation.gov.uk/uksi/2015/595/article/22/made>). The substantive response should include reasons for the consultee's views so that where these views have informed a subsequent decision made by a local planning authority the decision is transparent. A holding reply would not be acceptable as a substantive response.

ID 15-015-20140306 Last updated 06 03 2014

### **What happens where a statutory consultee is unable to meet the deadlines for responding?**

Local planning authorities are expected to determine planning applications within a time period of 8, 13 or 16 weeks (depending on the type of development). Statutory consultees should be aware of the risk that, should they fail to respond within a specified time period, a local planning authority may proceed to decide the application in absence of their advice.

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### **Is it possible for the statutory consultee to negotiate an extension to the 21 day deadline in the Development Management Procedure Order?**

Statutory consultees should do all they can to meet the 21 day deadline in the Development Management Order. It should rarely be necessary for an extension to be proposed.

Extensions of time which are negotiated between the statutory consultee and the local planning authority will not affect the applicant's right to appeal against non-determination. In considering whether to agree to any proposed extension, local planning authorities should therefore consider the views of the applicant and the likely impact on the overall time taken to reach a decision.

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### **Are statutory consultees accountable for their performance as a consultee on planning applications?**

Yes. Article 23 of the Development Management Procedure Order [\[2\]](http://www.legislation.gov.uk/uksi/2015/595/article/23/made) (<http://www.legislation.gov.uk/uksi/2015/595/article/23/made>) provides that statutory consultees should provide reports on their performance in meeting the 21 day deadline in the order. It would be helpful if these reports also identify the number of instances where negotiated extensions to the 21 day deadline are agreed with the local planning authorities concerned.

The reports should be sent to the Department for Communities and Local Government each year, and published on the statutory consultee's website.

ID 15-018-20140306 Last updated 06 03 2014

### **Are other local authorities statutory consultees?**

In certain cases there are specific requirements to consult other local authorities. More information about other local authorities' role as statutory consultees is set out here

(<http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/table-2-statutory-consultees-on-applications-for-planning-permission-and-heritage-applications/>).

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#### 4. Consultation and safeguarding directions

(<http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/consultation-and-safeguarding-directions/>)

##### **Consultation and safeguarding directions**

###### **What are consultation and safeguarding directions?**

The Development Management Procedure Order includes powers for the Secretary of State to direct local planning authorities that additional consultation must take place in specific local circumstances. This process is referred to as a 'consultation direction'.

A consultation direction may be issued in relation to areas, sites and routes which are typically of more than local importance, or to allow the further consideration of proposals in the vicinity of existing facilities (such as airports).

Safeguarding directions are a specific type of consultation direction, and typically set out detailed maps of areas (for example, those around some existing facilities, such as certain airports or in relation to proposed infrastructure) where statutory consultation is required on planning applications within their area. Detailed guidance on Mineral's safeguarding is provided in the Minerals Policy guidance

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/>).

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###### **Where is information kept regarding consultation directions?**

The relevant local planning authority will be able to advise applicants of any consultation directions that might affect planning proposals within its area.

Information on meteorological technical sites, and who to contact where a proposed development may affect such a site, can be found in the Town and Country Planning (Safeguarding Meteorological Sites) (England) Direction 2014



([http://www.metoffice.gov.uk/media/pdf/o/q/Met\\_Office\\_Planning\\_Direction\\_and\\_Circular\\_2014.pdf](http://www.metoffice.gov.uk/media/pdf/o/q/Met_Office_Planning_Direction_and_Circular_2014.pdf)).

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#### 5. Other organisations (non-statutory consultees)

(<http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/other-organisations-non-statutory-consultees/>)

##### **Other organisations (non-statutory consultees)**

###### **What other organisations should local planning authorities engage with as part of the planning application process?**

In addition to the statutory consultees set out in table 2 below, local planning authorities should also consider whether there are planning policy reasons to engage other consultees who – whilst not designated in law – are likely to have an interest in a proposed development (non-statutory consultees). A list of the organisations identified in national policy and guidance is set out in table 3 (<http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/table-3-non-statutory-consultees-identified-in-national-planning-policy-or-guidance/>).

To help applicants develop their proposals, local planning authorities are encouraged to produce and publish a locally specific list of non-statutory consultees.

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### **How should local planning authorities engage with non-statutory consultees?**

Local planning authorities should engage with non-statutory consultees to identify clearly the types of developments within the local area in which they have an interest, so that any formal consultation can be directed appropriately and unnecessary consultation avoided.

To ensure consultations are received promptly it is helpful to for applicants and local planning authorities to agree the most cost and time effective system of notification on individual applications.

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### **How long do non-statutory consultees have to respond to a planning application?**

Non-statutory consultees should respond within the period specified by the local planning authority. Where, exceptionally, additional time is required it is important to notify the local planning authority as soon as possible. It will be for the local planning authority to decide if further time is allowed. Extensions of time which are negotiated between non-statutory consultees and the local planning authority will not affect the applicant's right to appeal against non-determination. In considering whether to agree an extension to specified deadline, local authorities should therefore consider the views of the applicant, and the likely impact on the overall time taken to reach a decision.

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## **6. Re-consultation after an application has been amended**

(<http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/re-consultation-after-an-application-has-been-amended/>)

### **Re-consultation after an application has been amended**

#### **Can an application be amended after it has been submitted?**

An application can be amended after it has been submitted. Guidance on the procedures involved in doing so is set out in 'making an application' (<http://planningguidance.communities.gov.uk/blog/guidance/making-an-application-2/types-of-application/>).

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#### **Will further consultation take place after an application is amended?**

Where an application has been amended it is up to the local planning authority to decide whether further publicity and consultation is necessary.

In deciding whether this is necessary the following considerations may be relevant:

- were objections or reservations raised in the original consultation stage substantial and, in the view of the local planning authority, enough to justify further publicity?
- are the proposed changes significant?
- did earlier views cover the issues raised by the proposed changes?
- are the issues raised by the proposed changes likely to be of concern to parties not previously notified?

Where the local planning authority has decided that re-consultation is necessary, it is open to them to set the timeframe for responses, balancing the need for consultees to be given time to consider the issue that is being re-consulted upon and respond against the need for efficient decision making.

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7. Is it possible for a statutory or non-statutory consultee to direct refusal of an application? (<http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/is-it-possible-for-a-statutory-or-non-statutory-consultee-to-direct-refusal-of-an-application/>)

**Is it possible for a statutory or non-statutory consultee to direct refusal of an application?**

It is possible for a statutory or non-statutory consultee to recommend to the local planning authority that a planning application should be refused in their view. It is not possible for a statutory or non-statutory consultee to direct refusal and insist that a planning application is refused by the local planning authority.

However, in exceptional circumstances the Secretary of State for Transport, through the Highways Agency [\(http://www.highways.gov.uk/\)](http://www.highways.gov.uk/), may use powers in the Development Management Procedure Order to restrict the grant of planning permission or direct that certain conditions are placed on any decision. This occurs when the Secretary of State considers that the development as proposed would, if approved, result in an unacceptable impact on the strategic road network, or pose substantial risks to public safety.

In addition, Article 6 of the Town and Country Planning (Mayor of London) Order 2008  [\(http://www.legislation.gov.uk/ukSI/2008/580/article/6/made\)](http://www.legislation.gov.uk/ukSI/2008/580/article/6/made) sets out a power for the Mayor of London to direct refusal of a planning application in certain instances.

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**Can a local planning authority grant planning permission against the advice of a statutory or non-statutory consultee?**

The decision to grant or refuse a planning application ultimately rests with the local planning authority taking in to account all relevant planning considerations, and not just the advice from one consultee. Local Authorities should be aware of the need to be able to justify a decision taken, including where it is contrary to a statutory consultee’s view.

The Town and Country Planning (Consultation) Direction 2009  [\(https://www.gov.uk/government/publications/the-town-and-country-planning-consultation-england-direction-2009-circular-02-2009\)](https://www.gov.uk/government/publications/the-town-and-country-planning-consultation-england-direction-2009-circular-02-2009) sets out circumstances where local planning authorities must consult the Secretary of State prior to granting planning permission, where certain statutory consultees have objected to a proposed development.

Further guidance on the direction is provided in the guidance on determining an application (<http://planningguidance.communities.gov.uk/blog/guidance/determining-a-planning-application/what-are-the-time-periods-for-determining-a-planning-application/>). Specific guidance on this process where the Health and Safety Executive have advised against granting planning permission is set out in Hazardous Substances (<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/>).

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8. Table 1 – statutory publicity requirements for planning and heritage applications (<http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/table-1-statutory-publicity-requirements-for-planning-and-heritage-applications/>)

**Table 1 – statutory publicity requirements for planning and heritage applications**

Type of development	Site notice	Site notice or neighbour notification letter	Newspaper advertisement	Website



Applications for major development as defined in Article 2 of the Development Management Procedure Order		X	X	X
Applications subject to Environmental Impact Assessment which are accompanied by an environmental statement	X		X	X
Applications which do not accord with the development plan in force in the area	X		X	X
Applications which would affect a right of way to which Part 3 of the Wildlife and Countryside Act 1981 applies	X		X	X
Applications for planning permission not covered in the entries above eg non-major development		X		X
Applications for listed building consent where works to the exterior of the building are proposed	X		X	X
Applications to vary or discharge conditions attached to a listed building consent or conservation area consent, or involving exterior works to a listed building.	X		X	X

Note: the Environment Impact Assessment guidance (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/>) sets out further publicity and consultation requirements for applicants where this is relevant.

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### 9. Table 2 – Statutory consultees on applications for planning permission

(<http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/table-2-statutory-consultees-on-applications-for-planning-permission-and-heritage-applications/>)

#### Table 2 – Statutory consultees on applications for planning permission

The table below lists where there is a statutory requirement to consult particular bodies or persons on planning applications for certain types of development.

Statutory consultee	Type of Development
Adjoining landowners	Article 15 Development Management Procedure Order <sup>1</sup> ( <a href="http://www.legislation.gov.uk/ukSI/2015/595/article/15/made">http://www.legislation.gov.uk/ukSI/2015/595/article/15/made</a> )
Canal and River Trust <sup>2</sup> ( <a href="https://canalrivertrust.org.uk/#">https://canalrivertrust.org.uk/#</a> )	Schedule 4 (za) Development Management Procedure Order <sup>1</sup> ( <a href="http://www.legislation.gov.uk/ukSI/2015/595/schedule/4/made">http://www.legislation.gov.uk/ukSI/2015/595/schedule/4/made</a> )
Coal Authority <sup>3</sup> ( <a href="https://www.gov.uk/government/organisations/the-coal-authority">https://www.gov.uk/government/organisations/the-coal-authority</a> )	Article 26 <sup>1</sup> ( <a href="http://www.legislation.gov.uk/ukSI/2015/595/article/26/made">http://www.legislation.gov.uk/ukSI/2015/595/article/26/made</a> ) and Schedule 4 (o) Development Management Procedure Order <sup>1</sup> ( <a href="http://www.legislation.gov.uk/ukSI/2015/595/schedule/4/made">http://www.legislation.gov.uk/ukSI/2015/595/schedule/4/made</a> )
Control of major-accident hazards competent authority (COMAH)	Schedule 4 (zb) Development Management Procedure Order ( <a href="http://www.legislation.gov.uk/ukSI/2015/595/schedule/4/made">http://www.legislation.gov.uk/ukSI/2015/595/schedule/4/made</a> )

County Planning Authorities	Paragraph 7 of Schedule 1 to the Town and Country Planning Act 1990 <a href="http://www.legislation.gov.uk/ukpga/1990/8/schedule/">(http://www.legislation.gov.uk/ukpga/1990/8/schedule/)</a> Article 21 Development Management Procedure Order <a href="http://www.legislation.gov.uk/uksi/2015/595/article/21/made"> (http://www.legislation.gov.uk/uksi/2015/595/article/21/made)</a> Schedule 4 (b) (c) Development Management Procedure Order <a href="http://www.legislation.gov.uk/uksi/2015/595/schedule/4/made"> (http://www.legislation.gov.uk/uksi/2015/595/schedule/4/made)</a>
Crown Estates Commissioners <a href="http://www.thecrownestate.co.uk/">(http://www.thecrownestate.co.uk/)</a>	Article 26 Development Management Procedure Order <a href="http://www.legislation.gov.uk/uksi/2015/595/article/26/made"> (http://www.legislation.gov.uk/uksi/2015/595/article/26/made)</a>
Department of Energy and Climate Change <a href="https://www.gov.uk/government/organisations/department-of-energy-climate-change"> (https://www.gov.uk/government/organisations/department-of-energy-climate-change)</a>	Article 26 Development Management Procedure Order <a href="http://www.legislation.gov.uk/uksi/2015/595/article/26/made"> (http://www.legislation.gov.uk/uksi/2015/595/article/26/made)</a>
Environment Agency <a href="https://www.gov.uk/government/organisations/environment-agency"> (https://www.gov.uk/government/organisations/environment-agency)</a>	Schedule 4 (p) (t) (u) (v) (zc) (zd) Development Management Procedure Order <a href="http://www.legislation.gov.uk/uksi/2015/595/schedule/4/made"> (http://www.legislation.gov.uk/uksi/2015/595/schedule/4/made)</a>
Forestry Commission <a href="http://www.forestry.gov.uk/"> (http://www.forestry.gov.uk/)</a>	Paragraph 4 of Schedule 5 of Town and Country Planning Act 1990 <a href="http://www.legislation.gov.uk/ukpga/1990/8/schedule/5"> (http://www.legislation.gov.uk/ukpga/1990/8/schedule/5)</a>
Garden History Society	Schedule 4 (s) Development Management Procedure Order <a href="http://www.legislation.gov.uk/uksi/2015/595/schedule/4/made"> (http://www.legislation.gov.uk/uksi/2015/595/schedule/4/made)</a>  See also guidance on conserving and enhancing the historic environment <a href="http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/consultation-and-notification-requirements-for-heritage-related-applications/">(http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/consultation-and-notification-requirements-for-heritage-related-applications/)</a>
Greater London Authority	Mayor of London Order 2008 <a href="http://www.legislation.gov.uk/uksi/2008/580/contents/made"> (http://www.legislation.gov.uk/uksi/2008/580/contents/made)</a> (as amended)
Health and Safety Executive <a href="http://www.hse.gov.uk/"> (http://www.hse.gov.uk/)</a>	Schedule 4 (e) Development Management Procedure Order <a href="http://www.legislation.gov.uk/uksi/2015/595/schedule/4/made"> (http://www.legislation.gov.uk/uksi/2015/595/schedule/4/made)</a>  See also guidance on hazardous substances <a href="http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/">(http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/)</a>  Advice for local planning authorities on consulting Health and Safety Executive on planning applications <a href="http://www.hse.gov.uk/landuseplanning/padhi.htm"> (http://www.hse.gov.uk/landuseplanning/padhi.htm)</a> is also available
Highways Authority	Schedule 4 (g) (h) (i) (k) (l) (m) (n) Development Management Procedure Order <a href="http://www.legislation.gov.uk/uksi/2015/595/schedule/4/made"> (http://www.legislation.gov.uk/uksi/2015/595/schedule/4/made)</a>
Highways England <a href="https://www.gov.uk/government/organisations/highways-england"> (https://www.gov.uk/government/organisations/highways-england)</a>	Schedule 4 (g) (h) (i) Development Management Procedure Order <a href="http://www.legislation.gov.uk/uksi/2015/595/schedule/4/made"> (http://www.legislation.gov.uk/uksi/2015/595/schedule/4/made)</a>
Historic England <a href="https://www.historicengland.org.uk/"> (https://www.historicengland.org.uk/)</a>	Schedule 4 (g) (r) (s) Development Management Procedure Order <a href="http://www.legislation.gov.uk/uksi/2015/595/schedule/4/made"> (http://www.legislation.gov.uk/uksi/2015/595/schedule/4/made)</a>  See also guidance on conserving and enhancing the historic environment <a href="http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/consultation-and-notification-requirements-for-heritage-related-applications/">(http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/consultation-and-notification-requirements-for-heritage-related-applications/)</a>
Local Highway Authority	Schedule 4 (k) (l) (m) (n) Development Management Procedure Order <a href="http://www.legislation.gov.uk/uksi/2015/595/schedule/4/made"> (http://www.legislation.gov.uk/uksi/2015/595/schedule/4/made)</a>
Local Planning Authorities	Schedule 4 (b) (c) Development Management Procedure Order <a href="http://www.legislation.gov.uk/uksi/2015/595/schedule/4/made"> (http://www.legislation.gov.uk/uksi/2015/595/schedule/4/made)</a>

National Parks Authorities	Schedule 4 (a) Development Management Procedure Order <a href="http://www.legislation.gov.uk/ukSI/2015/595/schedule/4/made">[2]</a> ( <a href="http://www.legislation.gov.uk/ukSI/2015/595/schedule/4/made">http://www.legislation.gov.uk/ukSI/2015/595/schedule/4/made</a> )
Natural England <a href="https://www.gov.uk/government/organisations/natural-england">[2]</a> ( <a href="https://www.gov.uk/government/organisations/natural-england">https://www.gov.uk/government/organisations/natural-england</a> )	Schedule 4 (w) (y) (zb) Development Management Procedure Order <a href="http://www.legislation.gov.uk/ukSI/2015/595/schedule/4/made">[2]</a> ( <a href="http://www.legislation.gov.uk/ukSI/2015/595/schedule/4/made">http://www.legislation.gov.uk/ukSI/2015/595/schedule/4/made</a> )  Paragraph 4 of Schedule 5 of the Town and Country Planning Act 1990 <a href="http://www.legislation.gov.uk/ukpga/1990/8/schedule/">[2]</a> ( <a href="http://www.legislation.gov.uk/ukpga/1990/8/schedule/">http://www.legislation.gov.uk/ukpga/1990/8/schedule/</a> )
Parish Councils	Schedule 4 (d) Development Management Procedure Order <a href="http://www.legislation.gov.uk/ukSI/2015/595/schedule/4/made">[2]</a> ( <a href="http://www.legislation.gov.uk/ukSI/2015/595/schedule/4/made">http://www.legislation.gov.uk/ukSI/2015/595/schedule/4/made</a> )
Rail Infrastructure Managers	Article 16 Development Management Procedure Order <a href="http://www.legislation.gov.uk/ukSI/2015/595/article/16/made">[2]</a> ( <a href="http://www.legislation.gov.uk/ukSI/2015/595/article/16/made">http://www.legislation.gov.uk/ukSI/2015/595/article/16/made</a> )
Rail Network Operators	Schedule 4 (j) Development Management Procedure Order <a href="http://www.legislation.gov.uk/ukSI/2015/595/schedule/4/made">[2]</a> ( <a href="http://www.legislation.gov.uk/ukSI/2015/595/schedule/4/made">http://www.legislation.gov.uk/ukSI/2015/595/schedule/4/made</a> )
Sport England <a href="http://www.sportengland.org/">[2]</a> ( <a href="http://www.sportengland.org/">http://www.sportengland.org/</a> )	Schedule 4 (z) Development Management Procedure Order <a href="http://www.legislation.gov.uk/ukSI/2015/595/schedule/4/made">[2]</a> ( <a href="http://www.legislation.gov.uk/ukSI/2015/595/schedule/4/made">http://www.legislation.gov.uk/ukSI/2015/595/schedule/4/made</a> )
Theatres Trust <a href="http://www.theatrestrust.org.uk">[2]</a> ( <a href="http://www.theatrestrust.org.uk">http://www.theatrestrust.org.uk</a> )	Schedule 4 (x) Development Management Procedure Order <a href="http://www.legislation.gov.uk/ukSI/2015/595/schedule/4/made">[2]</a> ( <a href="http://www.legislation.gov.uk/ukSI/2015/595/schedule/4/made">http://www.legislation.gov.uk/ukSI/2015/595/schedule/4/made</a> )
Toll Road Concessionaries	Schedule 4 (m) Development Management Procedure Order <a href="http://www.legislation.gov.uk/ukSI/2015/595/schedule/4/made">[2]</a> ( <a href="http://www.legislation.gov.uk/ukSI/2015/595/schedule/4/made">http://www.legislation.gov.uk/ukSI/2015/595/schedule/4/made</a> )
Water and sewerage undertakers	Schedule 4 (zf) Development Management Procedure Order <a href="http://www.legislation.gov.uk/ukSI/2015/595/schedule/4/made">[2]</a> ( <a href="http://www.legislation.gov.uk/ukSI/2015/595/schedule/4/made">http://www.legislation.gov.uk/ukSI/2015/595/schedule/4/made</a> )

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10. Table 3 – Non-statutory consultees – identified in national planning policy and guidance (<http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/table-3-non-statutory-consultees-identified-in-national-planning-policy-or-guidance/>)


**Table 3 – Non-statutory consultees – identified in national planning policy and guidance**

Non statutory consultee	Type of development
Emergency Services and Multi-Agency Emergency Planning	See the guidance on Flooding and Coastal ( <a href="http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/">http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/</a> ).
Forestry Commission <a href="http://www.forestry.gov.uk">[2]</a> ( <a href="http://www.forestry.gov.uk">http://www.forestry.gov.uk</a> )	See guidance on the Natural Environment ( <a href="http://planningguidance.communities.gov.uk/blog/guidance/natural-environment/">http://planningguidance.communities.gov.uk/blog/guidance/natural-environment/</a> ).
Health and Safety Executive <a href="http://www.hse.gov.uk">[2]</a> ( <a href="http://www.hse.gov.uk">http://www.hse.gov.uk</a> )	See the deciding planning applications around hazardous installations ( <a href="http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/deciding-applications-for-hazardous-substances-consent/">http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/deciding-applications-for-hazardous-substances-consent/</a> ) guidance. See para 36 of the Planning practice guidance for onshore oil and gas <a href="https://www.gov.uk/government/publications/planning-practice-guidance-for-onshore-oil-and-gas">[2]</a> ( <a href="https://www.gov.uk/government/publications/planning-practice-guidance-for-onshore-oil-and-gas">https://www.gov.uk/government/publications/planning-practice-guidance-for-onshore-oil-and-gas</a> ). ( <a href="http://planningguidance.communities.gov.uk/beta/">http://planningguidance.communities.gov.uk/beta/</a> )
Ministry of Defence <a href="http://www.gov.uk/mod">[2]</a> ( <a href="http://www.gov.uk/mod">http://www.gov.uk/mod</a> )	See guidance for renewable and low carbon energy ( <a href="http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/">http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/</a> )
Office of Nuclear Regulation <a href="http://www.onr.gov.uk">[2]</a> ( <a href="http://www.onr.gov.uk">http://www.onr.gov.uk</a> )	See the deciding planning applications around hazardous installations ( <a href="http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/deciding-applications-for-hazardous-substances-consent/">http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/deciding-applications-for-hazardous-substances-consent/</a> ) guidance. ( <a href="http://planningguidance.communities.gov.uk/beta/">http://planningguidance.communities.gov.uk/beta/</a> )

Police and Crime Commissioners	See the guidance on design ( <a href="http://planningguidance.communities.gov.uk/blog/guidance/design/">http://planningguidance.communities.gov.uk/blog/guidance/design/</a> )
Rail Network Operators	See the guidance on transport ( <a href="http://planningguidance.communities.gov.uk/blog/guidance/travel-plans-transport-assessments-and-statements-in-decision-taking/">http://planningguidance.communities.gov.uk/blog/guidance/travel-plans-transport-assessments-and-statements-in-decision-taking/</a> )
Sport England  ( <a href="http://www.sportengland.org/">http://www.sportengland.org/</a> )	See guidance on Open space, sports and recreation facilities ( <a href="http://planningguidance.communities.gov.uk/blog/guidance/open-space-sports-and-recreation-facilities-public-rights-of-way-and-local-green-space/open-space-sports-and-recreation-facilities/">http://planningguidance.communities.gov.uk/blog/guidance/open-space-sports-and-recreation-facilities-public-rights-of-way-and-local-green-space/open-space-sports-and-recreation-facilities/</a> )
Business Improvement Districts	Designated under The Business Improvement Districts (England) Regulations 2004  ( <a href="http://www.legislation.gov.uk/ukSI/2004/2443/contents/made">http://www.legislation.gov.uk/ukSI/2004/2443/contents/made</a> )

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 Department for Communities & Local Government  
(<https://www.gov.uk/government/organisations/department-for-communities-and-local-government>)

# Planning Practice Guidance <http://planningguidance.communities.gov.uk>

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Guidance

## Crown Development

Print 

1. Definitions of Crown land (<http://planningguidance.communities.gov.uk/blog/guidance/crown-development/definitions-of-crown-land/>)

### Definitions of Crown land

#### What is 'Crown land'?

Crown land is defined in section 293 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/293) (<http://www.legislation.gov.uk/ukpga/1990/8/section/293>) of the Town and Country Planning Act 1990 as land in which there is a Crown interest or a Duchy interest.

'Crown interest' is defined as an interest belonging to Her Majesty in right of the Crown or in right of Her private estates, an interest belonging to a government department or held in trust for Her Majesty for the purposes of a government department, and such other interest as the Secretary of State specifies by order.

'Duchy interest' is defined as an interest belonging to Her Majesty in right of the Duchy of Lancaster or belonging to the Duchy of Cornwall.

All parts of the Palace of Westminster and both Houses of Parliament are either defined as Crown land or treated as if they were Crown land under the Planning (Application to the Houses of Parliament) Order 2006 [\[2\]](http://www.legislation.gov.uk/uksi/2006/1469/contents/made) (<http://www.legislation.gov.uk/uksi/2006/1469/contents/made>).

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#### What is 'operational Crown Land' and which Crown bodies own or manage such land?

Operational Crown land is land owned or managed by Crown bodies which is used or held for operational purposes. These purposes relate to the carrying out of the functions of the Crown body. Operational Crown land benefits from the additional permitted development rights

(<http://planningguidance.communities.gov.uk/blog/guidance/crown-development/crown-permitted-development-rights/>) in Part 19 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 [\[2\]](http://www.legislation.gov.uk/uksi/2015/596/schedule/2/part/19/made) (<http://www.legislation.gov.uk/uksi/2015/596/schedule/2/part/19/made>).

Examples of Crown bodies that have operational land include:

- Highways England and the Department for Transport – responsible for the building, improvement and maintenance of trunk roads and motorways;
- the Ministry of Defence – responsible for a wide range of military bases, training and research facilities;
- the Department for Culture, Media and Sport – responsible for the management of the occupied Royal Palaces and the Royal Parks, and for the unoccupied Royal Palaces, the management of which it has contracted out to Historic Royal Palaces;

- the Security and Intelligence Agencies (comprising the Secret Intelligence Service (SIS), the Security Service (MI5) and the Government Communications Headquarters (GCHQ));
- the Ministry of Justice – responsible for Custodial (prison) estate, Courts and Approved Premises (otherwise known as Probation Hostels).
- the Forestry Commission – responsible for the management of the Public Forest Estate.

Crown land that is effectively domestic land or private sector commercial land – for example a body's own offices, Her Majesty's private estates, land of the Duchies of Lancaster and Cornwall and the Crown Estate – **do not** form part of operational Crown land.

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2. Application to the Crown (<http://planningguidance.communities.gov.uk/blog/guidance/crown-development/application-to-the-crown/>)

## Application to the Crown

### Which planning rules apply to Crown Development?

The Planning Acts apply to the Crown in a similar manner as they do to other applicants. This means that the Crown is normally required to apply to the local planning authority for planning permission, consent under a Tree Preservation Order (<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/>), listed building consent

([http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/is-an-application-for-planning-permission-required-to-carry-out-works-to-a-listed-building/#paragraph\\_044](http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/is-an-application-for-planning-permission-required-to-carry-out-works-to-a-listed-building/#paragraph_044)), planning permission for relevant demolition in a conservation area

([http://planningguidance.communities.gov.uk/blog/guidance/heritage/is-an-application-for-planning-permission-required-to-carry-out-works-to-a-listed-building/#paragraph\\_047](http://planningguidance.communities.gov.uk/blog/guidance/heritage/is-an-application-for-planning-permission-required-to-carry-out-works-to-a-listed-building/#paragraph_047)) and hazardous substances consent

([http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/how-does-the-planning-system-deal-with-hazardous-substances/what-is-the-purpose-of-hazardous-substances-consent/#paragraph\\_004](http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/how-does-the-planning-system-deal-with-hazardous-substances/what-is-the-purpose-of-hazardous-substances-consent/#paragraph_004)).

There are, however, certain provisions and arrangements in place to help facilitate critical development and restrict access to sensitive information, mainly in the interests of national security and defence. These include:

- additional permitted development rights (<http://planningguidance.communities.gov.uk/blog/guidance/crown-development/crown-permitted-development-rights/>) to enable the Crown and Crown bodies to carry out certain development without requiring a planning application to be made (including emergency development by the Crown and development for national security purposes);
- arrangements for handling a planning application by the Crown (<http://planningguidance.communities.gov.uk/blog/guidance/crown-development/national-security-applications/>) when details of a proposed development cannot be disclosed in the interests of national security;
- national security provisions (<http://planningguidance.communities.gov.uk/blog/guidance/crown-development/national-security-procedure/>) to prevent the disclosure of sensitive information in a public inquiry; and
- a special urgency procedure (<http://planningguidance.communities.gov.uk/blog/guidance/crown-development/urgent-applications/>) to speed up the process for determining a planning application for urgent Crown development.

Information on the meaning of 'Crown land', 'operational Crown land' and 'Crown bodies' can be found here (<http://planningguidance.communities.gov.uk/blog/guidance/crown-development/definitions-of-crown-land/>).

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### **What about sensitive information in other planning applications?**

In addition to applications from Crown bodies, sensitive information in other planning applications (<http://planningguidance.communities.gov.uk/blog/guidance/crown-development/sensitive-information-in-planning-applications/>) may also require protection.

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### **3. Crown permitted development rights** (<http://planningguidance.communities.gov.uk/blog/guidance/crown-development/crown-permitted-development-rights/>)

#### **Crown permitted development rights**

#### **What additional permitted development rights does the Crown have?**

Crown bodies (<http://planningguidance.communities.gov.uk/blog/guidance/crown-development/definitions-of-crown-land/>) have additional permitted development rights to enable them to carry out certain development without requiring a planning application to be made. These are set out in Part 19 [\[2\]](http://www.legislation.gov.uk/ukxi/2015/596/schedule/2/part/19/made) (<http://www.legislation.gov.uk/ukxi/2015/596/schedule/2/part/19/made>) of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015.

There are permitted development rights in relation to the following types of development (with various restrictions, conditions and qualifications):

- Certain types of development by the Crown (Classes A-D)
- Aviation development by the Crown (Classes E-L)
- Crown railways, dockyards (etc) and lighthouses (Classes M-P)
- Emergency development by the Crown (Class Q)
- Development for national security purposes (Classes R-T)

For more information on permitted development rights, including the implications of Environmental Impact Assessment (EIA) Regulations, see 'When is permission required?'

(<http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/>).

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#### **Do these permitted development rights apply to all Crown land?**

Some of the permitted development rights granted by Part 19 [\[2\]](http://www.legislation.gov.uk/ukxi/2015/596/schedule/2/part/19/made) (<http://www.legislation.gov.uk/ukxi/2015/596/schedule/2/part/19/made>), Classes A-P of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 only apply to operational Crown land ([http://planningguidance.communities.gov.uk/blog/guidance/crown-development/definitions-of-crown-land/#paragraph\\_002](http://planningguidance.communities.gov.uk/blog/guidance/crown-development/definitions-of-crown-land/#paragraph_002)) and to operational Crown buildings.

The permitted development rights for 'emergency development by the Crown' and 'development for national security purposes' (Part 19, Classes Q-T) apply to all Crown land (<http://planningguidance.communities.gov.uk/blog/guidance/crown-development/definitions-of-crown-land/>) (including Her Majesty's private estates, the Duchies and the Crown Estate).

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### **Why does operational Crown land have additional permitted development rights?**

The additional permitted development rights for operational Crown land ([http://planningguidance.communities.gov.uk/blog/guidance/crown-development/definitions-of-crown-land/#paragraph\\_002](http://planningguidance.communities.gov.uk/blog/guidance/crown-development/definitions-of-crown-land/#paragraph_002)) put Crown bodies (<http://planningguidance.communities.gov.uk/blog/guidance/crown-development/definitions-of-crown-land/>) that own and manage land used for operational purposes on a similar footing to other bodies such as local authorities (Part 12 of the General Permitted Development Order) and statutory undertakers (Parts 8, 13 and 15 of the General Permitted Development Order). These bodies also have permitted development rights to enable them to undertake certain works on their operational land or operational buildings for the purposes of their functions.

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### **What additional permitted development rights does the Crown have in an emergency and when do these apply?**

Part 19 [\[2\]](http://www.legislation.gov.uk/uksi/2015/596/schedule/2/part/19/made) (<http://www.legislation.gov.uk/uksi/2015/596/schedule/2/part/19/made>), Class Q, of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 relates to development by the Crown for the purposes of preventing an emergency or in response to an emergency. The permitted development rights apply to all Crown land, mainly to ensure that all the residences of the Sovereign and Her heirs are covered. It is also possible that the Crown Estate, for example as owners of the foreshore, may have to deal with an environmental emergency. An 'emergency' is defined as an event or situation which threatens serious damage to human welfare (in a place), the environment (of a place) or the security of the United Kingdom.

When using these additional rights the developer must notify the local planning authority as soon as practicable after starting the development, and the development must cease and the land be restored to its original or an agreed condition within 6 months. If the Crown wishes the development to be permanent, it should submit a retrospective planning application as soon as possible.

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### **What are the additional permitted development rights for national security purposes?**

Part 19 [\[2\]](http://www.legislation.gov.uk/uksi/2015/596/schedule/2/part/19/made) (<http://www.legislation.gov.uk/uksi/2015/596/schedule/2/part/19/made>), Classes R-T, of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 permits certain types of development on any Crown land for national security purposes. These rights are available to all Crown bodies in order to cover the physical protection of the Sovereign and Her heirs (which is a matter of national security) as well as the security of the State (<http://planningguidance.communities.gov.uk/blog/guidance/crown-development/crown-permitted-development-rights/national-security-permitted-development-rights/>).



The permitted development rights granted to the Crown depend on the nature of the works proposed

(<http://planningguidance.communities.gov.uk/blog/guidance/crown-development/crown-permitted-development-rights/national-security-permitted-development-rights/>) and specific restrictions and qualifications apply.

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### **Is a Crown body expected to publicise a proposal for permitted development?**

Crown bodies should publicise proposals for permitted development where the development is likely to have a significant effect on the amenity and environment of an area. The Crown is encouraged to follow the guidance issued to statutory undertakers

([http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/#paragraph\\_068](http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/#paragraph_068)) and inform the local planning authority and the public well in advance of commencement (although there is no statutory requirement to do so). This would be particularly worthwhile if the development is likely to have a substantial effect on a conservation area or a significant planning impact that goes beyond the confines of the development site.

These publicity arrangements are not recommended where a Crown body is exercising its permitted development rights for emergency development (Part 19, Class Q) or for national security purposes (Part 19, Classes R-T).

For more information on permitted development rights, see 'When is permission required (<http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-is-development/>)' and for more information on publicity requirements, see 'Consultation and pre-decision matters (<http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/>)'.

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### **Can a local planning authority apply an Article 4 Direction to restrict a Crown body's permitted development rights?**

In exceptional cases, a local planning authority may consider that normal planning controls should apply to a development that the Crown proposes to implement using its permitted development rights. In these cases, the local planning authority can make a direction under Article 4 of the general permitted development order (an Article 4 Direction

([http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/#paragraph\\_036](http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/#paragraph_036))).

An Article 4 Direction cannot apply to 'certain highway development' by Highways England or the Secretary of State for Transport (permitted by Part 9, Class B of the General Permitted Development Order), 'emergency development' by the Crown or 'development for national security purposes (<http://planningguidance.communities.gov.uk/blog/guidance/crown-development/crown-permitted-development-rights/national-security-permitted-development-rights/>)'.

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- **National security – permitted development rights**

(<http://planningguidance.communities.gov.uk/blog/guidance/crown-development/crown-permitted-development-rights/national-security-permitted-development-rights/>)

### **National security – permitted development rights**

## What types of Crown development are permitted for national security purposes?

The permitted development rights granted to the Crown in Part 19 [\[2\]](http://www.legislation.gov.uk/uksi/2015/596/schedule/2/part/19/made) (<http://www.legislation.gov.uk/uksi/2015/596/schedule/2/part/19/made>), Classes R-T of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 depend on the nature of the works undertaken and specific restrictions and qualifications apply.

- **Class R** deals with the erection, construction, maintenance or alteration of a gate, fence, wall or other means of enclosure.
- **Class S** deals with closed circuit television cameras and associated lighting. These rights go beyond the normal permitted development rights for security purposes (granted by Part 2, Class F) by removing the restrictions on numbers, and allowing free-standing cameras and lighting.
- **Class T** deals with electronic communications apparatus and is based on the permitted development rights given to telecommunications code system operators, with the following additional rights granted to the Crown:
  - equipment replaced on a like-for-like basis can exceed the size limits imposed on new installations if the replacement apparatus does not exceed the 'original apparatus' in size;
  - equipment can be installed on a wall or sloping roof within 20 metres of a public highway;
  - a prior approval procedure is not required hence the Crown does not have to submit proposals to the local planning authority before commencing development (unless this involves installing a mast within 3 kilometres of an aerodrome, in which case the Crown will have to give notice to the owner or tenants and relevant authorities in advance).

In the absence of a requirement for prior approval, development is subject to certain restrictions on intensification.

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## What are the restrictions on the intensification of electronic communications on Crown land?

The restrictions on intensification are given in Part 19 Class T.3 of the General Permitted Development Order. This specifies that apparatus can be installed on Crown land if there was already electronic communication apparatus in place on the site on the 'relevant day' (7 June 2006). If this is the case, only one additional item of standard apparatus can be installed (to match the 'original apparatus') but one extra piece of 'small apparatus' can be installed for every four items of original apparatus present on the site on the relevant day.

'Small apparatus' is defined in Class T.3 (3) and is subject to the following restrictions:

- ground based equipment is limited to 7 metres in height, and 5 metres in diameter for dish antennae or 7 metres in diameter for ground works;
- apparatus on buildings are limited to 3 metres in height, with a maximum 1.3 metre diameter allowed for dish antennae;
- equipment housing is limited to 3 metres in height with a ground area of up to 9 square metres.

These intensification provisions are summarised as follows:

On non-article 2(3) land

([http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/#paragraph\\_018](http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/#paragraph_018)):

Pieces of existing apparatus	Number of pieces of 'original apparatus' that may be installed	Number of pieces of 'small apparatus' that may also be installed
0 – 3	1	0
4 – 7	1	1
8 – 11	1	2
12 – 15	1	3 etc

On article 2(3) land ([http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/#paragraph\\_018](http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/#paragraph_018)):

Pieces of existing apparatus	Number of pieces of 'original apparatus' that may be installed	Number of pieces of 'small apparatus' that may also be installed
0	0	0
1 – 3	1	0
4 – 7	1	1
8 – 11	1	2
12 – 15	1	3 etc

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4. National security – applications (<http://planningguidance.communities.gov.uk/blog/guidance/crown-development/national-security-applications/>)

### National security – applications

#### Can the Crown withhold details of a proposed development?

The Crown may choose not to disclose some of the details of a proposed development on the grounds that national security (or the security of premises or other property) might otherwise be compromised.

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#### How can a local planning authority determine an application on which information is withheld by the Crown?

As a result of the Crown withholding certain details from a planning application, the local planning authority may lack the information necessary to make an informed decision and so either refuse to grant permission or fail to determine the application. If the Crown then appeals against the decision or failure to determine, it is likely that the Secretary of State would recover the appeal ([http://planningguidance.communities.gov.uk/blog/guidance/appeals/planning-appeals-general/#paragraph\\_005](http://planningguidance.communities.gov.uk/blog/guidance/appeals/planning-appeals-general/#paragraph_005)) given the 'significant implications' of the application.

Alternatively, if the Crown is aware from the outset that the information which it has to withhold would be critical to the consideration of its application, it may ask the Secretary of State to call the application in ([http://planningguidance.communities.gov.uk/blog/guidance/determining-a-planning-application/who-must-the-local-planning-authority-notify-once-its-has-made-a-decision-on-a-planning-application/#paragraph\\_022](http://planningguidance.communities.gov.uk/blog/guidance/determining-a-planning-application/who-must-the-local-planning-authority-notify-once-its-has-made-a-decision-on-a-planning-application/#paragraph_022)) for determination rather than wait to appeal once the local planning authority has refused or failed to determine the application.

If the application/appeal is subject to a public inquiry national security provisions (<http://planningguidance.communities.gov.uk/blog/guidance/crown-development/national-security-procedure/>) may then be applied.

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## **Why can the Secretary of State 'Call in' a planning application for Crown development?**

Section 77 [\[a\]](http://www.legislation.gov.uk/ukpga/1990/8/section/77) (<http://www.legislation.gov.uk/ukpga/1990/8/section/77>) of the Town and Country Planning Act 1990 gives the Secretary of State the power to call in a planning application for determination. One of the current indicators for call-in is a case which may involve the interests of national security or of foreign Governments. Further guidance on the Secretary of State's powers to call-in an application can be found here

([http://planningguidance.communities.gov.uk/blog/guidance/determining-a-planning-application/who-must-the-local-planning-authority-notify-once-its-has-made-a-decision-on-a-planning-application/#paragraph\\_022](http://planningguidance.communities.gov.uk/blog/guidance/determining-a-planning-application/who-must-the-local-planning-authority-notify-once-its-has-made-a-decision-on-a-planning-application/#paragraph_022)).

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5. National security – procedure (<http://planningguidance.communities.gov.uk/blog/guidance/crown-development/national-security-procedure/>)

### **National security – procedure**

#### **What provisions are in place to prevent the disclosure of sensitive information in a public inquiry?**

The Secretary of State can give a direction under section 321 [\[a\]](http://www.legislation.gov.uk/ukpga/1990/8/section/321) (<http://www.legislation.gov.uk/ukpga/1990/8/section/321>) of the Town and Country Planning Act 1990 to prevent the disclosure of sensitive information at a public inquiry. This is called a 'section 321 direction' or a National Security Direction.

A section 321 direction restricts the right to hear or inspect particular evidence to particular people because it would not be in the national interest for such evidence to be disclosed to the general public. Evidence that is subject to the direction is known as 'closed evidence', 'material' or 'information'.

If a direction is given, a special advocate (otherwise known in the legislation as an 'appointed representative') may be appointed to represent the interests of those prevented by the direction from hearing or inspecting closed information.

Equivalent provisions are set out in the Planning (Listed Buildings and Conservation Areas) Act 1990 [\[a\]](http://www.legislation.gov.uk/ukpga/1990/5/section/80)

(<http://www.legislation.gov.uk/ukpga/2004/5/section/80>) (for listed building consent) and the Planning (Hazardous Substances) Act 1990 [\[a\]](http://www.legislation.gov.uk/ukpga/1990/5/section/80)

(<http://www.legislation.gov.uk/ukpga/2004/5/section/80>) (for hazardous substances consent).

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#### **When can the Secretary of State issue a section 321 direction?**

The Secretary of State can only issue a section 321 direction where satisfied that the giving of evidence, or its disclosure, would be likely to result in the disclosure of information about national security or the security of premises or other property and that public disclosure of that information would be contrary to the national interest.

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### **Who can request a section 321 direction?**

Any of the parties with an interest in the application can ask the Secretary of State to give a section 321 direction, but it will normally be the developing department owning the closed material that is likely to make such a request. A Crown body might also ask for a section 321 direction as an objector to a planning application for a development by a third party where the evidence in opposition to the development involves matters of national security (or the security of premises or property).

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### **What happens if a request for a section 321 direction is denied?**

The decision about whether or not to give a section 321 direction rests with the Secretary of State, with no right of challenge other than by means of judicial review. If the Secretary of State decides not to give such a direction, the owner of the closed material must either allow that material to be inspected or heard in accordance with the normal arrangements or withdraw the application or objection.

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### **How are requests for section 321 directions publicised?**

The Secretary of State is required to publicise any request for a section 321 direction. As well as stating that a request has been made, the notification must also specify the date by which any representations as to whether a direction should be given have to be made to the Secretary of State. This date will be at least 14 days from the date when the notice is given.

Further details of the publicity arrangements can be found in Rule 6 [\[2\]](http://www.legislation.gov.uk/ukSI/2006/1284/article/6/made) (<http://www.legislation.gov.uk/ukSI/2006/1284/article/6/made>) of the Planning (National Security Directions and Appointed Representatives) (England) Rules 2006 (SI 2006/1284).

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### **What if there are objections to a request for a section 321 direction?**

If publicity elicits relevant objections to the direction, the Secretary of State may consider the objections and decide whether to give the direction. If the Secretary of State is in any doubt, he or she will forward all openly available documents to the Attorney General with a request to appoint a special advocate to represent all those parties who have objected to the direction (and who have no right of access to the closed information).

After the special advocate has taken instructions from those persons whom he or she has been appointed to represent, the Secretary of State will forward the closed material to the advocate. The special advocate will then submit written representations on the application for a direction to the Secretary of State, who will decide whether to issue the direction on the basis of these, or following a private hearing. Any hearing would only be attended by the special advocate and the body owning the closed material.

Rules 8 to 11 [\[2\]](http://www.legislation.gov.uk/ukSI/2006/1284/article/8/made) (<http://www.legislation.gov.uk/ukSI/2006/1284/article/8/made>) of the Planning (National Security Directions and Appointed Representatives) (England) Rules 2006 set out other arrangements for conducting a hearing and assessing written representations.

Once the Secretary of State has decided whether to make a direction, the decision (including a copy of the direction, if given) will be sent to everyone who had made representations or been heard.

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### **What is the procedure for a local inquiry when a section 321 direction has been given?**

Once the direction has been given, the Secretary of State asks the Attorney General to appoint a special advocate to represent the interests of those prevented from hearing or inspecting particular evidence at the inquiry. If a special advocate was appointed to represent objectors to the request for a section 321 direction, a different special advocate would be appointed for the inquiry so that he or she can take instructions without having prior knowledge of the closed material.

The special advocate must take instructions before receiving the closed evidence but may discuss this evidence with the person who supplied it to the Secretary of State or anyone named in the direction.

The special advocate will make submissions to the inspector at the local inquiry on behalf of the person or persons they are representing, and cross-examine witnesses to the extent allowed by the inspector under the relevant Inquiries Procedure Rules [\[2\]](http://www.legislation.gov.uk/ukxi/2006/1282/schedule/2/made) (<http://www.legislation.gov.uk/ukxi/2006/1282/schedule/2/made>). The special advocate may also call witnesses to give evidence on land use matters and, at the close of the inquiry, will be responsible for returning any closed material to the person who supplied it.

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### **Who pays for the services of the special advocate?**

The Secretary of State has the power to direct any person interested in the inquiry to pay the fees and expenses of the special advocate. This will generally be the owners of the closed evidence or whoever asked for the section 321 direction.

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### **What rules must the inquiry abide by?**

When a special advocate has been appointed, the inquiry must follow the relevant Inquiries Procedure Rules [\[2\]](http://www.legislation.gov.uk/ukxi/2006/1282/schedule/2/made) (<http://www.legislation.gov.uk/ukxi/2006/1282/schedule/2/made>). These exclude the question of security clearance to access the material, which is an administrative matter. The rules also do not formally apply to appeals in relation to hazardous substances consent, which should still follow the spirit of the rules.

The rules ensure that:

- there are provisions to restrict closed material to those named in the direction (likely to be the inspector, the special advocate and the representatives of the owners of that material);
- the inspector has the discretion to hold separate 'open' and 'closed' sessions; and
- for site visits that include closed material, the inspector is accompanied by the representative of the owner of that material and the special advocate representing the excluded persons.

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### **How is sensitive information protected in the Inspector's**

## Report?

For public inquiries that are subject to a section 321 direction, there are two versions of the Inspector's Report (and any assessor's report) and the Secretary of State's decision letter. The 'open' version would be sent to all interested parties, but the 'closed' version, which discusses the closed material, would only be sent to the owner of the closed material and the special advocate.

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6. Urgent applications (<http://planningguidance.communities.gov.uk/blog/guidance/crown-development/urgent-applications/>)

## Urgent applications

### Can Crown development be determined as a matter of urgency?

There is a special procedure to speed up the process for determining a planning application where there is an urgent need for the Crown to undertake a particular development. This special urgency procedure is set out in Section 293A [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/293A) (<http://www.legislation.gov.uk/ukpga/1990/8/section/293A>) of the Town and Country Planning Act 1990.

If invoked, the special urgency procedure allows the developing body to make a planning application direct to the Secretary of State rather than to the local planning authority. The procedure to be followed is then similar to that of an application that has been called-in by the Secretary of State.

([http://planningguidance.communities.gov.uk/blog/guidance/determining-a-planning-application/who-must-the-local-planning-authority-notify-once-its-has-made-a-decision-on-a-planning-application/#paragraph\\_022](http://planningguidance.communities.gov.uk/blog/guidance/determining-a-planning-application/who-must-the-local-planning-authority-notify-once-its-has-made-a-decision-on-a-planning-application/#paragraph_022))

Section 82B [\[2\]](http://www.legislation.gov.uk/ukpga/2004/5/section/83/prospective) (<http://www.legislation.gov.uk/ukpga/2004/5/section/83/prospective>) of the Planning (Listed Buildings and Conservation Areas) Act 1990 sets out a similar procedure for urgent applications for works to listed buildings on Crown land. There are no urgency provisions under the Hazardous Substances Act.

ID 44-027-20140306 Last updated 06 03 2014

### When can the Crown use the special urgency procedure?

To invoke the special urgency procedure, the relevant Crown body promoting the development must be able to certify both that it is of national importance and that it is required as a matter of urgency.

The procedure may be invoked, for example, when it has become clear as a result of pre-application discussions between the Crown body and the local planning authority that planning permission is likely to be refused. This may be because the proposal is not in accordance with the local development plan or the proposed development is controversial locally. The tone of the inquiry that would ensue would therefore be similar to a recovered appeal.

The special urgency provisions may also be applied to an application that is subject to national security provisions

(<http://planningguidance.communities.gov.uk/blog/guidance/crown-development/national-security-procedure/>) in which case both the National Security Protocol and the modified Inquiries Procedure Rules [\[2\]](#)

(<http://www.legislation.gov.uk/uksi/2006/1282/schedule/2/made>) would apply.

ID 44-028-20140306 Last updated 06 03 2014

### What is the Crown body required to do when applying for urgent development under the special urgency procedure?

#### 1) Advertise the application

Before making the application to the Secretary of State, the Crown body must advertise its intention in at least one newspaper local to the development, including a description of the proposed development.

#### 2) Certify the scheme

The Crown body must certify in writing that the scheme is of national importance and is urgently required.

#### 3) Complete an application

The application must include each of the following:

- a completed application form (available from the local planning authority);
- a statement of the case for making the application;
- an Environmental Impact Assessment (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/>) (EIA) where this would be required if the application were being made to the local planning authority; and
- any further information (should this be requested by the Secretary of State to enable the application to be determined).

#### 4) Submit the application and certification

Although the application form can be sent electronically through Planning Portal, a hard copy of the certification must be sent to the Planning Inspectorate. Without it, neither section 293A of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/293A) (<http://www.legislation.gov.uk/ukpga/1990/8/section/293A>) nor section 82B of the Planning (Listed Buildings and Conservation Areas Act) 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/2004/5/section/83/prospective) (<http://www.legislation.gov.uk/ukpga/2004/5/section/83/prospective>) would apply.

The certification and application should be sent to the Planning Inspectorate at:

MSC Division (Crown Development Applications)

Room 4/04

Kite Wing

Temple Quay House

2 The Square

Temple Quay

BRISTOL BS1 6PN

A copy of each should also be sent to the relevant local planning authority and the Planning Central Casework Division at:

Divisional Manager,

Planning Central Casework Division,

Department for Communities and Local Government,

Floor 3/SE

Fry Building

2 Marsham Street

London SW1P 4DF

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### **How is the public informed of urgent applications for Crown development?**

The Secretary of State has to make copies of the statement of case, any Environmental Impact Assessment (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/>) (EIA) and any other further information which has been requested available for public inspection. However, where the Secretary of State has given a direction on national security grounds (<http://planningguidance.communities.gov.uk/blog/guidance/crown-development/national-security-applications/>), the closed material does not have to be made available for public inspection.

ID 44-030-20140306 Last updated 06 03 2014

### **What is the role of the local planning authority in the special urgency procedure?**

The Planning Inspectorate will ask the relevant local planning authority to act as agent for the Secretary of State and provide assistance as required. In particular, as the Inspectorate has no local presence, the local planning authority will be asked to assist with local advertisements, site notices and notifying adjoining properties to fulfil the publicity requirements set out in the Town and Country Planning (Development Management Procedure) (England) Order 2015 [\[2\]](http://www.legislation.gov.uk/ukSI/2015/595/contents/made) (<http://www.legislation.gov.uk/ukSI/2015/595/contents/made>).

It is also the local planning authority's responsibility to enter details of the application onto the planning register within 14 days of receiving notification from the Secretary of State of any application made under the urgency provisions. The national security provisions (<http://planningguidance.communities.gov.uk/blog/guidance/crown-development/national-security-procedure/>) may also apply.

ID 44-031-20140306 Last updated 06 03 2014

### **What is the process for determining an urgent application for Crown development?**

The Secretary of State determines the application in the same way as a local planning authority would – in accordance with the development plan unless material considerations indicate otherwise.

Prior to determination, the Secretary of State has to consult the local planning authority for the area in which the proposed development is located, as well as relevant statutory consultees (<http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/>). These are listed in the Town and Country Planning (Development Management Procedure) (England) Order 2015 [\[2\]](http://www.legislation.gov.uk/ukSI/2015/595/contents/made) (<http://www.legislation.gov.uk/ukSI/2015/595/contents/made>) and include parish councils for these types of application.

The special urgency procedure is intended to be similar to the exercise of the Secretary of State's call-in powers ([http://planningguidance.communities.gov.uk/blog/guidance/determining-a-planning-application/who-must-the-local-planning-authority-notify-once-its-has-made-a-decision-on-a-planning-application/#paragraph\\_022](http://planningguidance.communities.gov.uk/blog/guidance/determining-a-planning-application/who-must-the-local-planning-authority-notify-once-its-has-made-a-decision-on-a-planning-application/#paragraph_022)) under section 77 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/77) (<http://www.legislation.gov.uk/ukpga/1990/8/section/77>) of the Town and Country Planning Act 1990. Therefore very similar provisions apply. In particular, this means that the Secretary of State has to give the applicant and the local planning authority an opportunity to be heard at a local inquiry. This also means

that the Secretary of State's decision is final and cannot be the subject of any legal proceedings, except as provided in Part 12 [\[2\]](#) (<http://www.legislation.gov.uk/ukpga/1990/8/part/XII>) of that Act.

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### **How are fees paid for urgent applications for Crown development?**

The Crown has undertaken to pay fees for urgent applications directly to the Secretary of State. The fee to be paid is the same amount that would have been payable to the relevant local planning authority.

Further details can be found in the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 [\[2\]](#) (<http://www.legislation.gov.uk/uksi/2012/2920/contents/made>), as amended.

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### **What happens if an urgent application for Crown development is subject to public inquiry?**

If an urgent application for Crown development is subject to a public inquiry, the Town and Country Planning (Inquiries Procedure) (England) Rules 2000 [\[2\]](#) (<http://www.legislation.gov.uk/uksi/2006/1282/schedule/2/made>) apply, with some variations from the normal time-periods specified. For example, the period allowed for the lead-up to the inquiry where no pre-inquiry meeting is required is reduced from the normal minimum period of 22 weeks to 14 weeks. The Rules also apply to urgent applications for listed building consent.

After the inquiry, the Inspector will report to the Secretary of State who will then consider that report and issue the decision in line with the usual arrangements for called-in applications ([http://planningguidance.communities.gov.uk/blog/guidance/determining-a-planning-application/who-must-the-local-planning-authority-notify-once-its-has-made-a-decision-on-a-planning-application/#paragraph\\_022](http://planningguidance.communities.gov.uk/blog/guidance/determining-a-planning-application/who-must-the-local-planning-authority-notify-once-its-has-made-a-decision-on-a-planning-application/#paragraph_022)).

ID 44-034-20140306 Last updated 06 03 2014

## **7. Sensitive information in planning applications**

(<http://planningguidance.communities.gov.uk/blog/guidance/crown-development/sensitive-information-in-planning-applications/>)

### **Sensitive information in planning applications**

#### **Why might a planning application contain sensitive information?**

Bodies such as the diplomatic community and owners of critical national infrastructure may submit planning applications that contain sensitive information. These applications will often concern improvements to the physical security of the premises and may contain information which the applicant wishes the local planning authority to consider, but which the applicant does not wish to be made available on the planning register.

ID 44-035-20140306 Last updated 06 03 2014

#### **What can an applicant do if details of a proposed development are particularly sensitive?**

Before submitting a planning application, the applicant can discuss the status of sensitive information relating to a proposed development with the relevant local planning authority. If the local planning authority does not require this particular information to make a decision, then it can be omitted from the planning application. Otherwise, the applicant can follow the guidance set out below, if necessary.

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### **How can sensitive information in a planning application be protected?**

The applicant can request that the local planning authority does not publicise the application on their website (if that is their practice) and that sensitive information is kept separately from the main Register, so that it is only available on special request. Although applications for listed building consent do not have to be placed on a register, they are likely to accompany a planning application that does and should be treated in the same way.

It should be noted that, although this applies to applications made to the local planning authority, there is no power (other than through securing a section 321 Direction) to exclude any subsequent appeal and the documents relating to it, such as site plans, from the normal publicity arrangements.

ID 44-037-20140306 Last updated 06 03 2014

### **What is an applicant advised to do if their planning application contains sensitive information?**

The prospective applicant is advised to do the following:

- Take advice from an appropriate security adviser before submitting the application. This may be a police Special Branch or Counter-Terrorism security adviser or a security adviser from the Centre for the Protection of National Infrastructure.
- Contact the relevant local planning authority to agree the name of an officer to whom the application will be sent.
- Only submit the application on paper, with sensitive information placed in an annex so that it can be detached and kept separately from the planning register.
- Attach a covering letter to the application, requesting that the local planning authority makes arrangements to protect sensitive information. The letter will need to be endorsed by the applicant's security adviser.

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### **What arrangements can the local planning authority make when handling sensitive information?**

Any arrangements adopted by the local planning authority should be designed to give maximum protection to sensitive information consistent with the local planning authority's statutory obligations to put the planning application on the planning register.

The local planning authority is advised:

- not to scan the paper applications or place them on its website;
- not to scan other documents generated up to and including design stage, or place them on its website or store them on networked devices;
- if statutory consultees  
(<http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre->

decision-matters/) are required, request that they treat the paper application in the same way as described above;

- ask for proof of name and address of anyone making a request to inspect this part of the register. If the local planning authority suspects that the person may not be acting in good faith, it should consult the security adviser who previously endorsed the planning application;
- exercise appropriate discretion at planning committee meetings by preventing the public from attending; and
- exclude sensitive information from any report or minutes for the meeting, or other documents made available for inspection by the public.

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### **How can the public be notified of a planning decision without disclosing sensitive information?**

Notification of the decision must be given and the decision placed on the planning register in accordance with articles 35 and 40 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 [☐](http://www.legislation.gov.uk/uksi/2015/595/contents/made) (<http://www.legislation.gov.uk/uksi/2015/595/contents/made>). It should be possible to do so without compromising any sensitive information.

If planning permission is granted subject to conditions, or if the application is refused, the decision notice must state clearly and precisely the full reasons for each condition imposed or for the refusal. If this cannot be done without referring to the sensitive information, it would be helpful to prepare the decision notice in two parts so that the part containing the sensitive information can be kept separately from the main planning register.


ID 44-040-20140306 Last updated 06 03 2014

### **What happens if an application for sensitive development reaches public inquiry?**

If the application is refused, the applicant may consider applying to the Secretary of State for a 'section 321 direction (<http://planningguidance.communities.gov.uk/blog/guidance/crown-development/national-security-procedure/>)'.

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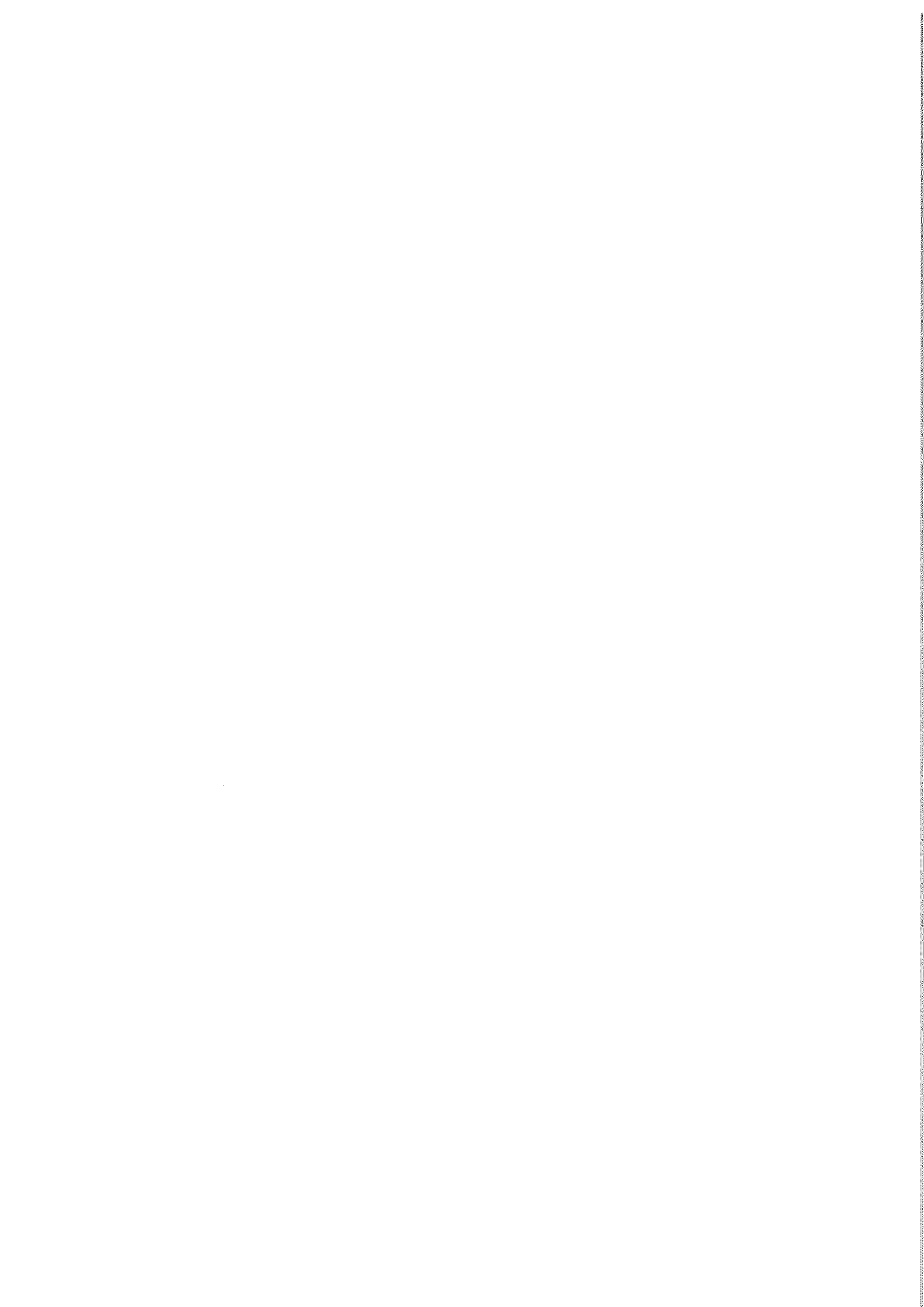
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 Department for Communities & Local Government  
(<https://www.gov.uk/government/organisations/department-for-communities-and-local-government>)

# Planning Practice Guidance

## Section Two (D-F):

- Design
- Determining a planning application
- Duty to cooperate
- Ensuring effective enforcement
- Ensuring the vitality of town centres
- Environmental Impact Assessment
- Fees for planning applications
- Flexible options for planning permissions
- Flood Risk and Coastal Change



# Planning Practice Guidance (<http://planningguidance.communities.gov.uk>)

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Guidance

## Design

Print 

1. The importance of good design (<http://planningguidance.communities.gov.uk/blog/guidance/design/the-importance-of-good-design/>)

### The importance of good design

#### Why does good design matter?

Good quality design is an integral part of sustainable development. The National Planning Policy Framework recognises that design quality matters and that planning should drive up standards across all forms of development. As a core planning principle, plan-makers and decision takers should always seek to secure high quality design.

Achieving good design is about creating places, buildings, or spaces that work well for everyone, look good, last well, and will adapt to the needs of future generations.

Good design responds in a practical and creative way to both the function and identity of a place. It puts land, water, drainage, energy, community, economic, infrastructure and other such resources to the best possible use – over the long as well as the short term.

ID 26-001-20140306 Last updated 06 03 2014

#### What does good design achieve?

Good design should:

- ensure that development can deliver a wide range of planning objectives
- enhance the quality buildings and spaces, by considering amongst other things form and function; efficiency and effectiveness and their impact on well being
- address the need for different uses sympathetically.

ID 26-002-20140306 Last updated 06 03 2014

#### How is good design delivered through plan making?

Local planning authorities should secure design quality through the policies adopted in their local plans. Good design is indivisible from good planning, and should be at the heart of the plan making process.

The National Planning Policy Framework requires Local Plans to develop robust and comprehensive polices setting out the quality of development that will be expected for the area. Local planning authorities will need to evaluate and understand the defining characteristics of the area as part of its evidence base, in order to identify appropriate design opportunities and policies.

These design policies will help in developing the vision for an area. They will assist in selecting sites and assessing their capacity for development. They will be useful in working up town centre strategies, and in developing sustainable transport solutions; all aimed at securing high quality design for places, buildings and spaces.

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## How can good design guide planning and development proposals?

Development proposals should reflect the requirement for good design set out in national and local policy. Local planning authorities will assess the design quality of planning proposals against their Local Plan policies, national policies and other material considerations.

Local planning authorities are required to take design into consideration and should refuse permission for development of poor design. Local planning authorities should give great weight to outstanding or innovative designs which help to raise the standard of design more generally in the area. This could include the use of innovative construction materials and techniques. Planning permission should not be refused for buildings and infrastructure that promote high levels of sustainability because of concerns about incompatibility with an existing townscape, if those concerns have been mitigated by good design (unless the concern relates to a designated heritage asset and the impact would cause material harm to the asset or its setting which is not outweighed by the proposal's economic, social and environmental benefits).

ID 26-004-20140306 Last updated 06 03 2014

## Who has the skills to judge good design?

By establishing sound, clear and easy to follow design policies and processes for use by both developers and local communities, local planning authorities can make design a more transparent and accessible part of the planning process.

To achieve good design the use of expert advice from appropriately skilled in house staff or consultants may sometimes be required. But design should not be the preserve of specialists, it is also important to seek the views of local communities.

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## 2. What planning objectives can good design help achieve?

(<http://planningguidance.communities.gov.uk/blog/guidance/design/what-planning-objectives-can-good-design-help-achieve/>)

### What planning objectives can good design help achieve?

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## Related policy

### National Planning Policy Framework

- Paragraph 63  
([http://planningguidance.com/sustainable-development/delivering-sustainable-development/7-requiring-good-design/#paragraph\\_63](http://planningguidance.com/sustainable-development/delivering-sustainable-development/7-requiring-good-design/#paragraph_63))
- Paragraph 64  
([http://planningguidance.com/sustainable-development/delivering-sustainable-development/7-requiring-good-design/#paragraph\\_64](http://planningguidance.com/sustainable-development/delivering-sustainable-development/7-requiring-good-design/#paragraph_64))
- Paragraph 65  
([http://planningguidance.com/sustainable-development/delivering-sustainable-development/7-requiring-good-design/#paragraph\\_65](http://planningguidance.com/sustainable-development/delivering-sustainable-development/7-requiring-good-design/#paragraph_65))



Design impacts on how people interact with places. Although design is only part of the planning process it can affect a range of economic, social and environmental objectives beyond the requirement for good design in its own right. Planning policies and decisions should seek to ensure the physical environment supports these objectives. The following issues should be considered:

- local character (including landscape setting)
- safe, connected and efficient streets
- a network of greenspaces (including parks) and public places
- crime prevention
- security measures
- access and inclusion
- efficient use of natural resources
- cohesive & vibrant neighbourhoods

ID 26-006-20140306 Last updated 06 03 2014

### **Planning should promote local character (including landscape setting)**

Development should seek to promote character in townscape and landscape by responding to and reinforcing locally distinctive patterns of development, local man-made and natural heritage and culture, while not preventing or discouraging appropriate innovation.

The successful integration of all forms of new development with their surrounding context is an important design objective, irrespective of whether a site lies on the urban fringe or at the heart of a town centre.

When thinking about new development the site's land form should be taken into account. Natural features and local heritage resources can help give shape to a development and integrate it into the wider area, reinforce and sustain local distinctiveness, reduce its impact on nature and contribute to a sense of place. Views into and out of larger sites should also be carefully considered from the start of the design process.

Local building forms and details contribute to the distinctive qualities of a place. These can be successfully interpreted in new development without necessarily restricting the scope of the designer. Standard solutions rarely create a distinctive identity or make best use of a particular site. The use of local materials, building methods and details can be an important factor in enhancing local distinctiveness when used in evolutionary local design, and can also be used in more contemporary design. However, innovative design should not be discouraged.

The opportunity for high quality hard and soft landscape design that helps to successfully integrate development into the wider environment should be carefully considered from the outset, to ensure it complements the architecture of the proposals and improves the overall quality of townscape or landscape. Good landscape design can help the natural surveillance of an area, creatively help differentiate public and private space and, where appropriate, enhance security.

ID 26-007-20140306 Last updated 06 03 2014

### **Planning should promote safe, connected and efficient streets**

Many of our streets already exist and the way they are changed or managed will not fall within planning controls. However large scale developments are likely to include new streets, while significant buildings or land use changes in established areas may change their nature and function, requiring alterations to existing streets.

Planning policies and decisions should look to create streets that support the character and use of the area. This means considering both their role as transport routes and their importance as local public spaces to accommodate non travel activities.

Development proposals should promote accessibility and safe local routes by making places that connect appropriately with each other and are easy to move through. Attractive and well-connected permeable street networks encourage more people to walk and cycle to local destinations.

For this reason streets should be designed to be functional and accessible for all, to be safe and attractive public spaces and not just respond to engineering considerations. They should reflect urban design qualities as well as traffic management considerations and should be designed to accommodate and balance a locally appropriate mix of movement and place based activities.

For example, boulevards which include service lanes, can support continuous frontage development by providing direct access to buildings and the parking and place based activities they generate, whilst still providing a high level of traffic capacity within the central lanes. Similarly Home Zones are one way to achieve a good balance between the needs of the local community and drivers in residential streets, by allowing through vehicle movement at low speeds, prioritising walking and cycling as travel modes and providing space for residents to meet, relax and play.

Streets should also be designed to support safe behaviours, efficient interchange between travel modes and the smooth and efficient flow of traffic. The transport user hierarchy should be applied within all aspects of street design – consider the needs of the most vulnerable users first: pedestrians, then cyclists, then public transport users, specialist vehicles like ambulances and finally other motor vehicles.

More people on the street can lead to improved personal security and road safety. Research shows that the presence of pedestrians causes drivers to travel more slowly and safely. Development layouts where buildings and trees frame and enclose streets, higher visual prominence of pedestrians and shorter site lines may all be helpful in supporting road safety.

Roads within a development which are built to adoptable standards, rather than being locked into estate management agreements (which inhibit change), are likely to allow a greater variety of uses to be developed over time.

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### **Planning should promote a network of greenspaces (including parks) and public places**

Development should promote public spaces and routes that are attractive, accessible, safe, uncluttered and work effectively for all users – including families, disabled people and elderly people. A system of open and green spaces that respect natural features and are easily accessible can be a valuable local resource and helps create successful places. A high quality landscape, including trees and semi-natural habitats where appropriate, makes an important contribution to the quality of an area.

Public spaces should be designed with a purpose in mind, and wherever possible deliver a range of social and environmental goals. They can take many different forms (for example path, street, square, park, plaza, green), and can serve different functions (for example informal, civic, recreational, commercial). Space left over after development, without a function, is a wasted resource, can detract from a place's sense of identity and can increase the likelihood of crime and anti-social behaviour occurring (a function could include informal spaces and design elements that add character, and should not be limited only formal functional uses). The benefit of greenspaces will be enhanced if they are integrated into a wider green network

(<http://planningguidance.communities.gov.uk/blog/guidance/natural-environment/green-infrastructure/>) of walkways, cycleways, open spaces and natural and river corridors.

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### **Planning should address crime prevention**

Designing out crime and designing in community safety should be central to the planning and delivery of new development. Section 17 of the Crime and Disorder Act 1998 requires all local authorities to exercise their functions with due regard to their likely effect on crime and disorder, and to do all they reasonably can to prevent crime and disorder. The prevention of crime and the enhancement of community safety are matters that a local authority should consider when exercising its planning functions under the Town and Country Planning legislation. Local authorities may, therefore, wish to consider how they will consult their Police and Crime Commissioners on planning applications where they are Statutory Consultees and agree with their police force how they will work effectively together on other planning matters.

Crime should not be seen as a stand alone issue, to be addressed separately from other design considerations. That is why guidance on crime has been embedded throughout the guidance on design rather than being set out in isolation.

It is important that crime reduction-based planning measures are based upon a clear understanding of the local situation, avoiding making assumptions about the problems and their causes. Consideration also needs to be given to how planning policies relate to wider policies on crime reduction, crime prevention and sustainable communities. This means working closely with the police force to analyse and share relevant information and good practice. Further information can be obtained from the Police.uk [\[2\]](http://www.police.uk/) (<http://www.police.uk/>) website.

ID 26-010-20140306 Last updated 06 03 2014

### **Planning should promote appropriate security measures**

Taking proportionate security measures should be a central consideration to the planning and delivery of new developments and substantive retrofits. Crime includes terrorism, and good counter terrorism protective security is also good crime prevention.

The UK faces a significant threat from international terrorism. The current assessed threat level to the UK can be found on the MI5 website [\[2\]](https://www.mi5.gov.uk/home/the-threats/terrorism/threat-levels.html) (<https://www.mi5.gov.uk/home/the-threats/terrorism/threat-levels.html>) where more information can also be found on what threat levels mean, who decides the level of threat and how the threat level system is used.

Where there is an identified risk, local planning authorities should work with police and other partners to ensure that an appropriate local strategy is in place to guide proposals for higher risk buildings and spaces where they exist. The

objective is to create safer places and buildings that are less vulnerable to terrorist attack and, should an attack take place, where people are better protected from its impact.

Pre-application discussions between security advisors such as Counter Terrorism Security Advisors and police Crime Prevention Design Advisors will ensure that applicants are aware right at the beginning of the design process of the level of risk and the sorts of measures available to mitigate this risk in a proportionate and well-designed manner. Advice on the matters to take in to account when considering the risk of terrorist attack, the proportionate response to that risk, and how best to integrate counter-terrorism protective security measures as part of good building and urban design can be found here [📄 \(https://www.gov.uk/government/publications/protecting-crowded-places\)](https://www.gov.uk/government/publications/protecting-crowded-places).

ID 26-011-20140306 Last updated 06 03 2014

### **Planning should promote access and inclusion**

An inclusive environment is one that can be accessed and used by everyone. It recognises and accommodates differences in the way people use the built environment.

Good design can help to create buildings and places that are for everyone. Planning can help break down unnecessary physical barriers and exclusions caused by the poor design of buildings and places.

Inclusive design acknowledges diversity and difference and is more likely to be achieved when it is considered at every stage of the development process, from inception to completion. However it is often mistakenly seen as a Building Regulations issue, to be addressed once planning permission has been granted, not at the planning application stage. The most effective way to overcome conflicting policies and to maximise accessibility for everyone is for all parties to consider inclusive design from the outset of the process. This is particularly important when considering historic buildings and conservation, and highways. Thinking at the design stage about how the completed building will be occupied and managed can overcome many barriers experienced by some users. Too often the needs of users, including disabled people, older people and families with small children, are considered too late in the day.

Inclusive design should not only be specific to the building, but also include the setting of the building in the wider built environment, for example, the location of the building on the plot; the gradient of the plot; the relationship of adjoining buildings; and the transport infrastructure.

Issues to consider include:

- proximity and links to public transport;
- parking spaces and setting down points in proximity to entrances;
- the positioning and visual contrast of street furniture and the design of approach routes to meet the needs of wheelchair users and people with visual impairments; and
- whether entrances to buildings are clearly identified, can be reached by a level or gently sloping approach and are well lit.

ID 26-012-20140306 Last updated 06 03 2014

### **Planning should promote efficient use of natural resources**

The structure, layout and design of places can help reduce their resource requirements in terms of energy demands, water and land take, and help to sustain natural ecosystems. Having a mix of uses and facilities within a neighbourhood can reduce travel demand and energy demands.

Ensuring a place is durable and adaptable will help make it less resource hungry over time. For example the layout of infrastructure servicing development (including water supply, sewerage, drainage, gas, electricity, cable, telephone, roads, footpaths, cycle ways and parks) should take account of foreseeable changes in demand to reduce the need for expensive future changes.

The layout and design of buildings and planting can reduce energy and water use and mitigate against flooding, pollution and over heating.

Passive solar design is the siting and design of buildings to maximise the use of the sun's energy for heating and cooling. Passive solar design takes advantage of natural characteristics in building materials and air to help reduce the additional energy needed for heating and cooling. Policies can encourage sites to be planned to permit good solar access to as many buildings as possible. The potential benefits of passive solar design can only be realised by careful siting and layout. For example, access roads could predominantly run east-west, with local distributors running north-south and glazing minimised on north facing elevations to reduce heat loss.

Passive solar design principles can be applied equally effectively in housing and commercial developments. It is important that passive design considers the potential for overheating in the summer, as well as reducing need for heating in the winter.

A range of design solutions can be considered to help avoid overheating and the need for air conditioning. For example, high levels of thermal mass, maximising natural ventilation, passive cooling using planting for shade, roof overhangs to provide shade for high-sun angles, and smart glazing materials. The urban heat island effect can be reduced by, for example, allowing sufficient space between buildings, tree planting, shading and street layouts which encourage air flow and using light and reflective surfaces or vegetation on buildings.

ID 26-013-20140306 Last updated 06 03 2014

### **Planning should promote cohesive and vibrant neighbourhoods**

Cohesion relies on a neighbourhood having a robust structure and identity. Local and neighbourhood plans can set aspirations for areas considering what is already successful about them and how they could be improved. This might include movement networks, the mix of uses and tenures, the amount and position of open space and local vernacular building materials and styles.

The health, wellbeing and quality of life of those who will be using an area will be influenced by its cohesion.

The vitality of neighbourhoods is enhanced by creating variety, choice and a mix of uses to attract people to live, work and play in the same area. Interesting and safe neighbourhoods often have a mix of uses which involves different people using the same parts of a building or place at different times of the day, as well as different uses happening in various parts of a building or space at the same time. Neighbourhoods should also cater for a range of demographic groups especially families and older people.

A mix of uses will be successful when they are compatible one with another and interact with each other positively avoiding opportunities for conflict. To encourage a mix of uses that are both vibrant and safe buildings can be designed so as to facilitate different access arrangements at different times.

ID 26-014-20140306 Last updated 06 03 2014

3. What is a well designed place? (<http://planningguidance.communities.gov.uk/blog/guidance/design/what-is-a-well-designed-place/>)

## What is a well designed place?

Well designed places are successful and valued. They exhibit qualities that benefit users and the wider area. Well designed new or changing places should:

- be functional;
- support mixed uses and tenures;
- include successful public spaces;
- be adaptable and resilient;
- have a distinctive character;
- be attractive; and
- encourage ease of movement.

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## A well designed place is functional

A building or place should be fit for purpose, designed and delivered in a way that delivers the intended function and achieves value for money in terms of lifetime costs. It should be intuitive, comfortable, safe and equally easy for all to use. It should relate well to its environmental circumstances so that occurrences such as flooding, temperature extremes and air pollution do not prevent it from being used.

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## A well designed place supports mixed uses and tenures

A good mix of uses and tenures is often important to making a place economically and socially successful, ensuring the community has easy access to facilities such as shops, schools, clinics, workplaces, parks, play areas, pubs or cafés. This helps achieve multiple benefits from the use of land, and encourage a healthier environment, reducing the need for travel and helping greater social integration. A mix of uses also allows communities and places to respond to change more readily by allowing a turnover of activities, for example with the same building or space performing different functions across a day, week or season.

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## A well designed public space is lively

Public spaces are available for everyone to see, use, enjoy, (e.g. streets, squares and parks). They help bring neighbourhoods together, and provide space for social activities and civic life. They also provide access, light, air and the setting for buildings. The position, design and detailing of public space is central to how it provides benefits for the wider community. The most successful spaces exhibit functional and attractive hard and soft landscape elements, with well orientated and detailed routes and include facilities such as seats and play equipment. Public art and sculpture can play an important role in making interesting and exciting places that people enjoy using.

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## A well designed place is adaptable and resilient

Successful places can adapt to changing circumstances and demands. They are flexible and are able to respond to a range of future needs, for example, in terms of working and shopping practices and the requirements of demographic and household change. Buildings often need to change their use over time, for

example from offices to housing. Designing buildings that can be adapted to different needs offers real benefits in terms of the use of resources and the physical stability of an area. Design features such as the position and scale of entrances and circulation spaces, and the ability of the construction to be modified, can affect how easily buildings can adapt to new demands. Places that are easy and practical to manage well tend to be more resilient. For example, where maintenance and policing are supported by good access, natural surveillance and hard wearing, easy to repair, materials.

ID 26-019-20140306 Last updated 06 03 2014

### **A well designed space has a distinctive character**

Distinctiveness is what often makes a place special and valued. It relies on physical aspects such as:

- the local pattern of street blocks and plots;
- building forms;
- details and materials;
- style and vernacular;
- landform and gardens, parks, trees and plants; and
- wildlife habitats and micro-climates.

Distinctiveness is not solely about the built environment – it also reflects an area's function, history, culture and its potential need for change.

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### **A well designed space is attractive**

The way a place looks, sounds, feels, and even smells, affects its attractiveness and long term success. Streetscapes, landscapes, buildings and elements within them all have an influence. So too can more transient elements – such as the way sunshine and shadows move across an area or the way it is maintained and cleaned. Composition of elements and the relationship between colours, textures, shapes and patterns are all important, as is the depth of views, particularly across roofscapes or between buildings.

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### **A well designed space promotes ease of movement**

The ability to move safely, conveniently and efficiently to and within a place will have a great influence on how successful it is. The experience for all users, whatever their mobility or mode of transport are important. A place should have an appropriate number of routes to and through it, not too many to make it anonymous but enough to allow easy legitimate movement. How direct and understandable these are, how closely they fit with desired lines of travel, and how well they connect with each other and destinations will all influence the success of the place.

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## **4. How should buildings and the spaces between them be considered?**

(<http://planningguidance.communities.gov.uk/blog/guidance/design/how-should-buildings-and-the-spaces-between-them-be-considered/>)

### **How should buildings and the spaces between them be considered?**

Plans, policies and decisions can effectively manage physical form at a variety of scales. This is how planning can help achieve good design and connected objectives. Where appropriate the following should be considered:

- layout – the way in which buildings and spaces relate to each other
- form – the shape of buildings
- scale – the size of buildings
- detailing – the important smaller elements of building and spaces
- materials – what a building is made from

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## Consider layout

This is how buildings, street blocks, routes and open spaces are positioned in an area and how they relate to each other. This provides the basic plan for development. Developments that endure have flexible layouts and design.

New development should look to respond appropriately to the existing layout of buildings, streets and spaces to ensure that adjacent buildings relate to each other, streets are connected, and spaces complement one another.

The layout of areas, whether existing or new, should be considered in relation to adjoining buildings, streets and spaces; the topography; the general pattern of building heights in the area; and views, vistas and landmarks into and out of the development site.

There may be an existing prevailing layout that development should respond to and potentially improve. Designs should ensure that new and existing buildings relate well to each other, that streets are connected, and spaces complement one another. This could involve following existing building lines, creating new links between existing streets or providing new public spaces.

In general urban block layouts provide an efficient template with building fronts and entrances to public spaces and their more private backs to private spaces. Such layouts minimise the creation of unsupervised and unsafe public spaces and unsafe access routes. However building frontages do not have to be continuous or flat. Breaks and features particularly where they emphasise entrances, can be successfully incorporated.

There should be a clear definition between public and private space. A buffer zone, such as a front garden, can successfully be used between public outdoor space and private internal space to support privacy and security.

ID 26-024-20140306 Last updated 06 03 2014

## Consider form

Buildings can be formed in many ways, for example tall towers, individual stand alone units, long and low blocks, terraces. They can all be successful, or unsuccessful, depending on where they are placed, how they relate to their surroundings, their use and their architectural and design quality.

Similarly streets can take different forms. From wide motorways with few entrances and exits to narrow lanes with many buildings accessed directly from them. Care should be taken to design the right form for the right place.

Some forms pose specific design challenges, for example how taller buildings meet the ground and how they affect local wind and sunlight patterns should be carefully considered. The length of some lower blocks can mean they disrupt local access and movement routes. Stand alone buildings can create ill defined spaces around them and terraces can appear monotonous and soulless if poorly designed.



ID 26-025-20140306 Last updated 06 03 2014

### **Consider scale**

This relates both to the overall size and mass of individual buildings and spaces in relation to their surroundings, and to the scale of their parts.

Decisions on building size and mass, and the scale of open spaces around and between them, will influence the character, functioning and efficiency of an area. In general terms too much building mass compared with open space may feel overly cramped and oppressive, with access and amenity spaces being asked to do more than they feasibly can. Too little and neither land as a resource or monetary investment will be put to best use.

The size of individual buildings and their elements should be carefully considered, as their design will affect the: overshadowing and overlooking of others; local character; skylines; and vistas and views. The scale of building elements should be both attractive and functional when viewed and used from neighbouring streets, gardens and parks.

The massing of development should contribute to creating distinctive skylines in cities, towns and villages, or to respecting existing skylines. Consideration needs to be given to roof space design within the wider context, with any adverse visual impact of rooftop servicing minimised.

Account should be taken of local climatic conditions, including daylight and sunlight, wind, temperature and frost pockets.

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### **Consider details**

The quality of new development can be spoilt by poor attention to detail. Careful consideration should be given to items such as doors, windows, porches, lighting, flues and ventilation, gutters, pipes and other rain water details, ironmongery and decorative features. It is vital not only to view these (and other) elements in isolation, but also to consider how they come together to form the whole and to examine carefully the 'joins' between the elements.

ID 26-027-20140306 Last updated 06 03 2014

### **Consider materials**

Materials should be practical, durable, affordable and attractive. Choosing the right materials can greatly help new development to fit harmoniously with its surroundings. They may not have to match, but colour, texture, grain and reflectivity can all support harmony.

There are a wide range of building and open space materials available and more products developed all the time. Innovative construction materials and techniques can help to achieve well designed homes and other buildings. This could include offsite construction and manufacturing which can help to deliver energy efficient and durable buildings more quickly. Although materials and building techniques may not be specified before planning permission is granted, the functions they will be expected to perform should be clear early on.

ID 26-028-20140306 Last updated 06 03 2014

## **5. Which planning processes and tools can we use to help achieve good design?**

(<http://planningguidance.communities.gov.uk/blog/guidance/design/which-planning-processes-and-tools-can-we-use-to-help-achieve-good-design/>)

## Which planning processes and tools can we use to help achieve good design?

### In development plans:

The promotion of good design should be sought at all stages in the planning process. At the development plan stage this will be carried out through:

- careful plan and policy formulation
- the use of proper consultative and participatory techniques
- where appropriate the preparation of masterplans, briefs and site specific policies

### In planning applications:

In the evolution of planning applications and proposals there are established ways in which good design can be achieved. These include:

- pre-application discussions
- design and access statements
- design review
- design codes
- decisions on applications
- the use and implementation of planning conditions and agreements

ID 26-029-20140306 Last updated 06 03 2014

## Good plan and policy formulation

A Local or Neighbourhood plan is essential to achieving high quality places. A key part of any plan is understanding and appreciating the context of an area, so that proposals can then be developed to respect it. Good design interprets and builds on historic character, natural resources and the aspirations of local communities.

The National Planning Policy Framework emphasises the importance of viability. It is futile designing and planning if there is no hope of proposals being implemented. Local plans must be informed by what is deliverable. However, proper planning, including good design, is the starting point. Initial proposals should then evolve to achieve the most appropriate balance between the vision and deliverability.

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## Good consultative and participatory techniques

Local communities play a vital part in good design. Those who live and work in an area often best understand the way in which places operate and their strengths. Local plans must evolve in a way that genuinely allows for local leadership and participation. Local plans should set a clear design framework. Neighbourhood plans can be used by local communities to develop their vision of how their area should look, feel and function.

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## Good masterplans and briefs

Masterplans can set out the strategy for a new development including its general layout and scale and other aspects that may need consideration. The process of developing masterplans will include testing out options and considering the most important parameters for an area such as the mix of uses, requirement for open space or transport infrastructure, the amount and scale of buildings, and the quality of buildings.

Masterplans can show these issues in an indicative layout and massing plan where the shape and position of buildings, streets and parks is set out. Masterplans can sometimes be submitted for outline planning permission or they can be adopted as local policy requirements.

Care should be taken to ensure that masterplans are viable and well understood by all involved. In particular graphical impressions of what the development will look like should not mislead the public by showing details not yet decided upon as certainties.

Masterplans, briefs and site policies can stay in place for a long time. They need to be flexible enough to adapt to changing circumstances.

ID 26-032-20140306 Last updated 06 03 2014

### Using pre application discussion

Pre application discussions are an opportunity to discuss the design policies, requirements and parameters that will be applied to a site. The local authority can explain the design issues they feel are most important and the developer can explain their own objectives and aspirations. Being able to inform and influence the design of a proposed development early in the design process is more efficient than trying to implement suggested revisions at a later stage – particularly if this relates to a major proposal.

The local authority may draw their comments from in house appropriately skilled and experienced staff, external consultants or design review panels. The local planning authority should consider offering design review when appropriate, as part of their pre-application service.

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### Using design and access statements

A Design and Access Statement is a concise report accompanying certain applications for planning permission and applications for listed building consent. They provide a framework for applications to explain how the proposed development is a suitable response to the site and its setting and demonstrate that it can be adequately accessed by prospective users. Information on what applications must be accompanied by a Design and Access statement and what they should include can be found here

([http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/national-information-requirements/#paragraph\\_029](http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/national-information-requirements/#paragraph_029)).

ID 26-034-20140306 Last updated 06 03 2014

### Using Design review

Design Review is a tried and tested method of promoting good design and is an effective way to improve quality. Local planning authorities should have local design review arrangements in place to provide assessment of proposals and to support high standards of design. Local authorities should, when appropriate, refer major projects for a national design review. Design review is most effective if done at the early stages of an application, and in many cases local authorities charge for this as part of a pre-application service.

Local authorities can source design reviews in a variety of ways. They could, for example, choose to appoint their own design review panel or share resources with other local authorities or outsource to external organisations.

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### Related policy

#### National Planning Policy Framework

- Paragraph 62 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/7-requiring-good-design/#paragraph\\_62](http://planningguidance.com/sustainable-development/delivering-sustainable-development/7-requiring-good-design/#paragraph_62))

Developers can apply for planning permission without going through a design review panel. However schemes that have been through the design review process, and have developed positively in response to the recommendations from the design review panel, are less likely to be refused planning permission on the grounds of poor design.

The purpose of design review is to improve the design quality of new development. In assessing applications, local planning authorities should have regard to the recommendations from the design review panel.

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## Using design codes

A design code is a type of detailed design guidance that is particularly useful for complex scenarios involving multiple parties in long-term development. A code can be a way of simplifying the processes associated with new development to give more certainty to all those involved and help to make high quality places. Code preparation can allow organisations and local communities to work together more effectively, helping to build consensus about what kind of place everyone wants to create.

Design codes vary mainly according to their level of prescription (what they fix and what they leave flexible) and the scale at which they operate. They may be appropriate for use on an area basis to shape new build development. They can be applied to all development types including residential, commercial, mixed use, redevelopment of parts of towns or cities, open space, landscape or public realm requirements. Design codes can be used in other situations. For example, they may be appropriate to guide the design of repetitive minor householder planning applications such as house extensions, alterations, and the like in a particular locality. They often link to adopted masterplans.

Preparing a good code is about finding a balance between technical specificity and a succinct description of what is required. Some of the best and most effective codes are very short.

Design codes seek to capture the specific requirements of a place and encourage interested parties to think together about each development in its entirety as a unique place.

Local planning authorities and developers should consider using design codes where they could help deliver high quality outcomes where for example:

- they wish to coordinate design outcomes across large or complex sites to deliver a coherent locally agreed vision;
- wish to ensure consistency across large sites which may be in multiple ownership and/or where development is to be phased and more than one developer and design team is likely to be involved;

Codes can also be used by applicants when submitting a planning application, if there is a need to retain some flexibility on the final design of the development (e.g. if the development is a self/custom build housing scheme where the final design of homes depends on the preferences of future home owners ).

To promote speed of implementation, avoid stifling responsible innovation and provide flexibility, design codes should wherever possible avoid overly prescriptive detail and encourage sense of place and variety (unless local circumstances can clearly justify a different approach).

Codes should be succinct and carefully distinguish mandatory from discretionary components, avoiding ambiguous aspirational statements, unnecessary jargon and they should define any use of key technical terms.

Although design codes are most often used as part of the planning application process they can be used at other points including:

- via formal adoption, principally through a Local Plan or neighbourhood plan;
- by being incorporated within Community Right to Build Orders or as part of a local development order or Neighbourhood Development Order; and
- by the exercise of freehold rights through development agreements and covenants.

The choice of approach depends on local circumstances and the aims and aspirations of the promoter of the code.

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### Using decisions on applications

Decisions on planning applications should clearly support the design objectives in the Development Plan. If a local authority decides that an application should be refused on design grounds there should be a clear explanation of the decision.

ID 26-037-20140306 Last updated 06 03 2014

### Using planning agreements and conditions

The design process often continues after the granting of permission. If the local authority feels that detailed design issues are central to the acceptability of a scheme, they may wish to use conditions to require these to be approved at a later date. This could be due to the sensitivity of the site, its relationship to existing properties or because permission relied on the integrity and quality of the architecture and landscape design proposed. Whilst conditions can be used to improve the certainty of the design outcome that will be delivered, the Local Planning Authority should ensure that each condition meets the six tests (<http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/application-of-the-six-tests-in-nppf-policy/>) in National Planning Policy Framework policy.

Conditions that prescribe very detailed specifications for materials (such as bricks) should not be used unless they are necessary, for example where there is a heritage or design need. Local planning authorities can avoid overly rigid conditions by building in the flexibility to allow them to permit acceptable alternatives. This is particularly useful where there may be supply shortages of materials or to encourage innovative appropriate alternative approaches (for example, off-site construction).

ID 26-038-20140306 Last updated 06 03 2014

## 6. Are there design issues that relate to particular types of development?

(<http://planningguidance.communities.gov.uk/blog/guidance/design/are-there-design-issues-that-relate-to-particular-types-of-development/>)

### Are there design issues that relate to particular types of development?

The qualities of well designed places are similar across most developments. However it is useful to consider what they can mean in practice for particular places or development types:

- housing design
- town centre design
- street design and transport corridors

ID 26-039-20140306 Last updated 06 03 2014

## Housing design issues

Well-designed housing should be functional, attractive and sustainable. It should also be adaptable to the changing needs of its occupants.

In well-designed places affordable housing is not distinguishable from private housing by its design, nor is it banished to the least attractive part of the site.

Consideration should be given to the servicing of dwellings such as the storage of bins and bikes, access to meter boxes, space for drying clothes or places for deliveries. Such items should be carefully considered and well designed to ensure they are discreet and can be easily used in a safe way.

Unightly bins can damage the visual amenity of an area. Carefully planned bin storage is, therefore, particularly important. Local authorities should ensure that each dwelling is carefully planned to ensure there is enough discretely designed and accessible storage space for all the different types of bin used in the local authority area (for example landfill, recycling, food waste).

In terms of parking, there are many different approaches that can support successful outcomes, such as on-street parking, in-curtilage parking and basement parking. Natural surveillance of parked cars is an important consideration. Car parking and service areas should be considered in context to ensure the most successful outcome can be delivered in each case.

ID 26-040-20140306 Last updated 06 03 2014

## Town centre issues

Good design can help town centres by ensuring a robust relationship between uses, facilities, activities and travel options. It can also help create attractive and comfortable places people choose to visit.

Access to town centres by all modes should be supported. This could involve clear, convenient, comfortable and safe walking and cycling routes, parking facilities, bus stops and station entrances and exits.

Well integrated proposals for movement between arrival points (such as train stations, bus stops, car parks) and the town centre can help support a successful centre. Consideration should be given to moving the arrival points closer to key attractions – for example moving bus stops, relocating car parks, reconfiguring entrances and exits of stations and car parks to minimise distance from the town centre. Moving arrival points can be expensive or not possible, so using redevelopment opportunities to create more attractions and activities on sites that lie between the arrival point and the established town centre attractions should be considered.

Improvements to the walking environment within the centre can support longer visits which take in more shops and facilities. Both formal and informal crossing facilities should be provided following key desire lines as much as is practicable.

Town centre buildings should include active frontages and entrances that support town centre activities. Where appropriate they may help to diversify town centre uses and the offers they provide. The quality of signage, including that for shops and other commercial premises, is important and can enhance identity and legibility.


The quality of parking in town centres is important; it should be convenient, safe and secure. Parking charges should be appropriate and not undermine the vitality of town centres and local shops, and parking enforcement should be proportionate.

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## Street design and transport corridors issues

Successful streets are those where traffic and other activities have been integrated successfully, and where buildings and spaces, and the needs of people, not just of their vehicles, shape the area.

In many cases shortcomings in street design reflect the rigid application of highway engineering standards in terms of road hierarchies, junction separation distances, sight lines and turning radii for service vehicles. The result is often a sense of sprawl and formlessness and development which contradicts some of the key principles of urban design. Imaginative and context-specific design that does not rely on conventional standards can achieve high levels of safety and amenity. Each street should be considered as unique – understand its location, character and eccentricities. Designs should relate to these local characteristics, not to something built elsewhere.

Every element of the street scene contributes to the identity of the place, including for example lighting, railings, litter bins, paving, fountains and street furniture. These should be well designed and sensitively placed. Unnecessary clutter and physical constraints such as parking bollards and road humps should be avoided. Street clutter is a blight, as the excessive or insensitive use of traffic signs and other street furniture has a negative impact on the success of the street as a place. The removal of unnecessary street clutter can, in itself, make pavements clearer and more spacious for pedestrians, including the disabled, and improve visibility and sight lines for road users. Street signs should be periodically audited with a view to identifying and removing unnecessary signs. The Department for Transport has published advice to highways authorities on reducing sign clutter  (<https://www.gov.uk/government/publications/reducing-sign-clutter>).

Public transport, and in particular interchanges, should be designed as an integral part of the street layout. The quality of design, configuration and facilities can make interchanges feel safe and easy to use, give them a sense of place to support social, economic and environmental goals, whilst also instilling a sense of civic pride in those that use them. Physical measures intended to protect and deliver security benefits, should be considered as an integral part of the design.

The likelihood of people choosing to walk somewhere is influenced not only by distance but also by the quality of the walking experience. When considering pedestrians plan for wheelchair users and people with sensory or cognitive impairments. Legible design, which makes it easier for people to work out where they are and where they are going, is especially helpful for disabled people.

Physical measures intended to protect pedestrians and road users, which can also deliver security benefits, should be secondary but considered as an integral part of the design. Barriers between the road and pedestrians are usually visually unattractive to the street scene, can form a hazard for cyclists who can be squeezed against them, and create the impression that the roads are for cars only; they should only be used when there is an overriding safety issue.

ID 26-042-20140306 Last updated 06 03 2014





## Planning Practice Guidance (<http://planningguidance.communities.gov.uk>)

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Guidance

### Determining a planning application


Print 

#### 1. What are the time periods for determining a planning application?

(<http://planningguidance.communities.gov.uk/blog/guidance/determining-a-planning-application/what-are-the-time-periods-for-determining-a-planning-application/>)

#### What are the time periods for determining a planning application?

Once a planning application has been validated, the local planning authority should make a decision on the proposal as quickly as possible, and in any event within the statutory time limit unless a longer period is agreed in writing with the applicant.

The statutory time limits 

(<http://www.legislation.gov.uk/ukxi/2015/595/article/34/made>) are usually 13 weeks for applications for major development and eight weeks for all other types of development (unless an application is subject to an Environmental Impact Assessment (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/>), in which case a 16 week limit applies).

Where a planning application takes longer than the statutory period to decide, and an extended period has not been agreed with the applicant, the Government's policy is that the decision should be made within 26 weeks at most in order to comply with the 'planning guarantee'.

ID 21b-001-20140306 Last updated 06 03 2014

#### What is the Government's 'planning guarantee'?

The planning guarantee is the Government's policy that no application should spend more than a year with decision-makers, including any appeal. In practice this means that planning applications should be decided in no more than 26 weeks, allowing a similar period for any appeal. The planning guarantee does not replace the statutory time limits for determining planning applications.

ID 21b-002-20140306 Last updated 06 03 2014

#### In what ways can a longer time period be agreed?

Where it is clear at the outset that an extended period will be necessary to process an application, the local planning authority and the applicant should consider entering into a planning performance agreement

(<http://planningguidance.communities.gov.uk/blog/guidance/before-submitting-an-application/planning-performance-agreements/>) before the application is submitted.

If a valid application is already being considered and it becomes clear that more time than the statutory period is genuinely required, then the local planning authority should ask the applicant to consider an agreed extension of time. Any such agreement must be in writing and set out the timescale within which a decision is expected.

The timetable set out in a planning performance agreement or extension of time may be varied by agreement in writing between the applicant and the local planning authority.

ID 21b-003-20140306 Last updated 06 03 2014

### What happens if an application is not dealt with on time?

Where a valid application has not been determined within the relevant statutory period (or such other period as has been agreed in writing between the local planning authority and the applicant), the applicant has a right to appeal to the Secretary of State

(<http://planningguidance.communities.gov.uk/blog/guidance/appeals/>) against non-determination.

If the applicant has not exercised this right of appeal, and the application remains undetermined after 26 weeks, then the fee paid by the applicant will be refunded to them (unless a longer period for the decision has been agreed).

Applicants should not attempt to delay a decision on their application simply to obtain a fee refund. A local planning authority will be justified in refusing permission where an applicant causes deliberate delay and has been unwilling to agree an extension of time; and such behaviour will be taken into account in determining any claim for costs by the local planning authority if the applicant then goes to appeal.

ID 21b-004-20140306 Last updated 06 03 2014

### What happens if a planning authority fails repeatedly to decide applications on time?

Section 62B of the Town and Country Planning Act 1990 (as amended) [\[a\]](http://www.legislation.gov.uk/ukpga/2013/27/section/1/enacted) (<http://www.legislation.gov.uk/ukpga/2013/27/section/1/enacted>) allows the Secretary of State to designate local planning authorities that “are not adequately performing their function of determining applications”, when assessed against published criteria. Those criteria include the percentage of applications for major development that have been determined within the statutory period or such extended time as has been agreed between the local planning authority and the applicant.

Where a local planning authority has been designated in this way, Section 62A of the Town and Country Planning Act 1990 (as amended) [\[a\]](http://www.legislation.gov.uk/ukpga/2013/27/section/1/enacted) (<http://www.legislation.gov.uk/ukpga/2013/27/section/1/enacted>) allows applications for major development to be submitted directly to the Secretary of State (if the applicant wishes) as long as the designation remains in place.

ID 21b-005-20140306 Last updated 06 03 2014

## 2. How must decisions on applications for planning permission be made?

(<http://planningguidance.communities.gov.uk/blog/guidance/determining-a-planning-application/how-must-decisions-on-applications-for-planning-permission-be-made/>)

### How must decisions on applications for planning permission be made?

To the extent that development plan policies are material to an application for planning permission the decision must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (see section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 [\[a\]](http://www.legislation.gov.uk/ukpga/2004/5/section/38) (<http://www.legislation.gov.uk/ukpga/2004/5/section/38>) – these provisions also apply to appeals).

The National Planning Policy Framework stresses the importance of having a planning system that is genuinely plan-led. Where a proposal accords with an up-to-date development plan it should be approved without delay, as required by the presumption in favour of sustainable development at paragraph 14 of the

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#### Related policy

##### National Planning Policy Framework

- Paragraph 14 ([http://planningguidance.com/sustainable-development/#paragraph\\_14](http://planningguidance.com/sustainable-development/#paragraph_14))

### National Planning Policy Framework


([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/#paragraph\\_14](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/#paragraph_14)).

Where the development plan is absent, silent or the relevant policies are out of date, paragraph 14 of the National Planning Policy Framework ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/#paragraph\\_14](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/#paragraph_14)) requires the application to be determined in accordance with the presumption in favour of sustainable development unless otherwise specified.

ID 21b-006-20140306 Last updated 06 03 2014

## What constitutes the development plan?

The statutory development plan is the plan for the future development of an area. It consists of:

- Local Plans (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>): development plan documents adopted by local planning authorities, including any 'saved' policies from plans that are otherwise no longer current, and those development plan documents that deal specifically with minerals and waste.
- Neighbourhood plans (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/>): where these have been supported by the local community at referendum and subsequently made by the local planning authority.
- In London only, the London Plan  (<http://www.london.gov.uk/priorities/planning/london-plan>): the spatial development strategy prepared by the Mayor of London.
- Any 'saved policies' from the former Regional Strategies, until such time as these are replaced by Local Plan policies.

ID 21b-007-20140306 Last updated 06 03 2014

## What is a material planning consideration?

A material planning consideration is one which is relevant to making the planning decision in question (e.g. whether to grant or refuse an application for planning permission).

The scope of what can constitute a material consideration is very wide and so the courts often do not indicate what cannot be a material consideration. However, in general they have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property or loss of private rights to light could not be material considerations.

ID 21b-008-20140306 Last updated 06 03 2014

## What weight can be given to a material consideration?

The law makes a clear distinction between the question of whether something is a material consideration and the weight which it is to be given. Whether a particular consideration is material will depend on the circumstances of the case and is ultimately a decision for the courts. Provided it has regard to all material considerations, it is for the decision maker to decide what weight is to be given to the material considerations in each case, and (subject to the test of reasonableness) the courts will not get involved in the question of weight.

ID 21b-009-20140306 Last updated 06 03 2014

## What role does the National Planning Policy Framework have

## in decision taking?

The National Planning Policy Framework represents up-to-date Government planning policy and must be taken into account where it is relevant to a planning application or appeal. If decision takers choose not to follow the National Planning Policy Framework, clear and convincing reasons for doing so are needed. A development that is consistent with the National Planning Policy Framework does not remove the requirement to determine the application in accordance with the development plan unless there are other material considerations that indicate otherwise.

ID 21b-010-20140306 Last updated 06 03 2014

## When should a 'local finance consideration' be taken into account as a material planning consideration?

Section 70(2) of the Town and Country Planning Act 1990 (as amended [\[2\]](http://www.legislation.gov.uk/ukpga/2011/20/section/143/enacted)) provides that a local planning authority must have regard to a local finance consideration as far as it is material. Section 70(4) of the 1990 Act (as amended [\[2\]](http://www.legislation.gov.uk/ukpga/2011/20/section/143/enacted)) defines a local finance consideration as a grant or other financial assistance that has been, that will or that could be provided to a relevant authority by a Minister of the Crown (such as New Homes Bonus payments), or sums that a relevant authority has received, or will or could receive, in payment of the Community Infrastructure Levy.

Whether or not a 'local finance consideration' is material to a particular decision will depend on whether it could help to make the development acceptable in planning terms. It would not be appropriate to make a decision based on the potential for the development to raise money for a local authority or other Government body.

In deciding an application for planning permission or appeal where a local financial consideration is material, decision takers need to ensure that the reasons supporting the decision clearly state how the consideration has been taken into account and its connection to the development.

New Homes Bonus payments recognise the efforts made by authorities to bring residential development forward. Even where anticipated Bonus payments are not a material consideration in making planning decisions, they can be noted for information in committee reports on applications for housing. Where this is done, care will be required not to imply that Bonus payments are relevant to the decision before the committee.

ID 21b-011-20140612 Last updated 12 06 2014

## What approach must be taken where development plan policies conflict with one another?

Under section 38(5) of the Planning and Compulsory Purchase Act 2004 [\[2\]](http://www.legislation.gov.uk/ukpga/2004/5/section/38) if a policy contained in a development plan for an area conflicts with another policy in the development plan, the conflict must be resolved in favour of the policy which is contained in the last document to be adopted, approved or published.

Conflicts between development plan policies adopted, approved or published at the same time must be considered in the light of all material considerations, including local priorities and needs, as guided by the National Planning Policy Framework.

ID 21b-012-20140306 Last updated 06 03 2014

## Can the local planning authority decide not to follow the

## policies in the development plan?

The local planning authority may depart from development plan policy where material considerations indicate that the plan should not be followed, subject to any conditions prescribed by direction by the Secretary of State. This power to depart from development plan policy is confirmed in article 32 [\[2\]](http://www.legislation.gov.uk/uksi/2015/595/article/32/made)

(<http://www.legislation.gov.uk/uksi/2015/595/article/32/made>) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 .

In cases where the local planning authority intends to depart from development plan policy, article 15(3) [\[2\]](http://www.legislation.gov.uk/uksi/2015/595/article/15/made)

(<http://www.legislation.gov.uk/uksi/2015/595/article/15/made>) of the Development Management Procedure Order sets out the publicity requirements which must be followed before the decision is taken.

ID 21b-013-20150327 Last updated 27 03 2015

## In what circumstances might it be justifiable to refuse planning permission on the grounds of prematurity?

Annex 1 of the National Planning Policy Framework

(<http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/annex-1-implementation/>) explains how weight may be given to policies in emerging plans. However in the context of the Framework and in particular the presumption in favour of sustainable development

([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/#paragraph\\_14](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/#paragraph_14)) – arguments that an application is premature are unlikely to justify a refusal of planning permission other than where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, taking the policies in the Framework and any other material considerations into account. Such circumstances are likely, but not exclusively, to be limited to situations where both:

a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan

(<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>) or Neighbourhood Planning

(<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/>); and

b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.

Refusal of planning permission on grounds of prematurity will seldom be justified where a draft Local Plan has yet to be submitted for examination, or in the case of a Neighbourhood Plan, before the end of the local planning authority publicity period. Where planning permission is refused on grounds of prematurity, the local planning authority will need to indicate clearly how the grant of permission for the development concerned would prejudice the outcome of the plan-making process.

ID 21b-014-20140306 Last updated 06 03 2014

## Should children's best interests be taken into account when determining planning applications?

Local authorities need to consider whether children's best interests are relevant to any planning issue under consideration. In doing so, they will want to ensure their approach is proportionate. They need to consider the case before them, and need to be mindful that the best interests of a particular child will not always outweigh other considerations including those that impact negatively on

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## Related policy

### National Planning Policy Framework

- Annex 1  
(<http://planningguidance.com/sustainable-development/annex-1-implementation/>)
- Paragraph 14  
([http://planningguidance.com/sustainable-development/#paragraph\\_14](http://planningguidance.com/sustainable-development/#paragraph_14))

the environment or the wider community. This will include considering the scope to mitigate any potential harm through non-planning measures, for example through intervention or extra support for the family through social, health and education services.

ID 21b-028-20150901 Last updated 01 09 2015

### 3. Who in a local planning authority makes a planning decision?

(<http://planningguidance.communities.gov.uk/blog/guidance/determining-a-planning-application/who-in-a-local-planning-authority-makes-a-planning-decision/>)

#### **Who in a local planning authority makes a planning decision?**

Section 101 of the Local Government Act 1972 <sup>2</sup>

(<http://www.legislation.gov.uk/ukpga/1972/70/section/101>) allows the local planning authority to arrange for the discharge any of its functions by a committee, sub-committee, or an officer or by any other local authority. An exception where this power may not apply is where the local authority's own application for development could give rise to a conflict of interest, when regulation 10 of the Town and Country Planning General Regulations 1992 <sup>3</sup> (<http://www.legislation.gov.uk/uksi/1992/1492/body/made>) applies.

The exercise of the power to delegate planning functions is generally a matter for individual local planning authorities, having regard to practical considerations including the need for efficient decision-taking and local transparency. It is in the public interest for the local planning authority to have effective delegation arrangements in place to ensure that decisions on planning applications that raise no significant planning issues are made quickly and that resources are appropriately concentrated on the applications of greatest significance to the local area.

Local planning authority delegation arrangements may include conditions or limitations as to the extent of the delegation, or the circumstances in which it may be exercised.

ID 21b-015-20140306 Last updated 06 03 2014

#### **How must elected councillors and other members of the local authority consider planning applications?**

Local authority members are involved in planning matters to represent the interests of the whole community and must maintain an open mind when considering planning applications. Where members take decisions on planning applications they must do so in accordance with the development plan unless material considerations indicate otherwise. Members must only take into account material planning considerations, which can include public views where they relate to relevant planning matters. Local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission, unless it is founded upon valid material planning reasons.

ID 21b-016-20140306 Last updated 06 03 2014

#### **How is the conduct of elected members regulated?**

Under Part I of the Localism Act 2011 <sup>4</sup>

(<http://www.legislation.gov.uk/ukpga/2011/20/part/1/enacted>) each local authority is required to adopt a local Code of Conduct that sets out the expectations as to the conduct of members in carrying out their official duties. The local authority must also keep a register of members' interests.

The Department for Communities and Local Government publication 'Openness and transparency on personal interests: a guide for councillors' <sup>5</sup> (<https://www.gov.uk/government/publications/openness-and-transparency-on-personal-interests>)

interests-guidance-for-councillors) gives practical information about members' personal interests and the standards arrangements introduced by the Localism Act 2011.

ID 21b-017-20140306 Last updated 06 03 2014

### **Can an elected member who has represented constituents interested in a planning application be accused of pre-determination or bias, if he or she subsequently speaks or votes on that application?**

Section 25 of the Localism Act 2011 [\[2\]](#)

(<http://www.legislation.gov.uk/ukpga/2011/20/section/25/enacted>) clarifies that a member is not to be regarded as being unable to act fairly or without bias if they participate in a decision on a matter simply because they have previously expressed a view or campaigned on it. Members may campaign and represent their constituents – and then speak and vote on those issues – without fear of breaking the rules on pre-determination. Members may also speak with developers and express positive views about development.

A distinction can be drawn between pre-determination and pre-disposition. Members must not have a closed mind when they make a decision, as decisions taken by those with pre-determined views are vulnerable to successful legal challenge. At the point of making a decision, members must carefully consider all the evidence that is put before them and be prepared to modify or change their initial view in the light of the arguments and evidence presented. Then they must make their final decision at the meeting with an open mind based on all the evidence.

ID 21b-018-20140306 Last updated 06 03 2014

4. Who must the local planning authority notify once it has made a decision on a planning application? (<http://planningguidance.communities.gov.uk/blog/guidance/determining-a-planning-application/who-must-the-local-planning-authority-notify-once-its-has-made-a-decision-on-a-planning-application/>)

### **Who must the local planning authority notify once it has made a decision on a planning application?**

The local planning authority must formally notify the applicant of their decision using a written decision notice. Under article 33(2) [\[2\]](#)

(<http://www.legislation.gov.uk/uksi/2015/595/article/33/made>) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 the local planning authority must also give notice of their decision to every person who has made a representation who is an owner of the land or a tenant of an agricultural holding on the land or an adjoining owner or occupier.

The local planning authority may take a flexible approach and make a judgement about whether additional publication of the decision is needed on a case by case basis, weighing up factors such as the level of public interest in the application and the cost of additional notification. It is particularly important that the local planning authority notifies the Environment Agency of any decision taken on a planning application where the Agency has objected on flood risk grounds (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/how-local-planning-authorities-should-involve-the-environment-agency-when-determining-planning-applications-where-there-is-a-risk-of-flooding/>).

ID 21b-019-20140612 Last updated 12 06 2014

### **What information must the local planning authority include on their written decision notices of planning applications to applicants?**

The information that the local planning authority must provide on their decision notices is set out in article 35 [\[2\]](http://www.legislation.gov.uk/uksi/2015/595/article/35/made) (<http://www.legislation.gov.uk/uksi/2015/595/article/35/made>] of the Town and Country Planning (Development Management Procedure) (England) Order 2015. This includes the requirement, where planning permission is refused, to state clearly and precisely the full reasons for the refusal, specifying all policies and proposals in the development plan that are relevant to the decision. While the local planning authority is no longer required to give reasons for approval on decision notices, it is important that the other paperwork that supports such decisions clearly shows how that decision has been reached.

The local planning authority must also include a notification to the applicant with the decision notice in the terms (or substantially in the terms) set out in Schedule 5 [\[2\]](http://www.legislation.gov.uk/uksi/2015/595/schedule/5/made) (<http://www.legislation.gov.uk/uksi/2015/595/schedule/5/made>) to the Development Management Procedure Order in the following cases:

- where planning permission is granted subject to conditions;
- where planning permission is refused;
- where the Secretary of State has given a direction restricting the grant of planning permission; and
- where the Secretary of State or a Government Department has expressed the view that permission should not be granted (either wholly or in part) or should be granted subject to conditions.

ID 21b-020-20140306 Last updated 06 03 2014

### **What is the decision date that the local planning authority should put on decision notices?**

To ensure consistency in the preparation of statistics, the decision date to be inserted on decision notices by the local planning authority is taken as the date when notice of the decision is issued to the applicant. This includes cases where the decision has been taken by an officer or a planning committee.

ID 21b-021-20140306 Last updated 06 03 2014

### **When does the local planning authority need to consult with the Secretary of State prior to taking a decision?**

The Town and Country Planning (Consultation) (England) Direction 2009 [\[2\]](https://www.gov.uk/government/publications/the-town-and-country-planning-consultation-england-direction-2009-circular-02-2009) (<https://www.gov.uk/government/publications/the-town-and-country-planning-consultation-england-direction-2009-circular-02-2009>) sets out the applicable criteria and arrangements that must be followed for consulting the Secretary of State once the local planning authority has resolved to grant planning permission for certain types of development that are set out in paragraphs 3-8 of the Direction. The purpose of the Direction is to give the Secretary of State an opportunity to consider using the power to call in an application under section 77 of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/77) (<http://www.legislation.gov.uk/ukpga/1990/8/section/77>). The use of the call in power requires that the decision be taken by the Secretary of State rather than the local planning authority.

The information that the local planning authority must submit with the consultation is set out in paragraph 10 of the Direction. Where consultation with the Secretary of State under the Direction is required, the local planning authority cannot grant planning permission on the application until the expiry of a period of 21 days beginning with the date which the Secretary of State notifies the local planning authority that the consultation has been received and he has all the information necessary to consider the matter.



The local planning authority must send consultations under the Town and Country Planning (Consultation) (England) Direction 2009 [\[2\]](https://www.gov.uk/government/publications/the-town-and-country-planning-consultation-england-direction-2009-circular-02-2009) (<https://www.gov.uk/government/publications/the-town-and-country-planning-consultation-england-direction-2009-circular-02-2009>) to the Department for Communities and Local Governments National Planning Casework Unit at the following address:

National Planning Casework Unit  
5 St Philip's Place  
Colmore Row  
Birmingham  
B3 2PW

[npcu@communities.gsi.gov.uk](mailto:npcu@communities.gsi.gov.uk) [\[3\]](mailto:npcu@communities.gsi.gov.uk) (<mailto:npcu@communities.gsi.gov.uk>)

The Direction is separate from, and does not affect or prejudice, the Secretary of State's general power under section 77 of the Town and Country Planning Act 1990 [\[4\]](http://www.legislation.gov.uk/ukpga/1990/8/section/77) (<http://www.legislation.gov.uk/ukpga/1990/8/section/77>) to direct that any particular planning application should be called in for determination by the Secretary of State. In addition to the requirements under the Direction there may also be additional, locally applicable arrangements set out in safeguarding directions.

ID 21b-022-20140306 Last updated 06 03 2014

### **When must a local planning authority in London notify the Mayor prior to making a decision?**


Local planning authorities in London are required to notify the Mayor if they receive applications of 'potential strategic importance' for the capital. This provides the Mayor with an opportunity to consider the proposal's compliance with the spatial development strategy (the London Plan [\[5\]](http://www.london.gov.uk/priorities/planning/london-plan) (<http://www.london.gov.uk/priorities/planning/london-plan>)), and if necessary direct that he should determine the application himself, or that the application should be refused. What constitutes an application of potential strategic importance is set out in the Town and Country Planning (Mayor of London) Order 2008 [\[6\]](http://www.legislation.gov.uk/uksi/2008/580/made) (<http://www.legislation.gov.uk/uksi/2008/580/made>), along with the procedural requirements that apply.

ID 21b-027-20140306 Last updated 06 03 2014

### **What are the Secretary of State's powers of intervention to call in a planning application?**

Section 77 of the Town and Country Planning Act 1990 [\[7\]](http://www.legislation.gov.uk/ukpga/1990/8/section/77) (<http://www.legislation.gov.uk/ukpga/1990/8/section/77>) empowers the Secretary of State to call in a planning application for his own determination. The power can be exercised at any time up to the grant of planning permission by a local planning authority, and is usually used when the local planning authority has resolved to approve an application, but before a decision is issued.

Anyone may request the Secretary of State to intervene and call an application in for his own determination. Applications may also be referred to the Secretary of State by the local planning authority under the Town and Country Planning (Consultation) (England) Direction 2009 [\[8\]](https://www.gov.uk/government/publications/the-town-and-country-planning-consultation-england-direction-2009-circular-02-2009) (<https://www.gov.uk/government/publications/the-town-and-country-planning-consultation-england-direction-2009-circular-02-2009>). In the case of a decision against the advice of the Health and Safety Executive there is guidance on notifying the Executive in advance of a decision being issued.

The call in policy was updated on 26 October 2012 in a Written Ministerial Statement by Nick Boles MP 


(<http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm121026/wmstext/121026m0001.htm#12102628000003>).

The use of the call in power is discretionary and the Government's policy is to be very selective about calling in planning applications.

ID 21b-024-20140306 Last updated 06 03 2014

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 Department for Communities & Local Government  
(<https://www.gov.uk/government/organisations/department-for-communities-and-local-government>)

# Planning Practice Guidance <http://planningguidance.communities.gov.uk>

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Guidance

## Duty to cooperate

Print 

### 1. What is the duty to cooperate and what does it require?

<http://planningguidance.communities.gov.uk/blog/guidance/duty-to-cooperate/what-is-the-duty-to-cooperate-and-what-does-it-require/>

#### What is the duty to cooperate and what does it require?

The duty to cooperate was created in the Localism Act 2011, and amends the Planning and Compulsory Purchase Act 2004 [\[2\]](http://www.legislation.gov.uk/ukpga/2011/20/section/110/enacted) (<http://www.legislation.gov.uk/ukpga/2011/20/section/110/enacted>). It places a legal duty on local planning authorities, county councils in England and public bodies to engage constructively, actively and on an ongoing basis to maximise the effectiveness of Local and Marine Plan preparation in the context of strategic cross boundary matters.

The duty to cooperate is not a duty to agree. But local planning authorities should make every effort to secure the necessary cooperation on strategic cross boundary matters before they submit their Local Plans for examination.

Local planning authorities must demonstrate how they have complied with the duty at the independent examination of their Local Plans. If a local planning authority cannot demonstrate that it has complied with the duty then the Local Plan will not be able to proceed further in examination.

Local planning authorities will need to satisfy themselves about whether they have complied with the duty. As part of their consideration, local planning authorities will need to bear in mind that the cooperation should produce effective and deliverable policies on strategic cross boundary matters.

ID 9-001-20140306 Last updated 06 03 2014

#### How does the duty to cooperate relate to the Local Plan test of soundness?

The duty to cooperate is a legal test that requires cooperation between local planning authorities and other public bodies to maximise the effectiveness of policies for strategic matters in Local Plans. It is separate from but related to the Local Plan test of soundness.

The Local Plan examination will test whether a local planning authority has complied with the duty to cooperate. The Inspector will recommend that the Local Plan is not adopted if the duty has not been complied with and the examination will not proceed any further.

If the Inspector finds that the duty has been complied with the examination will also test whether the Local Plan is sound. The test of soundness, set out in full in the National Planning Policy Framework (paragraph 182

[http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph\\_182](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph_182)), assesses whether the Local Plan (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>) is:

- positively prepared;

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#### Related policy

##### National Planning Policy Framework

- Paragraph 182 ([http://planningguidance.com/sustainable-development/plan-making/#paragraph\\_182](http://planningguidance.com/sustainable-development/plan-making/#paragraph_182))

- justified;
- effective; and
- consistent with national policy.

In assessing whether the Local Plan is effective the Inspector will assess whether it is deliverable within the timescale set by the Local Plan and if it demonstrates effective joint working to meet cross boundary strategic priorities. If a Local Plan is found unsound at the examination the Inspector will recommend that it is not adopted (although an Inspector must recommend modifications that would make a Local Plan sound if asked to do so by the local planning authority).

ID 9-002-20140306 Last updated 06 03 2014

### **Does the duty to cooperate require local planning authorities to reach agreement about the planning strategy before they submit their Local Plans for examination, and what should a local planning authority do if it is reliant on another local planning authority that will not cooperate?**

The duty to cooperate is not a duty to agree. But local planning authorities should make every effort to secure the necessary cooperation on strategic cross boundary matters before they submit their Local Plans for examination. Local authority officers and councillors have an important role to play in this process.

If another authority will not cooperate this should not prevent the authority bringing forward a Local Plan from submitting it for examination. However, the authority will need to submit comprehensive and robust evidence of the efforts it has made to cooperate and any outcomes achieved and this will be thoroughly tested at the examination. Local Planning Authorities should discuss their particular circumstances with the Planning Inspectorate prior to submitting the Local Plan.

Prior to submitting a Local Plan in these circumstances Local Planning Authorities should have explored all available options for delivering the planning strategy within their own planning area. They should also have approached other authorities with whom it would be sensible to seek to work to deliver the planning strategy.

Local Planning Authorities should discuss their particular circumstances with the Planning Inspectorate prior to submitting the Local Plan.

ID 9-003-20140306 Last updated 06 03 2014

### **Who is responsible for the duty?**

Local planning authority councillors and officers are responsible for leading discussion, negotiation and action to ensure effective planning for strategic matters in their Local Plans. This requires a proactive, ongoing and focussed approach to strategic planning and partnership working.

ID 9-004-20140306 Last updated 06 03 2014

### **Are other public bodies subject to the duty to cooperate and what is required of them?**

Other public bodies, in addition to local planning authorities, are subject to the duty to cooperate by being prescribed in the Town and Country Planning (Local Planning) (England) Regulations 2012 [\[2\]](#)

(<http://www.legislation.gov.uk/uksl/2012/767/regulation/4/made>) as amended by The

National Treatment Agency (Abolition) and the Health and Social Care Act 2012 (Consequential, Transitional and Saving Provisions) Order 2013 [\[2\]](http://www.legislation.gov.uk/ukxi/2013/235/made)  
(<http://www.legislation.gov.uk/ukxi/2013/235/made>)

These bodies are:

- the Environment Agency
- the Historic Buildings and Monuments Commission for England (known as Historic England)
- Natural England
- the Mayor of London
- the Civil Aviation Authority
- the Homes and Communities Agency
- each clinical commissioning group established under section 14D of the National Health Service Act 2006
- the National Health Service Commissioning Board
- the Office of Rail Regulation
- Transport for London
- each Integrated Transport Authority
- each highway authority within the meaning of section 1 of the Highways Act 1980 (including the Secretary of State, where the Secretary of State is the highways authority)
- the Marine Management Organisation.

These organisations are required to cooperate with local planning authorities, county councils that are not local planning authorities and the other prescribed bodies. These bodies play a key role in delivering local aspirations, and cooperation between them and local planning authorities is vital to make Local Plans as effective as possible on strategic cross boundary matters. The bodies should be proportionate in how they do this and tailor the degree of cooperation according to where they can maximise the effectiveness of plans..

ID 9-005-20150402 Last updated 02 04 2015

### **Are Local Enterprise Partnerships and Local Nature Partnerships subject to the duty to cooperate?**

Local Enterprise Partnerships and Local Nature Partnerships are not subject to the requirements of the duty. But local planning authorities and the public bodies that are subject to the duty must cooperate with Local Enterprise Partnerships and Local Nature Partnerships and have regard to their activities when they are preparing their Local Plans, so long as those activities are relevant to local plan making. Local Enterprise Partnerships and Local Nature Partnerships are prescribed for this purpose in Town and Country Planning (Local Planning (England) Regulations [\[2\]](http://www.legislation.gov.uk/ukxi/2012/767/regulation/4/made)  
(<http://www.legislation.gov.uk/ukxi/2012/767/regulation/4/made>) as amended by the Town and Country Planning (Local Planning) (England) (Amendment) Regulations 2012 to include Local Nature Partnerships [\[2\]](http://www.legislation.gov.uk/ukxi/2012/2613/contents/made)  
(<http://www.legislation.gov.uk/ukxi/2012/2613/contents/made>).

This requirement reflects the important role that both Local Enterprise Partnerships and Local Nature Partnerships need to play in strategic planning.

Local Enterprise Partnerships have a key role to play in delivering local growth by directing strategic regeneration funds and in providing economic leadership through their Strategic Economic Plans. The commitment of local planning authorities to work collaboratively with Local Enterprise Partnerships across their area will be vital for the successful delivery of policies for strategic growth

in their Local Plans. An effective policy framework for strategic planning matters, including joint or aligned planning policies, will be a fundamental requirement for this.

Local Nature Partnerships work strategically to help their local areas manage the natural environment and they are encouraged to work at a broader 'landscape scale'. Local planning authorities should seek opportunities to work collaboratively with Local Nature Partnerships to deliver a strategic approach to encouraging biodiversity

(<http://planningguidance.communities.gov.uk/blog/guidance/natural-environment/>).

ID 9-006-20140306 Last updated 06 03 2014

### **Does the duty to cooperate apply in London where the London Plan provides a strategic planning framework for cross boundary matters?**

The duty to cooperate applies in London where boroughs, alongside local planning authorities in the rest of England, are required to cooperate with other local planning authorities, county councils, and prescribed public bodies ([http://planningguidance.communities.gov.uk/blog/guidance/duty-to-cooperate/what-is-the-duty-to-cooperate-and-what-does-it-require/#paragraph\\_001](http://planningguidance.communities.gov.uk/blog/guidance/duty-to-cooperate/what-is-the-duty-to-cooperate-and-what-does-it-require/#paragraph_001)).

The Mayor of London is included in the list of prescribed bodies ([http://planningguidance.communities.gov.uk/blog/guidance/duty-to-cooperate/what-is-the-duty-to-cooperate-and-what-does-it-require/#paragraph\\_004](http://planningguidance.communities.gov.uk/blog/guidance/duty-to-cooperate/what-is-the-duty-to-cooperate-and-what-does-it-require/#paragraph_004)) and is also subject to the duty.

The degree of cooperation needed between boroughs will depend on the extent to which strategic issues have already been addressed in the London Plan. Cooperation between the Mayor, boroughs and local planning authorities bordering London will be vital to ensure that important strategic issues, such as housing delivery and economic growth, are planned effectively.

ID 9-007-20140306 Last updated 06 03 2014

### **Why does the duty to cooperate require local planning authorities to work with local planning authorities and bodies outside their area?**

The duty to cooperate seeks to ensure that local planning authorities lead strategic planning effectively through their Local Plans, addressing social, environmental and economic issues that can only be addressed effectively by working with other local planning authorities beyond their own administrative boundaries. For example, housing market and travel to work areas, river catchments and ecological networks may represent a more effective basis on which to plan for housing, transport, infrastructure, flood risk management, climate change mitigation and adaptation, and biodiversity. The aim is to encourage positive, continuous partnership working on issues that go beyond a single local planning authority's area.

ID 9-008-20140306 Last updated 06 03 2014

### **Does the duty to cooperate require additional consultation beyond existing statutory consultees?**

The duty requires active and sustained engagement. Local planning authorities and other public bodies must work together constructively from the outset of plan preparation to maximise the effectiveness of strategic planning policies. It is unlikely that this could be satisfied by consultation alone. Local planning authorities that cannot demonstrate that they have complied with the duty will fail the independent examination process.

ID 9-009-20140306 Last updated 06 03 2014

### **What outcomes are expected from the duty to cooperate?**

Cooperation between local planning authorities, county councils and other public bodies should produce effective policies on strategic cross boundary matters. Inspectors testing compliance with the duty at examination will assess the outcomes of cooperation and not just whether local planning authorities have approached others.

ID 9-010-20140306 Last updated 06 03 2014

### **What actions constitute effective cooperation under the duty to cooperate?**

The actions will depend on local needs which will differ, so there is no definitive list of actions that constitute effective cooperation under the duty. Cooperation should produce effective policies on cross boundary strategic matters. This is what local planning authorities and other public bodies should focus on when they are considering how to meet the duty. Local planning authorities should bear in mind that effective cooperation is likely to require sustained joint working with concrete actions and outcomes. It is unlikely to be met by an exchange of correspondence, conversations or consultations between authorities alone.

Section 33A(6) [\[2\]](http://www.legislation.gov.uk/ukpga/2011/20/section/110/enacted) (http://www.legislation.gov.uk/ukpga/2011/20/section/110/enacted) of the 2004 Act requires local planning authorities and other public bodies to consider entering into agreements on joint approaches. Local planning authorities are also required to consider whether to prepare local planning policies jointly under powers provided by section 28 of the 2004 Act.

The activities that fall within the duty to cooperate include activities that prepare the way for or support the preparation of Local Plans and can relate to all stages of the plan preparation process. This might involve joint research and evidence gathering to define the scope of the Local Plan, assess policy impacts and assemble the necessary material to support policy choices. These could include assessments of land availability, Strategic Flood Risk Assessments and water cycle studies.

Authorities should submit robust evidence of the efforts they have made to cooperate on strategic cross boundary matters. This could be in the form of a statement submitted to the examination. Evidence should include details about who the authority has cooperated with, the nature and timing of cooperation and how it has influenced the Local Plan.

ID 9-011-20140306 Last updated 06 03 2014

### **Is there a specific point in the Local Plan making process when cooperation should occur?**

Cooperation should take place throughout Local Plan preparation – it is important not to confine cooperation to any one point in the process.

Local planning authorities and other public bodies need to work together from the outset at the plan scoping and evidence gathering stages before options for the planning strategy are identified. That will help to identify and assess the implications of any strategic cross boundary issues on which they need to work together and maximise the effectiveness of Local Plans. After that they will need to continue working together to develop effective planning policies and delivery strategies. Cooperation should continue until plans are submitted for examination and beyond, into delivery and review.

Local planning authorities should bear in mind that failure to demonstrate compliance with the duty at the Local Plan examination cannot be corrected after the Local Plan has been submitted for examination. The most likely outcome of a failure to demonstrate compliance will be that the local planning authority will withdraw the Local Plan.

ID 9-012-20140306 Last updated 06 03 2014

## When is an issue a strategic matter on which cooperation is required?

Section 33A(4) of the 2004 Act [\[2\]](http://www.legislation.gov.uk/ukpga/2011/20/section/110/enacted) (<http://www.legislation.gov.uk/ukpga/2011/20/section/110/enacted>) sets out what are strategic matters. This includes sustainable development or use of land that has or would have a significant impact on at least two planning areas, in particular in connection with strategic infrastructure. The National Planning Policy Framework (paragraph 156 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph\\_156](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph_156))) further sets out the strategic matters that local planning authorities are expected to include in their Local Plans. This is not an exhaustive list and local planning authorities will need to adapt it to meet their specific needs.

Planning for infrastructure is a critical element of strategic planning. The National Planning Policy Framework (paragraph 162 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph\\_162](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph_162))) makes clear that local planning authorities should work with other local planning authorities and providers to assess the quality and capacity of a range of infrastructure types. This will ensure that key infrastructure such as transport, telecommunications, energy, water, health, social care and education, is properly planned.

Planning for infrastructure is a key requirement of the effectiveness element of the test of Local Plan soundness, which requires plans to be deliverable and based on effective joint working on cross boundary strategic priorities. The involvement of infrastructure providers in Local Plan preparation is critical to ensure that Local Plans are deliverable. Participation in the Local Plan preparation process in turn helps them to inform their business plans and to plan and finance the delivery of infrastructure that they have a legal obligation to provide. It is expected that private utility companies and providers will engage positively in the preparation and delivery of Local Plans.

ID 9-013-20140306 Last updated 06 03 2014

## Does the duty to cooperate require cooperation in two tier local planning authority areas?

Close cooperation between district local planning authorities and county councils in two tier local planning authority areas will be critical to ensure that both tiers are effective when planning for strategic matters such as minerals, waste, transport and education.

ID 9-014-20140306 Last updated 06 03 2014

## How do local planning authorities decide who to cooperate with?

The local planning authorities and public bodies that a local planning authority needs to cooperate with will depend on the strategic matters that the local planning authority is planning for and the most appropriate functional geography to gather evidence and develop planning policies. For example housing market

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## Related policy

### National Planning Policy Framework

- Paragraph 156 ([http://planningguidance.com/sustainable-development/plan-making/#paragraph\\_156](http://planningguidance.com/sustainable-development/plan-making/#paragraph_156))
- Paragraph 162 ([http://planningguidance.com/sustainable-development/plan-making/#paragraph\\_162](http://planningguidance.com/sustainable-development/plan-making/#paragraph_162))



(<http://planningguidance.communities.gov.uk/blog/guidance/housing-and-economic-development-needs-assessments/>) and travel to work areas, river catchments and landscape areas may be a more appropriate basis on which to plan than individual local planning authority areas.

It is important to adopt a pragmatic approach in deciding the area over which cooperation is needed and who to work with. For some strategic matters the most effective outcomes may be achieved through cooperation by a small number of neighbouring local planning authorities while for other matters there may be a need for cooperation over a wider functional area involving both neighbouring and other local planning authorities and bodies. Cooperation between different tiers – counties and districts – may be needed on issues such as transport, waste and flood risk. This will be decided by the particular issues and local planning authorities may well work in different groupings for different strategic matters.

ID 9-015-20140306 Last updated 06 03 2014

### **How can two or more local planning authorities cooperate on Local Plan preparation in order to comply with the duty?**

Where two or more local planning authorities decide to work together to prepare Local Plans or policies they should consider how to achieve this most effectively. For some authorities the most appropriate way might be to form a joint committee (to include one or more county councils) under section 29 of the 2004 Act [\[2\]](http://www.legislation.gov.uk/ukpga/2004/5/section/29) (<http://www.legislation.gov.uk/ukpga/2004/5/section/29>).

Alternatively, the local planning authorities could prepare a joint plan, using powers in section 28 of the 2004 Act [\[2\]](http://www.legislation.gov.uk/ukpga/2004/5/section/28) (<http://www.legislation.gov.uk/ukpga/2004/5/section/28>), or align their Local Plans, so that they are examined and adopted at broadly the same time.

These options will maximise opportunities for successful joint working and demonstrate a real commitment to effective strategic planning. It would also provide the most certainty for communities and those investing in economic development.

Another way to demonstrate effective cooperation, particularly if Local Plans are not being brought forward at the same time, is the use of formal agreements between local planning authorities, signed by elected members, demonstrating their long term commitment to a jointly agreed strategy on cross boundary matters. Such agreements should be as specific as possible, for example about the quantity, location and timing of unmet housing need that one authority is prepared to accept from another authority to help it deliver its planning strategy. This will be important to demonstrate the commitment between local planning authorities to produce effective strategic planning policies, and it will be helpful for Inspectors to see such agreements at the examination as part of the evidence to demonstrate compliance with the duty.

Local planning authorities considering how to comply with the duty should discuss joint working with the Planning Inspectorate at an early stage. The Planning Inspectorate will aim to facilitate effective joint working by, for example, appointing the same Inspector to undertake the examinations consecutively or a team of Inspectors who will ensure that the respective Local Plans are coordinated.

ID 9-016-20140306 Last updated 06 03 2014

### **If local planning authorities want to agree a joint planning strategy but are at different stages of Local Plan preparation what should they do?**

Where Local Plans are not being taken forward in the same broad time frame, the respective local planning authorities should try to enter into formal agreements, signed by their elected members, demonstrating their long term commitment to a jointly agreed strategy on cross boundary matters. Inspectors will expect to see these agreements at the examination. A key element of the examination will be to ensure that there is sufficient certainty through the agreements that an effective strategy will be in place for strategic matters when the relevant Local Plans are adopted.

ID 9-017-20140306 Last updated 06 03 2014

### **How will the duty to cooperate be considered at the Local Plan examination?**

At the examination, the Inspector will consider whether the local planning authority has fulfilled its duty under section 33A so as to maximise the effectiveness of the plan making process when planning for strategic cross boundary matters. If the Inspector is satisfied that the local planning authority has complied with the duty, the examination will proceed to consider whether the plan is sound ([http://planningguidance.communities.gov.uk/blog/guidance/duty-to-cooperate/what-is-the-duty-to-cooperate-and-what-does-it-require/#paragraph\\_002](http://planningguidance.communities.gov.uk/blog/guidance/duty-to-cooperate/what-is-the-duty-to-cooperate-and-what-does-it-require/#paragraph_002)).

The duty applies to the actions taken by local planning authorities in preparing Local Plans. Local planning authorities should bear in mind that a failure to demonstrate compliance with the duty at the Local Plan examination cannot be corrected after the Local Plan has been submitted for examination. If an Inspector finds that the duty has not been complied with they will not be able to recommend that the plan is adopted. In this context the most appropriate course of action is likely to be for the local planning authority to withdraw the plan and engage in the necessary discussions and actions with other relevant local planning authorities and partners. The precise stage of the plan preparation process that the local planning authority will need to go back to will depend on the specific facts of the case. But the revised plan will need to be re-published for consultation and comment before being re-submitted for examination.

ID 9-018-20140306 Last updated 06 03 2014

### **How will the Planning Inspectorate test a Local Plan where the evidence suggests that the local planning authority's planning strategy cannot be delivered fully because it has been unable to secure the cooperation of another local planning authority?**

This will depend on the particular circumstances and issues. Inspectors will expect to see robust evidence to support the local planning authority's case. They will examine what actions local planning authorities have taken to seek the cooperation of key partners and the outcome of their efforts.

Where a local planning authority has done all that it can but it has been unable to secure the cooperation necessary for effective strategic planning policies, Inspectors will assess the evidence and local circumstances to consider the implications for the planning strategy, for example – the extent of unmet housing need and its implications. As part of this analysis, the Inspector will also consider the willingness of the local planning authority being examined and other key partners to commit, through written agreements, to work together to achieve effective solutions.

Local planning authorities that are unwilling to cooperate with others will eventually have to bring forward their own Local Plan for examination. If they are unable to provide robust evidence to support a strategy that does not plan for

the unmet requirements of another local planning authority they may fail the test of compliance with the duty to cooperate or the plan may be found unsound.

ID 9-019-20140306 Last updated 06 03 2014

### **If a local planning authority has adopted a Local Plan is it required to cooperate with another local planning authority that is bringing forward a plan?**

The duty to cooperate applies to all local planning authorities who are in the process of preparing and reviewing a Local Plan, including early scoping and evidence gathering work. So even if a local planning authority has an adopted Local Plan, it is still required to cooperate with a local planning authority that is bringing forward its plan.

Local planning authorities are required under section 13 of the 2004 Act [\[2\]](http://www.legislation.gov.uk/ukpga/2004/5/section/13) (<http://www.legislation.gov.uk/ukpga/2004/5/section/13>) to keep under review the matters that may be expected to affect the development of their area or the planning of its development. These matters include physical, economic, social and environmental characteristics, size, composition and distribution of the population, and communications, transport and traffic. A local planning authority may also keep under review these matters in neighbouring areas beyond their administrative boundary if they are expected to affect its area and they must consult the relevant local planning authorities.

The National Planning Policy Framework (paragraph 182 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph\\_182](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph_182))) requires local planning authorities to take a strategic approach in their Local Plans. Local Plans should be based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring local planning authorities where it is reasonable to do so and consistent with achieving sustainable development.

Therefore, if a local planning authority preparing a Local Plan provides robust evidence of an unmet requirement, such as unmet housing need, identified in a Strategic Housing Market Assessment, other local planning authorities in the housing market area will be required to consider the implications, including the need to review their housing policies.

All local planning authorities must give details of what action they have taken to comply with the duty in their local Authority Monitoring Reports at least once a year. This should include details of the actions they have taken to respond constructively to requests for cooperation.

ID 9-020-20140306 Last updated 06 03 2014

### **If an authority is asked to cooperate with another authority to help it deliver its housing need, is the authority obliged to do so even if it considers that cooperation would have adverse impacts on the environment of its own planning area?**

The National Planning Policy Framework makes clear that local planning authorities should meet their own housing need and meet the needs of other authorities in the same housing market area as far as is consistent with the policies set out in the Framework. This includes policies for the protection of the built and natural environment.

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## **Related policy**

### **National Planning Policy Framework**

- Paragraph 182 ([http://planningguidance.com/sustainable-development/plan-making/#paragraph\\_182](http://planningguidance.com/sustainable-development/plan-making/#paragraph_182))

The Duty to Cooperate requires authorities to work effectively on strategic planning matters that cross their administrative boundaries. The Duty to Cooperate is not a duty to agree and local planning authorities are not obliged to accept the unmet needs of other planning authorities if they have robust evidence that this would be inconsistent with the policies set out in the National Planning Policy Framework, for example policies on Green Belt, or other environmental constraints.

An authority will need to consider its obligations under the duty to cooperate, the policies of the National Planning Policy Framework taken as a whole and any relevant Local Plan policies when considering requests from others to cooperate on strategic cross boundary matters.

ID 9-021-20140410 Last updated 10 04 2014

### **Do local planning authorities have to provide any information on how they have met the duty?**

Yes, local planning authorities must give details of what action they have taken under the duty to cooperate to their communities in their Authority Monitoring Reports (Town and Country Planning (Local Planning) (England) Regulations 2012, regulation 34(6) [\[2\]](#)

(<http://www.legislation.gov.uk/ukSI/2012/767/regulation/34/made>)). This should include actions to both secure the effective cooperation of others and respond constructively to requests for cooperation. It should also highlight the outcomes of cooperation. This should be done at least once a year and information should be published on the local planning authority's website and made available for inspection at their offices.

ID 9-022-20140306 Last updated 06 03 2014

### **Does this guidance apply to the preparation of Marine Plans?**


Marine plans are prepared by the Marine Management Organisation under the Marine and Coastal Access Act 2009. The Marine Policy Statement is the framework for preparing Marine Plans and taking decisions affecting the marine area.

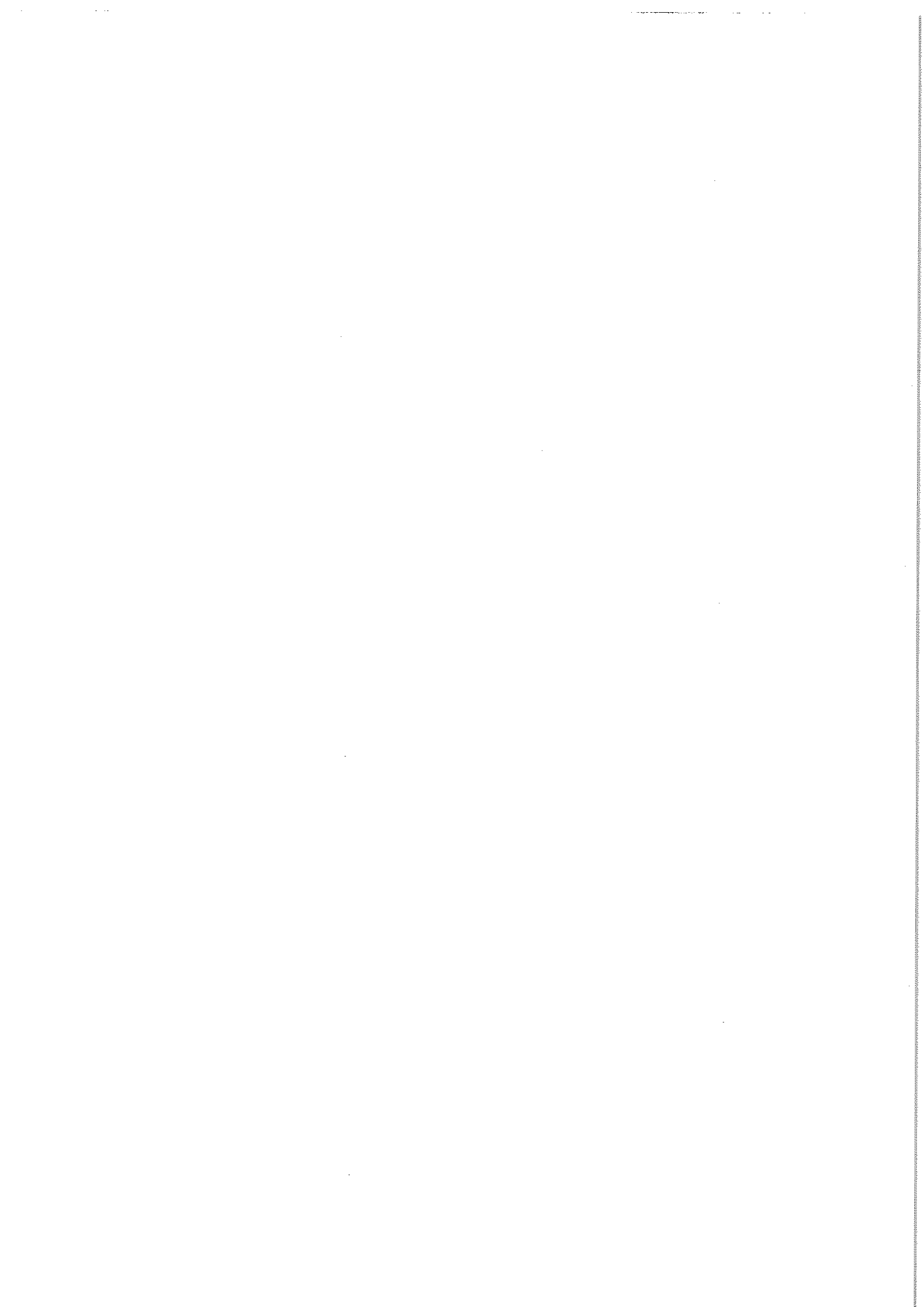
The Marine Management Organisation is included in the list of prescribed public bodies that are subject to the duty to cooperate. As such it is subject to the same requirements as local planning authorities, namely to cooperate with local planning authorities, county councils that are not local planning authorities and other prescribed bodies.

However, this guidance is about the land use planning system and should be read in conjunction with section 33A of the Planning and Compulsory Purchase Act 2004 [\[2\]](#) (<http://www.legislation.gov.uk/ukpga/2011/20/section/110/enacted>) and the National Planning Policy Framework.

The Marine Management Organisation's inclusion in the duty to cooperate will contribute to strengthening the integration between marine and terrestrial planning, which is also facilitated by requirements within the Marine and Coastal Access Act 2009 and the National Planning Policy Framework.

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 Department for Communities & Local Government  
(<https://www.gov.uk/government/organisations/department-for-communities-and-local-government>)



## Planning Practice Guidance <http://planningguidance.communities.gov.uk>

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Guidance


### Ensuring effective enforcement

Print 


1. Planning enforcement – overview (<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/planning-enforcement-overview/>)

#### Planning enforcement – overview

##### What is a breach of planning control?


A breach of planning control is defined in section 171A of the Town and Country Planning Act 1990  (<http://www.legislation.gov.uk/ukpga/1990/8/section/171A>) as:

- the carrying out of development without the required planning permission; or
- failing to comply with any condition or limitation subject to which planning permission has been granted.

Any contravention of the limitations on, or conditions belonging to, permitted development rights, under the Town and Country Planning (General Permitted Development) (England) Order 2015  (<http://www.legislation.gov.uk/uksi/2015/596/contents/made>), constitutes a breach of planning control against which enforcement action may be taken.

ID 17b-001-20140306 Last updated 06 03 2014

##### Who can take enforcement action?

Local planning authorities have responsibility for taking whatever enforcement action may be necessary, in the public interest, in their administrative areas. It should be noted that local authorities have a range of enforcement powers that extend beyond planning, as do the police in certain instances. See, for example, the note on dealing with illegal encampments .

([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/227492/130807\\_Dealing\\_with\\_illegal\\_encampment](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/227492/130807_Dealing_with_illegal_encampment);

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##### When should enforcement action be taken?

There is a range of ways of tackling alleged breaches of planning control, and local planning authorities should act in a proportionate way.

Local planning authorities have discretion to take enforcement action, when they regard it as expedient to do so having regard to the development plan and any other material considerations. This includes a local enforcement plan, where it is not part of the development plan.

In considering any enforcement action, the local planning authority should have regard to the National Planning Policy Framework, in particular paragraph 207:

- **National Planning Policy Framework 207.** *Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.*

The provisions of the European Convention on Human Rights such as Article 1 of the First Protocol, Article 8 and Article 14 

([http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)) are relevant when

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#### Related policy

##### National Planning Policy Framework

- Paragraph 207 ([http://planningguidance.communities.gov.uk/sustainable-development/decision-taking/#paragraph\\_207](http://planningguidance.communities.gov.uk/sustainable-development/decision-taking/#paragraph_207))

considering enforcement action. There is a clear public interest in enforcing planning law and planning regulation in a proportionate way. In deciding whether enforcement action is taken, local planning authorities should, where relevant, have regard to the potential impact on the health, housing needs and welfare of those affected by the proposed action, and those who are affected by a breach of planning control.

ID 17b-003-20140306 Last updated 06 03 2014

### **What are the time limits for taking enforcement action?**

Development becomes immune from enforcement if no action is taken:

- Within four years of substantial completion for a breach of planning control consisting of operational development;
- Within four years for an unauthorised change of use to a single dwellinghouse;
- Within ten years for any other breach of planning control (essentially other changes of use).

These time limits are set out in section 171B [\[2\]](#)

(<http://www.legislation.gov.uk/ukpga/1990/8/section/171B>) of the Town and Country Planning Act 1990.

The time-limits set out above do not prevent enforcement action after the relevant dates in certain circumstances. Section 171B(4)(b) [\[2\]](#) (<http://www.legislation.gov.uk/ukpga/1990/8/section/171B>) of the Town and Country Planning Act 1990 provides for the taking of “further” enforcement action in respect of any breach of planning control within four years of previous enforcement action (or purported action) in respect of the same breach. This mainly deals with the situation where earlier enforcement action has been taken, within the relevant time-limit, but has later proved to be defective, so that a further notice may be issued or served, as the case may be, even though the normal time-limit for such action has since expired. This is known as the “second bite” provision.

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### **Why is effective enforcement important?**

Effective enforcement is important to:

- tackle breaches of planning control which would otherwise have unacceptable impact on the amenity of the area;
- maintain the integrity of the decision-making process;
- help ensure that public acceptance of the decision-making process is maintained.

ID 17b-005-20140306 Last updated 06 03 2014

### **Why are local enforcement plans important?**

The preparation and adoption of a local enforcement plan is important because it:

- allows engagement in the process of defining objectives and priorities which are tailored to local circumstances;
- sets out the priorities for enforcement action, which will inform decisions about when to take enforcement action;
- provides greater transparency and accountability about how the local planning authority will decide if it is expedient to exercise its discretionary powers;
- provides greater certainty for all parties engaged in the development process.

ID 17b-006-20140306 Last updated 06 03 2014




## What options are available to local planning authorities to tackle possible breaches of planning control in a proportionate way?

- No formal action  
(<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/no-formal-action/>)
- Retrospective planning application  
(<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/retrospective-planning-application/>)
- Planning contravention notice  
(<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/planning-contravention-notice/>)
- Enforcement Notice  
(<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/enforcement-notice/>)
- Planning Enforcement Order  
(<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/planning-enforcement-order/>)
- Stop Notice (<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/stop-notice/>)
- Temporary Stop Notice  
(<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/temporary-stop-notice/>)
- Breach of Condition Notice  
(<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/breach-of-condition-notice/>)
- Injunction (<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/injunction/>)
- Rights of entry (<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/rights-of-entry/>)
- Enforcement on crown land  
(<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/enforcement-on-crown-land/>)
- Listed Building enforcement  
(<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/listed-building-enforcement/>)
- Enforcement of hazardous substances control  
(<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/enforcement-of-hazardous-substances-control/>)
- Unauthorised advertisements  
(<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/unauthorised-advertisements/>)
- Enforcement and protected trees  
(<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/how-are-offences-against-a-tree-preservation-order-enforced-including-tree-replacement/>)

ID 17b-007-20140306 Last updated 06 03 2014

## Why is early engagement important?

When investigating an alleged or apparent breach of planning control, a crucial first step is for the local planning authority to attempt to contact the owner or occupier of the site in question. Section 330 

(<http://www.legislation.gov.uk/ukpga/1990/8/section/330>) of the Town and Country Planning Act 1990 provides local planning authorities with the power to require information as to interests in land. Where it is possible, early engagement is vitally important to establish whether:

- there is a breach of planning control and the degree of harm which may be resulting;
- those responsible for any breach are receptive to taking action to remedy the breach.

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### **Is there a public register of enforcement action?**

Local planning authorities must maintain a register of enforcement and stop notices (Section 188 [\[a\]](http://www.legislation.gov.uk/ukpga/1990/8/section/188) of the Town and Country Planning Act 1990 & Article 43 [\[a\]](http://www.legislation.gov.uk/uksi/2015/595/article/43/made) of the Town and Country Planning (Development Management Procedure (England) Order 2015). It is important that, as soon as possible, details of the following actions should be recorded on the register:

- enforcement notices;
- stop notices;
- breach of condition notices;
- planning enforcement orders.

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2. No formal action (<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/no-formal-action/>)

### **No formal action**

#### **Can breaches of planning control be addressed without formal enforcement action, such as an enforcement notice?**

Addressing breaches of planning control without formal enforcement action can often be the quickest and most cost effective way of achieving a satisfactory and lasting remedy. For example, a breach of control may be the result of a genuine mistake where, once the breach is identified, the owner or occupier takes immediate action to remedy it. Furthermore in some instances formal enforcement action may not be appropriate.

It is advisable for the local planning authority to keep a record of any informal action taken, including a decision not to take further action

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### **When might formal enforcement action not be appropriate?**

Nothing in this guidance should be taken as condoning a wilful breach of planning law. Enforcement action should, however, be proportionate to the breach of planning control to which it relates and taken when it is expedient to do so. Where the balance of public interest lies will vary from case to case.

In deciding, in each case, what is the most appropriate way forward, local planning authorities should usually avoid taking formal enforcement action where:

- there is a trivial or technical breach of control which causes no material harm or adverse impact on the amenity of the site or the surrounding area;
- development is acceptable on its planning merits and formal enforcement action would solely be to regularise the development;
- in their assessment, the local planning authority consider that an application is the appropriate way forward to regularise the situation, for example, where planning conditions may need to be imposed ([http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/why-and-how-are-conditions-imposed/#paragraph\\_001](http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/why-and-how-are-conditions-imposed/#paragraph_001)).

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3. Retrospective planning applications (<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/retrospective-planning-application/>)

### Retrospective planning applications

#### Can a local planning authority invite a retrospective planning application?

A local planning authority can invite a retrospective application. In circumstances where the local planning authority consider that an application is the appropriate way forward to regularise the situation, the owner or occupier of the land should be invited to submit their application (Section 73A [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/73A) (<http://www.legislation.gov.uk/ukpga/1990/8/section/73A>) of the Town and Country Planning Act 1990) without delay. It is important to note that:

- although a local planning authority may invite an application, it cannot be assumed that permission will be granted, and the local planning authority should take care not to fetter its discretion prior to the determination of any application for planning permission – such an application must be considered in the normal way;
- an enforcement notice may also be issued in relation to other elements of the development.

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#### Are there any restrictions on retrospective applications?

A person who has undertaken unauthorised development has only one opportunity to obtain planning permission after the event. This can either be by means of a retrospective planning application (under section 73A [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/73A) (<http://www.legislation.gov.uk/ukpga/1990/8/section/73A>) of the Town and Country Planning Act 1990) or by means of an appeal against an enforcement notice on ground that planning permission ought to be granted or the condition or limitation concerned ought to be discharged – this is referred to as a ground (a) appeal.

The local planning authority can decline to determine a retrospective planning application if an enforcement notice has previously been issued (Section 70C [\[2\]](http://www.legislation.gov.uk/ukpga/2011/20/section/123/enacted) (<http://www.legislation.gov.uk/ukpga/2011/20/section/123/enacted>) of the Town and Country Planning Act 1990). No appeal under ground (a) may be made if an enforcement notice is issued within the time allowed for determination of a retrospective planning application.

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### 4. Obtaining information about alleged breaches of planning control

(<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/obtaining-information-about-alleged-breaches-of-planning-control/>)

#### Obtaining information about alleged breaches of planning control

##### Why is information about an alleged breach of planning control important?

Effective enforcement action relies on accurate information about an alleged breach of planning control.

In many instances, comprehensive information about the planning history of the site and the alleged breach of control is readily available; from the local planning authority's own records, site visits and other publicly available information. It is important to keep documentary evidence of any investigation.

Where necessary, local planning authorities also have a range of investigative powers for planning enforcement purposes. One option available is for the local planning authority to serve a planning contravention notice (<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/planning-contravention-notice/>).

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5. Planning contravention notice (<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/planning-contravention-notice/>)

### Planning contravention notice

#### What does a planning contravention notice do?

A planning contravention notice may be issued under Section 171C of the Town and Country Planning Act 1990 [\[2\]](#) (<http://www.legislation.gov.uk/ukpga/1990/8/section/171C>) and can be used to do the following:

- allow the local planning authority to require any information they want for enforcement purposes about any operations being carried out; any use of; or any activities being carried out on the land, and;
- can be used to invite its recipient to respond constructively to the local planning authority about how any suspected breach of planning control may be satisfactorily remedied.

A model planning contravention notice is here ([http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/17b-060-20140120\\_model-planning-contravention-notice.pdf](http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/17b-060-20140120_model-planning-contravention-notice.pdf)) (PDF).

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#### When can a planning contravention notice be used?

A planning contravention notice may only be served when it appears to the local planning authority that a breach of planning control may have occurred and they want to find out more information before deciding what if any enforcement action to take. It should not be used to undertake an investigative trawl just to satisfy the local planning authority about what activities are taking place on a parcel of land.

This is a discretionary procedure – the local planning authority need not serve a planning contravention notice before considering whether it is expedient to issue an enforcement notice or to take any other appropriate enforcement action.

A planning contravention notice is not available for use where there are suspected breaches of listed building or conservation area control, hazardous substances control or control of protected trees.

There is no requirement to enter a planning contravention notice in the local planning authority's register of enforcement notices, stop notices and breach of condition notices. The notice is not a legal charge on the land.

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#### What are the consequences of failing to respond to a notice?

A failure to complete or return a notice within 21 days is an offence, as is providing false or misleading information on the notice (Section 171D of the Town and Country Planning Act 1990 [\[2\]](#) (<http://www.legislation.gov.uk/ukpga/1990/8/section/171D>)).

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6. Enforcement notice (<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/enforcement-notice/>)

### Enforcement notice

#### Deciding whether to issue an enforcement notice

The power to issue an enforcement notice is discretionary (Section 172 of the Town and Country Planning Act 1990 [\[2\]](#) (<http://www.legislation.gov.uk/ukpga/1990/8/section/172>)).

An enforcement notice should only be issued where the local planning authority is satisfied that it appears to them that there has been a breach of planning control and it is expedient to issue a notice, taking into account the provisions of the development plan and any other material considerations.

Further guidance on when enforcement action should be taken ([http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/planning-enforcement-overview/#paragraph\\_003](http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/planning-enforcement-overview/#paragraph_003)).

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### **What does an enforcement notice do?**

An enforcement notice should enable every person who receives a copy to know:

- exactly what, in the local planning authority's view, constitutes the breach of planning control; and
- what steps the local planning authority require to be taken, or what activities are required to cease to remedy the breach

The local planning authority must enclose with the enforcement notice information about how to make an appeal. This information is contained in the information sheet [\[2\]](#)

(<http://www.planningportal.gov.uk/uploads/pins/eninfosheet.pdf>) provided by the Planning Inspectorate which local planning authorities should use.

Enforcement notices are not improved by over-elaborate wording or legalistic terms; plain English is always preferable. An eventual prosecution under Section 179 [\[2\]](#) (<http://www.legislation.gov.uk/ukpga/1990/8/section/179>) of the Act may fail if the Court finds the terms of the notice incomprehensible to the lay person.

An example enforcement notice – operational development is here ([http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/17b-061-20140120\\_example-enforcement-notice-operational-development.pdf](http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/17b-061-20140120_example-enforcement-notice-operational-development.pdf)) (PDF).

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### **Is it possible to take enforcement action against only some parts of a breach of planning consent?**

A local planning authority may decide not to require action be taken to remedy the whole of a breach of planning control. This is known as “under enforcement”.

Where an enforcement notice identifies a breach of planning control which could have required any buildings or works to be removed, or an activity to stop, but has stipulated some lesser requirements, and all the requirements of the notice have been complied with, then planning permission is deemed to be granted for those remaining operations or use (Section 173(11) of the Town and Country Planning Act 1990 [\[2\]](#)

(<http://www.legislation.gov.uk/ukpga/1990/8/section/173>)).

Whether a particular notice “could have” required something is contingent upon the terms of the alleged breach of planning control set out in the notice.

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### **Is there a right of appeal against an enforcement notice?**

There is a right of appeal

([http://planningguidance.communities.gov.uk/blog/guidance/appeals/appeals-against-other-planning-decisions/#paragraph\\_018](http://planningguidance.communities.gov.uk/blog/guidance/appeals/appeals-against-other-planning-decisions/#paragraph_018)) against an enforcement notice.

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### **What happens if an enforcement notice is not complied with?**

It is an offence not to comply with an enforcement notice, once the period for

compliance has elapsed, and there is no outstanding appeal.

A person guilty of an offence is liable, on summary conviction, to a fine currently not exceeding £20,000 or on conviction on indictment to an unlimited fine. In determining the amount of any fine, the Court is to have regard to any financial benefit which has been accrued or appears likely to accrue in consequence of the offence (Section 179 of the Town and Country Planning Act 1990 [\[a\]](http://www.legislation.gov.uk/ukpga/1990/8/section/179) (<http://www.legislation.gov.uk/ukpga/1990/8/section/179>)). Therefore, prosecuting authorities should always be ready to give any available details about the proceeds resulting, or likely to result, from the offence, so that the Court may take them into account.

Where a local planning authority achieves a successful conviction for failure to comply with an enforcement notice, they can apply for a Confiscation Order, under the Proceeds of Crime Act 2002 [\[a\]](http://www.legislation.gov.uk/ukpga/2002/29/part/2) (<http://www.legislation.gov.uk/ukpga/2002/29/part/2>), to recover the financial benefit obtained through unauthorised development.

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### Local authority default powers

The local planning authority has powers to enter enforcement notice land and carry out the requirements of the notice themselves (Section 178 of the Town and Country Planning Act 1990 [\[a\]](http://www.legislation.gov.uk/ukpga/1990/8/section/178) (<http://www.legislation.gov.uk/ukpga/1990/8/section/178>)). It is an offence to wilfully obstruct anyone who is exercising those powers on the local planning authority's behalf.

These default powers should be used when other methods have failed to persuade the owner or occupier of land to carry out, to the local planning authority's satisfaction, any steps required by an enforcement notice.

Further, the local planning authority can recover from the person who is then the owner of the land any expenses reasonably incurred by them in undertaking this work (Regulation 14 Town and Country Planning General Regulations 1992 [\[a\]](http://www.legislation.gov.uk/uksi/1992/1492/regulation/14/made) (<http://www.legislation.gov.uk/uksi/1992/1492/regulation/14/made>)).

A local planning authority can prosecute for a failure to comply with a notice as well as using default powers.

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7. Planning enforcement order (<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/planning-enforcement-order/>)

### Planning enforcement order

#### What does a Planning Enforcement Order do?

Where a person deliberately conceals unauthorised development, the deception may not come to light until after the time limits for taking enforcement action (Section 171B of the Town and Country Planning Act 1990 [\[a\]](http://www.legislation.gov.uk/ukpga/1990/8/section/171B) (<http://www.legislation.gov.uk/ukpga/1990/8/section/171B>)) have expired ([http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/planning-enforcement-overview/#paragraph\\_004](http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/planning-enforcement-overview/#paragraph_004)). A planning enforcement order enables an authority to take action in relation to an apparent breach of planning control notwithstanding that the time limits may have expired.

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#### What are the requirements for obtaining a planning enforcement order?

A local planning authority must have sufficient evidence of the apparent breach of planning control to justify applying for a planning enforcement order (Sections 171BA, 171BB and 171BC of the Town and Country Planning Act 1990 [\[a\]](http://www.legislation.gov.uk/ukpga/2011/20/section/124/enacted) (<http://www.legislation.gov.uk/ukpga/2011/20/section/124/enacted>)).

The application may be made within 6 months, starting with the date on which sufficient evidence of the apparent breach came to the local planning authority's knowledge. The appropriate officer must sign a certificate on behalf of the authority which states the date on which that evidence came to the local planning authority's knowledge, and the certificate will be conclusive of that fact.

The application must be made to a magistrates' court and a copy must be served on the owner and occupier of the land, and on anyone else with an interest in the land which, in the local planning authority's opinion, would be materially affected by the taking of enforcement action in respect of the breach. The applicant, any person who has been served with the application, and any other person the court thinks has an interest in the land that would be materially affected by the enforcement action, have a right to appear before, and be heard by, the court hearing the application.

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### **What evidence is needed to obtain a planning enforcement order?**

A magistrates' court may only make a planning enforcement order if it is satisfied on the balance of probabilities that the apparent breach of planning control (or any of the matters constituting that breach) has (to any extent) been deliberately concealed and that it is just to make the order having regard to all the circumstances.

Planning enforcement orders can only be made where the developer has deliberately concealed the unauthorised development. In these circumstances, evidence that the developer has taken positive steps to conceal the unauthorised development, rather than merely refraining from informing the local planning authority about it, will be required.

It is expected that planning enforcement orders will be focused on the worst cases of concealment.

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### **What is the effect of a planning enforcement order?**

The effect of a planning enforcement order is that the local planning authority will be able to take enforcement action against the apparent breach of planning control or any of the matters constituting the apparent breach during the "enforcement year". This means that once the "enforcement year" has begun, the local planning authority can at any time during that year, take enforcement action in respect of the apparent breach of planning control or any of the matters constituting that breach.

The "enforcement year" does not begin until the end of 22 days starting with the day on which the court's decision to make the order is given, or when any appeal against the order has been finally dismissed.

A local planning authority may make an application even if the normal time limit for enforcement action has not expired. This is to allow for the possibility that evidence may come to light very close to the end of the normal time limits for taking enforcement action, when there may be insufficient time to draft and issue an enforcement notice, or where there may be doubt as to when the time limits actually expire. For example, where the date of substantial completion is not certain.

The local planning authority is not prevented from taking enforcement action once the enforcement year has ended provided that the normal time limits for enforcement action have not expired (Section 171BA of the Town and Country Planning Act 1990 [\[2\]](#)

(<http://www.legislation.gov.uk/ukpga/2011/20/section/124/enacted>)).

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8. Stop notice (<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/stop-notice/>)

## Stop notice

### What does a stop notice do?

A stop notice can prohibit any or all of the activities which comprise the alleged breach(es) of planning control specified in the related enforcement notice, ahead of the deadline for compliance in that enforcement notice (Section 183 of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/183) (<http://www.legislation.gov.uk/ukpga/1990/8/section/183>)).

A stop notice cannot be served independently of an enforcement notice.

A model stop notice is here ([http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/17b-062-20140120\\_model-stop-notice.pdf](http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/17b-062-20140120_model-stop-notice.pdf)) (PDF).

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### How quickly can a stop notice take effect?

The local planning authority must specify in the stop notice when it is to take effect. The effective date must normally be no less than 3 days (or later than 28 days) after the date when the notice is served. (Section 184(3) of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/184) (<http://www.legislation.gov.uk/ukpga/1990/8/section/184>)).

When there are special reasons for specifying an earlier date a stop notice may take effect before 3 days, in which case, a statement of reasons must be served with it. For example, it may be considered essential to protect an Area of Outstanding Natural Beauty, Green Belt or conservation area, from operational development (such as buildings, roadways or other hard surfaces) which if it continued, would be especially harmful.

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### Are there any restrictions on what a Stop Notice can prohibit?

There are restrictions on what a Stop Notice can prohibit. These are set out in Section 183 of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/183) (<http://www.legislation.gov.uk/ukpga/1990/8/section/183>). One important restriction is that a stop notice may **not** prohibit the use of any building as a dwelling house, although it may be used to prohibit the use of land as a site for a caravan occupied by a person as his or her own main residence.

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### Could the local planning authority be liable for compensation as a result of serving a stop notice?

Where the associated enforcement notice is quashed, varied or withdrawn or the stop notice is withdrawn compensation may be payable in certain circumstances and subject to various limitations (Section 186 of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/186) (<http://www.legislation.gov.uk/ukpga/1990/8/section/186>)).

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### How does a local planning authority decide whether to serve a stop notice?

The power to serve a stop notice is discretionary. Before serving such a notice a local planning authority must be satisfied that it is expedient that any relevant activity should cease before the expiry of the period for compliance specified in an enforcement notice.



The relevant local planning authority should ensure that an assessment of the likely consequences of serving the notice is available to the Committee or officer who will authorise service of it. The assessment should examine among other things the foreseeable cost and benefits likely to result from the stop notice.

The local planning authority should ensure that a stop notice's requirements prohibit only what is essential to safeguard amenity or public safety in the neighbourhood; or to prevent serious or irreversible harm to the environment in the surrounding area.

Before deciding to serve a stop notice, the local planning authority's representative should discuss, whenever practicable, with the person carrying on the activity, whether there is any alternative means of production or operation which would overcome the objections to it in an environmentally and legally acceptable way.

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### **What about human rights?**

The provisions of the European Convention on Human Rights [\[2\]](http://echr.coe.int/Documents/Convention_ENG.pdf) ([http://echr.coe.int/Documents/Convention\\_ENG.pdf](http://echr.coe.int/Documents/Convention_ENG.pdf)), such as Article 1 of the First Protocol, Article 8 and Article 14, are relevant. In some instances there is a clear public interest in taking rapid action to address breaches of planning control. To ensure that this is a proportionate approach, before serving a stop notice, the local planning authority must be satisfied that there has been a breach of planning control and that the activity which amounts to the breach must be stopped immediately and before the end of the period allowed for compliance with the related enforcement notice.

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### **What are the penalties for contravention of a stop notice?**

A person who contravenes a stop notice after a site notice has been displayed, or the stop notice has been served on them, is guilty of an offence (Section 187 (1) of the Town and Country Planning Act 1990 [\[3\]](http://www.legislation.gov.uk/ukpga/1990/8/section/187) (<http://www.legislation.gov.uk/ukpga/1990/8/section/187>)).

A person guilty of this offence is liable on summary conviction to a fine not exceeding £20,000 – and on conviction on indictment, to an unlimited fine. In determining the amount of fine imposed the Court is to have regard to any financial benefit which has accrued, or appears likely to accrue, in consequence of the offence.

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### **How can a stop notice be challenged?**

There is no right of appeal to the Secretary of State against the prohibitions in a stop notice. The validity of a stop notice, and the propriety of the local planning authority's decision to issue a notice, may be challenged by application to the High Court for judicial review.

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9. Temporary stop notice (<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/temporary-stop-notice/>)

## **Temporary stop notice**

### **Why are temporary stop notices important?**

Temporary stop notices are a powerful enforcement tool that allows local planning authorities to act very quickly to address some breaches of planning control, such as unauthorised activities, where it is expedient to do so. Temporary stop notice may prohibit a range of activities, including those that take place on the land intermittently or seasonally.

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### What does a temporary stop notice do?

A temporary stop notice (Section 171E of the Town and Country Planning Act 1990 [\[a\]](http://www.legislation.gov.uk/ukpga/1990/8/section/171E)) requires that an activity which is a breach of planning control should stop immediately.

A temporary stop notice must state the date the temporary stop notice has been served, the activity that has to cease, and that any person contravening it may be prosecuted for an offence.

A model temporary stop notice is here

([http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/17b-063-20140120\\_model-temporary-stop-notice.pdf](http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/17b-063-20140120_model-temporary-stop-notice.pdf)) (PDF).

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### How is this different to a stop notice?

A temporary stop notice does not have to wait for an enforcement notice to be issued and the effect of the temporary stop notice is immediate.

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### Are there any restrictions on what a Temporary Stop Notice can prohibit?

There are restrictions on what a Temporary Stop Notice can prohibit (Section 171F of the Town and Country Planning Act 1990 [\[a\]](http://www.legislation.gov.uk/ukpga/1990/8/section/171F)):

- a temporary stop notice can require an activity to cease, or reduce or minimise the level of activity. Because a temporary stop notice is prohibitory, it is not appropriate for use in any circumstances which require positive action to be taken in response to it. The “immediate” cessation of activities should allow for the shutting down and making safe of an activity;
- a temporary stop notice may not prohibit the use of a building as a dwelling house.

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### How long can a temporary notice last?

A temporary stop notice expires 28 days after the display of the notice on site (or any shorter period specified). At the end of the 28 days there is the risk of the activity resuming if an enforcement notice is not issued and a stop notice served.

It is not possible to issue a further temporary stop notice unless the local planning authority has first taken some other enforcement action against the breach of planning control. (Section 171F(5) [\[a\]](http://www.legislation.gov.uk/ukpga/1990/8/section/171F)) of the Town and Country Planning Act 1990.

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### How does a local planning authority decide whether to serve a temporary notice?

Before issuing a temporary stop notice, the local planning authority must be satisfied that there has been a breach of planning control and that “it is expedient that the activity which amounts to the breach is stopped immediately” (Section 171E(1)(b) of the Town and Country Planning Act 1990 [\[a\]](http://www.legislation.gov.uk/ukpga/1990/8/section/171E)) (Section 171E(1)(b) of the Town and Country Planning Act 1990 [\[a\]](http://www.legislation.gov.uk/ukpga/1990/8/section/171E)). The local planning authority must give reasons for issuing the temporary stop notice on the face of the notice (Section 171E(3) of the Town and Country Planning Act 1990 [\[a\]](http://www.legislation.gov.uk/ukpga/1990/8/section/171E)) (Section 171E(3) of the Town and Country Planning Act 1990 [\[a\]](http://www.legislation.gov.uk/ukpga/1990/8/section/171E)).

The effect of issuing a temporary stop notice will be to halt the breach of planning control, or the specified activity immediately. This can have immediate serious consequences on a business. Local planning authorities should therefore ensure that a quick but adequate assessment of the likely consequences of issuing a temporary stop notice is available to the officer who will authorise issue of the notice.

It should not be necessary to carry out a detailed cost/benefit assessment, but the assessment should examine the foreseeable costs to the company, operator, or landowner, against whose activities the stop notice is directed and the benefit to amenity in the vicinity of the site which is likely to result from a temporary stop notice.

The local planning authority should ensure that a temporary stop notice's requirements prohibit only what is essential to safeguard amenity or public safety in the neighbourhood; or to prevent serious or irreversible harm to the environment in the surrounding area.

Before deciding to serve a temporary stop notice, the local planning authority's representative may choose to discuss, whenever practicable, with the person carrying on the activity whether there is any alternative means of production or operation which would overcome the objections to it in an environmentally and legally acceptable way.

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### **What about human rights?**

The provisions of the European Convention on Human Rights [\[2\]](http://echr.coe.int/Documents/Convention_ENG.pdf) (http://echr.coe.int/Documents/Convention\_ENG.pdf), such as Article 1 of the First Protocol, Article 8 and Article 14 [\[2\]](http://echr.coe.int/Documents/Convention_ENG.pdf) (http://echr.coe.int/Documents/Convention\_ENG.pdf), are relevant. In some instances there is a clear public interest in taking rapid action to address breaches of planning control. To ensure that this is a proportionate approach, before serving a temporary stop notice, the local planning authority must be satisfied that there has been a breach of planning control and "it is expedient that the activity which amounts to the breach is stopped immediately" (Section 171E(1)(b) of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/171E) (http://www.legislation.gov.uk/ukpga/1990/8/section/171E)).

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### **What are the penalties for contravention of a Temporary Stop Notice?**

It is an offence to contravene a temporary stop notice, and a local planning authority should always consider prosecution as soon they have evidence of an offence (Section 171G of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/171G) (http://www.legislation.gov.uk/ukpga/1990/8/section/171G)).

A person guilty of an offence is liable on summary conviction, to a fine not exceeding £20,000; and on conviction on indictment, to an unlimited fine.

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### **How can a temporary stop notice be challenged?**

Any person affected by a temporary stop notice will be able to make representations to the local planning authority to challenge the temporary stop notice. The local planning authority should include the name, address and telephone number of their nominated officer in the temporary stop notice.

There is no right of appeal to the Secretary of State against the prohibitions in a temporary stop notice. The validity of a temporary stop notice, and the propriety of the local planning authority's decision to issue a temporary stop notice, may be challenged by application to the High Court for judicial review.

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### Is compensation payable?

Only in certain circumstances is compensation payable. A person who at the time the temporary stop notice is served has an interest in the land to which the notice relates may be entitled to compensation by the local planning authority for any loss or damage directly attributable to the prohibition effected by the temporary stop notice. The scope for compensation is set out in Section 171H [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/171H) (<http://www.legislation.gov.uk/ukpga/1990/8/section/171H>) of the Town and Country Planning Act 1990. It should be noted compensation is only payable if one or more of the following applies:

- the activity specified in the temporary stop notice was the subject of an existing planning permission and any conditions attached to the planning permission have been complied with;
- it is permitted development (<http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/>) (including under a local or neighbourhood development order);
- the local planning authority issue a lawful development certificate confirming that the development was lawful;
- the local planning authority withdraws the temporary stop notice for some reason, other than because it has granted planning permission for the activity specified in the temporary stop notice after the issue of the temporary stop notice.

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### Can a temporary stop notice be used on land not owned by those living on it?

Yes. It may be appropriate in some circumstances for the local planning authority to issue a temporary stop notice where the breach of planning control has occurred on land owned by a third party, including the local authority or another public authority.

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## 10. Breach of condition notice (<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/breach-of-condition-notice/>)

### Breach of condition notice

#### What does a breach of condition notice do?

A breach of conditions notice requires its recipient to secure compliance with the terms of a planning condition or conditions, specified by the local planning authority in the notice (Section 187A of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/187A) (<http://www.legislation.gov.uk/ukpga/1990/8/section/187A>)).

Any recipient of a breach of condition notice will be in breach of the notice if, after the compliance period, any condition specified in it has not been complied with, and the steps specified have not been taken or the activities specified have not ceased.

A model breach of conditions notice is here ([http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/17b-064-20140120\\_model-breach-of-condition-notice.pdf](http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/17b-064-20140120_model-breach-of-condition-notice.pdf)) (PDF).

ID 17b-046-20140306 Last updated 06 03 2014

#### When can a breach of condition notice be used?

A breach of condition notice is mainly intended as an alternative to an enforcement notice for remedying a breach of condition – but it may also be served in addition to an enforcement notice, perhaps as an alternative to a stop notice, where the local planning authority consider it expedient to stop the breach quickly and before any appeal against the enforcement notice is determined.

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### **What happens if a breach of condition notice is not fully complied with?**

Following the end of the period for compliance, a “person responsible” who has not ensured full compliance with the conditions and any specified steps, will be in breach of the notice and guilty of an offence Section 187A(8) and (9) of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/187A)

(<http://www.legislation.gov.uk/ukpga/1990/8/section/187A>). Summary prosecution can be brought in the Magistrates’ Court for the offence of contravening a breach of condition notice.

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### **How can a breach of condition notice be challenged?**

There is no right of appeal to the Secretary of State against a breach of condition notice. The validity of a breach of condition notice, and the propriety of the local planning authority’s decision to serve a breach of condition notice, may be challenged by application to the High Court for judicial review.

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## **11. Injunction (<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/injunction/>)**

### **Injunction**

#### **How does a Local Authority decide whether seeking an injunction to restrain a breach of planning control is appropriate?**

A local planning authority can, where they consider it expedient for any actual or apprehended breach of planning control to be restrained, apply to the High Court or County Court for an injunction to restrain a breach of planning control (Section 187B of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/187B)) (<http://www.legislation.gov.uk/ukpga/1990/8/section/187B>).

In deciding whether it is necessary or expedient to seek an injunction, local planning authorities may find it helpful to consider whether:

- they have taken account of what appear to be relevant considerations, including the personal circumstances of those concerned;
- there is clear evidence that a breach of planning control has already occurred, or is likely to occur;
- injunctive relief is a proportionate remedy in the circumstances of the particular case;
- in the case of an injunction sought against a person whose identity is unknown, it is practicable to serve the Court’s order on the person or persons to whom it will apply;
- a local planning authority can apply for an injunction whether or not it has exercised, or proposes to exercise, any of their other powers to enforce planning control. However, proceedings for an injunction are the most serious enforcement action that a local planning authority can take because if a person fails to comply with an injunction they can be committed to prison for contempt of court. Additionally, once an injunction has been granted, it cannot be discharged except where there has been a significant change of circumstances since the order was made. In these circumstances a local planning authority should generally only apply for an injunction as a last resort and only if there have been persistent breaches of planning control over long period and/or other enforcement options have been, or would be, ineffective. The Court is likely to expect the local planning authority to explain its reasons on this issue.

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#### **Seeking an injunction against an unknown person**

The Court may grant an injunction against a person whose identity is unknown (Section 187B(3) of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/187B) (<http://www.legislation.gov.uk/ukpga/1990/8/section/187B>)). Nevertheless local planning authorities will need to identify, to the best of their ability, the person against whom the injunction is sought. The following may be used in support of the authority's submission to the Court:

- photographic evidence of the persons concerned;
- affidavit evidence sworn by the local planning authority's officers;
- reference to chattels on the land, known to belong to, or be used by, that person (eg a registered motor vehicle); or
- other relevant evidence (such as a name by which the person is commonly known even though it is not his or her proper name).

When applying to the Court, the local planning authority will have to provide affidavit evidence of their inability to ascertain the identity of the person, within the time reasonably available, and the steps taken in attempting to do so.

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12. Rights of entry (<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/rights-of-entry/>)

## Rights of entry

### What rights of entry are permitted?

Local planning authorities and Justices of the Peace can authorise named officers to enter land specifically for enforcement purposes (Sections 196A, 196B and Section 196C of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/part/VII/crossheading/rights-of-entry-for-enforcement-purposes) (<http://www.legislation.gov.uk/ukpga/1990/8/part/VII/crossheading/rights-of-entry-for-enforcement-purposes>)). This right is limited to what is regarded as essential, in the particular circumstances, for effective enforcement of planning control.

The Act specifies the purposes for which entry to land may be authorised (Section 196A(1) of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/196A) (<http://www.legislation.gov.uk/ukpga/1990/8/section/196A>)), namely:

- to ascertain whether there is or has been any breach of planning control on the land or any other land;
- to determine whether any of the local planning authority's enforcement powers should be exercised in relation to the land, or any other land;
- to determine how any such power should be exercised; and
- to ascertain whether there has been compliance with any requirement arising from earlier enforcement action in relation to the land, or any other land.

The phrase "or any other land" means that if necessary neighbouring land can be entered, whether or not it is in the same ownership, or is being occupied by the person whose land is being investigated.

The provisions of the Act (Section 196A of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/196A) (<http://www.legislation.gov.uk/ukpga/1990/8/section/196A>)) state there must be reasonable grounds for entering the land for the purpose in question. This is interpreted to mean that entering the land is the logical means of obtaining the information required by the local planning authority.

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### What happens if right of entry is obstructed?

It is an offence to wilfully obstruct an authorised person acting in exercise of a right of entry (Section 196C(2) of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/196C) (<http://www.legislation.gov.uk/ukpga/1990/8/section/196C>)).

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## Are there any restrictions or controls in relation to rights of entry?

There are a number of restrictions on the right of entry, including:

- **Damage to land or chattels:** Local planning authorities are expected to take every reasonable precaution to ensure no damage is caused as a result of exercising a right of entry. Where damage is caused, compensation may be recovered from the authorising authority.
- **Agricultural land:** In the interests of animal and plant health special precautions are essential when the right of entry is exercised. Additional precautions must be taken when there is an outbreak of serious disease in animals or a serious plant pest or pathogen. As not all diseases require warning notices local planning officers should contact the appropriate Animal Health Veterinary Laboratories Agency's Field Office [\[2\]](http://www.defra.gov.uk/ahvla-en/about-us/contact-us/field-services/) (<http://www.defra.gov.uk/ahvla-en/about-us/contact-us/field-services/>) and the Plant Health and Seeds Inspectorate Regional Office [\[3\]](http://www.fera.defra.gov.uk/plants/plantHealth/documents/phsiOffices0712.pdf) (<http://www.fera.defra.gov.uk/plants/plantHealth/documents/phsiOffices0712.pdf>) to check there are no restrictions in force on land to be visited.
- **Disclosure of information:** It is an offence to disclose any information obtained while on the land about any manufacturing process or trade secret.
- **Dwellinghouses:** Entry to a building used as a dwelling house cannot be demanded as of right unless 24 hours advanced notice of intended entry to the occupier has been given.

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## Entry authorised by warrant issued by a Justice of the Peace

Where there are reasonable grounds for entering land for enforcement purposes, and entry is refused or is reasonably likely to be refused, or there is a need for urgency, then it is possible for a Justice of the Peace to issue a warrant to allow entry (Section 196B(1) of the Town and Country Planning Act 1990 [\[4\]](http://www.legislation.gov.uk/ukpga/1990/8/section/196B) (<http://www.legislation.gov.uk/ukpga/1990/8/section/196B>)).

There are three restrictions on the use of a warrant:

- it only authorises entry on one occasion;
- entry must be within one month from the date of the issue of the warrant;
- the entry must be at a reasonable hour, unless the case is one of urgency.

ID 17b-055-20140306 Last updated 06 03 2014

13. Enforcement on Crown land (<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/enforcement-on-crown-land/>)

## Enforcement on Crown land

### Is enforcement action possible in relation to Crown Land?

Enforcement action is possible in relation to Crown Land, but there some restrictions which do not apply elsewhere. Sections 296A and 296B of the Town and Country Planning Act 1990 [\[5\]](http://www.legislation.gov.uk/ukpga/1990/8/contents) (<http://www.legislation.gov.uk/ukpga/1990/8/contents>) restrict such actions as serving enforcement notices, stop notices, revocation orders and discontinuance orders on the Crown.

The restrictions apply to all land in which a Crown body has any interest. Where a Crown body does have an interest, anything which must or may be done by or to the owner of the interest in land must be done by or to the appropriate authority (section 293 [\[6\]](http://www.legislation.gov.uk/ukpga/1990/8/section/293) (<http://www.legislation.gov.uk/ukpga/1990/8/section/293>) of the Town and Country Planning Act 1990). An interest in land includes an interest only as an occupier of the land.

Subject to these restrictions, a local planning authority can serve a notice or make an order (other than a court order) intended to enforce compliance on Crown land without having to follow any procedures other than those which are

already set out in the planning Acts as being generally applicable. There is no requirement to obtain the consent of the appropriate authority before serving the notice or making the order.

A local planning authority cannot, however, enter land for any purposes connected with the making or enforcing of any such notice or order without first securing the consent of the relevant Crown body. And, in granting such consent, the appropriate authority may impose such conditions as it considers appropriate. This might mean, for example, that any site visit by the local planning authority has to be accompanied, to take place at a pre-arranged time and/or to exclude certain parts of the site.

The local planning authority is also required to secure the consent of the appropriate authority, before taking any action to enforce the notice or order, even against a non-Crown interest, such as a private leaseholder on a Crown freehold. This includes bringing proceedings or making an application to the courts.

The Crown is also immune from prosecution under these provisions.

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14. **Listed building enforcement** (<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/listed-building-enforcement/>)

### Listed building enforcement

#### What enforcement action can be taken against breaches of listed building consent?

The listed building enforcement provisions are in sections 38 to 46 of the Planning (Listed Buildings and Conservation Areas) Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/9/part/IV) (<http://www.legislation.gov.uk/ukpga/1990/9/part/IV>), and the enforcement provisions relating to the demolition of an unlisted building in a conservation area ("relevant demolition") are in the Town and Country Planning Act 1990. Although broadly similar, there are a number of important differences between planning enforcement and listed building and conservation area enforcement, namely:

- there are no application fees for listed building consent or applications for relevant demolition;
- there are no time-limits for issuing listed building enforcement notices or for when enforcement action may be taken in relation to a breach of planning control with respect to relevant demolition, although the length of time that has elapsed since the apparent breach may be a relevant consideration when considering whether it is expedient to issue a listed building enforcement notice;
- carrying out work without the necessary listed building consent, or failing to comply with a condition attached to that consent, whereby such works etc materially affect the historic or architectural significance of the building, is an offence under section 9 of that Act – whether or not an enforcement notice has first been issued;
- carrying out work without the required planning permission for relevant demolition, or failing to comply with a condition attached to that planning permission is an offence under section 196D of the Town and Country Planning Act 1990, and;
- listed building consent and planning permission for relevant demolition are not granted retrospectively.

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### 15. Enforcement of hazardous substances control

(<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/enforcement-of-hazardous-substances-control/>)

#### Enforcement of hazardous substances control

##### What enforcement action can be taken against breaches of



### **hazardous substances consent?**

The Planning (Hazardous Substances) Act 1990 requires hazardous substances consent to be obtained when a controlled quantity of hazardous substance is present on land (<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/>). Provisions for enforcing against breaches of control generally follow the planning enforcement provisions, so far as they are appropriate, and a contravention of hazardous substances control is itself an offence.

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16. **Unauthorised advertisements** (<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/unauthorised-advertisements/>)

### **Unauthorised advertisements**

#### **Tackling Unauthorised Advertisements and defacement of premises**

For more information about tackling unauthorised advertisements and defacement of premises, see here

(<http://planningguidance.communities.gov.uk/blog/guidance/advertisements/enforcement-against-specific-unauthorised-advertisements/>).

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17. **Enforcement and protected trees** (<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/enforcement-and-protected-trees/>)

### **Enforcement and protected trees**

For more information about tackling damage to protected trees, see here.

(<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/how-are-offences-against-a-tree-preservation-order-enforced-including-tree-replacement/>)

ID 17b-060-20140306 Last updated 06 03 2014

18. **Model Notices** (<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/model-notices/>)

### **Model Notices**

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- **Model planning contravention notice**  
([http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/17b-060-20140120\\_model-planning-contravention-notice.pdf](http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/17b-060-20140120_model-planning-contravention-notice.pdf)) (PDF)
  - **Example enforcement notice – operational development**  
([http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/17b-061-20140120\\_example-enforcement-notice-operational-development.pdf](http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/17b-061-20140120_example-enforcement-notice-operational-development.pdf)) (PDF)
  - **Model stop notice** ([http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/17b-062-20140120\\_model-stop-notice.pdf](http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/17b-062-20140120_model-stop-notice.pdf)) (PDF)
  - **Model temporary stop notice**  
([http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/17b-063-20140120\\_model-temporary-stop-notice.pdf](http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/17b-063-20140120_model-temporary-stop-notice.pdf)) (PDF)
  - **Model breach of conditions notice**  
([http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/17b-064-20140120\\_model-breach-of-condition-notice.pdf](http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/17b-064-20140120_model-breach-of-condition-notice.pdf)) (PDF)

19. **Unauthorised Encampments** (<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/unauthorised-encampments/>)

### **Unauthorised Encampments**

#### **Does the absence of authorised sites prevent local authorities from taking enforcement action against unauthorised encampments?**

No – an absence of authorised sites does not mean that a local authority or the police cannot take enforcement action against unauthorised encampments.

ID 17b-066-20150901 Last updated 01 09 2015

#### **What powers do local authorities and the police have to take against unauthorised encampments?**

In March 2015 the Government wrote 

(<https://www.gov.uk/government/publications/dealing-with-illegal-and-unauthorised-encampments>) to council leaders, police and crime commissioners, and police chief constables summarising the extensive powers they have to help them deal with illegal and unauthorised sites.

ID 17b-067-20150901 Last updated 01 09 2015



Department for Communities & Local Government

(<https://www.gov.uk/government/organisations/department-for-communities-and-local-government>)

# Planning Practice Guidance <http://planningguidance.communities.gov.uk>

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Guidance

## Ensuring the vitality of town centres

Print 

1. Ensuring the vitality of town centres (<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-the-vitality-of-town-centres/ensuring-the-vitality-of-town-centres-guidance/>)

### Ensuring the vitality of town centres

#### What does the National Planning Policy Framework say about planning for town centres?

Local planning authorities should plan positively, to support town centres to generate local employment, promote beneficial competition within and between town centres, and create attractive, diverse places where people want to live, visit and work.

Local planning authorities should assess and plan to meet the needs of main town centre uses in full, in broadly the same way as for their housing and economic needs, adopting a 'town centre first' approach and taking account of specific town centre policy. In doing so, local planning authorities need to be mindful of the different rates of development in town centres compared with out of centre.

This positive approach should include seeking to improve the quality of parking in town centres (in line with the National Planning Policy Framework) and, where it is necessary to ensure the vitality of town centres, the quantity too. Local planning authorities should set appropriate parking charges that do not undermine the vitality of town centres and parking enforcement should be proportionate, avoiding unfairly penalising drivers.

The National Planning Policy Framework sets out two key tests that should be applied when planning for town centre uses which are not in an existing town centre and which are not in accord with an up to date Local Plan – the sequential test and the impact test. These are relevant in determining individual decisions and may be useful in informing the preparation of Local Plans.

The sequential test should be considered first as this may identify that there are preferable sites in town centres for accommodating main town centre uses (and therefore avoid the need to undertake the impact test). The sequential test will identify development that cannot be located in town centres, and which would then be subject to the impact test. The impact test determines whether there would be likely significant adverse impacts of locating main town centre development outside of existing town centres (and therefore whether the proposal should be refused in line with policy). It applies only above a floorspace threshold as set out in paragraph 26 of the National Planning Policy Framework ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/2-ensuring-the-vitality-of-town-centres/#paragraph\\_26](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/2-ensuring-the-vitality-of-town-centres/#paragraph_26)).

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#### Why is it important to have a strategic vision for town centres?

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### Related policy

#### National Planning Policy Framework

- Annex 2 – Glossary
  - Main town centre uses (<http://planningguidance.com/sustainable-development/annex-2-glossary/>)
- Paragraph 26 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/2-ensuring-the-vitality-of-town-centres/#paragraph\\_26](http://planningguidance.com/sustainable-development/delivering-sustainable-development/2-ensuring-the-vitality-of-town-centres/#paragraph_26))

A positive vision or strategy for town centres, articulated through the Local Plan, is key to ensuring successful town centres which enable sustainable economic growth and provide a wide range of social and environmental benefits. Once adopted a Local Plan (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>), including any town centre policy that it contains, will be the starting point for any decisions on individual developments. Local planning authorities should work with the private sector, Portas Pilot organisations, town teams, neighbourhood planning groups, town centre management organisations and other relevant groups when developing such strategies. Non-planning guidance produced by other Government Departments and the sector may be useful in producing such a strategy.

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### **What should a town centre strategy contain?**

Any strategy should be based on evidence of the current state of town centres (<http://planningguidance.communities.gov.uk/blog/guidance/housing-and-economic-development-needs-assessments/>) and opportunities to meet development needs and support their viability and vitality. Strategies should answer the following questions:

- what is the appropriate and realistic role, function and hierarchy of town centres in the area over the plan period? This will involve auditing existing centres to assess their role, vitality, viability and potential to accommodate new development and different types of development. This assessment should cover a three-five year period, but should also take the lifetime of the Local Plan into account and be regularly reviewed
- what is the vision for the future of each town centre? This should consider what the most appropriate mix of uses would be to enhance overall vitality and viability
- can the town centre accommodate the scale of assessed need for main town centre uses? This should include considering expanding centres, or development opportunities to enable new development or redevelop existing under-utilised space. It should involve evaluating different policy options (for example expanding the market share of a particular centre) or the implications of wider policy such as infrastructure delivery and demographic or economic change
- in what timeframe should new retail floorspace be provided?
- what complementary strategies are necessary or appropriate to enhance the town centre and help deliver the vision for its future, and how can these be planned and delivered?
- how can parking provision be enhanced and both parking charges and enforcement be made proportionate, in order to encourage town centre vitality?

Strategies should identify changes in the hierarchy of town centres, including where a town centre is in decline. In these cases, strategies should seek to manage decline positively to encourage economic activity and achieve an appropriate mix of uses commensurate with a realistic future for that town centre.

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### **How should market signals be addressed when planning for town centres?**

Local planning authorities should take full account of relevant market signals when planning for town centres and should keep their retail land allocations under regular review. These market signals should be identified and analysed in

terms of their impacts on town centres. This information should be used to inform policies that are responsive to changes in the market as well as the changing needs of business.

ID 2b-004-20140306 Last updated 06 03 2014

### **Which indicators should be used to determine the health of town centres?**

The following indicators, and their changes over time, are relevant in assessing the health of town centres:

- diversity of uses
- proportion of vacant street level property
- commercial yields on non-domestic property
- customers' views and behaviour
- retailer representation and intentions to change representation
- commercial rents
- pedestrian flows
- accessibility
- perception of safety and occurrence of crime
- state of town centre environmental quality

Not all successful town centre regeneration projects have been retail led or involved significant new development. Improvements to the public realm, transport (including parking) and accessibility as well as other measures promoted through partnership can also play important roles.

Any strategy should identify relevant sites, actions and timescales, and be articulated clearly in the Local Plan, where it can be considered by local people and investors. It should be regularly reviewed, assessing the changing role and function of different parts of the town centre over time.


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### **What if the required development cannot be accommodated in the town centre?**

It may not be possible to accommodate all forecast needs in a town centre: there may be physical or other constraints which make it inappropriate to do so. In those circumstances, planning authorities should plan positively to identify the most appropriate alternative strategy for meeting the need for these main town centre uses, having regard to the sequential and impact tests. This should ensure that any proposed main town centre uses which are not in an existing town centre are in the best locations to support the vitality and vibrancy of town centres, and that no likely significant adverse impacts on existing town centres arise, as set out in paragraph 26 of the National Planning Policy Framework ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/2-ensuring-the-vitality-of-town-centres/#paragraph\\_26](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/2-ensuring-the-vitality-of-town-centres/#paragraph_26)).

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### **What should local planning authorities consider when planning for tourism?**

Please see here for the World Tourism Organisation's definition of tourism  (<http://media.unwto.org/en/content/understanding-tourism-basic-glossary>).

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#### **Related policy**

##### **National Planning Policy Framework**

- Paragraph 26 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/2-ensuring-the-vitality-of-town-centres/#paragraph\\_26](http://planningguidance.com/sustainable-development/delivering-sustainable-development/2-ensuring-the-vitality-of-town-centres/#paragraph_26))

Tourism is extremely diverse and covers all activities of visitors. Local planning authorities, where appropriate, should articulate a vision for tourism in the Local Plan, including identifying optimal locations for tourism. When planning for tourism, local planning authorities should:

- consider the specific needs of the tourist industry, including particular locational or operational requirements;
- engage with representatives of the tourism industry;
- examine the broader social, economic, and environmental impacts of tourism;
- analyse the opportunities for tourism to support local services, vibrancy and enhance the built environment; and
- have regard to non-planning guidance produced by other Government Departments.

Local planning authorities may also want to consider guidance and best practice produced by the tourism sector. Further guidance on tourism can be found on the Visit England website [\[2\]](http://www.visitengland.org/) (<http://www.visitengland.org/>).

ID 2b-007-20140306 Last updated 06 03 2014

### What is the sequential test?

The sequential test guides main town centre uses towards town centre locations first, then, if no town centre locations are available, to edge of centre locations, and, if neither town centre locations nor edge of centre locations are available, to out of town centre locations, with preference for accessible sites which are well connected to the town centre. It supports the viability and vitality of town centres by placing existing town centres foremost in both plan-making and decision-taking.

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### How should the sequential approach be used in plan-making?

In plan-making, the sequential approach requires a thorough assessment of the suitability, viability and availability of locations for main town centre uses. It requires clearly explained reasoning if more central opportunities to locate main town centre uses are rejected.

The checklist below sets out the matters that should be considered when taking a sequential approach to plan-making:

- Has the need for main town centre uses been assessed? The assessment should consider the current situation, recent up-take of land for main town centre uses, the supply of and demand for land for main town centre uses, forecast of future need and the type of land needed for main town centre uses
- Can the identified need for main town centre uses land be accommodated on town centre sites? When identifying sites, the suitability, availability and viability of the site should be considered, with particular regard to the nature of the need that is to be addressed
- If the additional main town centre uses required cannot be accommodated in town centre sites, what are the next sequentially preferable sites that it can be accommodated on?

Local Plans should contain policies to apply the sequential test to proposals for main town centre uses that may come forward outside the sites or locations allocated in the Local Plan.

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### Related policy

#### National Planning Policy Framework

- Annex 2 – Glossary – Edge of centre (<http://planningguidance.com/sustainable-development/annex-2-glossary/>)

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## How should the sequential test be used in decision-taking?

It is for the applicant to demonstrate compliance with the sequential test (and failure to undertake a sequential assessment could in itself constitute a reason for refusing permission). Wherever possible, the local planning authority should support the applicant in undertaking the sequential test, including sharing any relevant information. The application of the test should be proportionate and appropriate for the given proposal. Where appropriate, the potential suitability of alternative sites should be discussed between the developer and local planning authority at the earliest opportunity.

The checklist below sets out the considerations that should be taken into account in determining whether a proposal complies with the sequential test:

- with due regard to the requirement to demonstrate flexibility, has the suitability of more central sites to accommodate the proposal been considered? Where the proposal would be located in an edge of centre or out of centre location, preference should be given to accessible sites that are well connected to the town centre. Any associated reasoning should be set out clearly.
- is there scope for flexibility in the format and/or scale of the proposal? It is not necessary to demonstrate that a potential town centre or edge of centre site can accommodate precisely the scale and form of development being proposed, but rather to consider what contribution more central sites are able to make individually to accommodate the proposal.
- if there are no suitable sequentially preferable locations, the sequential test is passed.

In line with paragraph 27 of the National Planning Policy Framework ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/2-ensuring-the-vitality-of-town-centres/#paragraph\\_27](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/2-ensuring-the-vitality-of-town-centres/#paragraph_27)), where a proposal fails to satisfy the sequential test, it should be refused. Compliance with the sequential and impact tests does not guarantee that permission is granted – local planning authorities will have to consider all material considerations in reaching a decision.

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## How should locational requirements be considered in the sequential test?

Use of the sequential test should recognise that certain main town centre uses have particular market and locational requirements which mean that they may only be accommodated in specific locations. Robust justification must be provided where this is the case, and land ownership does not provide such a justification.

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## How should viability be promoted?

The sequential test seeks to deliver the Government's "town centre first" policy. However as promoting new development on town centre locations can be more expensive and complicated than building elsewhere local planning authorities need to be realistic and flexible in terms of their expectations.

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## What is the impact test?

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### Related policy

#### National Planning Policy Framework

- Paragraph 27 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/2-ensuring-the-vitality-of-town-centres/#paragraph\\_27](http://planningguidance.com/sustainable-development/delivering-sustainable-development/2-ensuring-the-vitality-of-town-centres/#paragraph_27))

The purpose of the test is to ensure that the impact over time (up to five years (ten for major schemes)) of certain out of centre and edge of centre proposals on existing town centres is not significantly adverse. The test relates to retail, office and leisure development (not all main town centre uses) which are not in accordance with an up to date Local Plan and outside of existing town centres. It is important that the impact is assessed in relation to all town centres that may be affected, which are not necessarily just those closest to the proposal and may be in neighbouring authority areas.

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### **How should the impact test be used in plan-making?**

If the Local Plan is based on meeting the assessed need for town centre uses in accordance with the sequential approach, issues of adverse impact should not arise. The impact test may be useful in determining whether proposals in certain locations would impact on existing, committed and planned public and private investment, or on the role of centres.

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### **How should the impact test be used in decision-taking?**

It is for the applicant to demonstrate compliance with the impact test in support of relevant applications. Failure to undertake an impact test could in itself constitute a reason for refusing permission.

The impact test should be undertaken in a proportionate and locally appropriate way, drawing on existing information where possible. Ideally, applicants and local planning authorities should seek to agree the scope, key impacts for assessment, and level of detail required in advance of applications being submitted.

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### **When should the impact test be used?**

The impact test only applies to proposals exceeding 2,500 square metres gross of floorspace\* unless a different locally appropriate threshold is set by the local planning authority. In setting a locally appropriate threshold it will be important to consider the:

- scale of proposals relative to town centres
- the existing viability and vitality of town centres
- cumulative effects of recent developments
- whether local town centres are vulnerable
- likely effects of development on any town centre strategy
- impact on any other planned investment

As a guiding principle impact should be assessed on a like-for-like basis in respect of that particular sector (e.g. it may not be appropriate to compare the impact of an out of centre DIY store with small scale town-centre stores as they would normally not compete directly). Retail uses tend to compete with their most comparable competitive facilities. Conditions may be attached to appropriately control the impact of a particular use (<http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/>).

Where wider town centre developments or investments are in progress, it will also be appropriate to assess the impact of relevant applications on that investment. Key considerations will include:



- the policy status of the investment (i.e. whether it is outlined in the Development Plan)
- the progress made towards securing the investment (for example if contracts are established)
- the extent to which an application is likely to undermine planned developments or investments based on the effects on current/ forecast turnovers, operator demand and investor confidence

\* *Gross retail floorspace* (or gross external area) is the total built floor area measured externally which is occupied exclusively by a retailer or retailers, excluding open areas used for the storage, display or sale of goods.

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### **Is there a checklist for applying the impact test?**

The following steps should be taken in applying the impact test

- establish the state of existing centres and the nature of current shopping patterns (base year)
- determine the appropriate time frame for assessing impact, focusing on impact in the first five years, as this is when most of the impact will occur
- examine the 'no development' scenario (which should not necessarily be based on the assumption that all centres are likely to benefit from expenditure growth in convenience and comparison goods and reflect both changes in the market or role of centres, as well as changes in the environment such as new infrastructure);
- assess the proposal's turnover and trade draw\* (drawing on information from comparable schemes, the operator's benchmark turnover of convenience and comparison goods, and carefully considering likely catchments and trade draw)
- consider a range of plausible scenarios in assessing the impact of the proposal on existing centres and facilities (which may require breaking the study area down into a series of zones to gain a finer-grain analysis of anticipated impact)
- set out the likely impact of that proposal clearly, along with any associated assumptions or reasoning, including in respect of quantitative and qualitative issues
- any conclusions should be proportionate: for example, it may be sufficient to give a broad indication of the proportion of the proposal's trade draw likely to be derived from different centres and facilities in the catchment area and the likely consequences to the viability and vitality of existing town centres

A judgement as to whether the likely adverse impacts are significant can only be reached in light of local circumstances. For example in areas where there are high levels of vacancy and limited retailer demand, even very modest trade diversion from a new development may lead to a significant adverse impact.

Where evidence shows that there would be no likely significant impact on a town centre from an edge of centre or out of centre proposal, the local planning authority must then consider all other material considerations in determining the application, as it would for any other development.

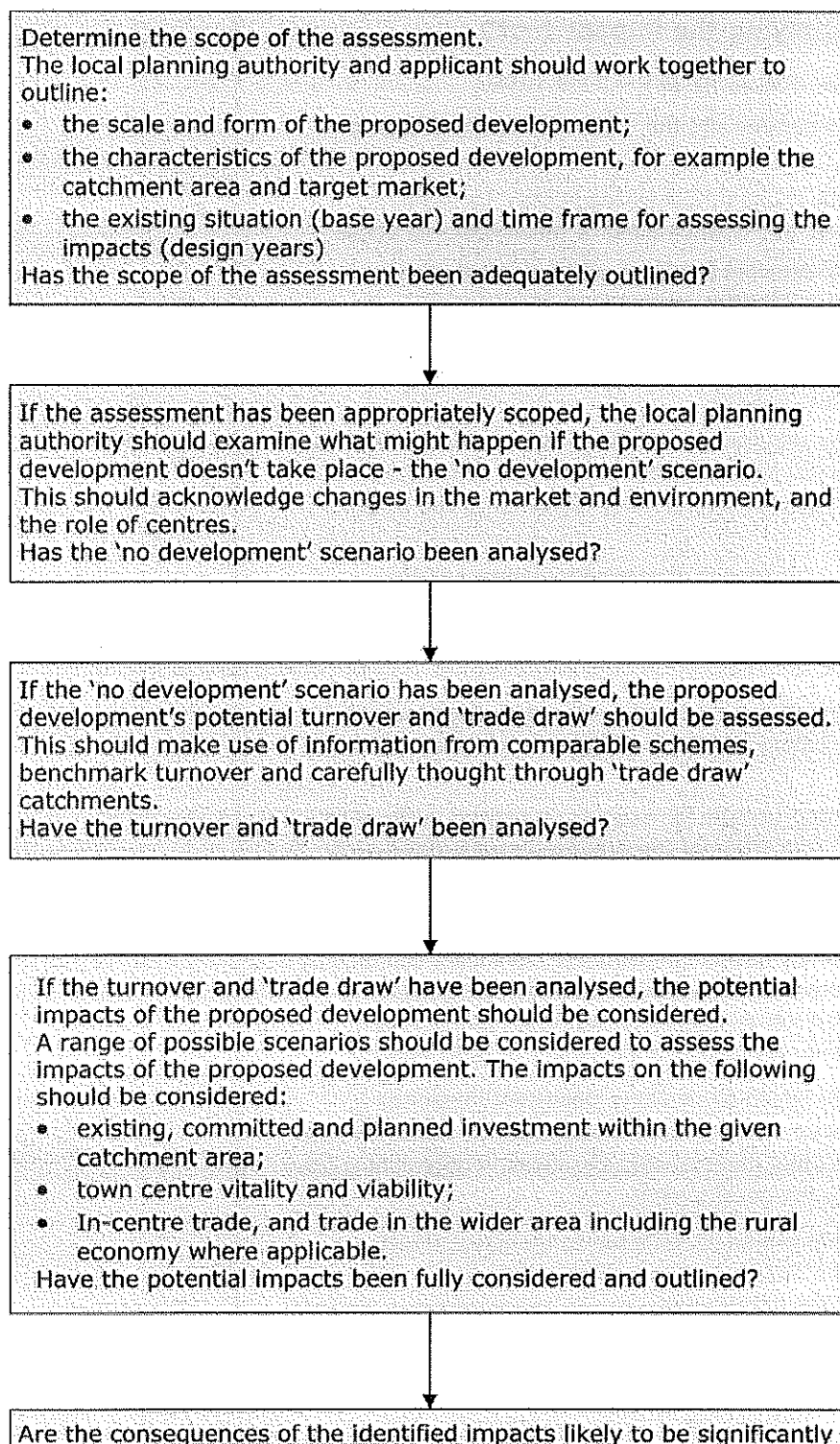
The design year for impact testing should be selected to represent the year when the proposal has achieved a 'mature' trading pattern. This is conventionally taken as the second full calendar year of trading after opening of each phase of a new retail development, but it may take longer for some developments to become established.

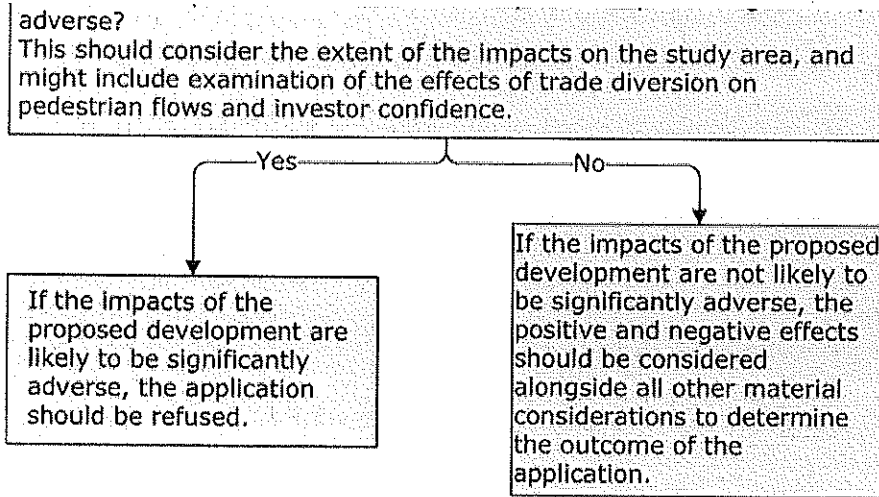
\* *Trade draw* is the proportion of trade that a development is likely to receive from customers within and outside its catchment area. It is likely that trade draw will relate to a certain geographic area (i.e. the distance people are likely to travel) and for a particular market segment (e.g. convenience retail). The best way of assessing trade draw where new development is proposed is to look at existing proxies of that type of development in other areas.

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## Impact Test: Decision-taking

This diagram sets out some of the key steps which should be taken when carrying out an impact test in decision-taking, but does not outline the process in its entirety.




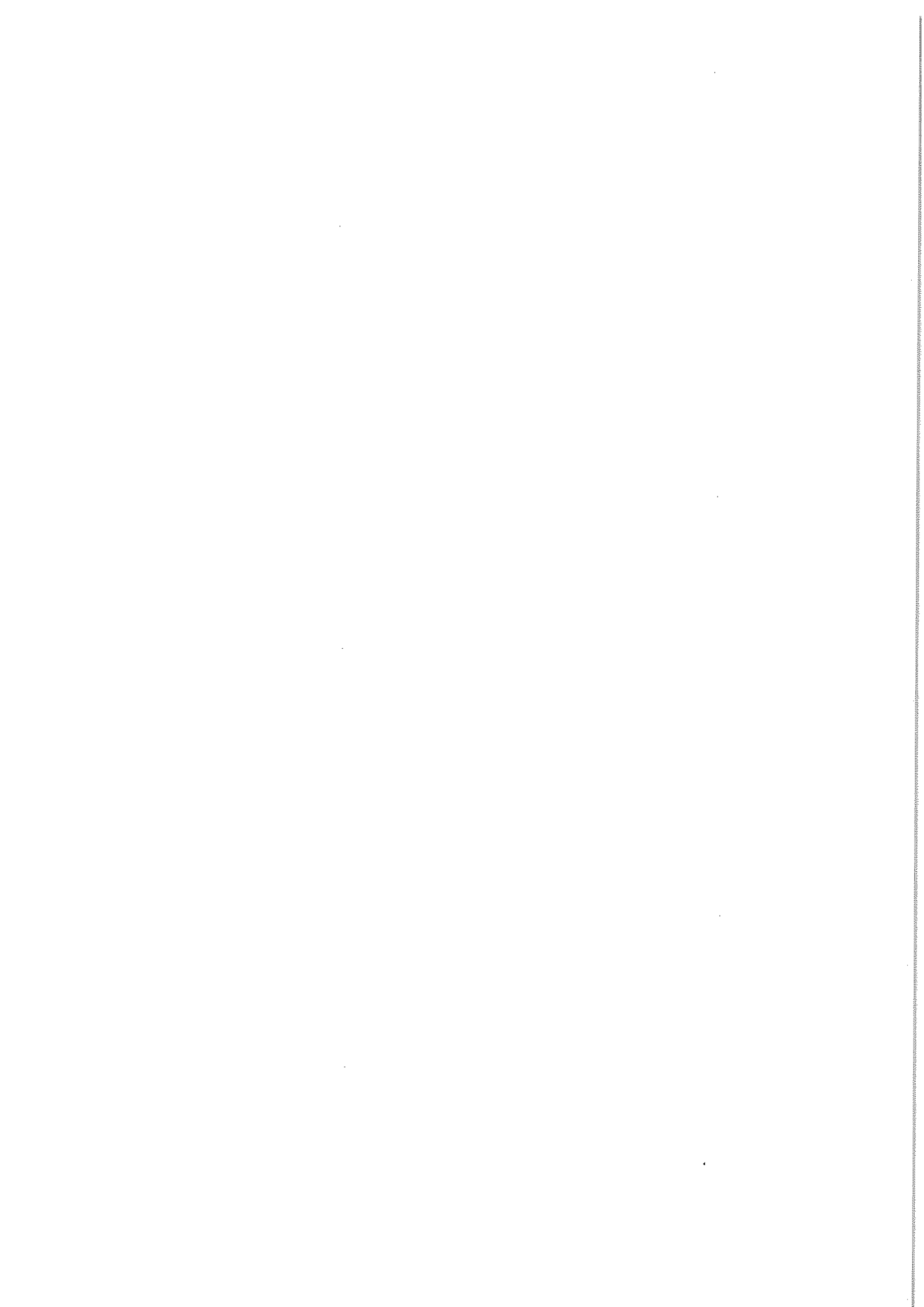


(<http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/town-centres.jpg>)

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 Department for Communities & Local Government  
(<https://www.gov.uk/government/organisations/department-for-communities-and-local-government>)



# Planning Practice Guidance <http://planningguidance.communities.gov.uk>

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Guidance

## Environmental Impact Assessment

Print 

### 1. Legislation covering Environmental Impact Assessment

<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/legislation-covering-environmental-impact-assessment/>)

#### Legislation covering Environmental Impact Assessment

##### What legislation covers Environmental Impact Assessment?

The process of Environmental Impact Assessment is governed by the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 [\[2\]](http://www.legislation.gov.uk/uksi/2011/1824/contents/made) (<http://www.legislation.gov.uk/uksi/2011/1824/contents/made>) as amended ([http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/screening-schedule-2-projects/#paragraph\\_059](http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/screening-schedule-2-projects/#paragraph_059)). These regulations apply the EU directive “on the assessment of the effects of certain public and private projects on the environment” (usually referred to as the Environmental Impact Assessment Directive [\[3\]](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:026:0001:0021:EN:PDF) (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:026:0001:0021:EN:PDF>)) to the planning system in England.

The regulations only apply to certain types of development and/or projects. They can even apply to ‘permitted development’ which is development for which you do not need to get planning permission. They do not apply to development consented under other regimes which are subject to separate Environmental Impact Assessment regulations.

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### 2. The purpose of Environmental Impact Assessment

<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/the-purpose-of-environmental-impact-assessment/>)

#### The purpose of Environmental Impact Assessment

##### What is the purpose of Environmental Impact Assessment?

The aim of Environmental Impact Assessment is to protect the environment by ensuring that a local planning authority when deciding whether to grant planning permission for a project, which is likely to have significant effects on the environment, does so in the full knowledge of the likely significant effects, and takes this into account in the decision making process. The regulations set out a procedure for identifying those projects which should be subject to an Environmental Impact Assessment, and for assessing, consulting and coming to a decision on those projects which are likely to have significant environmental effects.

The aim of Environmental Impact Assessment is also to ensure that the public are given early and effective opportunities to participate in the decision making procedures. See [Before submitting an application](http://planningguidance.communities.gov.uk/blog/guidance/before-submitting-an-application/)

[http://planningguidance.communities.gov.uk/blog/guidance/before-submitting-an-](http://planningguidance.communities.gov.uk/blog/guidance/before-submitting-an-application/)

application/) and Consultation and pre-decision matters (<http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/>).

Environmental Impact Assessment should not be a barrier to growth and will only apply to a small proportion of projects considered within the town and country planning regime. Local planning authorities have a well established general responsibility to consider the environmental implications of developments which are subject to planning control. The 2011 Regulations integrate Environmental Impact Assessment procedures into this framework and should only apply to those projects which are likely to have significant effects on the environment. Local planning authorities and developers should carefully consider if a project should be subject to an Environmental Impact Assessment. If required, they should limit the scope of assessment to those aspects of the environment that are likely to be significantly affected.

Pre-application engagement can also play a role in identifying when a proposal should be subject to environmental impact assessment. For more information click here (<http://planningguidance.communities.gov.uk/blog/guidance/before-submitting-an-application/>).

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### 3. The stages of Environmental Impact Assessment

(<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/the-stages-of-environmental-impact-assessment/>)

#### **The stages of Environmental Impact Assessment**

##### **What are the stages of Environmental Impact Assessment?**

There are five broad stages to the process:

##### **Screening**

Determining whether a proposed project falls within the remit of the Regulations, whether it is likely to have a significant effect on the environment and therefore requires an assessment.

Further information on screening can be found here (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/screening-schedule-2-projects/>).

##### **Scoping**

Determining the extent of issues to be considered in the assessment and reported in the Environmental Statement. The applicant can ask the local planning authority for their opinion on what information needs to be included (which is called a 'scoping opinion').

Further information on scoping can be found here (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/preparing-an-environmental-statement/>).

##### **Preparing an Environmental Statement**

Where it is decided that an assessment is required, the applicant must compile the information reasonably required to assess the likely significant environmental effects of the development. To help the applicant, public authorities must make available any relevant environmental information in their possession. The information finally compiled by the applicant is known as an Environmental Statement.

Further information on preparing an Environmental Statement can be found here (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/preparing-an-environmental-statement/>).

### **Making a planning application and consultation**

The Environmental Statement (and the application for development to which it relates) must be publicised. The statutory 'Consultation Bodies' and the public must be given an opportunity to give their views about the proposed development and the Environmental Statement.

Further information on consultation and publicity can be found here (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/the-procedures-for-submitting-an-environmental-statement/>).

### **Decision making**

The Environmental Statement, together with any other information which is relevant to the decision, comments and representations made on it, must be taken into account by the local planning authority and/or the Secretary of State in deciding whether or not to give consent for the development. The public must be informed of the decision and the main reasons for it.

Further information on decision making can be found here (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/considering-and-determining-planning-applications-that-have-been-subject-to-an-environmental-impact-assessment/>).

Note that an applicant can decide to prepare an Environmental Statement without first seeking a screening or scoping opinion from the local planning authority.


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## **4. Development covered by the regulations**

(<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/development-covered-by-the-regulations/>)

### **Development covered by the regulations**

#### **What development is covered by the regulations?**

The regulations  (<http://www.legislation.gov.uk/uksi/2011/1824/contents/made>) apply to England only, except for provisions relating to projects serving national defence purposes in the Devolved Administrations of Northern Ireland, Scotland and Wales. They apply to:

- **planning applications:** received by a local planning authority or which are referred to the Secretary of State for determination;
- **"subsequent applications":** i.e. applications for approval of a matter which is required by an extant planning permission and which must be obtained before all or part of the development permitted by the planning permission may begin. For more information click here (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/consideration-of-environmental-impact-assessment-applications/multi-stage-consents/>);
- **a local planning authorities' own development (Part 7).** For more information click here ([http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/what-development-is-covered-by-the-regulations/list-of-relevant-development-consent-mechanisms-and-controls/#paragraph\\_005](http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/what-development-is-covered-by-the-regulations/list-of-relevant-development-consent-mechanisms-and-controls/#paragraph_005));

- development permitted by **simplified planning zone** schemes, **enterprise zone** orders, **local development orders** and **neighbourhood development orders** (Part 8). For more information click here ([http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/what-development-is-covered-by-the-regulations/list-of-relevant-development-consent-mechanisms-and-controls/#paragraph\\_006](http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/what-development-is-covered-by-the-regulations/list-of-relevant-development-consent-mechanisms-and-controls/#paragraph_006));
- development which is subject to a **planning enforcement notice** (Part 9). For more information click here ([http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/what-development-is-covered-by-the-regulations/list-of-relevant-development-consent-mechanisms-and-controls/#paragraph\\_009](http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/what-development-is-covered-by-the-regulations/list-of-relevant-development-consent-mechanisms-and-controls/#paragraph_009));
- applications to **review a mineral permission** and for approval of conditions (Part 10). For more information click here ([http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/what-development-is-covered-by-the-regulations/list-of-relevant-development-consent-mechanisms-and-controls/#paragraph\\_013](http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/what-development-is-covered-by-the-regulations/list-of-relevant-development-consent-mechanisms-and-controls/#paragraph_013));
- Development which is carried out under **permitted development rights** (Schedule 6). For more information click here ([http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/what-development-is-covered-by-the-regulations/list-of-relevant-development-consent-mechanisms-and-controls/#paragraph\\_014](http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/what-development-is-covered-by-the-regulations/list-of-relevant-development-consent-mechanisms-and-controls/#paragraph_014));
- applications under section 73 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/73) (<http://www.legislation.gov.uk/ukpga/1990/8/section/73>) of the Town and Country Planning Act 1990 to carry out development without complying with a condition attached to an existing planning permission;
- **crown development**. For more information click here ([http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/what-development-is-covered-by-the-regulations/list-of-relevant-development-consent-mechanisms-and-controls/#paragraph\\_015](http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/what-development-is-covered-by-the-regulations/list-of-relevant-development-consent-mechanisms-and-controls/#paragraph_015)); and
- **demolition**. For more information click here ([http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/what-development-is-covered-by-the-regulations/list-of-relevant-development-consent-mechanisms-and-controls/#paragraph\\_016](http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/what-development-is-covered-by-the-regulations/list-of-relevant-development-consent-mechanisms-and-controls/#paragraph_016)).

The Regulations also apply to development with significant transboundary effects ([http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/considering-and-determining-planning-applications-that-have-been-subject-to-an-environmental-impact-assessment/#paragraph\\_049](http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/considering-and-determining-planning-applications-that-have-been-subject-to-an-environmental-impact-assessment/#paragraph_049)) (regulations 53 and 54 [\[2\]](http://www.legislation.gov.uk/uksi/2011/1824/part/11/made) (<http://www.legislation.gov.uk/uksi/2011/1824/part/11/made>)).

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- **List of relevant development consent mechanisms and controls** (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/development-covered-by-the-regulations/list-of-relevant-development-consent-mechanisms-and-controls/>)

## List of relevant development consent mechanisms and controls

### A local planning authority's own development

Where a local planning authority makes an Environmental Impact Assessment application for planning permission or subsequent consent, the procedures set out in the 2011 Regulations apply as they do to any other Environmental Impact Assessment application, subject to the modifications set out in regulation 25 [\[2\]](http://www.legislation.gov.uk/uksi/2011/1824/regulation/25/made) (<http://www.legislation.gov.uk/uksi/2011/1824/regulation/25/made>).

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## Simplified planning zones and enterprise zones

Schedule 1 [\[2\]](http://www.legislation.gov.uk/uksi/2011/1824/schedule/1/made) (<http://www.legislation.gov.uk/uksi/2011/1824/schedule/1/made>) development must not be granted planning permission by the adoption or approval of a Simplified Planning Zone, or through the designation or modification of an Enterprise Zone. This applies equally to permission granted under existing and new schemes.

Schedule 2 [\[2\]](http://www.legislation.gov.uk/uksi/2011/1824/schedule/2/made) (<http://www.legislation.gov.uk/uksi/2011/1824/schedule/2/made>) development can be included in, and permitted by Simplified Planning Zones and Enterprise Zones, providing the development has been the subject of a screening opinion or direction (regulations 27 [\[2\]](http://www.legislation.gov.uk/uksi/2011/1824/regulation/27/made) (<http://www.legislation.gov.uk/uksi/2011/1824/regulation/27/made>) and 28 [\[2\]](http://www.legislation.gov.uk/uksi/2011/1824/regulation/28/made) (<http://www.legislation.gov.uk/uksi/2011/1824/regulation/28/made>)) and determined not to be Environmental Impact Assessment development.

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## Local development orders

A local planning authority should not make a Local Development Order for Schedule 1 [\[2\]](http://www.legislation.gov.uk/uksi/2011/1824/schedule/1/made) (<http://www.legislation.gov.uk/uksi/2011/1824/schedule/1/made>) development.

For Schedule 2 [\[2\]](http://www.legislation.gov.uk/uksi/2011/1824/schedule/2/made) (<http://www.legislation.gov.uk/uksi/2011/1824/schedule/2/made>) development a local planning authority should not make a Local Development Order unless they have adopted a screening opinion or the Secretary of State has made a screening direction.

If screening identifies likely significant environmental effects, then an Environmental Impact Assessment is required. The procedure for making a Local Development Order for which an Environmental Statement has been prepared is set out in regulation 29 [\[2\]](http://www.legislation.gov.uk/uksi/2011/1824/regulation/29/made) (<http://www.legislation.gov.uk/uksi/2011/1824/regulation/29/made>).

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## Neighbourhood development orders

The Neighbourhood Planning (General) Regulations 2012 [\[2\]](http://www.legislation.gov.uk/uksi/2012/637/contents/made) (<http://www.legislation.gov.uk/uksi/2012/637/contents/made>) amended the Environmental Impact Assessment Regulations so that they apply to Neighbourhood Development Orders. These modifications are set out in a new regulation 29A [\[2\]](http://www.legislation.gov.uk/uksi/2012/637/schedule/3/made) (<http://www.legislation.gov.uk/uksi/2012/637/schedule/3/made>). An Order, which grants planning permission, may not be made by a local planning authority in respect of Schedule 1 [\[2\]](http://www.legislation.gov.uk/uksi/2011/1824/schedule/1/made) (<http://www.legislation.gov.uk/uksi/2011/1824/schedule/1/made>) development. An order proposal for development that would fall within Schedule 2 [\[2\]](http://www.legislation.gov.uk/uksi/2011/1824/schedule/2/made) (<http://www.legislation.gov.uk/uksi/2011/1824/schedule/2/made>) may be made provided the correct Environmental Impact Assessment procedures are followed, the basic conditions and other legal requirements are met and the order proposal achieves a majority at a referendum.

The new regulation 29A [\[2\]](http://www.legislation.gov.uk/uksi/2012/637/schedule/3/made) (<http://www.legislation.gov.uk/uksi/2012/637/schedule/3/made>) seeks to mirror as closely as possible the procedure to be followed by an applicant seeking planning permission for development that may be an Environmental Impact Assessment development. As a general rule for neighbourhood planning purposes references to 'applicants' in this guidance mean the 'qualifying body' and references to 'applications' mean the 'order proposal'.

For Schedule 2 [\[2\]](http://www.legislation.gov.uk/ukxi/2011/1824/schedule/2/made) (<http://www.legislation.gov.uk/ukxi/2011/1824/schedule/2/made>) development, a screening opinion or screening direction must be adopted to determine whether the development is Environmental Impact Assessment development. If screening identifies likely significant environmental effects, then Environmental Impact Assessment is required. In this situation when a qualifying body submits an order proposal to the local planning authority it should be accompanied by an Environmental Statement. The Environmental Statement will be one of the documents sent to the Independent Examiner.

Schedule 3 [\[3\]](http://www.legislation.gov.uk/ukxi/2012/637/schedule/3/made) (<http://www.legislation.gov.uk/ukxi/2012/637/schedule/3/made>) of the Neighbourhood Planning (General) Regulations 2012 prescribes a basic condition that must be met where the development described in an order proposal is Environmental Impact Assessment development. A referendum may not be held on the making of a Neighbourhood Development Order unless the local planning authority is satisfied that, having taken the environmental information into consideration, this basic condition has been met.

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### **Development which is the subject of a planning enforcement notice**

Development subject to a planning enforcement notice can be subject to Environmental Impact Assessment. Such development is referred to as “unauthorised Environmental Impact Assessment development” (Part 9 [\[9\]](http://www.legislation.gov.uk/ukxi/2011/1824/part/9/made) (<http://www.legislation.gov.uk/ukxi/2011/1824/part/9/made>) of the Regulations).

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### **Determining whether environmental impact assessment is needed for unauthorised development**

The local planning authority will determine whether Environmental Impact Assessment is needed (regulation 32 [\[32\]](http://www.legislation.gov.uk/ukxi/2011/1824/regulation/32/made) (<http://www.legislation.gov.uk/ukxi/2011/1824/regulation/32/made>)) and if necessary serve a “regulation 32 notice” with the enforcement notice, stating that Environmental Impact Assessment is required.

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### **Directions made by the secretary of state**

A recipient of a “regulation 32 notice” may apply to the Secretary of State for a screening direction (regulation 33 [\[33\]](http://www.legislation.gov.uk/ukxi/2011/1824/regulation/33/made) (<http://www.legislation.gov.uk/ukxi/2011/1824/regulation/33/made>)).

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### **Enforcement appeals**

Procedures for dealing with appeals against a planning enforcement notice are given in regulations 35-39 [\[35-39\]](http://www.legislation.gov.uk/ukxi/2011/1824/regulation/35/made) (<http://www.legislation.gov.uk/ukxi/2011/1824/regulation/35/made>)

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### **Review of mineral permissions**

The Regulations apply to applications and consents relating to a review of a mineral permission under Schedule 2 to the Planning and Compensation Act 1991, or Schedules 13 or 14 to the Environment Act 1995, with necessary modifications as set out in Part 10 to the Regulations.

## Minerals Guidance

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/>)

ID 4-013-20140306 Last updated 06 03 2014

## Permitted development

The Town and Country Planning (General Permitted Development) (England) Order 2015 [\[2\]](http://www.legislation.gov.uk/uksi/2015/596/contents/made) (<http://www.legislation.gov.uk/uksi/2015/596/contents/made>) grants a general planning permission (usually referred to as 'permitted development rights') for various specified types of development. Although many permitted development rights concern development of a minor, non-contentious nature, there are some that could fall within the descriptions in Schedules 1 [\[2\]](http://www.legislation.gov.uk/uksi/2011/1824/schedule/1/made) (<http://www.legislation.gov.uk/uksi/2011/1824/schedule/1/made>) or 2 [\[2\]](http://www.legislation.gov.uk/uksi/2011/1824/schedule/2/made) (<http://www.legislation.gov.uk/uksi/2011/1824/schedule/2/made>).

### Schedule 1 [\[2\]](http://www.legislation.gov.uk/uksi/2011/1824/schedule/1/made)

(<http://www.legislation.gov.uk/uksi/2011/1824/schedule/1/made>) development is excluded from being permitted development. Such development always requires the submission of a planning application and an Environmental Statement (and, where relevant, a subsequent application and revised Environmental Statement).

Schedule 2 [\[2\]](http://www.legislation.gov.uk/uksi/2011/1824/schedule/2/made) (<http://www.legislation.gov.uk/uksi/2011/1824/schedule/2/made>) development does not constitute permitted development unless the local planning authority has adopted a screening opinion to the effect that Environmental Impact Assessment is not required. Where the authority's opinion is that Environmental Impact Assessment is required, permitted development rights are withdrawn and a planning application must be submitted and accompanied by an Environmental Statement.

Application of the Environmental Impact Assessment requirements is excluded in the case of certain types of permitted development listed in Article 3(12) [\[2\]](http://www.legislation.gov.uk/uksi/2015/596/article/3/made) (<http://www.legislation.gov.uk/uksi/2015/596/article/3/made>) of the Town and Country Planning (General Permitted Development) (England) Order 2015. There may be rare cases in which a further application for approval needs to be made before development for which permitted development rights exist can proceed. In the case of Schedule 1 [\[2\]](http://www.legislation.gov.uk/uksi/2011/1824/schedule/1/made) (<http://www.legislation.gov.uk/uksi/2011/1824/schedule/1/made>) or 2 [\[2\]](http://www.legislation.gov.uk/uksi/2011/1824/schedule/2/made) (<http://www.legislation.gov.uk/uksi/2011/1824/schedule/2/made>) development authorised by an Act of Parliament, or order approved by both Houses, under Part 18 (Class A) of Schedule 2 [\[2\]](http://www.legislation.gov.uk/uksi/2015/596/schedule/2/made)

(<http://www.legislation.gov.uk/uksi/2015/596/schedule/2/made>) to the Town and Country Planning (General Permitted Development) (England) Order 2015, it will be necessary to carry out screening at the stage when the authority is asked to approve detailed plans and specifications, to check whether any Environmental Statement considered during the course of the passage of the Bill needs to be revised or updated.

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## Crown development

Planning applications by the Crown are subject to Environmental Impact Assessment procedures in the same way as applications by other bodies or individuals. Development serving national defence purposes is also subject to Environmental Impact Assessment procedures except where, in individual cases, the Secretary of State is of the opinion that an assessment would have an adverse effect on national defence, in which case a direction will be issued (regulation 4(4) [\[2\]](http://www.legislation.gov.uk/uksi/2011/1824/regulation/4/made)) (<http://www.legislation.gov.uk/uksi/2011/1824/regulation/4/made>) exempting such development from the Environmental Impact Assessment Regulations.

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## Demolition

Demolition of certain categories of buildings is considered development, albeit with permitted development rights, and can be subject to Environmental Impact Assessment. Where demolition works are a separate project, a developer will need to apply for a determination as to whether they will require prior approval from the local planning authority for the method of demolition. Local planning authorities will need to consider whether demolition projects are likely to have significant environmental effects and require a screening opinion to be issued; as such projects can come under Schedule 2.10(b) [\[2\]](#)

(<http://www.legislation.gov.uk/uk/si/2011/1824/schedule/2/made>) (urban development projects) and possibly other Schedule 2 categories of development

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5. Screening Schedule 2 projects (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/screening-schedule-2-projects/>)

## Screening Schedule 2 projects

### When is Environmental Impact Assessment required?

'Screening' is a procedure used to determine whether a proposed project is likely to have significant effects on the environment. It should normally take place at an early stage in the design of the project. However, it can also occur after a planning application has been made or even after an appeal has been made.

The local planning authority (or the Secretary of State in the case of an appeal) should determine whether the project is of a type listed in Schedule 1 or Schedule 2 of the Regulations [\[2\]](#) (<http://www.legislation.gov.uk/uk/si/2011/1824/made>):

- if it is listed in Schedule 1 [\[2\]](#) (<http://www.legislation.gov.uk/uk/si/2011/1824/schedule/1/made>) an assessment is required in every case;
- if the project is listed in Schedule 2 [\[2\]](#) (<http://www.legislation.gov.uk/uk/si/2011/1824/schedule/2/made>), the local planning authority should consider whether it is likely to have significant effects on the environment.

If a proposed project is listed in the first column in Schedule 2 ([http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/considering-and-determining-planning-applications-that-have-been-subject-to-an-environmental-impact-assessment/annex/#paragraph\\_058](http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/considering-and-determining-planning-applications-that-have-been-subject-to-an-environmental-impact-assessment/annex/#paragraph_058)) and exceeds the relevant thresholds or criteria set out in the second column (sometimes referred to as 'exclusion thresholds and criteria') the proposal needs to be screened by the local planning authority to determine whether significant effects are likely and hence whether an assessment is required. Projects listed in Schedule 2 which are located in, or partly in, a sensitive area also need to be screened, even if they are below the thresholds or do not meet the criteria.


Projects which are described in the first column of Schedule 2 but which do not exceed the relevant thresholds, or meet the criteria in the second column of the Schedule, or are not at least partly in a sensitive area may not be Schedule 2 development. Such projects do not usually require further screening or Environmental Impact Assessment.

Read more about sensitive areas

([http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/when-is-environmental-impact-assessment-required/interpretation-of-project-categories/#paragraph\\_032](http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/when-is-environmental-impact-assessment-required/interpretation-of-project-categories/#paragraph_032)).

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## **What is the procedure for deciding whether a Schedule 2 project is likely to have significant effects?**

When screening Schedule 2 projects, the local planning authority must take account of the selection criteria in Schedule 3 


(<http://www.legislation.gov.uk/uksi/2011/1824/schedule/3/made>) of the Regulations.

Not all of the criteria will be relevant in every case. Each case should be considered on its own merits in a balanced way and authorities should retain the evidence to justify their decision.

Only a very small proportion of Schedule 2 development will require an assessment. While it is not possible to formulate criteria or thresholds which will provide a universal test of whether or not an assessment is required, it is possible to offer a broad indication of the type or scale of development which is likely to require an assessment. It is also possible to provide an indication of the sort of development for which an assessment is unlikely to be necessary. To aid local planning authorities to determine whether a project is likely to have significant environmental effects, a set of indicative thresholds and criteria have been produced. To view the indicative thresholds and criteria click here (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/considering-and-determining-planning-applications-that-have-been-subject-to-an-environmental-impact-assessment/annex/>). The table also gives an indication of the types of impact that are most likely to be significant for particular types of development.

**However, it should not be presumed that developments above the indicative thresholds should always be subject to assessment, or those falling below these thresholds could never give rise to significant effects, especially where the development is in an environmentally sensitive location. Each development will need to be considered on its merits.**

While there is no requirement to use a screening checklist, they can help ensure the relevant issues are considered and provide a clear audit trail.

See the Planning Portal for an example checklist 

([http://www.planningportal.gov.uk/uploads/pins/eia\\_analysis\\_screening.doc](http://www.planningportal.gov.uk/uploads/pins/eia_analysis_screening.doc)) (DOC)

Having completed the screening exercise, the local planning authority must provide a screening opinion, indicating either that an assessment is required (a 'positive screening opinion') or is not required ('a negative screening opinion').

Click here (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/when-is-environmental-impact-assessment-required/establishing-whether-a-proposed-development-requires-an-environmental-impact-assessment/>) to view a flow chart summarising the screening process.

The Secretary of State can also use powers to direct that Environmental Impact Assessment is required in circumstances in which development of a type listed in Schedule 2 does not meet the criteria or exceed the thresholds, but is considered likely to have significant environmental effects.

Read more about interpreting project types

(<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/when-is-environmental-impact-assessment-required/interpretation-of-project-categories/>).

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## What is the procedure for dealing with relevant projects that are below the screening thresholds introduced by the Town and Country Planning (Environmental Impact Assessment) (Amendment) Regulations 2015?

As of 6 April 2015, new regulations [\[2\]](#)

(<http://www.legislation.gov.uk/ukxi/2015/660/contents/made>) come into force. They raise the screening thresholds for industrial estate development and urban development projects as set out in the Annex

([http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/considering-and-determining-planning-applications-that-have-been-subject-to-an-environmental-impact-assessment/annex/#paragraph\\_058](http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/considering-and-determining-planning-applications-that-have-been-subject-to-an-environmental-impact-assessment/annex/#paragraph_058)). Projects which are wholly outside of sensitive areas and do not exceed the new screening thresholds are not Schedule 2 development and should not be screened by the local planning authority.

There will be projects which do not exceed the new thresholds but which were determined to be environmental impact assessment development before the 2015 Regulations came into force. The implications for environmental impact assessment are as follows.

Where the local planning authority has, prior to 6 April 2015, screened a project which does not exceed the relevant new threshold and determined that it is environmental impact assessment development, it continues as such. It remains, as usual, open to the applicant to request that the Secretary of State issues a screening direction

([http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/screening-schedule-2-projects/#paragraph\\_020](http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/screening-schedule-2-projects/#paragraph_020)) to determine whether a development is likely to have significant effects on the environment

### Subsequent applications

([http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/considering-and-determining-planning-applications-that-have-been-subject-to-an-environmental-impact-assessment/multi-stage-consents/#paragraph\\_056](http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/considering-and-determining-planning-applications-that-have-been-subject-to-an-environmental-impact-assessment/multi-stage-consents/#paragraph_056)) in relation to development which was determined to be environmental impact assessment development prior to 6 April 2015 but which is below the new thresholds should continue to be treated as environmental impact assessment development. The local planning authority should consider whether the environmental information is adequate to assess the environmental effects of the development, and if so, take that information into consideration in the decision on the application in accordance with regulation 8 [\[2\]](#)

(<http://www.legislation.gov.uk/ukxi/2011/1824/regulation/8/made>). If the environmental information is not adequate to assess the environmental effects of the development, the necessary information should be sought from the developer in accordance with regulation 22(1) [\[2\]](#)

(<http://www.legislation.gov.uk/ukxi/2011/1824/regulation/22/made>).

Subsequent applications made after 6 April 2015 in respect of development which has never been determined to be Environmental Impact Assessment development should be treated in line with the new thresholds.

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## How can an applicant obtain a screening opinion from the local planning authority?

If anyone is considering carrying out development of a type listed in Schedule 2 [\[2\]](#) (<http://www.legislation.gov.uk/ukxi/2011/1824/schedule/2/made>), or is unsure whether their proposed development requires an Environmental Impact Assessment, they may request the local planning authority to provide a screening opinion on the need for Environmental Impact Assessment. The

request should include as a minimum a plan indicating the proposed location of the development, a brief description of the nature and purpose of the proposal, and its possible environmental effects, giving a broad indication of their likely scale. Requirements for making the documents available to the public are set out in regulation 23 [\[2\]](#)

(<http://www.legislation.gov.uk/ukSI/2011/1824/regulation/23/made>).

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### **Can the local authority's screening opinion be challenged?**

Generally, it will fall to local planning authorities in the first instance to consider whether a proposed development requires Environmental Impact Assessment. However, the Secretary of State is empowered to make directions in relation to the need for Environmental Impact Assessment. Such directions will normally be made in response to an application from a developer. Where the local planning authority's opinion is that Environmental Impact Assessment is required, or where a local planning authority fails to adopt an opinion within three weeks (or within an extension agreed in writing), the applicant may make a request to the Secretary of State to make a screening direction. Requests should be made to the National Casework Unit, Department for Communities and Local Government, 5 St Philips Place, Colmore Row, Birmingham B3 2PW ([npcu@communities.gsi.gov.uk](mailto:npcu@communities.gsi.gov.uk) [\[3\]](#) (<mailto:npcu@communities.gsi.gov.uk>)).

However, any person, where they consider a proposed development requires Environmental Impact Assessment, may write to the Secretary of State requesting a screening direction, even though neither the planning authority nor the applicant takes that view. Any such requests will be considered on a case by case basis. Some indication will therefore be looked for to demonstrate that the person making the request has seriously considered the basis on which an Environmental Impact Assessment might be needed, and has offered relevant grounds for that request.

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### **Can a screening opinion or direction be changed?**

There may, exceptionally, be cases where a screening opinion has been issued but it becomes evident that it needs to be changed, for example, because new evidence comes to light.

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### **Should proposed changes or extensions to Schedule 1 or Schedule 2 development be screened?**

Applicants and local planning authorities need to consider if significant environmental effects may result from an existing or approved Schedule 1 [\[4\]](#) (<http://www.legislation.gov.uk/ukSI/2011/1824/schedule/1/made>) or 2 [\[5\]](#) (<http://www.legislation.gov.uk/ukSI/2011/1824/schedule/2/made>) development being changed or extended.

More guidance on changes or extensions to existing development ([http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/when-is-environmental-impact-assessment-required/interpretation-of-project-categories/#paragraph\\_033](http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/when-is-environmental-impact-assessment-required/interpretation-of-project-categories/#paragraph_033)).

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### **Can mitigation measures be taken into account at the screening stage?**

The extent to which mitigation or other measures may be taken into account in reaching a screening opinion depends on the facts of each case. In some cases, the measures may form part of the proposal, be modest in scope or so plainly and easily achievable that it may well be possible to reach a conclusion that there is no likelihood of significant environmental effects. The local planning authority must have regard to the amount of information available, the precautionary principle and the degree of uncertainty in relation to the environmental impact. However, there may be cases where the uncertainties are such that Environmental Impact Assessment is required. Subject to this, proposals for mitigation and other measures may be taken into account by the local planning authority (R(Loaders) [2012] EWCA Civ 869).

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### **When should cumulative effects be assessed?**

Each application (or request for a screening opinion) should be considered on its own merits. There are occasions where other existing or approved development may be relevant in determining whether significant effects are likely as a consequence of a proposed development. The local planning authorities should always have regard to the possible cumulative effects arising from any existing or approved development. There could also be circumstances where two or more applications for development should be considered together. For example, where the applications in question are not directly in competition with one another, so that both or all of them might be approved, and where the overall combined environmental impact of the proposals might be greater or have different effects than the sum of their separate parts.

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### **How should multiple applications be treated?**

An application should not be considered in isolation if, in reality, it is an integral part of a more substantial development (Judgment in the case of R v Swale BC ex parte RSPB [1991] 1PLR 6). In such cases, the need for Environmental Impact Assessment must be considered in the context of the whole development. In other cases, it is appropriate to establish whether each of the proposed developments could proceed independently (Candlish [2005] EWHC 1539; Baker [2009] EWHC 595).

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### **Can an Environmental Statement be submitted without a screening opinion?**

An applicant may decide that Environmental Impact Assessment will be required and submit an Environmental Statement with an application without having obtained a screening opinion. If an applicant expressly states they are submitting a statement which they refer to as an Environmental Statement, then, for the purposes of the regulations, the application is classified as an Environmental Impact Assessment application and must be treated as such by the local planning authority.

If the applicant has not made it clear that the information submitted is intended to constitute an Environmental Statement, the local planning authority should contact the applicant to clarify the position. In case of doubt, the local planning authority should issue a screening opinion. Where it is determined that Environmental Impact Assessment is not required, the information provided by the applicant should still be taken into account in determining the application, if it is material to the decision.

ID 4-026-20140306 Last updated 06 03 2014



### **What happens if a planning application for a Schedule 2 development is not accompanied by an Environmental Statement?**

When a local planning authority receives an application for Schedule 2 [\[2\]](http://www.legislation.gov.uk/uksi/2011/1824/schedule/2/made) (http://www.legislation.gov.uk/uksi/2011/1824/schedule/2/made) development and the application has not been the subject of a screening opinion or direction and there is no accompanying Environmental Statement, the local planning authority must provide an opinion on the need for Environmental Impact Assessment as if the applicant had requested it under regulation 5 [\[2\]](http://www.legislation.gov.uk/uksi/2011/1824/regulation/5/made) (http://www.legislation.gov.uk/uksi/2011/1824/regulation/5/made). If the local planning authority's opinion is that Environmental Impact Assessment is not required, the application should then be determined in the normal way. There are specific requirements in relation to subsequent applications in regulation 8 [\[2\]](http://www.legislation.gov.uk/uksi/2011/1824/regulation/8/made) (http://www.legislation.gov.uk/uksi/2011/1824/regulation/8/made).

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### **What is the procedure where the Secretary of State calls-in an application which is not accompanied by an Environmental Statement?**

When a planning application which has not previously been subject to a screening opinion or direction is called in for determination by the Secretary of State (under section 77 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/77) (http://www.legislation.gov.uk/ukpga/1990/8/section/77) of the Town and Country Planning Act 1990) and it is not accompanied by an Environmental Statement, the Secretary of State will consider whether it is Environmental Impact Assessment development. Where necessary the Secretary of State will make a screening direction.

If the Secretary of State directs that Environmental Impact Assessment is required, the applicant and the local planning authority will be notified accordingly. There is no right of appeal against such a notification. An applicant who wishes to continue with their application must reply within **three weeks** of such a notification, stating that an Environmental Statement will be provided. Otherwise, at the end of the three week period, the Secretary of State will inform the applicant that no further action will be taken on the application. Where the applicant indicates that an Environmental Statement will be provided, the Secretary of State will notify the consultation bodies (http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/who-is-responsible-for-preparing-the-environmental-statement/consultation-bodies/) accordingly.

If the Secretary of State concludes that Environmental Impact Assessment is not required, and there has been no previous screening opinion to that effect, the Secretary of State shall make a screening direction to that effect and send a copy to the local planning authority. The local planning authority must ensure that the direction is placed on the planning register.

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### **What is the procedure for planning appeals?**

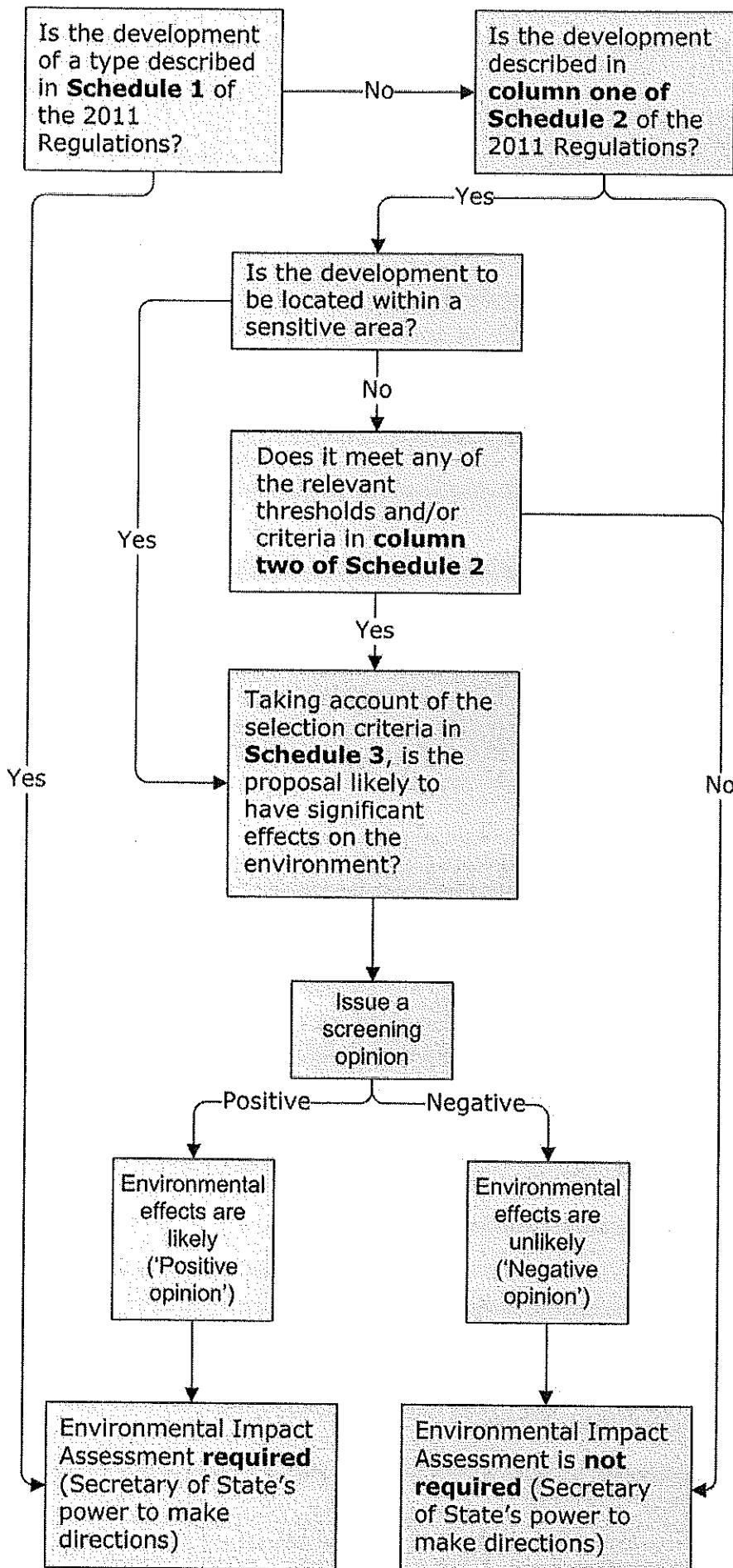
An appeal made under section 78 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/78) (http://www.legislation.gov.uk/ukpga/1990/8/section/78) of the 1990 Act which is not accompanied by an Environmental Statement will be dealt with in a similar way to a called-in application, and the same procedures and time limits will apply. However, where an Inspector dealing with an appeal considers that Environmental Impact Assessment might be required, the case will be referred to the Secretary of State. The Inspector is then precluded from determining the

appeal (except by refusing the planning permission) until he receives a screening direction from the Secretary of State. If the Secretary of State directs that Environmental Impact Assessment is required, the Inspector may not determine the appeal (except by refusing permission) until the appellant submits an Environmental Statement. The Secretary of State may direct that Environmental Impact Assessment is required at any time before an appeal is determined.

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- **Establishing whether a proposed development requires an environmental impact assessment** (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/screening-schedule-2-projects/establishing-whether-a-proposed-development-requires-an-environmental-impact-assessment/>)

### **Establishing whether a proposed development requires an environmental impact assessment**



([http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/eia1\\_030.jpg](http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/eia1_030.jpg))

**Related links:**

- Schedule 1 [\[X\]](http://www.legislation.gov.uk/uksi/2011/1824/schedule/1/made) of the 2011 Regulations
- Schedule 2 [\[X\]](http://www.legislation.gov.uk/uksi/2011/1824/schedule/2/made) of the 2011 Regulations
- Schedule 3 [\[X\]](http://www.legislation.gov.uk/uksi/2011/1824/schedule/3/made) of the 2011 Regulations
- More information on Sensitive Areas ([http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/when-is-environmental-impact-assessment-required/interpretation-of-project-categories/#paragraph\\_032](http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/when-is-environmental-impact-assessment-required/interpretation-of-project-categories/#paragraph_032))
- More information about the Secretary of State's power to make directions [\[X\]](http://www.legislation.gov.uk/uksi/2011/1824/regulation/6/made) (<http://www.legislation.gov.uk/uksi/2011/1824/regulation/6/made>)

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- Interpretation of project categories

(<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/screening-schedule-2-projects/interpretation-of-project-categories/>)

**Interpretation of project categories**

In determining whether a particular proposal for development is included within one of the categories of development listed in Schedule 1 [\[X\]](http://www.legislation.gov.uk/uksi/2011/1824/schedule/1/made) (<http://www.legislation.gov.uk/uksi/2011/1824/schedule/1/made>) or 2 [\[X\]](http://www.legislation.gov.uk/uksi/2011/1824/schedule/2/made) (<http://www.legislation.gov.uk/uksi/2011/1824/schedule/2/made>), local planning authorities and developers should have regard to the ruling of the Court of Justice of the European Union that the Directive has a "wide scope and broad purpose" (In the Court of Justice of the European Union case C- 72/95 (Kraaijeveld v Holland)). The fact that a particular development is not specifically identified in one of the Schedules does not necessarily mean that it falls outside the scope of the Regulations. For example, the Schedule 2.10(b) category, "urban development" (which accounts for by far the largest proportion of Environmental Impact Assessment development in England), includes residential and other development of an urban nature. It can also apply to development in non-urban areas which has an urbanising effect on the local environment, for example, an out-of-town shopping complex.

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**Sensitive areas**

The more environmentally sensitive the location, the more likely it is that the effects will be significant and will require an assessment. Certain designated sites are defined in regulation 2(1) [\[X\]](http://www.legislation.gov.uk/uksi/2011/1824/regulation/2/made) (<http://www.legislation.gov.uk/uksi/2011/1824/regulation/2/made>) as sensitive areas and the thresholds and criteria in the second column of the table in Schedule 2 are not applied. All developments in, or partly in, such areas should be screened. These are:

- Sites of Special Scientific Interest and European sites;
- National Parks, the Broads and Areas of Outstanding Natural Beauty; and
- World Heritage Sites and scheduled monuments.

An assessment is more likely to be required if the project affects the features for which the sensitive area was designated. However, it does not follow that every Schedule 2 development in (or affecting) these areas will automatically

require an assessment. It will be necessary to judge whether the likely effects on the environment of that particular development will be significant in that particular location. Local planning authorities are advised to consult the consultation bodies

(<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/who-is-responsible-for-preparing-the-environmental-statement/consultation-bodies/>) in cases where there is a doubt about the significance of a development's likely effects on a sensitive area.

Special considerations apply to Sites of Special Scientific Interest, especially those which are also European sites. In practice, the likely environmental effects of Schedule 2 development will often be such as to require an Environmental Impact Assessment if it is to be located in or close to sensitive sites. It may also be necessary to undertake an appropriate assessment under the Conservation of Habitats and Species Regulations 2010 <sup>2</sup>

(<http://www.legislation.gov.uk/ukxi/2010/490/contents/made>) if the proposed development is likely to have a significant effect on a European site. If a local planning authority or applicant is uncertain about the significance of a proposed development's likely effects on a Site of Special Scientific Interest or European site it should consult Natural England.

See also: What are the legal obligations on local planning authorities and developers regarding European sites designated under the Birds or Habitats Directives, protected species and Sites of Special Scientific Interest ([http://planningguidance.communities.gov.uk/blog/guidance/natural-environment/biodiversity-ecosystems-and-green-infrastructure/#paragraph\\_011](http://planningguidance.communities.gov.uk/blog/guidance/natural-environment/biodiversity-ecosystems-and-green-infrastructure/#paragraph_011)).

In certain cases, local designations which are not included in the definition of "sensitive areas", but which are nonetheless environmentally sensitive, may also be relevant in determining whether an assessment is required.

In considering the sensitivity of a particular location, regard should also be had to whether any national or internationally agreed environmental standards (e.g. air quality) are already being approached or exceeded.

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### **Proposed changes or extensions to schedule 1 or schedule 2 development**

Where a change or extension is made to a development of a type listed in Schedule 1 <sup>2</sup> (<http://www.legislation.gov.uk/ukxi/2011/1824/schedule/1/made>) and that change or extension itself meets the thresholds or description set out in that Schedule, it constitutes Schedule 1 development and Environmental Impact Assessment is required (Baker v Bath & North East Somerset Council [2009] All ER (D) 169 (Jul)).

Other changes or extensions to Schedule 1 development, which when considered with the development as a whole (i.e. as changed or extended), may result in significant adverse effects on the environment, or which meet the thresholds or criteria set out in column two of Schedule 2 (paragraph 13), are Schedule 2 development and should be screened.

#### **Changes or extensions to Schedule 2**

([http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/considering-and-determining-planning-applications-that-have-been-subject-to-an-environmental-impact-assessment/annex/#paragraph\\_058](http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/considering-and-determining-planning-applications-that-have-been-subject-to-an-environmental-impact-assessment/annex/#paragraph_058)) development, which when considered with the existing development as a whole, may result in significant adverse effects on the environment, or which meet the thresholds or criteria set out in column two of Schedule 2, are also Schedule 2 development and require screening.

If it is considered that the change or extension will not lead to other significant adverse effects, taking into account the effects on the development as a whole, screening should not be required where the change or extension does not meet the criteria or thresholds in Schedule 2. This is likely to be the outcome in the vast majority of cases involving a minor change or extension to an existing development (for example, the majority of permitted developments, such as development within the curtilage of a dwelling house, minor operations, temporary buildings and uses, small business use or minor infrastructure development such as that carried out within the boundaries of airports and other large site operations).

In some cases, repeated small extensions may be made to existing development. Quantified thresholds cannot easily deal with this kind of “incremental” development. An expansion of the same size as a previous expansion will not automatically lead to the same determination on the need for Environmental Impact Assessment because the environment may have altered since the question was last addressed.

ID 4-033-20140306 Last updated 06 03 2014

## 6. Preparing an Environmental Statement

(<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/preparing-an-environmental-statement/>)

### Preparing an Environmental Statement

#### Who is responsible for preparing the Environmental Statement?

The applicant is responsible for preparing the Environmental Statement.

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#### What information should the Environmental Statement contain?

There is no statutory provision as to the form of an Environmental Statement. However, it must contain the information specified in Part II of Schedule 4 [\[2\]](http://www.legislation.gov.uk/uksi/2011/1824/schedule/4/made) (<http://www.legislation.gov.uk/uksi/2011/1824/schedule/4/made>), and such of the relevant information in Part I of the Schedule 4 [\[2\]](http://www.legislation.gov.uk/uksi/2011/1824/schedule/4/made) (<http://www.legislation.gov.uk/uksi/2011/1824/schedule/4/made>) as is reasonably required to assess the effects of the project and which the applicant can reasonably be required to compile. It may consist of one or more documents, but it must constitute a “single and accessible compilation of the relevant environmental information and the summary in non-technical language” (Berkeley v SSETR [2000] 3 All ER 897, 908).

The applicant does not need to consult anyone about the information to be included in an Environmental Statement. However, local planning authorities will often possess useful local and specialised information and may be able to give preliminary advice on those aspects of the proposal that are likely to be of particular concern to them. It may also be helpful to an applicant preparing an Environmental Statement to obtain relevant environmental information from the statutory consultation bodies

(<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/who-is-responsible-for-preparing-the-environmental-statement/consultation-bodies/>) (regulation 15 [\[2\]](http://www.legislation.gov.uk/uksi/2011/1824/regulation/15/made)

(<http://www.legislation.gov.uk/uksi/2011/1824/regulation/15/made>)), and also to consult any appropriate non-statutory bodies that also have relevant information.

Whilst every Environmental Statement should provide a full factual description of the development, the emphasis of Schedule 4 is on the “main” or “**significant**” environmental effects to which a development is likely to give rise. The Environmental Statement should be proportionate and not be any longer than is necessary to assess properly those effects. **Where, for example, only one environmental factor is likely to be significantly affected, the assessment should focus on that issue only. Impacts which have little or no significance for the particular development in question will need only very brief treatment to indicate that their possible relevance has been considered.**

Where alternative approaches to development have been considered, the Environmental Statement should include an outline of the main alternatives studied and the main reasons for the choice made, taking into account the environmental effects.

The Environmental Statement may, of necessity, contain complex scientific data and analysis in a form which is not readily understandable by the lay person. The main findings must be set out in accessible plain English in a non technical summary to ensure that the findings can more readily be disseminated to the general public, and that the conclusions can be easily understood by non-experts as well as decision makers (paragraph five of Part II of Schedule 4 [\[2\]](http://www.legislation.gov.uk/ukxi/2011/1824/schedule/4/made) (<http://www.legislation.gov.uk/ukxi/2011/1824/schedule/4/made>)).

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### **Does an applicant have to obtain a formal opinion from the local planning authority on the scope of an Environmental Statement?**

An applicant is not required to consult anyone about the information to be included in an Environmental Statement. However, they may ask the local planning authority for its formal opinion on the information to be supplied in the Environmental Statement (a “scoping opinion”) (regulation 13 [\[2\]](http://www.legislation.gov.uk/ukxi/2011/1824/regulation/13/made) (<http://www.legislation.gov.uk/ukxi/2011/1824/regulation/13/made>)). This allows the local planning authority to clarify what it considers the main effects of the development are likely to be and, therefore, the aspects on which the applicant’s Environmental Statement should focus. There is no right to seek a formal scoping opinion once a planning application has been submitted.

When making a request for a scoping opinion, the applicant should, as a minimum, provide the local planning authority with a plan indicating the proposed location of the development, a brief description of the nature and purpose of the proposal and its possible environmental effects, giving a broad indication of their likely scale (regulation 13(2) [\[2\]](http://www.legislation.gov.uk/ukxi/2011/1824/regulation/13/made) (<http://www.legislation.gov.uk/ukxi/2011/1824/regulation/13/made>)). This is the same information required for a screening opinion and both requests may be made at the same time. A local planning authority can request additional information if it considers it necessary (regulation 13(3) [\[2\]](http://www.legislation.gov.uk/ukxi/2011/1824/regulation/13/made) (<http://www.legislation.gov.uk/ukxi/2011/1824/regulation/13/made>)).

The local planning authority must consult the consultation bodies (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/who-is-responsible-for-preparing-the-environmental-statement/consultation-bodies/>) and the applicant before providing a scoping opinion (regulation 13(4) [\[2\]](http://www.legislation.gov.uk/ukxi/2011/1824/regulation/13/made) (<http://www.legislation.gov.uk/ukxi/2011/1824/regulation/13/made>)). It should provide its opinion within **five weeks** (or longer period if agreed in writing with applicant) of receiving a request. The opinion should be proportionate – tailored to the specific characteristics of the development and the main environmental features likely to be significantly affected.

Regulation 23 [\[a\]](http://www.legislation.gov.uk/ukxi/2011/1824/regulation/23/made) (<http://www.legislation.gov.uk/ukxi/2011/1824/regulation/23/made>) sets out the requirements for making the scoping request and opinion available to the public.

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### **Can an applicant request a scoping direction from the Secretary of State?**

If a local planning authority fails to adopt a scoping opinion within five weeks (or following an extension agreed in writing) the applicant may ask the Secretary of State to make a scoping direction. Regulation 14 [\[a\]](http://www.legislation.gov.uk/ukxi/2011/1824/regulation/14/made) (<http://www.legislation.gov.uk/ukxi/2011/1824/regulation/14/made>) sets out the procedure for requesting a scoping direction.

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### **Does the applicant need to comply with a scoping opinion or direction?**

The applicant does not have to comply fully with either a scoping opinion or direction. However, as these documents represent the considered view of the local planning authority or Secretary of State, an Environmental Statement which does not cover all the matters specified in the scoping opinion or direction is more likely to be subject to a request for further information. This could delay the determination of an application.

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### **What information should the consultation bodies provide?**

Under the Environmental Information Regulations 2004 [\[a\]](http://www.legislation.gov.uk/ukxi/2004/3391/contents/made) (<http://www.legislation.gov.uk/ukxi/2004/3391/contents/made>) public bodies must make environmental information available to any person who requests it. The consultation bodies are only required to provide information already in their possession. There is no obligation to make available information which is capable of being treated as confidential under the Environmental Information Regulations 2004. The 2011 Regulations supplement these provisions in cases where an applicant is preparing an Environmental Statement. Once an applicant has given the local planning authority notice under regulation 15(1) [\[a\]](http://www.legislation.gov.uk/ukxi/2011/1824/regulation/15/made) (<http://www.legislation.gov.uk/ukxi/2011/1824/regulation/15/made>), the local planning authority must inform the consultation bodies (regulation 2(1) [\[a\]](http://www.legislation.gov.uk/ukxi/2011/1824/regulation/2/made) (<http://www.legislation.gov.uk/ukxi/2011/1824/regulation/2/made>)) and remind them of their obligation to make available, if requested, any relevant non-confidential, information in their possession. The local planning authority must also notify the applicant of the names and addresses of the bodies to which they have sent such a notice.

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### **What aspects of the environment need to be considered?**

The list of aspects of the environment which might be significantly affected by a project is set out in Schedule 4 [\[a\]](http://www.legislation.gov.uk/ukxi/2011/1824/schedule/4/made) (<http://www.legislation.gov.uk/ukxi/2011/1824/schedule/4/made>), and includes population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between the factors. Consideration should also be given to the likely significant effects resulting from the use of natural resources, the emission of pollutants, the creation of nuisances and the elimination of waste. In addition to the direct effects of a development, the Environmental Statement



should also cover indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects where these are significant. These are comprehensive lists, and a particular project may give rise to significant effects, and require full and detailed assessment, in only one or two respects.

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### **Does an applicant need to consider alternatives?**

No, however, where alternatives have been considered, paragraph 4 of part II of Schedule 4 [\[2\]](http://www.legislation.gov.uk/ukSI/2011/1824/schedule/4/made) (<http://www.legislation.gov.uk/ukSI/2011/1824/schedule/4/made>) requires the applicant to include in their Environmental Statement an outline of the main alternatives considered, and the main reasons for their choice.

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- **Consultation bodies** (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/preparing-an-environmental-statement/consultation-bodies/>)

### **Consultation bodies**

Regulation 2(1) [\[2\]](http://www.legislation.gov.uk/ukSI/2011/1824/regulation/2/made)

(<http://www.legislation.gov.uk/ukSI/2011/1824/regulation/2/made>) defines certain public bodies as '**consultation bodies**' for the purpose of the regulations. These include:

- Natural England;
- Environment Agency; and
- Marine Management Organisation.

It can also include other bodies designated by statutory provision as having specific environmental responsibilities and which the relevant local planning authority or the Secretary of State considers are likely to have an interest in the application.

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## **7. The procedures for submitting an Environmental Statement**

(<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/the-procedures-for-submitting-an-environmental-statement/>)

### **The procedures for submitting an Environmental Statement**

#### **What are the procedures for submitting an Environmental Statement with an application?**

When an applicant intends to submit a planning application with a statement which they refer to as an Environmental Statement, the applicant should send the local planning authority all the documents which must normally accompany a planning application (regulation 16 [\[2\]](http://www.legislation.gov.uk/ukSI/2011/1824/regulation/16/made)

(<http://www.legislation.gov.uk/ukSI/2011/1824/regulation/16/made>)).

In addition, the applicant should also submit:

- one further copy of the Environmental Statement for onward transmission by the local planning authority to the Secretary of State;
- a note of the name of everybody to whom the applicant has already sent, or intends to send, a copy of the Environmental Statement; and

- sufficient further copies of the Environmental Statement as are needed to allow the local planning authority to send one to the other consultation bodies.

Applicants should also make copies of the Environmental Statement available to the public, either free of charge or at a reasonable cost reflecting printing and distribution costs.

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### **What are the publicity requirements for Environmental Impact Assessment applications?**

The planning application and the Environmental Statement should be publicised in accordance with the procedures set out in Article 13 [\[2\]](http://www.legislation.gov.uk/ukxi/2015/595/article/13/made)

(<http://www.legislation.gov.uk/ukxi/2015/595/article/13/made>) of the Town and Country Planning (Development Management Procedure) (England) Order 2015. Schedule 3 [\[2\]](http://www.legislation.gov.uk/ukxi/2015/595/schedule/3/made) (<http://www.legislation.gov.uk/ukxi/2015/595/schedule/3/made>) to the Order contains the appropriate form for the notices to be published in the local press and posted on site, which must:

- state that a copy of the Environmental Statement is included in the documents which will be open to inspection by the public and give the address where the documents can be inspected free of charge;
- give an address in the locality where copies of the Environmental Statement may be obtained;
- state that a copy may be obtained there while stocks last and the amount of any charge to be made for supplying a copy; and
- state the date (which must be at least 21 days after the date on which the notice was published) by which any written representations about the application should be made to the local planning authority.

Copies of the Environmental Statement and the application must be sent to those consultation bodies

(<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/who-is-responsible-for-preparing-the-environmental-statement/consultation-bodies/>) that have not received one direct from the applicant.

Any particular persons or bodies (including non-governmental organisations promoting environmental protection) whom the local planning authority is aware are likely to be affected by, or have an interest in, the application, but are unlikely to become aware of it through a site notice or local advertisement, should be sent equivalent information to that publicised in the newspaper notice, so that they may obtain a copy of the Environmental Statement and comment or make representations if they wish.

The local planning authority must send a copy of the Environmental Statement and planning application to the Secretary of State within 14 days of receipt.

The Environmental Statement must be placed on Part I of the planning register, as should any related screening or scoping opinion or direction as soon as possible after publication.

ID 4-044-20150415 Last updated 15 04 2015

### **What are the publicity arrangements where the Environmental Statement is submitted after the planning application?**

Where an applicant submits an Environmental Statement after the planning application has been submitted, the applicant is responsible for publicising the Environmental Statement (regulation 17 [\[a\]](http://www.legislation.gov.uk/ukxi/2011/1824/regulation/17/made)) (<http://www.legislation.gov.uk/ukxi/2011/1824/regulation/17/made>)).

The applicant should publish notices in the local press and post them on the application site before the Environmental Statement is submitted, and serve a notice with the required information to those persons or bodies who would otherwise be unaware of the Environmental Statement and who may have an interest in, or be affected by, the proposed development.

When the copies of the Environmental Statement are submitted to the local planning authority, they should be accompanied by certificates stating that the publicity arrangements have been met. It is still the local planning authority's responsibility (or the Secretary of State's where the application has been referred to him) to send copies of the Environmental Statement to any of the consultation bodies (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/preparing-an-environmental-statement/consultation-bodies/>) that have not received one direct from the applicant.

ID 4-045-20140306 Last updated 06 03 2014

**8. Considering and determining planning applications that have been subject to an Environmental Impact Assessment** (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/considering-and-determining-planning-applications-that-have-been-subject-to-an-environmental-impact-assessment/>)

## **Considering and determining planning applications that have been subject to an Environmental Impact Assessment**

### **Are there specific arrangements for considering and determining planning applications that have been subject to an Environmental Impact Assessment?**

There are specific arrangements for considering and determining planning applications that have been subject to an Environmental Impact Assessment. It includes consideration of the adequacy of the information provided, consultation, publicity, and informing the public of the decision and the main reasons for it. The local planning authority should take into account the information in the Environmental Statement, the responses to consultation and any other relevant information when determining a planning application.

Click here to view a flow chart illustrating the submission and evaluation procedures (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/consideration-of-environmental-impact-assessment-applications/procedures-for-submitting-and-evaluating-environmental-impact-assessment-applications/>).

ID 4-046-20140306 Last updated 06 03 2014

### **Can a local planning authority ask for additional information?**

The local planning authority should check that the submitted Environmental Statement contains all the information specified in Part II of Schedule 4 [\[a\]](http://www.legislation.gov.uk/ukxi/2011/1824/schedule/4/made) (<http://www.legislation.gov.uk/ukxi/2011/1824/schedule/4/made>) to the Regulations and the relevant information set out in Part I of that Schedule.

If the local planning authority considers that further information is required, they should ask the applicant to provide it (regulation 22 [\[a\]](http://www.legislation.gov.uk/ukxi/2011/1824/regulation/22/made)) (<http://www.legislation.gov.uk/ukxi/2011/1824/regulation/22/made>)). All information

provided must be publicised, and consulted on. Requests for further information should be **limited to the “main” or “significant” environmental effects** to which a development is likely to give rise and must be on relevant matters set out in Schedule 4 [\[2\]](#)

(<http://www.legislation.gov.uk/ukxi/2011/1824/schedule/4/made>). The local planning authority, the Secretary of State or an Inspector may also require an applicant or appellant to produce evidence to verify and/or clarify any information in the Environmental Statement.

Additional information of a substantive nature submitted voluntarily by an applicant must be treated in the same way as information required by the local planning authority (see the definition of “any other information” in regulation 2 (1) [\[2\]](#) (<http://www.legislation.gov.uk/ukxi/2011/1824/regulation/2/made>)).

The 16 weeks time limit for determination of the Environmental Impact Assessment application continues to run while any correspondence about the adequacy of the information in an Environmental Statement is taking place.

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### **Can additional information be requested by the Secretary of State when determining a planning appeal?**

The Secretary of State may request further information for the purposes of determining an appeal under provisions in the 1990 Act. This includes local inquiries held into planning appeals arising under section 78 [\[2\]](#)

(<http://www.legislation.gov.uk/ukpga/1990/8/section/78>) of the 1990 Act and into planning applications referred to the Secretary of State under section 77 [\[2\]](#) (<http://www.legislation.gov.uk/ukpga/1990/8/section/77>) of the Act. If the request specifically states that the information is to be provided for an inquiry or hearing, the publicity procedures set out in regulation 22(3 to 9) [\[2\]](#)

(<http://www.legislation.gov.uk/ukxi/2011/1824/regulation/22/made>) do not apply. However, such information, together with additional information provided voluntarily by the appellant for the purposes of a local inquiry, will be regulated by the Inquiry Rules relating to the submission of evidence to local planning inquiries (The Town and Country Planning (Inquiries Procedure) (England) Rules 2000 (SI 2000 No 1624) [\[2\]](#)

(<http://www.legislation.gov.uk/ukxi/2000/1624/contents/made>)). Similar provisions are also included in the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000 (SI 2000 No 1625) [\[2\]](#) (<http://www.legislation.gov.uk/ukxi/2000/1625/contents/made>).

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### **What are the procedures for considering whether a proposal is likely to have transboundary effects in another European Economic Area?**

Local planning authorities are required to send a copy of every Environmental Statement and related planning application to the Secretary of State (National Planning Casework Unit) within two weeks of receipt. This is to enable consideration of whether the proposed development is likely to have significant effects on the environment of any European Union Member State, or any other country that has ratified the United Nations Economic Commission for Europe Convention on Environmental Impact Assessment in a Transboundary Context (the Espoo Convention).

As a proportion of all planning applications, the number of developments in England that are likely to have significant effects on the environment of another country will be small. However, should they occur, the Secretary of State must send information about the development to the government of the affected

country, and invite them to participate in the consultation procedures. In such a case, the Secretary of State may direct (Article 31 [\[2\]](http://www.legislation.gov.uk/ukSI/2015/595/article/31/made) (<http://www.legislation.gov.uk/ukSI/2015/595/article/31/made>)) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 that planning permission may not be granted until the end of such time as may be necessary for consultations with that government.

A copy of the Espoo Convention [\[2\]](http://www.unece.org/env/eia/eia.html) (<http://www.unece.org/env/eia/eia.html>) and further information can be found here.

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### **How long does a local planning authority have to determine a planning application involving an Environmental Impact Assessment?**

Where a valid planning application and Environmental Statement have been received by the local planning authority, they should determine the application within **16 weeks** beginning with the day immediately following receipt of the application and Environmental Statement (regulation 61(2) [\[2\]](http://www.legislation.gov.uk/ukSI/2011/1824/regulation/61/made) (<http://www.legislation.gov.uk/ukSI/2011/1824/regulation/61/made>)). The period may be extended by written agreement between the local planning authority and the applicant. Where an Environmental Statement has not been submitted with a planning application but the applicant indicates that they propose to provide one, consideration of the application should be suspended until the Environmental Statement has been received.

ID 4-050-20140306 Last updated 06 03 2014

### **How should mitigation measures proposed in a planning application be secured?**

Mitigation measures proposed in an Environmental Statement are designed to limit or remove any significant adverse environmental effects of a development. Local planning authorities will need to consider carefully how mitigation measures proposed in an Environmental Statement are secured.

Conditions (<http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/>) attached to a planning permission or subsequent consent may include mitigation measures. However, a condition requiring the development to be “in accordance with the Environmental Statement” is unlikely to be sufficient unless the Environmental Statement was exceptionally precise in specifying the mitigation measures to be undertaken, and the condition referred to the specific part of the Environmental Statement, rather than the whole document.

Mitigation measures can also be secured through planning obligations (<http://planningguidance.communities.gov.uk/blog/guidance/planning-obligations/planning-obligations/>) which are enforceable by the local planning authority. Planning obligations may be entered into unilaterally by a developer or by agreement between a developer and the local planning authority.

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### **What are the arrangements for publicising the decision on planning applications involving Environmental Impact Assessment?**

The notification and publicity requirements for the Environmental Impact Assessment determination decision are set out in regulation 24 [\[2\]](http://www.legislation.gov.uk/ukSI/2011/1824/regulation/24/made) (<http://www.legislation.gov.uk/ukSI/2011/1824/regulation/24/made>).

Click here to view a flow chart illustrating the procedure for announcing a decision involving Environmental Impact Assessment (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/consideration-of-environmental-impact-assessment-applications/procedure-for-announcing-a-decision-involving-environmental-impact-assessment/>).

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### **How should multi-stage consents be considered?**

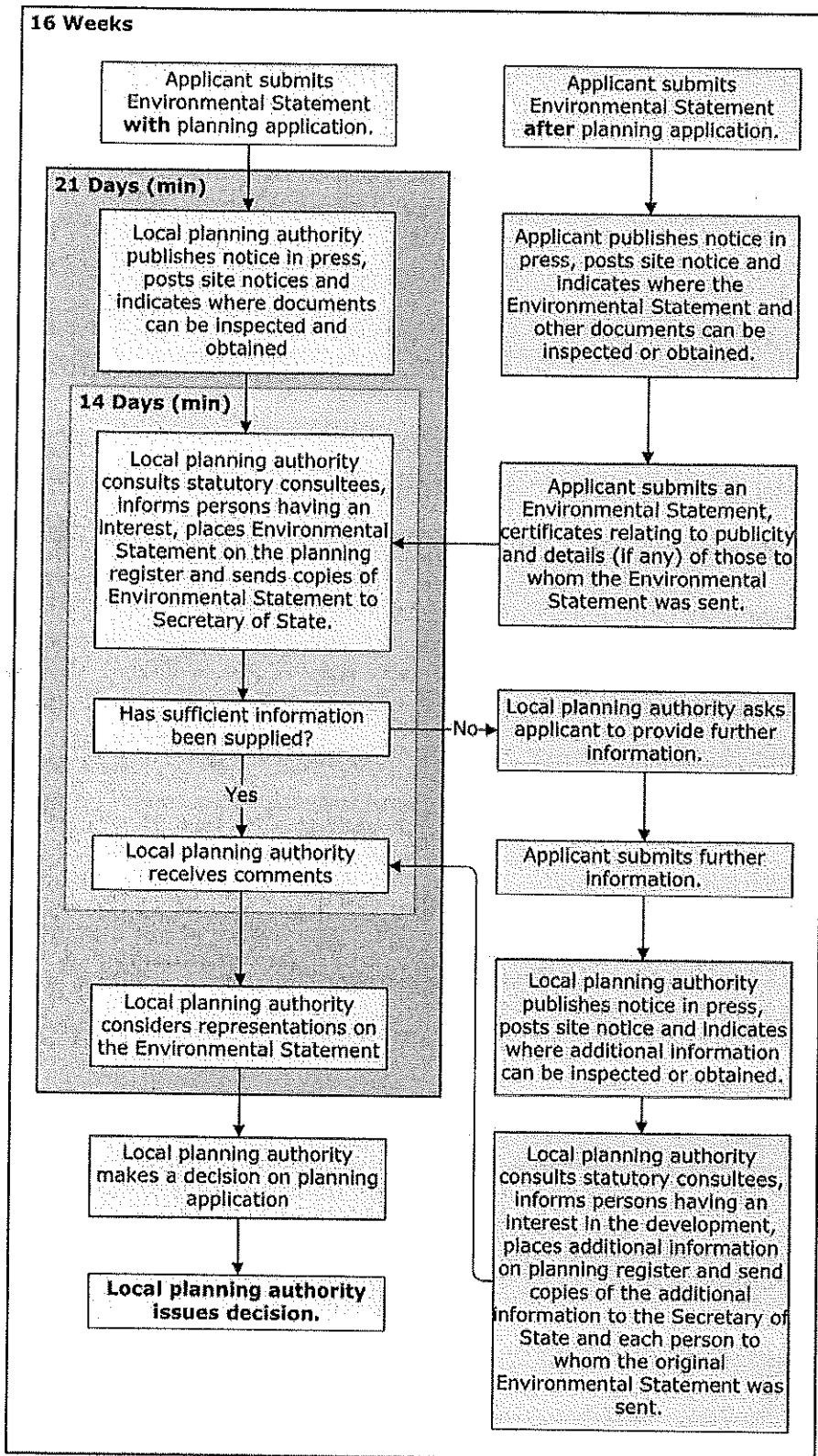
In cases where a consent procedure involves more than one stage (a multi-stage consent), for example, a first stage involving an outline planning permission and a second stage dealing with reserved matters, the effects of a project on the environment should normally be identified and assessed when determining the outline planning permission.

For more information on multi-stage consents click here. (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/consideration-of-environmental-impact-assessment-applications/multi-stage-consents/>)

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- Procedures for submitting and evaluating environmental impact assessment applications (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/considering-and-determining-planning-applications-that-have-been-subject-to-an-environmental-impact-assessment/procedures-for-submitting-and-evaluating-environmental-impact-assessment-applications/>)

### **Procedures for submitting and evaluating environmental impact assessment applications**



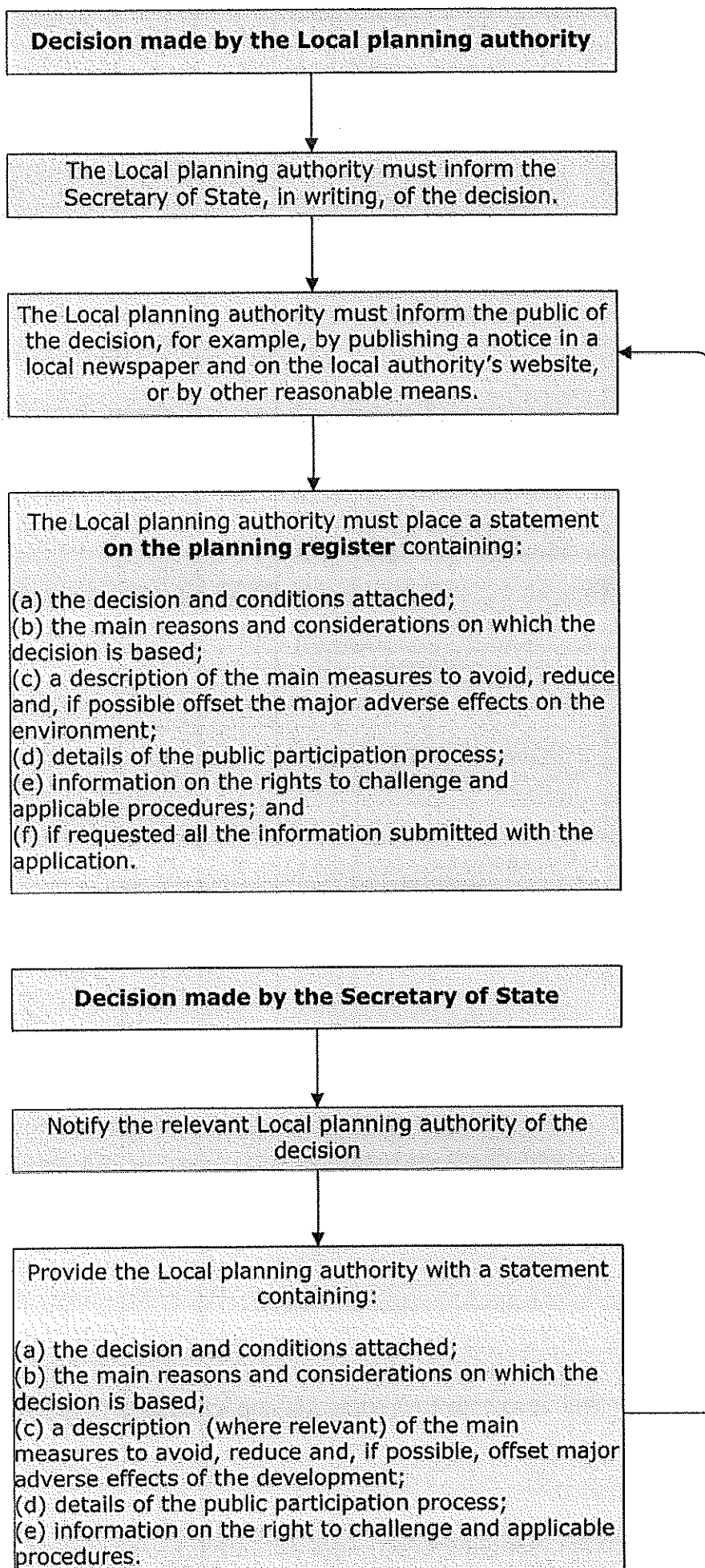
([http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/eia2\\_054.jpg](http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/eia2_054.jpg))

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• Procedure for announcing a decision involving environmental impact assessment

(<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/considering-and-determining-planning-applications-that-have-been-subject-to-an-environmental-impact-assessment/procedure-for-announcing-a-decision-involving-environmental-impact-assessment/>)

**Procedure for announcing a decision involving environmental impact assessment**





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- **Multi-stage consents** (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/considering-and-determining-planning-applications-that-have-been-subject-to-an-environmental-impact-assessment/multi-stage-consents/>)

### Multi-stage consents

Where a consent procedure involves more than one stage (termed a 'multi-stage consent'), for example, a first stage involving a principal decision (such as an outline planning permission) and the other an implementing decision (such as reserved matters), the likely significant effects of a project on the environment should be identified and assessed at the time of the procedure relating to the principal decision (See reference for a preliminary ruling in *R v. London Borough of Bromley ex parte Barker* (C-201/02) and *Commission v UK* (C-508/03)). However, if those effects are not identified or identifiable at the time of the principle decision, an assessment must be undertaken at the subsequent stage.

Under the Town and Country planning system this could be prior to approval:

- of reserved matters following a grant of outline planning permission;
- of matters required by a condition attached to a full planning permission; or
- by a mineral planning authority or the Secretary of State of details required by conditions determined following a review of a minerals permission under Schedule 2 to the Planning and Compensation Act 1991 or Schedules 13 or 14 to the Environment Act 1995.

An application for approval for the first two examples above is referred to in the regulations as a "subsequent application" (regulation 2(1) [\[2\]](http://www.legislation.gov.uk/uksi/2011/1824/regulation/2/made)) (<http://www.legislation.gov.uk/uksi/2011/1824/regulation/2/made>). A consent granted in approving a subsequent application is a "subsequent consent" (or a Review of Mineral Permission subsequent consent). There are requirements for screening for the need for an Environmental Impact Assessment for "subsequent applications" set out in regulations 8 [\[8\]](http://www.legislation.gov.uk/uksi/2011/1824/regulation/8/made) (<http://www.legislation.gov.uk/uksi/2011/1824/regulation/8/made>) and 9 [\[9\]](http://www.legislation.gov.uk/uksi/2011/1824/regulation/9/made) (<http://www.legislation.gov.uk/uksi/2011/1824/regulation/9/made>).

A review of a mineral permission

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/>) is known as a "Review of Mineral Permission subsequent application". A consent granted in approving a subsequent application is termed a subsequent consent (or a Review of Mineral Permission subsequent consent).

If sufficient information is provided with the application for planning permission, the local planning authority should determine whether the Environmental Impact Assessment obtained at that stage will take account of all the potential environmental effects of the project.

To minimise the possibility that further environmental information is required at a later stage of a multi-stage consent procedure, it is considered that (*R v Rochdale MBC ex parte Tew* [1999] 3 PLR 74 and *R v Rochdale MBC ex parte Milne* [2001 81 PCR 27]):

- where an application is made for an outline permission with all matters reserved for later approval, the permission should be subject to conditions or other parameters (such as a section 106 agreement) which 'tie' the scheme to what has been assessed; and

- while applicants are not precluded from having a degree of flexibility in how a scheme may be developed, each option will need to have been properly assessed and be within the remit of the outline permission.

However, there may be circumstances where an environmental impact assessment will be required even after outline planning permission has been granted (Commission v UK (C-508/03)). This is because it is not possible to eliminate entirely the possibility that it will not become apparent until a later stage that the project is likely to have significant effects on the environment. In that event, account will have to be taken of all the aspects of the project which have not yet been assessed, or which have been identified for the first time as requiring assessment.

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- **Annex: Indicative screening thresholds**

(<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/considering-and-determining-planning-applications-that-have-been-subject-to-an-environmental-impact-assessment/annex/>)

**Annex: Indicative screening thresholds**

**Thresholds and Criteria for the identification of Schedule 2 development requiring Environmental Impact Assessment and indicative values for determining significant effects**

The criteria and thresholds in column two represent the ‘exclusion thresholds’ in Schedule 2 of the Regulations, below which Environmental Impact Assessment does not need to be considered (subject to the proposal not being in a sensitive area ([http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/when-is-environmental-impact-assessment-required/interpretation-of-project-categories/#paragraph\\_032](http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/when-is-environmental-impact-assessment-required/interpretation-of-project-categories/#paragraph_032))). The figures in column three are **indicative only** and are intended to help determine whether significant effects are likely. However, when considering the thresholds, it is important to also consider the location of the proposed development.

In general, the more environmentally sensitive the location, the lower the threshold will be at which significant effects are likely. It follows, therefore, that the thresholds below should only be used in conjunction with the general guidance on determining whether Environmental Impact Assessment is required (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/screening-schedule-2-projects/>) and, in particular, the guidance on environmentally sensitive areas

([http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/when-is-environmental-impact-assessment-required/interpretation-of-project-categories/#paragraph\\_032](http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/when-is-environmental-impact-assessment-required/interpretation-of-project-categories/#paragraph_032)). Column four illustrates the issues that are most likely to need to be considered for different development types. However, there will be other issues which will be specific to the nature of the environmental receptor. For example, ecological impacts are likely to be an issue for all development which is proposed to be located in a Site of Special Scientific Interest designated for its wildlife value.

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Development type	Schedule 2 criteria and thresholds	Indicative criteria and threshold	Key issues to consider
<p><b>1. AGRICULTURE and AQUACULTURE</b> Note: Agricultural operations usually fall outside the scope of the Town and Country Planning system. The descriptions below apply only to projects that are considered to be ‘development’ for the purposes of the Town and Country Planning Act 1990.</p>			

Development type	Schedule 2 criteria and thresholds	Indicative criteria and threshold	Key issues to consider
(a) Use of uncultivated or semi-natural land for intensive agricultural purposes	The area of the development exceeds 0.5 hectare.	Environmental Impact Assessment is unlikely unless it covers more than five hectares.	Impacts on the surrounding ecology, hydrology and landscape
(b) Water management for agriculture, including irrigation and land drainage projects	The area of the works exceeds 1 hectare.	Permanent changes to the character of more than five hectares of land	Wider impacts on hydrology and surrounding ecosystems. Environmental Impact Assessment will not normally be required for routine water management projects undertaken by farmers.
(c). Intensive livestock installations	The area of new floorspace exceeds 500 square metres.	Installations designed to house more than 750 sows, 2,000 fattening pigs, 60,000 broilers or 50,000 layers, turkeys or other poultry.	Level of odours, increased traffic and the arrangements for waste handling.
(d). Intensive fish farming	The installation resulting from the development is designed to produce more than 10 tonnes of dead weight fish per year.	Developments designed to produce more than 100 tonnes of dead weight fish per year.	Physical scale of any development, the extent of any likely wider impacts on the hydrology and ecology of the surrounding area.
(e). Reclamation of land from the sea	All development.	Work is proposed on a site which exceeds one hectare.	Wider impacts on natural coastal processes beyond the site itself, as well as to the scale of reclamation works
<b>2. EXTRACTIVE INDUSTRY</b>			

Development type	Schedule 2 criteria and thresholds	Indicative criteria and threshold	Key issues to consider
(a) Quarries, open cast mining and peat extraction (unless included in Schedule 1); (b) Underground mining;	All development except the construction of buildings or other ancillary structures where the new floorspace does not exceed 1,000 square metres.	All new open cast mines and underground mines. Clay, sand and gravel workings, quarries covering more than 15 hectares or involve the extraction of more than 30,000 tonnes of mineral per year.	The likelihood of significant effects will tend to depend on the scale and duration of the works, and the likely consequent impact of noise, dust, discharges to water and visual intrusion.
(c) Extraction of minerals by fluvial or marine dredging;	All development.	Extraction of more than 100,000 tonnes of mineral per year.	Noise and any wider impacts on the surrounding hydrology and ecology.
(d) Deep drillings, in particular: (i) geothermal drilling; (ii) drilling for the storage of nuclear waste material; (iii) drilling for water supplies; with the exception of drillings for investigating the stability of the soil.	(i) In relation to any type of drilling, the area of the works exceeds 1 hectare; or (ii) in relation to geothermal drilling and drilling for the storage of nuclear waste material, the drilling is within 100 metres of any controlled waters.	Drilling operations involving development of a surface site of more than five hectares. [Exploratory deep drilling on its own is unlikely to require Environmental Impact Assessment]	Regard should be had to the likely wider impacts on surrounding hydrology and ecology.
(e) Surface industrial installations for the extraction of coal, petroleum, natural gas and ores, as well as bituminous shale.	The area of the development exceeds 0.5 hectare.	Development of a site of 10 hectares or more or where production is expected to be more than 100,000 tonnes of petroleum per year.	Scale of development, emissions to air, discharges to water, the risk of accident and the arrangements for transporting the fuel.
<b>3. ENERGY INDUSTRY</b>			
(a) Industrial installations for the production of electricity, steam and hot water (unless included in Schedule 1);	The area of the development exceeds 0.5 hectare.	Thermal output of more than 50 MW. Small stations using novel forms of generation should be considered carefully.	Level of emissions to air, arrangements for the transport of fuel and any visual impact.

Development type	Schedule 2 criteria and thresholds	Indicative criteria and threshold	Key issues to consider
(b) Industrial installations for carrying gas, steam and hot water;	The area of works exceeds 1 hectare.		
(c) Surface storage of natural gas; (d) Underground storage of combustible gases; (e) Surface storage of fossil fuels;	(i) The area of any new building, deposit or structure exceeds 500 square metres; or (ii) a new building, deposit or structure is to be sited within 100 metres of any controlled waters.	Storage of more than 100,000 tonnes of fuel. Smaller installations are unlikely to require Environmental Impact Assessment unless hazardous chemicals are stored.	Scale of the development, discharges to water, emissions to air and risk of accidents.
(f) Industrial briquetting of coal and lignite;	The area of new floorspace exceeds 1,000 square metres.		
(g) Installations for the processing and storage of radioactive waste (unless included in Schedule 1);	(i) The area of new floorspace exceeds 1,000 square metres; or (ii) the installation resulting from the development will require the grant of an environmental permit under the Environmental Permitting (England and Wales) Regulations 2010 (a) in relation to a radioactive substances activity described in paragraphs 5(2) (b), (2)(c) or (4) of Part 2 of Schedule 23 to those Regulations, or the variation of such a permit.	New installations whose primary purpose is to process and store radioactive waste, and which are located on sites not previously authorised for such use.	Scale of any development, the extent of routine discharges of radiation to the environment. Environmental Impact Assessment is unlikely to be required for installations where the processing or storage of radioactive waste is incidental to the main purpose of the development (e.g. installations at hospitals or research facilities).

Development type	Schedule 2 criteria and thresholds	Indicative criteria and threshold	Key issues to consider
(h) Installations for hydroelectric energy production;	The installation is designed to produce more than 0.5 megawatts.	New hydroelectric developments which have more than 5 MW of generating capacity.	Physical scale of the development, the potential wider impacts on hydrology and ecology.
(i) 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.	Commercial developments of five or more turbines, or more than 5 MW of new generating capacity.	Scale of the development, its visual impact, and potential noise impacts.
(j) Installations for the capture of carbon dioxide streams for the purposes of geological storage pursuant to Directive 2009/31/EC from installations not included in Schedule 1.	All development.		
<b>INDUSTRIAL and MANUFACTURING DEVELOPMENT</b>			

Development type	Schedule 2 criteria and thresholds	Indicative criteria and threshold	Key issues to consider
<p><b>4</b> <i>Production and processing of metals</i>  <b>5</b> <i>Mineral industry</i>  <b>6</b> <i>Chemical industry (unless included in Schedule 1)</i>  <b>7</b> <i>Food industry</i>  <b>8</b> <i>Textile, leather, wood and paper industries</i>  <b>9.</b> <i>Rubber industry</i></p>	<p>The area of new floorspace exceeds 1,000 square metres.</p> <p>Except for 6(c) – (c) Storage facilities for petroleum, petrochemical and chemical products:                      (i) The area of any new building or structure exceeds 0.05 hectare; or                      (ii) more than 200 tonnes of petroleum, petrochemical or chemical products is to be stored at any one time.</p>	<p>Operational development covers a site of more than 10 hectares.                      Smaller developments expected to give rise to significant discharges of waste, emission of pollutants or operational noise.</p>	<p>(i) development involves a process designated as a 'scheduled process' for the purpose of air pollution control;                      (ii) the process involves discharges to water which require the consent of the Environment Agency;                      (iii) the installation would give rise to the presence of environmentally significant quantities of potentially hazardous or polluting substances;                      (iv) the process would give rise to radioactive or other hazardous waste;                      or                      (v) the development would fall under Council Directive 96182/EC on the control of major accident hazards involving dangerous substances (COMAH)*. The need for a consent under other legislation is not itself a justification for Environmental Impact Assessment.</p>
<b>10. INFRASTRUCTURE PROJECTS</b>			
<p>(a) Industrial estate development projects;</p>	<p>The area of the development exceeds 5 hectares.</p>	<p>Site area of the new development is more than 20 hectares.</p>	<p>Potential increase in traffic, emissions and noise.</p>

Development type	Schedule 2 criteria and thresholds	Indicative criteria and threshold	Key Issues to consider
<p>(b) Urban development projects, including the construction of shopping centres and car parks, sports stadiums, leisure centres and multiplex cinemas;</p>	<p>(i) The development includes more than 1 hectare of urban development which is not dwellinghouse development; or</p> <p>(ii) the development includes more than 150 dwellings; or</p> <p>(iii) the overall area of the development exceeds 5 hectares.</p>	<p>Environmental Impact Assessment is unlikely to be required for the redevelopment of land unless the new development is on a significantly greater scale than the previous use, or the types of impact are of a markedly different nature or there is a high level of contamination.</p> <p>Sites which have not previously been intensively developed:</p> <p>(i) area of the scheme is more than 5 hectares; or</p> <p>(ii) it would provide a total of more than 10,000 m<sup>2</sup> of new commercial floorspace; or</p> <p>(iii) the development would have significant urbanising effects in a previously non-urbanised area (e.g. a new development of more than 1,000 dwellings).</p>	<p>Physical scale of such developments, potential increase in traffic, emissions and noise.</p>
<p>(c) Construction of intermodal transshipment facilities and of intermodal terminals (unless included in Schedule 1);</p>	<p>The area of the development exceeds 0.5 hectare.</p>	<p>Developments of more than five hectares.</p>	<p>Physical scale of the development, increased traffic, noise, emissions to air and water.</p>



Development type	Schedule 2 criteria and thresholds	Indicative criteria and threshold	Key issues to consider
(d) Construction of railways (unless included in Schedule 1); (f) Construction of roads (unless included in Schedule 1); (j) Tramways, elevated and underground railways, suspended lines or similar lines of a particular type, used exclusively or mainly for passenger transport.	The area of the works exceeds 1 hectare.	New development over 2 km in length	Estimated emissions, traffic, noise and vibration, the degree of visual intrusion and the impact on the surrounding ecology.
(e) Construction of airfields (unless included in Schedule 1);	(i) The development involves an extension to a runway; or (ii) the area of the works exceeds 1 hectare.	New permanent airfields and major works (such as new runways or terminals with a site area of more than 10 hectares) at existing airports. Smaller scale development at existing airports is unlikely to require Environmental Impact Assessment unless it would lead to significant increases in air or road traffic.	Noise, traffic generation and emissions.
(g) Construction of harbours and port installations including fishing harbours (unless included in Schedule 1);	The area of the works exceeds 1 hectare.	Site area of more than 10 hectares. Smaller developments may also have significant effects where they include a quay or pier which would extend beyond the high water mark or would affect wider coastal processes.	Hydrology, ecology, noise and increased traffic.

Development type	Schedule 2 criteria and thresholds	Indicative criteria and threshold	Key issues to consider
(h) Inland-waterway construction not included in Schedule 1.	The area of the works exceeds 1 hectare.	Development of over 2 km of canal.	Potential wider impacts on the surrounding hydrology and ecology
(h) canalisation and flood-relief works;	The area of the works exceeds 1 hectare.	Works would exceed five hectares or are more than 2 km in length.	Nature of the location and the potential effects on the surrounding ecology and hydrology.
(i) Dams and other installations designed to hold water or store it on a long-term basis (unless included in Schedule 1);	The area of the works exceeds 1 hectare.	Any major new dam (e.g. where the construction site exceeds 20 hectares).	Physical scale and potential wider impacts to the hydrology and ecology
(k) Oil and gas pipeline installations and pipelines for the transport of carbon dioxide streams for the purposes of geological storage (unless included in Schedule 1); (l) Installations of long-distance aqueducts;	(i) The area of the works exceeds 1 hectare; or, (ii) in the case of a gas pipeline, the installation has a design operating pressure exceeding 7 bar gauge.	Pipelines over 5 km long. Environmental Impact Assessment is unlikely to be required for pipelines laid underneath a road, or for those installed entirely by means of tunnelling.	For underground pipelines, the major impact will generally be the disruption to the surrounding ecosystems during construction, while for overground pipelines visual impact will be a key consideration.
(m) Coastal work to combat erosion and maritime works capable of altering the coast through the construction, for example, of dykes, moles, jetties and other sea defence works, excluding the maintenance and reconstruction of such works;	All development.	Works would exceed one hectare.	Nature of the site and the likely wider impacts on natural coastal processes outside of the site

Development type	Schedule 2 criteria and thresholds	Indicative criteria and threshold	Key issues to consider
(n) Groundwater abstraction and artificial groundwater recharge schemes not included in Schedule 1; (o) Works for the transfer of water resources between river basins not included in Schedule 1;	The area of the works exceeds 1 hectare.	Works exceeds one hectare	Hydrology and ecology. Such development can have significant effects on environments some kilometres distant. This is particularly important for wetland and other sites where the habitat and species are particularly dependent on an aquatic environment.
(p) Motorway service areas.	The area of the development exceeds 0.5 hectare.	New motorway service areas which are proposed for previously undeveloped sites and if the development would cover more than five hectares.	Traffic, noise, air quality, ecology and visual impact.
<b>11. OTHER PROJECTS</b>			
(a) Permanent racing and test tracks for motorised vehicles;	The area of the development exceeds 1 hectare.	Site area of 20 hectares or more	Size, noise impacts, emissions and the potential traffic generation.

Development type	Schedule 2 criteria and thresholds	Indicative criteria and threshold	Key issues to consider
(b) Installations for the disposal of waste (unless included in Schedule 1);	(i) The disposal is by incineration; or (ii) the area of the development exceeds 0.5 hectare; or (iii) the installation is to be sited within 100 metres of any controlled waters.	Installations (including landfill sites) for the deposit, recovery and/or disposal of household, industrial and/or commercial wastes where new capacity is created to hold more than 50,000 tonnes per year, or to hold waste on a site of 10 hectares or more. Sites taking smaller quantities of these wastes, sites seeking only to accept inert wastes (demolition rubble etc.) or Civic Amenity sites, are unlikely to require Environmental Impact Assessment.	Scale of the development and the nature of the potential impact in terms of discharges, emissions or odour.
(c) Waste-water treatment plants (unless included in Schedule 1);	The area of the development exceeds 1,000 square metres.	Site area of more than 10 hectares or capacity exceeds 100,000 population equivalent.	Size, treatment process, pollution and nuisance potential, topography, proximity of dwellings and the potential impact of traffic movements.
(d) Sludge-deposition sites;	(i) The area of deposit exceeds 0.5 hectare; or (ii) a deposit is to be made within 100 metres of any controlled waters.	Site is intended to hold more than 5,000 m <sup>3</sup> of sewage sludge.	Scale of the development and the nature of the potential impact in terms of discharges, emissions or odour.
(e) Storage of scrap iron, including scrap vehicles;	(i) The area of storage exceeds 0.5 hectare; or(ii) scrap is stored within 100 metres of any controlled waters.	Site area of 10 hectares or more.	Discharges to soil, site noise and traffic generation.
<b>12. TOURISM AND LEISURE</b>			

Development type	Schedule 2 criteria and thresholds	Indicative criteria and threshold	Key issues to consider
(a) Ski-runs, ski-lifts and cable-cars and associated developments;	(i) The area of the works exceeds 1 hectare; or(ii) the height of any building or other structure exceeds 15 metres.	Development is over 500 metres in length or It requires a site of more than five hectares.	Visual or ecological impacts and potential traffic generation.
(b) Marinas;	The area of the enclosed water surface exceeds 1,000 square metres.	Large new marinas, for example where the proposal is for more than 300 berths (seawater site) or 100 berths (freshwater site). Environmental Impact Assessment is unlikely to be required where the development is located solely within an existing dock or basin.	Wider impacts on natural coastal processes outside the site, as well as the potential noise and traffic generation
(c) Holiday villages and hotel complexes outside urban areas and associated developments; (d) Theme parks;	The area of the development exceeds 0.5 hectare.	New theme parks which are expected to generate more than 250,000 visitors per year. Major new tourism and leisure developments which require a site of more than 10 hectares. Holiday villages or hotel complexes with more than 300 bed spaces, or for permanent camp sites or caravan sites with more than 200 pitches.	Visual impacts, impacts on ecosystems and traffic generation
e) Permanent camp sites and caravan sites;	The area of the development exceeds 1 hectare.		
(f) Golf courses and associated developments.	The area of the development exceeds 1 hectare.	New 18 hole golf courses.	Hydrology, ecosystems, landscape and traffic generation.


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Return to Environmental Impact Assessment

(<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/considering-and-determining-planning-applications-that-have-been-subject-to-an-environmental-impact-assessment/>)

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# Planning Practice Guidance <http://planningguidance.communities.gov.uk>

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Guidance

## Fees for planning applications

Print 

### 1. Fees for planning applications – Overview

(<http://planningguidance.communities.gov.uk/blog/guidance/fees-for-planning-applications/fees-for-planning-applications-overview/>)

#### Fees for planning applications – Overview

##### Why does a fee have to be paid for planning services?

Planning-related fees were introduced so that users of the planning system, rather than taxpayers in general, meet the costs incurred by local planning authorities in deciding planning applications. The overall planning service is funded from local government grant and from council tax. The planning application service is also funded by fees for planning applications.

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##### Who sets planning fees?

Planning fees in England are set nationally by the Government. Details of planning fees are set out in the following regulations:

The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 [\[2\]](#)

(<http://www.legislation.gov.uk/ukxi/2012/2920/contents/made>) (S.I. 2012/2920)

The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2013 [\[2\]](#)

(<http://www.legislation.gov.uk/ukdsi/2013/9780111539293/contents>) (S.I. 2013/2153)

and

The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2014 [\[2\]](#)

(<http://www.legislation.gov.uk/ukdsi/2014/9780111107485>) (S.I. 2014/357) which provide that for the winning and working of onshore oil or natural gas, the site area of any land to be used solely for underground operations is ignored.

The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment No 2) Regulations 2014 [\[2\]](#)

(<http://www.legislation.gov.uk/ukxi/2014/2026/contents/made>) (S.I. 2014/2026) which provides for a new fee for prior approvals where the application includes associated building works.

Local planning authorities use the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 [\[2\]](#) (<http://www.legislation.gov.uk/ukxi/2012/2920/contents/made>), (S.I. 2012/2920) as amended by the 2013 and 2014 Regulations listed above, to charge the correct fee for each application, based on the details of the application. In this guidance, these are referred to as the “2012 Fees Regulations.”

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## Which applications are subject to a planning application fee?

Applications which are subject to a planning application fee include (but are not limited to):

- applications for planning permission, including 'retrospective applications' where development has already taken place
- applications for the approval of reserved matters ([http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/types-of-application/#paragraph\\_006](http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/types-of-application/#paragraph_006)) following the grant of planning permission in outline
- applications under Section 73 of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/73) (<http://www.legislation.gov.uk/ukpga/1990/8/section/73>) to vary a condition following the grant of planning permission
- applications made by local planning authorities for the development of any of their own land within their area, or for development by themselves (whether alone or jointly) of other land in their area
- applications for 'prior approval' of permitted development (<http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/>) (although some applications for prior approval are exempt from planning fees ([http://planningguidance.communities.gov.uk/blog/guidance/fees-for-planning-applications/exemptions-and-concessions/#paragraph\\_037](http://planningguidance.communities.gov.uk/blog/guidance/fees-for-planning-applications/exemptions-and-concessions/#paragraph_037)))
- 'deemed' applications ([http://planningguidance.communities.gov.uk/blog/guidance/fees-for-planning-applications/fees-for-specific-application-types/#paragraph\\_030](http://planningguidance.communities.gov.uk/blog/guidance/fees-for-planning-applications/fees-for-specific-application-types/#paragraph_030))
- applications for lawful development certificates (<http://planningguidance.communities.gov.uk/blog/guidance/lawful-development-certificates/>)
- requests for written confirmation of compliance with a planning condition (<http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/discharging-and-modifying-conditions-once-planning-permission-is-granted/>)
- applications for consent to display advertisements (<http://planningguidance.communities.gov.uk/blog/guidance/advertisements/>)
- site visits for the monitoring of landfill and minerals permissions

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## Which planning applications are not subject to planning fees?

A planning application fee does not have to be paid for the following types of application:

- applications for consents (other than 'reserved matter' approvals) required by a condition imposed on an outline permission (but a fee is payable for a request for written confirmation of compliance ([http://planningguidance.communities.gov.uk/blog/guidance/fees-for-planning-applications/fees-for-specific-application-types/#paragraph\\_026](http://planningguidance.communities.gov.uk/blog/guidance/fees-for-planning-applications/fees-for-specific-application-types/#paragraph_026)) with a planning condition)
- applications for listed building or scheduled monument consent (<http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/is-an-application-for-planning-permission-required-to-carry-out-works-to-a-listed-building/>)
- applications under Section 19 of the Planning (Listed Buildings and Conservation Areas) Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/19)



- (<http://www.legislation.gov.uk/ukpga/1990/9/section/19>) for discharge of a condition imposed on a listed building consent
- applications to demolish an unlisted building in a conservation area (these are exempt under Regulation 5A of the 2012 Fees Regulations [☒](#) (<http://www.legislation.gov.uk/uksi/2013/2153/regulation/4/made>))
  - applications for certificates of immunity from listing, under Section 6 of the Planning (Listed Buildings and Conservation Areas) Act 1990 [☒](#) (<http://www.legislation.gov.uk/ukpga/1990/9/section/6>)
  - applications for approvals under the Building Regulations [☒](#) (<https://www.gov.uk/government/policies/providing-effective-building-regulations-so-that-new-and-altered-buildings-are-safe-accessible-and-efficient>), for which charges are fixed locally under separate legislation
  - applications for review of old mining permissions under Schedule 2 of the Planning and Compensation Act 1991 [☒](#) (<http://www.legislation.gov.uk/ukpga/1991/34/schedule/2>) and mineral permissions under Schedules 13 [☒](#) (<http://www.legislation.gov.uk/ukpga/1995/25/schedule/13>) and 14 [☒](#) (<http://www.legislation.gov.uk/ukpga/1995/25/schedule/14>) of the Environment Act 1995
  - work on the preparation of planning obligations in the form of section 106 agreements
  - applications for consent to lop or fell trees subject to tree preservation orders (<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/>)
  - applications under the Commons Act 2006 [☒](#) (<http://www.legislation.gov.uk/ukpga/2006/26/contents>) to register a village green or other common land
  - applications (for valuation purposes) for Certificates of Appropriate Alternative Development, under Section 17 of the Land Compensation Act 1961 [☒](#) (<http://www.legislation.gov.uk/ukpga/Eliz2/9-10/33/section/17/enacted>)
  - applications for prior approval for larger home extensions as set out in Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 [☒](#) (<http://www.legislation.gov.uk/uksi/1995/418/schedule/2/made>)

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### How and when should fees be paid?

Fees should be paid to the local planning authority at the time of submitting the application. The local planning authority will provide advice on how the payment should be made.

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### Will the local authority charge an additional fee for paying by credit card?

Local authorities can charge an additional fee for paying by credit card. These charges are set locally by the local authority but should not be more than the cost of handling the credit card payment. Local authorities should not charge a fee for payments made by debit card.

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### What happens if the correct fee is not paid?

The correct fee must be paid when the application is submitted in order for:

- the local planning authority to begin to process the application; and
- the application to be valid.

Until the local planning authority accepts the application as valid, it cannot be registered or decided.

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### **What happens if the application is not validated?**

If the application cannot be validated, the local planning authority must notify and return the fee to the applicant, as required by Regulation 3(5) of the 2012 Fees Regulations [\[2\]](#)

(<http://www.legislation.gov.uk/ukdsi/2012/9780111527290/regulation/3>).

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## **2. Calculating fees for planning applications**

(<http://planningguidance.communities.gov.uk/blog/guidance/fees-for-planning-applications/calculating-fees-for-planning-applications/>)

### **Calculating fees for planning applications**

#### **How are planning application fees calculated?**

The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 [\[2\]](#) (<http://www.legislation.gov.uk/ukdsi/2012/2920/contents/made>) (S.I. 2012/2920) as amended, set out 13 categories of development and the fee that the local planning authority will require to determine an application under each of the categories. The fee for each category of development broadly reflects the work a local planning authority has to do to process the application. The local planning authority must decide the fee which will apply to the application based on the category, or categories of development if the application is for more than one type of development

([http://planningguidance.communities.gov.uk/blog/guidance/fees-for-planning-applications/calculating-fees-for-planning-applications/#paragraph\\_022](http://planningguidance.communities.gov.uk/blog/guidance/fees-for-planning-applications/calculating-fees-for-planning-applications/#paragraph_022)).

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#### **Is VAT charged on planning fees?**

There is no VAT to pay on fees for planning applications as the service is considered to be a 'non-business' activity.

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#### **What are the fees for outline applications?**

Where an applicant has applied for an outline planning permission ([http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/types-of-application/#paragraph\\_005](http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/types-of-application/#paragraph_005)) the fee is calculated based on the site area of the application and the relevant fee category or categories ([http://planningguidance.communities.gov.uk/blog/guidance/fees-for-planning-applications/calculating-fees-for-planning-applications/#paragraph\\_009](http://planningguidance.communities.gov.uk/blog/guidance/fees-for-planning-applications/calculating-fees-for-planning-applications/#paragraph_009)) for the type of development proposed.

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#### **What are the fees for full applications?**

Where an applicant has applied for full planning permission ([http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/types-of-application/#paragraph\\_004](http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/types-of-application/#paragraph_004)) the fee is calculated by applying the relevant fee category or categories ([http://planningguidance.communities.gov.uk/blog/guidance/fees-for-planning-applications/calculating-fees-for-planning-applications/#paragraph\\_009](http://planningguidance.communities.gov.uk/blog/guidance/fees-for-planning-applications/calculating-fees-for-planning-applications/#paragraph_009)) to the proposals in the application. This can include for example looking at the number of dwelling houses to be created, the area of gross floor space to be created or the size of the site area.

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### **What is the fee for each reserved matters application?**

A reserved matters ([http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/types-of-application/#paragraph\\_006](http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/types-of-application/#paragraph_006)) application may cover one or any number of reserved matters. The fee is calculated with reference to the relevant fee category or categories ([http://planningguidance.communities.gov.uk/blog/guidance/fees-for-planning-applications/calculating-fees-for-planning-applications/#paragraph\\_009](http://planningguidance.communities.gov.uk/blog/guidance/fees-for-planning-applications/calculating-fees-for-planning-applications/#paragraph_009)) for the type of development proposed. The fee for each reserved matter(s) application is calculated as if it were a full planning application. Where an application for approval of reserved matters relates to only one part or phase of the development covered by the outline permission, fees should be charged on the basis of the number of buildings or the floor space included in that part or phase. Subsequent applications – in respect of other parts or phases – will attract fees on the same basis.


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### **Is there a limit to the number of reserved matters that can be submitted in one application?**

There is no limit to the number of individual reserved matters that can be submitted as part of the same application. In some cases an applicant may also need to make more than one attempt to have a particular reserved matter approved.

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### **Is there a limit on the fees to be paid for reserved matter(s) applications?**

Under Paragraph 4(2) Part 1 of Schedule 1 to the 2012 Fees Regulations  (<http://www.legislation.gov.uk/uksi/2012/2920/schedule/1/made>), a flat rate fee of £385 is payable for any reserved matter application where the total amount paid for previous reserved matter(s) application(s) alone, equals or exceeds the fee that would have been payable for full permission for the whole development. The flat rate fee can only be applied where the reserved matter(s) application(s) is by the same applicant in respect of the same outline permission.

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### **How are site areas and floor spaces calculated?**

For most planning applications the fees are calculated based on the site area or the floor space of the application.

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### **What should be defined as the site area?**

Site area is defined as the area to which the application relates. This should be shown edged in red on plans accompanying an application, while other land in the same ownership but not being developed should be outlined in blue.

If a proposal is for carrying out alteration or works to the same type of existing structure in many locations across a wide area, the local planning authority may accept plans where the area is enclosed by a blue (or, if not owned by the applicant, other coloured) line, and each small works site within that line is ringed or marked out in red. The area for the application would be the total of all the pieces of land within red lines added together. This would be the case for applications for non-domestic scale solar or wind farms.

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### **How is floor space calculated?**

Floor space is the gross amount (all storeys, including basements and garaging) to be created by the development shown in the application. This is an external measurement, including the thickness of any external and internal walls, as set out in paragraph 12(1) of Part 1 of Schedule 1 to the 2012 Fees Regulations [\[2\]](http://www.legislation.gov.uk/ukdsi/2012/9780111527290/schedule/1) (<http://www.legislation.gov.uk/ukdsi/2012/9780111527290/schedule/1>). The local planning authority decides which spaces within a building count for fee assessment purposes.

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### **Does site area or floor space get rounded up?**

Any fraction of the stipulated unit of site area or floor space included in the application should be corrected upward to the 0.1 of a hectare or square metre respectively. For example 2.36 hectares would be rounded to 2.4 hectares and 60.4 square metres would be rounded to 61 square metres.

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### **How do I calculate the fee for a solar or wind farm application?**

The calculation for a solar panel or wind farm application is treated differently. The calculation is based on the site area of the equipment only and any associated development such as ancillary buildings or access. It does not include any land in between the equipment unless the applicant wishes to have the flexibility to move the equipment within the site as a whole. Where the applicant wishes to have more flexibility on siting equipment the fee would be based on the area of land for the whole of the site.

Where the application is for a wind-turbine, the site area is based on the area of land within the sweep of the blades where the turbine rotates 360 degrees. The area is calculated by calculating the area of a circle where the radius is the length of the blade of the wind turbine. The area of all the turbines is added together with any associated development. Please note that some elements of the application may fall under different categories of development and therefore the areas for each component would be calculated on the basis of mixed category development ([http://planningguidance.communities.gov.uk/blog/guidance/fees-for-planning-applications/calculating-fees-for-planning-applications/#paragraph\\_022](http://planningguidance.communities.gov.uk/blog/guidance/fees-for-planning-applications/calculating-fees-for-planning-applications/#paragraph_022)).

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### **How are fees for outline permission for mixed development calculated?**

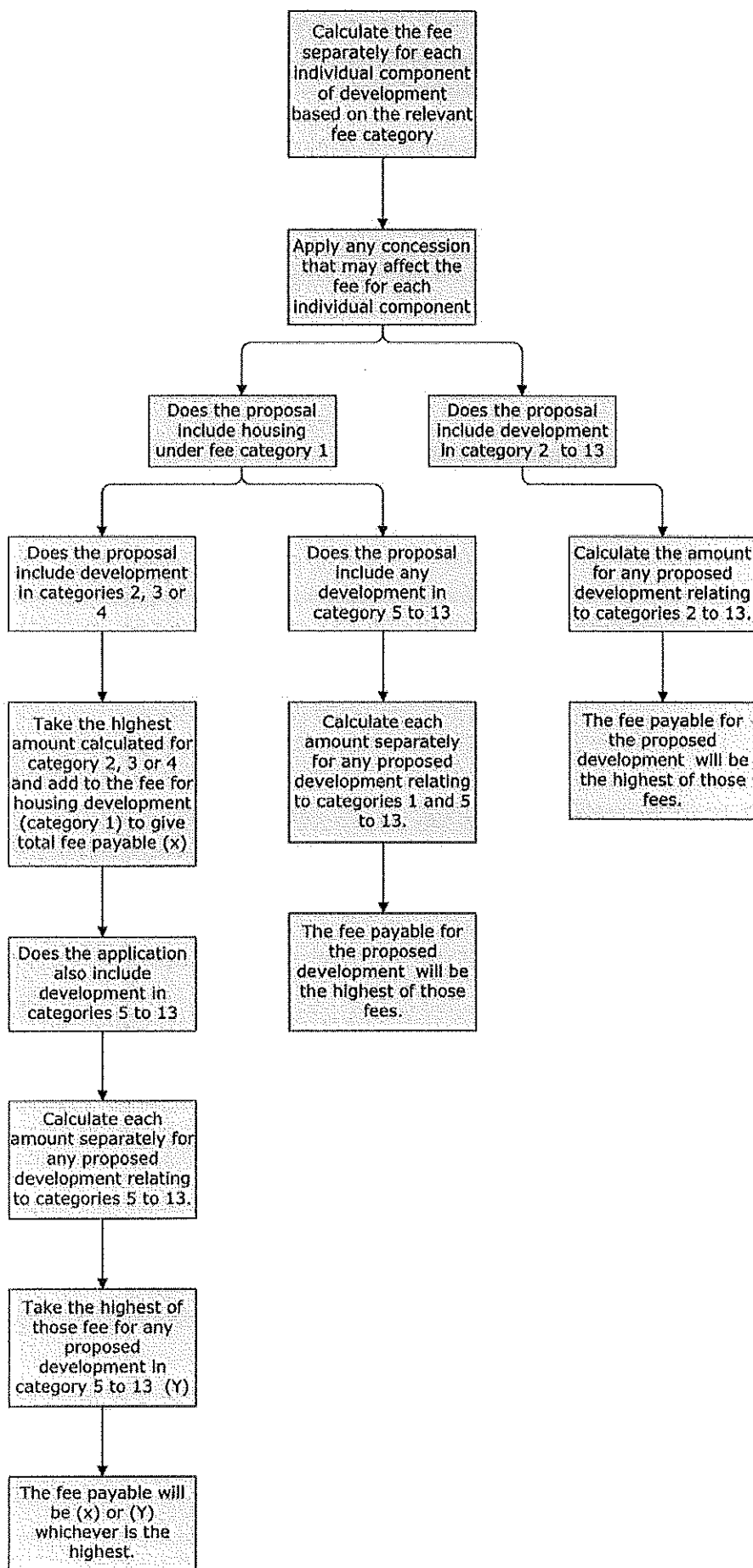
Under Paragraph 14(2) of Part 1 of Schedule 1 to the 2012 Fees Regulations [\[2\]](http://www.legislation.gov.uk/ukSI/2012/2920/schedule/1/made) (<http://www.legislation.gov.uk/ukSI/2012/2920/schedule/1/made>) application fees for outline planning permissions for mixed development are calculated in the following way:

- Where the site area does not exceed 2.5 hectares, £385 for each 0.1 hectare of the site area
- Where the site area exceeds 2.5 hectares the fee is £9,527 plus an additional £115 for each 0.1 hectare in excess of 2.5 hectares, subject to a maximum fee of £125,000

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### **How are fees for full permission for mixed development calculated?**

Fees for mixed development are calculated in the following way:



(<http://planningguidance.communities.gov.uk/wp-content/uploads/2014/10/fees.jpg>)

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3. Fees for specific application types (<http://planningguidance.communities.gov.uk/blog/guidance/fees-for-planning-applications/fees-for-specific-application-types/>)

### Fees for specific application types

#### How are fees calculated for prior approval applications?

Where the principle of development has already been established by a permitted development right, as set out in Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 [\[2\]](http://www.legislation.gov.uk/ukxi/1995/418/schedule/2/made) (<http://www.legislation.gov.uk/ukxi/1995/418/schedule/2/made>) (S.I. 1995/418), it usually means that there is no requirement to submit a planning application. However, in certain circumstances, a developer has to submit a request to the local planning authority to determine whether its prior approval will be required for specific elements of the development.

A fee for a prior approval application is payable in relation to certain types of development authorised by the 1995 Order [\[2\]](http://www.legislation.gov.uk/ukxi/1995/418/contents/made) (<http://www.legislation.gov.uk/ukxi/1995/418/contents/made>). The amounts are payable every time an application for prior approval is made.

Under Regulation 14 of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 [\[2\]](http://www.legislation.gov.uk/ukxi/2012/2920/regulation/14/made) (<http://www.legislation.gov.uk/ukxi/2012/2920/regulation/14/made>) (S.I. 2012/2920), as amended, the amounts to pay are:

- for a material change of use under any Part of Schedule 2 to the 1995 Order [\[2\]](http://www.legislation.gov.uk/ukxi/1995/418/schedule/2/made) (<http://www.legislation.gov.uk/ukxi/1995/418/schedule/2/made>) – £80
- for a material change of use and associated building operations under Part 3 of Schedule 2 to the 1995 Order [\[2\]](http://www.legislation.gov.uk/ukxi/1995/418/schedule/2/made) (<http://www.legislation.gov.uk/ukxi/1995/418/schedule/2/made>) – £172
- for certain agricultural buildings and forestry buildings and operations under Parts 6 and 7 of Schedule 2 to the 1995 Order [\[2\]](http://www.legislation.gov.uk/ukxi/1995/418/schedule/2/made) (<http://www.legislation.gov.uk/ukxi/1995/418/schedule/2/made>) – £80
- for demolition of buildings under Part 31 of Schedule 2 to the 1995 Order [\[2\]](http://www.legislation.gov.uk/ukxi/1995/418/schedule/2/made) (<http://www.legislation.gov.uk/ukxi/1995/418/schedule/2/made>) – £80
- for development by Electronic Communications Code Operators under Part 24 of Schedule 2 to the 1995 Order [\[2\]](http://www.legislation.gov.uk/ukxi/1995/418/schedule/2/made) (<http://www.legislation.gov.uk/ukxi/1995/418/schedule/2/made>) – £385

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#### What is the fee payable for a lawful development certificate?

A lawful development certificate

(<http://planningguidance.communities.gov.uk/blog/guidance/lawful-development-certificates/>) confirms that the particular use, operation or activity named within the certificate is lawful, so far as planning law is concerned, on the dates specified. A fee must be paid to the local planning authority for a lawful development certificate which is calculated in the following way:

- for a certificate to establish the lawfulness of an existing land-use or of development already carried out under Section 191(1)(a) or (b) of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/191) (<http://www.legislation.gov.uk/ukpga/1990/8/section/191>), under Regulation 11(3)(a) of the 2012 Fees Regulations [\[2\]](http://www.legislation.gov.uk/ukxi/2012/2920/regulation/11/made) (<http://www.legislation.gov.uk/ukxi/2012/2920/regulation/11/made>) the fee would be the same as if applying for a new permission for that use or operation

- for a certificate to establish that it was lawful not to comply with a particular condition or other limitation imposed through a planning permission under Section 191(1)(c) of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/191) (<http://www.legislation.gov.uk/ukpga/1990/8/section/191>), the fee in all cases is £195 (see Regulation 11(3)(b) of the 2012 Fees Regulations [\[2\]](http://www.legislation.gov.uk/ukdsi/2012/9780111527290/regulation/11)) (<http://www.legislation.gov.uk/ukdsi/2012/9780111527290/regulation/11>)
- for a certificate to state that some future development would be lawful under Section 192 of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/192) (<http://www.legislation.gov.uk/ukpga/1990/8/section/192>), the fee would be *half* the application fee for applying for planning permission to carry out whatever form of development is the subject of the certificate, in accordance with Regulation 11(3)(c) of the 2012 Fees Regulations [\[2\]](http://www.legislation.gov.uk/ukdsi/2012/2920/regulation/11/made) (<http://www.legislation.gov.uk/ukdsi/2012/2920/regulation/11/made>)

There are, however, circumstances where the following rules apply instead:

- where a use specified in an application under Section 191 (1)(a) of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/191) (<http://www.legislation.gov.uk/ukpga/1990/8/section/191>) is for one or more separate dwellings, the fee payable is calculated on the same basis as the fee payable in accordance with paragraph 2(a) or (b) of category 1 in Part 2 of Schedule 1 to the 2012 Fees Regulations [\[2\]](http://www.legislation.gov.uk/ukdsi/2012/2920/schedule/1/made) (<http://www.legislation.gov.uk/ukdsi/2012/2920/schedule/1/made>) (see Regulation 11 (6) of the 2012 Fees Regulations [\[2\]](http://www.legislation.gov.uk/ukdsi/2012/9780111527290/regulation/11)) (<http://www.legislation.gov.uk/ukdsi/2012/9780111527290/regulation/11>)
- where an application is made both under Section 191 (1)(a) and/or (b) and under Section 191(1)(c) of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/191) (<http://www.legislation.gov.uk/ukpga/1990/8/section/191>), the fee to be paid is the sum of the fees that would have been paid if there had been separate applications, in accordance with Regulation 11(7) of the 2012 Fees Regulations [\[2\]](http://www.legislation.gov.uk/ukdsi/2012/2920/regulation/11/made) (<http://www.legislation.gov.uk/ukdsi/2012/2920/regulation/11/made>)

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### Can a concession apply to applications for lawful development certificates?

Where the fee for an application for a lawful development certificate is the same as the applicant would have paid if they had actually made a planning application for the same development applied for in the lawful development certificate, then the applicant can take advantage of any exemption or concession (<http://planningguidance.communities.gov.uk/blog/guidance/fees-for-planning-applications/exemptions-and-concessions/>) that may be applied.

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### When does a fee for written confirmation of compliance need to be paid?

Applicants will need to pay a written confirmation of compliance fee (<http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/discharging-and-modifying-conditions-once-planning-permission-is-granted/>) where they request confirmation in writing of any planning consent, agreement or approval (commonly known as discharge of conditions) required by one or more conditions or limitations attached to a grant of planning permission.

The fee chargeable by the authority is £97 per request (or £28 where the related permission was for extending or altering a dwelling house or other development in the curtilage e.g. garden of a dwelling house) as set out in



Regulation 16 of the 2012 Fees Regulations [\[2\]](#)

(<http://www.legislation.gov.uk/ukxi/2012/2920/regulation/16/made>). A request can cover one or more conditions or limitations.

The Standard Application Form

(<http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/application-form/>) (application for the approval of details reserved by a condition) must be used to set out the details which applicants would like the local planning authority to consider.

If the local planning authority considers that the condition has not yet been complied with, they will explain to the applicant what remains to be done and issue confirmation of compliance when satisfied, unless enforcement action or a retrospective planning application would be more appropriate.

Where the applicant makes more than one request for confirmation of compliance in order to amend or revise the details to comply with a condition, a fee has to be paid each time as if it were the first such request.

A request for confirmation of compliance must be determined within 12 weeks ([http://planningguidance.communities.gov.uk/blog/guidance/fees-for-planning-applications/refunds-and-adjustments/#paragraph\\_043](http://planningguidance.communities.gov.uk/blog/guidance/fees-for-planning-applications/refunds-and-adjustments/#paragraph_043)).

Local authorities may choose to 'confirm' some conditions informally without seeking the fee. The applicant can decide whether or not to then request a formal statement of compliance.

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### **What fees are payable for applications to vary conditions?**

In order to vary the terms of a condition or to implement a planning permission without an imposed condition, it will be necessary to make an application under section 73 [\[2\]](#) (<http://www.legislation.gov.uk/ukpga/1990/8/section/73>) or 73A [\[2\]](#) ([http://www.legislation.gov.uk/ukpga/1990/8/section/73A\(2\)\(c\)](http://www.legislation.gov.uk/ukpga/1990/8/section/73A(2)(c))) of the Town and Country Planning Act 1990. The fee for an application under section 73 or 73A (2)(c) is a flat rate fee of £195 as set out in paragraphs 5 and 6(b) of Schedule 1 Part 1 to the 2012 Fees Regulations [\[2\]](#) (<http://www.legislation.gov.uk/ukxi/2012/2920/schedule/1/made>).

More than one condition at a time can be removed or altered on the same application without any multiplication of the fee to be paid.

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### **Can a local planning authority decline to accept an application to vary conditions?**

A local planning authority may decline to accept an application under section 73 [\[2\]](#) (<http://www.legislation.gov.uk/ukpga/1990/8/section/73>) or 73A [\[2\]](#) (<http://www.legislation.gov.uk/ukpga/1990/8/section/73A>) of the Town and Country Planning Act 1990 if the actual or potential impact of varying the relevant condition(s) would more properly be the subject of an entirely fresh application for full planning permission.

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### **How much is the fee for consents to display advertisements?**

#### **On-site signs**

Regulation 9 of the Town and Country Planning (Control of Advertisements) Regulations 2007 [\[2\]](#) (<http://www.legislation.gov.uk/ukxi/2007/783/regulation/9/made>) (S.I 2007/783), as amended, requires an application to be made where express

consent to display an advertisement is needed. Fees for applications for consent for the display of advertisements are set out in Regulation 13 [\[a\]](http://www.legislation.gov.uk/ukxi/2012/2920/regulation/13/made) (<http://www.legislation.gov.uk/ukxi/2012/2920/regulation/13/made>) of and Schedule 2 [\[a\]](http://www.legislation.gov.uk/ukxi/2012/2920/schedule/2/made) (<http://www.legislation.gov.uk/ukxi/2012/2920/schedule/2/made>) to the 2012 Fees Regulations.

Regulation 13 of the 2012 Fees regulations [\[a\]](http://www.legislation.gov.uk/ukxi/2012/2920/regulation/13/made) (<http://www.legislation.gov.uk/ukxi/2012/2920/regulation/13/made>), which requires this fee, refers to the site on which the advertisement is displayed. "Site" is defined in Regulation 2(1) of the 2007 Regulations [\[a\]](http://www.legislation.gov.uk/ukxi/2007/783/regulation/2/made) (<http://www.legislation.gov.uk/ukxi/2007/783/regulation/2/made>) as the land or building on which the advertisement is to be displayed.

When a number of advertisements are to be displayed in a specified area then the specified area is regarded as one site for the fee calculation as set out in Regulation 13(4) of the 2012 Fees Regulations [\[a\]](http://www.legislation.gov.uk/ukxi/2012/2920/regulation/13/made) (<http://www.legislation.gov.uk/ukxi/2012/2920/regulation/13/made>)).

### **Advance signs**

'Advance signs' are advertisements which give advance notice of premises situated in the locality of the proposed advertisement but which are not visible from the location of the advertisement. For example, when a hotel in a rural area wishes to obtain express consent for an advance sign beside a main road, and the hotel cannot be seen from the site where the advertisement is to be displayed, the fee will be £110; but when a hotel wants to put up an advertisement beside a main road, on a site from which the hotel itself can be seen, the fee goes up to £385.

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### **How much is the fee for a deemed planning application?**

When an appeal is made against an enforcement notice under Section 174 of the Town and Country Planning Act 1990 [\[a\]](http://www.legislation.gov.uk/ukpga/1990/8/section/174) (<http://www.legislation.gov.uk/ukpga/1990/8/section/174>) under the ground in Section 174(2)(a) that planning permission ought to have been granted, the process for resolving the issue is through a 'deemed application'. This is an application deemed to have been made for planning permission to carry out whatever activity or change of land-use had earlier been found unlawful by the local planning authority.

The fee is double that which would be payable for a corresponding planning application that was made at the time the enforcement notice was issued, as set out in Regulation 10(3) of the 2012 Fees Regulations [\[a\]](http://www.legislation.gov.uk/ukxi/2012/2920/regulation/10/made) (<http://www.legislation.gov.uk/ukxi/2012/2920/regulation/10/made>).

Where the development is for mixed use development ([http://planningguidance.communities.gov.uk/blog/guidance/fees-for-planning-applications/calculating-fees-for-planning-applications/#paragraph\\_022](http://planningguidance.communities.gov.uk/blog/guidance/fees-for-planning-applications/calculating-fees-for-planning-applications/#paragraph_022)) the fee should be calculated, and then the fee is doubled.

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### **Is Crown development subject to a planning application fee?**

Most planning applications for development on Crown land (<http://planningguidance.communities.gov.uk/blog/guidance/crown-development/>) are now made subject to the same planning fees as other applications. If the Crown needs to carry out urgent development under Section 293A of the Town and Country Planning Act 1990 [\[a\]](http://www.legislation.gov.uk/ukpga/1990/8/section/293A) (<http://www.legislation.gov.uk/ukpga/1990/8/section/293A>) then a fee is payable to the Secretary of State. Regulation 12 of the 2012 Fees Regulations [\[a\]](http://www.legislation.gov.uk/ukxi/2012/2920/regulation/12/made) (<http://www.legislation.gov.uk/ukxi/2012/2920/regulation/12/made>).

(<http://www.legislation.gov.uk/ukxi/2012/2920/regulation/12/made>) provides that the fee payable will be the same amount as would have been paid to the local planning authority.

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4. Exemptions and concessions (<http://planningguidance.communities.gov.uk/blog/guidance/fees-for-planning-applications/exemptions-and-concessions/>)

### **Exemptions and concessions**

#### **For which planning applications is it possible not to pay a fee or pay a reduced fee?**

There are several types of planning application where no fee or a reduced fee applies.

ID 22-032-20141017 Last updated 17 10 2014

### **Alternative developments on the same site**

If different proposals for full or outline permission, or for approval of a reserved matter, are all submitted **simultaneously**, by or on behalf of, the same applicant, a concession is available. The fee should first be calculated separately for each alternative for which permission is sought. The total fee payable is then calculated by adding to the highest of these separate amounts half the sum of the other separate amounts. Please see paragraph 10 of Part 1 of Schedule 1 to the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 [\[2\]](http://www.legislation.gov.uk/ukxi/2012/2920/schedule/1/made) (<http://www.legislation.gov.uk/ukxi/2012/2920/schedule/1/made>) (S.I 2012/2920), as amended.

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### **Applications made on sites that cross local planning authority boundaries**

If an application site is on land that falls within the boundary of more than one local planning authority, then identical applications must be submitted to each local planning authority, identifying on the plans which part of the site is relevant to each. The planning fee is paid to the local planning authority whose area contains the largest part of the application site.

The fee, however, for this divided site would be either the sum of the fees payable for each part of the site calculated separately, or, if it comes to a smaller figure, 150 per cent of the fee that would have been payable if there had been only one application to a single authority covering the entire site.

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### **Applications made on sites that cross local planning authority boundaries: County matter applications**

The fee for a county matter application which relates to land which is situated in a single county for which there is no county planning authority will be the same as the fee which would have been payable if the application had fallen to be made to one authority in relation to the whole development (see paragraph 8 (2) of Part 1 of Schedule 1 of 2012 Fees Regulations [\[2\]](http://www.legislation.gov.uk/ukdsi/2012/9780111527290/schedule/1) (<http://www.legislation.gov.uk/ukdsi/2012/9780111527290/schedule/1>)). In any other case, the fee for a county matter application which is on a site which crosses local planning authority boundaries will be 150 per cent of the fee which would

have been payable if the application had fallen to be made to a single authority or the sum of the fees payable for each part of the site calculated separately, whichever is the lesser.

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## Development providing for people with disabilities

Regulation 4 of the 2012 Fees Regulations [\[2\]](#)

(<http://www.legislation.gov.uk/uksi/2012/2920/regulation/4/made>) sets out that planning application fees are waived for a disabled person who is living or intending to live in a dwelling who wishes to:

- alter or extend an existing dwelling; or
- undertake works in the curtilage of an existing dwelling

in order, in either case, to:

- create an access; and/or
- provide for their improved safety, health or comfort

There is no fee exemption for an application to construct a new dwelling for someone with a disability.

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## Permitted Development and Use Class rights

The Town and Country Planning (General Permitted Development) Order 1995 [\[2\]](#) (<http://www.legislation.gov.uk/uksi/1995/418/contents/made>) grants a general planning permission for various forms of minor development, which usually means that unless prior approval is required, development or the change of land-use can start without applying for permission or paying a fee. However, where permitted development cannot be carried out because the relevant right has been removed by a direction made under Article 4 of the 1995 Order [\[2\]](#)

(<http://www.legislation.gov.uk/uksi/1995/418/article/4/made>), or by a specific planning condition, any application for specific planning permission required as a consequence is exempt from fees (see Regulation 5 of the 2012 Fees Regulations [\[2\]](#) (<http://www.legislation.gov.uk/uksi/2012/2920/regulation/5/made>)).

No fee is payable for a planning application to demolish an unlisted building in a Conservation Area (see Regulation 5A of the 2012 Fees Regulations [\[2\]](#) (<http://www.legislation.gov.uk/uksi/2013/2153/regulation/4/made>)).

No fee is payable for an application for change of use of land if that application is not necessary because a right to change the land-use granted by The Town and Country Planning (Use Classes) Order 1987 [\[2\]](#)

(<http://www.legislation.gov.uk/uksi/1987/764/contents/made>), as amended, has been removed by a condition imposed on a previous grant of planning permission as set out in Regulation 6 of the 2012 Fees Regulations [\[2\]](#) (<http://www.legislation.gov.uk/uksi/2012/2920/regulation/6/made>).

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## Parish and town councils

Town and parish councils have various rights under Part 12 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 [\[2\]](#) (<http://www.legislation.gov.uk/uksi/1995/418/schedule/2/made>) to carry out works without making a planning application. However, where a parish or town council is required to apply for planning permission, paragraph 2 of Schedule 1 to the 2012 Fees Regulations [\[2\]](#)

(<http://www.legislation.gov.uk/ukxi/2012/2920/schedule/1/made>) sets out that the planning application fee is half the normal fee for the type of application being applied for.

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### Development of playing fields

There is a flat-rate fee of £385 for applications made by non-profit making clubs or other non-profit-making sporting or recreational organisations, relating to playing fields for their own use (see paragraph 3 of Schedule 1, Part 1 to the 2012 Fees Regulations [\[2\]](#)

(<http://www.legislation.gov.uk/ukxi/2012/2920/schedule/1/made>)).

The flat rate fee applies to applications to change the use of land for playing fields and other associated operations such as earthmoving, draining or levelling. The flat rate fee does not apply to planning applications to erect buildings.

The term “playing field” includes, but is not limited to, football, cricket, hockey or hurling pitches, but does not include enclosed courts for games such as tennis or squash, golf courses or golf driving ranges.

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### When are applications eligible for a “free go”?

A planning application may benefit from a “free go” to submit a further application without paying a fee. The following table sets out the type of application which can benefit from a “free go” and the conditions and requirements to be eligible.

Type of Application	Regulation	Conditions/Requirements
An application made following the granting of planning permission for development of the same character or description as development already permitted.	Regulation 8 of the 2012 Fees Regulations <a href="#">[2]</a> ( <a href="http://www.legislation.gov.uk/ukxi/2012/2920/regulation/8/made">http://www.legislation.gov.uk/ukxi/2012/2920/regulation/8/made</a> )	<ul style="list-style-type: none"> <li>• The application must be made by or on behalf of the same applicant</li> <li>• That the application is made within 12 months of the date of the grant of planning permission or the grant of approval of reserved matters</li> <li>• That the application relates, in the case of an application for planning permission, to the same site and to no other land except land included solely for the purpose of providing a different means of access to the site or, in the case of a reserved matters, to the same sites in respect of which the approval was granted or to part of that site and no other land</li> </ul>

<p>An application for approval of one or more reserved matters which is made following the granting of the approval of details relating to the same reserved matters authorised by the same outline planning permission.</p>		<ul style="list-style-type: none"> <li>• Where the original application was in outline only a revised outline application can be exempt</li> <li>• Where the original application was for full permission the further application must be for full permission</li> <li>• In the case of reserved matters, the revised application must relate to the same reserved matter(s) to be exempt</li> </ul>
<p>An application is made to vary the terms of a condition or to implement a planning permission without an imposed condition following the grant of planning permission.</p>		
<p>A planning application is made following an application which has been withdrawn or refused</p>	<p>Regulation 9 of the 2012 Fees Regulations <a href="http://www.legislation.gov.uk/uksi/2012/2920/regulation/9/made">[2]</a> (<a href="http://www.legislation.gov.uk/uksi/2012/2920/regulation/9/made">http://www.legislation.gov.uk/uksi/2012/2920/regulation/9/made</a>)</p>	<ul style="list-style-type: none"> <li>• The application must be made by or on behalf of the same applicant</li> <li>• That the application is made within 12 months:                         <ul style="list-style-type: none"> <li>• in the case of an earlier valid application which was withdrawn the date the application was received</li> <li>• in the case of an appeal against non-determination, within 12 months of the expiry of the 8 week period or (in the case of major applications) 13 week period for determination</li> </ul> </li> </ul>
<p>A planning application is made after an appeal or a 'called-in' application has been rejected by the Secretary of State</p>		

A planning application is made after an appeal has been made to the Secretary of State on the grounds of non-determination

- in any other case the date of the refusal
- In the case of an application for planning permission, the authority is satisfied that it relates to the development of the same character or description as the development to which the earlier application and no other land
- Where the original application was in outline only a revised outline application can be exempt
- Where the original application was for full permission the further application must be for full permission
- In the case of reserved matters, the revised application must relate to the same reserved matter(s) to be exempt
- That the fee payable in respect of the earlier application was paid
- That no application made by or on behalf of the applicant in relation to the whole or any part of the site has already been exempted from Regulation 3

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5. Refunds and adjustments (<http://planningguidance.communities.gov.uk/blog/guidance/fees-for-planning-applications/refunds-and-adjustments/>)

## Refunds and adjustments

### Can planning application fees be refunded once paid?

Once paid, most planning application fees cannot be refunded. There are a few exceptions to this, including:

- in relation to the Planning Guarantee ([http://planningguidance.communities.gov.uk/blog/guidance/fees-for-planning-applications/refunds-and-adjustments/#paragraph\\_042](http://planningguidance.communities.gov.uk/blog/guidance/fees-for-planning-applications/refunds-and-adjustments/#paragraph_042))
- when a request for a written confirmation of compliance is not completed within 12 weeks ([http://planningguidance.communities.gov.uk/blog/guidance/fees-for-planning-applications/refunds-and-adjustments/#paragraph\\_043](http://planningguidance.communities.gov.uk/blog/guidance/fees-for-planning-applications/refunds-and-adjustments/#paragraph_043))

- in some circumstances for deemed planning applications ([http://planningguidance.communities.gov.uk/blog/guidance/fees-for-planning-applications/refunds-and-adjustments/#paragraph\\_044](http://planningguidance.communities.gov.uk/blog/guidance/fees-for-planning-applications/refunds-and-adjustments/#paragraph_044))

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### **When are planning application fees refunded under the Planning Guarantee?**

Under the Planning Guarantee, the planning application fee must be refunded to applicants where no decision has been made within 26 weeks (unless a longer period has been agreed in writing between the applicant and the local planning authority) (see Regulation 9A of the 2012 Fees Regulations [\[2\]](http://www.legislation.gov.uk/uksi/2013/2153/regulation/5/made) (<http://www.legislation.gov.uk/uksi/2013/2153/regulation/5/made>)). This only applies to applications submitted after 1 October 2013.

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### **When are fees for written confirmation of compliance refunded?**

Regulation 16(2) of the 2012 Fees Regulations [\[2\]](http://www.legislation.gov.uk/ukdsi/2012/9780111527290/regulation/16) (<http://www.legislation.gov.uk/ukdsi/2012/9780111527290/regulation/16>) sets out that fees are refunded where a request for written confirmation of compliance with conditions is not decided within 12 weeks.

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### **When will fees for deemed planning applications be refunded?**

Fees for deemed planning applications can be refunded (see Regulation 10 of the 2012 Fees Regulations [\[2\]](http://www.legislation.gov.uk/uksi/2012/2920/regulation/10/made) (<http://www.legislation.gov.uk/uksi/2012/2920/regulation/10/made>)) in the following situations:

- if the related enforcement notice is withdrawn by the local planning authority at any stage
- if the related appeal is withdrawn at least 21 days before the public inquiry, or the site inspection where the written representations procedure (<http://planningguidance.communities.gov.uk/blog/guidance/appeals/planning-appeals-general/>) is used. (An appeal is regarded as 'withdrawn' on the date when the Secretary of State receives notice in writing of the withdrawal.)
- if an enforcement notice appeal is rejected as invalid, is null, or is formally dismissed for lack of facts in support of the grounds of appeal within a period prescribed by the Secretary of State
- if an enforcement notice is quashed, and the appeal is allowed by the Secretary of State because the local planning authority has failed to submit the prescribed information within a prescribed period
- if an enforcement notice appeal is allowed because the enforcement notice is found to be invalid or to contain a defect which the Secretary of State cannot correct within the appeal process

When an enforcement notice is amended under section 176(1) of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/176)

(<http://www.legislation.gov.uk/ukpga/1990/8/section/176>), and the fee payable on the amended notice is less than was actually paid, then the difference can be refunded (see Regulation 10(14) of the 2012 Fees Regulations [\[2\]](http://www.legislation.gov.uk/uksi/2012/2920/regulation/10/made) (<http://www.legislation.gov.uk/uksi/2012/2920/regulation/10/made>)).



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### **Can fees be adjusted once paid?**

Fees cannot be adjusted once paid and where the local planning authority has validated the application and accepted the planning application fee is correct, except in the case of deemed applications

([http://planningguidance.communities.gov.uk/blog/guidance/fees-for-planning-applications/refunds-and-adjustments/#paragraph\\_044](http://planningguidance.communities.gov.uk/blog/guidance/fees-for-planning-applications/refunds-and-adjustments/#paragraph_044)).

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## **6. Fees for monitoring mining and landfill sites**

(<http://planningguidance.communities.gov.uk/blog/guidance/fees-for-planning-applications/fees-for-monitoring-mining-and-landfill-sites/>)

### **Fees for monitoring mining and landfill sites**

#### **Can mineral planning authorities charge for site visits?**

Under Regulation 15 of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 [\[2\]](http://www.legislation.gov.uk/uksi/2012/2920/regulation/15/made) (<http://www.legislation.gov.uk/uksi/2012/2920/regulation/15/made>) (S.I. 2012/2920), mineral planning authorities dealing with county matter applications can charge to monitor mineral and landfill permissions. This covers initial implementation to the end of the period of aftercare required by a condition of the planning permission. During a site visit, the local planning authority may also check compliance with other permissions and planning obligations which apply to the site.

The fee for a site visit is £331 where the whole or part of the site is active, or £110 in any other case.

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#### **How many site visits can a mineral planning authority charge for?**

Under Regulation 15 of the 2012 Fees Regulations [\[2\]](http://www.legislation.gov.uk/ukdsi/2012/9780111527290/regulation/15) (<http://www.legislation.gov.uk/ukdsi/2012/9780111527290/regulation/15>), authorities can charge for a maximum of eight site visits within any 12 month period for an active mining or landfill site, and one visit for an inactive site. Additional site visits may be undertaken but they cannot be charged for.

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#### **What is an active site in terms of mineral development?**

An active site in terms of minerals development is:

- one where development to which a mineral or landfill permission relates
- where a condition attached to the mineral permission or landfill permission is in operation
- a single site which is both a mining and landfill site where either or both are operational
- “mothballed” sites which are subject to ongoing restoration or aftercare

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#### **What is an inactive site in terms of minerals development?**

Inactive sites in terms of minerals development are any other sites which are not active, dormant

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/review-of-minerals-planning-conditions/dormant-sites/>), mining or landfill sites, and “mothballed” mining or landfill sites where no mineral or landfill restoration and aftercare are being carried out to any substantial extent.

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### **What inspection fee is charged for a minerals and/or a landfill site which has more than one planning application and includes more than one location?**

For fee purposes, a mining and/or landfill site is the area of land which is worked as a single site, regardless of how many planning permissions or what permitted development rights relate to it. For mining sites, this may also include satellite sites

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/review-of-minerals-planning-conditions/coverage-and-frequency-of-periodic-reviews/>). The whole site will be the subject of the monitoring visit, for which a single charge can be made up to the maximum number of chargeable visits.

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### **What is the fee if a site is both a mining and a landfill site?**

For fee purposes, sites worked as both mineral and landfill sites are regarded as single sites, and are subject to the maximum number of chargeable monitoring visits.

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### **How do monitoring fees apply to satellite sites?**

Fees can apply to satellite sites

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/review-of-minerals-planning-conditions/coverage-and-frequency-of-periodic-reviews/>). These sites may be part of the mining site and grouped with the main extraction site or primary processing facility and may be subject to a monitoring fee.

This will depend on factors such as:

- their location
- their distance from each other and from the main extraction site or primary processing facility
- whether it is clear that the various sites form part of a coordinated mineral extraction and/or primary processing operation
- whether it makes practical sense to monitor them all at the same time or separately

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### **When will fees cease to be charged?**

Fees will cease to be charged for monitoring visits on the completion of the period of aftercare set out in the planning permission.

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### **What constitutes a site visit for which fees may be charged?**

A fee may only be charged for a site visit when the planning officer(s) enter a mining or landfill site to monitor compliance with planning permissions and obligations. Fees are not charged for any assessment by an officer of conditions at a site without entering the site.

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### **What happens when a mining or landfill site straddles two or more mineral planning authority boundaries?**

Where a mining or landfill site straddles two or more mineral planning authority boundaries, the mineral planning authorities should agree who is responsible for monitoring the site, and to which mineral planning authority the operator will pay the fee. The monitoring of the site should normally be undertaken by the authority which contains the largest proportion of the site.

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### **What issues should mineral planning authorities monitor under individual site visits?**

Mineral planning authorities' visits may monitor one or more aspects of operations or a few conditions only. However, over the course of each 12 month period all planning conditions and obligations, including section 106 agreements, and any permitted development rights should be monitored.

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### **Should monitoring cover issues which are the responsibility of the Environment Agency?**

Mineral planning authorities should avoid monitoring activities which are the responsibility of the Environment Agency

(<https://www.gov.uk/government/organisations/environment-agency>). Operators should not be billed twice for duplicated monitoring by the Environment Agency and the planning authority.

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### **How many chargeable site visits to active sites should be carried out?**

The number of chargeable visits to active sites will depend on a number of factors, including:

- the size and type of development
- the number and complexity of conditions
- the number of issues requiring monitoring
- the stage of development. More frequent visits to mining sites may be needed during initial site preparation e.g. construction of site access and wheel washing equipment, installation and commissioning of processing plant/offices
- the progressive nature of working/restoration ie sand and gravel sites may require more frequent visits than hard rock
- breaches of planning control observed/consistency in compliance
- complaints received about the site that have proved to be justified

Whilst a maximum of eight site visits are chargeable, local planning authorities should not seek to carry out more than four visits in a 12 month period unless the site is at a particularly sensitive stage of development, or where the

authority has concerns about compliance. Minor breaches of control at an otherwise consistently compliant site should not normally lead to more visits in the following year.

An active, “mothballed”, site that is subject to restoration works should receive fewer monitoring visits than other types of active sites.

Mineral planning authorities should agree with operators the number of site visits (announced and unannounced) to each site, and who will be invoiced for the monitoring fees, at the start of the charging year. Mineral planning authorities should clearly explain the performance assessment and other factors which have been taken into account in reaching the number of proposed site visits.

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### **Who should pay the monitoring fee?**

The operator should pay the monitoring fee. “Operator” is defined in Regulation 15(6) of the 2012 Fees Regulations [☒](http://www.legislation.gov.uk/ukSI/2012/2920/regulation/15/made) (<http://www.legislation.gov.uk/ukSI/2012/2920/regulation/15/made>). For sites in multiple operation, an operator in overall control of the site should pay for the monitoring. However, the operator may make arrangements to recoup part of the fees from subsidiary operators carrying out mineral development, but who are not in overall control of the site.

Where no operator has been identified, responsibility for paying the monitoring fee rests with the owner. The liable owner is the person who holds the head lease of the site. If there is no head lease, then the person who is the freehold owner of the site is liable. If there is more than one owner, then the fee will be split between them.

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### **When should site monitoring fees be paid?**

A fee for a site visit is charged after the visit has occurred, and a written follow up site monitoring report has been sent to the operator. Local planning authorities should agree invoicing arrangements, including when visits should be paid for, with operators before the start of the charging year.

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### **Should the record of the site visit record any specific information about the site visit?**

A record of the time spent on site should be produced by the mineral planning authority and completed for each site visit. The record of the site visit should also identify the time spent at site, the name and work address of the officer who carried out the inspection, whether or not the visit was announced or unannounced or was in response to a complaint, and a short description of which planning conditions were monitored.

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### **What should a site monitoring report contain?**


A written site monitoring report should detail in full:

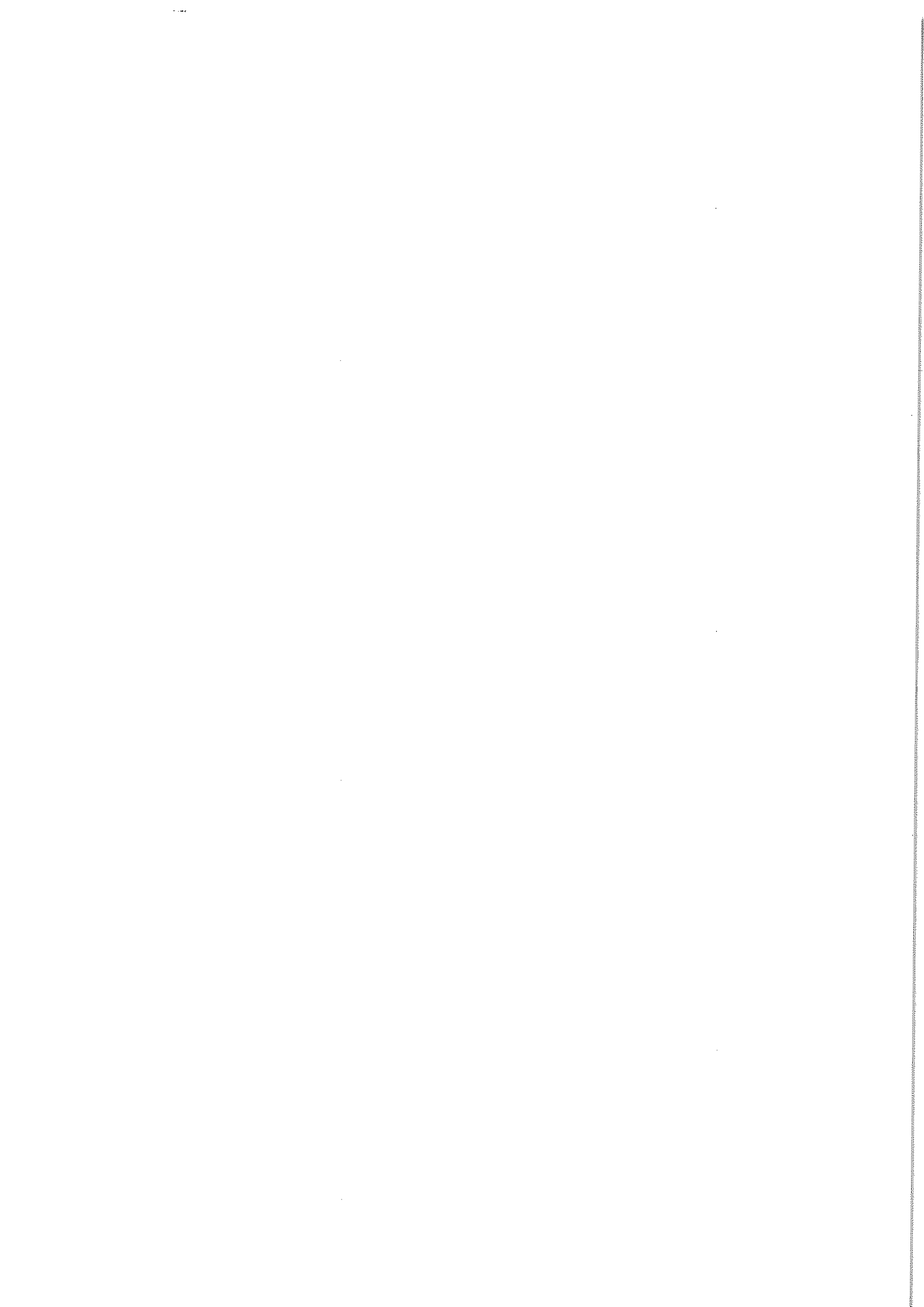
- compliance with, and any breaches of, the planning conditions being monitored

- the matters reviewed, the points arising, agreed improvements in working practices that have been identified, any breaches of conditions, and the action required by both the operator and the authority, including timescales

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 Department for Communities & Local Government  
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# Planning Practice Guidance (<http://planningguidance.communities.gov.uk>)

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Guidance

## Flexible options for planning permissions

Print 

### 1. How can a proposal that has planning permission be amended?

(<http://planningguidance.communities.gov.uk/blog/guidance/flexible-options/how-is-a-proposal-that-has-planning-permission-amended/>)

#### How can a proposal that has planning permission be amended?

When planning permission is granted, development must take place in accordance with the permission and conditions attached to it, and with any associated legal agreements.

New issues may arise after planning permission has been granted, which require modification of the approved proposals. Where these modifications are fundamental or substantial, a new planning application under section 70 of the Town and Country Planning Act 1990 will need to be submitted. Where less substantial changes are proposed, there are the following options for amending a proposal that has planning permission:

- Making a non-material amendment  
(<http://planningguidance.communities.gov.uk/blog/guidance/flexible-options/making-a-non-material-amendment-to-a-planning-permission/>)
- Amending the conditions attached to the planning permission, including seeking to make minor material amendments  
(<http://planningguidance.communities.gov.uk/blog/guidance/flexible-options/amending-the-conditions-attached-to-a-permission-including-seeking-minor-material-amendments-application-under-section-73-tcpa-1990/>)


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### 2. Making a non-material amendment to a planning permission

(<http://planningguidance.communities.gov.uk/blog/guidance/flexible-options/making-a-non-material-amendment-to-a-planning-permission/>)

#### Making a non-material amendment to a planning permission

##### Is there a definition of a non-material amendment?

There is no statutory definition of 'non-material'. This is because it will be dependent on the context of the overall scheme – an amendment that is non-material in one context may be material in another. The local planning authority must be satisfied that the amendment sought is non-material in order to grant an application under section 96A of the Town and Country Planning Act 1990  (<http://www.legislation.gov.uk/ukpga/1990/8/section/96A>).

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#### Can an application to make a non-material amendment be made using the standard application form?

An application seeking a non-material amendment to a planning permission can be made using the standard application form.

Further information about the process of applying for a non-material amendment can be found at Annex A: summary comparison table (<http://planningguidance.communities.gov.uk/blog/guidance/flexible-options/annex-a-summary-comparison-table/>).

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### **Can this procedure be used to make non-material amendments to listed building consents?**

The procedure cannot be used to make non-material amendments to listed building consents. It only applies to planning permissions.

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### **Is consultation/publicity required?**

As an application to make a non-material amendment is not an application for planning permission, the existing Town and Country Planning (Development Management Procedure) (England) Order 2015 [☒](http://www.legislation.gov.uk/uksi/2015/595/introduction/made) (<http://www.legislation.gov.uk/uksi/2015/595/introduction/made>) provisions relating to statutory consultation and publicity do not apply. Therefore local planning authorities have discretion in whether and how they choose to inform other interested parties or seek their views.

As by definition the changes sought will be non-material, consultation or publicity are unlikely to be necessary, and there are unlikely to be effects which would need to be addressed under the Environmental Impact Assessment Regulations 2011.

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### **Is notification required?**

As an application for a non-material amendment is not an application for planning permission, the normal provisions relating to notification do not apply. Instead, before the application is made, the applicant must notify anyone who is an owner of the land which would be affected by the non-material amendment or, where the land comprises an agricultural holding, the tenant of that holding. The applicant must also record who has been notified on the application form. Anyone notified must be told where the application can be viewed, and that they have 14 days to make representations to the local planning authority. There is no prescribed form for this and no requirement for an ownership certificate or an agricultural holdings certificate to be provided. These requirements are set out in article 10 [☒](http://www.legislation.gov.uk/uksi/2015/595/article/10/made) (<http://www.legislation.gov.uk/uksi/2015/595/article/10/made>) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

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### **What is the time period for determination?**

The time period for determination is 28 days, or a longer period if that has been agreed in writing between the parties.

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### **What does the local planning authority have to take into account when making its decision?**



The local planning authority must have regard to the effect of the change, together with any previous changes made under section 96A. They must also take into account any representations made by anyone notified, provided they are received within 14 days of notification. As this is not an application for planning permission, section 38(6) of the Planning and Compulsory Purchase Act 2004 [\[2\]](http://www.legislation.gov.uk/ukpga/2004/5/section/38) (http://www.legislation.gov.uk/ukpga/2004/5/section/38) does not apply.

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### **Can the local planning authority allow this form of application if they consider that the amendment sought is not non-material?**

This procedure, which has no consultation requirements and minimal notification requirements, cannot be used to make a material amendment.

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### **What is the procedure for issuing a decision?**

The decision must be issued in writing. There is no prescribed form for this.

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### **What should the decision letter cover?**

The decision only relates to the non-material amendments sought and the notice of the decision should describe these. It is not a reissue of the original planning permission, which still stands. The two documents should be read together.

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### **Is there a right of appeal for refusal or non-determination?**

Applications under section 96A of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/96A) (http://www.legislation.gov.uk/ukpga/1990/8/section/96A) do not fall within the range of applications for which section 78 of the 1990 Act [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/78) (http://www.legislation.gov.uk/ukpga/1990/8/section/78) grants a right of appeal. The applicant would need to submit a planning application to seek approval for the proposed amendments.

ID 17a-012-20140306 Last updated 06 03 2014

### **3. Amending the conditions attached to a permission including seeking minor material amendments (application under Section 73 TCPA 1990)**

(<http://planningguidance.communities.gov.uk/blog/guidance/flexible-options/amending-the-conditions-attached-to-a-permission-including-seeking-minor-material-amendments-application-under-section-73-tcpa-1990/>)

### **Amending the conditions attached to a permission including seeking minor material amendments (application under Section 73 TCPA 1990)**

#### **How are the conditions attached to a planning permission amended?**

An application can be made under section 73 of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/73) (http://www.legislation.gov.uk/ukpga/1990/8/section/73) to vary or remove conditions associated with a planning permission. One of the uses of a section 73 application is to seek a minor material amendment, where there is a relevant condition that can be varied.

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### **Are there any restrictions on what section 73 can be used for?**

Planning permission cannot be granted under section 73 to extend the time limit within which a development must be started or an application for approval of reserved matters must be made.

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### **What is the effect of a grant of permission?**

Where an application under section 73 is granted, the effect is the issue of a new planning permission, sitting alongside the original permission, which remains intact and unamended.

A decision notice describing the new permission should be issued, setting out all of the conditions related to it. To assist with clarity decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. Further information about conditions can be found in the guidance for use of planning conditions

(<http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/>).

As a section 73 application cannot be used to vary the time limit for implementation, this condition must remain unchanged from the original permission. If the original permission was subject to a planning obligation then this may need to be the subject of a deed of variation.

ID 17a-015-20140306 Last updated 06 03 2014

### **Do the Environmental Impact Assessment Regulations apply?**

A section 73 application is considered to be a new application for planning permission under the 2011 Environmental Impact Assessment Regulations. Where the development is listed under either Schedule 1 or Schedule 2 to the Regulations, and satisfies the criteria or thresholds set, a local planning authority must carry out a new screening exercise and issue a screening opinion whether Environmental Impact Assessment is necessary.

Where an Environmental Impact Assessment was carried out on the original application, the planning authority will need to consider if further information needs to be added to the original Environmental Statement to satisfy the requirements of the Regulations. Whether changes to the original Environmental Statement are required or not, an Environmental Statement must be submitted with a section 73 application for development which the local planning authority considers to be Environmental Impact Assessment development

(<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/>).

Further information about the process of applying for development without compliance with original conditions can be found at ANNEX A: summary comparison table (<http://planningguidance.communities.gov.uk/blog/guidance/flexible-options/annex-a-summary-comparison-table/>).

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### **Is there a definition of 'minor material amendment'?**

There is no statutory definition of a 'minor material amendment' but it is likely to include any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved.

Pre-application discussions will be useful to judge the appropriateness of this route in advance of an application being submitted.

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### **Can section 73 be used to make minor material amendments if there is no relevant condition in the permission listing approved plans?**

Section 73 cannot be used to make minor material amendments if there is no relevant condition in the permission listing the originally approved plans.

It is possible to seek the addition of a condition listing plans using an application under s96A of the Town and Country Planning Act 1990 (<http://planningguidance.communities.gov.uk/blog/guidance/flexible-options/making-a-non-material-amendment-to-a-planning-permission/>). This would then enable the use of a section 73 application to make minor material amendments.

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#### 4. Annex A: summary comparison table (<http://planningguidance.communities.gov.uk/blog/guidance/flexible-options/annex-a-summary-comparison-table/>)

##### **Annex A: summary comparison table**

	<b>Application under section 96A for non-material amendment</b>	<b>Application under section 73 for development without compliance with original conditions /minor material amendment</b>
<b>Who can apply?</b>	A person with an interest in the land.	In theory anybody. In practice, copyright considerations may limit it to the original applicant or someone authorised by them.
<b>What is the application process?</b>	Standard application form	
<b>What is the application considered against?</b>	Local planning authority has to be satisfied it is not material; they must have regard to the effect of the change, together with any previous changes made under this section, on the planning permission as originally granted.	Development plan and material considerations, under section 38 (6) of the 2004 Act, and conditions attached to the existing permission. Local planning authorities should, in making their decisions, focus their attention on national and development plan policies, and other material considerations which may have changed significantly since the original grant of permission.
<b>Does it result in a new permission?</b>	No	Yes


<b>When is the expiry date of the new permission</b>	N/A	As original permission
<b>Is a design and access statement required?</b>	No	
<b>Will the decision appear on planning register?</b>	Yes	
<b>Is there a right of appeal?</b>	No	Yes, under section 78 of the 1990 Act.
<b>In what form must the decision be issued?</b>	In writing. There is no prescribed form for this.	Grant: new decision notice describing the whole development and listing all conditions. Refuse: decision notice listing reasons for refusal. Original permission with existing conditions remains in place.
<b>Is an Environmental Impact Assessment required?</b>	As by definition the changes sought will be non-material, it is unlikely that there will be effects which would need to be addressed under the Environmental Impact Assessment Regulations 2011.	This is considered to be a new application for planning permission under the Environmental Impact Assessment Regulations 2011.
<b>What is the fee for the application?</b>	£28 for householder applications. £195 for other applications.	£195.
<b>What are the requirements for publicity under Article 13 of the Development Management Procedure Order?</b>	Applications under section 96A are not applications for planning permission, so they are not covered by these requirements. Local planning authorities therefore have discretion.	Applications under section 73 are covered by these requirements. Within the discretion they have, local planning authorities should adopt a proportionate approach.
<b>What are the requirements for statutory consultation under Schedule 5 of the Development Management Procedure Order?</b>	Applications under section 96A are not applications for planning permission, so they are not covered by these requirements. Local planning authorities therefore have discretion.	For non-Environmental Impact Assessment schemes, local planning authorities have discretion in whom they consult under this article. For Environmental Impact Assessment schemes, there is no discretion.
<b>What is the time limit for making a decision?</b>	28 days, or a longer period if that has been agreed in writing.	As per new application.

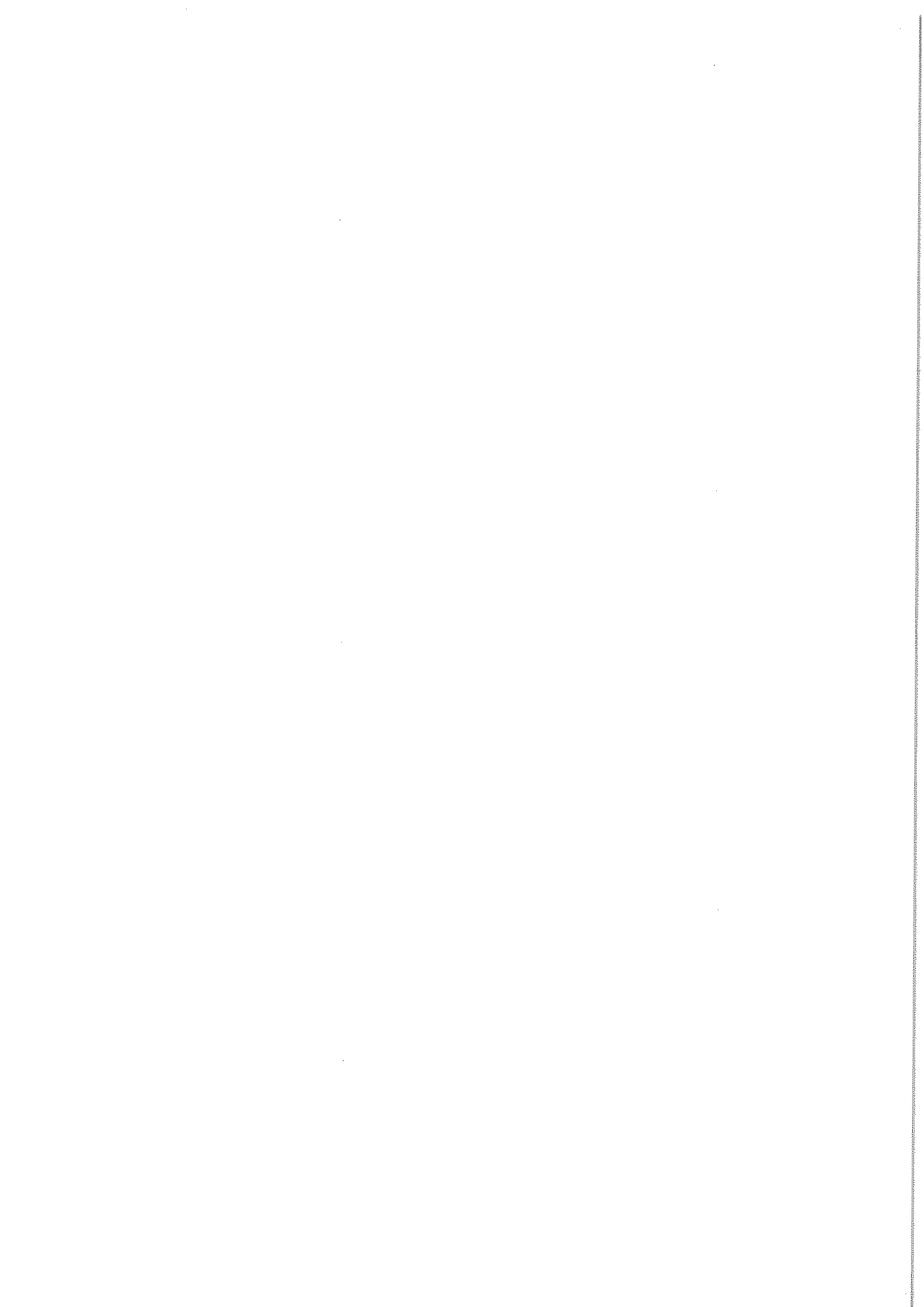
<b>What is the time limit for an appeal? (refusal)</b>	N/A	Householder application: 12 weeks. Non-householder: six months.
<b>What is the time limit for an appeal? (non-determination)</b>	N/A	Householder and non-householder: six months from end of statutory determination period.

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 Department for Communities & Local Government  
(<https://www.gov.uk/government/organisations/department-for-communities-and-local-government>)



## Planning Practice Guidance <http://planningguidance.communities.gov.uk>

Guidance

# Flood Risk and Coastal Change

Print 

1. Planning and Flood Risk (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/planning-and-flood-risk/>)

### Planning and Flood Risk

#### What is the general planning approach to development and flood risk?

The National Planning Policy Framework sets strict tests to protect people and property from flooding which all local planning authorities are expected to follow. Where these tests are not met, national policy is clear that new development should not be allowed. The main steps to be followed are set out below which, in summary, are designed to ensure that if there are better sites in terms of flood risk, or a proposed development cannot be made safe, it should not be permitted.

#### Assess flood risk:

- Local planning authorities undertake a Strategic Flood Risk Assessment (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/strategic-flood-risk-assessment/>) to fully understand the flood risk (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/the-general-planning-approach-to-development-and-flood-risk/what-is-flood-risk/>) in the area to inform Local Plan preparation (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/taking-flood-risk-into-account-in-the-preparation-of-local-plans/>)
- In areas at risk of flooding (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/the-general-planning-approach-to-development-and-flood-risk/what-are-the-areas-at-risk-of-flooding-mentioned-in-the-national-planning-policy-framework/>) or for sites of 1 hectare or more, developers undertake a site-specific flood risk assessment (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/site-specific-flood-risk-assessment/>) to accompany applications for planning permission (or prior approval for certain types of permitted development (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/permitted-development-rights-and-flood-risk/>)).

#### Avoid flood risk:

- In plan-making, local planning authorities apply a sequential approach (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/the-sequential-risk-based-approach-to-the-location-of-development/>) to site selection so that development is, as far as reasonably possible, located where the risk of flooding (from all sources) is lowest, taking account of climate change and the vulnerability of future uses to flood risk. In plan-making this involves applying the 'Sequential Test' to Local Plans (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/applying-the-sequential-test-in-the-preparation-of-a-local-plan/>) and, if needed, the 'Exception Test' to Local Plans (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/applying-the-exception-test-in-the-preparation-of-a-local-plan/>).
- In decision-taking, where necessary, local planning authorities also apply the 'sequential approach' (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal->

### Related policy

#### National Planning Policy Framework

- Paragraphs 100 – 104 ([http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph\\_100](http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph_100))

change/the-sequential-risk-based-approach-to-the-location-of-development/). In decision-taking this involves applying the Sequential Test for specific development proposals (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/applying-the-sequential-test-to-individual-planning-applications/>) and, if needed, the Exception Test for specific development proposals (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/applying-the-exception-test-to-planning-applications/>), to steer development to areas with the lowest probability of flooding.

#### Manage and Mitigate flood risk:

- Where development needs to be in locations where there is a risk of flooding as alternative sites are not available, local planning authorities and developers ensure development is appropriately flood resilient and resistant (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/flood-resilience-and-flood-resistance/>), safe (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/making-development-safe-from-flood-risk/>) for its users for the development's lifetime (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/the-exception-test/what-is-considered-to-be-the-lifetime-of-development-in-terms-of-flood-risk-and-coastal-change/>), and will not increase flood risk overall.
- Local planning authorities and developers should seek flood risk management opportunities (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/reducing-the-causes-and-impacts-of-flooding/>) (e.g. safeguarding land), and to reduce the causes and impacts of flooding (e.g. through the use of sustainable drainage systems ([http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/reducing-the-causes-and-impacts-of-flooding/why-are-sustainable-drainage-systems-important/#paragraph\\_051](http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/reducing-the-causes-and-impacts-of-flooding/why-are-sustainable-drainage-systems-important/#paragraph_051)) in developments).

This guidance on flood risk and coastal change will help local planning authorities in the preparation of Local Plans (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/taking-flood-risk-into-account-in-the-preparation-of-local-plans/>), and neighbourhoods in preparing neighbourhood plans (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/neighbourhood-planning-flood-risk/>). It will also be relevant to applications for planning permission (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/addressing-flood-risk-in-individual-planning-applications/>) and applications for prior approval for certain types of permitted development (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/permitted-development-rights-and-flood-risk/>).

There is information on the requirements to consult the Environment Agency (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/how-local-planning-authorities-should-involve-the-environment-agency-when-determining-planning-applications-where-there-is-a-risk-of-flooding/>) on applications where there is a risk of flooding. Also information on what should happen if a local planning authority wishes to grant consent for a major development against Environment Agency advice (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/how-local-planning-authorities-should-involve-the-environment-agency-when-determining-planning-applications-where-there-is-a-risk-of-flooding/what-should-happen-if-a-local-planning-authority-wants-to-grant-consent-for-a-major-development-against-environment-agency-advice/>).

There is information on the role of lead local flood authorities (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/taking-flood-risk-into-account-in-the-preparation-of-local-plans/which-flood-risk-management-bodies-should-local-planning-authorities-should-consult-when-preparing-local-plans/>), and when their advice may need to be sought in considering planning applications (<http://planningguidance.communities.gov.uk/blog/guidance/flood->



risk-and-coastal-change/how-the-local-planning-authority-should-involve-the-lead-local-flood-authority-when-determining-planning-applications-and-what-advice-should-be-given-about-local-flood-risks/)

There is information on flood risk in relation to minor developments (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/the-flood-risk-issues-raised-by-minor-developments/>) and change of use (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/the-flood-risk-issues-raised-by-changes-of-use/>), whilst information on climate change and flood risk is available from the Environment Agency [\[2\]](https://www.gov.uk/guidance/flood-risk-assessments-climate-change-allowances) (<https://www.gov.uk/guidance/flood-risk-assessments-climate-change-allowances>).

See also:

- What is “flood risk”? (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/the-general-planning-approach-to-development-and-flood-risk/what-is-flood-risk/>)
- What are the “areas at risk of flooding” mentioned in paragraph 100 of the National Planning Policy Framework? (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/planning-and-flood-risk/what-are-the-areas-at-risk-of-flooding-mentioned-in-the-national-planning-policy-framework/>)

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- What is “flood risk”? (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/planning-and-flood-risk/what-is-flood-risk/>)

### What is “flood risk”?

For the purposes of applying the National Planning Policy Framework, “flood risk” is a combination of the probability and the potential consequences of flooding from all sources – including from rivers and the sea, directly from rainfall on the ground surface and rising groundwater, overwhelmed sewers and drainage systems, and from reservoirs, canals and lakes and other artificial sources.

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- What are the ‘areas at risk of flooding’ mentioned in paragraph 100 of the National Planning Policy Framework? (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/planning-and-flood-risk/what-are-the-areas-at-risk-of-flooding-mentioned-in-the-national-planning-policy-framework/>)

### What are the ‘areas at risk of flooding’ mentioned in paragraph 100 of the National Planning Policy Framework?

For the purposes of applying the National Planning Policy Framework, areas at risk from all sources of flooding are included. For fluvial (river) and sea flooding, this is principally land within Flood Zones 2 and 3. It can also include an area within Flood Zone 1 which the Environment Agency has notified the local planning authority as having critical drainage problems.

Table 1 (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/flood-zone-and-flood-risk-tables/table-1-flood-zones/>) sets out the definitions of the Flood Zones, from low to high probability of river and sea flooding, and refers to the Environment Agency’s Flood Map for Planning (Rivers and Sea) which shows the location of these Flood Zones. This map and maps [\[2\]](http://maps.environment-agency.gov.uk/wiyby/wiybyController?ep=maptopics&lang=_e) ([http://maps.environment-agency.gov.uk/wiyby/wiybyController?ep=maptopics&lang=\\_e](http://maps.environment-agency.gov.uk/wiyby/wiybyController?ep=maptopics&lang=_e)) showing other sources of flooding are available from the Environment Agency.

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### Related policy

#### National Planning Policy Framework

- Paragraph 100 (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/planning-and-flood-risk/what-are-the-areas-at-risk-of-flooding-mentioned-in-the-national-planning-policy-framework/>)

## 2. Taking flood risk into account in the preparation of Local Plans

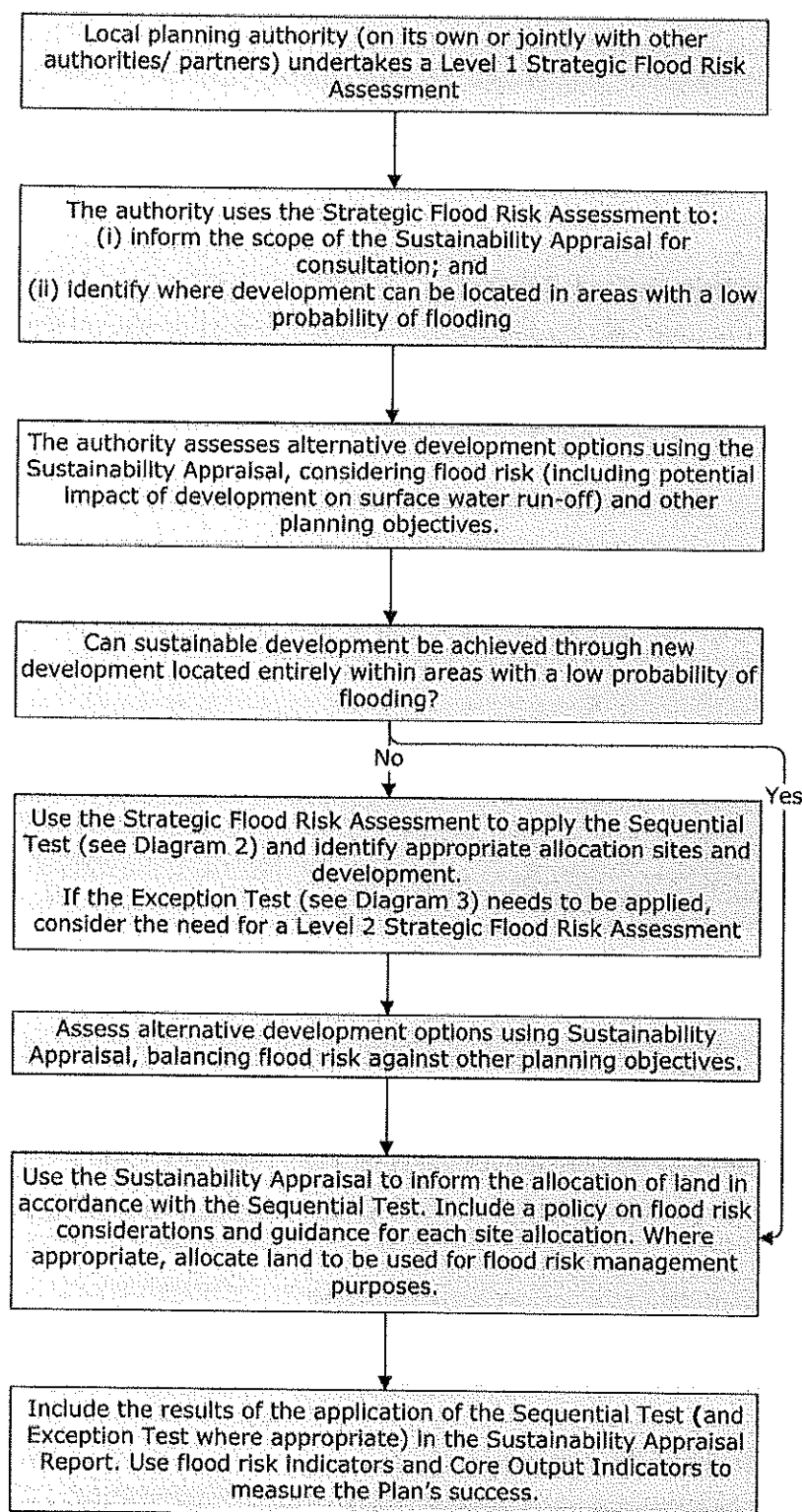
(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/taking-flood-risk-into-account-in-the-preparation-of-local-plans/>)

### **Taking flood risk into account in the preparation of Local Plans**

This is summarised in Diagram 1 (below).

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### **Diagram 1: Taking flood risk into account in the preparation of a Local Plan**



([http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/flood1\\_005.jpg](http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/flood1_005.jpg))

#### Notes to diagram 1:

- Read more about Strategic Flood Risk Assessment (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/strategic-flood-risk-assessment/>)
- View guidance on Sustainability Appraisal (<http://planningguidance.communities.gov.uk/blog/guidance/strategic-environmental-assessment-and-sustainability-appraisal/>)
- View Diagram 2: Application of the Sequential Test for Local Plan preparation ([http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/applying-the-sequential-test-in-the-preparation-of-a-local-plan/#paragraph\\_021](http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/applying-the-sequential-test-in-the-preparation-of-a-local-plan/#paragraph_021))

- View Diagram 3: Application of the Exception Test to Local Plan preparation ([http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/applying-the-exception-test-in-the-preparation-of-a-local-plan/#paragraph\\_028](http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/applying-the-exception-test-in-the-preparation-of-a-local-plan/#paragraph_028))
- Read more about the sequential test (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/applying-the-sequential-test-in-the-preparation-of-a-local-plan/>)
- Read more about the exception test (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/applying-the-exception-test-in-the-preparation-of-a-local-plan/>)

See also:

- Which flood risk management bodies should local planning authorities seek advice from when preparing Local Plans (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/how-should-flood-risk-be-taken-into-account-in-the-preparation-of-local-plans/which-flood-risk-management-bodies-should-local-planning-authorities-seek-advice-from-when-preparing-local-plans/>)?
- Is flood risk relevant to Local Plan policies that change the use of land or buildings (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/how-should-flood-risk-be-taken-into-account-in-the-preparation-of-local-plans/is-flood-risk-relevant-to-local-plan-policies-that-change-the-use-of-land/>)?
- Is flood risk relevant to waste and minerals plans (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/how-should-flood-risk-be-taken-into-account-in-the-preparation-of-local-plans/is-flood-risk-relevant-to-waste-and-minerals-plans/>)?

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- Which flood risk management bodies should local planning authorities seek advice from when preparing Local Plans? (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/taking-flood-risk-into-account-in-the-preparation-of-local-plans/which-flood-risk-management-bodies-should-local-planning-authorities-seek-advice-from-when-preparing-local-plans/>)

### Which flood risk management bodies should local planning authorities seek advice from when preparing Local Plans?

Paragraph 100 of the National Planning Policy Framework states that local planning authorities should take advice from the Environment Agency and other relevant flood risk management bodies such as lead local flood authorities and internal drainage boards.

Lead local flood authorities (unitary authorities or county councils) are responsible for managing local flood risk, including from surface water, ground water and ordinary watercourses, and for preparing local flood risk management strategies. Local planning authorities should work with lead local flood authorities to secure Local Plan policies compatible with the local flood risk management strategy.

Local planning authorities should also take advice where relevant, from:

- **Internal drainage boards:** local planning authorities should confer with internal drainage boards where they exist to identify the scope of their interests.
- **Reservoir undertakers:** local planning authorities should discuss their proposed site allocations with reservoir undertakers to:
  - avoid an intensification of development within areas at risk from reservoir failure, and;
  - ensure that reservoir undertakers can assess the cost implications of any reservoir safety improvements required due to changes in land use downstream of their assets.
- **Navigation authorities:** Navigation authorities should be consulted by the local planning authority in relation to sites adjacent to, or which discharge

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#### Related policy

##### National Planning Policy Framework

- Paragraph 100 ([http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph\\_100](http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph_100))

into, canals – especially where these are impounded above natural ground level.

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- Is flood risk relevant to Local Plan policies that change the use of land or buildings? (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/taking-flood-risk-into-account-in-the-preparation-of-local-plans/is-flood-risk-relevant-to-local-plan-policies-that-change-the-use-of-land/>)

### Is flood risk relevant to Local Plan policies that change the use of land or buildings?

A change in use may involve an increase in flood risk if the vulnerability classification of the development is changed – see Table 2 (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/flood-zone-and-flood-risk-tables/table-2-flood-risk-vulnerability-classification/>). For example, changing from industrial use to residential use will increase the vulnerability classification from 'less' to 'more' vulnerable. As changes of use are not subject to the Sequential (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/applying-the-sequential-test-in-the-preparation-of-a-local-plan/>) or Exception (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/the-exception-test/>) tests, the local planning authority should consider when formulating policy what changes of use will be acceptable, having regard to paragraph 157 (6<sup>th</sup> bullet) ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph\\_157](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph_157)) of the National Planning Policy Framework and taking into account the Strategic Flood Risk Assessment. This is likely to depend on whether developments can be designed to be safe and that there is safe access and egress.

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- Is flood risk relevant to waste and minerals plans? (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/taking-flood-risk-into-account-in-the-preparation-of-local-plans/is-flood-risk-relevant-to-waste-and-minerals-plans/>)

### Is flood risk relevant to waste and minerals plans?

Waste and mineral planning authorities need to take account of flood risk when allocating land for development. They should prepare their plan policies with regard to any available Strategic Flood Risk Assessments. The location of Mineral Safeguarding Areas and site allocations, in particular in relation to sand and gravel workings which are often located in functional floodplains, need to be identified. It is possible to explore benefits, such as restoring mineral working located in flood risk areas to increase flood water storage, which can also enhance the natural environment. Partnership working on joint Strategic Flood Risk Assessments offers the best opportunity to identify and realise these opportunities.

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3. Strategic Flood Risk Assessment (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/strategic-flood-risk-assessment/>)

## Strategic Flood Risk Assessment

### What is a Strategic Flood Risk Assessment?

A Strategic Flood Risk Assessment is a study carried out by one or more local planning authorities to assess the risk to an area from flooding from all sources, now and in the future, taking account of the impacts of climate change <sup>(2)</sup> (<https://www.gov.uk/guidance/flood-risk-assessments-climate-change-allowances>), and to assess the impact that land use changes and development in the area will have on flood risk.

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## Related policy

### National Planning Policy Framework

- Paragraph 157 – 6th bullet ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph\\_157](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph_157))

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## How should a Strategic Flood Risk Assessment be used in plan making?

The Strategic Flood Risk Assessment will be used to refine information on river and sea flooding risk shown on the Environment Agency's Flood Map for Planning (Rivers and Seas)  ([http://maps.environment-agency.gov.uk/wiyby/wiybyController?topic=floodmap&layerGroups=default&lang=\\_e&ep=map&scale=1&x=357682.99999999994&y=355133.99999999994](http://maps.environment-agency.gov.uk/wiyby/wiybyController?topic=floodmap&layerGroups=default&lang=_e&ep=map&scale=1&x=357682.99999999994&y=355133.99999999994)).

Local planning authorities should use the Assessment to:

- determine the variations in risk from all sources of flooding across their areas, and also the risks to and from surrounding areas in the same flood catchment;
- inform the sustainability appraisal (<http://planningguidance.communities.gov.uk/blog/guidance/strategic-environmental-assessment-and-sustainability-appraisal/>) of the Local Plan, so that flood risk is fully taken into account when considering allocation options and in the preparation of plan policies, including policies for flood risk management to ensure that flood risk is not increased;
- apply the Sequential Test (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/applying-the-sequential-test-in-the-preparation-of-a-local-plan/>) and, where necessary, the Exception Test (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/the-exception-test/>) when determining land use allocations;
- identify the requirements for site-specific flood risk assessments in particular locations, including those at risk from sources other than river and sea flooding;
- determine the acceptability of flood risk in relation to emergency planning capability;
- consider opportunities to reduce flood risk to existing communities and developments through better management of surface water, provision for conveyance and of storage for flood water.

See also:

- How should a Strategic Flood Risk Assessment be prepared (in general) (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/how-should-a-strategic-flood-risk-assessment-be-used-in-plan-making/how-should-a-strategic-flood-risk-assessment-be-prepared-in-general/>)?
- How should a Strategic Flood Risk Assessment be prepared in terms of scope and detail (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/how-should-a-strategic-flood-risk-assessment-be-used-in-plan-making/how-should-a-strategic-flood-risk-assessment-be-prepared-in-terms-of-scope-and-detail/>)?
- How should Strategic Flood Risk Assessment address surface water flooding issues (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/how-should-a-strategic-flood-risk-assessment-be-used-in-plan-making/how-should-strategic-flood-risk-assessment-address-surface-water-flooding-issues/>)?
- How should the assessment address the risk from reservoirs (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/how-should-a-strategic-flood-risk-assessment-be-used-in-plan-making/how-should-the-assessment-address-the-risk-from-reservoirs/>)?
- How should a Strategic Flood Risk Assessment be used to identify the functional floodplain (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/how-should-a-strategic-flood-risk-assessment-be-used-in-plan-making/how-should-a-strategic-flood-risk-assessment-be-used-to-identify-the-functional-floodplain/>)?

- Should a Level 2 Strategic Flood Risk Assessment take account of existing flood defences (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/how-should-a-strategic-flood-risk-assessment-be-used-in-plan-making/should-a-level-2-strategic-flood-risk-assessment-take-account-of-existing-flood-defences/>)?
- How should the assessment cover flood defence breaching and overtopping, and risk to people behind flood defences (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/how-should-a-strategic-flood-risk-assessment-be-used-in-plan-making/how-should-the-assessment-cover-flood-defence-breaching-and-overtopping-and-risk-to-people-behind-flood-defences/>)?

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- How should a Strategic Flood Risk Assessment be prepared (in general?) (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/strategic-flood-risk-assessment/how-should-a-strategic-flood-risk-assessment-be-prepared-in-general/>)

**How should a Strategic Flood Risk Assessment be prepared (in general)?**

The Strategic Flood Risk Assessment should be prepared by local planning authorities in consultation with the Environment Agency, lead local flood authorities, local planning authorities' own functions of emergency response and drainage authority under the Land Drainage Act 1991 – and where appropriate, internal drainage boards. Where local authorities are the drainage authority, or are a Maritime District Council under the Coastal Protection Act 1949, or the lead local flood authority, local planning authorities should engage their engineering and emergency response staff when preparing the Assessment.

Local planning authorities should consult sewerage undertakers in developing their Local Plans, so that their Strategic Flood Risk Assessment takes account of any specific capacity problems and of the undertaker's drainage area plans.

Working collaboratively with other authorities, local planning authorities can develop Strategic Flood Risk Assessments covering a wider area and at a river catchment level. County level Assessments may also be appropriate where minerals and waste issues can be considered at the same time.

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- How should a Strategic Flood Risk Assessment be prepared in terms of scope and detail? (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/strategic-flood-risk-assessment/how-should-a-strategic-flood-risk-assessment-be-prepared-in-terms-of-scope-and-detail/>)

**How should a Strategic Flood Risk Assessment be prepared in terms of scope and detail?**

There are two levels of Strategic Flood Risk Assessment, as set out in the following table:

Levels of Strategic Flood Risk Assessment	
	Description
Level 1	A Level 1 Assessment should be carried out in local authority areas where flooding is not a major issue and where development pressures are low. The Assessment should be sufficiently detailed to allow application of the Sequential Test to the location of development and to identify whether development can be allocated outside high and medium flood risk areas, based on all sources of flooding, without application of the Exception Test. The Environment Agency and lead local flood authorities can advise on the key outputs from a Level 1 Strategic Flood Risk Assessment.

Level 2	<p>Where a Level 1 Assessment shows that land outside flood risk areas cannot appropriately accommodate all the necessary development, it may be necessary to increase the scope of the Assessment to a Level 2 to provide the information necessary for application of the Exception Test where appropriate – see Table 3</p> <p>(<a href="http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/flood-zone-and-flood-risk-tables/table-3-flood-risk-vulnerability-and-flood-zone-compatibility/#paragraph_063">http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/flood-zone-and-flood-risk-tables/table-3-flood-risk-vulnerability-and-flood-zone-compatibility/#paragraph_063</a>). A Level 2 Strategic Flood Risk Assessment should consider the detailed nature of the flood characteristics within a flood zone including:</p> <ul style="list-style-type: none"> <li>• flood probability;</li> <li>• flood depth;</li> <li>• flood velocity;</li> <li>• rate of onset of flooding; and</li> <li>• duration of flood</li> </ul>
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A Level 2 Strategic Flood Risk Assessment should also reduce burdens on developers, in particular, at windfall sites, in the preparation of site-specific flood risk assessments. See the Environment Agency's advice [\[2\]](https://www.gov.uk/local-planning-authorities-strategic-flood-risk-assessment) (<https://www.gov.uk/local-planning-authorities-strategic-flood-risk-assessment>) on Strategic Flood Risk Assessment for further information.

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- How should Strategic Flood Risk Assessment address surface water flooding issues? (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/strategic-flood-risk-assessment/how-should-strategic-flood-risk-assessment-address-surface-water-flooding-issues/>)

### How should Strategic Flood Risk Assessment address surface water flooding issues?

A Strategic Flood Risk Assessment should identify areas at risk from surface water flooding and drainage issues, taking account of the surface water flood risk map [\[2\]](http://watermaps.environment-agency.gov.uk/wiyby/wiyby.aspx?topic=ufmfs#wx=357683&y=355134&scale=2) (<http://watermaps.environment-agency.gov.uk/wiyby/wiyby.aspx?topic=ufmfs#wx=357683&y=355134&scale=2>) published by the Environment Agency and any other available evidence, such as local flood risk management strategies. It should also identify the types of measure which may be appropriate to manage them, taking account of location, site opportunities, constraints and geology.

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- How should the assessment address the risk from reservoirs? (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/strategic-flood-risk-assessment/how-should-the-assessment-address-the-risk-from-reservoirs/>)

### How should the assessment address the risk from reservoirs?

The failure of a reservoir has the potential to cause catastrophic damage due to the sudden release of large volumes of water. The local planning authority will need to evaluate the potential damage to buildings or loss of life in the event of dam failure, compared to other risks, when considering development downstream of a reservoir. Local planning authorities will also need to evaluate in Strategic Flood Risk Assessments (and when applying the Sequential Test) how an impounding reservoir will modify existing flood risk in the event of a flood in the catchment it is located within, and/or whether emergency draw-down of the reservoir will add to the extent of flooding.

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- How should a Strategic Flood Risk Assessment be used to identify the functional floodplain? (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/strategic-flood-risk-assessment/how-should-a-strategic-flood-risk-assessment-be-used-to-identify-the-functional-floodplain/>)

### **How should a Strategic Flood Risk Assessment be used to identify the functional floodplain?**

The definition of Flood Zone 3b in Table 1 ([http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/flood-zone-and-flood-risk-tables/table-1-flood-zones/#paragraph\\_061](http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/flood-zone-and-flood-risk-tables/table-1-flood-zones/#paragraph_061)) explains that local planning authorities should identify areas of functional floodplain in their Strategic Flood Risk Assessments in discussion with the Environment Agency and the lead local flood authority. The identification of functional floodplain should take account of local circumstances and not be defined solely on rigid probability parameters. However, land which would naturally flood with an annual probability of 1 in 20 (5%) or greater in any year, or is designed to flood (such as a flood attenuation scheme) in an extreme (0.1% annual probability) flood, should provide a starting point for consideration and discussions to identify the functional floodplain.

A functional floodplain is a very important planning tool in making space for flood waters when flooding occurs. Generally, development should be directed away from these areas using the Environment Agency's catchment flood management plans, shoreline management plans and local flood risk management strategies produced by lead local flood authorities.

The area identified as functional floodplain should take into account the effects of defences and other flood risk management infrastructure. Areas which would naturally flood, but which are prevented from doing so by existing defences and infrastructure or solid buildings, will not normally be identified as functional floodplain. If an area is intended to flood, e.g. an upstream flood storage area designed to protect communities further downstream, then this should be safeguarded from development and identified as functional floodplain, even though it might not flood very often.

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- Should a Level 2 Strategic Flood Risk Assessment take account of existing flood defences? (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/strategic-flood-risk-assessment/should-a-level-2-strategic-flood-risk-assessment-take-account-of-existing-flood-defences/>)

### **Should a Level 2 Strategic Flood Risk Assessment take account of existing flood defences?**

See the Environment Agency's [link](https://www.gov.uk/local-planning-authorities-strategic-flood-risk-assessment) (<https://www.gov.uk/local-planning-authorities-strategic-flood-risk-assessment>) advice on development and flood risk.

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- How should the assessment cover flood defence breaching and overtopping, and risk to people behind flood defences? (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/strategic-flood-risk-assessment/how-should-the-assessment-cover-flood-defence-breaching-and-overtopping-and-risk-to-people-behind-flood-defences/>)

### **How should the assessment cover flood defence breaching and overtopping, and risk to people behind flood defences?**

See the Environment Agency's [link](https://www.gov.uk/local-planning-authorities-strategic-flood-risk-assessment) (<https://www.gov.uk/local-planning-authorities-strategic-flood-risk-assessment>) advice on development and flood risk.

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## **4. The sequential, risk-based approach to the location of development**

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/the-sequential-risk-based-approach-to-the-location-of-development/>)

## **The sequential, risk-based approach to the location of development**

### **What is the sequential, risk-based approach to the location of development?**

This general approach is designed to ensure that areas at little or no risk of flooding from any source are developed in preference to areas at higher risk. The aim should be to keep development out of medium and high flood risk areas (Flood Zones 2 and 3) and other areas affected by other sources of flooding where possible.

Application of the sequential approach in the plan-making process, in particular application of the Sequential Test, will help ensure that development can be safely and sustainably delivered and developers do not waste their time promoting proposals which are inappropriate on flood risk grounds. According to the information available, other forms of flooding should be treated consistently with river flooding in mapping probability and assessing vulnerability to apply the sequential approach across all flood zones.

Waste and mineral planning authorities should apply the sequential approach to the allocation of sites for waste management and, where possible, mineral extraction and processing. It should also be recognised that mineral deposits have to be worked where they are (and sand and gravel extraction is defined as 'water-compatible development' in table 2

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/flood-zone-and-flood-risk-tables/table-2-flood-risk-vulnerability-classification/>), acknowledging that these deposits are often in flood risk areas).

However, mineral working should not increase flood risk elsewhere and needs to be designed, worked and restored accordingly.

Mineral workings can be large and may afford opportunities for applying the sequential approach at the site level. It may be possible to locate ancillary facilities such as processing plant and offices in areas at lowest flood risk. Sequential working and restoration can be designed to reduce flood risk by providing flood storage and attenuation. This is likely to be most effective at a strategic (county) scale.

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5. The aim of the Sequential Test (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/the-aim-of-the-sequential-test/>)

### **The aim of the Sequential Test**

#### **What is the aim of the Sequential Test for the location of development?**

The Sequential Test ensures that a sequential approach is followed to steer new development to areas with the lowest probability of flooding. The flood zones (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/flood-zone-and-flood-risk-tables/table-1-flood-zones/>) as refined in the Strategic Flood Risk Assessment for the area provide the basis for applying the Test. The aim is to steer new development to Flood Zone 1 (areas with a low probability of river or sea flooding). Where there are no reasonably available sites in Flood Zone 1, local planning authorities in their decision making should take into account the flood risk vulnerability of land uses

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/flood-zone-and-flood-risk-tables/table-2-flood-risk-vulnerability-classification/>) and consider reasonably available sites in Flood Zone 2 (areas with a medium probability of river or sea flooding), applying the Exception Test if required (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/flood-zone-and-flood-risk-tables/table-3-flood-risk-vulnerability-and-flood-zone-compatibility/>). Only where there are no reasonably available sites in Flood Zones 1 or 2 should the suitability of sites in Flood Zone 3 (areas with a high probability of river or sea flooding) be considered, taking into account the flood risk vulnerability of land uses and applying the Exception Test if required.

- **Note:** Table 2 categorises different types of uses & development according to their vulnerability to flood risk. Table 3 maps these vulnerability classes against the flood zones set out in Table 1 to indicate where development is 'appropriate' and where it should not be permitted.

Within each flood zone, surface water and other sources of flooding also need to be taken into account in applying the sequential approach to the location of development.

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## 6. Applying the Sequential Test in the preparation of a Local Plan

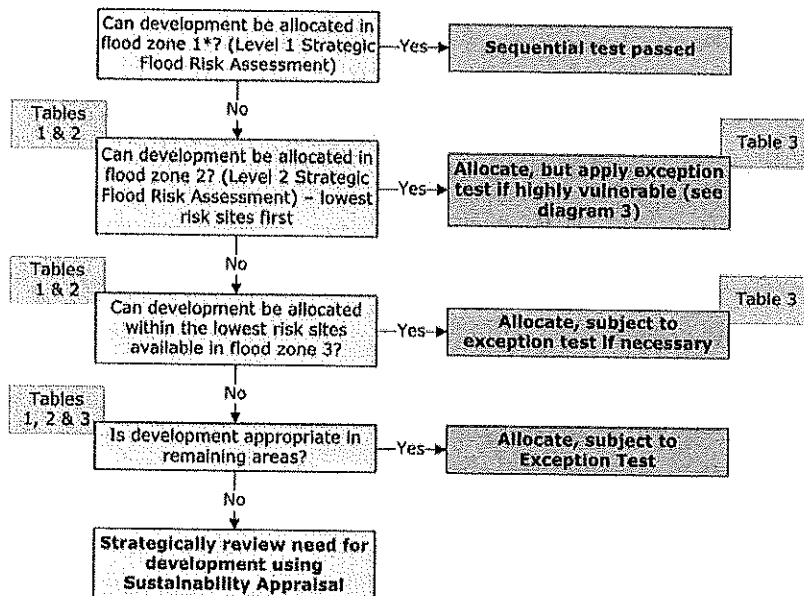
(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/applying-the-sequential-test-in-the-preparation-of-a-local-plan/>)

### Applying the Sequential Test in the preparation of a Local Plan

This is illustrated in diagram 2 (below). As some areas at lower flood risk may not be suitable for development for various reasons and therefore out of consideration, the Sequential Test should be applied to the whole local planning authority area to increase the possibilities of accommodating development which is not exposed to flood risk. More than one local planning authority may jointly review development options over a wider area where this could potentially broaden the scope for opportunities to reduce flood risk and put the most vulnerable development in lower flood risk areas.

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### Diagram 2: Application of the Sequential Test for Local Plan preparation



([http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/flood2\\_021.jpg](http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/flood2_021.jpg))

#### Notes to Diagram 2:

\* Other sources of flooding also need to be considered

Links can be found here to Table 1

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/flood-zone-and-flood-risk-tables/table-1-flood-zones/>), Table 2

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/flood-zone-and-flood-risk-tables/table-2-flood-risk-vulnerability-classification/>),

Table 3 (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/flood-zone-and-flood-risk-tables/table-3-flood-risk-vulnerability-and-flood->

zone-compatibility/) and Diagram 3

([http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/applying-the-exception-test-in-the-preparation-of-a-local-plan/#paragraph\\_028](http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/applying-the-exception-test-in-the-preparation-of-a-local-plan/#paragraph_028)).

Guidance on applying the sequential test to individual applications is here (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/applying-the-sequential-test-to-individual-planning-applications/>).

Further guidance on the role of sustainability appraisal in the sequential test is available here (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/how-should-the-sequential-test-be-applied-in-the-preparation-of-a-local-plan/what-is-the-role-of-sustainability-appraisal-in-the-sequential-test/>).

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- What is the role of sustainability appraisal in the sequential test?

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/applying-the-sequential-test-in-the-preparation-of-a-local-plan/what-is-the-role-of-sustainability-appraisal-in-the-sequential-test/>)

### What is the role of sustainability appraisal in the sequential test?

A local planning authority should demonstrate through evidence that it has considered a range of options in the site allocation process, using the Strategic Flood Risk Assessment to apply the Sequential Test and the Exception Test where necessary. This can be undertaken directly or, ideally, as part of the sustainability appraisal. Where other sustainability criteria outweigh flood risk issues, the decision making process should be transparent with reasoned justifications for any decision to allocate land in areas at high flood risk in the sustainability appraisal report. The Sequential Test can also be demonstrated in a free-standing document, or as part of strategic housing land or employment land availability assessments.

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## 7. The Exception Test (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/the-exception-test/>)

### The Exception Test

#### What is the Exception Test?

The Exception Test, as set out in paragraph 102 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph\\_102](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph_102)) of the Framework, is a method to demonstrate and help ensure that flood risk to people and property will be managed satisfactorily, while allowing necessary development to go ahead in situations where suitable sites at lower risk of flooding are not available.

Essentially, the two parts to the Test require proposed development to show that it will provide wider sustainability benefits to the community that outweigh flood risk (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/the-exception-test/how-can-wider-sustainability-benefits-to-the-community-that-outweigh-flood-risk-be-demonstrated/>), and that it will be safe for its lifetime (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/what-is-the-exception-test/what-needs-to-be-considered-to-demonstrate-that-development-will-be-safe-for-its-lifetime/>), without increasing flood risk elsewhere and where possible reduce flood risk overall.

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- How can wider sustainability benefits to the community that outweigh flood risk be demonstrated? (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/the-exception-test/how-can-wider-sustainability-benefits-to-the-community-that-outweigh-flood-risk-be-demonstrated/>)

#### How can wider sustainability benefits to the community that outweigh flood risk be demonstrated?

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### Related policy

#### National Planning Policy Framework

- Paragraph 102 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph\\_102](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph_102))

Evidence of wider sustainability benefits to the community should be provided, for instance, through the sustainability appraisal. If a potential site allocation fails to score positively against the aims and objectives of the sustainability appraisal, or is not otherwise capable of demonstrating sustainability benefits, the local planning authority should consider whether the use of planning conditions and/or planning obligations could make it do so. Where this is not possible the Exception Test has not been satisfied and the allocation should not be made.

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- What needs to be considered to demonstrate that development will be safe for its lifetime? (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/the-exception-test/what-needs-to-be-considered-to-demonstrate-that-development-will-be-safe-for-its-lifetime/>)

### **What needs to be considered to demonstrate that development will be safe for its lifetime?**

Wider safety issues need to be considered as part of the plan preparation. If infrastructure fails then people may not be able to stay in their homes. Flood warnings and evacuation issues therefore need to be considered in design and layout of planned developments. In considering an allocation in a Local Plan a level 2 Strategic Flood Risk Assessment should inform consideration of the second part of the Exception Test. See further information on making development safe from flood risk here

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/making-development-safe-from-flood-risk/>) and on what is considered to be the lifetime of development here

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/what-is-the-exception-test/what-needs-to-be-considered-to-demonstrate-that-development-will-be-safe-for-its-lifetime/what-is-considered-to-be-the-lifetime-of-development-in-terms-of-flood-risk-and-coastal-change/>).

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- What is considered to be the lifetime of development in terms of flood risk and coastal change? (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/the-exception-test/what-is-considered-to-be-the-lifetime-of-development-in-terms-of-flood-risk-and-coastal-change/>)

### **What is considered to be the lifetime of development in terms of flood risk and coastal change?**

Residential development should be considered for a minimum of 100 years, unless there is specific justification for considering a shorter period. For example; the time in which flood risk or coastal change is anticipated to impact on it, where a development is controlled by a time-limited planning condition.

The lifetime of a non-residential development depends on the characteristics of that development. Planners should use their experience within their locality to assess how long they anticipate the development being present for. Developers would be expected to justify why they have adopted a given lifetime for the development, for example, when they are preparing a site-specific flood risk assessment. The impact of climate change <sup>2</sup> (<https://www.gov.uk/guidance/flood-risk-assessments-climate-change-allowances>) needs to be taken into account in a realistic way and developers, the local planning authority and Environment Agency should discuss and agree what allowances are acceptable.

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## **8. Applying the Exception Test in the preparation of a Local Plan**

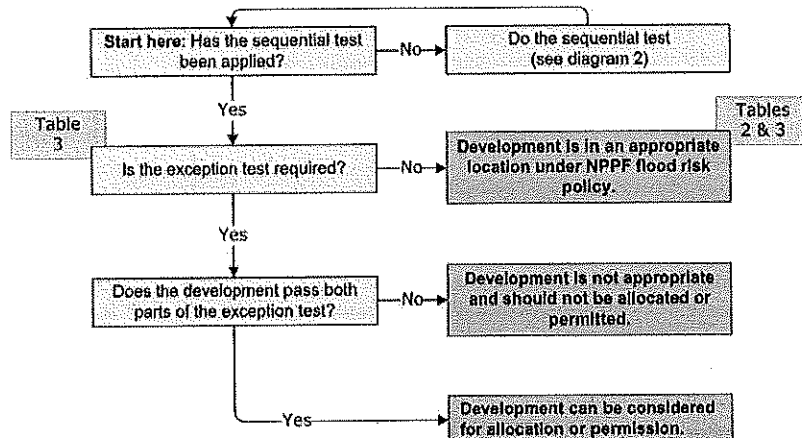
(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/applying-the-exception-test-in-the-preparation-of-a-local-plan/>)

### **Applying the Exception Test in the preparation of a Local Plan**

This is summarised in diagram 3 (below). The Exception Test should *only* be applied as set out in Table 3 (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/flood-zone-and-flood-risk-tables/table-3-flood-risk-vulnerability-and-flood-zone-compatibility/>) and **following** application of the Sequential Test.

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### Diagram 3: Application of the Exception Test to Local Plan preparation



([http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/flood3\\_028.jpg](http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/flood3_028.jpg))

#### Notes to diagram 3:

- View diagram 2: Application of the Sequential Test for Local Plan preparation ([http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/applying-the-sequential-test-in-the-preparation-of-a-local-plan/#paragraph\\_021](http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/applying-the-sequential-test-in-the-preparation-of-a-local-plan/#paragraph_021))
- View table 2: Flood Risk Vulnerability Classification (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/flood-zone-and-flood-risk-tables/table-2-flood-risk-vulnerability-classification/>)
- View table 3: Flood risk vulnerability and flood zone 'compatibility' (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/flood-zone-and-flood-risk-tables/table-3-flood-risk-vulnerability-and-flood-zone-compatibility/>)

ID 7-028-20140306 Last updated 06 03 2014

## 9. Addressing flood risk in individual planning applications

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/addressing-flood-risk-in-individual-planning-applications/>)

### Addressing flood risk in individual planning applications

#### What do developers and applicants need to consider?

Developers and applicants need to consider flood risk to and from the development site, and it is likely to be in their own best interests to do this as early as possible, in particular, to reduce the risk of subsequent, significant additional costs being incurred. The broad approach of assessing, avoiding, managing and mitigating flood risk should be followed.

ID 7-029-20140306 Last updated 06 03 2014

## 10. Site-specific flood risk assessment (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/site-specific-flood-risk-assessment/>)

### Site-specific flood risk assessment

#### What is a site-specific flood risk assessment?

A site-specific flood risk assessment is carried out by (or on behalf of) a developer to assess the flood risk to and from a development site. Where necessary (see footnote 20 in the National Planning Policy Framework ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#footnote\\_20](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#footnote_20))), the assessment should accompany a planning application submitted to the local planning authority. The assessment should demonstrate to the decision-maker how flood risk will be managed now and over the development's lifetime, taking climate change [into account](https://www.gov.uk/guidance/flood-risk-assessments-climate-change-allowances) (<https://www.gov.uk/guidance/flood-risk-assessments-climate-change-allowances>) into account, and with regard to the vulnerability of its users (see Table 2 – Flood Risk Vulnerability ([http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/flood-zone-and-flood-risk-tables/table-2-flood-risk-vulnerability-classification/#paragraph\\_062](http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/flood-zone-and-flood-risk-tables/table-2-flood-risk-vulnerability-classification/#paragraph_062))).

The objectives of a site-specific flood risk assessment are to establish:

- whether a proposed development is likely to be affected by current or future flooding from any source;
- whether it will increase flood risk elsewhere;
- whether the measures proposed to deal with these effects and risks are appropriate;
- the evidence for the local planning authority to apply (if necessary) the Sequential Test, and;
- whether the development will be safe and pass the Exception Test, if applicable.

Further information on the detail needed in a flood risk assessment can be found here (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/what-is-a-site-specific-flood-risk-assessment/what-level-of-detail-is-needed-in-a-flood-risk-assessment/>).

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- **What level of detail is needed in a flood risk assessment?**

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/site-specific-flood-risk-assessment/what-level-of-detail-is-needed-in-a-flood-risk-assessment/>)

### **What level of detail is needed in a flood risk assessment?**

The information provided in the flood risk assessment should be credible and fit for purpose. Site-specific flood risk assessments should always be proportionate to the degree of flood risk and make optimum use of information already available, including information in a Strategic Flood Risk Assessment for the area, and the interactive flood risk maps [maps](http://maps.environment-agency.gov.uk/wiyby/wiybyController?ep=maptopics&lang=_e) ([http://maps.environment-agency.gov.uk/wiyby/wiybyController?ep=maptopics&lang=\\_e](http://maps.environment-agency.gov.uk/wiyby/wiybyController?ep=maptopics&lang=_e)) available on the Environment Agency's web site.

A flood risk assessment should also be appropriate to the scale, nature and location of the development. For example, where the development is an extension to an existing house (for which planning permission is required) which would not significantly increase the number of people present in an area at risk of flooding, the local planning authority would generally need a less detailed assessment to be able to reach an informed decision on the planning application. For a new development comprising a greater number of houses in a similar location, or one where the flood risk is greater, the local planning authority would need a more detailed assessment.

Further advice on flood risk assessment is available here (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/what-is-a-site-specific-flood-risk-assessment/what-level-of-detail-is-needed-in-a-flood-risk-assessment/what-further-advice-is-available-on-the-preparation-of-a-site-specific-flood-risk-assessment/>).

ID 7-031-20140306 Last updated 06 03 2014

## **Related policy**

### **National Planning Policy Framework**

- Footnote 20 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#footnote\\_20](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#footnote_20))

- What further advice is available on the preparation of a site-specific flood risk assessment? (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/site-specific-flood-risk-assessment/what-further-advice-is-available-on-the-preparation-of-a-site-specific-flood-risk-assessment/>)

### What further advice is available on the preparation of a site-specific flood risk assessment?

To assist the developer, the local planning authority should set out and agree the scope of the flood risk assessment, using the Environment Agency Standing Advice on flood risk [\[2\]](https://www.gov.uk/flood-risk-assessment-local-planning-authorities) (<https://www.gov.uk/flood-risk-assessment-local-planning-authorities>), or in direct consultation with the Agency and/or any other relevant flood risk management bodies. Applicants for planning permission (or prior approval in the case of certain permitted development rights) will find the Agency's advice on assessing flood risk for planning applications [\[2\]](https://www.gov.uk/flood-risk-assessment-for-planning-applications) (<https://www.gov.uk/flood-risk-assessment-for-planning-applications>) helpful when preparing a site-specific flood risk assessment for, and before designing, a development that raises lower risk concerns.

The checklist in this guidance

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/site-specific-flood-risk-assessment-checklist/>) may be helpful to applicants/developers in preparing a site-specific flood risk assessment.

ID 7-032-20150415 Last updated 15 04 2015

## 11. Applying the Sequential Test to individual planning applications

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/applying-the-sequential-test-to-individual-planning-applications/>)

### Applying the Sequential Test to individual planning applications

#### How should the Sequential Test be applied to planning applications?

Advice on the sequential approach to development is available here (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/the-sequential-risk-based-approach-to-the-location-of-development/>) and the aim of the sequential test is here (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/the-aim-of-the-sequential-test/>).

The Sequential Test does not need to be applied for individual developments on sites which have been allocated in development plans through the Sequential Test, or for applications for minor development (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/what-is-meant-by-minor-development-in-relation-to-flood-risk/>) or change of use (except for a change of use to a caravan, camping or chalet site, or to a mobile home or park home site).

Nor should it normally be necessary to apply the Sequential Test to development proposals in Flood Zone 1 (land with a low probability of flooding from rivers or the sea), unless the Strategic Flood Risk Assessment for the area, or other more recent information, indicates there may be flooding issues now or in the future (for example, through the impact of climate change).

For individual planning applications where there has been no sequential testing of the allocations in the development plan, or where the use of the site being proposed is not in accordance with the development plan, the area to apply the Sequential Test across will be defined by local circumstances relating to the catchment area for the type of development proposed. For some developments this may be clear, for example, the catchment area for a school. In other cases it may be identified from other Local Plan policies, such as the need for affordable housing within a town centre, or a specific area identified for regeneration. For example, where there are large areas in Flood Zones 2 and 3 (medium to high probability of flooding) and development is needed in those areas to sustain the existing community, sites outside them are unlikely to provide reasonable alternatives.

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#### Related policy

##### National Planning Policy Framework

- Paragraph 101 ([http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph\\_101](http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph_101))



When applying the Sequential Test, a pragmatic approach on the availability of alternatives should be taken. For example, in considering planning applications for extensions to existing business premises it might be impractical to suggest that there are more suitable alternative locations for that development elsewhere. For nationally or regionally important infrastructure the area of search to which the Sequential Test could be applied will be wider than the local planning authority boundary.

Any development proposal should take into account the likelihood of flooding from other sources, as well as from rivers and the sea. The sequential approach to locating development in areas at lower flood risk should be applied to all sources of flooding, including development in an area which has critical drainage problems, as notified to the local planning authority by the Environment Agency, and where the proposed location of the development would increase flood risk elsewhere.

See also advice on who is responsible for deciding whether an application passes the Sequential Test here

([http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/applying-the-sequential-test-to-individual-planning-applications/who-is-responsible-for-deciding-whether-an-application-passes-the-sequential-test/#paragraph\\_034](http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/applying-the-sequential-test-to-individual-planning-applications/who-is-responsible-for-deciding-whether-an-application-passes-the-sequential-test/#paragraph_034)) and further advice on the Sequential Test process available from the Environment Agency (<https://www.gov.uk/flood-risk-assessment-the-sequential-test-for-applicants>)(flood risk standing advice).

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- **Who is responsible for deciding whether an application passes the Sequential Test?**

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/applying-the-sequential-test-to-individual-planning-applications/who-is-responsible-for-deciding-whether-an-application-passes-the-sequential-test/>)

### **Who is responsible for deciding whether an application passes the Sequential Test?**

It is for local planning authorities, taking advice from the Environment Agency as appropriate, to consider the extent to which Sequential Test considerations have been satisfied, taking into account the particular circumstances in any given case. The developer should justify with evidence to the local planning authority what area of search has been used when making the application. Ultimately the local planning authority needs to be satisfied in all cases that the proposed development would be safe and not lead to increased flood risk elsewhere.

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## **12. Applying the Exception Test to planning applications**

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/applying-the-exception-test-to-planning-applications/>)

### **Applying the Exception Test to planning applications**

#### **When should the Exception Test be applied to planning applications?**

General guidance on the Exception Test is here (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/the-exception-test/>). The Exception Test should *only* be applied as set out in Table 3 (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/flood-zone-and-flood-risk-tables/table-3-flood-risk-vulnerability-and-flood-zone-compatibility/>) following application of the Sequential Test. An applicant will need to show that both elements of the Test, as set out in paragraph 102 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change/flooding-and-coastal-change/#paragraph\\_102](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change/flooding-and-coastal-change/#paragraph_102)) of the Framework, can be satisfied.

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#### **Related policy**

##### **National Planning Policy Framework**

- Paragraph 102 (<http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change/>)

Further advice on applying the Exception Test in areas requiring redevelopment or regeneration can be found here

[flooding-and-coastal-change/#paragraph\\_102](#)

([http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/when-should-the-exception-test-be-applied-to-planning-applications/does-the-exception-test-need-to-be-applied-in-areas-requiring-redevelopment-or-regeneration/#paragraph\\_034](http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/when-should-the-exception-test-be-applied-to-planning-applications/does-the-exception-test-need-to-be-applied-in-areas-requiring-redevelopment-or-regeneration/#paragraph_034)).

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- Does the Exception Test need to be applied in areas requiring redevelopment or regeneration? (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/applying-the-exception-test-to-planning-applications/does-the-exception-test-need-to-be-applied-in-areas-requiring-redevelopment-or-regeneration/>)

### **Does the Exception Test need to be applied in areas requiring redevelopment or regeneration?**

If the Sequential Test to locate development where there is a lower risk of flooding has been applied within an area subject to redevelopment or regeneration, the applicant may also need to show that the Exception Test is passed for particular developments within the regeneration area in the circumstances set out in Table 3

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/flood-zone-and-flood-risk-tables/table-3-flood-risk-vulnerability-and-flood-zone-compatibility/>). As the site is part of a regeneration strategy it is very likely that it will provide the wider sustainability benefits to pass the first part of the Exception Test. The developer still needs to show that the development will be safe and will not increase flood risk elsewhere.

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### **13. Demonstrating that the wider sustainability benefits to the community outweigh flood risk to satisfy the first part of the Exception Test**

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/demonstrating-that-the-wider-sustainability-benefits-to-the-community-outweigh-flood-risk-to-satisfy-the-first-part-of-the-exception-test/>)

#### **Demonstrating that the wider sustainability benefits to the community outweigh flood risk to satisfy the first part of the Exception Test**

##### **How can it be demonstrated that wider sustainability benefits to the community outweigh flood risk?**

Local planning authorities will need to consider what criteria they will use in this assessment, having regard to the objectives of their Local Plan's Sustainability Appraisal framework, and provide advice which will enable applicants to provide the evidence to demonstrate this part of the Exception Test is passed.

If a planning application fails to score positively against the aims and objectives of the Local Plan Sustainability Appraisal or Local Plan policies, or other measures of sustainability, the local planning authority should consider whether the use of planning conditions and/or planning obligations could make it do so. Where this is not possible, the Exception Test has not been satisfied and planning permission should be refused.

ID 7-037-20140306 Last updated 06 03 2014

### **14. Developers to demonstrate that development will be safe to satisfy the second part of the Exception Test** (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/developers-to-demonstrate-that-development-will-be-safe-to-satisfy-the-second-part-of-the-exception-test/>)

#### **Developers to demonstrate that development will be safe to satisfy the second part of the Exception Test**

##### **What must developers do to demonstrate that development will be safe?**

The developer must provide evidence to show that the proposed development would be safe (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/making-development-safe-from-flood-risk/>) and that any residual flood risk (further information here (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/developers-to-demonstrate-that-development-will-be-safe-to-satisfy-the-second-part-of-the-exception-test/what-is-residual-risk/>) and here (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/developers-to-demonstrate-that-development-will-be-safe-to-satisfy-the-second-part-of-the-exception-test/how-should-residual-risk-be-addressed/>)) can be overcome to the satisfaction of the local planning authority, taking account of any advice from the Environment Agency. The developer's site-specific flood risk assessment should demonstrate that the site will be safe and that people will not be exposed to hazardous flooding from any source. The following should be covered by the flood risk assessment:

- the design of any flood defence infrastructure;
- access and egress ([http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/how-can-developers-demonstrate-that-development-will-be-safe-to-satisfy-the-second-part-of-the-exception-test/how-can-you-ensure-safe-access-and-egress-to-and-from-the-development/#paragraph\\_037](http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/how-can-developers-demonstrate-that-development-will-be-safe-to-satisfy-the-second-part-of-the-exception-test/how-can-you-ensure-safe-access-and-egress-to-and-from-the-development/#paragraph_037));
- operation and maintenance;
- design of development to manage and reduce flood risk wherever possible;
- resident awareness;
- flood warning and evacuation procedures ([http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/how-can-developers-demonstrate-that-development-will-be-safe-to-satisfy-the-second-part-of-the-exception-test/what-is-needed-to-ensure-safe-evacuation-and-flood-response-procedures-are-in-place/#paragraph\\_038](http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/how-can-developers-demonstrate-that-development-will-be-safe-to-satisfy-the-second-part-of-the-exception-test/what-is-needed-to-ensure-safe-evacuation-and-flood-response-procedures-are-in-place/#paragraph_038)) (see also advice here (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/making-development-safe-from-flood-risk/are-flood-warning-and-evacuation-plans-needed/>) on when flood warning and evacuation plans are needed); and
- any funding arrangements necessary for implementing the measures.

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- **How can you ensure safe access and egress to and from the development?**

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/developers-to-demonstrate-that-development-will-be-safe-to-satisfy-the-second-part-of-the-exception-test/how-can-you-ensure-safe-access-and-egress-to-and-from-the-development/>)

### **How can you ensure safe access and egress to and from the development?**

Where access and egress is important to the overall safety of the development, this should be discussed with the local planning authority and Environment Agency at the earliest stage, as this can affect the overall design of the development. Access considerations should include the voluntary and free movement of people during a 'design flood' ([http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/what-should-be-done-to-make-development-safe-from-flood-risk/what-is-meant-by-a-design-flood/#paragraph\\_052](http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/what-should-be-done-to-make-development-safe-from-flood-risk/what-is-meant-by-a-design-flood/#paragraph_052)), as well as the potential for evacuation before a more extreme flood. Access and egress must be designed to be functional for changing circumstances over the lifetime of the development. Specifically:

- Access routes should allow occupants to safely access and exit their dwellings in design flood conditions. Vehicular access to allow the emergency services to safely reach the development during design flood conditions will also normally be required.
- Wherever possible, safe access routes should be provided that are located above design flood levels and avoiding flow paths. Where this is not possible, limited depths of flooding may be acceptable, provided that the proposed access is designed with appropriate signage etc., to make it safe. The acceptable flood depth for safe access will vary depending on flood

velocities and the risk of debris within the flood water. Even low levels of flooding can pose a risk to people in situ (because of, for example, the presence of unseen hazards and contaminants in floodwater, or the risk that people remaining may require medical attention).

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- What is needed to ensure safe evacuation and flood response procedures are in place?

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/developers-to-demonstrate-that-development-will-be-safe-to-satisfy-the-second-part-of-the-exception-test/what-is-needed-to-ensure-safe-evacuation-and-flood-response-procedures-are-in-place/>)

### **What is needed to ensure safe evacuation and flood response procedures are in place?**

To demonstrate to the satisfaction of the local planning authority that the development will be safe for its lifetime

([http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/what-is-the-exception-test/what-needs-to-be-considered-to-demonstrate-that-development-will-be-safe-for-its-lifetime/what-is-considered-to-be-the-lifetime-of-development-in-terms-of-flood-risk-and-coastal-change/#paragraph\\_074](http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/what-is-the-exception-test/what-needs-to-be-considered-to-demonstrate-that-development-will-be-safe-for-its-lifetime/what-is-considered-to-be-the-lifetime-of-development-in-terms-of-flood-risk-and-coastal-change/#paragraph_074)) taking account of the vulnerability of its users, a site-specific flood risk assessment may need to show that appropriate evacuation and flood response procedures are in place to manage the residual risk associated with an extreme flood event. In locations where there is a residual risk of flooding due to the presence of defences, judgements on whether a proposal can be regarded as safe will need to consider the feasibility of evacuation from the area should it be flooded. See also the advice on flood warning and evacuation plans here.

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/making-development-safe-from-flood-risk/are-flood-warning-and-evacuation-plans-needed/>)

Proposals that are likely to increase the number of people living or working in areas of flood risk require particularly careful consideration, as they could increase the scale of any evacuation required. To mitigate this impact it is especially important to look at ways in which the development could help to reduce the overall consequences of flooding in the locality, either through its design (recognising that some forms of development may be more resistant or resilient to floods than others) or through off-site works that benefit the area more generally.

ID 7-040-20140306 Last updated 06 03 2014

- What is “residual risk”? (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/developers-to-demonstrate-that-development-will-be-safe-to-satisfy-the-second-part-of-the-exception-test/what-is-residual-risk/>)

### **What is “residual risk”?**

Residual risks are those remaining after applying the sequential approach to the location of development and taking mitigating actions. Examples of residual flood risk include:

- the failure of flood management infrastructure such as a breach of a raised flood defence, blockage of a surface water conveyance system, overtopping of an upstream storage area, or failure of a pumped drainage system;
- failure of a reservoir  
([http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/what-should-be-done-to-make-development-safe-from-flood-risk/who-should-be-consulted-on-emergency-planning-issues-and-in-relation-to-reservoirs/#paragraph\\_054](http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/what-should-be-done-to-make-development-safe-from-flood-risk/who-should-be-consulted-on-emergency-planning-issues-and-in-relation-to-reservoirs/#paragraph_054)), or;
- a severe flood event that exceeds a flood management design standard, such as a flood that overtops a raised flood defence, or an intense rainfall event which the drainage system cannot cope with.

Areas behind flood defences are at particular risk from rapid onset of fast-flowing and deep water flooding, with little or no warning if defences are overtopped or breached.

ID 7-041-20140306 Last updated 06 03 2014

- **How should residual risk be addressed?**

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/developers-to-demonstrate-that-development-will-be-safe-to-satisfy-the-second-part-of-the-exception-test/how-should-residual-risk-be-addressed/>)

### **How should residual risk be addressed?**

Where residual risk is relatively uniform, such as within a large area protected by embanked flood defences, the Strategic Flood Risk Assessment should indicate the nature and severity of the risk remaining, and provide guidance for residual risk issues to be covered in site-specific flood risk assessments. Where necessary, local planning authorities should use information on identified residual risk to state in Local Plan policies their preferred mitigation strategy in relation to urban form, risk management and where flood mitigation measures are likely to have wider sustainable design implications.

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## **15. How local planning authorities should involve the Environment Agency when determining planning applications where there is a risk of flooding**

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/how-local-planning-authorities-should-involve-the-environment-agency-when-determining-planning-applications-where-there-is-a-risk-of-flooding/>)

### **How local planning authorities should involve the Environment Agency when determining planning applications where there is a risk of flooding**

#### **What are the requirements for involving the Environment Agency?**

There is a statutory requirement for local planning authorities to consult the Environment Agency for developments in areas at risk of flooding (as defined in the Town and Country Planning (Development Management Procedure) (England) Order 2015 [\[2\]](#)

(<http://www.legislation.gov.uk/ukxi/2015/595/schedule/4/made>) before granting planning permission. The Environment Agency has Standing Advice [\[2\]](#) (<https://www.gov.uk/flood-risk-assessment-local-planning-authorities>) available on its website which gives guidance to local planning authorities and developers where flood risk is an issue, including on when the Environment Agency should be consulted on planning applications.

All local planning authorities should notify the Environment Agency ([http://planningguidance.communities.gov.uk/blog/guidance/determining-a-planning-application/who-must-the-local-planning-authority-notify-once-its-has-made-a-decision-on-a-planning-application/#paragraph\\_019](http://planningguidance.communities.gov.uk/blog/guidance/determining-a-planning-application/who-must-the-local-planning-authority-notify-once-its-has-made-a-decision-on-a-planning-application/#paragraph_019)) of the decision on any planning application where the Agency has objected on flood risk grounds.

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- **What should happen if a local planning authority wants to grant consent for a major development against Environment Agency advice?**

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/how-local-planning-authorities-should-involve-the-environment-agency-when-determining-planning-applications-where-there-is-a-risk-of-flooding/what-should-happen-if-a-local-planning-authority-wants-to-grant-consent-for-a-major-development-against-environment-agency-advice/>)

### **What should happen if a local planning authority wants to grant consent for a major development against Environment Agency advice?**

For any major developments within Flood Zones 2 or 3, or on land within Flood Zone 1 which has been notified to the local planning authority as having critical drainage problems, which are the subject of a sustained objection by the Environment Agency on flood risk grounds, the local planning authority (and applicants) should bear in mind the requirements of the Town and Country Planning (Consultation) (England) Direction 2009 [\[2\]](#)

(<https://www.gov.uk/government/publications/the-town-and-country-planning-consultation-england-direction-2009-circular-02-2009>), if the authority is minded to grant permission for the development. In such cases, the authority, the Agency and the applicant should try to agree what changes could be made to the application that would enable the Agency to withdraw its objection. If the Agency concludes that it is unable to withdraw its objection and the authority is still minded to grant permission, the Direction requires the authority to notify the Secretary of State.

In this context, "major development" means:

- in respect of residential development, the provision of 10 or more dwellings, or a site of 0.5 hectares or more;
- in respect of non-residential development, new floorspace of 1,000 square metres or more, or a site of 1 hectare or more.

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16. How the local planning authority should involve the lead local flood authority when determining planning applications, and what advice should be given about local flood risks (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/how-the-local-planning-authority-should-involve-the-lead-local-flood-authority-when-determining-planning-applications-and-what-advice-should-be-given-about-local-flood-risks/>)

### **How the local planning authority should involve the lead local flood authority when determining planning applications, and what advice should be given about local flood risks**

#### **What are the responsibilities of lead local flood authorities and how can they assist local planning authorities in considering planning applications?**

Information about the responsibilities of lead local flood authorities and guidance on securing compatibility between Local Plans and local flood risk management strategies can be found here

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/taking-flood-risk-into-account-in-the-preparation-of-local-plans/which-flood-risk-management-bodies-should-local-planning-authorities-see-advice-from-when-preparing-local-plans/>).

When considering major development the local planning authority should consult the lead local flood authority on surface water drainage. Having regard to the available information on local flood risks, including the Strategic Flood Risk Assessment and the updated map of flood risk from surface water [\[2\]](#)

(<http://watermaps.environment-agency.gov.uk/wiyby/wiyby.aspx?topic=ufmfs#x=357683&y=355134&scale=2>) available on the Environment Agency's web site, local planning authorities may find it helpful to agree with lead local flood authorities the circumstances and locations where lead local flood authority advice should be sought on other planning applications which raise surface water or other local flood risk issues.

Where surface water or other local flood risks are likely to significantly affect a proposed development site, early discussions between the planning authority and the developer will help to identify the flood risk issues that the authority would expect to see addressed in the planning application and accompanying site-specific flood risk assessment.

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## 17. What is meant by “minor development” in relation to flood risk

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/what-is-meant-by-minor-development-in-relation-to-flood-risk/>)

### What is meant by “minor development” in relation to flood risk

Minor development means:

- **minor non-residential extensions:** industrial/commercial/leisure etc. extensions with a footprint less than 250 square metres.
- **alterations:** development that does not increase the size of buildings eg alterations to external appearance.
- **householder development:** For example; sheds, garages, games rooms etc. within the curtilage of the existing dwelling, in addition to physical extensions to the existing dwelling itself. This definition excludes any proposed development that would create a separate dwelling within the curtilage of the existing dwelling eg subdivision of houses into flats.

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### Related policy

#### National Planning Policy Framework

- Paragraph 104 ([http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph\\_104](http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph_104))

## 18. The flood risk issues raised by minor developments

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/the-flood-risk-issues-raised-by-minor-developments/>)

### The flood risk issues raised by minor developments

#### Are minor developments likely to raise flood risk issues?

Minor developments are unlikely to raise significant flood risk issues unless:

- they would have an adverse effect on a watercourse, floodplain or its flood defences;
- they would impede access to flood defence and management facilities, or;
- where the cumulative impact of such developments would have a significant effect on local flood storage capacity or flood flows.

The Environment Agency's advice on flood risk assessment [\[2\]](https://www.gov.uk/flood-risk-assessment-for-planning-applications)

(<https://www.gov.uk/flood-risk-assessment-for-planning-applications>) is helpful for ensuring extensions or alterations are designed and constructed to conform to any flood protection already incorporated in the property, and include flood resilience measures in the design.

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## 19. The flood risk issues raised by changes of use

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/the-flood-risk-issues-raised-by-changes-of-use/>)

### The flood risk issues raised by changes of use

#### What issues need to be considered and what does the applicant need to do?

A change in use may involve an increase in flood risk if the vulnerability classification (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/flood-zone-and-flood-risk-tables/table-2-flood-risk-vulnerability-classification/>) of the development is changed. In such cases, the applicant will need to show in their flood risk assessment that future users of the development will not be placed in danger from flood hazards throughout its lifetime. Depending on the risk, mitigation measures may be needed. It is for the applicant to show that the change of use meets the objectives of the

Framework's policy on flood risk. For example, how the operation of any mitigation measures can be safeguarded and maintained effectively through the lifetime of the development.

The local planning authority may have a Local Plan policy on what changes of use ([http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/how-should-flood-risk-be-taken-into-account-in-the-preparation-of-local-plans/is-flood-risk-relevant-to-local-plan-policies-that-change-the-use-of-land/#paragraph\\_007](http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/how-should-flood-risk-be-taken-into-account-in-the-preparation-of-local-plans/is-flood-risk-relevant-to-local-plan-policies-that-change-the-use-of-land/#paragraph_007)) will be acceptable in areas at risk of flooding.

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## 20. Permitted development rights and flood risk

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/permitted-development-rights-and-flood-risk/>)

### Permitted development rights and flood risk

#### What are the flood risk considerations in relation to permitted development rights?

When considering the potential impacts of permitted development ([http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/#paragraph\\_016](http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/#paragraph_016)) on local flood risk, a local planning authority may consider making an Article 4 direction to remove national permitted development rights to protect local amenity or the well-being of an area.

To assist local planning authorities in their determination of an application as to whether their prior approval is required for a change of use of agricultural buildings, or a change from office to dwelling houses in an area at risk of flooding, the applicant should provide with their application an assessment of flood risk. This should demonstrate how the flood risks to the development will be managed so that it remains safe through its lifetime.

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## 21. Reducing the causes and impacts of flooding

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/reducing-the-causes-and-impacts-of-flooding/>)

### Reducing the causes and impacts of flooding

#### What are the opportunities for reducing flood risk overall?

Local authorities and developers should seek opportunities to reduce the overall level of flood risk in the area and beyond. This can be achieved, for instance, through the layout and form of development, including green infrastructure ([http://planningguidance.communities.gov.uk/blog/guidance/natural-environment/biodiversity-ecosystems-and-green-infrastructure/#paragraph\\_015](http://planningguidance.communities.gov.uk/blog/guidance/natural-environment/biodiversity-ecosystems-and-green-infrastructure/#paragraph_015)) and the appropriate application of sustainable drainage systems (further information here ([http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/reducing-the-causes-and-impacts-of-flooding/why-are-sustainable-drainage-systems-important/#paragraph\\_051](http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/reducing-the-causes-and-impacts-of-flooding/why-are-sustainable-drainage-systems-important/#paragraph_051))), through safeguarding land for flood risk management, or where appropriate, through designing off-site works required to protect and support development in ways that benefit the area more generally.

Further advice is available on how to demonstrate the most vulnerable development ([http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/reducing-the-causes-and-impacts-of-flooding/how-can-you-demonstrate-that-the-most-vulnerable-development-is-located-in-areas-of-lowest-flood-risk-within-the-site/#paragraph\\_053](http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/reducing-the-causes-and-impacts-of-flooding/how-can-you-demonstrate-that-the-most-vulnerable-development-is-located-in-areas-of-lowest-flood-risk-within-the-site/#paragraph_053)) is located in areas of lowest risk within a site

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- Why are sustainable drainage systems important?

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/reducing-the-causes-and-impacts-of-flooding/why-are-sustainable-drainage-systems-important/>)



### Why are sustainable drainage systems important?

Sustainable drainage systems are designed to control surface water run off close to where it falls and mimic natural drainage as closely as possible. They provide opportunities to:

- reduce the causes and impacts of flooding;
- remove pollutants from urban run-off at source;
- combine water management with green space with benefits for amenity, recreation and wildlife.

Further guidance on the planning considerations on sustainable drainage in relation to water supply and water quality are here (<http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality/water-supply-wastewater-and-water-quality-considerations-in-plan-making/water-quality/>) and here ([http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality/water-supply-wastewater-and-water-quality-considerations-for-planning-applications/#paragraph\\_019](http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality/water-supply-wastewater-and-water-quality-considerations-for-planning-applications/#paragraph_019)).

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### When should a sustainable drainage system be considered?

Whether a sustainable drainage system should be considered will depend on the proposed development and its location, for example whether there are concerns about flooding. Sustainable drainage systems may not be practicable for some forms of development (for example, mineral extraction). New development should only be considered appropriate in areas at risk of flooding if priority has been given to the use of sustainable drainage systems

([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph\\_103](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph_103)). Additionally, and more widely, when considering major development, as defined in the Town and Country Planning (Development Management Procedure) (England) Order 2015 [\[1\]](http://www.legislation.gov.uk/ukSI/2015/595/part/1/made) (<http://www.legislation.gov.uk/ukSI/2015/595/part/1/made>), sustainable drainage systems should be provided unless demonstrated to be inappropriate [\[2\]](http://www.parliament.uk/documents/commons-vote-office/December%202014/18%20December/6.%20DCLG-sustainable-drainage-systems.pdf) (<http://www.parliament.uk/documents/commons-vote-office/December%202014/18%20December/6.%20DCLG-sustainable-drainage-systems.pdf>).

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### What sort of sustainable drainage system should be considered?

Generally, the aim should be to discharge surface run off as high up the following hierarchy of drainage options as reasonably practicable:

- into the ground (infiltration);
- to a surface water body;
- to a surface water sewer, highway drain, or another drainage system;
- to a combined sewer.

Particular types of sustainable drainage systems may not be practicable in all locations. It could be helpful therefore for local planning authorities to set out those local situations where they anticipate particular sustainable drainage systems not being appropriate.

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### Are there particular factors the local planning authority will address when considering a sustainable drainage system as part of a planning application?

In considering a development that includes a sustainable drainage system the local planning authority will want to be satisfied that the proposed minimum standards of operation are appropriate and that there are clear arrangements in

place for ongoing [maintenance](#)

([http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/reducing-the-causes-and-impacts-of-flooding/why-are-sustainable-drainage-systems-important/#paragraph\\_085](http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/reducing-the-causes-and-impacts-of-flooding/why-are-sustainable-drainage-systems-important/#paragraph_085)). Information sought by the local planning authority should be no more than necessary, having regard to the nature and scale of the development concerned.


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### When would a sustainable drainage system be inappropriate?

The decision on whether a sustainable drainage system would be inappropriate in relation to a particular development proposal is a matter of judgement for the local planning authority. In making this judgement the local planning authority will seek [advice from the relevant flood risk management bodies](#)



([http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/reducing-the-causes-and-impacts-of-flooding/why-are-sustainable-drainage-systems-important/#paragraph\\_086](http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/reducing-the-causes-and-impacts-of-flooding/why-are-sustainable-drainage-systems-important/#paragraph_086)), principally the lead local flood authority, including on what sort of sustainable drainage system they would consider to be reasonably [practicable](#)

([http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/reducing-the-causes-and-impacts-of-flooding/why-are-sustainable-drainage-systems-important/#paragraph\\_083](http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/reducing-the-causes-and-impacts-of-flooding/why-are-sustainable-drainage-systems-important/#paragraph_083)).

The judgement of what is reasonably practicable should be by reference to the [technical standards](#)  (<https://www.gov.uk/government/publications/sustainable-drainage-systems-non-statutory-technical-standards>) published by the Department for Environment, Food and Rural Affairs and take into account [design and construction costs](#) ([http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/reducing-the-causes-and-impacts-of-flooding/why-are-sustainable-drainage-systems-important/#paragraph\\_084](http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/reducing-the-causes-and-impacts-of-flooding/why-are-sustainable-drainage-systems-important/#paragraph_084)).

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### Are the Department for Environment, Food and Rural Affairs' technical standards for sustainable drainage systems mandatory?


The [technical standards](#)  (<https://www.gov.uk/government/publications/sustainable-drainage-systems-non-statutory-technical-standards>) provided by government relate to the design, construction, operation and maintenance of sustainable drainage systems and have been published as guidance for those designing schemes. In terms of the overall viability of a proposed development, expecting compliance with the technical standards is unlikely to be reasonably practicable if [more expensive](#) ([http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/reducing-the-causes-and-impacts-of-flooding/why-are-sustainable-drainage-systems-important/#paragraph\\_084](http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/reducing-the-causes-and-impacts-of-flooding/why-are-sustainable-drainage-systems-important/#paragraph_084)) than complying with building regulations 

(<http://www.planningportal.gov.uk/buildingregulations/approveddocuments/parth/approved>) – provided that where there is a risk of flooding the development will be safe and flood risk is not increased elsewhere. Similarly, a [particular discharge route](#) ([http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/reducing-the-causes-and-impacts-of-flooding/why-are-sustainable-drainage-systems-important/#paragraph\\_080](http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/reducing-the-causes-and-impacts-of-flooding/why-are-sustainable-drainage-systems-important/#paragraph_080)) would not normally be reasonable practicable when an alternative would cost less to design and construct.

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### What is relevant to design and construction costs?

Construction costs can include the opportunity cost of providing land for a drainage system above ground where the land utilised for the drainage system is not also utilised for another land use. [Design costs also include the resulting](#)

[maintenance and operation requirements](#) 

(<http://www.parliament.uk/documents/commons-vote-office/December%202014/18%20December/6.%20DCLG-sustainable-drainage-systems.pdf>) arising from the design.


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**What about the operation and maintenance of a sustainable drainage system?**

When planning a sustainable drainage system, developers need to ensure their design takes account of the construction, operation and maintenance requirements of both surface and subsurface components, allowing for any personnel, vehicle or machinery access required to undertake this work. Any sustainable drainage system should be designed so that the capacity takes account of the likely impacts of climate change and likely changes in impermeable area within the development over its lifetime and continues to provide effective drainage for properties. Whether maintenance and operation requirements are economically proportionate should be considered by reference to the costs that would be incurred by consumers for the use of an effective drainage system connecting directly to a public sewer.

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**Where to go for advice on surface water drainage?**

When considering major development the local planning authority should consult the lead local flood authority  (<http://www.legislation.gov.uk/ukxi/2015/595/schedule/4/made>). For other developments the local planning authority will want to consider the circumstances where it would be beneficial to [seek advice from the lead local flood authority](#) ([http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/how-the-local-planning-authority-should-involve-the-lead-local-flood-authority-when-determining-planning-applications-and-what-advice-should-be-given-about-local-flood-risks/#paragraph\\_045](http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/how-the-local-planning-authority-should-involve-the-lead-local-flood-authority-when-determining-planning-applications-and-what-advice-should-be-given-about-local-flood-risks/#paragraph_045)). Local planning authorities are also advised to consult as appropriate:

- The relevant sewerage undertaker where a connection with a public sewer is proposed.
- The Environment Agency, if the drainage system directly or indirectly involves the discharge of water into a watercourse
- The relevant highway authority for an affected road
- The Canal and River Trust, if the drainage system may directly or indirectly involve the discharge of water into or under a waterway managed by them
- An internal drainage board, if the drainage system may directly or indirectly involve the discharge of water into an ordinary watercourse (within the meaning of section 72 of the Land Drainage Act 1991) within the board's district.

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- How can you demonstrate that the most vulnerable development is located in areas of lowest flood risk within the site? (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/reducing-the-causes-and-impacts-of-flooding/how-can-you-demonstrate-that-the-most-vulnerable-development-is-located-in-areas-of-lowest-flood-risk-within-the-site/>)

**How can you demonstrate that the most vulnerable development is located in areas of lowest flood risk within the site?**

This will be identified from a detailed site-specific flood risk assessment. Residential areas may contain a variety of land uses, including vehicle and pedestrian access, shops and other community facilities. Layout should be designed so that the most vulnerable uses

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/flood-zone-and-flood-risk-tables/table-2-flood-risk-vulnerability-classification/>) are

restricted to higher ground at lower risk of flooding, with development which has a lower vulnerability (parking, open space, etc) in the highest risk areas, unless there are overriding reasons to prefer a different location.

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## 22. Making development safe from flood risk

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/making-development-safe-from-flood-risk/>)

### Making development safe from flood risk

#### How can development be made safe from flood risk?

After applying a sequential approach so that, as far as possible, development is located to where there is the lowest risk of flooding, new development can be made safe by:

- designing buildings to avoid flooding by, for example, raising floor levels;
- providing adequate flood risk management infrastructure which will be maintained for the lifetime of the development, for example, using Community Infrastructure Levy or planning obligations, or Partnership Funding  (<https://www.gov.uk/flood-and-coastal-defence-funding-submit-a-project>) where appropriate;
- leaving space in developments for flood risk management infrastructure to be maintained and enhanced, and;
- mitigating the potential impacts of flooding through design and flood resilient and resistant construction.

When considering safety, specific local circumstances need to be taken into account, including:

- the characteristics of a possible flood event, e.g. the type and source of flooding and frequency, depth, velocity and speed of onset;
- the safety of people within a building if it floods and also the safety of people around a building and in adjacent areas, including people who are less mobile or who have a physical impairment. This includes the ability of residents and users to safely access and exit a building during a design flood ([http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/what-should-be-done-to-make-development-safe-from-flood-risk/what-is-meant-by-a-design-flood/#paragraph\\_052](http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/what-should-be-done-to-make-development-safe-from-flood-risk/what-is-meant-by-a-design-flood/#paragraph_052)) and to evacuate before an extreme flood;
- the structural safety of buildings, and;
- the impact of a flood on the essential services provided to a development.

While safety considerations are always very important, local planning authorities should seek to ensure that communities are sustainable, including ensuring that certain sections of society, such as the elderly and those with less mobility, are not unnecessarily excluded from areas where there is a risk of flooding.

See also further advice on:

- What is meant by a “design flood”? ([http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/what-should-be-done-to-make-development-safe-from-flood-risk/what-is-meant-by-a-design-flood/#paragraph\\_052](http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/what-should-be-done-to-make-development-safe-from-flood-risk/what-is-meant-by-a-design-flood/#paragraph_052))
- When are flood warning and evacuation plans needed? (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/making-development-safe-from-flood-risk/are-flood-warning-and-evacuation-plans-needed/>)
- Who should be consulted on emergency planning issues and in relation to reservoirs? ([http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/what-should-be-done-to-make-development-safe-from-flood-risk/who-should-be-consulted-on-emergency-planning-issues-and-in-relation-to-reservoirs/#paragraph\\_054](http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/what-should-be-done-to-make-development-safe-from-flood-risk/who-should-be-consulted-on-emergency-planning-issues-and-in-relation-to-reservoirs/#paragraph_054))

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- What is meant by a “design flood”? (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/making-development-safe-from-flood-risk/what-is-meant-by-a-design-flood/>)

### What is meant by a “design flood”?

This is a flood event of a given annual flood probability, which is generally taken as:

- fluvial (river) flooding likely to occur with a 1% annual probability (a 1 in 100 chance each year), or;
- tidal flooding with a 0.5 per cent annual probability (1 in 200 chance each year),

against which the suitability of a proposed development is assessed and mitigation measures, if any, are designed.

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- Are flood warning and evacuation plans needed?

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/making-development-safe-from-flood-risk/are-flood-warning-and-evacuation-plans-needed/>)

### Are flood warning and evacuation plans needed?

One of the considerations to ensure that any new development is safe, including where there is a residual risk of flooding, is whether adequate flood warnings would be available to people using the development. A flood warning and evacuation plan ([http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/what-should-be-done-to-make-development-safe-from-flood-risk/when-are-flood-warning-and-evacuation-plans-needed/what-are-the-important-considerations-for-flood-warning-and-evacuation-plans/#paragraph\\_076](http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/what-should-be-done-to-make-development-safe-from-flood-risk/when-are-flood-warning-and-evacuation-plans-needed/what-are-the-important-considerations-for-flood-warning-and-evacuation-plans/#paragraph_076)) is a requirement for sites at risk of flooding used for holiday or short-let caravans and camping and are important at any site that has transient occupants (e.g. hostels and hotels).

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- What are the important considerations for flood warning and evacuation plans?

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/making-development-safe-from-flood-risk/what-are-the-important-considerations-for-flood-warning-and-evacuation-plans/>)

### What are the important considerations for flood warning and evacuation plans?

Flood warning and evacuation plans will need to take account of the likely impacts of climate change, e.g. increased water depths and the impact on how people can be evacuated. In consultation with the authority’s emergency planning staff, the local planning authority will need to ensure that evacuation plans are suitable through appropriate planning conditions or planning agreements.

In advising the local planning authority, the emergency services are unlikely to regard developments that increase the scale of any rescue that might be required as being safe. Even with defences in place, if the probability of inundation is high, safe access and egress should be maintained for the lifetime of the development. The practicality of safe evacuation from an area will depend on:

- the type of flood risk present, and the extent to which advance warning can be given in a flood event;
- the number of people that would require evacuation from the area potentially at risk;
- the adequacy of both evacuation routes and identified places that people could be evacuated to (and taking into account the length of time that the evacuation may need to last), and;
- sufficiently detailed and up to date evacuation plans being in place for the locality that address these and related issues.

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- **Who should be consulted on emergency planning issues and in relation to reservoirs?**  
(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/making-development-safe-from-flood-risk/who-should-be-consulted-on-emergency-planning-issues-and-in-relation-to-reservoirs/>)

### **Who should be consulted on emergency planning issues and in relation to reservoirs?**

Local planning authorities are advised to consult with their emergency planning officers as early as possible during the preparation of Local Plans, and also regarding any planning applications which have implications for emergency planning. Where issues affecting emergency services are identified it may be relevant to contact the local resilience forum – multi-agency partnerships made up of representatives from local public services which prepare for local incidents and catastrophic emergencies. Or in some cases, it may be appropriate for the local planning authority to consult the emergency services on specific emergency planning issues related to new developments.

Local planning authorities are also advised to consult with the owners/operators of raised reservoirs, to establish constraints upon safe development.

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## 23. Flood resilience and flood resistance

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/flood-resilience-and-flood-resistance/>)

### **Flood resilience and flood resistance**

#### **What is flood resilience and flood resistance?**

Flood resistance, or dry-proofing, stops water entering a building. Flood resilience, or wet-proofing, accepts that water will enter the building, but through careful design will minimise damage and allow the re-occupancy of the building quickly. Flood resistance and resilience measures should not be used to justify development in inappropriate locations;

- **Flood resilient:** Flood-resilient buildings are designed and constructed to reduce the impact of flood water entering the building so that no permanent damage is caused, structural integrity is maintained and drying and cleaning is easier. The Department for Communities and Local Government has published *Improving the Flood Performance of New Buildings: flood resilient construction (2007)* (<https://www.gov.uk/government/publications/flood-resilient-construction-of-new-buildings>). This provides guidance on how to improve the resilience of new properties in low or residual flood risk areas by the use of suitable materials and construction details.
- **Flood resistance:** Flood-resistant construction can prevent entry of water or minimise the amount that may enter a building where there is short duration flooding outside with water depths of 0.6 metres or less. This form of construction should be used with caution and accompanied by resilience measures, as effective flood exclusion may depend on occupiers ensuring some elements, such as barriers to doorways, are put in place and maintained in a good state. Buildings may also be damaged by water pressure or debris being transported by flood water. This may breach flood-excluding elements of the building and permit rapid inundation. Temporary and demountable defences are not appropriate for new developments.

Further advice on what needs to be considered in the use of appropriate flood resilience and resistance measures is here

([http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/what-does-flood-resilient-and-flood-resistant-mean/what-needs-to-be-considered-in-the-use-of-appropriate-flood-resilience-and-resistance-measures/#paragraph\\_056](http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/what-does-flood-resilient-and-flood-resistant-mean/what-needs-to-be-considered-in-the-use-of-appropriate-flood-resilience-and-resistance-measures/#paragraph_056)).

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- What needs to be considered in the use of appropriate flood resilience and resistance measures? (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/flood-resilience-and-flood-resistance/what-needs-to-be-considered-in-the-use-of-appropriate-flood-resilience-and-resistance-measures/>)

### What needs to be considered in the use of appropriate flood resilience and resistance measures?

The first preference should be to avoid flood risk. Where it is not possible, a building and its surrounds (at site level) may be constructed to avoid it being flooded (e.g. by raising it above the design flood (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/making-development-safe-from-flood-risk/what-is-meant-by-a-design-flood/>) level).

Since any flood management measures only manage the risk of flooding rather than remove it, flood resistance and flood resilience may need to be incorporated into the design of buildings and other infrastructure behind flood defence systems. Resistance and resilience measures are unlikely to be suitable as the only mitigation measure to manage flood risk, but they may be suitable in some circumstances, such as:

- water-compatible and less vulnerable uses where temporary disruption is acceptable and an appropriate flood warning is provided;
- in some instances where the use of an existing building is to be changed and it can be demonstrated that no other measure is practicable;
- as a measure to manage residual flood risk.

Further information on flood resilience and resistance is available as part of the advice on flood risk assessment for planning applications [\[2\]](https://www.gov.uk/flood-risk-assessment-standing-advice) (<https://www.gov.uk/flood-risk-assessment-standing-advice>) available from the Environment Agency.

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## 24. Neighbourhood Planning (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/neighbourhood-planning-flood-risk/>)

### Neighbourhood Planning

#### How should neighbourhood planning take account of flood risk?

The overall approach in paragraph 100 of the National Planning Policy Framework ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph\\_100](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph_100)) applies to neighbourhood planning (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/>).

In summary, the qualifying bodies involved in neighbourhood planning should:

- seek to ensure neighbourhood plans and neighbourhood development/community right to build orders are informed by an appropriate assessment of flood risk;
- ensure policies steer development to areas of lower flood risk as far as possible;
- ensure that any development in an area at risk of flooding would be safe (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/making-development-safe-from-flood-risk/>), for its lifetime (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/the-exception-test/what-needs-to-be-considered-to-demonstrate-that-development-will-be-safe-for-its-lifetime/>) taking account of climate change impacts [\[2\]](https://www.gov.uk/guidance/flood-risk-assessments-climate-change-allowances) (<https://www.gov.uk/guidance/flood-risk-assessments-climate-change-allowances>);
- be able to demonstrate how flood risk to and from the plan area/development site(s) will be managed, so that flood risk will not be increased

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### Related policy

#### National Planning Policy Framework

- Paragraph 100 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph\\_100](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph_100))

overall, and that opportunities to reduce flood risk (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/reducing-the-causes-and-impacts-of-flooding/>), for example, through the use of sustainable drainage systems, are included in the plan/order.

Local planning authorities should have in mind these aims in providing advice or assistance to qualifying bodies involved in neighbourhood planning. Further information on what information and advice should be made available is here (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/how-neighbourhood-planning-should-take-account-of-flood-risk/what-advice-and-information-on-flood-risk-is-available-for-neighbourhood-planning/>).


See also:


- What to consider if there is a risk of flooding in the neighbourhood plan area? (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/how-neighbourhood-planning-should-take-account-of-flood-risk/what-should-be-considered-if-there-is-a-risk-of-flooding-in-the-neighbourhood-plan-area/>)
- What to consider if bringing forward a Neighbourhood Development Order/Community Right to Build Order in an area at risk of flooding? (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/how-neighbourhood-planning-should-take-account-of-flood-risk/what-should-be-considered-if-bringing-forward-a-neighbourhood-development-order-community-right-to-build-order-in-an-area-at-risk-of-flooding/>)

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- **What advice and information on flood risk is available for neighbourhood planning?** (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/neighbourhood-planning-flood-risk/what-advice-and-information-on-flood-risk-is-available-for-neighbourhood-planning/>)

### **What advice and information on flood risk is available for neighbourhood planning?**

Local planning authorities' Strategic Flood Risk Assessments (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/strategic-flood-risk-assessment/>) should be the primary source of flood risk information in considering whether particular neighbourhood planning areas may be appropriate for development. Other important sources include the interactive maps of flood risk  ([http://maps.environment-agency.gov.uk/wiyby/wiybyController?ep=maptopics&lang=\\_e](http://maps.environment-agency.gov.uk/wiyby/wiybyController?ep=maptopics&lang=_e)) available on the Environment Agency's web site. Local planning authorities should make available to qualifying bodies any reports or information relating to the Strategic Flood Risk Assessment, and share any other information relevant to flood risk (such as the application of the Sequential (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/the-aim-of-the-sequential-test/>) and Exception Tests (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/the-exception-test/>) to the Local Plan).

Along with other statutory agencies, the Environment Agency has published advice on neighbourhood planning  ([http://webarchive.nationalarchives.gov.uk/20140328084622/http://cdn.environment-agency.gov.uk/LIT\\_6524\\_7da381.pdf](http://webarchive.nationalarchives.gov.uk/20140328084622/http://cdn.environment-agency.gov.uk/LIT_6524_7da381.pdf)). Anyone preparing a neighbourhood plan or order may also find it helpful to consult the lead local flood authority (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/taking-flood-risk-into-account-in-the-preparation-of-local-plans/which-flood-risk-management-bodies-should-local-planning-authorities-look-for-advice-from-when-preparing-local-plans/>) for the area.

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- **What should be considered if there is a risk of flooding in the neighbourhood plan area?** (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/neighbourhood-planning-flood-risk/what-should-be-considered-if-there-is-a-risk-of-flooding-in-the-neighbourhood-plan-area/>)

### **What should be considered if there is a risk of flooding in the neighbourhood plan area?**



Where the Strategic Flood Risk Assessment, or other available flood risk maps or information, indicates that part or parts of a neighbourhood plan area may be at risk of flooding, the qualifying body will need to have regard to the National Planning Policy Framework's policies on flood risk. Where they are considering proposing development, they should show that this would be consistent with the local planning authority's application of the Sequential Test

([http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/applying-the-sequential-test-in-the-preparation-of-a-local-plan/#paragraph\\_021](http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/applying-the-sequential-test-in-the-preparation-of-a-local-plan/#paragraph_021)) and if necessary, the Exception Test ([http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/applying-the-exception-test-in-the-preparation-of-a-local-plan/#paragraph\\_028](http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/applying-the-exception-test-in-the-preparation-of-a-local-plan/#paragraph_028)) for the Local Plan.

Where areas under consideration for development are not consistent, or the relevant Local Plan is inconclusive, it is likely that the qualifying body will need to provide further information to demonstrate that any development proposed by the neighbourhood plan passes the Sequential Test, and if necessary the Exception Test.

Local planning authorities should provide advice to qualifying bodies on where and how they should demonstrate that policies and any site allocations in neighbourhood plans and Orders would satisfy the Sequential Test and, if necessary, the Exception Test, including the appropriate area to apply the Sequential Test. This will depend on a number of factors, including:

- the size of the neighbourhood planning area;
- the flood risks in the area and/or in its vicinity;
- the nature of the neighbourhood plan policies or Order proposals;
- the degree of conformity with strategic policies of the Local Plan, including site allocations, and whether these have been subject to the Sequential Test.

In providing advice, local planning authorities should have regard to flood risk across the whole of their areas. In particular, there may be places outside the neighbourhood planning area at lower flood risk which are suitable and reasonably available for the development proposed.

There is further guidance on the approach to individual development proposals (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/addressing-flood-risk-in-individual-planning-applications/>), or where a Neighbourhood Development or Community Right to Build Order is proposed, in an area at risk of flooding

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/how-neighbourhood-planning-should-take-account-of-flood-risk/what-should-be-considered-if-bringing-forward-a-neighbourhood-development-order-community-right-to-build-order-in-an-area-at-risk-of-flooding/>).

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- **What should be considered if bringing forward a Neighbourhood Development Order/Community Right to Build Order in an area at risk of flooding?**

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/neighbourhood-planning-flood-risk/what-should-be-considered-if-bringing-forward-a-neighbourhood-development-order-community-right-to-build-order-in-an-area-at-risk-of-flooding/>)

### **What should be considered if bringing forward a Neighbourhood Development Order/Community Right to Build Order in an area at risk of flooding?**

The general approach and requirements for site-specific flood risk assessments (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/site-specific-flood-risk-assessment/>) should be applied to developments in areas at risk of flooding to be permitted by Neighbourhood Development/Community Right to Build Orders. This means that for any development proposals:

- in Flood Zone 2 or 3 (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/flood-zone-and-flood-risk-tables/table-1-flood-zones/>);
- or of at least 1 hectare;
- or in an area that has critical drainage problems (as notified to the local planning authority by the Environment Agency);
- or that may be subject to other sources of flood risk;

a site-specific flood risk assessment should support the draft Order. The flood risk assessment checklist

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/site-specific-flood-risk-assessment-checklist/>) may be helpful in this respect.

Where the neighbourhood planning area is in Flood Zone 2 or 3, or is in an area with critical drainage problems, advice on the scope of the flood risk assessment required should be sought from the Environment Agency. Where the area may be subject to other sources of flooding, it may be helpful to consult other bodies involved in flood risk management, as appropriate.

Where a Neighbourhood Development/Community Right to Build Order is under consideration for a site/area in Flood Zone 2 or 3, which has not been allocated in the development plan through the Sequential Test, and if necessary the Exception Test, it will be necessary for those proposing the development, in having regard to the National Planning Policy Framework's policies on flood risk, to demonstrate why the development cannot reasonably be located in areas of lower flood risk.

In all cases where new development is proposed, the sequential approach (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/the-sequential-risk-based-approach-to-the-location-of-development/>) to locating development in areas of lower flood risk should still be applied within a neighbourhood planning area.

Neighbourhood Development/Community Right to Build Orders that propose new development that would be:

- contrary to the flood risk vulnerability and flood zone compatibility table (Table 3) (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/flood-zone-and-flood-risk-tables/table-3-flood-risk-vulnerability-and-flood-zone-compatibility/>), or;
- within areas at risk of flooding where sequential testing shows there to be places at lower flood risk which are suitable and reasonably available for the development proposed,

should not be considered appropriate, having regard to the national policies on development and flood risk.

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25. Flood Zone and Flood Risk Tables (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/flood-zone-and-flood-risk-tables/>)

### **Flood Zone and Flood Risk Tables**

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- Table 1: Flood Zones (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/flood-zone-and-flood-risk-tables/table-1-flood-zones/>)
- Table 2: Flood Risk Vulnerability Classification (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/flood-zone-and-flood-risk-tables/table-2-flood-risk-vulnerability-classification/>)
- Table 3: Flood risk vulnerability and flood zone 'compatibility' (<http://planningguidance.communities.gov.uk/blog/guidance/flood->

risk-and-coastal-change/flood-zone-and-flood-risk-tables/table-3-flood-risk-vulnerability-and-flood-zone-compatibility/)

- Table 1: Flood Zones (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/flood-zone-and-flood-risk-tables/table-1-flood-zones/>)

**Table 1: Flood Zones**

These Flood Zones refer to the probability of river and sea flooding, ignoring the presence of defences. They are shown on the Environment Agency’s Flood Map for Planning (Rivers and Sea) ([http://maps.environment-agency.gov.uk/wiyby/wiybyController?x=357683.0&y=355134.0&scale=1&layerGroups=default&ep=map&textonly=off&lang=\\_e&topic=floodmap](http://maps.environment-agency.gov.uk/wiyby/wiybyController?x=357683.0&y=355134.0&scale=1&layerGroups=default&ep=map&textonly=off&lang=_e&topic=floodmap))), available on the Environment Agency’s web site, as indicated in the table below.

Flood Zone	Definition
Zone 1 Low Probability	Land having a less than 1 in 1,000 annual probability of river or sea flooding. (Shown as 'clear' on the Flood Map – all land outside Zones 2 and 3)
Zone 2 Medium Probability	Land having between a 1 in 100 and 1 in 1,000 annual probability of river flooding; or Land having between a 1 in 200 and 1 in 1,000 annual probability of sea flooding. (Land shown in light blue on the Flood Map)
Zone 3a High Probability	Land having a 1 in 100 or greater annual probability of river flooding; or Land having a 1 in 200 or greater annual probability of sea flooding. (Land shown in dark blue on the Flood Map)
Zone 3b The Functional Floodplain	<b>This zone comprises land where water has to flow or be stored in times of flood.</b> Local planning authorities should identify in their Strategic Flood Risk Assessments areas of functional floodplain and its boundaries accordingly, in agreement with the Environment Agency. (Not separately distinguished from Zone 3a on the Flood Map)

**Note:** The Flood Zones shown on the Environment Agency’s Flood Map for Planning (Rivers and Sea) do not take account of the possible impacts of climate change and consequent changes in the future probability of flooding. Reference should therefore also be made to the Strategic Flood Risk Assessment (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/strategic-flood-risk-assessment/>) when considering location and potential future flood risks to developments and land uses.

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- Table 2: Flood Risk Vulnerability Classification (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/flood-zone-and-flood-risk-tables/table-2-flood-risk-vulnerability-classification/>)

**Table 2: Flood Risk Vulnerability Classification**

<p><b>Essential Infrastructure</b></p> <ul style="list-style-type: none"> <li>• Essential transport infrastructure (including mass evacuation routes) which has to cross the area at risk.</li> <li>• Essential utility infrastructure which has to be located in a flood risk area for operational reasons, including electricity generating power stations and grid and primary substations; and water treatment works that need to remain operational in times of flood.</li> <li>• Wind turbines.</li> </ul>
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**Highly Vulnerable**

- Police and ambulance stations; fire stations and command centres; telecommunications installations required to be operational during flooding.
- Emergency dispersal points.
- Basement dwellings.
- Caravans, mobile homes and park homes intended for permanent residential use.
- Installations requiring hazardous substances consent (<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/planning-for-hazardous-substances/>). (Where there is a demonstrable need to locate such installations for bulk storage of materials with port or other similar facilities, or such installations with energy infrastructure or carbon capture and storage installations, that require coastal or water-side locations, or need to be located in other high flood risk areas, in these instances the facilities should be classified as 'Essential Infrastructure').

**More Vulnerable**

- Hospitals
- Residential institutions such as residential care homes, children's homes, social services homes, prisons and hostels.
- Buildings used for dwelling houses, student halls of residence, drinking establishments, nightclubs and hotels.
- Non-residential uses for health services, nurseries and educational establishments.
- Landfill\* and sites used for waste management facilities for hazardous waste.
- Sites used for holiday or short-let caravans and camping, subject to a specific warning and evacuation plan.

**Less Vulnerable**

- Police, ambulance and fire stations which are **not** required to be operational during flooding.
- Buildings used for shops; financial, professional and other services; restaurants, cafes and hot food takeaways; offices; general industry, storage and distribution; non-residential institutions not included in the 'More Vulnerable' class; and assembly and leisure.
- Land and buildings used for agriculture and forestry.
- Waste treatment (except landfill\* and hazardous waste facilities).
- Minerals working and processing (except for sand and gravel working).
- Water treatment works which do not need to remain operational during times of flood.
- Sewage treatment works, if adequate measures to control pollution and manage sewage during flooding events are in place.

- Water-Compatible Development**
- Flood control infrastructure.
  - Water transmission infrastructure and pumping stations.
  - Sewage transmission infrastructure and pumping stations.
  - Sand and gravel working.
  - Docks, marinas and wharves.
  - Navigation facilities.
  - Ministry of Defence defence installations.
  - Ship building, repairing and dismantling, dockside fish processing and refrigeration and compatible activities requiring a waterside location.
  - Water-based recreation (excluding sleeping accommodation).
  - Lifeguard and coastguard stations.
  - Amenity open space, nature conservation and biodiversity, outdoor sports and recreation and essential facilities such as changing rooms.
  - Essential ancillary sleeping or residential accommodation for staff required by uses in this category, subject to a specific warning and evacuation plan.

\* Landfill is as defined in Schedule 10 [\[2\]](http://www.legislation.gov.uk/ukxi/2010/675/schedule/10/made) (<http://www.legislation.gov.uk/ukxi/2010/675/schedule/10/made>) to the Environmental Permitting (England and Wales) Regulations 2010.

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- Table 3: Flood risk vulnerability and flood zone 'compatibility' (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/flood-zone-and-flood-risk-tables/table-3-flood-risk-vulnerability-and-flood-zone-compatibility/>)

**Table 3: Flood risk vulnerability and flood zone 'compatibility'**

Flood Zones ( <a href="http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/flood-zone-and-flood-risk-tables/table-1-flood-zones/">http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/flood-zone-and-flood-risk-tables/table-1-flood-zones/</a> )	Flood Risk Vulnerability Classification ( <a href="http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/flood-zone-and-flood-risk-tables/table-flood-risk-vulnerability-classification/">http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/flood-zone-and-flood-risk-tables/table-flood-risk-vulnerability-classification/</a> )				
	Essential infrastructure	Highly vulnerable	More vulnerable	Less vulnerable	Water compa
Zone 1	✓	✓	✓	✓	✓
Zone 2	✓	Exception Test required	✓	✓	✓
Zone 3a †	Exception Test required †	x	Exception Test required	✓	✓
Zone 3b *	Exception Test required *	x	x	x	✓*

**Key:**

- ✓ Development is appropriate
- x Development should not be permitted.

Notes to table 3:

- This table does not show the application of the Sequential Test ([http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/the-aim-of-the-sequential-test/#paragraph\\_019](http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/the-aim-of-the-sequential-test/#paragraph_019)) which should be applied first to guide development to Flood Zone 1, then Zone 2, and then Zone 3; nor does it reflect the need to avoid flood risk from sources other than rivers and the sea;

- The Sequential and Exception Tests ([http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/the-exception-test/#paragraph\\_023](http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/the-exception-test/#paragraph_023)) do not need to be applied to minor developments ([http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/what-is-meant-by-minor-development-in-relation-to-flood-risk/#paragraph\\_046](http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/what-is-meant-by-minor-development-in-relation-to-flood-risk/#paragraph_046)) and changes of use, except for a change of use to a caravan, camping or chalet site, or to a mobile home or park home site;
- Some developments may contain different elements of vulnerability and the highest vulnerability category should be used, unless the development is considered in its component parts.

† In Flood Zone 3a essential infrastructure should be designed and constructed to remain operational and safe in times of flood.

\* In Flood Zone 3b (functional floodplain) essential infrastructure that has to be there and has passed the Exception Test, and water-compatible uses, should be designed and constructed to:

- remain operational and safe for users in times of flood;
- result in no net loss of floodplain storage;
- not impede water flows and not increase flood risk elsewhere.

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## 26. Site-Specific Flood Risk Assessment: CHECKLIST

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/site-specific-flood-risk-assessment-checklist/>)

### Site-Specific Flood Risk Assessment: CHECKLIST

<b>1 Development description and location</b>
a. What type of development is proposed (e.g., new development, an extension to existing development, a change of use etc.) and where will it be located?
b. What is its flood risk vulnerability classification ( <a href="http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/flood-zone-and-flood-risk-tables/table-2-flood-risk-vulnerability-classification/">http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/flood-zone-and-flood-risk-tables/table-2-flood-risk-vulnerability-classification/</a> )?
c. Is the proposed development consistent with the Local Plan for the area? (Seek advice from the local planning authority if you are unsure about this).
d. What evidence can be provided that the Sequential Test and where necessary the Exception Test has/have been applied in the selection of this site for this development type?
e. Will your proposal increase overall the number of occupants and/or users of the building/land, or the nature or times of occupation or use, such that it may affect the degree of flood risk to these people? (Particularly relevant to minor developments (alterations & extensions) & changes of use).
<b>2. Definition of the flood hazard</b>
a. What sources of flooding could affect the site?
b. For each identified source in box 2a above, can you describe how flooding would occur, with reference to any historic records where these are available?
c. What are the existing surface water drainage arrangements for the site?
<b>3. Probability</b>
a. Which flood zone is the site within? (As a first step, check the Flood Map for Planning (Rivers and Sea) on the Environment Agency's web site <a href="http://maps.environment-agency.gov.uk/wiyby/wiybyController?x=357683.0&amp;y=355134.0&amp;scale=1&amp;layerGroups=default&amp;ep=map&amp;textonly=off&amp;lang=_e&amp;topic=floodmap">http://maps.environment-agency.gov.uk/wiyby/wiybyController?x=357683.0&amp;y=355134.0&amp;scale=1&amp;layerGroups=default&amp;ep=map&amp;textonly=off&amp;lang=_e&amp;topic=floodmap</a> )
b. If there is a Strategic Flood Risk Assessment covering this site (check with the local planning authority). Does this show the same or a different flood zone compared with the Environment Agency's flood map? (If different you should seek advice from the local planning authority and, if necessary, the Environment Agency).

<p>c. What is the probability of the site flooding, taking account of the maps of flood risk from rivers and the sea and from surface water, on the Environment Agency's web site <a href="http://maps.environment-agency.gov.uk/wiyby/wiybyController?ep=maptopics&amp;lang=_e">[X]</a> (<a href="http://maps.environment-agency.gov.uk/wiyby/wiybyController?ep=maptopics&amp;lang=_e">http://maps.environment-agency.gov.uk/wiyby/wiybyController?ep=maptopics&amp;lang=_e</a>), and the Strategic Flood Risk Assessment, and of any further flood risk information for the site?</p>
<p>d. If known, what (approximately) are the existing rates and volumes of surface water run-off generated by the site?</p>
<p><b>4. Climate change</b></p>
<p>How is flood risk at the site likely to be affected by climate change? (The local planning authority's Strategic Flood Risk Assessment should have taken this into account. Further information on climate change <a href="https://www.gov.uk/guidance/flood-risk-assessments-climate-change-allowances">[X]</a> (<a href="https://www.gov.uk/guidance/flood-risk-assessments-climate-change-allowances">https://www.gov.uk/guidance/flood-risk-assessments-climate-change-allowances</a>) and development and flood risk is available on the Environment Agency's web site.</p>
<p><b>5. Detailed development proposals</b></p>
<p>Where appropriate, are you able to demonstrate how land uses most sensitive to flood damage have been placed in areas within the site that are at least risk of flooding (including providing details of the development layout)?</p>
<p><b>6. Flood risk management measures</b></p>
<p>How will the site/building be protected from flooding, including the potential impacts of climate change, over the development's lifetime?</p>
<p><b>7. Off site impacts</b></p>
<p>a. How will you ensure that your proposed development and the measures to protect your site from flooding will not increase flood risk elsewhere?</p>
<p>b. How will you prevent run-off from the completed development causing an impact elsewhere?</p>
<p>c. Are there any opportunities offered by the development to reduce flood risk elsewhere?</p>
<p><b>8. Residual risks</b></p>
<p>a. What flood-related risks will remain after you have implemented the measures to protect the site from flooding?</p>
<p>b. How, and by whom, will these risks be managed over the lifetime of the development? (E.g., flood warning and evacuation procedures).</p>

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27. Planning and Coastal Change (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/planning-and-coastal-change/>)

**Planning and Coastal Change**

**What is the general planning approach to development and coastal change?**

The aim of the policy on coastal change, as set out in paragraphs 105-108 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph\\_105](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph_105)) of the National Planning Policy Framework, is to reduce risk from coastal change by avoiding inappropriate development in vulnerable areas or adding to the impacts of physical changes to the coast. The general approach can be summarised as follows:

- Local planning authorities apply Integrated Coastal Zone Management (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/why-it-is-important-to-apply-integrated-coastal-zone-management/>) to integrate terrestrial and marine planning regimes;
- Local planning authorities identify Coastal Change Management Areas (further information here (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/coastal-change-management-areas/>) and here (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/coastal-change-management-areas/what-are-the-considerations-in-defining->

**Related policy**

**National Planning Policy Framework**

- Paragraphs 105-108 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph\\_105](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph_105))

coastal-change-management-areas/)) likely to be affected by physical changes to the coast:

- Local planning authorities are expected to be clear what development will be appropriate in Coastal Change Management Areas ([http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/what-is-the-general-planning-approach-to-development-and-coastal-change/what-development-will-be-appropriate-in-a-coastal-change-management-area/#paragraph\\_069](http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/what-is-the-general-planning-approach-to-development-and-coastal-change/what-development-will-be-appropriate-in-a-coastal-change-management-area/#paragraph_069)) and make provision for development and infrastructure that needs to be relocated away from Coastal Change Management Areas ([http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/what-is-the-general-planning-approach-to-development-and-coastal-change/what-development-will-be-appropriate-in-a-coastal-change-management-area/what-approach-should-be-taken-to-making-provision-for-the-relocation-of-development-away-from-coastal-change-management-areas/#paragraph\\_071](http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/what-is-the-general-planning-approach-to-development-and-coastal-change/what-development-will-be-appropriate-in-a-coastal-change-management-area/what-approach-should-be-taken-to-making-provision-for-the-relocation-of-development-away-from-coastal-change-management-areas/#paragraph_071)).

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## 28. Why it is important to apply Integrated Coastal Zone Management

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/why-it-is-important-to-apply-integrated-coastal-zone-management/>)

### Why it is important to apply Integrated Coastal Zone Management

Integrated Coastal Zone Management is a process which requires the adoption of a joined-up and participative approach towards the planning and management of the many different elements in coastal areas (land and marine). The recognised key principles which should guide all partners in implementing an integrated approach to the management of coastal areas are:

- a long term view
- a broad holistic approach
- adaptive management
- working with natural processes
- support and involvement of all relevant administrative bodies
- use of a combination of instruments
- participatory planning
- reflecting local characteristics

In coastal areas, local planning authorities should collaborate with the Marine Management Organisation to ensure that plans and policies across the land/sea boundary are coordinated. Further guidance on the Marine Management Organisation's role is available here

([http://planningguidance.communities.gov.uk/blog/guidance/duty-to-cooperate/what-is-the-duty-to-cooperate-and-what-does-it-require/#paragraph\\_023](http://planningguidance.communities.gov.uk/blog/guidance/duty-to-cooperate/what-is-the-duty-to-cooperate-and-what-does-it-require/#paragraph_023)).

Local planning authorities are strongly encouraged to adopt the principles set out in the Coastal Concordat for England [\[2\]](https://www.gov.uk/government/publications/a-coastal-concordat-for-england) (<https://www.gov.uk/government/publications/a-coastal-concordat-for-england>), which is available on the UK Government's web site (publications), working in collaboration with other relevant public bodies to coordinate the consenting process for coastal development.

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## 29. Coastal Change Management Areas (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/coastal-change-management-areas/>)

### Coastal Change Management Areas

#### What is a Coastal Change Management Area?

This is an area identified in Local Plans as likely to be affected by coastal change (physical change to the shoreline through erosion, coastal landslip, permanent inundation or coastal accretion).

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#### Related policy

##### National Planning Policy Framework

- Paragraphs 105 ([http://planningguidance.communities.gov.uk/blog/guidance/sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph\\_105](http://planningguidance.communities.gov.uk/blog/guidance/sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph_105))

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#### Related policy

##### National Planning Policy Framework



- Paragraphs 105-108  
([http://planningguidance.communit-sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph\\_105](http://planningguidance.communit-sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph_105))

- **What are the considerations in defining Coastal Change Management Areas?**

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/coastal-change-management-areas/what-are-the-considerations-in-defining-coastal-change-management-areas/>)

### What are the considerations in defining Coastal Change Management Areas?

A Coastal Change Management Area will only be defined where rates of shoreline change are significant over the next 100 years, taking account of climate change [\[2\]](https://www.gov.uk/guidance/flood-risk-assessments-climate-change-allowances) (https://www.gov.uk/guidance/flood-risk-assessments-climate-change-allowances). They will not need to be defined where the accepted shoreline management plan policy is to hold or advance the line (maintain existing defences or build new defences) for the whole period covered by the plan, subject to evidence of how this may be secured.

Local planning authorities should demonstrate that they have considered shoreline management plans, which provide a large-scale assessment of the risks associated with coastal processes, and should provide the primary source of evidence in defining the coastal change management area and inform land allocation within it. Other sources that may help inform decisions on the appropriate area for the coastal change management area include:

- catchment flood management plans [\[2\]](http://www.environment-agency.gov.uk/research/planning/33586.aspx) (<http://www.environment-agency.gov.uk/research/planning/33586.aspx>)\*
- estuary management plans
- harbour management plans
- river basin management plans [\[2\]](http://www.environment-agency.gov.uk/research/planning/33106.aspx) (<http://www.environment-agency.gov.uk/research/planning/33106.aspx>)\*
- Environment Agency's coastal erosion map [\[2\]](http://www.environment-agency.gov.uk/homeandleisure/134808.aspx) (<http://www.environment-agency.gov.uk/homeandleisure/134808.aspx>)\*

Shoreline management plans [\[2\]](http://www.environment-agency.gov.uk/research/planning/104939.aspx) (<http://www.environment-agency.gov.uk/research/planning/104939.aspx>)\* identify risk in three time horizons (up to 20, 50 and 100 years) and include maps showing the geographical extent of each risk area. Local planning authorities have discretion to determine how these are interpreted in planning terms to define the coastal change management area and whether it should show the separate zones for each of the three time horizons – or whether it should rely on the shoreline management plan for the area to provide that level of information. Where the shoreline management plan policy is to hold the line over part of the 100-year period, evidence would be expected to be provided of how this may be secured.

Although the primary basis for defining the coastal change management area are the physical processes affecting the coast, the local planning authority may want to take into account the boundaries of existing settlements and requirements for facilitating roll-back and relocation of land uses.

\* More information is available on the website of the Environment Agency

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- **What development will be appropriate in a Coastal Change Management Area?**

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/coastal-change-management-areas/what-development-will-be-appropriate-in-a-coastal-change-management-area/>)

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### Related policy

#### National Planning Policy Framework

- Paragraphs 105-108  
([http://planningguidance.communit-sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph\\_105](http://planningguidance.communit-sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph_105))

## What development will be appropriate in a Coastal Change Management Area?

### Essential infrastructure

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/flood-zone-and-flood-risk-tables/table-2-flood-risk-vulnerability-classification/>) may be permitted in a coastal change management area, provided there are clear plans to manage the impacts of coastal change on it, and it will not have an adverse impact on rates of coastal change elsewhere.

Ministry of Defence installations that require a coastal location can be permitted within a coastal change management area, provided there are clear plans to manage the impacts of coastal change. Where the installation will have a material impact on coastal processes, this must be managed to minimise adverse impacts on other parts of the coast.

For other development the following criteria can be used as a basis for decisions on what may be appropriate:

- Within the short-term risk areas (i.e. 20-year time horizon) only a limited range of types of development directly linked to the coastal strip, such as beach huts, cafes/tea rooms, car parks and sites used for holiday or short-let caravans and camping – all with time-limited planning permissions;
- Within the medium (20 to 50-year) and long-term (up to 100-year) risk areas, a wider range of time-limited development, such as hotels, shops, office or leisure activities requiring a coastal location and providing substantial economic and social benefits to the community, may be appropriate. Other significant development, such as key community infrastructure, is unlikely to be appropriate unless it has to be sited within the coastal change management area to provide the intended benefit to the wider community and there are clear, costed plans to manage the impact of coastal change on it and the service it provides;
- Permanent new residential development will not be appropriate within a coastal change management area.

In all cases, there should still be careful consideration of the policies on development and flood risk, including table 2

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/flood-zone-and-flood-risk-tables/table-2-flood-risk-vulnerability-classification/>) and table 3 (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/flood-zone-and-flood-risk-tables/table-3-flood-risk-vulnerability-and-flood-zone-compatibility/>).

Further advice on:

- how a vulnerability assessment can be used to demonstrate whether development is appropriate in a coastal change management area is here ([http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/what-is-the-general-planning-approach-to-development-and-coastal-change/what-development-will-be-appropriate-in-a-coastal-change-management-area/can-a-vulnerability-assessment-be-used-to-demonstrate-whether-development-is-appropriate-in-a-coastal-change-management-area/#paragraph\\_070](http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/what-is-the-general-planning-approach-to-development-and-coastal-change/what-development-will-be-appropriate-in-a-coastal-change-management-area/can-a-vulnerability-assessment-be-used-to-demonstrate-whether-development-is-appropriate-in-a-coastal-change-management-area/#paragraph_070))
- permitted development rights in areas at risk of coastal change is here (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/permitted-development-rights-in-areas-at-risk-from-coastal-change/>)
- how neighbourhood plans and Neighbourhood Development/Community Right to Build Orders should take account of coastal change is here (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/how-neighbourhood-plans-and-neighbourhood-developmentcommunity-right-to-build-orders-should-take-account-of-coastal-change/>).

Advice also available here

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/what-is-the-general-planning-approach-to-development-and-coastal-change/what-development-will-be-appropriate-in-a-coastal-change-management-area/what-approach-should-be-taken-to-making-provision-for-the-relocation-of-development-away-from-coastal->

### Related policy

#### National Planning Policy Framework

- Paragraphs 105-108 ([http://planningguidance.communit-sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph\\_105](http://planningguidance.communit-sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph_105))

change-management-areas/#paragraph\_071) on what approach should be taken to making provision for the relocation of development away from Coastal Change Management Areas.

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- Can a vulnerability assessment be used to demonstrate whether development is appropriate in a coastal change management area?

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/coastal-change-management-areas/can-a-vulnerability-assessment-be-used-to-demonstrate-whether-development-is-appropriate-in-a-coastal-change-management-area/>)

### **Can a vulnerability assessment be used to demonstrate whether development is appropriate in a coastal change management area?**

Local planning authorities may wish to consider whether information about the vulnerability of new development would be helpful to demonstrate the appropriateness of a development in a coastal change management area. It would be advisable for the developer to agree the scope of a vulnerability assessment (which should be appropriate to the degree of risk and the scale, nature and location of the development) in advance with the local planning authority and in consultation with the Environment Agency and any other relevant stakeholders.

In considering the requirements in paragraph 107

([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph\\_107](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph_107)) of the National Planning Policy Framework a vulnerability assessment might demonstrate that the development:

- would not impair the ability of communities and the natural environment to adapt sustainably to the impacts of a changing climate;
- will be safe through its planned lifetime, without increasing risk to life or property, or requiring new or improved coastal defences;
- would not affect the natural balance and stability of the coastline or exacerbate the rate of shoreline change to the extent that changes to the coastline are increased nearby or elsewhere.

The assessment could also consider measures for managing the development at the end of its planned life

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/the-exception-test/what-is-considered-to-be-the-lifetime-of-development-in-terms-of-flood-risk-and-coastal-change/>), including any proposals for the removal of the development before the site is immediately threatened by shoreline changes. Further advice on limiting the planned lifetime of development is here

([http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/what-is-the-general-planning-approach-to-development-and-coastal-change/what-development-will-be-appropriate-in-a-coastal-change-management-area/can-a-vulnerability-assessment-be-used-to-demonstrate-whether-development-is-appropriate-in-a-coastal-change-management-area/how-can-planning-limit-the-planned-lifetime-of-development/#paragraph\\_077](http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/what-is-the-general-planning-approach-to-development-and-coastal-change/what-development-will-be-appropriate-in-a-coastal-change-management-area/can-a-vulnerability-assessment-be-used-to-demonstrate-whether-development-is-appropriate-in-a-coastal-change-management-area/how-can-planning-limit-the-planned-lifetime-of-development/#paragraph_077)).

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- What approach should be taken to making provision for the relocation of development away from Coastal Change Management Areas?

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/coastal-change-management-areas/what-approach-should-be-taken-to-making-provision-for-the-relocation-of-development-away-from-coastal-change-management-areas/>)

### **What approach should be taken to making provision for the relocation of development away from Coastal Change Management Areas?**

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#### **Related policy**

##### **National Planning Policy Framework**

- Paragraph 107 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph\\_107](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph_107))

Formally allocating land in Local Plans for relocation of development and habitat affected by coastal change may be appropriate in some instances. An approach that takes into account the exceptional circumstances of having to replace existing development at risk of coastal change by granting planning permissions where normally they would be refused may be more suitable for some coastal authorities.

ID 7-076-20140306 Last updated 06 03 2014

## Related policy

### National Planning Policy Framework

- Paragraphs 105-108 ([http://planningguidance.communit-sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph\\_105](http://planningguidance.communit-sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph_105))

## 30. Permitted development rights in areas at risk from coastal change

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/permitted-development-rights-in-areas-at-risk-from-coastal-change/>)

### Permitted development rights in areas at risk from coastal change

#### What issues do local planning authorities need to consider in relation to permitted development rights in coastal change areas?

Where extensions and alterations which are permitted development ([http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/#paragraph\\_016](http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/#paragraph_016)) under the Town and Country Planning (General Permitted Development) (England) (Order) 2015 are likely to result in an increase in the scale of property and number of occupants at risk from coastal change in the short-term (i.e. next 20 years), local planning authorities should consider whether to make use of their powers under Article 4 of the Order <sup>2</sup> (<http://www.legislation.gov.uk/ukSI/2015/596/article/4/made>) to require planning permission to be sought in each case.

ID 7-077-20150415 Last updated 15 04 2015

## Related policy

### National Planning Policy Framework

- Paragraphs 105-108 ([http://planningguidance.communit-sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph\\_105](http://planningguidance.communit-sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph_105))

## 31. How neighbourhood plans and neighbourhood development/community right to build orders should take account of coastal change

(<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/how-neighbourhood-plans-and-neighbourhood-developmentcommunity-right-to-build-orders-should-take-account-of-coastal-change/>)

### How neighbourhood plans and neighbourhood development/community right to build orders should take account of coastal change

In line with the core planning principles and the policy on coastal change neighbourhood plans and neighbourhood Development/Community Right to Build Orders should avoid allowing inappropriate development in areas vulnerable to coastal change, or adding to the impacts of physical changes to the coast.

In any instance where a neighbourhood planning area is proposed in a coastal change management area, careful attention should be paid to the guidance on what development would be appropriate in such an area (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/coastal-change-management-areas/what-development-will-be-appropriate-in-a-coastal-change-management-area/>), including whether time-limiting planning permissions (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/coastal-change-management-areas/can-a-vulnerability-assessment-be-used-to-demonstrate-whether-development-is-appropriate-in-a-coastal-change-management-area/how-can-planning-limit-the-planned-lifetime-of-development/>) would

## Related policy


### National Planning Policy Framework

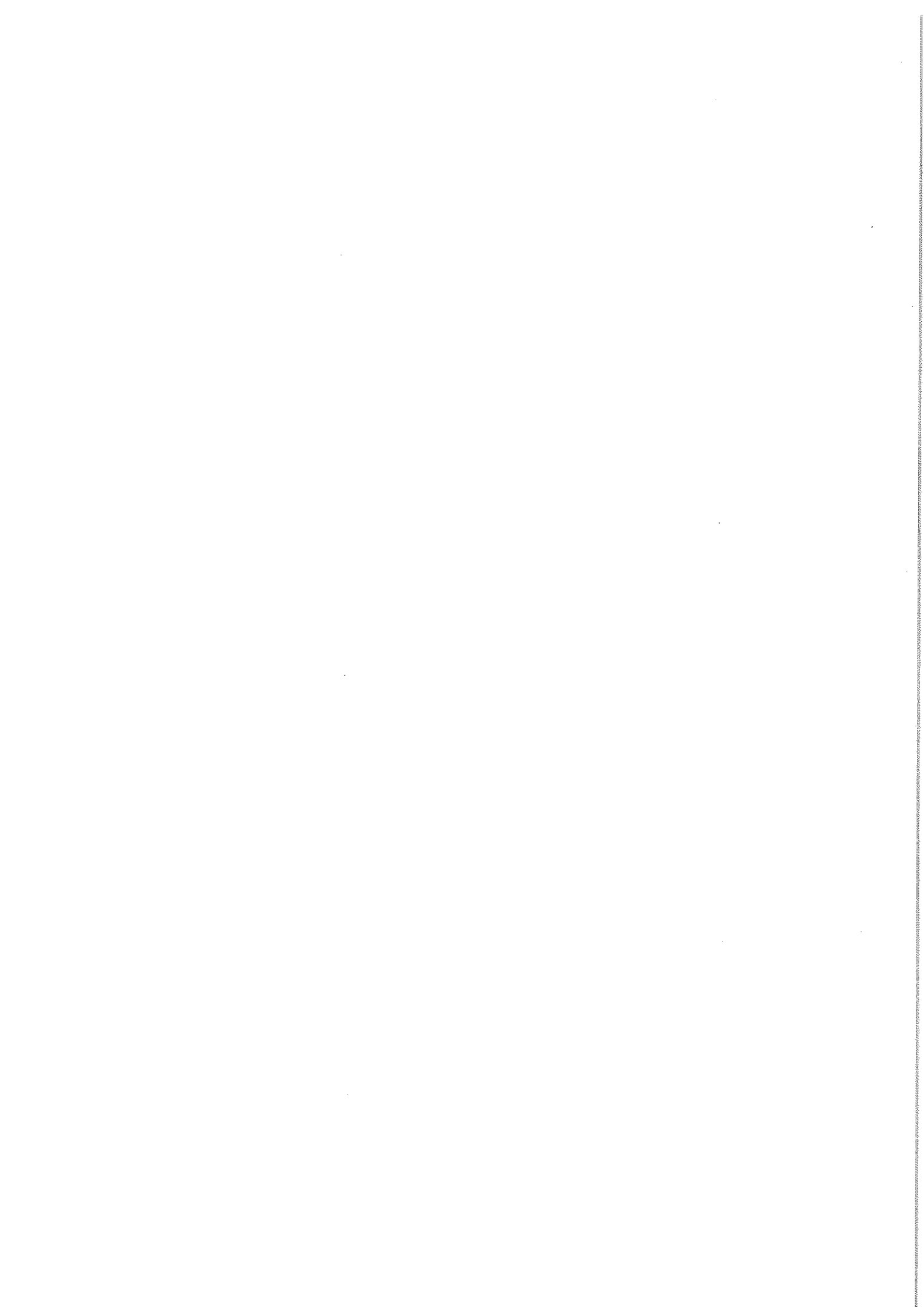
- Paragraphs 105-108 ([http://planningguidance.communit-sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph\\_105](http://planningguidance.communit-sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph_105))

be needed. The local planning authority should be consulted on what information about the vulnerability of new development would be helpful to demonstrate appropriateness in a coastal change management area.

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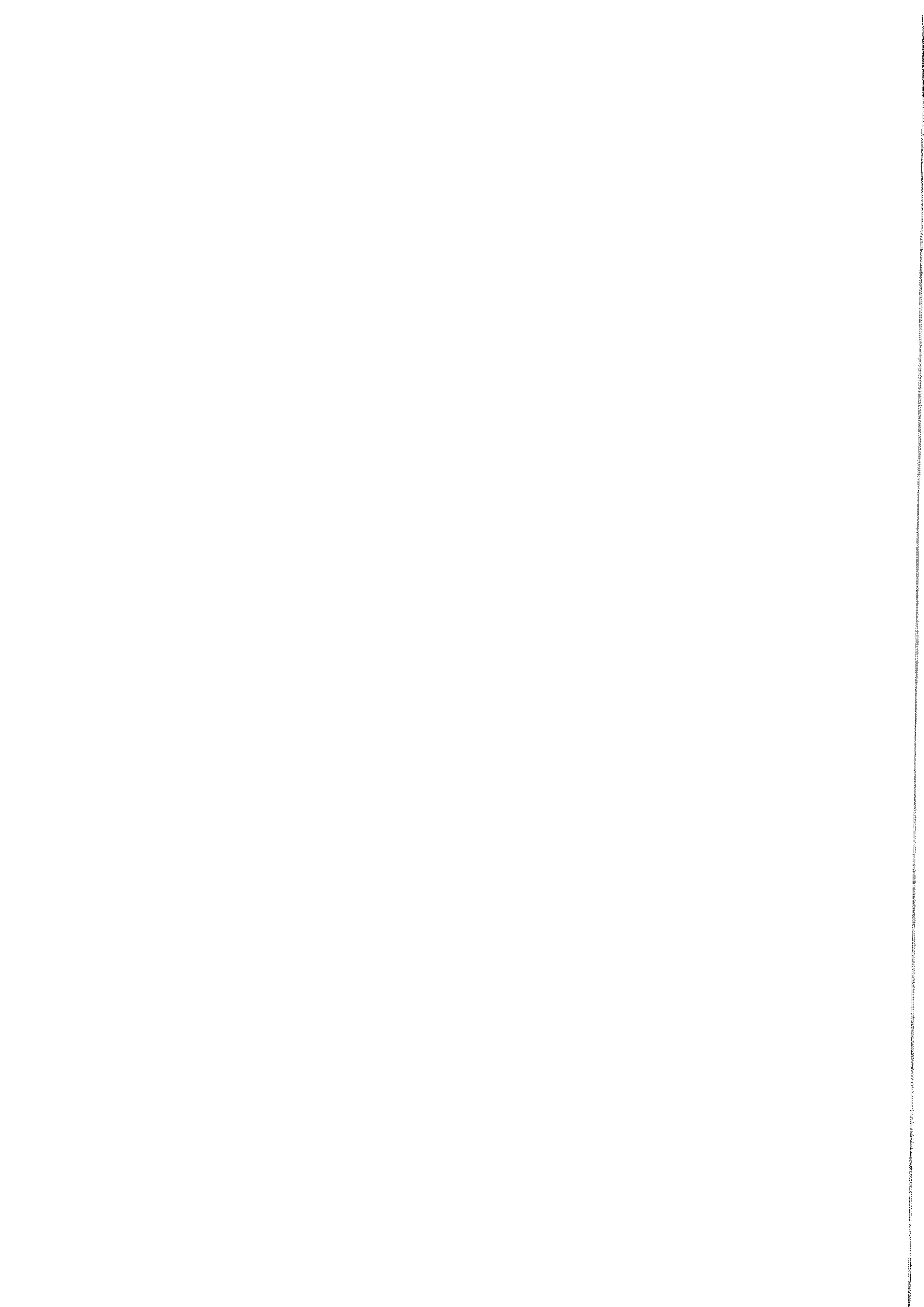
 Department for Communities & Local Government  
(<https://www.gov.uk/government/organisations/department-for-communities-and-local-government>)



# Planning Practice Guidance

## Section Three (G-M):

- Hazardous Substances
- Health and wellbeing
- Housing and economic development needs assessment
- Housing and economic land availability assessment
- Housing- Optional Technical Standards
- Land affected by contamination
- Land Stability
- Lawful development certificates
- Light pollution
- Local Plans
- Making an application
- Minerals





## Planning Practice Guidance (<http://planningguidance.communities.gov.uk>)

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Guidance

### Hazardous Substances

Print 

#### 1. Planning for Hazardous Substances

(<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/planning-for-hazardous-substances/>)

#### Planning for Hazardous Substances

##### Why does land use planning need to consider hazardous substances?

The lessons from explosions such as at the Flixborough chemical works in Humberside in 1974, Seveso in Italy in 1976 and Buncefield in 2005 underline the importance of controlling sites where hazardous substances could be present and where development is proposed near them.

ID 39-001-20140306 Last updated 06 03 2014

##### How does the planning system deal with hazardous substances?

There are three elements to how the planning system deals with preventing and limiting the consequences of major accidents:

###### 1. Hazardous substances consent

This is required for the presence of certain quantities of hazardous substances. This is a key part of the controls for storage and use of hazardous substances which could, in quantities at or above specified limits, present a major off-site risk.

- The purpose of hazardous substances consent  
(<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/how-does-the-planning-system-deal-with-hazardous-substances/what-is-the-purpose-of-hazardous-substances-consent/>)
- Deciding whether a hazardous substances consent is needed  
(<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/how-does-the-planning-system-deal-with-hazardous-substances/when-is-consent-needed-for-the-storage-or-use-of-hazardous-substances/>)
- Applying for hazardous substances consent  
(<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/how-does-the-planning-system-deal-with-hazardous-substances/how-are-applications-for-consent-made/>)
- Deciding applications for hazardous substances consent  
(<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/deciding-applications-for-hazardous-substances-consent/>)
- After consent has been granted  
(<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/after-consent-has-been-granted/>)
- Breaches of hazardous substances control  
(<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/breaches-of-hazardous-substances-control/>)

## 2. Dealing with hazardous substances in plan-making

### When preparing Local Plans

(<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>), local planning authorities are required to have regard to the prevention of major accidents and limiting their consequences. They must also consider the long-term need for appropriate distances between hazardous establishments and population or environmentally sensitive areas. They must also consider whether additional measures for existing establishments are required so that risks to people in the area are not increased. Detailed requirements are set out in the Town and Country Planning (Local Planning) (England) Regulations 2012 [\[2\]](#) (<http://www.legislation.gov.uk/ukksi/2012/767/regulation/10/made>).

Further guidance can be found under dealing with hazardous substances in plan-making (<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/dealing-with-hazardous-substances-in-plan-making/>).

## 3. Handling development proposals around hazardous installations

When considering development proposals around hazardous installations the Local Planning Authority is expected to seek technical advice on the risks presented by major accident hazards affecting people in the surrounding area from the Health and Safety Executive. This allows those making planning decisions to give due weight to those risks, when balanced against other relevant planning considerations. The Health and Safety Executive also provides advice on developments around pipelines, licensed explosives sites, licensed ports and other relevant sites. The Office for Nuclear Regulation [\[3\]](#) (<http://www.hse.gov.uk/nuclear/land-use-planning.htm>) provides advice on developments around nuclear installations.

Further guidance on development can be found under handling development proposals around hazardous installations (<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/handling-development-proposals-around-hazardous-installations/>).

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## What is the policy and legislation governing planning and hazardous substances?

The following paragraphs of the National Planning Policy Framework are particularly relevant to planning for hazardous substances:

- Paragraph 2 ([http://planningguidance.communities.gov.uk/blog/policy/introduction/#paragraph\\_2](http://planningguidance.communities.gov.uk/blog/policy/introduction/#paragraph_2)) on EU obligations and statutory requirements;
- Paragraph 110 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph\\_110](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph_110)) on preventing unacceptable risk to development;
- Paragraph 172 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph\\_172](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph_172)) on planning policies taking account of the major hazards and mitigating the consequences of major accidents;
- Paragraph 194 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/decision-taking/#paragraph\\_194](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/decision-taking/#paragraph_194)) on consulting appropriate bodies when planning, or determining applications, for development around major hazards;

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## Related policy

### National Planning Policy Framework

- Paragraph 2 (<http://planningguidance.com>)
- Paragraph 110 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph\\_110](http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph_110))
- Paragraph 172 ([http://planningguidance.com/sustainable-development/plan-making/#paragraph\\_172](http://planningguidance.com/sustainable-development/plan-making/#paragraph_172))

- The glossary to the Framework (<http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/annex-2-glossary/>) defines what is meant by 'major hazards', including nuclear installations.

Article 12 of the Seveso II directive [\[2\]](http://ec.europa.eu/environment/seveso) (<http://ec.europa.eu/environment/seveso>) requires planning controls to apply to all establishments within the scope of the Directive. In England this is implemented through a system of consents for hazardous substances under the Planning (Hazardous Substances) Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/10/contents) (<http://www.legislation.gov.uk/ukpga/1990/10/contents>) and through arrangements for dealing with planning applications and plan-making.

The main regulations are:

- the Planning (Hazardous Substances) Regulations 1992 [\[2\]](http://www.legislation.gov.uk/uksi/1992/656/contents/made) (<http://www.legislation.gov.uk/uksi/1992/656/contents/made>) (as amended – see below);
- the Town and Country Planning (Development Management Procedure) (England) Order 2010 [\[2\]](http://www.legislation.gov.uk/uksi/2010/2184/schedule/5/made) (<http://www.legislation.gov.uk/uksi/2010/2184/schedule/5/made>) (see regulation 16 and Schedule 5);
- the Town and Country Planning (Local Planning) (England) Regulations 2012 [\[2\]](http://www.legislation.gov.uk/uksi/2012/767/regulation/10/made) (<http://www.legislation.gov.uk/uksi/2012/767/regulation/10/made>) (see regulation 10(1)(a) and (b)).

Amendments to the above have been made by:

- the Planning (Control of Major-Accident Hazards) Regulations 1999 [\[2\]](http://www.legislation.gov.uk/uksi/1999/981/contents/made) (<http://www.legislation.gov.uk/uksi/1999/981/contents/made>);
- the Planning (Hazardous Substances) (Amendment) (England) Regulations 2009 [\[2\]](http://www.legislation.gov.uk/uksi/2009/1901/contents/made) (<http://www.legislation.gov.uk/uksi/2009/1901/contents/made>);
- the Planning (Hazardous Substances) (Amendment) (England) Regulations 2010 [\[2\]](http://www.legislation.gov.uk/uksi/2010/1050/contents/made) (<http://www.legislation.gov.uk/uksi/2010/1050/contents/made>)

Separately, the Health and Safety Executive and Environment Agency have responsibility for implementing other aspects of the Seveso II Directive [\[2\]](http://ec.europa.eu/environment/seveso) (<http://ec.europa.eu/environment/seveso>) and deliver this through other regulations, principally the Control of Major Accident Hazards Regulations 1999 [\[2\]](http://www.legislation.gov.uk/uksi/1999/743/contents/made) (<http://www.legislation.gov.uk/uksi/1999/743/contents/made>). This guidance only deals the land use planning aspects of Seveso II under the planning legislation referred to above.

A new directive, Seveso III, was published in 2012 and is required to be implemented by 31 May 2015. This guidance will be updated to reflect the new regulations [\[2\]](http://www.legislation.gov.uk/uksi/2015/627/contents/made) (<http://www.legislation.gov.uk/uksi/2015/627/contents/made>) implementing the directive. A draft of the updated guidance can be viewed here [\[2\]](https://www.gov.uk/government/publications/hazardous-substances-draft-planning-practice-guidance%20) (<https://www.gov.uk/government/publications/hazardous-substances-draft-planning-practice-guidance%20>).

ID 39-003-20150415 Last updated 15 04 2015

## 2. The purpose of hazardous substances consent

(<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/what-is-the-purpose-of-hazardous-substances-consent/>)

### The purpose of hazardous substances consent

#### What is the purpose of hazardous substances consent?

The hazardous substances consent process ensures that hazardous substances can be kept or used in significant amounts only after an assessment of the risk to people and the environment in the surrounding area. This is a key part of the

- Paragraph 194 ([http://planningguidance.com/sustainable-development/decision-taking/#paragraph\\_194](http://planningguidance.com/sustainable-development/decision-taking/#paragraph_194))
- Annex 2 – Glossary (<http://planningguidance.com/sustainable-development/annex-2-glossary/>)

controls for storage and use of hazardous substances which could, in quantities at or above specified limits, present a major off-site risk. The system of hazardous substances consent does not replace requirements under health and safety legislation.

Hazardous substances consent provides control over the presence of hazardous substances whether or not an associated planning permission is required. Where the presence of a hazardous substance is directly associated with a proposed development, local planning authorities can exercise some control through the decisions on applications for planning permission.

The consent process regulates the storage and use of hazardous substances and enables breaches of control, which may present serious risks, to be dealt with quickly and effectively.

Even after measures have been taken to prevent major accidents, there will remain the residual risk of an accident which cannot entirely be eliminated. Hazardous substances consent ensures that this residual risk to people in the vicinity or to the environment is taken into account before a hazardous substance is allowed to be present in a controlled quantity. The extent of this risk will depend upon where and how a hazardous substance is present; and the nature of existing and prospective uses of the application site and its surroundings.

ID 39-004-20140306 Last updated 06 03 2014

### **Who decides if the risk of storing hazardous substances is tolerable?**

The hazardous substances authority has responsibility for deciding whether the risk of storing hazardous substances is tolerable for the community. Therefore the decision on whether a particular proposal to store or use a hazardous substance should be allowed is one for the hazardous substances authority.

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### **Who is the hazardous substances authority and what is its role?**

The hazardous substances authority will usually be the local planning authority. The local council should therefore be the first point of contact to check who the local hazardous substances authority is. The hazardous substances authority for an area determines hazardous substances consent applications and enforces the controls.

ID 39-006-20140306 Last updated 06 03 2014

### **Who advises the hazardous substances authority on the level of risk?**

The Health and Safety Executive advises the hazardous substances authority on the nature and severity of the risk to persons in the vicinity arising from the presence of a hazardous substance. The Environment Agency advises on the risk to the environment, including if an environmental permit is needed.

ID 39-007-20140306 Last updated 06 03 2014

### **Does hazardous substances consent override planning permission requirements?**

Where there is development associated with the storage or use of hazardous substances, a separate planning permission may also be necessary. Dealing with related applications for hazardous substances consent and for planning permission together should speed up decision making and avoid unnecessary duplication in providing information.

There may be different considerations, and decisions, for related applications. It is important that related decisions are not inconsistent (e.g. conditions containing conflicting requirements). To avoid confusion, detailed control over the manner in which a hazardous substance is to be kept or used is best addressed by hazardous substances consent conditions.

ID 39-008-20140306 Last updated 06 03 2014

### **Are there any special arrangements for statutory undertakers?**

Statutory undertakers are subject to the consent procedure and will apply to a Government department for authorisation of a development involving the hazardous substances.

ID 39-009-20140306 Last updated 06 03 2014

## **3. Deciding whether a hazardous substances consent is needed**

(<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/when-is-consent-needed-for-the-storage-or-use-of-hazardous-substances/>)

### **Deciding whether a hazardous substances consent is needed**

#### **When is consent needed for the storage or use of hazardous substances?**

Consent is needed if specified hazardous substances are stored or used at or above specified controlled quantities. Where more than one substance is present there are procedures for working out whether consent is required. In certain circumstances there are exceptions to these controls.

ID 39-010-20140306 Last updated 06 03 2014

### **What hazardous substances are subject to the controls?**

The list of substances and controlled quantities set out in the Planning (Hazardous Substances) (Amendment) (England) Regulations 2009 [\[2\]](http://www.legislation.gov.uk/uksi/2009/1901/schedule/made) (<http://www.legislation.gov.uk/uksi/2009/1901/schedule/made>) as amended by the Planning (Hazardous Substances) (Amendment) (England) Regulations 2010 [\[3\]](http://www.legislation.gov.uk/uksi/2010/1050/contents/made) (<http://www.legislation.gov.uk/uksi/2010/1050/contents/made>) is in three parts:

- Part A: (<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/how-does-the-planning-system-deal-with-hazardous-substances/when-is-consent-needed-for-the-storage-or-use-of-hazardous-substances/list-of-hazardous-substances-and-controlled-quantities/part-a-named-substances/>) named hazardous substances.
- Part B: (<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/how-does-the-planning-system-deal-with-hazardous-substances/when-is-consent-needed-for-the-storage-or-use-of-hazardous-substances/list-of-hazardous-substances-and-controlled-quantities/part-b-categories-of-substances-and-preparations-not-specifically-named-in-part-a/>) un-named substances that fall within generic categories of substances or preparations.
- Part C: (<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/how-does-the-planning-system-deal-with-hazardous-substances/when-is-consent-needed-for-the-storage-or-use-of-hazardous-substances/list-of-hazardous-substances-and-controlled-quantities/part-c-un-named-substances/>) un-named substances that fall within generic categories of substances or preparations.

consent-needed-for-the-storage-or-use-of-hazardous-substances/list-of-hazardous-substances-and-controlled-quantities/part-c-substances-used-in-an-industrial-chemical-process/) where a controlled quantity of a hazardous substance within either Part A or B may be present only as a result of a loss of control of an industrial chemical process. In this case the consent will be required for the substances used in the relevant industrial chemical process, and not for the substance(s) that may be released in the event of an accident.

Hazardous substances consent is required for hazardous substances present at any establishment that falls within the scope of the Seveso II Directive [\[2\]](http://ec.europa.eu/environment/seveso/legislation.htm) (<http://ec.europa.eu/environment/seveso/legislation.htm>). The concept of 'establishment' is important. It is defined in Article 3 of the directive and means any installation or collection of installations which are within an area of land under the control of the same person or body. In distinguishing one establishment from another it is essential to establish who exactly has control.

ID 39-011-20140306 Last updated 06 03 2014

### When is a hazardous substances consent needed?

Generally, consent is required for the presence of hazardous substances on, over or under land unless below the thresholds listed in the Planning (Hazardous Substances) (Amendment) (England) Regulations 2009 [\[2\]](http://www.legislation.gov.uk/ukxi/2009/1901/schedule/made) (<http://www.legislation.gov.uk/ukxi/2009/1901/schedule/made>) as amended by the Planning (Hazardous Substances) (Amendment) (England) Regulations 2010 [\[2\]](http://www.legislation.gov.uk/ukxi/2010/1050/contents/made) (<http://www.legislation.gov.uk/ukxi/2010/1050/contents/made>):

- If any of the named substances at Part A (<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/how-does-the-planning-system-deal-with-hazardous-substances/when-is-consent-needed-for-the-storage-or-use-of-hazardous-substances/list-of-hazardous-substances-and-controlled-quantities/part-a-named-substances/>) of the regulations are present at a site at or above the specified threshold then a hazardous substances consent is needed;
- In many cases the substances present at a site may not be included in Part A but they may fall within one or more of the 'generic categories' of substances or preparations specified in Part B (<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/how-does-the-planning-system-deal-with-hazardous-substances/when-is-consent-needed-for-the-storage-or-use-of-hazardous-substances/list-of-hazardous-substances-and-controlled-quantities/part-b-categories-of-substances-and-preparations-not-specifically-named-in-part-a/>). If so, and they are present at or above the specified threshold then a consent is required.

A consent may also be required:

- For the presence of hazardous substances even though the amount of the substance present is below the threshold specified for that substance. This may happen because substances within the same generic category, or that have similar hazard characteristics, are added together to determine whether consent is required for some or all of them. This is calculated using an addition rule.
- For substances that appear as a result of a loss of control of an industrial chemical process. In this case if a substance in either Part A or B of the regulations may be present in an amount at or above its controlled quantity (even though the substance would not normally be present) consent is required. The consent would not be for the dangerous substance(s) that would be produced during any loss of control of the chemical process. The consent would be required for the substances present at the site that in the event of a loss of control would lead to the production of the released dangerous substance(s), as specified in Part C

(<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/how-does-the-planning-system-deal-with-hazardous-substances/when-is-consent-needed-for-the-storage-or-use-of-hazardous-substances/list-of-hazardous-substances-and-controlled-quantities/part-c-substances-used-in-an-industrial-chemical-process/>). Advice on this matter is available as part of the pre-application advice provided by the Health and Safety Executive.

ID 39-012-20140306 Last updated 06 03 2014

### What are the generic categories in the list?

The 'generic categories' of substances and preparations for the Seveso II Directive, used in Part B of the regulations, are those set out in the Chemical (Hazards Information and Packaging for Supply) Regulations 1994 [\[2\]](http://www.legislation.gov.uk/ukSI/1994/3247/contents/made) (<http://www.legislation.gov.uk/ukSI/1994/3247/contents/made>). Further information is available from the Health and Safety Executive [\[2\]](http://www.hse.gov.uk/chip/index.htm) (<http://www.hse.gov.uk/chip/index.htm>).

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### What is the addition rule?

The list of hazardous substances subject to these controls is split into Part A (<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/how-does-the-planning-system-deal-with-hazardous-substances/when-is-consent-needed-for-the-storage-or-use-of-hazardous-substances/list-of-hazardous-substances-and-controlled-quantities/part-a-named-substances/>) and Part B (<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/how-does-the-planning-system-deal-with-hazardous-substances/when-is-consent-needed-for-the-storage-or-use-of-hazardous-substances/list-of-hazardous-substances-and-controlled-quantities/part-b-categories-of-substances-and-preparations-not-specifically-named-in-part-a/>). The addition rule applies when substances in Part A are present below their individual controlled quantity, together with substances from the same classification in Part B. It also applies when substances with similar characteristics (as explained in legislation) in Column B are present together.

For the addition rule the following calculation is used:

$$q_1/Q + q_2/Q + q_3/Q + q_4/Q + q_5/Q \dots \geq 1$$

The quantities present for each substance ( $q_x$ ) are expressed as fractions of the controlled quantity for that substance ( $Q$ ). These are then added together. If the sum equals or exceeds 1, then a consent is required for each of the substances included in the addition.

For some substances in Part A of the list, the controlled quantity ( $Q$ ) is different for the purpose of the addition. In this case it is set out in Column 3 of the table in Schedule 1 of the Regulations.

For illustrations of how the addition rule works see examples of the addition rule (<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/when-is-consent-needed-for-the-storage-or-use-of-hazardous-substances/examples-of-the-addition-rule/>).

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### Are there any exceptions to the normal hazardous substances consent requirements?

Exceptions to the normal hazardous substances consent requirements are set out in the section 4(3) of the Planning (Hazardous Substances) Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/10/section/4) (<http://www.legislation.gov.uk/ukpga/1990/10/section/4>) and in the Planning (Hazardous Substances) Regulations 1992 [\[2\]](#)

(<http://www.legislation.gov.uk/ukxi/1992/656/contents/made>) as amended (<http://www.legislation.gov.uk/ukxi/1999/981/contents/made>). For more details on the exceptions see exceptions from hazardous substances consent (<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/when-is-consent-needed-for-the-storage-or-use-of-hazardous-substances/exceptions-from-hazardous-substances-consent/>).

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### **Do I need consent for substances stored in small amounts which do not pose a risk?**

In some circumstances, small amounts of most substances can be disregarded when assessing whether Hazardous Substances Consent is required. This is because of an exemption known as the 2% rule.

Regulations (<http://www.legislation.gov.uk/ukxi/1999/981/regulation/3/made>) stipulate that the exemption can apply up to 2% of the controlled quantity of most substances where its presence cannot initiate a major accident elsewhere on the site. This may be, for example, because it is stored separately or because of the physical properties of the substance as stored on site. However, the exemption does not apply to chlorine, pressurised LPG, hydrogen selenide or selenium hexafluoride. The responsibility for determining whether small quantities of hazardous substances maybe disregarded under this exemption is, initially, for the site operator.

For illustrations of how the 2% rule might apply see the examples of the 2% rule (<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/when-is-consent-needed-for-the-storage-or-use-of-hazardous-substances/examples-of-the-2-rule/>).

ID 39-016-20140306 Last updated 06 03 2014

### **Is hazardous substances consent needed for nuclear sites?**

The hazardous substances consent procedure does not apply to substances that create a hazard from ionising radiation at licensed nuclear sites. However, other hazardous substances present at licensed nuclear sites (those which do not create hazards through ionising radiation) are subject to hazardous substance consent controls.

ID 39-017-20140306 Last updated 06 03 2014

### **Do explosives require hazardous substances consent?**

Explosives controlled by licences issued by the Health and Safety Executive are not included in the list of hazardous substances.

The quantity of explosives licensed by county councils is less than the quantity subject to hazardous substances consent. There should therefore be no need for consent for the presence of these explosives alone. However, consent may be required if present in combination with other hazardous substances.

ID 39-018-20140306 Last updated 06 03 2014

### **How will planning requirements for Heavy Fuel Oils change?**

In early 2014 an amendment to regulations on Hazardous Substances Consent (<http://www.hse.gov.uk/consult/condocs/cd262.htm>) came into force to implement a change to the Seveso II directive. The amendment names Heavy Fuel Oils as a Petroleum Product in the list of hazardous substances. This raises the controlled quantity at which consent for Heavy Fuel Oils is required from 100 to 2,500 tonnes. Where existing consents are no longer required as a result of the




change they will become obsolete. However, existing consents will not become obsolete where they are still required. This could be where those consents already cover Heavy Fuel Oils in quantities at or above the new threshold. This could also be where Heavy Fuel Oils are present with other substances, and consents continue to be required under the addition rule. In such circumstances, existing consents should be considered as continuing to have effect.


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- **List of hazardous substances and controlled quantities**

(<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/when-is-consent-needed-for-the-storage-or-use-of-hazardous-substances/list-of-hazardous-substances-and-controlled-quantities/>)

## **List of hazardous substances and controlled quantities**

The list of hazardous substances and controlled quantities for England below is intended as a guide and should be read in conjunction with the Planning (Hazardous Substances) Regulations 1992 

(<http://www.legislation.gov.uk/ukxi/1992/656/contents/made>) as amended 

(<http://www.legislation.gov.uk/ukxi/1999/981/contents/made>).

- **Part A: Named substances**  
(<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/how-does-the-planning-system-deal-with-hazardous-substances/when-is-consent-needed-for-the-storage-or-use-of-hazardous-substances/list-of-hazardous-substances-and-controlled-quantities/notes-to-part-a/>)
- **Notes to Part A**  
(<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/how-does-the-planning-system-deal-with-hazardous-substances/when-is-consent-needed-for-the-storage-or-use-of-hazardous-substances/list-of-hazardous-substances-and-controlled-quantities/notes-to-part-a/>)
- **Part B: Categories of substances and preparations not specifically named in Part A** (<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/how-does-the-planning-system-deal-with-hazardous-substances/when-is-consent-needed-for-the-storage-or-use-of-hazardous-substances/list-of-hazardous-substances-and-controlled-quantities/part-b-categories-of-substances-and-preparations-not-specifically-named-in-part-a/>)
- **Notes to Part B**  
(<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/how-does-the-planning-system-deal-with-hazardous-substances/when-is-consent-needed-for-the-storage-or-use-of-hazardous-substances/list-of-hazardous-substances-and-controlled-quantities/notes-to-part-b/>)
- **Notes to Parts A and B**  
(<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/how-does-the-planning-system-deal-with-hazardous-substances/when-is-consent-needed-for-the-storage-or-use-of-hazardous-substances/list-of-hazardous-substances-and-controlled-quantities/notes-to-part-a-and-b/>)
- **Part C: Substances used in an industrial chemical process**  
(<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/how-does-the-planning-system-deal-with-hazardous-substances/when-is-consent-needed-for-the-storage-or-use-of-hazardous-substances/list-of-hazardous-substances-and-controlled-quantities/part-c-substances-used-in-an-industrial-chemical-process/>)
- **Notes to Part C**  
(<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/how-does-the-planning-system-deal-with-hazardous-substances/when-is-consent-needed-for-the-storage-or-use-of-hazardous-substances/list-of-hazardous-substances-and-controlled-quantities/notes-to-part-c/>)

consent-needed-for-the-storage-or-use-of-hazardous-substances/list-of-hazardous-substances-and-controlled-quantities/notes-to-part-c/)

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- Examples of the addition rule (<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/when-is-consent-needed-for-the-storage-or-use-of-hazardous-substances/examples-of-the-addition-rule/>)

## Examples of the addition rule

### Example 1

Assume that the following substances are present together at an establishment

Substance/ <i>Category</i>	Amount present	Controlled quantity
Bromine	21.00 tonnes	20.00 tonnes
Chlorine	3.00 tonnes	10.00 tonnes
<i>Very toxic</i>	1.00 tonne	5.00 tonnes
<i>Toxic</i>	5.00 tonnes	50.00 tonnes

The amount of bromine is greater than its controlled quantity. It therefore requires a hazardous substances consent.

None of the other substances or categories of substance exceeds its controlled quantity. But they all have similar hazard characteristics (they are all either very toxic or toxic substances and fall within categories 1, 2 and 10 of Part B of the list). Further information on classifications is available from the Health and Safety Executive [☒](http://www.hse.gov.uk/chip/index.htm) (<http://www.hse.gov.uk/chip/index.htm>). They must therefore be added together. Expressed as fractions of their controlled quantities the sum is:

$$3/10 + 1/5 + 5/50 = 0.30 + 0.20 + 0.10 = 0.60.$$

The sum of the addition is less than 1, so there is no need for a consent for any of these substances, other than the bromine. The addition rule applies for substances in Part A appearing at less than their controlled quantity which are present with substances from Part B with the same classification. As the amount of bromine is greater than its controlled quantity, it is not included in the aggregation calculation.

### Example 2

Substance/ <i>Category</i>	Amount present	Controlled quantity
Bromine	15.00 tonnes	20.00 tonnes
Chlorine	3.00 tonnes	10.00 tonnes
Hydrogen selenide	0.50 tonnes	50.00 tonnes
Ethylene oxide	2.00 tonnes	5.00 tonnes
Propylene oxide	1.00 tonnes	5.00 tonnes

<i>Very toxic</i>	1.00 tonne	5.00 tonnes
<i>Toxic</i>	5.00 tonnes	50.00 tonnes
<i>Oxidising</i>	3.00 tonnes	50.00 tonnes

None of these substances is present at amounts greater than its individual controlled quantity. But substances that have similar hazard characteristics have to be considered under the addition rule.

Bromine, chlorine, hydrogen selenide and the very toxic and toxic substances have similar characteristics. They have to be added together. Expressed as fractions of their controlled quantities the sum is:

$$15/20 + 3/10 + 0.5/50 + 1/5 + 5/50 = 0.75 + 0.30 + 0.01 + 0.20 + 0.10 = 1.36.$$

(Note: the divisor used for hydrogen selenide above is taken from Column 3 in Part A (<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/how-does-the-planning-system-deal-with-hazardous-substances/when-is-consent-needed-for-the-storage-or-use-of-hazardous-substances/list-of-hazardous-substances-and-controlled-quantities/part-a-named-substances/>). The other divisors are taken from Column 2. See Note 4 in the Notes to Parts A and B (<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/how-does-the-planning-system-deal-with-hazardous-substances/when-is-consent-needed-for-the-storage-or-use-of-hazardous-substances/list-of-hazardous-substances-and-controlled-quantities/notes-to-part-a-and-b/>).

The sum of these fractions is greater than 1, so for each of these five substances a hazardous substances consent would be required. Any consent granted by the hazardous substances authority will be in respect of the amount of the hazardous substance present.

Ethylene oxide, propylene oxide and the oxidising substance also have common characteristics. They fall within categories 3-9 of Part B of the list and are added together. Expressed as fractions the addition is:

$$2/5 + 1/5 + 3/50 = 0.40 + 0.20 + 0.06 = 0.66.$$

Since the sum is less than 1, there is no need for a consent for any of these three substances.

*Example 3*

A number of dangerous substances are present at an establishment. None of them are substances named specifically in Part A of the list but they are all within the categories of in Part B. The site operator does not wish to name the individual substances, preferring to apply for consent under their generic headings. The substances shown on the consent application form are as follows:

Substance/Category	Amount present	Controlled quantity
<i>Very toxic</i>	7.00 tonnes	5.00 tonnes
<i>Toxic</i>	35.00 tonnes	50.00 tonnes
<i>Dangerous for the environment</i>	50.00 tonnes	200.00 tonnes

These substances have similar hazard characteristics and they therefore have to be added together for the purpose of determining whether a consent is needed. Expressed as fractions of their controlled quantities the addition is:

$$7/5 + 35/50 + 50/200 = 1.40 + 0.70 + 0.25 = 2.35.$$

The sum of the addition exceeds 1, so for each of the substances a hazardous substances consent is required.

When the aggregation rule is applied only to substances that fall within Part B of the list, all of the substances have to be taken into account, even if an individual substance appears in excess of its controlled quantity. In the above example it would not be permissible to disaggregate the very toxic substances from the calculation.

#### *Example 4*

Substances A, B and C are present at a site and are used in a chemical process to produce substance Z. None of the substances A, B, C or Z used or produced in the chemical process requires a hazardous substances consent. However, in the event of a loss of control of the chemical process, it is known that in some circumstances A, B and C will react to produce a different substance, ZX. ZX is included in of the list of hazardous substances, at an amount that exceeds its controlled quantity. A consent would therefore be required for substances A and B and C.


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- **Exceptions from hazardous substances consent**

(<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/when-is-consent-needed-for-the-storage-or-use-of-hazardous-substances/exceptions-from-hazardous-substances-consent/>)

### **Exceptions from hazardous substances consent**

#### *Temporary presence of hazardous substances for a short time while in transit*


The temporary presence 

(<http://www.legislation.gov.uk/uksi/1992/656/regulation/4/made>) of a hazardous substance does not need to be taken into account if it is being transported from one place to another, unless it is unloaded or present on land which already has consent for other hazardous substances. It is up to the hazardous substances authority to take a view on whether the presence of a hazardous substance is temporary.

Substances in transit, unloaded to transfer to another means of transport, are likely to be exempt if there was clear intention to transfer to another means of transport as opposed to going into storage. It is for the hazardous substances authority to determine whether a consent would be required based on the requirements of legislation.

This would not apply if the temporary presence is on a site where consent is already required for other hazardous substances which are not being transported. In these circumstances, the substances present temporarily will have to be taken into account in calculating the total quantity for consent.

#### *Hazardous substances in pipelines*

Consent is not generally required for hazardous substances in pipelines  (<http://www.legislation.gov.uk/uksi/1992/656/regulation/4/made>). However where pipelines on, over, or under an establishment – and connected to it – carry hazardous substances, these will require consent. Consent is also required for pipelines carrying substances from one part of the establishment to another.

#### *Harbours assisting ships in an emergency*

Where ships or other sea vessels containing hazardous substances are allowed to enter a harbour in a dangerous condition there is an exemption from needing consent. The harbourmaster may waive normal requirements for advance notice in the interests of health and safety.

In such cases substances may need to be removed and stored as a matter of urgency. There is an exemption for 14 days from unloading to give time for suitable alternative storage arrangements to be made.

*Waste landfill sites*

Hazardous substances at waste landfill sites are exempt from the consent procedures. There may be controls on substances in the waste management licence issued by the Environment Agency. The exemption applies only to hazardous substances at a waste landfill site and not to substances present at other disposal sites (e.g. at waste disposal incinerators).

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- Examples of the 2% rule (<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/when-is-consent-needed-for-the-storage-or-use-of-hazardous-substances/examples-of-the-2-rule/>)

**Examples of the 2% rule**

*Example 1*

A site has a number of locations where small quantities of oxygen are stored, each less than 4 tonnes in size. The total quantity stored is greater than the controlled quantity for oxygen, which is 200 tonnes. However, all of the storage containers have suitable separation such that they are not capable of causing fire escalation which could become the initiator of a major accident elsewhere on the site. Under such circumstances the site does not require hazardous substances consent.

*Example 2*

A site has a small number of large bulk oxygen vessels which in aggregate can store a total of 196 tonnes. In addition there are a number of locations where small quantities of oxygen are stored, each less than 4 tonnes in size. The total quantity stored is greater than the controlled quantity for oxygen, which is 200 tonnes. However, all of the small storage containers of less than 4 tonnes have suitable separation such that they are not capable of causing fire escalation which could become the initiator of a major accident elsewhere on the site. Under such circumstances the small containers do not need to be included in the total quantity and consequently the site does not require hazardous substances consent.

*Example 3*

The following substances are present at a site, each stored in a single separate container.

Substance/Category	Amount present	Controlled quantity
Bromine	8.00 tonnes	20.00 tonnes
Ethyleneimine	3.00 tonnes	10.00 tonnes
Hydrogen selenide	0.50 tonnes	50.00 tonne
<i>Very toxic</i>	1.00 tonne	5.00 tonnes
<i>Toxic</i>	5.00 tonnes	50.00 tonnes

None of the substances present are at amounts greater than their individual controlled quantities, but they all have similar characteristics and have to be added together. Expressed as fractions of their controlled quantities the sum is:

$$8/20 + 3/10 + 0.5/50 + 1/5 + 5/50 = 0.40 + 0.30 + 0.01 + 0.20 + 0.10 = 1.01.$$

(Note: the divisor used for hydrogen selenide above is taken from Column 3 in Part A (<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/how-does-the-planning-system-deal-with-hazardous-substances/when-is-consent-needed-for-the-storage-or-use-of-hazardous-substances/list-of-hazardous-substances-and-controlled-quantities/notes-to-part-a/>). The other divisors are taken from Column 2. See Note 4 in the Notes to Parts A and B (<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/how-does-the-planning-system-deal-with-hazardous-substances/when-is-consent-needed-for-the-storage-or-use-of-hazardous-substances/list-of-hazardous-substances-and-controlled-quantities/notes-to-part-a-and-b/>).

The sum of these fractions is greater than 1, so for each of the substances the controlled quantity is considered to be present and a hazardous substances consent would be required for each of them.

If the very toxic substance was stored in two separate containers one of which contained 0.9 tonne and the other 0.1 tonne: then the calculation and outcome could be different. The hazardous substance in the smaller container represents 2% of the controlled quantity for that substance. If the 0.1 tonnes of very toxic material could not initiate a major accident elsewhere on the site (for example because it is stored separately or because of the physical properties of the very toxic substance as stored on site) it maybe disregarded when calculating the aggregate quantity. So the calculation would then be:

$$8/20 + 3/10 + 0.5/50 + 0.9/5 + 5/50 = 0.40 + 0.30 + 0.01 + 0.18 + 0.10 = 0.99.$$

The sum of these fractions is less than 1, so there is no need for a consent for any of the substances.

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#### 4. Applying for hazardous substances consent

(<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/how-are-applications-for-consent-made/>)

##### **Applying for hazardous substances consent**

##### **How are applications for consent made?**

If consent is required, applicants will need to apply for consent to the hazardous substances authority. It is important that applications provide all the relevant information as decisions on incomplete applications can be delayed.

The content of the forms to apply for consent are prescribed in Schedule 2 of the Planning (Control of Major-Accident Hazards) Regulations 1999 [\[2\]](http://www.legislation.gov.uk/uksi/1999/981/schedule/2/made) (<http://www.legislation.gov.uk/uksi/1999/981/schedule/2/made>). Form 1 is for general applications. Form 2 is for applications to remove conditions attached to a previous consent. Form 2 should also be used for an application to continue with a consent following a partial change in the control of the land. Copies of the relevant application form should be available from the hazardous substances authority. It is important that the form contains all of the information required. For more information on what needs to be provided in an application, see information needed in an application (<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/how-does-the-planning-system-deal-with-hazardous-substances/how-are-applications-for-consent-made/information-needed-in-an-application/>).

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### **How can applicants help make sure a decisions are not delayed?**

Incomplete applications can delay decisions. Early discussions with the hazardous substances authority and the Health and Safety Executive can help to ensure the quality of their applications and prevent delays. The Health and Safety Executive will give pre-application advice to new operators of hazardous installations and to nationally significant infrastructure project applicants. If applications are incomplete, or information required by the Health and Safety Executive is not provided, this can cause delays for applicants.

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### **Who can see the information provided in an application?**

The application form will be used to make the decision on consent by the hazardous substances authority and for consultation with the Health and Safety Executive, Environment Agency and Natural England where appropriate. Applications, including plans, will be open to inspection by the public. Applicants who are in doubt as to what could be disclosed may want to have a prior informal discussion with the hazardous substances authority.

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### **Do applicants need to do to tell people around the site that they are making an application?**

Applicants need to tell others around the site that they intend to make an application. This allows people living and working in the area to make their views known to the hazardous substances authority.

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### **How do applicants tell local people about their application?**

Before submitting an application, applicants need to publicise that they intend to do so. This gives the opportunity for people to review the application and accompanying documentation. Applicants should have a completed application form and accompanying documents ready when publicising. For more details see information needed in an application

([http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/how-does-the-planning-system-deal-with-hazardous-substances/how-are-applications-for-consent-made/information-needed-in-an-application/#paragraph\\_033](http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/how-does-the-planning-system-deal-with-hazardous-substances/how-are-applications-for-consent-made/information-needed-in-an-application/#paragraph_033)).

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### **Do applicants need to own the site to apply for consent?**

Applicants do not need to own the application site in order to make an application for consent. However, owners should be given the opportunity to comment on the application. Every application must therefore also be accompanied by a signed certificate relating to ownership. This will be one of the certificates (A-D) set out in Form 5 in Schedule 2 of the Planning (Hazardous Substances) Regulations 1992 [\[2\]](http://www.legislation.gov.uk/uksi/1992/656/schedule/2/made)

(<http://www.legislation.gov.uk/uksi/1992/656/schedule/2/made>).

Applicants should provide a copy of:

- Certificate A if they are the freeholder of all the land and there are no leaseholders with leases of 7 or more years;
- Certificate B if not, and they know the names and addresses of the other owners; or
- Certificate C or D if they cannot ascertain all, or some, of the other owners in order to serve individual notices on them.

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### **How much does an application cost?**

For applications where no one substance exceeds twice the controlled quantity, the fee is £250. For proposals involving the presence of a substance in excess of twice the controlled quantity, the fee is £400. Where an application is for the removal of conditions attached to a grant of consent or for the continuation of a consent upon partial change in ownership of the land, the fee is £200.

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### **How can Hazardous Substances Authorities apply for consent themselves?**

Where a hazardous substances authority in England wishes to obtain a hazardous substances consent itself, it will apply to the Secretary of State for Communities and Local Government by sending the application to the National Planning Casework Unit at the following addresses:


National Planning Casework Unit

5 St Philips Place

Colmore Row

Birmingham

B3 2PW

[npcu@communities.gsi.gov.uk](mailto:npcu@communities.gsi.gov.uk)  (mailto:npcu@communities.gsi.gov.uk)


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### **Can hazardous substances consent be given under Local and Neighbourhood Development Orders?**

Local and Neighbourhood Development Orders allow for development to take place without the need for an express grant of planning permission. However they cannot provide an exemption from hazardous substances consent, which would need to be obtained in the normal way. Further guidance on local and neighbourhood development orders near hazardous installations see 'What about Local and Neighbourhood Development Orders?' ([http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/handling-development-proposals-around-hazardous-installations/#paragraph\\_070](http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/handling-development-proposals-around-hazardous-installations/#paragraph_070)).

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### **Do hazardous substances controls apply to Crown land?**

Section 79 of the Planning and Compulsory Purchase Act 2004  (<http://www.legislation.gov.uk/ukpga/2004/5/part/7/chapter/1>) applies hazardous substances controls to Crown land.

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- **Information needed in an application**

(<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/how-are-applications-for-consent-made/information-needed-in-an-application/>)

### **Information needed in an application**

The forms to apply for consent are prescribed in Schedule 2 of the Planning (Control of Major-Accident Hazards) Regulations 1999 [\[2\]](#)  
(<http://www.legislation.gov.uk/ukSI/1999/981/schedule/2/made>).

Applicants should:

- Answer the questions on the form. This includes information about the substances for which consent is required (referring to the most up to date list of substances) and the manner in which the substances are to be kept and used.
- Provide relevant maps and drawings. Firstly, a site map, to a scale of at least 1:10,000, identifying the application site and showing National Grid lines and reference numbers. Secondly, a substance location plan, to a scale of at least 1:2,500, showing any area of the site where the substance is to be stored. It is helpful if topographical features of the site are indicated. Where existing and proposed works are shown on the same drawing, new works should be easily distinguishable.
- Where the substance is to be used in a manufacturing, treatment or other industrial process, include the location of the major items of plant involved in that process. Also other details such as maximum temperature and maximum pressure.
- Provide information about access points to and from the land.
- Provide information about how they have told people about the application.
- Provide a certificate (Form 5 in the regulations) explaining who owns the site.
- Provide a copy of any existing hazardous substances consent.

This information should be provided for each hazardous substance or generic category for which consent is required.

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### **Notifying local people about an application**

The requirements for notifying people about an application for hazardous substances consent are set out in the Planning (Hazardous Substances) Regulations 1992 [\[2\]](#) (<http://www.legislation.gov.uk/ukSI/1992/656/regulation/6/made>).

Three steps are needed:

- A notice of the application should be published in a local newspaper. Form 3 in the regulations [\[2\]](#) (<http://www.legislation.gov.uk/ukSI/1992/656/schedule/2/made>) sets out how this should look. This must be published within the 21 days before the date on which the application is made. The applicant is responsible for arranging for the documents to be available for inspection at a suitable place within the locality.
- A copy of the notice should be published at the application site. This should be easily legible for people without needing to go onto the land. The notice should be displayed for at least seven days of the 21 day period.
- When the application is made, the applicant will need to certify that this publicity has happened by providing a copy of the newspaper notice (verifying that it has been published and stating the name and date of publication). A certificate (Form 4 in regulations) should confirm that the site notice was

displayed as required. If the site notice was not displayed, through no fault of the applicant, an explanation should be given.

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## 5. Deciding applications for hazardous substances consent

(<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/deciding-applications-for-hazardous-substances-consent/>)

### **Deciding applications for hazardous substances consent**

#### **What does the hazardous substances authority do when it receives an application?**

The first thing a hazardous substances authority ([http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/what-is-the-purpose-of-hazardous-substances-consent/#paragraph\\_006](http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/what-is-the-purpose-of-hazardous-substances-consent/#paragraph_006)) will do is to make sure the application is in order. This will involve ensuring it meets the requirements set out in the Planning (Hazardous Substances) Regulations 1992 [\[2\]](http://www.legislation.gov.uk/uksi/1992/656/regulation/5/made) (<http://www.legislation.gov.uk/uksi/1992/656/regulation/5/made>). If the application is in order, the hazardous substances authority will acknowledge it. It will place a copy on the register of consent applications, which is available to anyone who wants to see it. If it does not consider the application is in order it will tell the applicant why.

ID 39-043-20140306 Last updated 06 03 2014

#### **What expert advice should the hazardous substances authority seek?**

Before deciding on a consent application, the hazardous substances authority ([http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/what-is-the-purpose-of-hazardous-substances-consent/#paragraph\\_006](http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/what-is-the-purpose-of-hazardous-substances-consent/#paragraph_006)) should consult the Health and Safety Executive, Environment Agency and any other bodies as required by legislation. These include fire and civil defence authorities, other relevant planning authorities and public utilities. Natural England should also be consulted where it appears to the hazardous substances authority that an area of particular natural sensitivity or interest may be affected. The hazardous substances authority must give consultees at least 28 days to comment.

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#### **What is the role of the Health and Safety Executive and Environment Agency?**

The role of Health and Safety Executive and the Environment Agency is to advise the hazardous substances authority on the risks arising from the presence of hazardous substances. The Health and Safety Executive has the expertise to assess the risks to people, and the Environment Agency risks to the environment. However, the decision as to whether the risks from hazardous substances are tolerable in the context of existing and potential uses of neighbouring land is made by the hazardous substances authority.

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#### **What will the hazardous substances authority consider in making a decision?**

Before reaching a decision, the hazardous substances authority will weigh up all the comments received, including those from the Health and Safety Executive. It will take account of local needs and conditions, the local plan, and any other material considerations.

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### **What consideration should be given to the Health and Safety Executive's advice?**

In view of its acknowledged expertise in assessing the off-site risks presented by the use of hazardous substances, any advice from Health and Safety Executive that hazardous substances consent should be refused, should not be overridden without the most careful consideration. **Where a hazardous substances authority is minded to grant consent against Health and Safety Executive advice, it should notify the Health and Safety Executive** [\[2\]](http://www.legislation.gov.uk/ukxi/1992/656/made) (<http://www.legislation.gov.uk/ukxi/1992/656/made>) **and allow 21 days for the Executive to give further consideration.** During that period the Health and Safety Executive will consider whether to request the Secretary of State for Communities and Local Government to call-in the application for determination.

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### **What decision can the hazardous substances authority make on the consent?**

It may grant consent, either with or without conditions, or may refuse it. If it refuses consent or grants it subject to conditions, it should provide full reasons for the decision. This will help the applicant to decide whether or not to contest the decision. The requirements for making a decision are set out in the Planning (Hazardous Substances) Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/10/section/9) (<http://www.legislation.gov.uk/ukpga/1990/10/section/9>).

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### **What conditions can be imposed on a consent?**

The hazardous substances authority can impose conditions [\[2\]](http://www.legislation.gov.uk/ukpga/1990/10/section/10) (<http://www.legislation.gov.uk/ukpga/1990/10/section/10>), including how and where substances are kept and the times substances may be present or requiring permanent removal within a certain time.

Conditions on how a substance is to be kept or used should only be imposed if the Health and Safety Executive has advised that such conditions should be imposed. Where an authority is considering imposing a condition restricting where a substance may be present within a site, it should try to avoid imposing undue restrictions on the relatively small amounts of that substance being elsewhere. For example, a condition may allow a hazardous substance to be stored in a moveable container in a different area of a site from where it has previously been stored provided the quantity does not exceed 10 per cent of the controlled quantity set out above. This avoids situations where, for example, relatively small amount of a substance in a moveable container in a different part of the site (e.g. a gas canister to service a staff kitchen), or which is covered by the '2% rule

([http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/how-does-the-planning-system-deal-with-hazardous-substances/when-is-consent-needed-for-the-storage-or-use-of-hazardous-substances/#paragraph\\_016](http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/how-does-the-planning-system-deal-with-hazardous-substances/when-is-consent-needed-for-the-storage-or-use-of-hazardous-substances/#paragraph_016)), would otherwise be a breach.

ID 39-049-20140306 Last updated 06 03 2014

## Who else could decide applications for consent?

The hazardous substances authority will usually decide the application. The Secretary of State also has the power to call in an application [\[2\]](http://www.legislation.gov.uk/ukpga/1990/10/crossheading/secretary-of-states-powers) (<http://www.legislation.gov.uk/ukpga/1990/10/crossheading/secretary-of-states-powers>) for his own determination. This will be very much the exception, for example where an application raises issues of more than local importance. Where an application is called-in, the hazardous substances authority must inform the applicant.

Under the nationally significant infrastructure planning regime [\[2\]](http://www.legislation.gov.uk/ukpga/2008/29/contents) (<http://www.legislation.gov.uk/ukpga/2008/29/contents>) hazardous substances consent can be deemed to be granted by a Development Consent Order. The aim in doing so is to provide a 'one stop shop' for consenting for nationally significant infrastructure projects. A deemed consent can also be issued in certain circumstances by the Government where consent is required for a development by a statutory undertaker or local authority which requires Government authorisation.

ID 39-050-20140306 Last updated 06 03 2014

## How long will it take to decide on an application for consent?

A decision should be given within eight weeks from receipt of a valid application. Alternatively, it should be given within any extended period agreed in writing between the applicant and hazardous substances authority. In order to avoid delay it is important that the application contains all of the necessary information. Early discussions between the applicant, Health and Safety Executive and hazardous substances authority can help ensure this.

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## What if an applicant is not happy with the decision or the hazardous substances authority is taking too long to reach it?

It is important to consider the reasons for any refusal or conditions. It may be possible to overcome objections by changing the proposal in some way and submitting a new application. Discussions between the hazardous substances authority and applicant can help.

If a hazardous substances authority is taking longer than eight weeks to make a decision it is possible to appeal, although this may take longer than waiting for the authority to make a decision.

ID 39-052-20140306 Last updated 06 03 2014

## Can applicants appeal against the decision on an application for consent?

An appeal can be made to the Secretary of State if the hazardous substances authority:

- refuses to grant consent;
- refuses an application for a continuation of consent upon change in ownership of part of the land;
- refuses to grant any consent, agreement or approval required by a condition imposed on a consent;
- refuses an application to vary or remove conditions attached to a previous grant of consent;

- grants consent but imposes conditions which are unacceptable to the applicant; or
- fails to reach a decision within the statutory time limit of eight weeks, or any longer period agreed with the applicant.

Hazardous substances consent appeals [\[2\]](#)

(<http://www.planningportal.gov.uk/planning/countryside/environmental/hazsubstances>) may be made at any time within six months of the decision or, if no decision has been made, within six months from when a decision should have been given. This gives the applicant time to discuss matters with the hazardous substances authority to see if there is any possibility of finding a way of overcoming its objections bearing in mind that an appeal is intended to be a last resort.

ID 39-053-20140306 Last updated 06 03 2014

6. After consent has been granted (<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/after-consent-has-been-granted/>)

### **After consent has been granted**

#### **Can the consent be used straight away?**

The applicant can use the consent immediately unless the consent contains conditions that do not allow this. There may be other approvals required in connection with consent (e.g. planning permission if development is required).

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#### **Who can implement the consent?**

Unless a condition is imposed limiting use of the consent to a specified person or company the consent will normally run with the land, rather than being personal to the applicant. This means that if the land is sold in its entirety, the new owner will be able to implement the consent. Where there is a partial change in control of land with a consent (e.g. part of the land is sold, but not all of it) that consent is revoked unless an application to continue has been made.

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#### **Can conditions be altered?**

An application can be made to the hazardous substances authority to vary or revoke any conditions (Form 2 in the regulations [\[2\]](#) (<http://www.legislation.gov.uk/uksi/1999/981/schedule/2/made>)). In considering applications the hazardous substances authority can only consider the conditions; it cannot overturn the original decision by refusing consent outright. If the hazardous substances authority decides that the conditions should be varied or removed, it will grant a new consent. If it decides that the conditions should not be changed, the application will be refused, but the original consent will still stand. The same publicity procedures will apply as for applications for a new consent.

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#### **Will a hazardous substances consent affect decisions on future development nearby?**

Where a consent exists it will be taken into account in deciding nearby applications for planning permission

(<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/handling-development-proposals-around-hazardous-installations/>) and in

preparing local plans

(<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/dealing-with-hazardous-substances-in-plan-making/>).

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### **What happens if the consent is not implemented?**

If the substances with consent have not been present for five years, the hazardous substances authority may revoke the consent without needing to pay compensation. There are also other circumstances where consent can be revoked.

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### **Can hazardous substances authorities revoke or change a consent?**

The hazardous substances authority can revoke or modify a consent. This requires confirmation by the Secretary of State, and the hazardous substances authority would be liable to pay compensation. There are also specific circumstances where a consent can be revoked, set out in section 14 of the Planning (Hazardous Substances) Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/10/section/14) (<http://www.legislation.gov.uk/ukpga/1990/10/section/14>).

In some cases the use of the land with a consent may change. For example, there have been situations where sites with consent have since been converted into a car park. In these situations the hazardous substances authority can revoke the consent. Where a consent has not been relied on for five years, or the use of the land has changed materially since the consent was granted, it maybe revoked without compensation being payable.

If there is a change to the person in control of part of the land the consent is automatically revoked unless an application for continuation has been made. It is likely that a hazardous substances authority will need to modify information in the consent or conditions. But it should rarely be appropriate to impose more onerous conditions or revoke a consent.

Applications for revocation that are subject to confirmation by the Secretary of State should be sent to the National Planning Casework Unit at the following addresses:

National Planning Casework Unit

5 St Philips Place

Colmore Row

Birmingham

B3 2PW

[npcu@communities.gsi.gov.uk](mailto:npcu@communities.gsi.gov.uk) [\[3\]](mailto:npcu@communities.gsi.gov.uk) (<mailto:npcu@communities.gsi.gov.uk>)

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### **What happens if an operator gives up a consent?**

If an operator wants to give up the consent or reduce the maximum quantity of hazardous substances for which it has consent it should discuss this with the hazardous substances authority. There is no procedure for giving up consent set out in legislation however alternative arrangements may be made (e.g. the hazardous substances authority may revoke the consent and make a separate agreement with the operator to waive compensation).

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## Who keeps a register of applications and consents?

Hazardous substances authorities keep a register containing information about applications for hazardous substances consent.

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## 7. Breaches of hazardous substances control

(<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/breaches-of-hazardous-substances-control/>)

### Breaches of hazardous substances control

#### Who is responsible for ensuring hazardous substances consent requirements are complied with?

Enforcement of hazardous substances controls is the responsibility of the hazardous substances authority. The authority will liaise with the Health and Safety Executive where contraventions give rise to health and safety concerns. The Health and Safety Executive may consider whether action is also appropriate under the Health and Safety at Work etc Act 1974 [\[2\]](http://www.legislation.gov.uk/ukpga/1974/37/contents) (<http://www.legislation.gov.uk/ukpga/1974/37/contents>).

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#### What happens if somebody operates without consent?

Contravention of hazardous substances control can be a serious and immediate risk to people in the area. There are several options [\[2\]](http://www.legislation.gov.uk/ukpga/1990/10/crossheading/contraventions-of-hazardous-substances-control) (<http://www.legislation.gov.uk/ukpga/1990/10/crossheading/contraventions-of-hazardous-substances-control>) for a hazardous substances authority if somebody is operating without consent, or in contravention of a condition. In deciding a course of action the hazardous substances authority will:

- take account of the nature of the unauthorised use;
- the degree of risk arising from it; and
- whether the breach is intentional.

In less serious cases the hazardous substances authority can negotiate with the operator to resolve the situation without formal action. For example, a hazardous substances authority may ask an operator to apply for consent retrospectively. Alternatively, the hazardous substances authority can serve a contravention notice, setting out what should be done to rectify the situation.

The hazardous substances authority can also ask for a court injunction to restrain a breach of control or prosecute. The fact that contravention is a criminal offence reflects the potential gravity of such a breach.

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#### What is a contravention notice?

A contravention notice would set out the alleged contravention and the steps required to remedy that contravention. Requirements for a notice are set out in legislation [\[2\]](http://www.legislation.gov.uk/ukpga/1990/10/crossheading/contraventions-of-hazardous-substances-control) (<http://www.legislation.gov.uk/ukpga/1990/10/crossheading/contraventions-of-hazardous-substances-control>). It would be served on:

- the owner;
- the person in control of the land; and
- any other person with an interest in the land to which the notice relates.

The hazardous substances authority should also send a copy of the notice to the Health and Safety Executive. The notice should be accompanied by information about the right to appeal, the grounds for which are set out in legislation.

The hazardous substances authority can withdraw a contravention notice at any time.

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## 8. Dealing with hazardous substances in plan-making

(<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/dealing-with-hazardous-substances-in-plan-making/>)

### Dealing with hazardous substances in plan-making

#### What information is available to local planning authorities in making plans?

Local planning authorities should know the location of hazardous installations as they will have been informed of consultation zones by the Health and Safety Executive and consultation distances by the Office for Nuclear Regulation [\(http://www.hse.gov.uk/nuclear/\)](http://www.hse.gov.uk/nuclear/). For licensed explosives sites the license holder will provide the local authority with a safeguarding plan for the site. Plan preparation can be informed by taking into account the likely advice on applications within these zones. This will also enable the local planning authority to have regard to the objective of preventing major accidents and limiting their consequences.

If a neighbourhood plan is being developed in an area where a consultation zone applies, local planning authorities will want to take this into account when exercising their duty to advise and assist (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/what-is-neighbourhood-planning/>).

It is good practice to discuss any emerging issues with the Health and Safety Executive (or Office for Nuclear Regulation [\(http://www.hse.gov.uk/nuclear/\)](http://www.hse.gov.uk/nuclear/)) at the earliest opportunity.

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#### How should businesses that need hazardous substances consent and local authorities work together?

It is good planning practice for local authorities and businesses that need hazardous substances consent to work together when Local Plans (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/what-is-the-role-of-a-local-plan/>) are being prepared. This can help to reduce the potential for conflicting land uses and promote safety of people and protection of the environment.

The National Planning Policy Framework ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/#paragraph\\_21](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/#paragraph_21)) sets out that local planning authorities should support existing business sectors and, where possible, identify and plan for new or emerging sectors likely to locate in their area. This may include the chemicals industry, distributors and other businesses that require hazardous substances consent.

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### Related policy

#### National Planning Policy Framework

- Paragraph 21 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/#paragraph\\_21](http://planningguidance.com/sustainable-development/delivering-sustainable-development/#paragraph_21))



The chemicals industry is an important part of the UK economy. Local planning authorities can use the duty to co-operate (<http://planningguidance.communities.gov.uk/blog/guidance/duty-to-cooperate/>) to work strategically with neighbouring authorities and local enterprise partnerships to understand the needs of business in their area, including the chemicals industry.

In wholly or predominantly business areas that have been designated as such for neighbourhood planning, businesses can take the lead and the local planning authority can work with business to support their ambitions, including early consideration of the need for hazardous substances consent ([http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/how-are-applications-for-consent-made/#paragraph\\_039](http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/how-are-applications-for-consent-made/#paragraph_039)).

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### **What can be done to overcome conflicts between hazardous substances consents and the demand for development?**

It is good practice for local planning authorities to work proactively with businesses to consider how any conflicts between businesses requiring hazardous substances consents, and the need for development, can be overcome.

Reviews of consents to ensure they are still in use could help identify where consents may be redundant

([http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/handling-development-proposals-around-hazardous-installations/#paragraph\\_074](http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/handling-development-proposals-around-hazardous-installations/#paragraph_074)) or could be given up

([http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/after-consent-has-been-granted/#paragraph\\_060](http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/after-consent-has-been-granted/#paragraph_060)).

If a hazardous substances consent is no longer used it may be appropriate for it to be revoked ([http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/after-consent-has-been-granted/#paragraph\\_059](http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/after-consent-has-been-granted/#paragraph_059)) so as not to prevent development in the vicinity. Hazardous substances consent can be revoked in other situations, although this may result in compensation being payable.



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## **9. Handling development proposals around hazardous installations**

(<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/handling-development-proposals-around-hazardous-installations/>)

### **Handling development proposals around hazardous installations**

#### **What expert advice should be sought on planning applications around hazardous installations?**


Local planning authorities should know the location of hazardous installations as they will have been informed of consultation zones by the Health and Safety Executive and consultation distances by the Office for Nuclear Regulation  (<http://www.hse.gov.uk/nuclear/>). For licensed explosives sites the license holder will provide the local authority with a safeguarding plan for the site. Schedule 5 of the Town and Country Planning (Development Management Procedure) (England) Order 2010 

(<http://www.legislation.gov.uk/uksi/2010/2184/schedule/5/made>) requires local planning authorities to consult

(<http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/>) the Health and Safety Executive on applications above certain thresholds in these consultation zones.

They must consult the Health and Safety Executive on applications in consultation zones for residential development, and large retail, office or industrial developments. They must also consult the Health and Safety Executive on applications which are likely to result in an increase in the number of people working in or visiting the notified area. Particular regard should be had to children, older people or disabled people. There may be particular issues to consider for hotels and similar developments where people may be unfamiliar with their surroundings, or which may result in a large number of people in one place. Within consultation zones certain permitted development rights may not apply (<http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-is-development/>). For each type of development, the Health and Safety Executive's advice to local planning authorities will take account of the maximum quantity of a substance permitted by a hazardous substances consent and any conditions attached to it.

Local planning authorities must also consult with Health and Safety Executive, Environment Agency and, where the development could affect a sensitive natural area, with Natural England. This is necessary for new establishments, modifications to existing establishments, and development (including transport links) in the vicinity of existing establishments, which could increase the risk or consequences of major accident.

Local planning authorities should also consult the Office for Nuclear Regulation  (<http://www.hse.gov.uk/nuclear/>) in certain circumstances.


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### **How should applications for planning permission which are below thresholds for consultation be dealt with?**

Local planning authorities should be alert to encroachment of development in consultation zones, including where larger developments are divided between smaller applications to fall below consultation thresholds. Unplanned and encroaching development can add costs for businesses to provide additional safety measures, and risk increased consequences should a major accident occur. Local planning authorities can consult the Health and Safety Executive on other applications (<http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/>), for example where several planning applications fall below the thresholds in the regulations but would require consultation if they had been submitted as one larger application.

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### **How will the Health and Safety Executive be consulted?**

PADHI (Planning Advice for Developments near Hazardous Installations) is the name of the methodology used by Health and Safety Executive to give land use planning advice. Health and Safety Executive has developed a software version of this methodology, known as PADHI+  (<http://www.hse.gov.uk/landuseplanning/>), which is available on-line to planning authorities, to enable them to consult Health and Safety Executive directly for advice on developments around major hazard sites and pipelines. As a statutory consultee (<http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/what-consultation-takes-place-before-a-planning-application-is-decided-and-with-who/>), the Health and Safety Executive will provide advice within 21 days.

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### **What consideration will the local planning authority give to Health and Safety Executive advice?**

Health and Safety Executive's role is an advisory one. It has no power to direct refusal of planning permission or of hazardous substances consent. Where Health and Safety Executive advises that there are health and safety grounds for refusing, or imposing conditions on an application, it will, on request, explain to the local planning authority the reasons for its advice.

The decision on whether to grant permission rests with the local planning authority. In view of its acknowledged expertise in assessing the off-site risks presented by the use of hazardous substances, any advice from Health and Safety Executive that planning permission should be refused for development for, at or near to a hazardous installation or pipeline **should not be overridden without the most careful consideration.**

Where that advice is material to any subsequent appeal, the Health and Safety Executive may provide expert evidence at any local inquiry. More information on the issues the Health and Safety Executive takes into account when advising on applications can be found on the HSE Land Use Planning website [\[2\]](http://www.hse.gov.uk/landuseplanning/) (<http://www.hse.gov.uk/landuseplanning/>).

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### **What happens if a local planning authority would like to give planning permission against Health and Safety Executive advice?**

Where a local planning authority is minded to grant planning permission against Health and Safety Executive's advice, **it should give Health and Safety Executive advance notice of that intention, and allow 21 days from that notice for the Health and Safety Executive to give further consideration to the matter.** This will enable the Health and Safety Executive to consider whether to request the Secretary of State for Communities and Local Government to call-in the application. The Secretary of State exercises the power to call-in [\[2\]](https://www.gov.uk/government/collections/planning-applications-called-in-decisions-and-recovered-appeals) (<https://www.gov.uk/government/collections/planning-applications-called-in-decisions-and-recovered-appeals>) applications very selectively.

Health and Safety Executive will normally consider its role to be discharged when it is satisfied that the local authority is acting in full understanding of the advice received and the consequences that could follow. It will consider recommending call-in action only in cases of exceptional concern or where important policy or safety issues are at stake.

Local planning authorities should notify the Health and Safety Executive where planning permission has been granted in the Safeguarding Zone of a Health and Safety Executive licensed explosives site.

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### **How can conflicts between consents and development be addressed?**

It is good planning practice for local planning authorities to work proactively with businesses that have consent where there is potential conflict between the existence of a consent and a local authority's planning priorities.

Reviews of consents to ensure they are still in use could help identify where consents may be redundant or could be given up ([http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/after-consent-has-been-granted/#paragraph\\_060](http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/after-consent-has-been-granted/#paragraph_060)).

It is also important to plan strategically for the chemicals industry and other uses that require hazardous substances consents. Business, industry and local planning authorities working together when Local Plans are being prepared ([http://planningguidance.communities.gov.uk/blog/guidance/local-plans/preparing-a-local-plan/#paragraph\\_006](http://planningguidance.communities.gov.uk/blog/guidance/local-plans/preparing-a-local-plan/#paragraph_006)) can help to reduce future problems and promote safety of people and protection of the environment.


ID 2a-073-20140306 Last updated 06 03 2014


### **If hazardous substances consent is no longer required will it still prevent development nearby?**

Redundant hazardous substances consents can be a barrier to development. Sometimes a consent is no longer required by an operator. For example, a facility may have shut down or a site redeveloped. However, unless the hazardous substances consent is revoked ([http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/how-does-the-planning-system-deal-with-hazardous-substances/can-the-consent-be-used-straight-away/#paragraph\\_059](http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/how-does-the-planning-system-deal-with-hazardous-substances/can-the-consent-be-used-straight-away/#paragraph_059)) then consultation zones are still likely to apply. Hazardous substances authorities should be proactive about revoking consents that no are no longer required.

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### **What about development around nuclear installations?**

Consultation requirements can vary between sites for proposed developments in the vicinity of licensed nuclear installations. Administrative arrangements exist under which the Office for Nuclear Regulation  (<http://www.hse.gov.uk/nuclear/>) specify consultation zones and the type of developments on which it should be consulted.

Where the local planning authority is in any doubt about whether the Office for Nuclear Regulation should be consulted in a particular case  (<http://www.hse.gov.uk/nuclear/land-use-planning.htm>), it should contact them at the earliest opportunity.

Policy on public safety from major accidents – including those at nuclear installations – is set out at paragraphs 172 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph\\_172](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph_172)) and 194 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/decision-taking/#paragraph\\_194](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/decision-taking/#paragraph_194)) of the National Planning Policy Framework.

Given their statutory role in public safety, local authority emergency planners will have a key role to play in advising local planning authorities on developments around nuclear installations. Early engagement can help to address issues which may otherwise affect development proposals at a later stage.

ID 39-075-20140306 Last updated 06 03 2014

### **How is development around licensed explosives facilities considered?**

The Health and Safety Executive issue consultation zones around licensed explosive sites and licensed ports. Licences issued by the Health and Safety Executive specify that each place keeping or handling explosives shall be separated from other occupied buildings. This 'safety distance' varies according to the types and quantities of explosives present.

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#### **Related policy**

##### **National Planning Policy Framework**

- Paragraph 172 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph\\_172](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph_172))
- Paragraph 194 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/decision-taking/#paragraph\\_194](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/decision-taking/#paragraph_194))

The licence does not of itself prevent construction or activities within these distances, but this may lead to further restrictions being imposed on the licensee. This could result in the operations with explosives becoming unviable. Licensees are therefore usually alert to any development which occurs or is proposed in the vicinity of their premises and which may seriously affect their operations. So that the Health and Safety Executive is also made aware of the possibility of encroachment on the safety distances local planning authorities are required to consult Health and Safety Executive at an early stage about applications for development in the vicinity of licensed explosives sites and licensed ports.

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### **What about Local and Neighbourhood Development Orders?**

Local and Neighbourhood Development Orders allow for development to take place without the need for an express grant of planning permission. The same consultation requirements set out above apply in preparing Order as apply to deciding applications for planning permission. If a neighbourhood planning body is unsure whether there is a consultation zone covering their neighbourhood it should ask the local planning authority in the first instance.


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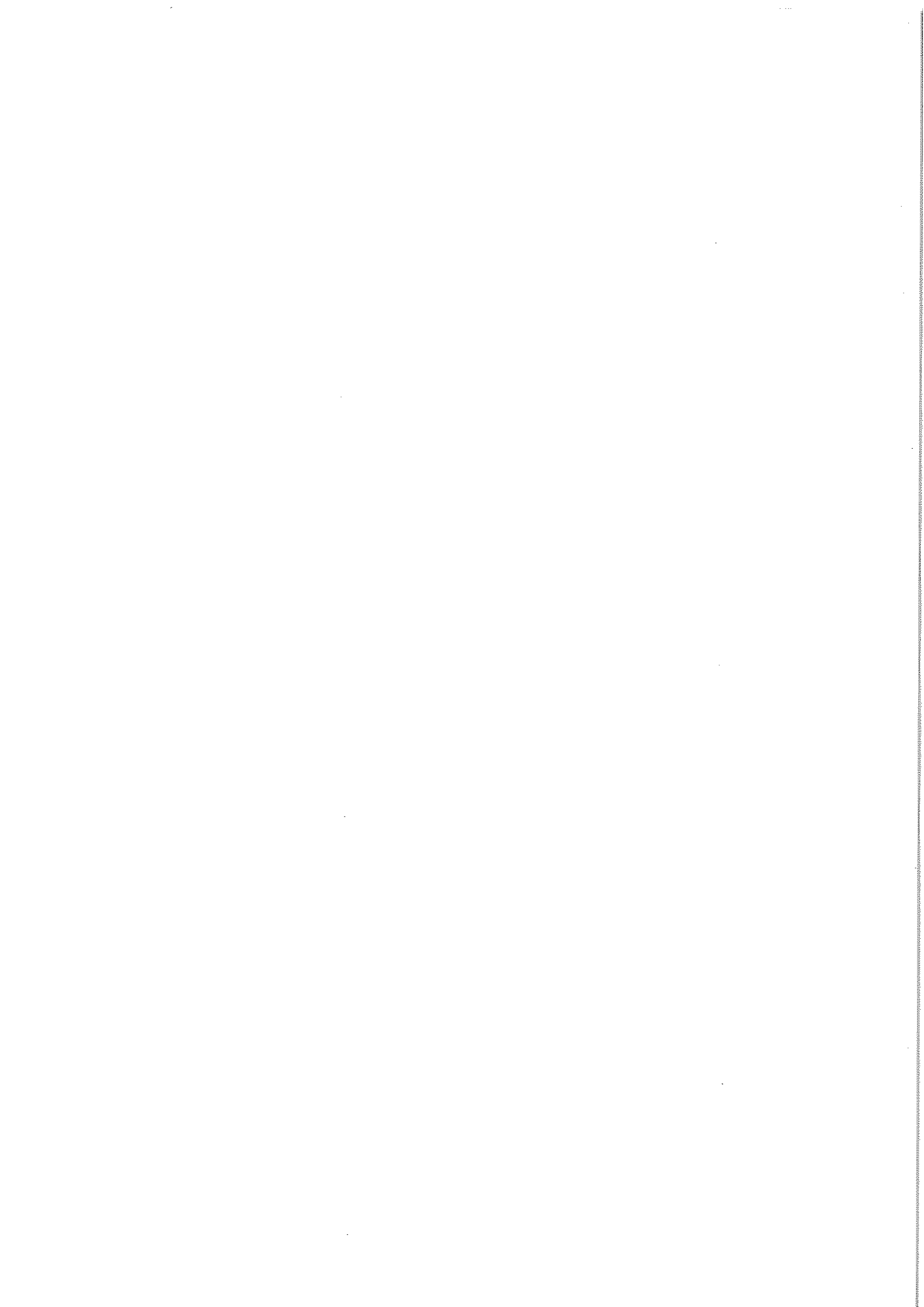
### **Could the zones for consultation change over time?**

Changes may sometimes be required to consultation distances around sites that already have a consent for the presence of hazardous substances. Health and Safety Executive/Office for Nuclear Regulation will keep the consultation zones under review and will inform the local planning authority if changes are appropriate. Similarly, the local planning authority should liaise with Health and Safety Executive/Office for Nuclear Regulation if it becomes aware of changed circumstances that might affect the consultation zone.

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# Planning Practice Guidance <http://planningguidance.communities.gov.uk>

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Guidance

## Health and wellbeing

Print 

### 1. What is the role of health and wellbeing in planning?

<http://planningguidance.communities.gov.uk/blog/guidance/health-and-wellbeing/what-is-the-role-of-health-and-wellbeing-in-planning/>

#### What is the role of health and wellbeing in planning?

Local planning authorities should ensure that health and wellbeing, and health infrastructure are considered in local and neighbourhood plans and in planning decision making. Public health organisations, health service organisations, commissioners and providers, and local communities should use this guidance to help them work effectively with local planning authorities in order to promote healthy communities and support appropriate health infrastructure.

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#### What are the links between health and planning?

The link between planning and health has been long established. The built and natural environments are major determinants of health and wellbeing. The importance of this role is highlighted in the promoting health communities section ([http://planningguidance.communities.gov.uk/blog/guidance/health-and-wellbeing/what-is-the-role-of-health-and-wellbeing-in-planning/#paragraph\\_004](http://planningguidance.communities.gov.uk/blog/guidance/health-and-wellbeing/what-is-the-role-of-health-and-wellbeing-in-planning/#paragraph_004)). This is further supported by the three dimensions to sustainable development (see National Planning Policy Framework paragraph 7 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/#paragraph\\_7](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/#paragraph_7))).

Further links to planning and health are found throughout the whole of the National Planning Policy Framework. Key areas include the core planning principles (see National Planning Policy Framework paragraph 17 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/#paragraph\\_17](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/#paragraph_17))) and the policies on transport (see National Planning Policy Framework chapter 4 (<http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/4-promoting-sustainable-transport/>)), high quality homes (see National Planning Policy Framework chapter 6 (<http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/>)), good design (see National Planning Policy Framework chapter 7 (<http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/7-requiring-good-design/>)), climate change (see National Planning Policy Framework chapter 10 (<http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/>)) and the natural environment (see National Planning Policy Framework chapter 11

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#### Related policy

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#### Related policy

National Planning Policy Framework

- Paragraphs 69-78 (<http://planningguidance.com/sustainable-development/delivering-sustainable-development/8-promoting-healthy-communities/>)
- Paragraph 7 ([http://planningguidance.com/sustainable-development/#paragraph\\_7](http://planningguidance.com/sustainable-development/#paragraph_7))
- Paragraph 17 ([http://planningguidance.com/sustainable-development/#paragraph\\_17](http://planningguidance.com/sustainable-development/#paragraph_17))
- Paragraph 156 ([http://planningguidance.com/sustainable-development/plan-making/#paragraph\\_156](http://planningguidance.com/sustainable-development/plan-making/#paragraph_156))
- Paragraph 162 ([http://planningguidance.com/sustainable-development/plan-making/#paragraph\\_162](http://planningguidance.com/sustainable-development/plan-making/#paragraph_162))

(<http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/>)).

The National Planning Policy Framework encourages local planning authorities to engage with relevant organisations when carrying out their planning function. In the case of health and wellbeing, the key contacts are set out in this guidance ([http://planningguidance.communities.gov.uk/blog/guidance/health-and-wellbeing/what-is-the-role-of-health-and-wellbeing-in-planning/#paragraph\\_003](http://planningguidance.communities.gov.uk/blog/guidance/health-and-wellbeing/what-is-the-role-of-health-and-wellbeing-in-planning/#paragraph_003)). Engagement with these organisations will help ensure that local strategies to improve health and wellbeing) and the provision of the required health infrastructure (see National Planning Policy Framework paragraphs seven ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/#paragraph\\_7](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/#paragraph_7)), 156 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph\\_156](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph_156)) and 162 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph\\_162](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph_162))) are supported and taken into account in local and neighbourhood plan making and when determining planning applications.

The range of issues that could be considered through the plan-making and decision-making processes, in respect of health and healthcare infrastructure, include how:

- development proposals can support strong, vibrant and healthy communities and help create healthy living environments which should, where possible, include making physical activity easy to do and create places and spaces to meet to support community engagement and social capital;
- the local plan promotes health, social and cultural wellbeing and supports the reduction of health inequalities;
- the local plan considers the local health and wellbeing strategy and other relevant health improvement strategies in the area;
- the healthcare infrastructure implications of any relevant proposed local development have been considered;
- opportunities for healthy lifestyles have been considered (e.g. planning for an environment that supports people of all ages in making healthy choices, helps to promote active travel and physical activity, and promotes access to healthier food, high quality open spaces, green infrastructure (<http://planningguidance.communities.gov.uk/blog/guidance/natural-environment/green-infrastructure/>) and opportunities for play, sport and recreation);
- potential pollution and other environmental hazards, which might lead to an adverse impact on human health, are accounted for in the consideration of new development proposals; and
- access to the whole community by all sections of the community, whether able-bodied or disabled, has been promoted.

- Paragraph 171 ([http://planningguidance.com/sustainable-development/plan-making/#paragraph\\_171](http://planningguidance.com/sustainable-development/plan-making/#paragraph_171))
- Chapter 4 (<http://planningguidance.com/sustainable-development/delivering-sustainable-development/4-promoting-sustainable-transport/>)
- Chapter 6 (<http://planningguidance.com/sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/>)
- Chapter 7 (<http://planningguidance.com/sustainable-development/delivering-sustainable-development/7-requiring-good-design/>)
- Chapter 10 (<http://planningguidance.com/sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/>)
- Chapter 11 (<http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/>)

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### **Who are the main health organisations a local authority should contact and why?**

The first point of contact on population health and well-being issues, including health inequalities, should be the Director of Public Health for the local authority, or at the County Council for two-tier areas.



Working with the advice and support of the Director of Public Health and their team, local authority planners should also consider engaging and consulting appropriately with the following key groups in the local health and wellbeing system:

- The Health and Wellbeing Board – which can provide a valuable forum through which partners can help ensure that planning proposals, where appropriate, are likely to have a positive impact on the health and wellbeing of local communities. Health and Wellbeing Boards bring together local authorities, the NHS, communities and wider partners to share system leadership across the health and social care system; and have a duty to encourage integrated working between commissioners of services, and between the functions of local government (including planning). Each Health and Wellbeing Board is responsible for producing a Health and Well-being Strategy which is underpinned by a Joint Strategic Needs Assessment. This will be a key strategy for a local planning authority to take into account to improve health and well-being. Other relevant strategies to note would cover issues such as obesity and healthy eating, physical activity, dementia care and health inequalities. Data and information from Public Health England is also useful as part of the evidence base for plan-making.
- The local Clinical Commissioning Group(s) and NHS England are responsible for the commissioning of healthcare services and facilities which are linked to the work of the Health and Wellbeing Boards and the local Director of Public Health. These bodies are listed as consultees for local plans. These bodies in consultation with local healthcare providers will be able to assist a local planning authority regarding its strategic policy to deliver health facilities and its assessment of the quality and capacity of health infrastructure as well as its ability to meet forecast demand. They will be able to provide information on their current and future strategies to refurbish, expand, reduce or build new facilities to meet the health needs of the existing population as well as those arising as a result of new and future development.
- Engagement with the local community is also important. As part of this work, local planning authorities should consider approaching their local Healthwatch organisation (which represents users of health and social care services) and other community groups as appropriate.

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### **How should health and well-being and health infrastructure be considered in planning decision making?**

Local authority planners should consider consulting the Director of Public Health on any planning applications (including at the pre-application stage) that are likely to have a significant impact on the health and wellbeing of the local population or particular groups within it. This would allow them to work together on any necessary mitigation measures. A health impact assessment may be a useful tool to use where there are expected to be significant impacts.

Similarly, the views of the local Clinical Commissioning Group and NHS England should be sought regarding the impact of new development which would have a significant or cumulatively significant effect on health infrastructure and/or the demand for healthcare services.

Information gathered from this engagement should assist local planning authorities consider whether the identified impact(s) should be addressed through a Section 106 obligation or a planning condition. These need to meet the criteria for planning obligations

(<http://planningguidance.communities.gov.uk/blog/guidance/planning-obligations/planning-obligations-guidance/>).

Alternatively, local planning authorities may decide the identified need could be funded through the Community Infrastructure Levy 

([http://www.planningportal.gov.uk/uploads/cil/cil\\_guidance\\_main.pdf](http://www.planningportal.gov.uk/uploads/cil/cil_guidance_main.pdf)).

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### **What is a healthy community?**

A healthy community is a good place to grow up and grow old in. It is one which supports healthy behaviours and supports reductions in health inequalities. It should enhance the physical and mental health of the community and, where appropriate, encourage:

- Active healthy lifestyles that are made easy through the pattern of development, good urban design, good access to local services and facilities; green open space and safe places for active play and food growing, and is accessible by walking and cycling and public transport.
- The creation of healthy living environments for people of all ages which supports social interaction. It meets the needs of children and young people to grow and develop, as well as being adaptable to the needs of an increasingly elderly population and those with dementia and other sensory or mobility impairments.

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## Planning Practice Guidance (<http://planningguidance.communities.gov.uk>)

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Guidance

# Housing and economic development needs assessments

Print 

1. The approach to assessing need (<http://planningguidance.communities.gov.uk/blog/guidance/housing-and-economic-development-needs-assessments/the-approach-to-assessing-need/>)

### The approach to assessing need

#### What is the purpose of the assessment of housing and economic development needs guidance?

This guidance supports local planning authorities in objectively assessing and evidencing development needs for housing (both market and affordable); and economic development (which includes main town centre uses).

The assessment of housing and economic development needs includes the Strategic Housing Market Assessment requirement as set out in the National Planning Policy Framework.

ID 2a-001-20140306 Last updated 06 03 2014

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### Related policy

#### National Planning Policy Framework

- Paragraph 159 ([http://planningguidance.com/sustainable-development/plan-making/#paragraph\\_159](http://planningguidance.com/sustainable-development/plan-making/#paragraph_159))
- Annex 2 – Glossary – affordable housing/economic development/town centre (<http://planningguidance.com/sustainable-development/annex-2-glossary/>)

#### What is the primary objective of the assessment?

The primary objective of identifying need is to:

- identify the future quantity of housing needed, including a breakdown by type, tenure and size;
- identify the future quantity of land or floorspace required for economic development uses including both the quantitative and qualitative needs for new development; and
- provide a breakdown of that analysis in terms of quality and location, and to provide an indication of gaps in current land supply.

ID 2a-002-20140306 Last updated 06 03 2014

#### What is the definition of need?

Need for housing in the context of the guidance refers to the scale and mix of housing and the range of tenures that is likely to be needed in the housing market area over the plan period – and should cater for the housing demand of the area and identify the scale of housing supply necessary to meet that demand.

Need for all land uses should address both the total number of homes or quantity of economic development floorspace needed based on quantitative assessments, but also on an understanding of the qualitative requirements of each market segment.

Assessing development needs should be proportionate and does not require local councils to consider purely hypothetical future scenarios, only future scenarios that could be reasonably expected to occur.

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### **Can local planning authorities apply constraints to the assessment of development needs?**

The assessment of development needs is an objective assessment of need based on facts and unbiased evidence. Plan makers should not apply constraints to the overall assessment of need, such as limitations imposed by the supply of land for new development, historic under performance, viability, infrastructure or environmental constraints. However, these considerations will need to be addressed when bringing evidence bases together to identify specific policies within development plans.

ID 2a-004-20140306 Last updated 06 03 2014

### **Can local planning authorities use a different methodology?**

There is no one methodological approach or use of a particular dataset(s) that will provide a definitive assessment of development need. But the use of this standard methodology set out in this guidance is strongly recommended because it will ensure that the assessment findings are transparently prepared. Local planning authorities may consider departing from the methodology, but they should explain why their particular local circumstances have led them to adopt a different approach where this is the case. The assessment should be thorough but proportionate, building where possible on existing information sources outlined within the guidance.

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### **Can town/parish councils and designated neighbourhood forums (qualifying bodies) preparing neighbourhood plans use this guidance?**

Town/parish councils and designated neighbourhood forums (qualifying bodies) preparing neighbourhood plans (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/>) can use this guidance to identify specific local needs that may be relevant to a neighbourhood but any assessment at such a local level should be proportionate. Designated neighbourhood forums and parish/town councils can also refer to existing needs assessments prepared by the local planning authority as a starting point.

The neighbourhood plan should support the strategic development needs set out in Local Plans (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>), including policies on housing and economic development. The level of housing (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/neighbourhood-planning-flood-risk/>) and economic development is likely to be a strategic policy.

ID 2a-006-20140306 Last updated 06 03 2014

### **Who do local planning authorities need to work?**

Local planning authorities should assess their development needs working with the other local authorities in the relevant housing market area or functional economic market area in line with the duty to cooperate (<http://planningguidance.communities.gov.uk/blog/guidance/duty-to-cooperate/>). This is because such needs are rarely constrained precisely by local authority administrative boundaries.

Where Local Plans (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>) are at different stages of production, local planning authorities can build upon the existing evidence base of partner local authorities in their housing market area but should co-ordinate future housing reviews so they take place at the same time.

Local communities, partner organisations, Local Enterprise Partnerships, businesses and business representative organisations, universities and higher education establishments, house builders (including those specialising in older people's housing), parish and town councils, designated neighbourhood forums preparing neighbourhood plans (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/>) and housing associations should be involved from the earliest stages of plan preparation, which includes the preparation of the evidence base in relation to development needs.

ID 2a-007-20150320 Last updated 20 03 2015

**2. Scope of assessments** (<http://planningguidance.communities.gov.uk/blog/guidance/housing-and-economic-development-needs-assessments/scope-of-assessments/>)

### **Scope of assessments**

#### **What areas should be assessed?**

Needs should be assessed in relation to the relevant functional area, ie housing market area, functional economic area in relation to economic uses, or area of trade draw in relation to main town centre (<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-the-vitality-of-town-centres/ensuring-the-vitality-of-town-centres-guidance/>) uses.

Establishing the assessment area may identify smaller sub-markets with specific features, and it may be appropriate to investigate these specifically in order to create a detailed picture of local need. It is important also to recognise that there are 'market segments' ie not all housing types or economic development have the same appeal to different occupants.

In some cases housing market areas and functional economic areas may well be the same.

ID 2a-008-20140306 Last updated 06 03 2014

#### **Is there a single source that will identify the assessment areas?**

No single source of information on needs will be comprehensive in identifying the appropriate assessment area; careful consideration should be given to the appropriateness of each source of information and how they relate to one another. For example, for housing, where there are issues of affordability or low demand, house price or rental level analyses will be particularly important in identifying the assessment area. Where there are relatively high or volatile rates of household movement, migration data will be particularly important. Plan makers will need to consider the usefulness of each source of information and approach for their purposes. Local planning authorities can use a combination of approaches where necessary.

ID 2a-009-20140306 Last updated 06 03 2014

## What is a housing market area?

A housing market area is a geographical area defined by household demand and preferences for all types of housing, reflecting the key functional linkages between places where people live and work. It might be the case that housing market areas overlap.

The extent of the housing market areas identified will vary, and many will in practice cut across various local planning authority administrative boundaries. Local planning authorities should work with all the other constituent authorities under the duty to cooperate (<http://planningguidance.communities.gov.uk/blog/guidance/duty-to-cooperate/>).

Where there is a joint plan, housing requirements and the need to identify a five year supply of sites can apply across the joint plan area. The approach being taken should be set out clearly in the plan.

ID 2a-010-20140306 Last updated 06 03 2014

## How can housing market areas be defined?

Housing market areas can be broadly defined by using three different sources of information as follows.

- **House prices and rates of change in house prices**

Housing market areas can be identified by assessing patterns in the relationship between housing demand and supply across different locations. This analysis uses house prices to provide a 'market-based' reflection of housing market area boundaries. It enables the identification of areas which have clearly different price levels compared to surrounding areas. The findings provide information about differences across the area in terms of the price people pay for similar housing, market 'hotspots', low demand areas and volatility.

**Suggested data sources:**

Office for National Statistics, House Price Index, Land Registry House Price Index and Price Paid data (including sales), Department for Communities and Local Government Statistics including Live Tables on Affordability (lower quartile house prices/lower quartile earnings), Neighbourhood data from the Census.

- **Household migration and search patterns**

Migration flows and housing search patterns reflect preferences and the trade-offs made when choosing housing with different characteristics. Analysis of migration flow patterns can help to identify these relationships and the extent to which people move house within an area. The findings can identify the areas within which a relatively high proportion of household moves (typically 70 per cent) are contained. This excludes long distance moves (eg those due to a change of lifestyle or retirement), reflecting the fact that most people move relatively short distances due to connections to families, friends, jobs, and schools.

**Suggested data sources:**

Census, Office for National Statistics Internal Migration Statistics, and NHS registration data. Data from estate agents and local newspapers contain information about the geographical coverage of houses advertised for sale and rent.

- **Contextual data (for example travel to work area boundaries, retail and school catchment areas)**

Travel to work areas can provide information about commuting flows and the spatial structure of the labour market, which will influence household price

and location. They can also provide information about the areas within which people move without changing other aspects of their lives (eg work or service use).

**Suggested data sources:**

Office of National Statistics (travel to work areas), retailers and other service providers may be able to provide information about the origins of shoppers and service users, school catchment areas.

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### How can functional economic market areas be defined?

The geography of commercial property markets should be thought of in terms of the requirements of the market in terms of the location of premises, and the spatial factors used in analysing demand and supply – often referred to as the functional economic market area. Since patterns of economic activity vary from place to place, there is no standard approach to defining a functional economic market area, however, it is possible to define them taking account of factors including:

- extent of any Local Enterprise Partnership within the area;
- travel to work areas;
- housing market area;
- flow of goods, services and information within the local economy;
- service market for consumers;
- administrative area;
- Catchment areas of facilities providing cultural and social well-being;
- transport network.

**Suggested Data Source:**

Office of National Statistics (travel to work areas)

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### How can the area of ‘trade draw’ be defined?

The ‘trade draw’ area in relation to main town centres uses is defined in the context of the town centre impact test

([http://planningguidance.communities.gov.uk/blog/guidance/ensuring-the-vitality-of-town-centres/ensuring-the-vitality-of-town-centres-guidance/#paragraph\\_013](http://planningguidance.communities.gov.uk/blog/guidance/ensuring-the-vitality-of-town-centres/ensuring-the-vitality-of-town-centres-guidance/#paragraph_013)) in the town centre guidance (<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-the-vitality-of-town-centres/ensuring-the-vitality-of-town-centres-guidance/>).

ID 2a-013-20140306 Last updated 06 03 2014

## 3. Methodology: assessing housing need

(<http://planningguidance.communities.gov.uk/blog/guidance/housing-and-economic-development-needs-assessments/methodology-assessing-housing-need/>)

### Methodology: assessing housing need

#### What methodological approach should be used?

Establishing future need for housing is not an exact science. No single approach will provide a definitive answer. Plan makers should avoid expending significant resources on primary research (information that is collected through surveys, focus groups or interviews etc and analysed to produce a new set of findings) as this will in many cases be a disproportionate way of establishing an evidence

base. They should instead look to rely predominantly on secondary data (eg Census, national surveys) to inform their assessment which are identified within the guidance.

ID 2a-014-20140306 Last updated 06 03 2014

## What is the starting point to establish the need for housing?

Household projections published by the Department for Communities and Local Government should provide the starting point estimate of overall housing need.

The household projections are produced by applying projected household representative rates to the population projections published by the Office for National Statistics. Projected household representative rates are based on trends observed in Census and Labour Force Survey data.

The household projections are trend based, ie they provide the household levels and structures that would result if the assumptions based on previous demographic trends in the population and rates of household formation were to be realised in practice. They do not attempt to predict the impact that future government policies, changing economic circumstances or other factors might have on demographic behaviour.

The household projection-based estimate of housing need may require adjustment to reflect factors affecting local demography and household formation rates which are not captured in past trends. For example, formation rates may have been suppressed historically by under-supply and worsening affordability of housing. The assessment will therefore need to reflect the consequences of past under delivery of housing. As household projections do not reflect unmet housing need, local planning authorities should take a view based on available evidence of the extent to which household formation rates are or have been constrained by supply.

ID 2a-015-20140306 Last updated 06 03 2014

## How often are the projections updated?

The Government's official population and household projections are generally updated every two years to take account of the latest demographic trends. The most recent published Household Projections update the 2011-based interim projections to be consistent with the Office for National Statistics population projections. Further analysis of household formation rates as revealed by the 2011 Census will continue during 2015.

Wherever possible, local needs assessments should be informed by the latest available information. The National Planning Policy Framework is clear that Local Plans should be kept up-to-date. A meaningful change in the housing situation should be considered in this context, but this does not automatically mean that housing assessments are rendered outdated every time new projections are issued.

The 2012-2037 Household Projections were published on 27 February 2015, and are the most up-to-date estimate of future household growth.

ID 2a-016-20150227 Last updated 27 02 2015

## Can adjustments be made to household projection-based estimates of housing need?

The household projections produced by the Department for Communities and Local Government are statistically robust and are based on nationally consistent assumptions. However, plan makers may consider sensitivity testing, specific to their local circumstances, based on alternative assumptions in relation to the

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### Related policy

#### National Planning Policy Framework

- Paragraph 17, bullet 1 ([http://planningguidance.com/sustainable-development/#paragraph\\_17](http://planningguidance.com/sustainable-development/#paragraph_17))



underlying demographic projections and household formation rates. Account should also be taken of the most recent demographic evidence including the latest Office of National Statistics population estimates.

Any local changes would need to be clearly explained and justified on the basis of established sources of robust evidence.

Issues will vary across areas but might include:

- migration levels that may be affected by changes in employment growth or a one off event such as a large employer moving in or out of an area or a large housing development such as an urban extension in the last five years
- demographic structure that may be affected by local circumstances or policies eg expansion in education or facilities for older people

Local housing need surveys may be appropriate to assess the affordable housing requirements specific to the needs of people in rural areas, given the lack of granularity provided by secondary sources of information.

ID 2a-017-20140306 Last updated 06 03 2014

### How should employment trends be taken into account?

Plan makers should make an assessment of the likely change in job numbers based on past trends and/or economic forecasts as appropriate and also having regard to the growth of the working age population in the housing market area. Any cross-boundary migration assumptions, particularly where one area decides to assume a lower internal migration figure than the housing market area figures suggest, will need to be agreed with the other relevant local planning authority under the duty to cooperate

(<http://planningguidance.communities.gov.uk/blog/guidance/duty-to-cooperate/>). Failure to do so will mean that there would be an increase in unmet housing need.

Where the supply of working age population that is economically active (labour force supply) is less than the projected job growth, this could result in unsustainable commuting patterns (depending on public transport accessibility or other sustainable options such as walking or cycling) and could reduce the resilience of local businesses. In such circumstances, plan makers will need to consider how the location of new housing or infrastructure development could help address these problems.

ID 2a-018-20140306 Last updated 06 03 2014

### How should market signals be taken into account?

The housing need number suggested by household projections (the starting point) should be adjusted to reflect appropriate market signals, as well as other market indicators of the balance between the demand for and supply of dwellings. Prices or rents rising faster than the national/local average may well indicate particular market undersupply relative to demand. Relevant signals may include the following:

- **Land Prices**

Land values are determined by the demand for land in particular uses, relative to the supply of land in those uses. The allocation of land supply designated for each different use, independently of price, can result in substantial price discontinuities for adjoining parcels of land (or land with otherwise similar characteristics). Price premiums provide direct information on the shortage of land in any locality for any particular use.

- **House Prices**

Mix adjusted house prices (adjusted to allow for the different types of houses sold in each period) measure inflation in house prices. Longer term changes may indicate an imbalance between the demand for and the supply

of housing. The Office for National Statistics publishes a monthly House Price Index at regional level. The Land Registry also publishes a House Price Index and Price Paid data at local authority level.

- **Rents**

Rents provide an indication of the cost of consuming housing in a market area. Mixed adjusted rent information (adjusted to allow for the different types of properties rented in each period) shows changes in housing costs over time. Longer term changes may indicate an imbalance between demand for and supply of housing. The Office for National Statistics publishes a monthly Private Rental Index.

- **Affordability**

Assessing affordability involves comparing house costs against the ability to pay. The ratio between lower quartile house prices and the lower quartile income or earnings can be used to assess the relative affordability of housing. The Department for Communities and Local Government publishes quarterly the ratio of lower quartile house price to lower quartile earnings by local authority district.

- **Rate of Development**

Local planning authorities monitor the stock and flows of land allocated, permissions granted, and take-up of those permissions in terms of completions. Supply indicators may include the flow of new permissions expressed as a number of units per year relative to the planned number and the flow of actual completions per year relative to the planned number. A meaningful period should be used to measure supply. If the historic rate of development shows that actual supply falls below planned supply, future supply should be increased to reflect the likelihood of under-delivery of a plan. The Department for Communities and Local Government publishes quarterly planning application statistics.

- **Overcrowding**

Indicators on overcrowding, concealed and sharing households, homelessness and the numbers in temporary accommodation demonstrate un-met need for housing. Longer term increase in the number of such households may be a signal to consider increasing planned housing numbers. The number of households accepted as homeless and in temporary accommodation is published in the quarterly Statutory Homelessness release.

ID 2a-019-20140306 Last updated 06 03 2014

## How should plan makers respond to market signals?

Appropriate comparisons of indicators should be made. This includes comparison with longer term trends (both in absolute levels and rates of change) in the: housing market area; similar demographic and economic areas; and nationally. A worsening trend in any of these indicators will require upward adjustment to planned housing numbers compared to ones based solely on household projections. Volatility in some indicators requires care to be taken: in these cases rolling average comparisons may be helpful to identify persistent changes and trends.

In areas where an upward adjustment is required, plan makers should set this adjustment at a level that is reasonable. The more significant the affordability constraints (as reflected in rising prices and rents, and worsening affordability ratio) and the stronger other indicators of high demand (eg the differential between land prices), the larger the improvement in affordability needed and, therefore, the larger the additional supply response should be.

Market signals are affected by a number of economic factors, and plan makers should not attempt to estimate the precise impact of an increase in housing supply. Rather they should increase planned supply by an amount that, on

reasonable assumptions and consistent with principles of sustainable development, could be expected to improve affordability, and monitor the response of the market over the plan period.

The list of indicators above is not exhaustive. Other indicators, including those at lower spatial levels, are available and may be useful in coming to a full assessment of prevailing market conditions. In broad terms, the assessment should take account both of indicators relating to price (such as house prices, rents, affordability ratios) and quantity (such as overcrowding and rates of development).

ID 2a-020-20140306 Last updated 06 03 2014

## How should the needs for all types of housing be addressed?

Once an overall housing figure has been identified, plan makers will need to break this down by tenure, household type (singles, couples and families) and household size. Plan makers should therefore examine current and future trends of:

- the proportion of the population of different age profile;
- the types of household (eg singles, couples, families by age group, numbers of children and dependents);
- the current housing stock size of dwellings (eg one, two+ bedrooms);
- the tenure composition of housing.

This information should be drawn together to understand how age profile and household mix relate to each other, and how this may change in the future. When considering future need for different types of housing, plan makers will need to consider whether they plan to attract a different age profile eg increasing the number of working age people.

Plan makers should look at the household types, tenure and size in the current stock and in recent supply, and assess whether continuation of these trends would meet future needs.

Identifying the need for certain types of housing and the needs of different groups is discussed below in more detail.

- **The private rented sector**

Tenure data from the Office of National Statistics can be used to understand the future need for private rented sector housing. However, this will be based on past trends. Market signals in the demand for private rented sector housing could be indicated from a change in rents. Evidence can also be sourced from the English Housing Survey, which will provide at national level updated information on tenure trends, Office of National Statistics Private Rental Index, the Valuation Office Agency, HomeLet Rental Index and other commercial sources.

- **Self-build and custom housebuilding**

The Government wants to enable more people to build or commission their own home and wants to make this form of housing a mainstream housing option. From 1 April 2016, most local planning authorities (including all district councils and National Park Authorities) are required to keep a register of individuals and associations of individuals who are seeking to acquire serviced plots of land in their area in order to build homes for those individuals to occupy. The Self-build and Custom Housebuilding (Register) Regulations 2016 [\[2\]](http://www.legislation.gov.uk/id/uksi/2016/105) (<http://www.legislation.gov.uk/id/uksi/2016/105>) and Draft planning guidance [\[3\]](https://www.gov.uk/government/publications/self-build-and-custom-housebuilding-draft-planning-practice-guidance) (<https://www.gov.uk/government/publications/self-build-and-custom-housebuilding-draft-planning-practice-guidance>) are available to view. In order to obtain a robust assessment of demand for this type of housing in

their area, local planning authorities should supplement the data from the registers with secondary data sources such as: building plot search websites, 'Need-a-Plot' information available from the Self Build Portal; and enquiries for building plots from local estate agents.

- **Family housing**

Plan makers can identify current numbers of families, including those with children, by using the local household projections.

- **Housing for older people**

The need to provide housing for older people is critical given the projected increase in the number of households aged 65 and over accounts for over half of the new households (Department for Communities and Local Government Household Projections 2013). The age profile of the population can be drawn from Census data. Projection of population and households by age group should also be used. Plan makers will need to consider the size, location and quality of dwellings needed in the future for older people in order to allow them to live independently and safely in their own home for as long as possible, or to move to more suitable accommodation if they so wish. Supporting independent living can help to reduce the costs to health and social services, and providing more options for older people to move could also free up houses that are under occupied. The future need for specialist accommodation for older people broken down by tenure and type (e.g sheltered, enhanced sheltered, extra care, registered care) should be assessed and can be obtained from a number of online tool kits provided by the sector. The assessment should set out the level of need for residential institutions (Use Class C2). Many older people may not want or need specialist accommodation or care and may wish to stay or move to general housing that is already suitable, such as bungalows, or homes which can be adapted to meet a change in their needs. Local authorities should therefore identify particular types of general housing as part of their assessment.

- **Households with specific needs**

There is no one source of information about disabled people who require adaptations in the home, either now or in the future. The Census provides information on the number of people with long-term limiting illness and plan makers can access information from the Department of Work and Pensions on the numbers of Disability Living Allowance/Attendance Allowance benefit claimants. Whilst these data can provide a good indication of the number of disabled people, not all of the people included within these counts will require adaptations in the home. Applications for Disabled Facilities Grant will provide an indication of levels of expressed need, although this could underestimate total need. If necessary, plan makers can engage with partners to better understand their housing requirements.

- **Student housing**

Local planning authorities should plan for sufficient student accommodation whether it consists of communal halls of residence or self-contained dwellings, and whether or not it is on campus. Student housing provided by private landlords is often a lower-cost form of housing. Encouraging more dedicated student accommodation may provide low cost housing that takes pressure off the private rented sector and increases the overall housing stock. Plan makers are encouraged to consider options which would support both the needs of the student population as well as local residents before imposing caps or restrictions on students living outside of university-provided accommodation. Plan makers should engage with universities and other higher educational establishments to better understand their student accommodation requirements.

ID 2a-021-20160204 Last updated 04 02 2016

### **How should affordable housing need be calculated?**

Plan makers working with relevant colleagues within their local authority (eg housing, health and social care departments) will need to estimate the number of households and projected households who lack their own housing or live in unsuitable housing and who cannot afford to meet their housing needs in the market.

This calculation involves adding together the current unmet housing need and the projected future housing need and then subtracting this from the current supply of affordable housing stock.

ID 2a-022-20140306 Last updated 06 03 2014

### **What types of households are considered in affordable housing need?**

The types of households to be considered in housing need are:

- homeless households or insecure tenure (e.g. housing that is too expensive compared to disposable income);
- households where there is a mismatch between the housing needed and the actual dwelling (e.g. overcrowded households);
- households containing people with social or physical impairment or other specific needs living in unsuitable dwellings (e.g. accessed via steps) which cannot be made suitable in-situ
- households that lack basic facilities (e.g. a bathroom or kitchen) and those subject to major disrepair or that are unfit for habitation;
- households containing people with particular social needs (e.g. escaping harassment) which cannot be resolved except through a move.

ID 2a-023-20140306 Last updated 06 03 2014

### **How should the current unmet gross need for affordable housing be calculated?**

Plan makers should establish unmet (gross) need for affordable housing by assessing past trends and recording current estimates of:

- the number of homeless households;
- the number of those in priority need who are currently housed in temporary accommodation;
- the number of households in over-crowded housing;
- the number of concealed households;
- the number of existing affordable housing tenants in need (i.e. householders currently housed in unsuitable dwellings);
- the number of households from other tenures in need and those that cannot afford their own homes.

Care should be taken to avoid double-counting, which may be brought about with the same households being identified on more than one transfer list, and to include only those households who cannot afford to access suitable housing in the market.

#### **Suggested data sources:**

Local authorities will hold data on the number of homeless households, those in temporary accommodation and extent of overcrowding. The Census also provides data on concealed households and overcrowding which can be

compared with trends contained in the English Housing Survey. Housing registers and local authority and registered social landlord transfer lists will also provide relevant information.

ID 2a-024-20140306 Last updated 06 03 2014

### **How should the number of newly arising households likely to be in affordable housing need be calculated (gross annual estimate)?**

Projections of affordable housing need will need to take into account new household formation, the proportion of newly forming households unable to buy or rent in the market area, and an estimation of the number of existing households falling into need. This process should identify the minimum household income required to access lower quartile (entry level) market housing (plan makers should use current cost in this process, but may wish to factor in changes in house prices and wages). It should then assess what proportion of newly-forming households will be unable to access market housing.

#### **Suggested data sources:**

Department for Communities and Local Government household projections, English Housing Survey, local authority and registered social landlords databases, and mortgage lenders.

*Total newly arising affordable housing need (gross per year) =*

*(the number of newly forming households x the proportion unable to afford market housing) + existing households falling into need*

ID 2a-025-20140306 Last updated 06 03 2014

### **How should the current total affordable housing supply available be calculated?**

There will be a current supply of housing stock that can be used to accommodate households in affordable housing need as well as future supply. To identify the total affordable housing supply requires identifying the current housing stock by:

- identifying the number of affordable dwellings that are going to be vacated by current occupiers that are fit for use by other households in need;
- identifying surplus stock (vacant properties);
- identifying the committed supply of new affordable units (social rented and intermediate housing) at the point of the assessment (number and size);
- identifying units to be taken out of management (demolition or replacement schemes that lead to net losses of stock).

#### **Sources of data:**

Department for Communities and Local Government affordable housing supply statistics to show recent trends, and local authority and Registered Social Landlord records including housing register, transfer lists, demolition and conversion programmes, development programme of affordable housing providers.

*Total affordable housing stock available =*

*Dwellings currently occupied by households in need + surplus stock + committed additional housing stock – units to be taken out of management*

ID 2a-026-20140306 Last updated 06 03 2014

### **What is the likely level of future housing supply of social re-lets (net) and intermediate affordable housing (excluding transfers)?**

Plan makers should calculate the level of likely future affordable housing supply taking into account future annual supply of social housing re-lets (net), calculated on the basis of past trends (generally the average number of re-lets over the previous three years should be taken as the predicted annual levels), and the future annual supply of intermediate affordable housing (the number of units that come up for re-let or re-sale should be available from local operators of intermediate housing schemes).

#### **Suggested data sources:**

Local Authority and Registered Social Landlord data, CORE (Continuous Recording of lettings and sales in social housing) data on the number of lettings in the RSL sector whilst HSSA (Housing Strategy Statistical Appendix) data provides the number of lettings in council owned housing.

$$\text{Future annual supply of affordable housing units} = \text{the number of social rented units} + \text{the number of intermediate affordable units}$$

ID 2a-027-20140306 Last updated 06 03 2014

### **What is the relationship between the current housing stock and current and future needs?**

Plan makers should look at the house size in the current stock and assess whether these match current and future needs.

ID 2a-028-20140306 Last updated 06 03 2014

### **What is the total need for affordable housing?**

The total need for affordable housing should be converted into annual flows by calculating the total net need (subtract total available stock from total gross need) and converting total net need into an annual flow.

The total affordable housing need should then be considered in the context of its likely delivery as a proportion of mixed market and affordable housing developments, given the probable percentage of affordable housing to be delivered by market housing led developments. An increase in the total housing figures included in the local plan should be considered where it could help deliver the required number of affordable homes.

ID 2a-029-20140306 Last updated 06 03 2014

#### **4. Methodology: assessing economic development and main town centre uses**

(<http://planningguidance.communities.gov.uk/blog/guidance/housing-and-economic-development-needs-assessments/methodology-assessing-economic-development-and-main-town-centre-uses/>)

#### **Methodology: assessing economic development and main town centre uses**

##### **How should the current situation in relation to economic and main town centre uses be assessed?**

In understanding the current market in relation to economic and main town centre uses, plan makers should liaise closely with the business community to understand their current and potential future requirements. Plan makers should also consider:

- The recent pattern of employment land supply and loss to other uses (based on extant planning permissions and planning applications). This can be

generated though a simple assessment of employment land by sub-areas and market segment, where there are distinct property market areas within authorities.

- Market intelligence (from local data and discussions with developers and property agents, recent surveys of business needs or engagement with business and economic forums).
- Market signals, such as levels and changes in rental values, and differentials between land values in different uses.
- Public information on employment land and premises required.
- Information held by other public sector bodies and utilities in relation to infrastructure constraints.
- The existing stock of employment land. This will indicate the demand for and supply of employment land and determine the likely business needs and future market requirements (though it is important to recognise that existing stock may not reflect the future needs of business). Recent statistics on take-up of sites should be consulted at this stage, along with other primary and secondary data sources to gain an understanding of the spatial implications of 'revealed demand' for employment land.
- The locational and premises requirements of particular types of business.
- Identification of oversupply and evidence of market failure (e.g. physical or ownership constraints that prevent the employment site being used effectively, which could be evidenced by unfulfilled requirements from business, yet developers are not prepared to build premises at the prevailing market rents).

ID 2a-030-20140306 Last updated 06 03 2014

### **How should employment land be analysed?**

A simple typology of employment land by market segment and by sub-areas, where there are distinct property market areas within authorities, should be developed and analysed. This should be supplemented by information on permissions for other uses that have been granted, if available, on sites then or formerly in employment use.

When examining the recent take-up of employment land, it is important to consider projections (based on past trends) and forecasts (based on future scenarios) and identify occurrences where sites have been developed for specialist economic uses. This will help to provide an understanding of the underlying requirements for office, general business and warehousing sites, and (when compared with the overall stock of employment sites) should form the context for appraising individual sites.

Analysing supply and demand will allow plan makers to identify whether there is a mismatch between quantitative and qualitative supply of and demand for employment sites. This will enable an understanding of which market segments are over-supplied to be derived and those which are undersupplied.

Employment land markets can overlap several local authority areas.

ID 2a-031-20140306 Last updated 06 03 2014

### **How should future trends be forecast?**

Plan makers should consider forecasts of quantitative and qualitative need (i.e. the number of units and amount of floorspace for other uses needed) but also its particular characteristics (eg footprint of economic uses and proximity to infrastructure). The key output is an estimate of the scale of future needs, broken down by economic sectors.



Local authorities should develop an idea of future needs based on a range of data which is current and robust. Authorities will need to take account of business cycles and make use of forecasts and surveys to assess employment land requirements.

Emerging sectors that are well suited to the area being covered by the analysis should be encouraged where possible. Market segments should be identified within the employment property market so that need can be identified for the type of employment land advocated.

The available stock of land should be compared with the particular requirements of the area so that 'gaps' in local employment land provision can be identified

Plan makers should consider:

- sectoral and employment forecasts and projections (labour demand);
- demographically derived assessments of future employment needs (labour supply techniques);
- analyses based on the past take-up of employment land and property and/or future property market requirements;
- consultation with relevant organisations, studies of business trends, and monitoring of business, economic and employment statistics.

ID 2a-032-20140306 Last updated 06 03 2014

### **What type of employment land is needed?**

The increasing diversity of employment generating uses (as evidenced by the decline of manufacturing and rise of services and an increased focus on mixed-use development) requires different policy responses and an appropriate variety of employment sites. The need for rural employment should not be overlooked.

Labour supply models are based on population and economic activity projections. Underlying population projections can be purely demographic or tied to future housing stock which needs to be assessed separately. These models normally make predictions for a period of 10 to 15 years. Plan makers should be careful to consider that national economic trends may not automatically translate to particular areas with a distinct employment base.

ID 2a-033-20140306 Last updated 06 03 2014

### **How should employment land requirements be derived?**

When translating employment and output forecasts into land requirements, there are four key relationships which need to be quantified. This information should be used to inform the assessment of land requirements. The four key relationships are:

- Standard Industrial Classification sectors to use classes;
- Standard Industrial Classification sectors to type of property;
- employment to floorspace (employment density); and
- floorspace to site area (plot ratio based on industry proxies).

ID 2a-034-20140306 Last updated 06 03 2014

5. Core outputs and monitoring (<http://planningguidance.communities.gov.uk/blog/guidance/housing-and-economic-development-needs-assessments/core-outputs-and-monitoring/>)

### **Core outputs and monitoring**

#### **What are the core outputs?**

Plan makers should set out clear conclusions and any assumptions made in reaching these conclusions on the levels of quantitative and qualitative predicted need. This will be an important input into assessing the suitability of sites and the Local Plan (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>) preparation process more generally.

Plan makers will need to consider their existing and emerging housing and economic strategies in light of needs.

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### **How often should indicators be monitored?**

Local planning authorities should not need to undertake comprehensive assessment exercises more frequently than every five years although they should be updated regularly, looking at the short-term changes in housing and economic market conditions.

Monitoring information should be shared with qualifying bodies undertaking a neighbourhood plan (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/>) via the local authorities' monitoring report (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/adoption-monitoring-and-supplementary-planning-documents/>) so that they can understand how their neighbourhood plan is being implemented.


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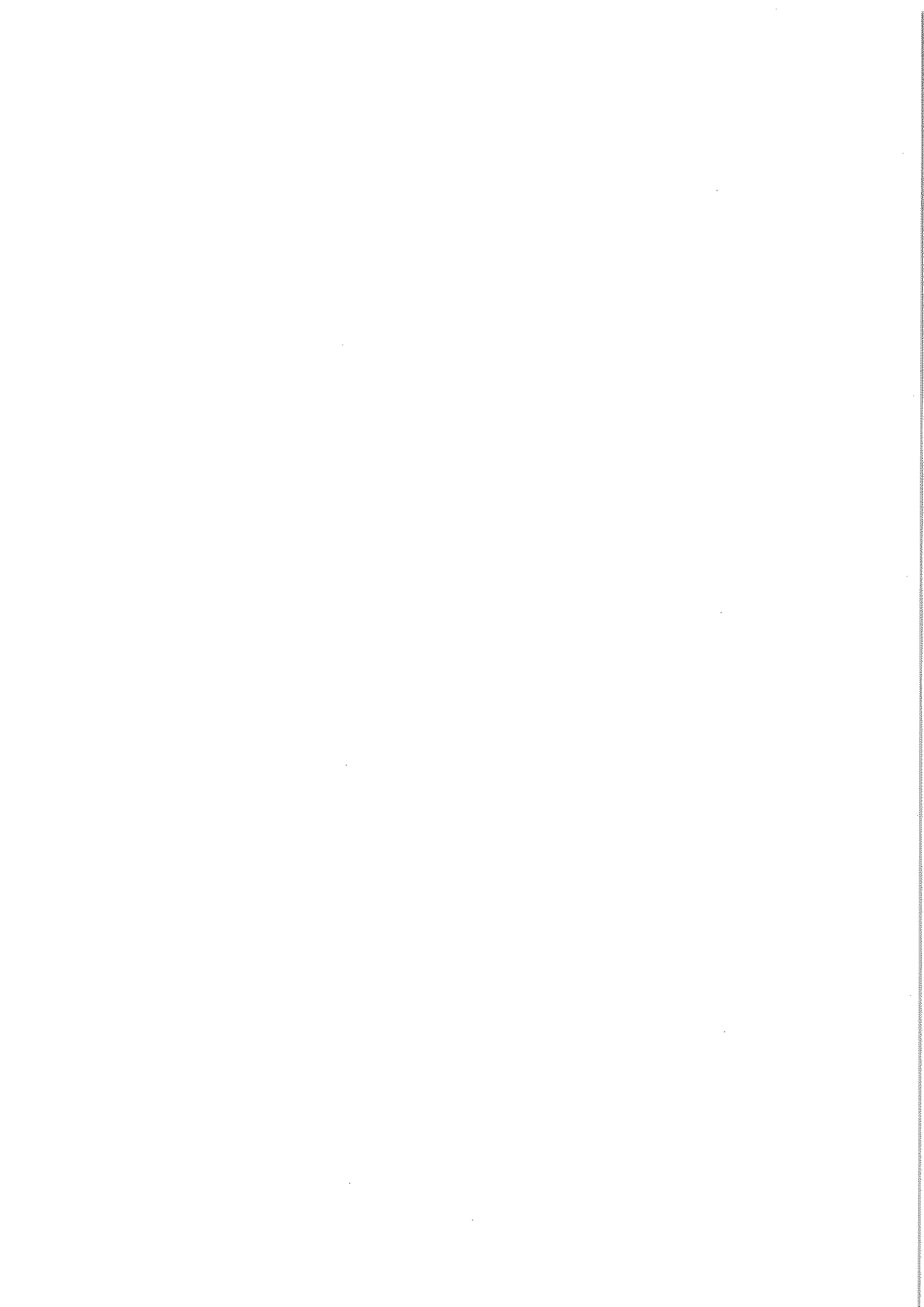
### **What could be monitored?**

Local planning authorities should put in place their own monitoring arrangements in relation to relevant local indicators which could include:

- housing and employment land and premises (current stock) database;
- housing and employment permissions granted, by type;
- housing and employment permissions developed by type, matched to allocated sites;
- housing and employment permissions for development of sites where change of use is involved;
- housing and employment land and premises available and recent transactions;
- housing and employment premises enquiries (if the authority has an estates team);
- housing developer or employer requirements and aspirations for houses and economic floorspace;
- housing waiting lists applications;
- the market signals  
([http://planningguidance.communities.gov.uk/blog/guidance/housing-and-economic-development-needs-assessments/methodology-assessing-housing-need/#paragraph\\_019](http://planningguidance.communities.gov.uk/blog/guidance/housing-and-economic-development-needs-assessments/methodology-assessing-housing-need/#paragraph_019)).

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 Department for Communities & Local Government  
(<https://www.gov.uk/government/organisations/department-for-communities-and-local-government>)



# Planning Practice Guidance [\(http://planningguidance.communities.gov.uk\)](http://planningguidance.communities.gov.uk)

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Guidance

## Housing and economic land availability assessment

Print 

### 1. What is the purpose of the assessment of land availability?

[\(http://planningguidance.communities.gov.uk/blog/guidance/housing-and-economic-land-availability-assessment/what-is-the-purpose-of-the-assessment-of-land-availability/\)](http://planningguidance.communities.gov.uk/blog/guidance/housing-and-economic-land-availability-assessment/what-is-the-purpose-of-the-assessment-of-land-availability/)

#### What is the purpose of the assessment of land availability?

An assessment of land availability identifies a future supply of land which is suitable, available and achievable for housing and economic development uses over the plan period. The assessment of land availability includes the Strategic Housing Land Availability Assessment requirement as set out in the National Planning Policy Framework.

The assessment of land availability is an important step in the preparation of Local Plans (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>). The National Planning Policy Framework identifies the advantages of carrying out land assessments for housing and economic development as part of the same exercise, in order that sites may be allocated for the use which is most appropriate.

An assessment should:

- identify sites and broad locations with potential for development (<http://planningguidance.communities.gov.uk/blog/guidance/assessment-of-land-availability/methodologystage-1-identification-of-sites-and-broad-locations-determine-assessment-area-and-site-size/>);
- assess their development potential (<http://planningguidance.communities.gov.uk/blog/guidance/assessment-of-land-availability/stage-2-sitebroad-location-assessment-identifying-the-development-potential-of-each-sitebroad-location/>);
- assess their suitability for development and the likelihood of development coming forward (the availability and achievability) ([http://planningguidance.communities.gov.uk/blog/guidance/assessment-of-land-availability/stage-2-sitebroad-location-assessment-identifying-the-development-potential-of-each-sitebroad-location/#paragraph\\_018](http://planningguidance.communities.gov.uk/blog/guidance/assessment-of-land-availability/stage-2-sitebroad-location-assessment-identifying-the-development-potential-of-each-sitebroad-location/#paragraph_018)).

This approach ensures that all land is assessed together as part of plan preparation to identify which sites or broad locations are the most suitable and deliverable for a particular use.

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### 2. About the assessment (<http://planningguidance.communities.gov.uk/blog/guidance/housing-and-economic-land-availability-assessment/about-the-assessment/>)

#### About the assessment

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#### Related policy

##### National Planning Policy Framework

- Paragraph 159 ([http://planningguidance.com/sustainable-development/plan-making/#paragraph\\_159](http://planningguidance.com/sustainable-development/plan-making/#paragraph_159))
- Annex 2 (<http://planningguidance.com/sustainable-development/annex-2-glossary/>)

## How does the assessment relate to the development plan process?

The assessment forms a key component of the evidence base to underpin policies in development plans for housing and economic development, including supporting the delivery of land to meet identified need for these uses.

From the assessment, plan makers will then be able to plan proactively by choosing sites to go forward into their development plan documents to meet objectively assessed needs.

This guidance should be read in conjunction with separate guidance on the application of town centre planning policy, which includes the sequential test for locating town centre

(<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-the-vitality-of-town-centres/>) uses.

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## Does the assessment allocate land in development plans?

The assessment is an important evidence source to inform plan making but does not in itself determine whether a site should be allocated for development. This is because not all sites considered in the assessment will be suitable for development (e.g. because of policy constraints or if they are unviable). It is the role of the assessment to provide information on the range of sites which are available to meet need, but it is for the development plan itself to determine which of those sites are the most suitable to meet those needs.

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## Can designated neighbourhood forums and parish/town councils use the guidance?

Designated neighbourhood forums and parish/town councils may use the methodology to assess sites but any assessment should be proportionate. Neighbourhood forums and parish councils may also refer to existing site assessments prepared by the local planning authority as a starting point when identifying sites to allocate within a neighbourhood plan

(<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/what-is-neighbourhood-planning/>).

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## Can plan makers use a different methodology?

This guidance indicates what inputs and processes should lead to a robust assessment of land availability. Plan makers should have regard to the guidance in preparing their assessments. Where they depart from the guidance, plan makers will have to set out reasons for doing so. The assessment should be thorough but proportionate, building where possible on existing information sources outlined within the guidance.

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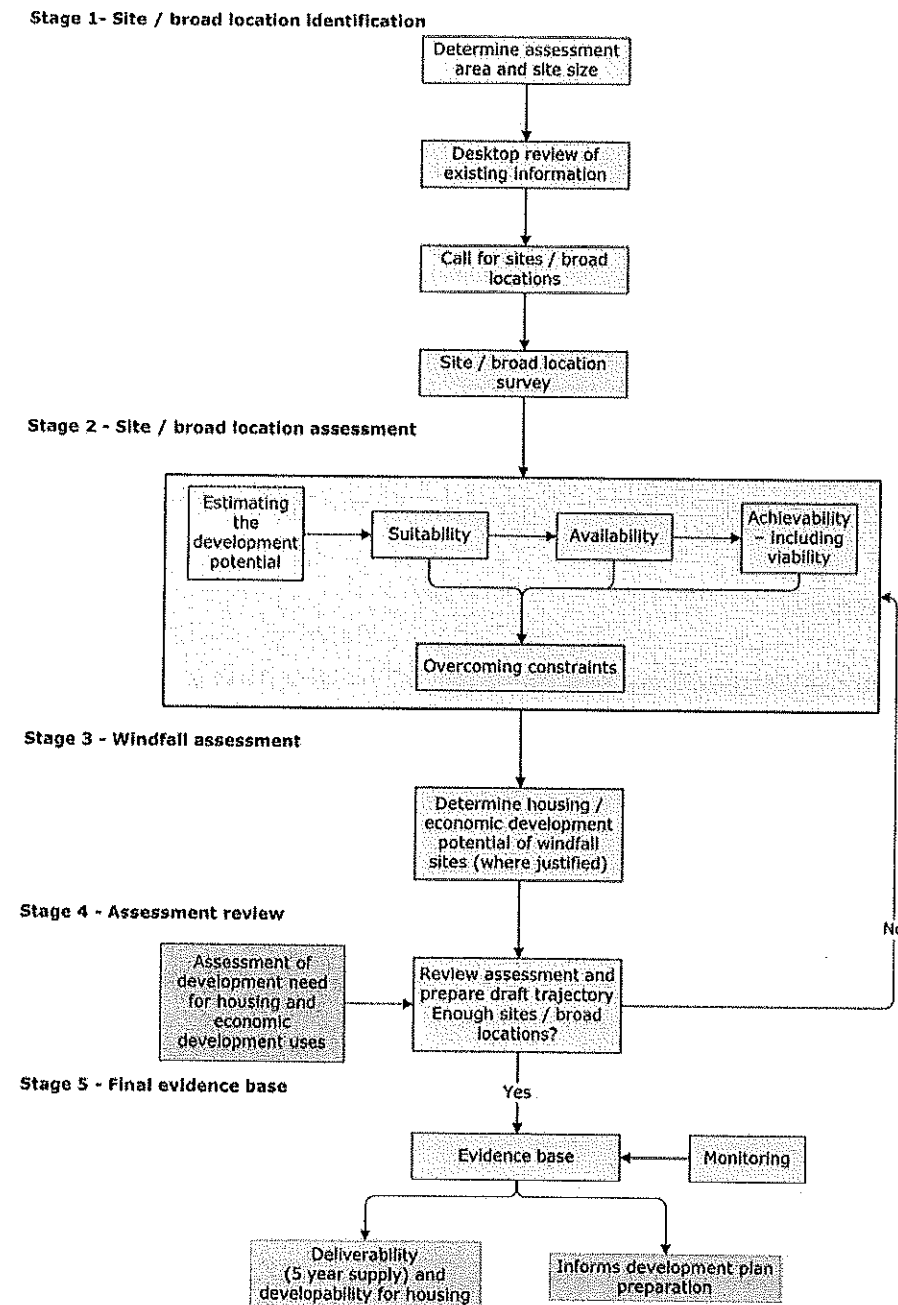
3. Methodology – flow chart (<http://planningguidance.communities.gov.uk/blog/guidance/housing-and-economic-land-availability-assessment/methodology-flow-chart/>)

### Methodology – flow chart

## Related policy

### National Planning Policy Framework

- Annex 2 – Glossary (<http://planningguidance.com/sustainable-development/annex-2-glossary/>)



(<http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/land-availability.jpg>)

ID 3-006-20140306 Last updated 06 03 2014

#### 4. Methodology – Stage 1: Identification of sites and broad locations

(<http://planningguidance.communities.gov.uk/blog/guidance/housing-and-economic-land-availability-assessment/methodologystage-1-identification-of-sites-and-broad-locations-determine-assessment-area-and-site-size/>)

### Methodology – Stage 1: Identification of sites and broad locations

#### Determine assessment area and site size

#### What geographical area should the assessment cover?

The area selected for the assessment should be the housing market area and functional economic market area

(<http://planningguidance.communities.gov.uk/blog/guidance/housing-and-economic-development-needs-assessments/the-approach-to-assessing-need/>). This could be the local planning authority area or a different area such as two or more local authority areas or areas covered by the Local Enterprise Partnership.

ID 3-007-20140306 Last updated 06 03 2014

### **Who should plan makers work with?**

The assessment should be undertaken and regularly reviewed working with other local planning authorities in the relevant housing market area or functional economic market area, in line with the duty to cooperate (<http://planningguidance.communities.gov.uk/blog/guidance/duty-to-cooperate/what-is-the-duty-to-cooperate-and-what-does-it-require/>).

The following should be involved from the earliest stages of plan preparation, which includes the evidence base in relation to land availability: developers; those with land interests; land promoters; local property agents; local communities; partner organisations; Local Enterprise Partnerships; businesses and business representative organisations; parish and town councils; neighbourhood forums preparing neighbourhood plans (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/what-is-neighbourhood-planning/>).

ID 3-008-20140306 Last updated 06 03 2014

### **Should the assessment be constrained by the need for development?**

The assessment should identify all sites and broad locations regardless of the amount of development needed to provide an audit of available land. The process of the assessment will, however, provide the information to enable an identification of sites and locations suitable for the required development in the Local Plan (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>).

ID 3-009-20140306 Last updated 06 03 2014

### **What site/broad location size should be considered for assessment?**

Plan makers will need to assess a range of different site sizes from small-scale sites to opportunities for large-scale developments such as village and town extensions and new settlements where appropriate.

The assessment should consider all sites and broad locations capable of delivering five or more dwellings or economic development on sites of 0.25ha (or 500m<sup>2</sup> of floor space) and above. Where appropriate, plan makers may wish to consider alternative site size thresholds.

ID 3-010-20140306 Last updated 06 03 2014

### **How should sites/broad locations be identified?**

When carrying out a desk top review, plan makers should be proactive in identifying as wide a range as possible of sites and broad locations for development (including those existing sites that could be improved, intensified or changed). Sites, which have particular policy constraints, should be included in the assessment for the sake of comprehensiveness but these constraints must be set out clearly, including where they severely restrict development. An important part of the desktop review, however, is to test again the appropriateness of other previously defined constraints, rather than simply to accept them.

Plan makers should not simply rely on sites that they have been informed about but actively identify sites through the desktop review process that may have a part to play in meeting the development needs of an area.

ID 3-011-20140306 Last updated 06 03 2014



### What types of sites and sources of data should be used?

Plan makers should consider all available types of sites and sources of data that may be relevant in the assessment process but the following may be particularly relevant:

Type of site	Potential data source
Existing housing and economic development allocations and site development briefs not yet with planning permission	Local and neighbourhood plans Planning applications records Development briefs
Planning permissions for housing and economic development that are unimplemented or under construction	Planning application records Development starts and completions records
Planning applications that have been refused or withdrawn	Planning application records
Land in the local authority's ownership	Local authority records
Surplus and likely to become surplus public sector land	National register of public sector land <a href="http://www.data.gov.uk/dataset/epims">[2]</a> ( <a href="http://www.data.gov.uk/dataset/epims">http://www.data.gov.uk/dataset/epims</a> ) Engagement with strategic plans of other public sector bodies such as County Councils, Central Government, National Health Service, Police, Fire Services, utilities providers, statutory undertakers

Type of site	Potential data source
Vacant and derelict land and buildings (including empty homes, redundant and disused agricultural buildings, potential permitted development changes e.g. offices to residential)	Local authority empty property register English House Condition Survey National Land Use Database Commercial property databases (e.g. estate agents and property agents) Valuation Office database Active engagement with sector
Additional opportunities in established uses (e.g. making productive use of under-utilised facilities such as garage blocks)	Ordnance Survey maps Aerial photography Planning applications Site surveys
Business requirements and aspirations	Enquiries received by local planning authority Active engagement with sector
Sites in rural locations	Local and neighbourhood plans Planning applications
Large scale redevelopment and redesign of existing residential or economic areas	Ordnance Survey maps Aerial photography Site surveys
Sites in and adjoining villages or rural settlements and rural exception sites	
Potential urban extensions and new free standing settlements	

ID 3-012-20140306 Last updated 06 03 2014

### **Should plan makers issue a call for potential sites and broad locations for development?**

Plan makers should issue a call for potential sites and broad locations for development, which should be aimed at as wide an audience as is practicable so that those not normally involved in property development have the opportunity to contribute. This should include parish councils and neighbourhood forums, landowners, developers, businesses and relevant local interest groups, and local notification/publicity. It may be possible to include notification of a call for sites in other local authority documentation (such as notification of local elections) to minimise costs.

Plan makers should also set out key information sought from respondents. This could include:

- site location;
- suggested potential type of development e.g. economic development uses – retail, leisure, cultural, office, warehousing etc. residential – by different tenures, types and needs of different groups such as older people housing, private rented housing and people wishing to build or commission their own homes;
- the scale of development;
- constraints to development.

ID 3-013-20140306 Last updated 06 03 2014

### **What should be included in the site and broad location survey?**

The comprehensive list of sites and broad locations derived from data sources and the call for sites should be assessed against national policies and designations to establish which have reasonable potential for development and should be included in the site survey.

Plan makers should then assess potential sites and broad locations via more detailed site surveys to:

- ratify inconsistent information gathered through the call for sites and desk assessment;
- get an up to date view on development progress (where sites have planning permission);
- a better understanding of what type and scale of development may be appropriate;
- gain a more detailed understanding of deliverability, any barriers and how they could be overcome;
- identify further sites with potential for development that were not identified through data sources or the call for sites.

ID 3-014-20140306 Last updated 06 03 2014

### **How detailed should the survey be?**

Site surveys should be proportionate to the detail required for a robust appraisal. For example, the assessment will need to be more detailed where sites are considered to be realistic candidates for development.

ID 3-015-20140306 Last updated 06 03 2014

### **What characteristics should be recorded during the survey?**

During the site survey the following characteristics should be recorded (or checked if they were previously identified through the data sources and call for sites):

- site size, boundaries, and location;
- current land use and character;
- land uses and character of surrounding area;
- physical constraints (e.g. access, contamination, steep slopes, flooding, natural features of significance, location of infrastructure / utilities);
- potential environmental constraints;
- where relevant, development progress (e.g. ground works completed, number of units started, number of units completed);
- initial assessment of whether the site is suitable for a particular type of use or as part of a mixed-use development.

ID 3-016-20140306 Last updated 06 03 2014

## 5. Methodology – Stage 2: Site/broad location assessment

(<http://planningguidance.communities.gov.uk/blog/guidance/housing-and-economic-land-availability-assessment/methodology-stage-2-sitebroad-location-assessment/>)

### **Methodology – Stage 2: Site/broad location assessment**

#### **Estimating the development potential of each site/broad location**

#### **How should the development potential be calculated?**

The estimation of the development potential of each identified site should be guided by the existing or emerging plan policy including locally determined policies on density.

Where the plan policy is out of date or does not provide a sufficient basis to make a judgement then relevant existing development schemes can be used as the basis for assessment, adjusted for any individual site characteristics and physical constraints. The use of floor space densities for certain industries may also provide a useful guide.

The development potential is a significant factor that affects economic viability of a site/broad location and its suitability for a particular use. Therefore, assessing achievability (including viability) and suitability can usefully be carried out in parallel with estimating the development potential.

ID 3-017-20140306 Last updated 06 03 2014

#### **What factors should be considered for when and whether sites/broad locations are likely to be developed?**

Assessing the suitability, availability and achievability of sites including whether the site is economically viable will provide the information on which the judgement can be made in the plan-making context as to whether a site can be considered deliverable over the plan period.

ID 3-018-20140306 Last updated 06 03 2014

#### **What factors should be considered when assessing the suitability of sites/broad locations for development?**

Plan makers should assess the suitability of the identified use or mix of uses of a particular site or broad location including consideration of the types of development that may meet the needs of the community. These may include,

but are not limited to: market housing, private rented, affordable housing, people wishing to build or commission their own homes, housing for older people, or for economic development uses.

Assessing the suitability of sites or broad locations for development should be guided by:

- the development plan, emerging plan policy and national policy;
- market and industry requirements in that housing market or functional economic market area.

When assessing the sites against the adopted development plan, plan makers will need to take account of how up to date the plan policies are and consider the appropriateness of identified constraints on sites/broad location and whether such constraints may be overcome.

Sites in existing development plans or with planning permission will generally be considered suitable for development although it may be necessary to assess whether circumstances have changed which would alter their suitability. This will include a re-appraisal of the suitability of previously allocated land and the potential to designate allocated land for different or a wider range of uses. This should be informed by a range of factors including the suitability of the land for different uses and by market signals, which will be useful in identifying the most appropriate use.

In addition to the above considerations, the following factors should be considered to assess a site's suitability for development now or in the future:

- physical limitations or problems such as access, infrastructure, ground conditions, flood risk, hazardous risks, pollution or contamination;
- potential impacts including the effect upon landscapes including landscape features, nature and heritage conservation;
- appropriateness and likely market attractiveness for the type of development proposed;
- contribution to regeneration priority areas;
- environmental/amenity impacts experienced by would be occupiers and neighbouring areas.

ID 3-019-20140306 Last updated 06 03 2014

### **What factors should be considered when assessing availability?**

A site is considered available for development, when, on the best information available (confirmed by the call for sites and information from land owners and legal searches where appropriate), there is confidence that there are no legal or ownership problems, such as unresolved multiple ownerships, ransom strips tenancies or operational requirements of landowners. This will often mean that the land is controlled by a developer or landowner who has expressed an intention to develop, or the landowner has expressed an intention to sell. Because persons do not need to have an interest in the land to make planning applications, the existence of a planning permission does not necessarily mean that the site is available. Where potential problems have been identified, then an assessment will need to be made as to how and when they can realistically be overcome. Consideration should also be given to the delivery record of the developers or landowners putting forward sites, and whether the planning background of a site shows a history of unimplemented permissions.

ID 3-020-20140306 Last updated 06 03 2014

## What factors should be considered when assessing achievability including whether the development of the site is viable?

A site is considered achievable for development where there is a reasonable prospect that the particular type of development will be developed on the site at a particular point in time. This is essentially a judgement about the economic viability of a site (<http://planningguidance.communities.gov.uk/blog/guidance/viability-guidance/>), and the capacity of the developer to complete and let or sell the development over a certain period.

ID 3-021-20140306 Last updated 06 03 2014

## What happens when constraints are identified that impact on the suitability, availability and achievability?

Where constraints have been identified, the assessment should consider what action would be needed to remove them (along with when and how this could be undertaken and the likelihood of sites/broad locations being delivered). Actions might include the need for investment in new infrastructure, dealing with fragmented land ownership, environmental improvement, or a need to review development plan policy, which is currently constraining development.

ID 3-022-20140306 Last updated 06 03 2014

## How should the timescale and rate of development be assessed and presented?

The local planning authority should use the information on suitability, availability, achievability and constraints to assess the timescale within which each site is capable of development. This may include indicative lead-in times and build-out rates for the development of different scales of sites. On the largest sites allowance should be made for several developers to be involved. The advice of developers and local agents will be important in assessing lead-in times and build-out rates by year.

ID 3-023-20140306 Last updated 06 03 2014

## 6. Methodology – Stage 3: Windfall assessment (where justified)

(<http://planningguidance.communities.gov.uk/blog/guidance/housing-and-economic-land-availability-assessment/stage-3-determining-the-housing-potential-of-windfall-sites-where-justified/>)

### Methodology – Stage 3: Windfall assessment (where justified)

#### Determining the housing potential of windfall sites where justified

#### How should a windfall allowance be determined in relation to housing?

A windfall allowance may be justified in the five-year supply if a local planning authority has compelling evidence as set out in paragraph 48

([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#paragraph\\_48](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#paragraph_48)) of the National Planning Policy Framework.

Local planning authorities have the ability to identify broad locations in years 6-15, which could include a windfall allowance based on a geographical area (using the same criteria as set out in paragraph 48 of the National Planning Policy Framework).

ID 3-24-20140306 Last updated 06 03 2014

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### Related policy

#### National Planning Policy Framework

- Paragraph 48 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#paragraph\\_48](http://planningguidance.com/sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#paragraph_48))

- Annex 2 – Glossary – windfall sites (<http://planningguidance.com/sustainable-development/annex-2-glossary/>)

## 7. Methodology – Stage 4: Assessment review

(<http://planningguidance.communities.gov.uk/blog/guidance/housing-and-economic-land-availability-assessment/stage-4-assessment-review/>)

### Methodology – Stage 4: Assessment review

#### How should the assessment be reviewed?

Once the sites and broad locations have been assessed, the development potential of all sites can be collected to produce an indicative trajectory. This should set out how much housing and the amount of economic development that can be provided, and at what point in the future. An overall risk assessment should be made as to whether sites will come forward as anticipated.

ID 3-025-20140306 Last updated 06 03 2014

#### What happens if the trajectory indicates that there are insufficient sites/broad locations to meet the objectively assessed need?

It may be concluded that insufficient sites/broad locations have been identified against objectively assessed needs. Plan makers will need to revisit the assessment, for example changing the assumptions on the development potential on particular sites (including physical and policy constraints) including sites for possible new settlements.

If, following this review there are still insufficient sites, then it will be necessary to investigate how this shortfall should best be planned for. If there is clear evidence that the needs cannot be met locally, it will be necessary to consider how needs might be met in adjoining areas in accordance with the duty to cooperate (<http://planningguidance.communities.gov.uk/blog/guidance/duty-to-cooperate/what-is-the-duty-to-cooperate-and-what-does-it-require/>).

ID 3-026-20140306 Last updated 06 03 2014

#### Is it essential to identify specific developable sites or broad locations for housing growth for years 11-15?

As set out in the National Planning Policy Framework, local planning authorities should identify a supply of specific, developable sites or broad locations for growth, where possible, for years 11-15. Local Plans can pass the test of soundness where local planning authorities have not been able to identify sites or broad locations for growth in years 11-15.

ID 3-027-20140306 Last updated 06 03 2014

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### Related policy

#### National Planning Policy Framework

- Paragraph 47 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#paragraph\\_47](http://planningguidance.com/sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#paragraph_47))
- Paragraph 157 (<http://planningguidance.com/sustainable->

development/plan-  
making/#paragraph\_157)

## 8. Methodology – Stage 5: Final evidence base

(<http://planningguidance.communities.gov.uk/blog/guidance/housing-and-economic-land-availability-assessment/stage-5-final-evidence-base/>)

### Methodology – Stage 5: Final evidence base

#### What are the core outputs?

The following set of standard outputs should be produced from the assessment to ensure consistency, accessibility and transparency:

- a list of all sites or broad locations considered, cross-referenced to their locations on maps;
- an assessment of each site or broad location, in terms of its suitability for development, availability and achievability including whether the site/broad location is viable) to determine whether a site is realistically expected to be developed and when;
- contain more detail for those sites which are considered to be realistic candidates for development, where others have been discounted for clearly evidenced and justified reasons;
- the potential type and quantity of development that could be delivered on each site/broad location, including a reasonable estimate of build out rates, setting out how any barriers to delivery could be overcome and when;
- an indicative trajectory of anticipated development and consideration of associated risks.

The assessment should also be made publicly available in an accessible form.

ID 3-028-20140306 Last updated 06 03 2014

#### Do housing and economic needs override constraints on the use of land, such as Green Belt?

The National Planning Policy Framework should be read as a whole: need alone is not the only factor to be considered when drawing up a Local Plan.

The Framework is clear that local planning authorities should, through their Local Plans, meet objectively assessed needs unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, or specific policies in the Framework indicate development should be restricted. Such policies include those relating to sites protected under the Birds and Habitats Directives, and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, Heritage Coast or within a National Park or the Broads; designated heritage assets; and locations at risk of flooding or coastal erosion.

The Framework makes clear that, once established, Green Belt boundaries should only be altered in exceptional circumstances, through the preparation or review of the Local Plan.

ID 3-044-20141006 Last updated 06 10 2014

#### Do local planning authorities have to meet in full housing needs identified in needs assessments?

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#### Related policy

##### National Planning Policy Framework

- Paragraph 14 ([http://planningguidance.com/sustainable-development/#paragraph\\_14](http://planningguidance.com/sustainable-development/#paragraph_14))
- Paragraph 83 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/9-protecting-green-belt-land/#paragraph\\_83](http://planningguidance.com/sustainable-development/delivering-sustainable-development/9-protecting-green-belt-land/#paragraph_83))

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#### Related policy



Local authorities should prepare a Strategic Housing Market Assessment to assess their full housing needs.

However, assessing need is just the first stage in developing a Local Plan. Once need has been assessed, the local planning authority should prepare a Strategic Housing Land Availability Assessment to establish realistic assumptions about the availability, suitability and the likely economic viability of land to meet the identified need for housing over the plan period, and in so doing take account of any constraints such as Green Belt, which indicate that development should be restricted and which may restrain the ability of an authority to meet its need.

ID 3-045-20141006 Last updated 06 10 2014

### How is deliverability (1-5 years) and developability (6-15 years) determined in relation to housing supply?

Assessing the suitability, availability and achievability (including the economic viability of a site) will provide the information as to whether a site can be considered deliverable, developable or not currently developable for housing. The definition of 'deliverability' and 'developability' in relation to housing supply is set out in footnote 11

([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#footnote\\_11](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#footnote_11)) and footnote 12

([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#footnote\\_12](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#footnote_12)) of the National Planning Policy Framework.

All aspects of a Local Plan

(<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>) must be realistic and deliverable but there are specific requirements in the Framework in relation to planned housing land supply.

ID 3-029-20140306 Last updated 06 03 2014

#### National Planning Policy Framework

- Paragraph 159 ([http://planningguidance.com/sustainable-development/plan-making/#paragraph\\_159](http://planningguidance.com/sustainable-development/plan-making/#paragraph_159))

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#### Related policy

##### National Planning Policy Framework

- Paragraph 47 – Bullets 2 & 3 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#paragraph\\_47](http://planningguidance.com/sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#paragraph_47))
- Footnote 11 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#footnote\\_11](http://planningguidance.com/sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#footnote_11))
- Footnote 12 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#footnote\\_12](http://planningguidance.com/sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#footnote_12))

### What is the starting point for the five-year housing supply?

The National Planning Policy Framework sets out that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements. Therefore local planning authorities should have an identified five-year housing supply at all points during the plan period. Housing requirement figures in up-to-date adopted Local Plans should be used as the starting point for calculating the five year supply. Considerable weight should be given to the housing requirement figures in adopted Local Plans, which have successfully passed through the examination process, unless significant new evidence comes

to light. It should be borne in mind that evidence which dates back several years, such as that drawn from revoked regional strategies, may not adequately reflect current needs.

Where evidence in Local Plans has become outdated and policies in emerging plans are not yet capable of carrying sufficient weight, information provided in the latest full assessment of housing needs should be considered. But the weight given to these assessments should take account of the fact they have not been tested or moderated against relevant constraints. Where there is no robust recent assessment of full housing needs, the household projections published by the Department for Communities and Local Government should be used as the starting point, but the weight given to these should take account of the fact that they have not been tested (which could evidence a different housing requirement to the projection, for example because past events that affect the projection are unlikely to occur again or because of market signals) or moderated against relevant constraints (for example environmental or infrastructure).

ID 3-030-20140306 Last updated 06 03 2014

### What constitutes a 'deliverable site' in the context of housing policy?

Deliverable sites for housing could include those that are allocated for housing in the development plan and sites with planning permission (outline or full that have not been implemented) unless there is clear evidence that schemes will not be implemented within five years.

However, planning permission or allocation in a development plan is not a prerequisite for a site being deliverable in terms of the five-year supply. Local planning authorities will need to provide robust, up to date evidence to support the deliverability of sites, ensuring that their judgements on deliverability are clearly and transparently set out. If there are no significant constraints (e.g. infrastructure) to overcome such as infrastructure sites not allocated within a development plan or without planning permission can be considered capable of being delivered within a five-year timeframe.

The size of sites will also be an important factor in identifying whether a housing site is deliverable within the first 5 years. Plan makers will need to consider the time it will take to commence development on site and build out rates to ensure a robust five-year housing supply.

ID 3-031-20140306 Last updated 06 03 2014

### What constitutes a 'developable site' in the context of housing policy?

The National Planning Policy Framework asks local planning authorities to identify a supply of specific developable sites or broad locations for growth in years 6-10 and where possible for years 11-15.

Developable sites or broad locations are areas that are in a suitable location for housing development and have a reasonable prospect that the site or broad location is available and could be viably developed at the point envisaged. Local planning authorities will need to consider when in the plan period such sites or broad locations will come forward so that they can be identified on the development trajectory. These sites or broad locations may include large development opportunities such as urban extension or new settlements.

ID 3-032-20140306 Last updated 06 03 2014

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### Related policy

#### National Planning Policy Framework

- Footnote 11 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#footnote\\_11](http://planningguidance.com/sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#footnote_11))

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### Related policy

#### National Planning Policy Framework

- Footnote 12 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#footnote\\_12](http://planningguidance.com/sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#footnote_12))

## Updating evidence on the supply of specific deliverable sites sufficient to provide five years worth of housing against housing requirements

Applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The examination of Local Plans

(<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>) is intended to ensure that up-to-date housing requirements and the deliverability of sites to meet a five year supply will have been thoroughly considered and examined prior to adoption, in a way that cannot be replicated in the course of determining individual applications and appeals where only the applicant's/appellant's evidence is likely to be presented to contest an authority's position.

The National Planning Policy Framework requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing. As part of this, local planning authorities should consider both the delivery of sites against the forecast trajectory and also the deliverability of all the sites in the five year supply.

Local planning authorities should ensure that they carry out their annual assessment in a robust and timely fashion, based on up-to-date and sound evidence, taking into account the anticipated trajectory of housing delivery, and consideration of associated risks, and an assessment of the local delivery record. Such assessment, including the evidence used, should be realistic and made publicly available in an accessible format. Once published, such assessments should normally not need to be updated for a full twelve months unless significant new evidence comes to light or the local authority wishes to update its assessment earlier.

By taking a thorough approach on an annual basis, local planning authorities will be in a strong position to demonstrate a robust five year supply of sites. Demonstration of a five year supply is a key material consideration when determining housing applications and appeals. As set out in the National Planning Policy Framework, a five year supply is also central to demonstrating that relevant policies for the supply of housing are up-to-date in applying the presumption in favour of sustainable development.

ID 3-033-20150327 Last updated 27 03 2015

## In decision taking, can unmet need for housing outweigh Green Belt Protection?

Unmet housing need (including for traveller sites) is unlikely to outweigh the harm to the Green Belt and other harm to constitute the "very special circumstances" justifying inappropriate development on a site within the Green Belt.

ID 3-034-20141006 Last updated 06 10 2014

## How should local planning authorities deal with past under-supply?

The approach to identifying a record of persistent under delivery of housing involves questions of judgment for the decision maker in order to determine whether or not a particular degree of under delivery of housing triggers the requirement to bring forward an additional supply of housing.

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### Related policy

#### National Planning Policy Framework

- Paragraph 47 (<http://planningguidance.com/sustainable-development/delivering-sustainable->

The factors behind persistent under delivery may vary from place to place and, therefore, there can be no universally applicable test or definition of the term. It is legitimate to consider a range of issues, such as the effect of imposed housing moratoriums and the delivery rate before and after any such moratoriums.

development/6-delivering-a-wide-choice-of-high-quality-homes/#paragraph\_47)

The assessment of a local delivery record is likely to be more robust if a longer term view is taken, since this is likely to take account of the peaks and troughs of the housing market cycle.

Local planning authorities should aim to deal with any undersupply within the first 5 years of the plan period where possible. Where this cannot be met in the first 5 years, local planning authorities will need to work with neighbouring authorities under the 'Duty to Cooperate' (<http://planningguidance.communities.gov.uk/blog/guidance/duty-to-cooperate/>).

ID 3-035-20140306 Last updated 06 03 2014

### **Can previous over-supply of housing be considered when determining the objectively assessed need for housing?**

The housing requirement is set at the starting point of the plan, which can be earlier than the date the plan is adopted. For a plan to be found sound it would have to be based on an objectively assessed need for housing. In assessing this need, consideration can be given to evidence that the Council has delivered over and above its housing need in previous years.

Household projections are based on past trends. If a Council has robust evidence that past high delivery rates that inform the projections are no longer realistic – for example they relied on a particular set of circumstances that could not be expected to occur again – they can adjust their projections down accordingly.

ID 3-036-20140306 Last updated 06 03 2014

### **How should local planning authorities deal with housing for older people?**

Older people have a wide range of different housing needs, ranging from suitable and appropriately located market housing through to residential institutions (Use Class C2). Local planning authorities should count housing provided for older people, including residential institutions in Use Class C2, against their housing requirement. The approach taken, which may include site allocations, should be clearly set out in the Local Plan.

In decision-taking, evidence that development proposals for accessible and manageable homes specifically for older people will free up under-occupied local housing for other population groups is likely to demonstrate a market need that supports the approval of such homes.

ID 3-037-20150320 Last updated 20 03 2015

### **How should local planning authorities deal with student housing?**

All student accommodation, whether it consists of communal halls of residence or self-contained dwellings, and whether or not it is on campus, can be included towards the housing requirement, based on the amount of accommodation it releases in the housing market. Notwithstanding, local authorities should take steps to avoid double-counting.

ID 3-038-20140306 Last updated 06 03 2014

## How should local planning authorities deal with empty housing and buildings?

The National Planning Policy Framework encourages local authorities to bring empty housing and buildings back into residential use. Empty homes can help to contribute towards meeting housing need but it would be for individual local authorities to identify and implement an empty homes strategy. Any approach to bringing empty homes back into use and counting these against housing need would have to be robustly evidenced by the local planning authority at the independent examination of the draft Local Plan, for example to test the deliverability of the strategy and to avoid double counting (local planning authorities would need to demonstrate that empty homes had not been counted within their existing stock of dwellings when calculating their overall need for additional dwellings in their local plans).

ID 3-039-20140306 Last updated 06 03 2014

## How does the five-year housing supply relate to neighbourhood planning?

Local planning authorities need to be able to demonstrate a five-year supply of deliverable sites in order to comply with national policies. The National Planning Policy Framework asks local planning authorities to use their evidence base to ensure that their Local Plan meets the full objectively assessed needs for market and affordable housing, identifies key sites that are critical to the delivery of the housing strategy and identifies and updates annually a supply of specific deliverable sites sufficient to provide a five-year supply.

Neighbourhood plans (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/neighbourhood-planning-flood-risk/>) set out policies that relate to the development and use of land and can be used to allocate sites for development but the plans must be in general conformity with the strategic policies of the Local Plan. Where a neighbourhood plan comes forward before an up to date Local Plan is in place, the local planning authority should work constructively with a qualifying body to enable a neighbourhood plan to make timely progress and to share evidence used to prepare their plan.

Neighbourhood plans

(<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/what-is-neighbourhood-planning/what-is-a-neighbourhood-plan-and-what-is-its-relationship-to-a-local-plan/>) should deliver against the objectively assessed evidence of needs.

ID 3-040-20140306 Last updated 06 03 2014

## How often should an assessment be updated?

The assessment of sites should be kept up-to-date as part of local authorities' monitoring report (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/adoption-monitoring-and-supplementary-planning-documents/>) and should be updated yearly.

It should only be necessary to carry out a full re-survey of the sites/broad locations when development plans have to be reviewed or other significant changes make this necessary (e.g. if a local planning authority is no longer able to demonstrate a five year supply of specific deliverable sites for housing).

ID 3-041-20140306 Last updated 06 03 2014

## Is an annual update required for allocated employment sites?

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### Related policy

#### National Planning Policy Framework

- Paragraph 51 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#paragraph\\_51](http://planningguidance.com/sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#paragraph_51))

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### Related policy

#### National Planning Policy Framework

- About the National Planning Policy Framework (<http://planningguidance.com/about-the-national-planning-policy-framework/>)

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### Related policy

#### National Planning Policy

Although there is no formal requirement for an annual update of employment (including retail, office, manufacturing) site allocations, they should be regularly reviewed.

ID 3-042-20140306 Last updated 06 03 2014

#### Framework

- Paragraph 22 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/#paragraph\\_22](http://planningguidance.com/sustainable-development/delivering-sustainable-development/#paragraph_22))


### What information should be recorded when monitoring?

The main information to record is:

- progress with delivery of development on allocated and sites with planning permission;
- planning applications that have been submitted or approved on sites and broad locations identified by the assessment;
- progress that has been made in removing constraints on development and whether a site is now considered to be deliverable or developable;
- unforeseen constraints that have emerged which now mean a site is no longer deliverable or developable, and how these could be addressed;
- whether the windfall allowance (where justified) is coming forward as expected, or may need to be adjusted.

ID 3-043-20140306 Last updated 06 03 2014

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 Department for Communities & Local Government  
(<https://www.gov.uk/government/organisations/department-for-communities-and-local-government>)

## Planning Practice Guidance (<http://planningguidance.communities.gov.uk>)

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Guidance

### Housing- Optional Technical Standards

Print 

1. Introduction (<http://planningguidance.communities.gov.uk/blog/guidance/housing-optional-technical-standards/introduction/>)

#### Introduction

##### What are the new optional technical housing standards?

The Government has created a new approach for the setting of technical standards for new housing. This rationalises the many differing existing standards into a simpler, streamlined system which will reduce burdens and help bring forward much needed new homes. The Government set out its policy on the application of these standards in decision taking and plan making in a Written Ministerial Statement [\[2\]](https://www.gov.uk/government/speeches/planning-update-march-2015) (<https://www.gov.uk/government/speeches/planning-update-march-2015>), which also withdraws the Code for Sustainable Homes aside from legacy cases. [\[2\]](https://www.gov.uk/government/policies/improving-the-energy-efficiency-of-buildings-and-using-planning-to-protect-the-environment/supporting-pages/code-for-sustainable-homes) (<https://www.gov.uk/government/policies/improving-the-energy-efficiency-of-buildings-and-using-planning-to-protect-the-environment/supporting-pages/code-for-sustainable-homes>)

ID 56-001-20150327 Last updated 27 03 2015

##### What optional technical housing standards can local planning authorities set?

Local planning authorities have the option to set additional technical requirements exceeding the minimum standards required by Building Regulations in respect of access and water, and an optional nationally described space standard. Local planning authorities will need to gather evidence to determine whether there is a need for additional standards in their area, and justify setting appropriate policies in their Local Plans (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>).

ID 56-002-20150327 Last updated 27 03 2015

##### How should local planning authorities assess viability concerns for setting optional Building Regulation requirements and the nationally described space standard?

Local planning authorities should consider the impact of using these standards as part of their Local Plan viability assessment. In considering the costs relating to optional Building Regulation requirements or the nationally described space standard, authorities may wish to take account of the evidence in the most recent Impact Assessment [\[2\]](https://www.gov.uk/government/publications/housing-standards-review-final-implementation-impact-assessment) (<https://www.gov.uk/government/publications/housing-standards-review-final-implementation-impact-assessment>) issued alongside the Housing Standards Review.

ID 56-003-20150327 Last updated 27 03 2015

##### Where can I find out more about the standards?

Further information on the access standard and water efficiency standard standards are available from the Planning Portal. [\[a\]](http://www.planningportal.gov.uk/buildingregulations/approveddocuments/)

(<http://www.planningportal.gov.uk/buildingregulations/approveddocuments/>)

Further information on the nationally described space standard [\[a\]](https://www.gov.uk/government/publications/technical-housing-standards-nationally-described-space-standard)

(<https://www.gov.uk/government/publications/technical-housing-standards-nationally-described-space-standard>) is available from GOV.UK [\[a\]](https://www.gov.uk/government/policies/providing-effective-building-regulations-so-that-new-and-altered-buildings-are-safe-accessible-and-efficient/supporting-pages/technical-housing-standards-review)

(<https://www.gov.uk/government/policies/providing-effective-building-regulations-so-that-new-and-altered-buildings-are-safe-accessible-and-efficient/supporting-pages/technical-housing-standards-review>).

ID 56-004-20150327 Last updated 27 03 2015

## 2. Accessibility and wheelchair housing standards

(<http://planningguidance.communities.gov.uk/blog/guidance/housing-optional-technical-standards/accessibility-and-wheelchair-housing-standards/>)

### Accessibility and wheelchair housing standards

#### Can local planning authorities require accessibility, adaptability and wheelchair standards in new dwellings?

The National Planning Policy Framework

(<http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/8-promoting-healthy-communities/>)

(NPPF) is clear that local planning authorities should plan to create safe, accessible environments and promote inclusion and community cohesion. This includes buildings and their surrounding spaces. Local planning authorities should take account of evidence that demonstrates a clear need for housing for people with specific housing needs and plan to meet this need.

ID 56-005-20150327 Last updated 27 03 2015

#### How should local planning authorities assess the need for accessibility requirements?

The National Planning Policy Framework

([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#paragraph\\_50](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#paragraph_50)) requires local planning authorities to have a clear understanding of housing needs in their area, including those for people with specific housing needs. The Framework provides guidance on the methodology (<http://planningguidance.communities.gov.uk/blog/guidance/housing-and-economic-development-needs-assessments/methodology-assessing-housing-need/>) that can be used to undertake the needs assessments.

ID 56-006-20150327 Last updated 27 03 2015

#### What evidence should local planning authorities use to demonstrate a need to set higher accessibility, adaptability and wheelchair housing standards?

Based on their housing needs assessment and other available datasets it will be for local planning authorities to set out how they intend to approach demonstrating the need for Requirement M4(2) (accessible and adaptable

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### Related policy

#### National Planning Policy Framework

- Promoting Healthy Communities (<http://planningguidance.com/sustainable-development/delivering-sustainable-development/8-promoting-healthy-communities/>)

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### Related policy

#### National Planning Policy Framework

- Paragraph 50 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#paragraph\\_50](http://planningguidance.com/sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#paragraph_50))



dwellings), and / or M4(3) (wheelchair user dwellings), of the Building Regulations. There is a wide range of published official statistics and factors which local planning authorities can consider and take into account, including:

- the likely future need for housing for older and disabled people (including wheelchair user dwellings).
- size, location, type and quality of dwellings needed to meet specifically evidenced needs (for example retirement homes, sheltered homes or care homes).
- the accessibility and adaptability of existing housing stock.
- how needs vary across different housing tenures.
- the overall impact on viability.

To assist local planning authorities in appraising this data the Government has produced a summary data sheet [\[2\]](https://www.gov.uk/government/publications/building-regulations-guide-to-available-disability-data) (<https://www.gov.uk/government/publications/building-regulations-guide-to-available-disability-data>). This sets out in one place useful data and sources of further information which planning authorities can draw from to inform their assessments. It will reduce the time needed for undertaking the assessment and thereby avoid replicating some elements of the work.

ID 56-007-20150327 Last updated 27 03 2015

### **What accessibility standards can local planning authorities require from new development?**

Where a local planning authority adopts a policy to provide enhanced accessibility or adaptability they should do so only by reference to Requirement M4(2) and / or M4(3) of the optional requirements in the Building Regulations. They should clearly state in their Local Plan what proportion of new dwellings should comply with the requirements. There may be rare instances where an individual's needs are not met by the wheelchair accessible optional requirement – see paragraph 011 below

([http://planningguidance.communities.gov.uk/blog/guidance/housing-optional-technical-standards/accessibility-and-wheelchair-housing-standards/#paragraph\\_011](http://planningguidance.communities.gov.uk/blog/guidance/housing-optional-technical-standards/accessibility-and-wheelchair-housing-standards/#paragraph_011)).

Local Plan (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>) policies should also take into account site specific factors such as vulnerability to flooding, site topography, and other circumstances which may make a specific site less suitable for M4(2) and M4(3) compliant dwellings, particularly where step free access cannot be achieved or is not viable. Where step-free access is not viable, neither of the Optional Requirements in Part M should be applied.

ID 56-008-20150327 Last updated 27 03 2015

### **What issues should local planning authorities consider in determining whether dwellings should be fully wheelchair accessible or adaptable?**

Part M of the Building Regulations sets a distinction between wheelchair accessible (a home readily useable by a wheelchair user at the point of completion) and wheelchair adaptable (a home that can be easily adapted to meet the needs of a household including wheelchair users) dwellings.

Local Plan (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>) policies for wheelchair accessible homes should be applied only to those dwellings where the local authority is responsible for allocating or nominating a person to live in that dwelling.

ID 56-009-20150327 Last updated 27 03 2015

### **How should authorities determine whether accessible and adaptable or wheelchair user dwellings (M4(2) or M4(3)) should be required in non-lift serviced flats?**

The Building Regulations for accessible and adaptable or wheelchair user dwellings require that these types of dwelling should achieve step-free access. In setting policies requiring M4(2) and M4(3) compliant dwellings, local planning authorities will need to assess whether this has an impact on non-lift serviced multi-storey development in their local housing mix. Where step-free access in this type of development is not viable, neither of the Optional Requirements in Part M should be applied.

ID 56-010-20150327 Last updated 27 03 2015

### **Where an individual has specific needs that would not be met by the wheelchair accessible optional requirement can a local planning authority ask for a different standard?**

Where there is a very specific and clearly evidenced accessibility need, which is outside of what is provided for by the wheelchair accessible standard, a local planning authority can have different requirements in order to meet that need. This should only be required to meet the needs of a specific individual and therefore should only be required of a home where a local authority allocation policy applies. Such a requirement would also be subject to viability considerations.

ID 56-011-20150327 Last updated 27 03 2015

### **Where can I find out more about the access standard?**

Approved Document M, volumes 1 – access to and use of dwellings [\[2\]](http://www.planningportal.gov.uk/buildingregulations/approveddocuments/partm/adm/admvol1)  
(<http://www.planningportal.gov.uk/buildingregulations/approveddocuments/partm/adm/admvol1>)  
and 2 – access to and use of buildings other than dwellings [\[2\]](http://www.planningportal.gov.uk/buildingregulations/approveddocuments/partm/adm/admvol2)  
(<http://www.planningportal.gov.uk/buildingregulations/approveddocuments/partm/adm/admvol2>)  
are available from the Planning Portal.

ID 56-012-20150327 Last updated 27 03 2015

## **3. Water efficiency standards (<http://planningguidance.communities.gov.uk/blog/guidance/housing-optional-technical-standards/water-efficiency-standards/>)**

### **Water efficiency standards**

#### **Can local planning authorities require a tighter water efficiency standard in new dwellings?**

In setting out how the planning system should contribute to the achievement of sustainable development, the National Planning Policy Framework (<http://planningguidance.communities.gov.uk/blog/policy/>) and Guidance (<http://planningguidance.communities.gov.uk/blog/guidance/>) makes clear this includes planning to provide the high quality housing required to meet the needs of present and future generations, and helping to use natural resources prudently. The Framework's policies expect local planning authorities to adopt proactive strategies to adapt to climate change that take full account of water supply and demand considerations. Early engagement between local planning authorities and water companies can help ensure the necessary water infrastructure is put in place to support new development. Water supply guidance is available from paragraph 001, reference ID: 34-001-20140306 (<http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and->

[water-quality/water-supply-wastewater-and-water-quality-introduction/#paragraph\\_001](http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality-introduction/#paragraph_001), (<http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality-introduction/>)The local planning authority may also consider whether a tighter water efficiency requirement for new homes is justified to help manage demand.

ID 56-013-20150327 Last updated 27 03 2015

### **What standard should be applied to new homes?**

All new homes already have to meet the mandatory national standard set out in the Building Regulations (of 125 litres/person/day). Where there is a clear local need, local planning authorities can set out Local Plan (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>)policies requiring new dwellings to meet the tighter Building Regulations optional requirement of 110 litres/person/day.

ID 56-014-20150327 Last updated 27 03 2015

### **How should local planning authorities establish a clear need?**



It will be for a local planning authority to establish a clear need based on:

- existing sources of evidence.
- consultations with the local water and sewerage company, the Environment Agency and catchment partnerships. Water supply guidance is available from paragraph 003. Reference ID: 34-003-20140306 ([http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality-introduction/#paragraph\\_003](http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality-introduction/#paragraph_003))
- consideration of the impact on viability and housing supply of such a requirement.

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### **What are the existing sources of evidence?**

Primary sources of evidence which might support a tighter water efficiency standard for new dwellings are:

- The Environment Agency Water Stressed Areas Classification (2013)  ([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/244333/water-stressed-classification-2013.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/244333/water-stressed-classification-2013.pdf)) which identifies areas of serious water stress where household demand for water is (or is likely to be) a high proportion of the current effective rainfall available to meet that demand.
- Water resource management plans produced by water companies
- River Basin Management Plans  (<https://www.gov.uk/government/collections/river-basin-management-plans>)– which describe the river basin district and the pressure that the water environment faces. These include information on where water resources are contributing to a water body being classified as 'at risk' or 'probably at risk' of failing to achieve good ecological status, due to low flows or reduced water availability.

In addition to these primary data sources, locally specific evidence may also be available, for example collaborative 'water cycle studies' may have been carried out in areas of high growth.

ID 56-016-20150327 Last updated 27 03 2015

## Where can I find out more about the water efficiency standard?

Further information on the water efficiency standard [\[2\]](#) (<http://www.planningportal.gov.uk/buildingregulations/approveddocuments/partg/approved>) is available from the Planning Portal.

ID 56-017-20150327 Last updated 27 03 2015

## 4. Internal space standards (<http://planningguidance.communities.gov.uk/blog/guidance/housing-optional-technical-standards/internal-space-standards/>)

### Internal space standards

#### Can local planning authorities require internal space standards in new homes?

The National Planning Policy Framework ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#paragraph\\_50](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#paragraph_50)) says that local planning authorities should identify the size, type, tenure and range of housing that is required in particular locations, reflecting local demand.

Where a local planning authority (or qualifying body) wishes to require an internal space standard, they should only do so by reference in their Local Plan to the Nationally Described Space Standard [\[2\]](#) (<https://www.gov.uk/government/publications/technical-housing-standards-nationally-described-space-standard>).

ID 56-018-20150327 Last updated 27 03 2015

#### What standard should be applied to new homes?

The requirements of the space standard are set out in a supporting document – the Nationally Described Space Standard [\[2\]](#) (<https://www.gov.uk/government/publications/technical-housing-standards-nationally-described-space-standard>).

ID 56-019-20150327 Last updated 27 03 2015

#### How should local planning authorities establish a need for internal space standards?

Where a need for internal space standards is identified, local planning authorities should provide justification for requiring internal space policies. Local planning authorities should take account of the following areas:

- **need** – evidence should be provided on the size and type of dwellings currently being built in the area, to ensure the impacts of adopting space standards can be properly assessed, for example, to consider any potential impact on meeting demand for starter homes.
- **viability** – the impact of adopting the space standard should be considered as part of a plan's viability assessment with account taken of the impact of potentially larger dwellings on land supply. Local planning authorities will also need to consider impacts on affordability where a space standard is to be adopted.
- **timing** – there may need to be a reasonable transitional period following adoption of a new policy on space standards to enable developers to factor the cost of space standards into future land acquisitions.

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### Related policy

#### National Planning Policy Framework

- Paragraph 50 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#paragraph\\_50](http://planningguidance.com/sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#paragraph_50))

ID 56-020-20150327 Last updated 27 03 2015



### **Who is responsible for ensuring compliance with the internal space standard?**

Unlike other aspects of the Housing Standards Review, the space standard has not been incorporated into the Building Regulations. Establishing compliance and any enforcement action therefore rests with the local planning authority.

Building control bodies may choose to provide checking of the space standard in development proposals as an additional service alongside carrying out their building control function. In these circumstances, local planning authorities may wish to avoid further additional checking of plans with regard to space standards.


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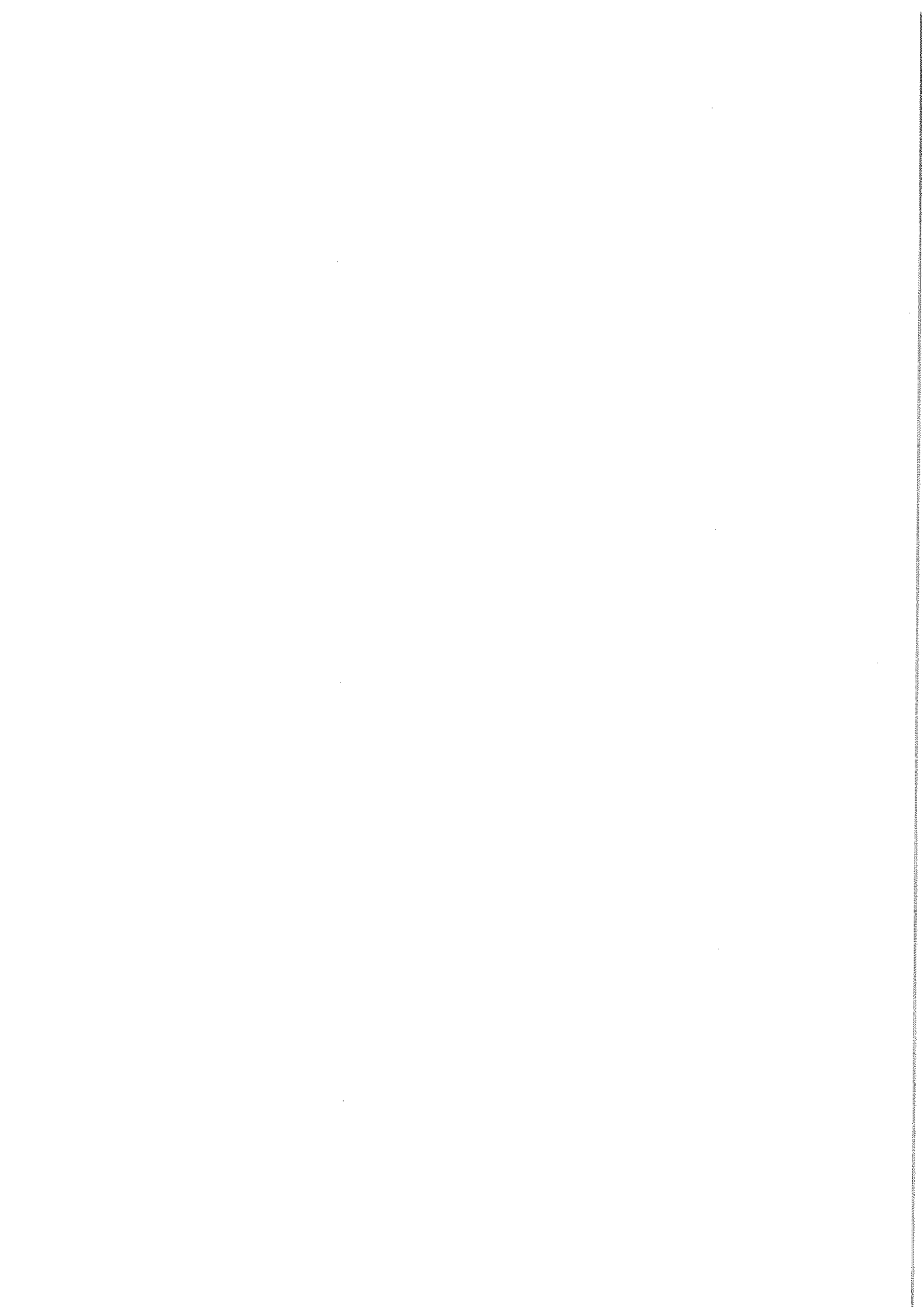
### **Where can I find out more about the nationally described space standard?**

Further information on the nationally described space standard  (<https://www.gov.uk/government/publications/technical-housing-standards-nationally-described-space-standard>) is available from GOV.UK  (<https://www.gov.uk/government/policies/providing-effective-building-regulations-so-that-new-and-altered-buildings-are-safe-accessible-and-efficient/supporting-pages/technical-housing-standards-review>).

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## Planning Practice Guidance (<http://planningguidance.communities.gov.uk>)

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Guidance


### Land affected by contamination

Print 

1. Land affected by contamination (<http://planningguidance.communities.gov.uk/blog/guidance/land-affected-by-contamination/land-affected-by-contamination-guidance/>)

#### Land affected by contamination

##### Why should local planning authorities be concerned about land contamination?

Failing to deal adequately with contamination could cause harm to human health, property and the wider environment. It could also limit or preclude new development; and undermine compliance with European Directives such as the Water Framework Directive  (<https://www.gov.uk/government/policies/improving-water-quality>).

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#### Related policy

##### National Planning Policy Framework

- Paragraph 109 ([http://planningguidance.communit-sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph\\_109](http://planningguidance.communit-sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph_109))
- Paragraph 120 ([http://planningguidance.communit-sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph\\_120](http://planningguidance.communit-sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph_120))
- Paragraph 121 ([http://planningguidance.communit-sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph\\_121](http://planningguidance.communit-sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph_121))
- Paragraph 122 ([http://planningguidance.communit-sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph\\_122](http://planningguidance.communit-sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph_122))

**Is dealing with land that may be affected by contamination just a planning matter?**

When dealing with land that may be affected by contamination, the planning system works alongside a number of other regimes including:

- The system for identifying and remediating statutorily defined contaminated land under Part 2A of the Environmental Protection Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/43/part/IIA) (<http://www.legislation.gov.uk/ukpga/1990/43/part/IIA>). The government has published statutory guidance [\[2\]](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69538/pb13735cont-land-guidance.pdf) ([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69538/pb13735cont-land-guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69538/pb13735cont-land-guidance.pdf)) on Part 2A which concentrates on addressing contaminated land that meets the legal definition and cannot be dealt with through any other means, including through planning.
- Building Regulations [\[2\]](http://www.planningportal.gov.uk/buildingregulations/approveddocuments/partc/documentc) (<http://www.planningportal.gov.uk/buildingregulations/approveddocuments/partc/documentc>), which require reasonable precautions to be taken to avoid danger to health and safety caused by contaminants in ground to be covered by buildings and associated ground.
- Environmental Permitting Regulations [\[2\]](http://www.environment-agency.gov.uk/business/sectors/116550.aspx) (<http://www.environment-agency.gov.uk/business/sectors/116550.aspx>), under which an Environmental Permit from the Environment Agency is normally required to cover the treatment and/or redeposit of contaminated soils if the soils are 'waste'.

ID 33-002-20140306 Last updated 06 03 2014

### What is planning's contribution?

The contaminated land regime under Part 2A of the Environmental Protection Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/43/part/IIA) (<http://www.legislation.gov.uk/ukpga/1990/43/part/IIA>) provides a risk based approach to the identification and remediation of land where contamination poses an unacceptable risk to human health or the environment. The regime does not take into account future uses which could need a specific grant of planning permission. To ensure a site is suitable for its new use and to prevent unacceptable risk from pollution, the implications of contamination for a new development would be considered by the local planning authority to the extent that it is not addressed by other regimes.

ID 33-003-20140306 Last updated 06 03 2014

### When is contamination likely to be present?

Contamination is more likely to arise in former industrial areas but cannot be ruled out in other locations including in the countryside (e.g. by inappropriate spreading of materials such as sludges, or as a result of contamination being moved from its original source). In addition, some areas may be affected by the natural or background occurrence of potentially hazardous substances, such as radon, methane or elevated concentrations of metallic elements.

Only a specific investigation can establish whether there is contamination at a particular site, but the possibility should always be considered particularly when the development proposed involves a sensitive use such as housing with gardens, schools or nurseries. There are various sources of information that can be drawn on to help indicate whether land could be contaminated.

Sources of information can vary according to previous investigations and land reclamation schemes but useful sources to consider include:

- Local authorities' own survey information; including information held and collected in connection with Part 2A of the Environmental Protection Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/43/part/IIA) (<http://www.legislation.gov.uk/ukpga/1990/43/part/IIA>) (this could include information about sites that have been inspected and not determined to be 'contaminated land' within the terms of the Act but where new development could change the level of risk). There may also be information about land affected by contamination held by other parts of a local authority, for example by building control, regeneration teams, highways and engineering.
- River Basin Management Plans [\[2\]](http://www.environment-agency.gov.uk/research/planning/33240.aspx) (<http://www.environment-agency.gov.uk/research/planning/33240.aspx>) published by the Environment Agency, including 'protected areas', which are shown in Annex D of each plan.



- Information about previous land uses contained in the National Land Use Database [\[2\]](http://www.homesandcommunities.co.uk/nlud-pdl-results-and-analysis) (<http://www.homesandcommunities.co.uk/nlud-pdl-results-and-analysis>), in commercial databases, land condition records or in records held by the Environment Agency or the British Geological Survey (e.g. the location of 'made ground', the results of broad scale geochemical surveys or radon potential maps).
- Local authority planning department records, including relevant Environmental Statements (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/>) that may include updated baseline assessments.
- Information on the most common industrial activities and the risk of contamination is in Volume 2, Annex 3 of 'Guidance for the Safe Development of Housing on Land Affected by Contamination' [\[2\]](http://a0768b4a8a31e106d8b0-50dc802554eb38a24458b98ff72d550b.r19.cf3.rackcdn.com/sr-dpub66-e-e.pdf) (<http://a0768b4a8a31e106d8b0-50dc802554eb38a24458b98ff72d550b.r19.cf3.rackcdn.com/sr-dpub66-e-e.pdf>), published by the Environment Agency, NHBC and CIEH. More information is also available from industry profiles published by the Environment Agency.

ID 33-004-20140306 Last updated 06 03 2014

### What is the role of Local Plans in considering contamination?

Consideration of land contamination in Local Plans

(<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>) will vary between places and the type of issues that the plan needs to cover, but it can be helpful to:

- consider a strategic, phased approach to dealing with potential contamination if this is an issue over a wide area, and in doing so, recognise that dealing with land contamination can help contribute to achieving the objectives of EU directives such as the Water Framework Directive [\[2\]](https://www.gov.uk/government/policies/improving-water-quality) (<https://www.gov.uk/government/policies/improving-water-quality>);
- use sustainability appraisal (<http://planningguidance.communities.gov.uk/blog/guidance/strategic-environmental-assessment-and-sustainability-appraisal/strategic-environmental-assessment-and-sustainability-appraisal-and-how-does-it-relate-to-strategic-environmental-assessment/>) to shape an appropriate strategy, including through work on the 'baseline', appropriate objectives for the assessment of impact and proposed monitoring;
- allocate land which is known to be affected by contamination only for appropriate development – and be clear on the approach to remediation;
- have regard to the possible impact of land contamination on neighbouring areas (e.g. by polluting surface water or groundwater); and
- be clear on the role of developers and requirements for information and assessments.

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### Are concerns about land contamination relevant to neighbourhood planning?

Concerns about land contamination could be relevant to neighbourhood planning and it is important to consider the possibility of land being affected by contamination when drawing up a Neighbourhood Plan

(<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/what-is-neighbourhood-planning/>) or considering a Neighbourhood Development Order. The local planning and environmental health departments should be able to advise on whether land contamination could be a concern.

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### What is the starting point for an applicant bringing forward a proposal for a site that could be contaminated?

Early engagement with the local planning and environmental health departments, particularly if the land is determined as contaminated land under Part 2A of the Environmental Protection Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/43/part/IIA) (<http://www.legislation.gov.uk/ukpga/1990/43/part/IIA>), will clarify what assessment is needed to support the application and issues that need to be considered in the design of a development, for example how land affected by contamination can be made compatible with sustainable drainage.

The Environment Agency will also have an interest in the case of 'special sites' designated under Part 2A of the Environmental Protection Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/43/part/IIA) (<http://www.legislation.gov.uk/ukpga/1990/43/part/IIA>) and all sites where there is a risk of pollution to controlled waters. Remediation will need to meet their requirements. The developer should also check whether an environmental permit [\[2\]](http://a0768b4a8a31e106d8b0-50dc802554eb38a24458b98ff72d550b.r19.cf3.rackcdn.com/LIT_7260_bba627.pdf) ([http://a0768b4a8a31e106d8b0-50dc802554eb38a24458b98ff72d550b.r19.cf3.rackcdn.com/LIT\\_7260\\_bba627.pdf](http://a0768b4a8a31e106d8b0-50dc802554eb38a24458b98ff72d550b.r19.cf3.rackcdn.com/LIT_7260_bba627.pdf)) is required before development can start.

The concerns on land contamination will sit alongside a wider set of considerations that the planning system will look at. Details about the broad steps a local planning authority should follow can be found here ([http://planningguidance.communities.gov.uk/blog/guidance/land-affected-by-contamination/land-affected-by-contamination-guidance/#paragraph\\_010](http://planningguidance.communities.gov.uk/blog/guidance/land-affected-by-contamination/land-affected-by-contamination-guidance/#paragraph_010)).

If there is a reason to believe contamination could be an issue, developers should provide proportionate but sufficient site investigation information (a risk assessment) to determine the existence or otherwise of contamination, its nature and extent, the risks it may pose and to whom/what (the 'receptors') so that these risks can be assessed and satisfactorily reduced to an acceptable level. Defra has published a policy companion document considering the use of 'Category 4 Screening Levels' [\[2\]](http://randd.defra.gov.uk/Default.aspx?Menu=Menu&Module=More&Location=None&Completed=0&ProjectID=18341) (<http://randd.defra.gov.uk/Default.aspx?Menu=Menu&Module=More&Location=None&Completed=0&ProjectID=18341>) in providing a simple test for deciding when land is suitable for use and definitely not contaminated land. A risk assessment of land affected by contamination should inform an Environmental Impact Assessment (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/>) if one is required.

The risk assessment should also identify the potential sources, pathways and receptors ('pollutant linkages') and evaluate the risks. This information will enable the local planning authority to determine whether further more detailed investigation is required, or whether any proposed remediation is satisfactory.

At this stage, an applicant may be required to provide at least the report of a desk study and site walk-over. This may be sufficient to develop a conceptual model of the source of contamination, the pathways by which it might reach vulnerable receptors and options to show how the identified pollutant linkages can be broken.

Unless this initial assessment clearly demonstrates that the risk from contamination can be satisfactorily reduced to an acceptable level, further site investigations and risk assessment will be needed before the application can be determined. Further guidance can be found on the Environment Agency website [\[2\]](http://www.environment-agency.gov.uk/research/planning/121619.aspx) (<http://www.environment-agency.gov.uk/research/planning/121619.aspx>).

Note that remediation or site investigation activities themselves, including field trials, may require planning permission if not carried out as part of a development, and in some cases may also need environmental permits.

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### **Does an outline application require less information?**

The information sought should be proportionate to the decision at the outline stage, but before granting outline planning permission a local planning authority will, among other matters, need to be satisfied that:

- it understands the contaminated condition of the site;
- the proposed development is appropriate as a means of remediating it; and

- it has sufficient information to be confident that it will be able to grant permission in full at a later stage bearing in mind the need for the necessary remediation to be viable and practicable.

ID 33-008-20140306 Last updated 06 03 2014

### **Should planning permission be refused if there are concerns about land contamination?**

Local planning authorities should work with developers to find acceptable ways forward if there are concerns about land contamination. For example, planning permission can be granted subject to conditions

(<http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/>) and/or planning obligations

(<http://planningguidance.communities.gov.uk/blog/guidance/planning-obligations/planning-obligations-guidance/>) can be sought in the light of the information currently available about contamination on the site and the proposed remediation measures and standards. Responsibility for securing a safe development rests with the developer and/or landowner.

However, local planning authorities should be satisfied that a proposed development will be appropriate for its location and not pose an unacceptable risk.

#### *Using planning conditions*

Local authorities can use planning conditions, where the relevant tests are met, to ensure that development (other than that required to be carried out as part of an approved scheme of remediation) should not commence until the identified stages in delivering a remediation scheme have been discharged. These stages and the factors to consider in framing appropriate planning conditions include:

- site characterisation – what is required, including what sort of survey, assessment and appraisal, by whom and how the work is to be presented;
- submission of the remediation scheme – what it should include;
- implementation of the approved remediation scheme – notification to the local planning authority of when the works will start, validation that the works have been carried out and reporting of unexpected contamination; and
- monitoring and maintenance – what is required and for how long.

#### *Using planning obligations*

Planning obligations could be used in a number of situations, for example:

- to ensure that any necessary offsite treatment works (e.g. the installation of gas-migration barriers, water treatment or monitoring arrangements) are put in place;
- to restrict the development or future use of the land concerned; or
- for payments to the local planning authority, for example, for ongoing monitoring, maintenance, or as a bond to cover the contingency of future action triggered by the monitoring.

#### *Unacceptable risk*

Defra has published statutory guidance to help identify and deal with land which poses unacceptable levels of risk [\[2\]](#)

([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69538/pb13735cont-land-guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69538/pb13735cont-land-guidance.pdf)) under the Part 2A of the Environmental Protection Act 1990

regime for remediating statutorily defined contaminated land. Local planning authorities will want to have regard to this guidance alongside other considerations including the Water Framework Directive [\[2\]](#)

(<https://www.gov.uk/government/policies/improving-water-quality>) objectives and other matters that could affect the amenity of a site and its future occupants. (There could, for example, be contaminants present at levels that could cause nausea, headaches, odour/nuisance to people, or harm to non-protected species of plants and animals.) After remediation, as a minimum, land should not be capable of being determined as contaminated land under Part 2A.

More stringent standards of remediation than those under Part 2A apply to the management of the risks posed by man-made radioactive substances as a result of redevelopment for a new use. Public Health England has published technical guidance on recovery from chemical incidents [\[2\]](#)

([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/201024/UKRHCI\\_publication\\_31st\\_May\\_2012\\_web2](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/201024/UKRHCI_publication_31st_May_2012_web2) and DECC has published statutory guidance on land affected by radioactive contamination [\[2\]](#)

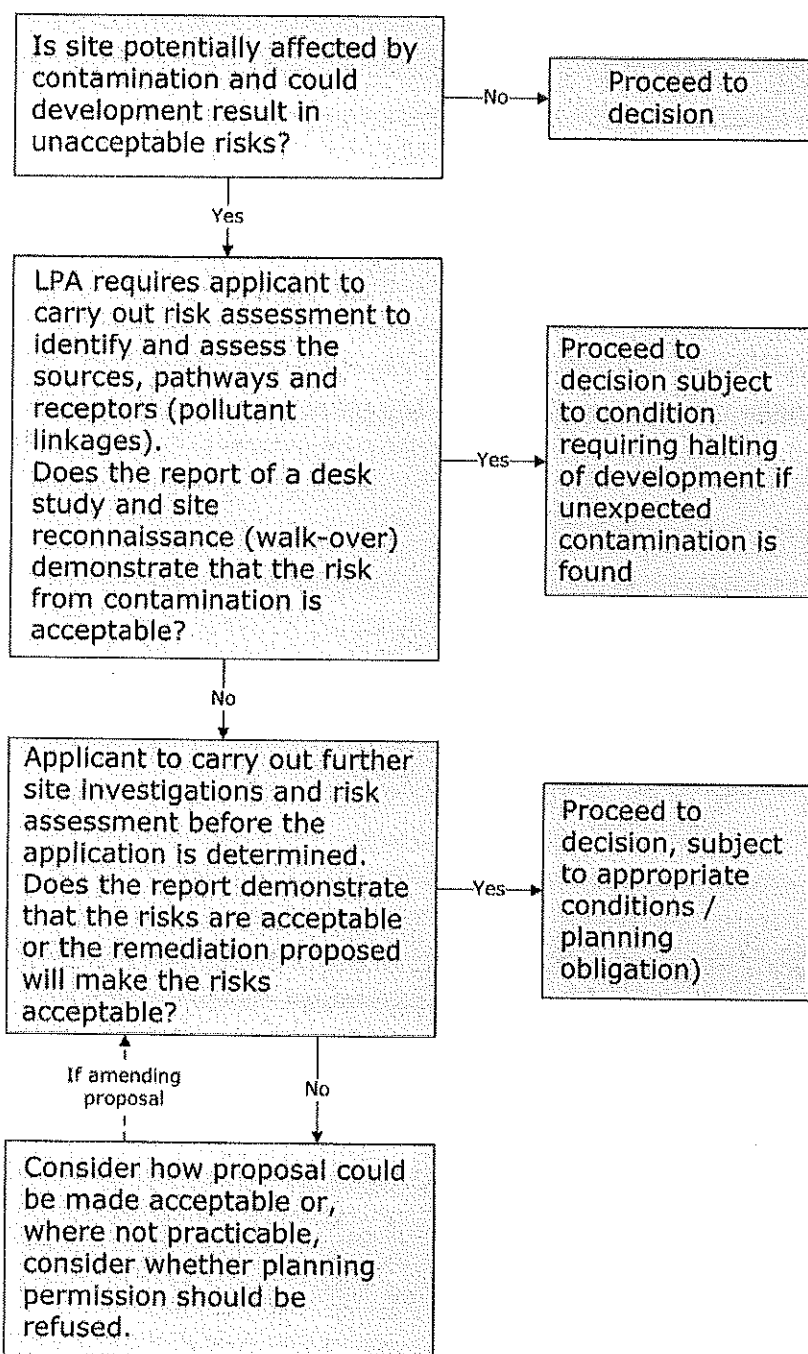
([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/48325/4472-draft-statutory-guidance-covering-radioactive-cont.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/48325/4472-draft-statutory-guidance-covering-radioactive-cont.pdf)). Public Health England [\[2\]](#)

(<http://www.ukradon.org.uk/>) has also published guidance on areas affected by radon and the control measures available for new development.

[\[2\]](#) (<http://www.ukradon.org.uk/>)

ID 33-009-20140306 Last updated 06 03 2014

### **How do considerations of land remediation fit into development management?**




(<http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/land-affected-by-contamination.jpg>)

**Related links:**

- More information on planning conditions (<http://planningguidance.communities.gov.uk/blog/guidance/determining-a-planning-application/>)
- More information on planning obligations (<http://planningguidance.communities.gov.uk/blog/guidance/planning-obligations/planning-obligations-guidance/>)

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 Department for Communities & Local Government  
(<https://www.gov.uk/government/organisations/department-for-communities-and-local-government>)

# Planning Practice Guidance (<http://planningguidance.communities.gov.uk>)

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Guidance

## Land Stability

Print 

1. Land Stability (<http://planningguidance.communities.gov.uk/blog/guidance/land-stability/land-stability-guidance/>)

### Land Stability

#### Why should planning authorities be concerned about land stability?

The effects of land instability may result in landslides, subsidence or ground heave. Failing to deal with this issue could cause harm to human health, local property and associated infrastructure, and the wider environment. They occur in different circumstances for different reasons and vary in their predictability and in their effect on development.

The planning system has an important role in considering land stability by:

- minimising the risk and effects of land stability on property, infrastructure and the public;
- helping ensure that various types of development should not be placed in unstable locations without various precautions; and
- to bring unstable land, wherever possible, back into productive use.

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#### Is dealing with land stability issues solely a planning issue?

When dealing with land that may be unstable, the planning system works alongside a number of other regimes, including:

- Building Regulations, which seek to ensure that any development is structurally sound;
- the Coal Authority's responsibility for public safety risks arising from past coal mining activities and dealing with proven claims for subsidence under the Coal Mining Subsidence Act 1991 and the Coal Industry Act 1994;
- consultation with the Cheshire Brine Subsidence Compensation Board, where land is subsiding or liable to subside owing to past brine pumping within a defined planning area;
- the safeguarding of mine entries once they are abandoned to protect health and safety as required under the Mines and Quarries Act 1954; and
- a general duty on the site operator to ensure the safety of quarry excavations and tips; and that once abandoned the quarry is left in a safe condition, as required under the Quarries Regulations 1999.

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#### What is the role of local plans in planning for land instability in their areas?

Consideration of land stability in local plans will vary between areas and the types of issues that the plan covers, but planning authorities may need to consider:

- identifying specific areas where particular consideration of landslides, mining hazards or subsidence will be needed;
- including policies that ensure unstable land is appropriately remediated, prohibit development in specific areas, or only allow specific types of development in those areas;
- circumstances where additional procedures or information, such as a land stability or slope stability risk assessment report, would be required to ensure that adequate and environmentally acceptable mitigation measures are in place; and
- removing permitted development rights in specific circumstances.

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### **Where can planning authorities obtain information on land stability issues?**

Planning authorities may obtain information about land instability from:

- geological information held by the British Geological Survey, including the national dataset on landslides and mapping and borehole records;
- coal mining records held by the Coal Authority;
- the planning authority's own information, including building control records, which may contain issues such as previous surveys, records of previous events;
- local libraries and archives; and
- information about previous land uses contained in the National Land Use database.

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### **What measures can planning authorities take to mitigate the risk of subsidence?**

Planning authorities have a range of mechanisms, through both local plan policies and in determining planning applications, available to mitigating and minimising risks to development proceeding. These include:

- establishing the principle and layout of new development, for example designing a layout to avoid mine entries and other hazards;
- ensuring proper design of buildings and their structures to cope with any movement expected, and other hazards such as mine and/or ground gases; or
- requiring ground improvement techniques, usually involving the removal of poor material and its replacement with suitable inert and stable material. For development on land previously affected by mining activity, this may mean prior extraction of any remaining mineral resource.

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### **What steps should developers take if they suspect land stability is an issue for an individual application?**

Details of the steps that a planning authority should follow for applications where they expect land stability is an issue may be found in the flowchart below. If land stability could be an issue, developers should seek appropriate



technical and environmental expert advice to assess the likely consequences of proposed developments on sites where subsidence, landslides and ground compression is known or suspected.

A preliminary assessment of ground instability should be carried out at the earliest possible stage before a detailed planning application is prepared. Developers should ensure that any necessary investigations are undertaken to ascertain that their sites are and will remain stable or can be made so as part of the development of the site. A site needs to be assessed in the context of surrounding areas where subsidence, landslides and land compression could threaten the development within its anticipated life or damage neighbouring land or property.

Such information could be provided to the planning authority in the form of a land stability or slope stability risk assessment report. Developers may choose to adopt phased reporting, e.g. desk study results followed by ground investigation results.

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### **What should a slope stability risk assessment report contain?**

The basic issues that a slope stability risk assessment report might consider include:

- an understanding of the factors influencing stability;
- an assessment of whether or not the site is stable and has an adequate level of protection;
- an assessment of whether or not the site is likely to be threatened or affected by reasonably foreseeable slope instability originating outside the boundaries;
- an assessment of whether or not the proposed development is likely to result in slope instability and the extent to which it will affect either the development or nearby property; and
- mitigation measures.

Preparation of a slope stability risk assessment report will vary according to location but is likely to involve at least a comprehensive desk study examination and a site visit.

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### **What should a land stability risk assessment report contain?**

The contents of a land stability risk assessment report will vary in detail from one site to another depending on the potential causes of unstable land that need to be investigated and the development that is proposed. It should present all the information obtained from investigations in a logical order and format which allows an assessment of the risks to the development and include the mitigation necessary to ensure that development will be safe and stable.

Preparation of a land stability risk assessment will normally comprise a comprehensive desk-study and site inspections, but in some circumstances this may require additional intrusive site investigations. The land stability risk assessment report should include:

- a review of existing sources of geological and/or mining information;
- site history;
- site inspection;
- intrusive site investigation (if necessary);

- assessment of land instability risks; and
- mitigation measures

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### **Who should prepare a land or slope stability risk assessment report?**

Land or slope instability risk assessment reports should be prepared by an appropriately qualified person such as chartered members of a relevant professional institution.

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### **What role does the Coal Authority play in the planning system to prevent land instability?**

Since the ownership of virtually all un-worked coal, closed coal mines and coal mine entries transferred to the Coal Authority under the Coal Industry Act 1994, the Coal Authority plays a critical role in dealing with land instability caused by the effects of past and present coal mining activity in England.

The Coal Authority seeks to minimise the impact of land instability on new development through the planning process by:

- identification within the coalfield area of England of specific Development High Risk Areas, where the potential land instability and other safety risks associated with former coal mining activities, such as mine gases, are recorded. This information should be used by planning authorities in the preparation of local plans to identify areas where development may be inappropriate or subject to additional information to ensure that land stability measures are properly addressed;
- acting as a statutory consultee for specific types of application to ensure that land stability measures are properly addressed as part of new development in coalfield areas; and
- managing intrusive site investigations which affect coal and former coal mining features through its permitting regime in the interests of public safety.

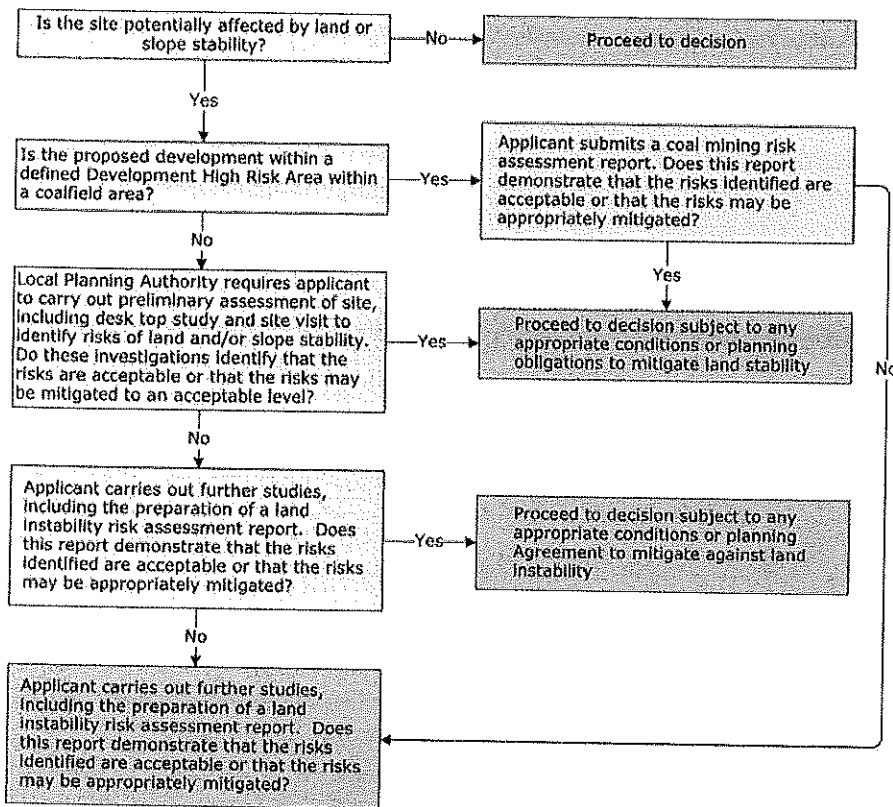
ID 45-010-20140306 Last updated 06 03 2014

### **What information on land stability must be submitted to the Coal Authority for individual applications?**

Applicants should normally submit a coal mining assessment as part of their application in specific development High Risk Areas. Further information on this assessment and what it should contain may be found on Gov.uk [\[A\]](http://coal.decc.gov.uk/en/coal/cms/services/planning/strategy/strategy.aspx) (<http://coal.decc.gov.uk/en/coal/cms/services/planning/strategy/strategy.aspx>).

ID 45-011-20140306 Last updated 06 03 2014

### **How do considerations of land stability fit into development management?**



(<http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/land-stability.jpg>)

ID 45-012-20140306 Last updated 06 03 2014



## Planning Practice Guidance [\(http://planningguidance.communities.gov.uk\)](http://planningguidance.communities.gov.uk)

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Guidance

### Lawful development certificates

Print 

#### 1. Establishing whether a proposed or existing development is lawful

[\(http://planningguidance.communities.gov.uk/blog/guidance/lawful-development-certificates/establishing-whether-a-proposed-or-existing-development-is-lawful/\)](http://planningguidance.communities.gov.uk/blog/guidance/lawful-development-certificates/establishing-whether-a-proposed-or-existing-development-is-lawful/)

#### Establishing whether a proposed or existing development is lawful

##### What is a lawful development certificate?

There are two types of lawful development certificate. A local planning authority can grant a certificate confirming that:

(a) an existing use of land, or some operational development, or some activity being carried out in breach of a planning condition, is lawful for planning purposes under section 191 of the Town and Country Planning Act 1990 [☐](http://www.legislation.gov.uk/ukpga/1990/8/section/191) (<http://www.legislation.gov.uk/ukpga/1990/8/section/191>); or

(b) a proposed use of buildings or other land, or some operations proposed to be carried out in, on, over or under land, would be lawful for planning purposes under section 192 of the Town and Country Planning Act 1990 [☐](http://www.legislation.gov.uk/ukpga/1990/8/section/192) (<http://www.legislation.gov.uk/ukpga/1990/8/section/192>).

ID 17c-001-20140306 Last updated 06 03 2014

##### How is a lawful development certificate obtained and what does it mean?

Anyone can apply to the local planning authority to obtain a decision on whether an existing use or development, or a proposed use or development, is lawful for planning purposes or not.

If the local planning authority is satisfied that the appropriate legal tests have been met, it will grant a lawful development certificate. Where an application has been made under section 191, the statement in a lawful development certificate of what is lawful relates only to the state of affairs on the land at the date of the certificate application.

The key statutory framework for such applications and their determination is set out in sections 191-193 of the Town and Country Planning Act 1990 ("the Act") [☐](http://www.legislation.gov.uk/ukpga/1990/8/section/191) (<http://www.legislation.gov.uk/ukpga/1990/8/section/191>).

Once a certificate has been granted following an application under section 192, it means that any proposed use or development in accordance with it must be presumed as lawful, unless there is a material change before the use or development has begun (Section 192(4)) [☐](http://www.legislation.gov.uk/ukpga/1990/8/section/192) (<http://www.legislation.gov.uk/ukpga/1990/8/section/192>). Examples of such a material change include:

- a direction under Article 4 [☐](http://www.legislation.gov.uk/uksi/2015/596/article/4/made) (<http://www.legislation.gov.uk/uksi/2015/596/article/4/made>) of The Town and Country Planning (General Permitted Development) (England) Order 2015 taking away the particular permitted development right relevant to the certificate; or

- a statutory amendment to permitted development rights

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2. Definition of lawfulness and its limits (<http://planningguidance.communities.gov.uk/blog/guidance/lawful-development-certificates/definition-of-lawfulness-and-its-limits/>)

### Definition of lawfulness and its limits

#### How is lawfulness defined in relation to lawful development certificates?

The statutory framework covering “lawfulness” for lawful development certificates is set out in section 191(2) of the Act [\[a\]](http://www.legislation.gov.uk/ukpga/1990/8/section/191) (<http://www.legislation.gov.uk/ukpga/1990/8/section/191>). In summary, lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force ([http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/planning-enforcement-overview/#paragraph\\_004](http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/planning-enforcement-overview/#paragraph_004)), or, for which planning permission is not required (<http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/>).

An enforcement notice is not in force where an enforcement appeal is outstanding or an appeal has been upheld and the decision has been remitted to the Secretary of State for redetermination, but that redetermination is still outstanding.

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#### How do lawful development certificates relate to other regulatory requirements?

The grant of a certificate applies only to the lawfulness of development in accordance with planning legislation. It does not remove the need to comply with any other legal requirements such as The Building Regulations 2010 [\[a\]](https://www.gov.uk/government/policies/providing-effective-building-regulations-so-that-new-and-altered-buildings-are-safe-accessible-and-efficient#legislation) (<https://www.gov.uk/government/policies/providing-effective-building-regulations-so-that-new-and-altered-buildings-are-safe-accessible-and-efficient#legislation>), or the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) [\[a\]](http://www.legislation.gov.uk/ukpga/1990/9/contents) (<http://www.legislation.gov.uk/ukpga/1990/9/contents>) or other licensing or permitting schemes.

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### 3. Application and determination procedure

(<http://planningguidance.communities.gov.uk/blog/guidance/lawful-development-certificates/application-and-determination-procedure/>)

#### Application and determination procedure

##### What information must accompany an application for a lawful development certificate?

Article 39 [\[a\]](http://www.legislation.gov.uk/uksi/2015/595/article/39/made) (<http://www.legislation.gov.uk/uksi/2015/595/article/39/made>) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 specifies the contents of an application and how it must be submitted. There is a different application form for each type of certificate, but either type must be accompanied by sufficient factual information/evidence for a local planning authority to decide the application, along with the relevant application fee [\[a\]](#)

(<http://www.legislation.gov.uk/ukSI/2012/2920/regulation/11/made>). Application forms can be obtained from the local planning authority and can be completed by the applicant or someone working on their behalf.

An application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate. This does not preclude another application being submitted later on, if more information can be produced.

ID 17c-005-20140306 Last updated 06 03 2014

### **Who is responsible for providing sufficient information to support an application?**


The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.

In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved.

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### **What information must be entered on to the planning register?**

Article 40(7)  (<http://www.legislation.gov.uk/ukSI/2015/595/article/40/made>) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 sets out the requirements for the information to be placed on the planning register.

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### **Does a local planning authority need to consult on an application for a lawful development certificate?**

There is no statutory requirement to consult third parties including parish councils or neighbours. It may, however, be reasonable for a local planning authority to seek evidence from these sources, if there is good reason to believe they may possess relevant information about the content of a specific application. Views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application.

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### **How is an application for a lawful development certificate determined?**

A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process.

In determining an application for a prospective development under section 192 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/192) (http://www.legislation.gov.uk/ukpga/1990/8/section/192) a local planning authority needs to ask “if this proposed change of use had occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?”

A local planning authority may choose to issue a lawful development certificate for a different description from that applied for, as an alternative to refusing a certificate altogether. It is, however, advisable to seek the applicant’s agreement to any amendment before issuing the certificate. A refusal is not necessarily conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented.

ID 17c-009-20140306 Last updated 06 03 2014

4. Content of a certificate (<http://planningguidance.communities.gov.uk/blog/guidance/lawful-development-certificates/content-of-a-certificate/>)

### Content of a certificate

#### What must a lawful development certificate include?

Details of what must be included in each type of lawful development certificate can be found in section 191(5) [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/191)

(<http://www.legislation.gov.uk/ukpga/1990/8/section/191>) or 192(3) [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/192)

(<http://www.legislation.gov.uk/ukpga/1990/8/section/192>) of the Act. The prescribed form can be found in Schedule 8 [\[2\]](http://www.legislation.gov.uk/uksl/2015/595/schedule/8/made)

(<http://www.legislation.gov.uk/uksl/2015/595/schedule/8/made>) to the Town and Country Planning (Development Management Procedure) (England) Order 2015. Precision in the terms of any certificate is vital, so there is no room for doubt about what was lawful at a particular date, as any subsequent change may be assessed against it. It is important to note that:

- a certificate for existing use must include a description of the use, operations or other matter for which it is granted regardless of whether the matters fall within a use class. But where it is within a “use class”, a certificate must also specify the relevant “class”. In all cases, the description needs to be more than simply a title or label, if future problems interpreting it are to be avoided. The certificate needs to therefore spell out the characteristics of the matter so as to define it unambiguously and with precision. This is particularly important for uses which do not fall within any “use class” (i.e. “*sui generis*” use); and
- where a certificate is granted for one use on a “planning unit” which is in mixed or composite use, that situation may need to be carefully reflected in the certificate. Failure to do so may result in a loss of control over any subsequent intensification of the certificated use.

ID 17c-010-20140306 Last updated 06 03 2014

### 5. Conditions, appeals, revocation and status of pre-1992 certificates

(<http://planningguidance.communities.gov.uk/blog/guidance/lawful-development-certificates/conditions-appeals-revocation-and-status-of-pre-1992-certificates/>)

#### Conditions, appeals, revocation and status of pre-1992 certificates



### **How does a lawful development certificate relate to conditions on an existing planning permission?**

A lawful development certificate may be granted on the basis that there is an extant planning permission for the development; however, that development still needs to comply with any conditions or limitations imposed on the development by that grant of permission, except to the extent specifically described in the lawful development certificate.

ID 17c-011-20140306 Last updated 06 03 2014

### **Is there a right of appeal against the refusal of a lawful development certificate?**

An appeal can be made to the Secretary of State against the refusal of a lawful development certificate in certain circumstances

([http://planningguidance.communities.gov.uk/blog/guidance/appeals/appeals-against-other-planning-decisions/#paragraph\\_020](http://planningguidance.communities.gov.uk/blog/guidance/appeals/appeals-against-other-planning-decisions/#paragraph_020)).

A Secretary of State's decision can be challenged in the High Court by the appellant or the local planning authority, but only on the grounds that the Secretary of State has got the law wrong or made a procedural error.

ID 17c-012-20140306 Last updated 06 03 2014

### **Can a lawful development certificate be revoked?**

A local planning authority can revoke a certificate if a statement was made, or document used, which was false or untrue in any way; or if any information was withheld. Details of the process that a local planning authority must follow when giving notice of their proposal to revoke a certificate and when they carry out the revocation are set out in Article 39 [\[2\]](#)

(<http://www.legislation.gov.uk/uksi/2015/595/article/39/made>) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

If a local authority proposes to revoke a certificate, they must give notice of their proposal as set out in Article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015. This gives recipients an opportunity to make representations before the local planning authority makes their decision.

Revocation of a certificate may make the owner or occupier liable to immediate enforcement action. No compensation is payable in the event of revocation. The decision to revoke a certificate is entirely for a local planning authority, even when the certificate has been granted by the Secretary of State. There is no right of appeal against a revocation but a decision could be challenged in the High Court in judicial review proceedings.

It is an offence to make a false or misleading statement, use false or misleading documentation, or, withhold any material information in order to obtain a certificate. Committing an offence can result in a fine on summary conviction, on indictment, the maximum penalty is two years' imprisonment or a fine, or both.

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### **How does an existing "established use" certificate relate to lawful development certificates?**

"Established use" certificates were replaced by lawful development certificates in 1992. The effect and value of any existing established use certificates remains unchanged, but they are not considered to have been made under section 191 [\[2\]](#) (<http://www.legislation.gov.uk/ukpga/1990/8/section/191>) of the Act. The


key difference is that old style certificates could certify an established use and provide immunity from enforcement action, but not that the development was lawful.

An application to “convert” an established use certificate to a lawful development certificate needs to be made like any other application for a certificate.

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# Planning Practice Guidance (<http://planningguidance.communities.gov.uk>)

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Guidance

## Light pollution


Print 

### 1. When is light pollution relevant to planning?

(<http://planningguidance.communities.gov.uk/blog/guidance/light-pollution/when-is-light-pollution-relevant-to-planning/>)

#### When is light pollution relevant to planning?

Artificial light provides valuable benefits to society, including through extending opportunities for sport and recreation, and can be essential to a new development. Equally, artificial light is not always necessary, has the potential to become what is termed 'light pollution' or 'obtrusive light' and not all modern lighting is suitable in all locations. It can be a source of annoyance to people, harmful to wildlife, undermine enjoyment of the countryside or detract from enjoyment of the night sky. For maximum benefit, the best use of artificial light is about getting the right light, in the right place and providing light at the right time.

Lighting schemes can be costly and difficult to change, so getting the design right and setting appropriate conditions at the planning stage (<http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/>) is important. In particular, some types of premises (including prisons, airports and transport depots where high levels of light may be required for safety and security reasons) are exempt from the statutory nuisance regime for artificial light, so it is even more important to get the lighting design for these premises right at the outset. Guidance, which sets out the full list of premises and explains how action can be taken by a local authority when artificial light is a statutory nuisance can be found in Defra's guidance on sections 101 to 103 of the Clean Neighbourhoods and Environment Act 2005, titled "Statutory nuisance from insects and artificial light". 

(<http://archive.defra.gov.uk/environment/quality/local/legislation/cnea/documents/statnuisance.pdf>)

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### 2. What factors should be considered when assessing whether a development proposal might have implications for light pollution?

(<http://planningguidance.communities.gov.uk/blog/guidance/light-pollution/what-factors-should-be-considered-when-assessing-whether-a-development-proposal-might-have-implications-for-light-pollution/>)

#### What factors should be considered when assessing whether a development proposal might have implications for light pollution?

Some proposals for new development, but not all, may have implications for light pollution. The following questions will help to identify when the possibility of light pollution might arise:

- Does a new development proposal, or a major change to an existing one, materially alter light levels outside the development and/or have the potential to adversely affect the use or enjoyment of nearby buildings or open spaces?
- Does an existing lighting installation make the proposed location for a development unsuitable? For example, this might be because:

- the artificial light has a significant effect on the locality;
- users of the proposed development (e.g. a hospital) may be particularly sensitive to light intrusion from the existing light source.
- Does a proposal have a significant impact on a protected site or species e.g. located on, or adjacent to, a designated European site or where there are designated European protected species that may be affected?
- Is the development in or near a protected area of dark sky or an intrinsically dark landscape where it may be desirable to minimise new light sources?
- Are forms of artificial light with a potentially high impact on wildlife (e.g. white or ultraviolet light) being proposed close to sensitive wildlife receptors or areas, including where the light shines on water?
- Does the proposed development include smooth, reflective building materials, including large horizontal expanses of glass, particularly near water bodies (because it may change *natural* light, creating polarised light pollution that can affect wildlife behaviour)?

If the answer to any of the above questions is 'yes', local planning authorities and applicants should think about:

- where the light shines  
(<http://planningguidance.communities.gov.uk/blog/guidance/light-pollution/what-factors-are-relevant-when-considering-where-light-shines/>);
- when the light shines  
(<http://planningguidance.communities.gov.uk/blog/guidance/light-pollution/what-factors-are-relevant-when-considering-when-light-shines/>);
- how much light shines  
(<http://planningguidance.communities.gov.uk/blog/guidance/light-pollution/what-factors-are-relevant-when-considering-how-much-the-light-shines/>); and
- possible ecological impact  
(<http://planningguidance.communities.gov.uk/blog/guidance/light-pollution/what-factors-are-relevant-when-considering-possible-ecological-impact/>).

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### 3. What factors are relevant when considering where light shines?

(<http://planningguidance.communities.gov.uk/blog/guidance/light-pollution/what-factors-are-relevant-when-considering-where-light-shines/>)

#### **What factors are relevant when considering where light shines?**

Light intrusion occurs when the light 'spills' beyond the boundary of the area being lit. For example, light spill can impair sleeping, cause annoyance to people, compromise an existing dark landscape and/or affect natural systems (e.g. plants, animals, insects, aquatic life). It can usually be completely avoided with careful lamp design selection and positioning:

- Lighting near or above the horizontal is usually to be avoided to reduce glare and sky glow (the brightening of the night sky).
- Good design, correct installation and ongoing maintenance are essential to the effectiveness of lighting schemes.

Common causes of complaints to local authorities are about domestic, shop or office exterior security lights, illuminated advertising and flood lighting, so these installations may require particular attention.

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#### 4. What factors are relevant when considering when light shines?

(<http://planningguidance.communities.gov.uk/blog/guidance/light-pollution/what-factors-are-relevant-when-considering-when-light-shines/>)

##### **What factors are relevant when considering when light shines?**

Lighting only when the light is required can have a number of benefits, including minimising light pollution, reducing harm to wildlife and improving people's ability to enjoy the night-sky:

- Lighting schemes could be turned off when not needed ('part-night lighting') to reduce any potential adverse effects e.g. when a business is closed or, in outdoor areas, switching-off at quiet times between midnight and 5am or 6am. Planning conditions could potentially require this.
- Impact on sensitive wildlife receptors throughout the year, or at particular times (e.g. on migration routes), may be mitigated by the design of the lighting or by turning it off or down at sensitive times.

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#### 5. What factors are relevant when considering how much the light shines?

(<http://planningguidance.communities.gov.uk/blog/guidance/light-pollution/what-factors-are-relevant-when-considering-how-much-the-light-shines/>)

##### **What factors are relevant when considering how much the light shines?**

Considering how much light shines includes an assessment of the quantitative and spectral attributes of the lighting scheme (e.g. light source and performance levels) and whether it exceeds the levels required to fulfil its intended purpose. The character of the area and the surrounding environment may affect what will be considered an appropriate level of lighting for a development. In particular, lighting schemes for developments in protected areas of dark sky or intrinsically dark landscapes should be carefully assessed as to their necessity and degree.

Glare should be avoided, particularly for safety reasons. This is the uncomfortable brightness of a light source due to the excessive contrast between bright and dark areas in the field of view. Consequently, the perceived glare depends on the brightness of the background against which it is viewed. It is affected by the quantity and directional attributes of the source. Where appropriate, lighting schemes could include 'dimming' to lower the level of lighting (e.g. during periods of reduced use of an area, when higher lighting levels are not needed).

More lighting does not necessarily mean better lighting. For example, large differences in adjacent lit areas can mask activity in shadow and cause areas of high contrast or glare.

White light, with more blue content or with ultraviolet content, is generally more disruptive to wildlife than, say, yellow/orange light. Similarly, for humans, light intrusion by white/blue light is more disruptive to sleep. Use of newer white light sources that filter out blue or ultraviolet light may mitigate these effects, as well as offering superior directional control. However, whiter light aids people's vision and ability to perceive colour; it also facilitates CCTV use.


The needs of particular individuals or groups should be considered where appropriate (e.g. the safety of pedestrians and cyclists). Schemes designed for those more likely to be older or visually impaired may require higher levels of light and enhanced contrast, together with more control, as the negative effects of glare also increase with age.

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## 6. What factors are relevant when considering possible ecological impact?

(<http://planningguidance.communities.gov.uk/blog/guidance/light-pollution/what-factors-are-relevant-when-considering-possible-ecological-impact/>)

### **What factors are relevant when considering possible ecological impact?**


Wildlife differ from humans in their sensitivity to light (e.g. they can be affected by very low levels of light) and may be adversely affected in a number of ways (see the Royal Commission on Environmental Pollution's 2009 report, *Artificial Light in the Environment*  (<http://www.official-documents.gov.uk/document/other/9780108508547/9780108508547.pdf>)). The positioning, duration, type of light source and level of lighting are all factors that can affect the impact of light on wildlife.

The ability of some building materials to polarise light may cause insects, birds and other wildlife to mistake the material for water. This is a daytime and night-time effect and is different to artificial light reflected off surfaces. The effect is particularly strong with smooth (shiny) dark surfaces and may be important to consider when assessing schemes near water bodies. The use of rough, matt, light-coloured materials may reduce the effect.

Further advice is available from the Defra  (<https://www.gov.uk/government/policies/protecting-biodiversity-and-ecosystems-at-home-and-abroad>) and Natural England  (<https://www.gov.uk/government/organisations/natural-england>) websites on handling the impact on wildlife – including from artificial light – where European protected sites or European protected species could be affected. The specific nature of any consideration will depend on the features of any protected site or presence of any protected species.

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# Planning Practice Guidance (<http://planningguidance.communities.gov.uk>)

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Guidance

## Local Plans

Print 

1. Local Plans – Key Issues (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/local-plans-key-issues/>)

### Local Plans – Key Issues

#### What is the role of a Local Plan?

National planning policy places Local Plans at the heart of the planning system, so it is essential that they are in place and kept up to date. Local Plans set out a vision and a framework for the future development of the area, addressing needs and opportunities in relation to housing, the economy, community facilities and infrastructure – as well as a basis for safeguarding the environment, adapting to climate change and securing good design. They are also a critical tool in guiding decisions about individual development proposals, as Local Plans (together with any neighbourhood plans that have been made) are the starting-point for considering whether applications can be approved. It is important for all areas to put an up to date plan in place to positively guide development decisions.

National planning policy

([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph\\_150](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph_150)) sets clear expectations as to how a Local Plan must be developed in order to be justified, effective, consistent with national policy and positively prepared to deliver sustainable development that meets local needs and national priorities.

ID 12-001-20140306 Last updated 06 03 2014

#### What should a Local Plan contain?

The Local Plan should make clear **what** is intended to happen in the area over the life of the plan, **where** and **when** this will occur and **how** it will be delivered. This can be done by setting out broad locations and specific allocations of land for different purposes; through designations showing areas where particular opportunities or considerations apply (such as protected habitats); and through criteria-based policies to be taken into account when considering development. A policies map must illustrate geographically the application of policies in a development plan. The policies map may be supported by such other information as the Local Planning Authority sees fit to best explain the spatial application of development plan policies.

Local Plans should be tailored to the needs of each area in terms of their strategy and the policies required. They should focus on the key issues that need to be addressed and be aspirational but realistic in what they propose. The Local Plan should aim to meet the objectively assessed development and infrastructure needs of the area, including unmet needs of neighbouring areas where this is consistent with policies in the National Planning Policy Framework as a whole. Local Plans should recognise the contribution that Neighbourhood Plans can make in planning to meet development and infrastructure needs.

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#### How should local planning authorities express the need for

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#### Related policy

##### National Planning Policy Framework

- Paragraph 150 ([http://planningguidance.commu-sustainable-development/plan-making/#paragraph\\_150](http://planningguidance.commu-sustainable-development/plan-making/#paragraph_150))

## different types of housing in their Local Plan?

Local planning authorities should ensure that the policies in their Local Plan recognise the diverse types of housing needed in their area and, where appropriate, identify specific sites for all types of housing to meet their anticipated housing requirement. This could include sites for older people's housing including accessible mainstream housing such as bungalows and step-free apartments, sheltered or extra care housing, retirement housing and residential care homes. Where local planning authorities do not consider it appropriate to allocate such sites, they should ensure that there are sufficiently robust criteria in place to set out when such homes will be permitted. This might be supplemented by setting appropriate targets for the number of these homes to be built.

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## How is a Local Plan produced?

Local planning authorities develop a Local Plan by assessing the future needs and opportunities of their area, developing options for addressing these and then identifying a preferred approach. This involves gathering evidence ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph\\_158](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph_158)), carrying out a Sustainability Appraisal (<http://planningguidance.communities.gov.uk/blog/guidance/strategic-environmental-assessment-and-sustainability-appraisal/strategic-environmental-assessment-and-sustainability-appraisal-and-how-does-it-relate-to-strategic-environmental-assessment/>) to inform the preparation of the Local Plan and effective discussion and consultation ([http://planningguidance.communities.gov.uk/blog/guidance/local-plans/preparing-a-local-plan/#paragraph\\_017](http://planningguidance.communities.gov.uk/blog/guidance/local-plans/preparing-a-local-plan/#paragraph_017)) with local communities, businesses and other interested parties.

There is considerable flexibility open to local planning authorities in how they carry out the initial stages of plan production, provided they comply with the specific requirements in regulation 18 of the Town and Country Planning (Local Planning) (England) Regulations 2012 [\[2\]](http://www.legislation.gov.uk/ukxi/2012/767/regulation/18/made) (<http://www.legislation.gov.uk/ukxi/2012/767/regulation/18/made>), ('the Local Plan Regulations') on consultation, and with the commitments in their Statement of Community Involvement. Consultation exercises on emerging options are often termed "issues and options", "preferred options" or "pre publication". Local planning authorities should always make clear how any consultation fits within the wider Local Plan process.

Local planning authorities must publicise the version of their Local Plan that they intend to submit to the Planning Inspectorate for examination to enable representations to come forward that can be considered at examination. This is known as the publication stage.

Local planning authorities must also publicise their intended timetable for producing the Local Plan. This information is contained within a Local Development Scheme ([http://planningguidance.communities.gov.uk/blog/guidance/local-plans/preparing-a-local-plan/#paragraph\\_009](http://planningguidance.communities.gov.uk/blog/guidance/local-plans/preparing-a-local-plan/#paragraph_009)), which local planning authorities should publish on their web site and must keep up to date. Up-to-date and accessible reporting on the Local Development Scheme in an Authority's Monitoring Report is an important way in which Local Planning Authorities can keep communities informed of plan making activity.

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## What is the role of the examination?

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### Related policy

#### National Planning Policy Framework


- Paragraph 158 ([http://planningguidance.commu-sustainable-development/plan-making/#paragraph\\_158](http://planningguidance.commu-sustainable-development/plan-making/#paragraph_158))

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### Related policy

#### National Planning Policy Framework



Having received any representations on the publication version of the plan, the local planning authority should submit the Local Plan and any proposed changes it considers appropriate along with supporting  (<http://www.legislation.gov.uk/uksi/2012/767/regulation/17/made>) documents to the Planning Inspectorate for examination on behalf of the Secretary of State.

The examination starts when the Local Plan is submitted to the Planning Inspectorate and concludes when a report to the local planning authority has been issued. During the examination a planning Inspector will assess whether the Local Plan has been prepared in line with the relevant legal requirements (including the duty to cooperate ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph\\_178](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph_178))) and whether it meets the tests of 'soundness ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph\\_182](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph_182))' contained in the National Planning Policy Framework.

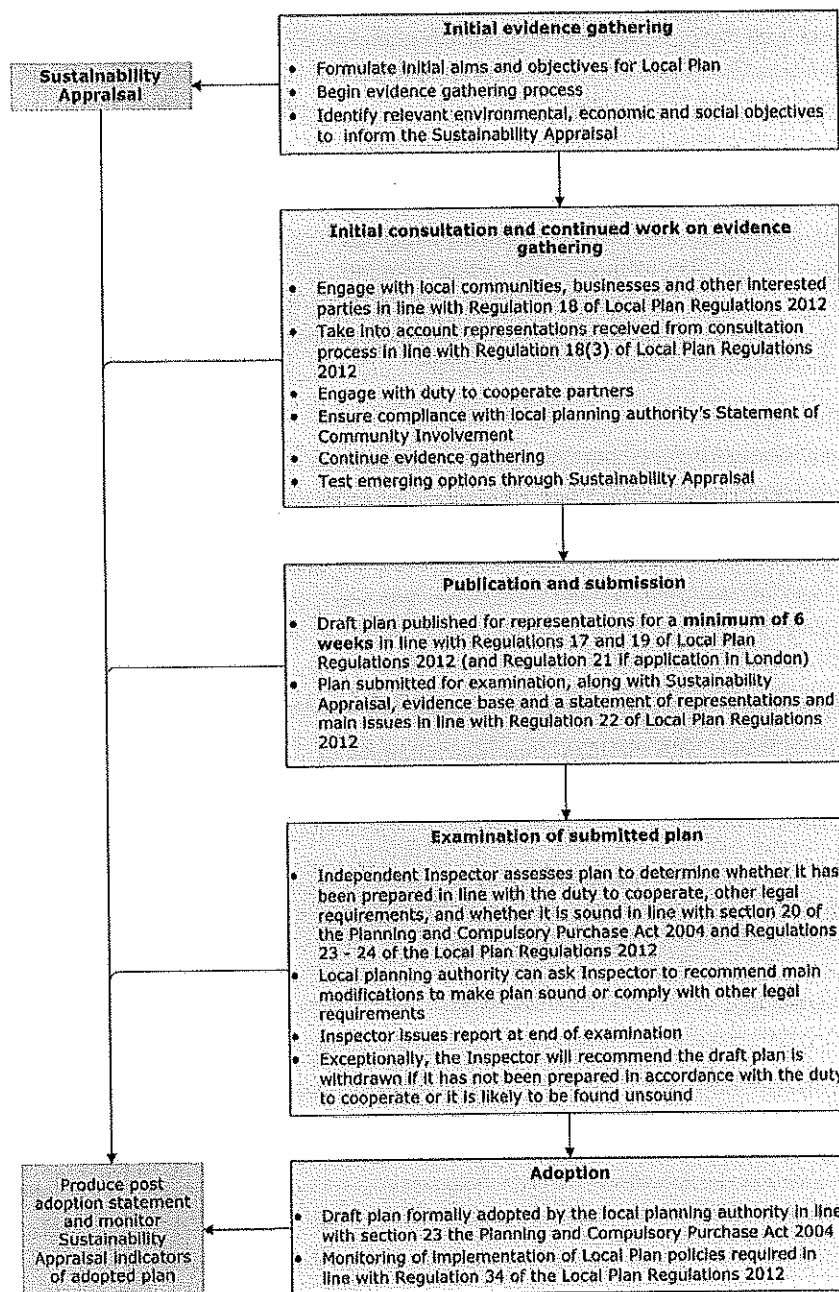
If necessary, the Inspector may be asked by the local planning authority to recommend modifications

([http://planningguidance.communities.gov.uk/blog/guidance/local-plans/publication-and-examination-of-the-draft-plan/#paragraph\\_024](http://planningguidance.communities.gov.uk/blog/guidance/local-plans/publication-and-examination-of-the-draft-plan/#paragraph_024)) to the Local Plan that would address any issues with soundness or procedural requirements that are identified during the examination. The Inspector can only recommend modifications if they are asked to do so by the local planning authority itself. If, in doing so, the Inspector identifies any fundamental issues with the plan, they may recommend that the plan should not be adopted by the local planning authority ([http://planningguidance.communities.gov.uk/blog/guidance/local-plans/preparing-a-local-plan/#paragraph\\_006](http://planningguidance.communities.gov.uk/blog/guidance/local-plans/preparing-a-local-plan/#paragraph_006)). The local planning authority will then need to consider whether to withdraw the plan and prepare a new document for submission. In this situation, any existing Local Plan policies will remain in force while a new plan is prepared, although some of those existing policies are likely to become increasingly out-of-date.

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## Local Plan development

- Paragraph 178 ([http://planningguidance.commu-sustainable-development/plan-making/#paragraph\\_178](http://planningguidance.commu-sustainable-development/plan-making/#paragraph_178))
- Paragraph 182 ([http://planningguidance.commu-sustainable-development/plan-making/#paragraph\\_182](http://planningguidance.commu-sustainable-development/plan-making/#paragraph_182))



([http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/local-plans\\_new.jpg](http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/local-plans_new.jpg))

ID 12-005-20140306 Last updated 06 03 2014

## 2. Preparing a Local Plan (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/preparing-a-local-plan/>)

### Preparing a Local Plan

#### Who is responsible for preparing a Local Plan?

Those local planning authorities responsible for 'district matters' should prepare and maintain an up-to-date Local Plan for their area: this includes district, London borough, metropolitan district, unitary, and National Park authorities.

Those local planning authorities with minerals and waste planning responsibilities should also produce plans to provide a framework for decisions involving these uses (this includes county councils in respect of any part of their area for which there is a district council, London borough, metropolitan district, unitary and National Park authorities). Local planning authorities can produce combined minerals and waste plans and, where relevant, may also prepare one Local Plan combining policies on minerals, waste and other planning matters.

The Marine Management Organisation is producing a series of marine plans to cover the English marine (off shore) area. Coastal local planning authorities will need to take these into account when preparing their Local Plans, insofar as they have implications for on-shore activities.

ID 12-006-20140306 Last updated 06 03 2014

### Can a local planning authority produce a joint Local Plan with another authority or authorities?

Section 28 of the Planning and Compulsory Purchase Act 2004 [\[2\]](http://www.legislation.gov.uk/ukpga/2004/5/section/28) (<http://www.legislation.gov.uk/ukpga/2004/5/section/28>) enables two or more local planning authorities to agree to prepare a joint Local Plan, which can be an effective means of addressing cross-boundary issues, sharing specialist resources and reducing costs (e.g. through the formation of a joint planning unit).

The duty to cooperate (<http://planningguidance.communities.gov.uk/blog/guidance/duty-to-cooperate/>) requires local planning authorities and certain other public bodies to cooperate with each other in preparing a Local Plan, where there are matters that would have a significant impact on the areas of two or more authorities. A joint Local Plan is one means of achieving this and those preparing Joint Plans will wish to consider a joint evidence base and assessment of development needs (<http://planningguidance.communities.gov.uk/blog/guidance/housing-and-economic-development-needs-assessments/>). Less formal mechanisms can also be used. In particular, local planning authorities should consider the opportunities for aligning plan timetables and policies, as well as for sharing plan-making resources.

ID 12-007-20140306 Last updated 06 03 2014

### How often should a Local Plan be reviewed?

To be effective plans need to be kept up-to-date. Policies will age at different rates depending on local circumstances, and the local planning authority should review the relevance of the Local Plan at regular intervals to assess whether some or all of it may need updating. Most Local Plans are likely to require updating in whole or in part at least every five years. Reviews should be proportionate to the issues in hand. Local Plans may be found sound conditional upon a review in whole or in part within five years of the date of adoption.

The National Planning Policy Framework

([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#paragraph\\_47](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#paragraph_47)) makes clear that relevant policies for the supply of housing should not be considered up-to-date if the authority cannot demonstrate a five-year supply

([http://planningguidance.communities.gov.uk/blog/guidance/housing-and-economic-development-needs-assessments/methodology-assessing-housing-need/#paragraph\\_014](http://planningguidance.communities.gov.uk/blog/guidance/housing-and-economic-development-needs-assessments/methodology-assessing-housing-need/#paragraph_014)) of deliverable housing sites

([http://planningguidance.communities.gov.uk/blog/guidance/housing-and-economic-development-needs-assessments/methodology-assessing-housing-need/#paragraph\\_014](http://planningguidance.communities.gov.uk/blog/guidance/housing-and-economic-development-needs-assessments/methodology-assessing-housing-need/#paragraph_014)). Local planning authorities should also consider whether plan making activity by other authorities has an impact on planning and the Local Plan in their area. For example, a revised Strategic Housing Market Assessment will affect all authorities in that housing market area, and potentially beyond, irrespective of the status or stage of development of particular Local Plans.

There are requirements for a local planning authority to support neighbourhood planning [\[3\]](http://www.legislation.gov.uk/ukpga/2011/20/schedule/10/enacted) (<http://www.legislation.gov.uk/ukpga/2011/20/schedule/10/enacted>). Further detail is provided in the Neighbourhood Planning guidance

([http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/the-role-of-the-local-planning-authority-in-neighbourhood-planning/#paragraph\\_022](http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/the-role-of-the-local-planning-authority-in-neighbourhood-planning/#paragraph_022)).

A local planning authority must set out the timetable for producing or reviewing its Local Plan in its Local Development Scheme.

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### Related policy

#### National Planning Policy Framework

- Paragraph 47 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#paragraph\\_47](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#paragraph_47))

ID 12-008-20140306 Last updated 06 03 2014

## What should the Local Development Scheme contain?

A Local Development Scheme is required under Section 15 of the Planning and Compulsory Purchase Act 2004 [\[2\]](#)

(<http://www.legislation.gov.uk/ukpga/2011/20/section/111/enacted>) (as amended by the Localism Act 2011). This must specify (among other matters) the documents which, when prepared, will comprise the Local Plan for the area. It must be made available publically and kept up-to-date. It is important that local communities and interested parties can keep track of progress. Local planning authorities should publish their Local Development Scheme on their website.

ID 12-009-20140306 Last updated 06 03 2014

## How detailed should a Local Plan be?

While the content of Local Plans will vary depending on the nature of the area and issues to be addressed, all Local Plans should be as focused, concise and accessible as possible. They should concentrate on the critical issues facing the area – including its development needs – and the strategy and opportunities for addressing them, paying careful attention to both deliverability and viability.

In line with the National Planning Policy Framework ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph\\_156](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph_156)), the Local Plan should be clear in setting out the strategic priorities for the area and the policies that address these, and which also provide the strategic framework within which any neighbourhood plans (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/>) may be prepared to shape development at the community level.

In drafting policies the local planning authority should avoid undue repetition, for example by using generic policies to set out principles that may be common to different types of development. There should be no need to reiterate policies that are already set out in the National Planning Policy Framework.

Where sites are proposed for allocation, sufficient detail should be given to provide clarity to developers, local communities and other interests about the nature and scale of development (addressing the 'what, where, when and how' questions).

The policies map should illustrate geographically the policies in the Local Plan and be reproduced from, or based on, an Ordnance Survey map. If the adoption of a Local Plan would result in changes to a previously adopted policies map, when the plan is submitted to the Planning Inspectorate for examination an up to date submission policies map should also be submitted, showing how the adopted policies map would be changed as a result of the new plan.

Section 19 of the Planning and Compulsory Purchase Act 2004 [\[2\]](#) (<http://www.legislation.gov.uk/ukpga/2004/5/section/19>) sets out specific matters to which the local planning authority must have regard when preparing a Local Plan. Regulations 8 and 9 of the Town and Country Planning (Local Planning) (England) Regulations 2012 [\[2\]](#)

(<http://www.legislation.gov.uk/uksi/2012/767/regulation/8/made>) prescribe the general form and content of Local Plans and adopted policies map, while regulation 10 states what additional matters local planning authorities must have regard to when drafting their plans.

ID 12-010-20140306 Last updated 06 03 2014

## How should a Local Plan reflect the presumption in favour of sustainable development?

Paragraphs 14 and 15 of the National Planning Policy Framework indicates that Local Plans should be based upon and reflect the presumption in favour of sustainable development

(<http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable->

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## Related policy

### National Planning Policy Framework

- Paragraph 156 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph\\_156](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph_156))

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## Related policy

### National Planning Policy Framework

development/#paragraph\_14). This should be done by identifying and providing for objectively assessed needs and by indicating how the presumption will be applied locally.

ID 12-011-20140306 Last updated 06 03 2014

- Paragraph 14 ([http://planningguidance.communities.gov.uk/blog/guidance/sustainable-development/#paragraph\\_14](http://planningguidance.communities.gov.uk/blog/guidance/sustainable-development/#paragraph_14))
- Paragraph 15 ([http://planningguidance.communities.gov.uk/blog/guidance/sustainable-development/#paragraph\\_15](http://planningguidance.communities.gov.uk/blog/guidance/sustainable-development/#paragraph_15))

### Should all the Local Plan policies be contained in one document?

The National Planning Policy Framework makes clear that the Government's preferred approach is for each local planning authority to prepare a single Local Plan for its area (or a joint document with neighbouring areas). While additional Local Plans can be produced, for example a separate site allocations document or Area Action Plan, there should be a clear justification for doing so.

ID 12-012-20140306 Last updated 06 03 2014

### What is the relationship between the Local Plan and Neighbourhood Plans?

Neighbourhood plans

(<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/>), when brought into force, become part of the statutory development plan for the area that they cover.

They can be developed before, after or in parallel with a Local Plan, but the law requires that they must be in general conformity with the strategic policies in the adopted Local Plan for the area (and any other strategic policies that form part of the statutory development plan where relevant, such as the London Plan). Neighbourhood plans are not tested against the policies in an emerging Local Plan although the reasoning and evidence informing the Local Plan process may be relevant to the consideration of the basic conditions against which a neighbourhood plan is tested.

There are requirements for a local planning authority to support neighbourhood planning [\[2\]](http://www.legislation.gov.uk/ukpga/2011/20/schedule/10/enacted) (<http://www.legislation.gov.uk/ukpga/2011/20/schedule/10/enacted>). Further detail is provided in the Neighbourhood Planning guidance. (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/>)

Where a neighbourhood plan is brought forward before an up-to-date Local Plan is in place the local planning authority should take a proactive and positive approach, working collaboratively with a qualifying body. This could include sharing evidence and seeking to resolve any issues to ensure the draft Neighbourhood plan has the greatest chance of success at independent examination.

Where a neighbourhood plan has been made, the local planning authority should take it into account when preparing the Local Plan strategy and policies, and avoid duplicating the policies that are in the neighbourhood plan.

ID 12-013-20140306 Last updated 06 03 2014

### What evidence is needed to support the policies in a Local Plan?

Appropriate and proportionate evidence is essential for producing a sound Local Plan, and paragraph 158 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph\\_158](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph_158)) onwards of the National Planning Policy Framework sets out the types of evidence that may be required. This is not a

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#### Related policy

**National Planning Policy Framework**

- Paragraph 158 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph\\_158](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph_158))

prescriptive list; the evidence should be focused tightly on supporting and justifying the particular policies in the Local Plan. Evidence of cooperation (<http://planningguidance.communities.gov.uk/blog/guidance/duty-to-cooperate/>) and considering different options for meeting development needs will be key for this process.

sustainable-  
development/plan-  
making/#paragraph\_158)

The evidence needs to inform what is in the plan and shape its development rather than being collected retrospectively. It should also be kept up-to-date. For example when approaching submission, if key studies are already reliant on data that is a few years old, they should be updated to reflect the most recent information available (and, if necessary, the plan adjusted in the light of this information and the comments received at the publication stage).

Local planning authorities should publish documents that form part of the evidence base as they are completed, rather than waiting until options are published or a Local Plan is published for representations. This will help local communities and other interests consider the issues and engage with the authority at an early stage in developing the Local Plan. It will also help communities bringing forward neighbourhood plans (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/>), who may be able to use this evidence to inform the development of their own plans.

ID 12-014-20140306 Last updated 06 03 2014

### **Can local planning authorities in the process of plan making use the same approaches that have been accepted as sound in other Local Plans adopted since the introduction of the National Planning Policy Framework?**

Local authorities can consider following approaches established in local plan examinations that have been undertaken since the National Planning Policy Framework was introduced, provided they are both relevant and appropriate.

ID 12-015-20140306 Last updated 06 03 2014

### **What roles do Sustainability Appraisal and Habitats Assessment play?**

Every Local Plan must be informed and accompanied by a Sustainability Appraisal (<http://planningguidance.communities.gov.uk/blog/guidance/strategic-environmental-assessment-and-sustainability-appraisal/>). This allows the potential environmental, economic and social impacts of the proposals to be systematically taken into account, and should play a key role throughout the plan-making process. The Sustainability Appraisal plays an important part in demonstrating that the Local Plan reflects sustainability objectives and has considered reasonable alternatives. The Sustainability Appraisal should incorporate a Strategic Environmental Assessment (<http://planningguidance.communities.gov.uk/blog/guidance/strategic-environmental-assessment-and-sustainability-appraisal/>) to meet the statutory requirement for certain plans and programmes to be subject to a process of 'environmental assessment'.

The Local Plan may also require a Habitats Regulation Assessment, as set out in the Conservation of Habitats and Species Regulations 2010 (as amended) [\[2\]](http://www.legislation.gov.uk/uksi/2010/490/contents/made) (<http://www.legislation.gov.uk/uksi/2010/490/contents/made>) if it is considered likely to have significant effects on European habitats or species, located in the local planning authority's area or in its vicinity.

ID 12-016-20140306 Last updated 06 03 2014

### **Who should be involved in preparing a Local Plan?**

Local planning authorities will need to identify and engage at an early stage with all those that may be interested in the development or content of the Local Plan, including those groups who may be affected by its proposals but who do

not play an active part in most consultations. Those communities contemplating or pursuing a Neighbourhood plan (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/what-is-neighbourhood-planning/>) will have a particular interest in the emerging strategy, which will provide the strategic framework for the neighbourhood plan policies. The local planning authority will also need to ensure that it works proactively with other authorities on strategic cross boundary issues in line with the duty to cooperate (<http://planningguidance.communities.gov.uk/blog/guidance/duty-to-cooperate/>).

Regulation 18 of the Town and Country Planning (Local Planning) (England) Regulations 2012 [\[2\]](http://www.legislation.gov.uk/ukxi/2012/767/regulation/18/made) (<http://www.legislation.gov.uk/ukxi/2012/767/regulation/18/made>) sets out specific bodies or persons that a local planning authority must notify and invite representations from in developing its Local Plan. The local planning authority must take into account any representation made, and will need to set out how the main issues raised have been taken into account. It must also consult the Strategic Environmental Assessment consultation bodies (<http://planningguidance.communities.gov.uk/blog/guidance/strategic-environmental-assessment-and-sustainability-appraisal/strategic-environmental-assessment-and-sustainability-appraisal-and-how-does-it-relate-to-strategic-environmental-assessment/>) on the information and level of detail to include in the sustainability appraisal report.

Section 18 of the Planning and Compulsory Purchase Act 2004 [\[2\]](http://www.legislation.gov.uk/ukpga/2004/5/section/18) (<http://www.legislation.gov.uk/ukpga/2004/5/section/18>) requires local planning authorities to produce a Statement of Community Involvement, which should explain how they will engage local communities and other interested parties in producing their Local Plan and determining planning applications. The Statement of Community Involvement should be published on the local planning authority's website.

ID 12-017-20140306 Last updated 06 03 2014

### **How can the local planning authority show that a Local Plan is capable of being delivered including provision for infrastructure?**

A Local Plan is an opportunity for the local planning authority to set out a positive vision for the area, but the plan should also be realistic about what can be achieved and when (including in relation to infrastructure). This means paying careful attention to providing an adequate supply of land, identifying what infrastructure is required and how it can be funded and brought on stream at the appropriate time; and ensuring that the requirements of the plan as a whole will not prejudice the viability of development ([http://planningguidance.communities.gov.uk/blog/guidance/viability-guidance/viability-a-general-overview/#paragraph\\_001](http://planningguidance.communities.gov.uk/blog/guidance/viability-guidance/viability-a-general-overview/#paragraph_001)).

Early discussion with infrastructure and service providers is particularly important to help understand their investment plans and critical dependencies. The local planning authority should also involve the Local Enterprise Partnership at an early stage in considering the strategic issues facing their area, including the prospects for investment in infrastructure.

The Local Plan should make clear, for at least the first five years, what infrastructure is required, who is going to fund and provide it, and how it relates to the anticipated rate and phasing of development. This may help in reviewing the plan and in development management decisions. For the later stages of the plan period less detail may be provided as the position regarding the provision of infrastructure is likely to be less certain. If it is known that a development is unlikely to come forward until after the plan period due, for example, to uncertainty over deliverability of key infrastructure, then this should be clearly stated in the draft plan.

Where the deliverability of critical infrastructure is uncertain then the plan should address the consequences of this, including possible contingency arrangements and alternative strategies. The detail concerning planned

infrastructure provision can be set out in a supporting document such as an infrastructure delivery programme that can be updated regularly. However the key infrastructure requirements on which delivery of the plan depends should be contained in the Local Plan itself.

The evidence which accompanies an emerging Local Plan should show how the policies in the plan have been tested for their impact on the viability of development, including (where relevant) the impact which the Community Infrastructure Levy [\[2\]](#)

([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/197687/Community\\_Infrastructure\\_Levy\\_2013.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/197687/Community_Infrastructure_Levy_2013.pdf)) is expected to have. Where local planning authorities intend to bring forward a Community Infrastructure Levy regime, there is a strong advantage in doing so in parallel with producing the Local Plan, as this allows questions about infrastructure funding and the viability of policies to be addressed in a comprehensive and coordinated way.

ID 12-018-20140306 Last updated 06 03 2014

### What weight does an emerging local plan carry in decision-making?

The National Planning Policy Framework sets out that decision-takers may give weight to relevant policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies, and their degree of consistency with policies in the National Planning Policy Framework ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/annex-1-implementation/#paragraph\\_216](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/annex-1-implementation/#paragraph_216)).

ID 12-019-20140306 Last updated 06 03 2014

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### Related policy

#### National Planning Policy Framework

- Paragraph 216 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/annex-1-implementation/#paragraph\\_216](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/annex-1-implementation/#paragraph_216))

## 3. Publication and examination of a Local Plan

(<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/publication-and-examination-of-the-draft-plan/>)

### Publication and examination of a Local Plan

#### What happens when a Local Plan is published?

The publication stage plan should be the document that the local authority considers ready for examination. This Plan must be published for representations by the local planning authority, together with other “proposed submission documents”, before it can be submitted to the Planning Inspectorate for examination. This provides a formal opportunity for the local community and other interests to consider the Local Plan, which the local planning authority would like to adopt. The specific publication requirements are set out at Regulations 17, 19 and 35 (and 21) of the Town and Country Planning (Local Planning) (England) Regulations 2012 [\[2\]](#)

(<http://www.legislation.gov.uk/ukpga/2004/5/section/17>).

ID 12-020-20140306 Last updated 06 03 2014

#### What should the local planning authority do when submitting a Local Plan for examination?

Having received any representations on the publication version of the plan, the local planning authority should submit the Local Plan and any proposed changes it considers appropriate along with supporting [\[2\]](#)

(<http://www.legislation.gov.uk/uksi/2012/767/regulation/17/made>) documents to the Planning Inspectorate for examination on behalf of the Secretary of State. A Statement of Representations Procedure should be published alongside the submission version of the Local Plan.

The submitted documents should include those that were made available at the publication stage (updated as necessary), including details of who was consulted when preparing the Local Plan (at Regulation 18 stage) and how the main issues raised have been addressed. The local planning authority must also



include details of the representations made following publication of the Local Plan and a summary of the main issues raised – see Regulation 22 of the Town and Country Planning (Local Planning) (England) Regulations 2012 [☒](http://www.legislation.gov.uk/ukpga/2004/5/section/22) (<http://www.legislation.gov.uk/ukpga/2004/5/section/22>).

ID 12-021-20140306 Last updated 06 03 2014

### **What happens if the Inspector has significant concerns about a submitted Local Plan before the hearings begin?**

The Inspector will make an initial assessment of the Local Plan once it has been submitted for examination. Where any major concerns are identified, in relation to the duty to cooperate, other procedural requirements or the soundness of the plan, the Inspector will write to the local planning authority setting these out. Where the issues cannot be addressed through correspondence the Inspector may arrange for an exploratory meeting to take place.

If the Inspector considers that the local planning authority has not met the duty to cooperate or other procedural requirements then the Inspector may suggest that the plan is withdrawn to allow these issues to be rectified.

Where the Inspector has significant concerns about the soundness ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph\\_182](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph_182)) of a submitted plan, they may also suggest that the plan is withdrawn, but exceptionally may also suspend the examination process to give the local planning authority time to undertake further work to address the issues raised.

ID 12-022-20140306 Last updated 06 03 2014

### **Who is involved and what is discussed in a hearing session?**

Anyone who has made representations seeking to change a published Local Plan must, if they request, be given the opportunity of attending a hearing (section 20(6) of the Planning and Compulsory Purchase Act 2004) [☒](http://www.legislation.gov.uk/ukpga/2004/5/section/20) (<http://www.legislation.gov.uk/ukpga/2004/5/section/20>). The local planning authority will liaise with those who have asked to appear at the hearing to arrange attendance, including whether interested groups wish to nominate a representative to put forward their views.

The local planning authority is required to publicise details of the hearing sessions at least six weeks before they are scheduled to take place – under regulation 24 of the Town and Country Planning (Local Planning) (England) Regulations 2012 [☒](http://www.legislation.gov.uk/uksi/2012/767/regulation/24/made) (<http://www.legislation.gov.uk/uksi/2012/767/regulation/24/made>).

The appointed Inspector may hold a pre-hearing meeting, the purpose of which is to clarify the critical issues to be considered at the hearing sessions, and to explain the procedures to be followed. Where no pre-hearing meeting is held these matters will be dealt with through a written note from the Inspector.

The subject of the hearings is determined by the Inspector based on the documents submitted by the local planning authority and the representations that have been made. During the hearings the Inspector may ask participants to provide additional information by set deadlines. Such requests will be circulated to all those attending by the Programme Officer (an independent official who provides administrative support to the Inspector).

ID 12-023-20140306 Last updated 06 03 2014

### **What if modifications are required to make a submitted Local Plan sound?**

The Inspector can recommend ‘main modifications’ (changes that materially affect the policies) to make a submitted Local Plan sound and legally compliant only if asked to do so by the local planning authority under section 20(7C) of the 2004 Planning and Compulsory Purchase Act as amended) [☒](#)

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#### **Related policy**

##### **National Planning Policy Framework**

- Paragraph 182 ([http://planningguidance.communities.gov.uk/sustainable-development/plan-making/#paragraph\\_182](http://planningguidance.communities.gov.uk/sustainable-development/plan-making/#paragraph_182))

(<http://www.legislation.gov.uk/ukpga/2011/20/part/6/chapter/1/enacted>). The council can also put forward 'additional modifications' of its own to deal with more minor matters.

Where the changes recommended by the Inspector would be so extensive as to require a virtual re-writing of the Local Plan, the Inspector is likely to suggest that the local planning authority withdraws the plan. Exceptionally, under section 21 (9) (a) of the Planning and Compulsory Purchase Act 2004, the Secretary of State has the power to direct a local planning authority to withdraw its submitted plan.

Inspectors will require the local planning authority to consult upon all proposed main modifications. Depending on the scope of the modifications, further Sustainability Appraisal

(<http://planningguidance.communities.gov.uk/blog/guidance/strategic-environmental-assessment-and-sustainability-appraisal/strategic-environmental-assessment-and-sustainability-appraisal-and-how-does-it-relate-to-strategic-environmental-assessment/>) work may also be required. The Inspector's report on the plan will only be issued once the local planning authority has consulted on the main modifications and the Inspector has had the opportunity to consider the representations on these.

Whether to advertise any 'additional modifications' is at the discretion of the local planning authority, but they may wish to do so at the same time as consulting on the main modifications.

ID 12-024-20140306 Last updated 06 03 2014

### **What happens if a Local Plan is found unsound?**

Where the Inspector concludes that the duty to cooperate or other basic procedural requirements have not been met, or there are fundamental issues regarding the soundness of the plan that cannot be addressed through modifications, it will be recommended that the submitted plan is not adopted. In these circumstances the local planning authority will be unable to adopt the Local Plan and it should be withdrawn in accordance with regulation 27 of the Town and Country Planning (Local Planning) (England) Regulations 2012 [\[a\]](http://www.legislation.gov.uk/uksi/2012/767/regulation/27/made) (<http://www.legislation.gov.uk/uksi/2012/767/regulation/27/made>).

Speedy withdrawal of a plan in such circumstances provides certainty to the local community, applicants and other interests about the status of the planning framework in the area. Until a revised plan is brought forward to adoption, any existing Local Plan policies will remain in place.

Following withdrawal of a Local Plan from examination a Local Planning Authority should consider whether to republish under Regulation 19 [\[a\]](http://www.legislation.gov.uk/uksi/2012/767/regulation/19/made) (<http://www.legislation.gov.uk/uksi/2012/767/regulation/19/made>) or reconsult under Regulation 18 of the Town and Country Planning (Local Planning) (England) Regulations 2012 [\[a\]](http://www.legislation.gov.uk/uksi/2012/767/regulation/18/made) (<http://www.legislation.gov.uk/uksi/2012/767/regulation/18/made>) and what matters this republication or reconsultation should address.

ID 12-025-20140306 Last updated 06 03 2014

## **4. Local plans – Adoption, monitoring and supplementary planning documents**

(<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/adoption-monitoring-and-supplementary-planning-documents/>)

### **Local plans – Adoption, monitoring and supplementary planning documents**

#### **What needs to be done to formally adopt a Local Plan?**

Once the examination process is complete, adoption is the final stage of putting a Local Plan in place. This requires confirmation by a full meeting of the local planning authority (Regulation 4(1) and (3) of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 [\[a\]](http://www.legislation.gov.uk/uksi/2000/2853/regulation/4/made) (<http://www.legislation.gov.uk/uksi/2000/2853/regulation/4/made>)). On adopting a Local Plan, the local planning authority has to make publicly available a copy of

the plan, an adoption statement and Sustainability Appraisal in line with regulations 26 and 35 of the Town and Country Planning (Local Planning) (England) Regulations 2012 [\[2\]](http://www.legislation.gov.uk/ukSI/2012/767/regulation/26/made) (<http://www.legislation.gov.uk/ukSI/2012/767/regulation/26/made>).

While the local planning authority is not legally required to adopt its Local Plan following examination, it will have been through a significant process locally to engage communities and other interests in discussions about the future of the area, and it is to be expected that the authority will proceed quickly with adopting a plan that has been found sound.

ID 12-026-20140306 Last updated 06 03 2014

### What is the role of the Authority Monitoring Report?

Local planning authorities must publish information at least annually that shows progress with Local Plan preparation, reports any activity relating to the duty to cooperate and shows how the implementation of policies in the Local Plan is progressing and are encouraged to report as frequently as possible on planning matters to communities. This is important to enable communities and interested parties to be aware of progress. Local planning authorities can also use the Authority Monitoring Report to provide up-to-date information on the implementation of any neighbourhood plans that have been made, and to determine whether there is a need to undertake a partial or full review of the Local Plan.

This information should be made available publicly. Regulation 34 of the Town and Country Planning (Local Planning) (England) Regulations 2012 [\[2\]](http://www.legislation.gov.uk/ukSI/2012/767/regulation/34/made) (<http://www.legislation.gov.uk/ukSI/2012/767/regulation/34/made>) sets out what information the reports must contain, although there is other useful information that can be set out. In particular, the reports can highlight the contributions made by development, including section 106 planning obligations, Community Infrastructure Levy and New Homes Bonus payments, and how these have been used.

ID 12-027-20150326 Last updated 26 03 2015

### Are Supplementary Planning Documents needed?

Supplementary planning documents should be prepared only where necessary and in line with paragraph 153 of the National Planning Policy Framework ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph\\_153](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph_153)).

They should build upon and provide more detailed advice or guidance on the policies in the Local Plan. They should not add unnecessarily to the financial burdens on development.

Regulations 11 to 16 of the Town and Country Planning (Local Planning) (England) Regulations 2012 [\[2\]](http://www.legislation.gov.uk/ukSI/2012/767/regulation/11/made%20to%20http://www.legislation.gov.uk/ukSI/2012/767/regulation/16/made) (<http://www.legislation.gov.uk/ukSI/2012/767/regulation/11/made%20to%20http://www.legislation.gov.uk/ukSI/2012/767/regulation/16/made>) set out the requirements for producing Supplementary Planning Documents.

In exceptional circumstances a Strategic Environmental Assessment (<http://planningguidance.communities.gov.uk/blog/guidance/strategic-environmental-assessment-and-sustainability-appraisal/>) may be required when producing a Supplementary Planning Document.


ID 12-028-20140306 Last updated 06 03 2014

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### Related policy

#### National Planning Policy Framework

- Paragraph 153 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph\\_153](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph_153))

 Department for Communities & Local Government  
(<https://www.gov.uk/government/organisations/department-for-communities-and-local-government>)

# Planning Practice Guidance [\(http://planningguidance.communities.gov.uk\)](http://planningguidance.communities.gov.uk)

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Guidance

## Making an application

Print 

1. Types of application (<http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/types-of-application/>)

### Types of application

#### What types of application are possible?

There are two main types of application – applications for full planning permission ([http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/types-of-application/#paragraph\\_004](http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/types-of-application/#paragraph_004)) and applications for outline planning permission ([http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/types-of-application/#paragraph\\_005](http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/types-of-application/#paragraph_005)).

Applications can also be made for:

- approval of reserved matters ([http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/types-of-application/#paragraph\\_006](http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/types-of-application/#paragraph_006));
- discharge of conditions (<http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/discharging-and-modifying-conditions-once-planning-permission-is-granted/>);
- amending proposals that have planning permission (<http://planningguidance.communities.gov.uk/blog/guidance/flexible-options/how-is-a-proposal-that-has-planning-permission-amended/>);
- amending planning obligations; ([http://planningguidance.communities.gov.uk/blog/guidance/planning-obligations/planning-obligations-guidance/#paragraph\\_009](http://planningguidance.communities.gov.uk/blog/guidance/planning-obligations/planning-obligations-guidance/#paragraph_009))
- lawful development certificates; (<http://planningguidance.communities.gov.uk/blog/guidance/lawful-development-certificates/>);
- prior approval ([http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/#paragraph\\_026](http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/#paragraph_026)) for some permitted development rights;
- non-planning consents (such as advertisement consent (<http://planningguidance.communities.gov.uk/blog/guidance/advertisements/>), consent required under a Tree Preservation Order (<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/>) and hazardous substances consent (<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/>)).

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#### What are non-planning consents?

Non-planning consents are those consents that may have to be obtained alongside or after, and separate from, planning permission in order to complete and operate a development lawfully.

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### **What should prospective applicants do if they are unsure what type of application is needed?**

Applicants who are unsure about which type of application to make should speak to their local planning authority for information on different types of planning application, as well as non-planning consents.

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### **What is an application for full planning permission?**

An application for full planning permission results in a decision on the detailed proposals of how a site can be developed. If planning permission is granted, and subject to compliance with any planning conditions that are imposed, no further engagement with the local planning authority is required to proceed with the development granted permission, although other consents may be required.

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### **What is an outline planning application?**

An application for outline planning permission allows for a decision on the general principles of how a site can be developed. Outline planning permission is granted subject to conditions requiring the subsequent approval of one or more 'reserved matters'.

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### **What are reserved matters?**

Reserved matters are those aspects of a proposed development which an applicant can choose not to submit details of with an outline planning application, (i.e. they can be 'reserved' for later determination). These are defined in article 2 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 [\[2\]](http://www.legislation.gov.uk/uksi/2015/595/article/2/made) (<http://www.legislation.gov.uk/uksi/2015/595/article/2/made>) as:

- 'Access' – the accessibility to and within the site, for vehicles, cycles and pedestrians in terms of the positioning and treatment of access and circulation routes and how these fit into the surrounding access network.
- 'Appearance' – the aspects of a building or place within the development which determine the visual impression the building or place makes, including the external built form of the development, its architecture, materials, decoration, lighting, colour and texture.
- 'Landscaping' – the treatment of land (other than buildings) for the purpose of enhancing or protecting the amenities of the site and the area in which it is situated and includes: (a) screening by fences, walls or other means; (b) the planting of trees, hedges, shrubs or grass; (c) the formation of banks, terraces or other earthworks; (d) the laying out or provision of gardens, courts, squares, water features, sculpture or public art; and (e) the provision of other amenity features;
- 'Layout' – the way in which buildings, routes and open spaces within the development are provided, situated and orientated in relation to each other and to buildings and spaces outside the development.
- 'Scale' – the height, width and length of each building proposed within the development in relation to its surroundings.

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### **Is there a time limit for making an application for approval of reserved matters?**

Under section 92 of the Town and Country Planning Act 1990 [\[a\]](http://www.legislation.gov.uk/ukpga/1990/8/section/92) (<http://www.legislation.gov.uk/ukpga/1990/8/section/92>), applications for approval of reserved matters ([http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/types-of-application/#paragraph\\_006](http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/types-of-application/#paragraph_006)) must be made within a specified time-limit, normally three years from the date outline planning permission was granted.

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### **Do all reserved matters need to be submitted for approval at the same time?**

Applications for approval under outline permission may be made either for all reserved matters at once, or individually. Even after details relating to a particular reserved matter have been approved, one or more fresh applications can be made for approval of alternative details in relation to the same reserved matter. Once the time-limit for applications for approval of reserved matters has expired, however, no applications for such an approval may be submitted.

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### **What should prospective applicants do if their application contains sensitive information?**

See guidance on applications that contain sensitive information ([http://planningguidance.communities.gov.uk/blog/guidance/crown-development/sensitive-information-in-planning-applications/#paragraph\\_035](http://planningguidance.communities.gov.uk/blog/guidance/crown-development/sensitive-information-in-planning-applications/#paragraph_035)).

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## **2. Who should an application be submitted to?**

(<http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/who-should-an-application-be-submitted-to/>)

### **Who should an application be submitted to?**

#### **Which authority should deal with a planning application?**

Most planning applications are submitted to the relevant local planning authority. In two-tier council areas the relevant local planning authority will be the district council, except for applications involving minerals (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/>) and waste development which are made to the county council. The local authority finder on Gov.uk [\[a\]](https://www.gov.uk/find-your-local-council) (<https://www.gov.uk/find-your-local-council>) indicates the relevant authority for each area. In certain limited cases ([http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/who-should-an-application-be-submitted-to/#paragraph\\_014](http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/who-should-an-application-be-submitted-to/#paragraph_014)), it is possible to make an application direct to the Planning Inspectorate.

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### **What if an application relates to land in more than one local planning authority area?**

Where a site which is the subject of a planning application straddles one or more local planning authority boundaries, the applicant must submit identical applications to each local planning authority.

See further guidance on how local planning authorities should publicise such 'cross boundary' applications ([http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/public-consultation/#paragraph\\_008](http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/public-consultation/#paragraph_008)). The planning fee is payable solely to the authority of wherever area contains the larger or largest part of the whole application site.

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### **What about development to be undertaken by a local authority?**

The procedures dealing with development undertaken by local authorities are contained in the Town and Country Planning General Regulations 1992 [\[2\]](http://www.legislation.gov.uk/ukSI/1992/1492/contents/made) (<http://www.legislation.gov.uk/ukSI/1992/1492/contents/made>). The principle underlying these Regulations is that local authorities must make planning applications in the same way as any other person and must follow the same procedures as would apply to applications by others.

County and district councils may grant themselves planning permission for their own development on land in which they have an interest or for development by an authority jointly with another person. The proposals must be publicised ([http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/public-consultation/#paragraph\\_002](http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/public-consultation/#paragraph_002)) in the same way as any similar application from any other applicant and they cannot be decided by a committee or officer responsible for the management of any land or buildings to which the application relates.

Local authority development proposals, like those of other persons applying for planning permission, must be determined in accordance with the development plan unless material considerations indicate otherwise ([http://planningguidance.communities.gov.uk/blog/guidance/determining-a-planning-application/how-must-decisions-on-applications-for-planning-permission-be-made/#paragraph\\_006](http://planningguidance.communities.gov.uk/blog/guidance/determining-a-planning-application/how-must-decisions-on-applications-for-planning-permission-be-made/#paragraph_006)).

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### **What about development to be undertaken by the Crown?**

The Crown must make applications for planning permission, listed building consent and hazardous substances consent in the same way as applications made by any other party. The exception is an application for urgent Crown development made under section 293A of the Town and Country Planning Act 1990. Read further guidance on Crown Development (<http://planningguidance.communities.gov.uk/blog/guidance/crown-development/>).

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### **What kinds of application are made directly to the Planning Inspectorate?**

- Applications for development consent for Nationally Significant Infrastructure. Further guidance can be found here [\[2\]](http://infrastructure.planningportal.gov.uk/application-process/the-process/) (<http://infrastructure.planningportal.gov.uk/application-process/the-process/>).
- Applications for urgent Crown development ([http://planningguidance.communities.gov.uk/blog/guidance/crown-development/urgent-applications/#paragraph\\_027](http://planningguidance.communities.gov.uk/blog/guidance/crown-development/urgent-applications/#paragraph_027)).
- Applications for major development under section 62A of the 1990 Act where the local planning authority has been designated (<http://planningguidance.communities.gov.uk/blog/guidance/determining-a-planning-application/what-are-the-time-periods-for-determining-a-planning->



application/#paragraph\_005) by the Secretary of State and the applicant has chosen to submit an application to the Planning Inspectorate.

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### **What kinds of application are made to the Secretary of State for Energy?**

The Department of Energy and Climate Change (DECC) administers the provisions of the Electricity Act 1989 for developers seeking consents from the Secretary of State for the construction of overhead lines. This applies to overhead lines with a nominal voltage of less than 132 kilovolts and lines with a nominal voltage of 132 kilovolts or greater that are under 2 kilometres in length. Please visit the Department for Energy and Climate Change Energy Infrastructure Portal [\[2\]](https://itportal.decc.gov.uk/EIP.htm) (<https://itportal.decc.gov.uk/EIP.htm>) for guidance on the consent application process detailed in section 37 of the Electricity Act 1989.

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3. Validation requirements (<http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/>)

#### **Validation requirements**

##### **What is required to make a valid application for planning permission?**

The submission of a valid application for planning permission requires:

- (a) a completed application form  
(<http://planningguidance.communities.gov.uk/blog/guidance/making-an-application-2/validation-requirements/application-form/>)
- (b) compliance with national information requirements  
(<http://planningguidance.communities.gov.uk/blog/guidance/making-an-application-2/validation-requirements/national-information-requirements/>)
- (c) the correct application fee
- (d) provision of local information requirements  
(<http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/local-information-requirements/>)


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- Application form (<http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/application-form/>)

#### **Application form**

##### **Where can the standard application form be found?**

Applicants are encouraged to apply electronically through the Local Planning Authority's [\[2\]](https://www.gov.uk/find-your-local-council) (<https://www.gov.uk/find-your-local-council>) website. The standard application form can be viewed for information on the Gov.uk website [\[2\]](https://www.gov.uk/government/publications/planning-application-forms-templates-for-local-planning-authorities) (<https://www.gov.uk/government/publications/planning-application-forms-templates-for-local-planning-authorities>). Alternatively, an application can be completed on a paper version of the form provided by the local planning authority.

The vast majority of applications can be made using the standard application form. The standard application form cannot currently be used for applications for mining operations or the use of land for mineral-working deposits, although there is a separate paper form for onshore oil and gas development  (<http://www.planningportal.gov.uk/planning/applications/paperforms>).

Applications made under the Planning (Hazardous Substances) Act 1990 for hazardous substance consent are also not covered by the Standard Application Form. Such applications must be made on a form provided by the local planning authority.

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### **Does a planning application have to be made on paper?**

Applicants are encouraged to apply electronically. However, online submission of supporting information may not always be possible. In these circumstances, information can be submitted to the local planning authority in hard copy, or electronically (e.g. on a CD or USB storage device).

For electronic applications, a typed signature of the applicant or agent's name is acceptable.

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### **How many copies of the application form need to be submitted?**

Applications submitted electronically do not need to be accompanied by any further copies either of the application or accompanying information.

Applicants who apply on a paper copy of the standard application form must provide the original plus three copies of the form (a total of four copies), unless the local planning authority indicate that a smaller number is required.

Local planning authorities may request additional copies above the statutory requirement, but failure to provide these additional copies would not be a basis for refusing to validate the application.

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### **Can a local planning authority insist that a copy of an application be submitted electronically or on paper?**

A local planning authority cannot refuse to validate an application if an applicant who has made an application electronically does not provide paper copies. Similarly, a local planning authority cannot refuse to validate an application if an applicant does not provide an electronic copy of the application.

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### **What if an application is located in an area where the Community Infrastructure Levy is charged?**

The Community Infrastructure Levy means that authorities charging the levy require additional information to determine whether a charge is due and to determine the amount. Applicants are required to answer additional questions to enable authorities to calculate levy liability.

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- National information requirements (<http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/national-information-requirements/>)

## National information requirements

### What are the national information requirements

An application for planning permission must be accompanied by:

- Plans and drawings ([http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/national-information-requirements/#paragraph\\_023](http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/national-information-requirements/#paragraph_023)).
- Ownership Certificate and Agricultural Land Declaration ([http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/national-information-requirements/#paragraph\\_025](http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/national-information-requirements/#paragraph_025)).
- Design and Access Statement ([http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/national-information-requirements/#paragraph\\_029](http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/national-information-requirements/#paragraph_029)) (for some planning applications).


In addition, there are specific requirements in relation to:

- Outline planning applications ([http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/national-information-requirements/#paragraph\\_034](http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/national-information-requirements/#paragraph_034)).
- Applications that are subject to Environmental Impact Assessment ([http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/national-information-requirements/#paragraph\\_037](http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/national-information-requirements/#paragraph_037)).

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## Plans and drawings

### What plans and drawings must be submitted with a planning application?

As a minimum, applicants will need to submit a 'location plan' that shows the application site in relation to the surrounding area. Additional plans and drawings will in most cases be necessary to describe the proposed development, as required by the legislation (see article 7(1)(c)(ii) of the Town and Country Planning (Development Management Procedure (England) (Order) 2015  (<http://www.legislation.gov.uk/ukSI/2015/595/article/7/made>)). These may be requested by the local planning authority through their local list of information requirements (<http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/local-information-requirements/>), where it is reasonable to do so.

Any plans or drawings must be drawn to an identified scale, and in the case of plans, must show the direction of north. Although not a requirement of legislation, the inclusion of a linear scale bar is also useful, particularly in the case of electronic submissions.

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### What information should be included on a location plan?

A location plan should be based on an up-to-date map. The scale should typically be 1:1250 or 1:2500, but wherever possible the plan should be scaled to fit onto A4 or A3 size paper. A location plan should identify sufficient roads and/or buildings on land adjoining the application site to ensure that the exact location of the application site is clear.

The application site should be edged clearly with a red line on the location plan. It should include all land necessary to carry out the proposed development (e.g. land required for access to the site from a public highway, visibility splays, landscaping, car parking and open areas around buildings). A blue line should be drawn around any other land owned by the applicant, close to or adjoining the application site.

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## Ownership certificate and agricultural land declaration

### What is an ownership certificate?

A certificate which applicants must complete that provides certain details about the ownership of the application site and confirms that an appropriate notice has been served on any other owners (and agricultural tenants). The forms of notice are in Schedule 2 to the Town and Country Planning (Development Management Procedure (England) (Order) 2015 [\[2\]](http://www.legislation.gov.uk/ukSI/2015/595/schedule/2/made) (<http://www.legislation.gov.uk/ukSI/2015/595/schedule/2/made>).

An application is not valid, and therefore cannot be determined by the local planning authority, unless the relevant certificate has been completed. It is an offence to complete a false or misleading certificate, either knowingly or recklessly, with a maximum fine of up to £5,000.

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### Which ownership certificate should be signed?

#### *Certificate A – Sole Ownership and no agricultural tenants*

This should only be completed if the applicant is the sole owner of the land to which the application relates and there are no agricultural tenants.

#### *Certificate B – Shared Ownership (All other owners/agricultural tenants known)*

This should be completed if the applicant is not the sole owner, or if there are agricultural tenants, and the applicant knows the names and addresses of all the other owners and/or agricultural tenants.

#### *Certificate C – Shared Ownership (Some other owners/agricultural tenants known)*

This should be completed if the applicant does not own all of the land to which the application relates and does not know the name and address of all of the owners and/or agricultural tenants.

#### *Certificate D – Shared Ownership (None of the other owners/agricultural tenants known)*

This should be completed if the applicant does not own all of the land to which the application relates and does not know the names and addresses of any of the owners and/or agricultural tenants.

An 'owner' is anyone with a freehold interest, or leasehold interest the unexpired term of which is not less than seven years. In the case of development consisting of the winning or working of minerals, a person entitled to an interest in a mineral in the land is also an owner.

An 'agricultural tenant' is a tenant of an agricultural holding, any part of which is comprised in the land to which the application relates.

Any hard copy certificate submitted with the standard application form must be signed by hand. For any electronically submitted certificate, a typed signature of the applicant's name is acceptable. Ownership certificates must also be completed for applications for listed building consent, although no agricultural declaration is required.

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### **Can a planning application be made on someone else's land?**

The planning system entitles anyone to apply for permission to develop any plot of land, irrespective of ownership. However, an applicant is required to notify owners of the land or buildings to which the application relates, as well as any agricultural tenants, in accordance with article 13 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 [\[2\]](http://www.legislation.gov.uk/ukSI/2015/595/article/13/made) (<http://www.legislation.gov.uk/ukSI/2015/595/article/13/made>). When making an application, an applicant is required to sign a certificate ([http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/national-information-requirements/#paragraph\\_026](http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/national-information-requirements/#paragraph_026)) confirming the ownership of the land to which the application relates and that the relevant notices have been served.

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### **What is an agricultural land declaration?**

All agricultural tenants on a site must be notified prior to the submission of an application for planning permission. Applicants must certify that they have notified any agricultural tenants about their application, or that there are no agricultural tenants on the site. This declaration is required whether or not the site includes an agricultural holding. It is incorporated into the ownership certificates on the standard application form.

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## **Design and access statement**

### **What is a Design and Access Statement?**

A Design and Access Statement is a concise report accompanying certain applications for planning permission and applications for listed building consent. They provide a framework for applicants to explain how the proposed development is a suitable response to the site and its setting, and demonstrate that it can be adequately accessed by prospective users. Design and Access Statements can aid decision-making by enabling local planning authorities and third parties to better understand the analysis that has underpinned the design of a development proposal.

The level of detail in a Design and Access Statement should be proportionate to the complexity of the application, but should not be long.

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### **What applications must be accompanied by a Design and Access Statement?**

- Applications for major development, as defined in article 2 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 [\[2\]](http://www.legislation.gov.uk/ukSI/2015/595/article/2/made) (<http://www.legislation.gov.uk/ukSI/2015/595/article/2/made>);
- Applications for development in a designated area, where the proposed development consists of:
  - one or more dwellings; or

- a building or buildings with a floor space of 100 square metres or more.
- Applications for listed building consent.

For the purposes of Design and Access Statements, a designated area means a World Heritage Site or a conservation area.

Applications for waste development, a material change of use, engineering or mining operations do not need to be accompanied by a Design and Access Statement.

Applications to amend the conditions attached to a planning permission (<http://planningguidance.communities.gov.uk/blog/guidance/flexible-options/annex-a-summary-comparison-table/>) do not need to be accompanied by a Design and Access Statement.

There are some differences between the requirements for applications for planning permission ([http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/national-information-requirements/#paragraph\\_031](http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/national-information-requirements/#paragraph_031)) and applications for listed building consent ([http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/national-information-requirements/#paragraph\\_032](http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/national-information-requirements/#paragraph_032)).

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### **What should be included in a Design and Access Statement accompanying an application for planning permission?**

A Design and Access Statement must:

- (a) explain the design principles and concepts that have been applied to the proposed development; and
- (b) demonstrate the steps taken to appraise the context of the proposed development, and how the design of the development takes that context into account.

A development's context refers to the particular characteristics of the application site and its wider setting. These will be specific to the circumstances of an individual application and a Design and Access Statement should be tailored accordingly.

Design and Access Statements must also explain the applicant's approach to access and how relevant Local Plan policies have been taken into account. They must detail any consultation undertaken in relation to access issues, and how the outcome of this consultation has informed the proposed development. Applicants must also explain how any specific issues which might affect access to the proposed development have been addressed.

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### **What should be included in a Design and Access Statement accompanying an application for listed building consent?**

Design and Access Statements accompanying applications for listed building consent must include an explanation of the design principles and concepts that have been applied to the proposed works, and how they have taken account of:

- (a) the special architectural or historic importance of the building;
- (b) the particular physical features of the building that justify its designation as a listed building; and
- (c) the building's setting.

Unless the proposed works only affect the interior of the building, Design and Access Statements accompanying applications for listed building consent must also explain how issues relating to access to the building have been dealt with. They must explain the applicant's approach to access, including what alternative means of access have been considered, and how relevant Local Plan policies have been taken into account. Statements must also explain how the applicant's approach to access takes account of matters (a)-(c) above.

Design and Access Statements accompanying applications for listed building consent must provide information on any consultation undertaken, and how the outcome of this consultation has informed the proposed works. Statements must also explain how any specific issues which might affect access to the building have been addressed.

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### **Where a planning application is submitted in parallel with an application for listed building consent, do two Design and Access Statements need to be provided?**

Where a planning application is submitted in parallel with an application for listed building consent, a single, combined Design and Access Statement should address the requirements of both. The combined Statement should address the elements required in relation to a planning application and the additional requirements in relation to listed building consent.

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## **Outline planning applications**

### **What details need to be submitted with an outline planning application?**

Information about the proposed **use** or uses, and the **amount** of development proposed for each use, is necessary to allow consideration of an application for outline planning permission.

Under article 5(3) of the Development Management Procedure Order 2015 [\[2\]](http://www.legislation.gov.uk/ukSI/2015/595/article/5/made) (<http://www.legislation.gov.uk/ukSI/2015/595/article/5/made>), an application for outline planning permission must also indicate the area or areas where **access** points to the development will be situated, even if access has been reserved ([http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/types-of-application/#paragraph\\_006](http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/types-of-application/#paragraph_006)).

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### **Can details of reserved matters be submitted with an outline application?**

An applicant can choose to submit details of any of the reserved matters ([http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/types-of-application/#paragraph\\_006](http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/types-of-application/#paragraph_006)) as part of an outline application. Unless the applicant has indicated that those details are submitted "for illustrative purposes only" (or has otherwise indicated that they are not formally part of the application), the local planning authority must treat them as part of the development in respect of which the application is being made; the local planning authority cannot reserve that matter by condition for subsequent approval.

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### **Can a local planning authority request further details in**

## relation to reserved matters?

A local planning authority can request further details in relation to reserved matters under article 5(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 [\[2\]](http://www.legislation.gov.uk/uksi/2015/595/article/5/made) (<http://www.legislation.gov.uk/uksi/2015/595/article/5/made>). If a local planning authority considers that an outline application ought to include details of the reserved matters it must notify the applicant no more than one month after the application is received, specifying which further details are required.

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## Applications subject to environmental impact assessment

### What information is required if an application is subject to Environmental Impact Assessment?

For projects requiring an Environmental Impact Assessment, an Environmental Statement (and non-technical summary) must be provided. Guidance on Environmental Impact Assessment can be found here (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/what-legislation-covers-environmental-impact-assessment/>).

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- Local information requirements (<http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/local-information-requirements/>)

## Local information requirements

### What is the Government's policy on local information requirements?

The Government's policy on local information requirements can be found in the National Planning Policy Framework. Local planning authorities should take a proportionate approach to the information requested in support of planning applications.

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## Related policy

### National Planning Policy Framework

- Paragraph 193 ([http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/local-information-requirements/#paragraph\\_193](http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/local-information-requirements/#paragraph_193))

## Can local planning authorities request information that must be provided with a planning application?

A local planning authority may request supporting information with a planning application. Its requirements should be specified on a formally adopted 'local list' which has been published on its website less than two years before an application is submitted. Local information requirements have no bearing on whether a planning application is valid ([http://planningguidance.communities.gov.uk/blog/guidance/making-an-application-2/validation-requirements/#paragraph\\_16](http://planningguidance.communities.gov.uk/blog/guidance/making-an-application-2/validation-requirements/#paragraph_16)) unless they are set out on such a list.

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### **Can local planning authorities request any information from its local list?**

The local list is prepared by the local planning authority to clarify what information is usually required for applications of a particular type, scale or location.

In addition to being specified on an up-to-date local list published on the local planning authority's website, information requested with a particular planning application must be:

- reasonable having regard, in particular, to the nature and scale of the proposed development; and
- about a matter which it is reasonable to think will be a material consideration in the determination of the application.

These statutory tests are set out in section 62 (4A) of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/2013/27/section/6/enacted) (inserted by the Growth and Infrastructure Act) and article 11(3)(c) of the Town and Country Planning (Development Management Procedure) (England) (Order) 2015 [\[2\]](http://www.legislation.gov.uk/uksi/2015/595/article/11/made).

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### **What happens if a local planning authority asks for information which is not necessary?**

Applicants can either provide the information, or use the procedure to resolve disputes over the information to be provided with a planning application ([http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/receipt-of-an-application/delay-in-the-validation-of-an-application/#paragraph\\_047](http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/receipt-of-an-application/delay-in-the-validation-of-an-application/#paragraph_047)).

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### **Can planning obligations or heads of terms be on a local list?**

The purpose of planning obligations (<http://planningguidance.communities.gov.uk/blog/guidance/planning-obligations/planning-obligations-guidance/>) is to make development acceptable in planning terms. This is about mitigation, rather than just identification, of any undesirable impact and is generally negotiated during the consideration of a planning application. So while it can be good practice to submit information about a proposed planning obligation alongside an application, it should not normally be a requirement for validation of a planning application. If they are to go on the local list, the local planning authority should be able to justify their inclusion in relation to any particular development.

ID 14-042-20140306 Last updated 06 03 2014

### **How often should a local list be reviewed?**

A local list should be reviewed at least every two years.

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### **How should a local planning authority review its local list?**

The recommended process for reviewing and revising local lists involves the following three-step process:

- *Step 1: Reviewing the existing local list*

Local planning authorities should identify the drivers for each item on their existing local list of information requirements. These drivers should be statutory requirements, policies in the National Planning Policy Framework or development plan, or published guidance that explains how adopted policy should be implemented.

Having identified their information requirements, local planning authorities should decide whether they need to revise their existing local list. Where a local planning authority decides that no changes are necessary, it should publish an announcement to this effect on its website and republish its local list.

- *Step 2: Consulting on proposed changes*

Where a local planning authority considers that changes are necessary, the proposals should be issued to the local community, including applicants and agents, for consultation.

- *Step 3: Finalising and publishing the revised local list*

Consultation responses should be taken into account by the local planning authority when preparing the final revised list. The revised local list should be published on the local planning authority's website.

Information requested with a particular planning application must meet the statutory tests introduced by the Growth and Infrastructure Act ([http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/local-information-requirements/#paragraph\\_040](http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/local-information-requirements/#paragraph_040)).

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#### 4. Receipt of an application (<http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/receipt-of-an-application/>)

### Receipt of an application

#### What does the local planning authority do when it first receives an application?

Once it has received an application, the local planning authority will register the application and send the applicant an acknowledgement that confirms the application has been received and sets out the next steps.

Issues that may arise when an application is first submitted:

- Changes to the description of the development (<http://planningguidance.communities.gov.uk/blog/guidance/making-an-application-2/receipt-of-application/changes-to-the-description-of-development/>)
- Delay in validation of an application (<http://planningguidance.communities.gov.uk/blog/guidance/making-an-application-2/receipt-of-application/delay-in-the-validation-of-an-application/>)
- Dealing with 'repeat applications' for development that has already been refused (<http://planningguidance.communities.gov.uk/blog/guidance/making-an-application-2/receipt-of-application/dealing-with-repeat-applications-for-development-that-have-already-been-refused/>)

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- Changes to the description of development

(<http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/receipt-of-an-application/changes-to-the-description-of-development/>)

### Changes to the description of development

#### Can a local planning authority amend the description of development?

Before publicising and consulting on an application

(<http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/>), the local planning authority should be satisfied that the description of development provided by the applicant is accurate. The local planning authority should not amend the description of development without first discussing any revised wording with the applicant or their agent. Checking the accuracy of the description of development should not delay validation of an application.

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- **Delay in the validation of an application**

(<http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/receipt-of-an-application/delay-in-the-validation-of-an-application/>)

### **Delay in the validation of an application**

#### **What should happen if there is delay in validating an application?**

Applications should be validated as soon as practicable to allow the formal process of publicising and consulting on the application to begin. Sometimes delays can occur if there are concerns about the validity of an application. In such circumstances, it is advisable for local planning authorities to:

- discuss their concerns with the applicant at the earliest opportunity; and
- give clear advice about what steps need to be taken to address their concerns.

The requirements for a valid application are set out here

([http://planningguidance.communities.gov.uk/blog/guidance/making-an-application-2/validation-requirements/#paragraph\\_16](http://planningguidance.communities.gov.uk/blog/guidance/making-an-application-2/validation-requirements/#paragraph_16)).

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#### **What happens if, after having received a planning application the local planning authority considers that insufficient information has been provided to make a decision on the application?**

The local planning authority will inform the applicant as soon as possible that this is the case, setting out what additional information it thinks needs to be provided. Any additional information must form part of the local list, and meet the statutory tests ([http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/local-information-requirements/#paragraph\\_040](http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/local-information-requirements/#paragraph_040)).

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#### **What happens where the applicant disagrees with the local planning authority request to provide additional information?**

It is expected that both the applicant and local planning authority should make every effort to resolve disagreements about the information needed to support a planning application. Informal negotiation is clearly in the interests of both parties. The local planning authority should involve qualified planning officers in such discussions to judge what information is necessary.

Pre-application discussions can be a useful way for an applicant and local planning authority to agree what information is required before an application is submitted. This can help avoid disputes over the information necessary to validate an application and reduce associated delays.

There is a procedure in the Development Management Procedure Order to resolve such disputes. An applicant must first send the local planning authority a notice under article 12 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 [\[2\]](http://www.legislation.gov.uk/uksi/2015/595/article/12/made) (<http://www.legislation.gov.uk/uksi/2015/595/article/12/made>) (an 'article 12 notice'). This must set out the reasons why the applicant considers that the information requested by the local planning authority, in refusing to validate the planning application, does not meet the statutory tests ([http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/local-information-requirements/#paragraph\\_040](http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/local-information-requirements/#paragraph_040)).

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### **How should a local planning authority respond to an article 12 notice?**

When a local planning authority receives an article 12 notice, it will consider the merits of the applicant's case as to why the information requested does not meet the statutory tests ([http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/local-information-requirements/#paragraph\\_040](http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/local-information-requirements/#paragraph_040)). The local planning authority must then either issue a 'validation notice', stating that it no longer requires the information specified in the article 12 notice, or a 'non-validation notice' stating that it still requires the applicant to provide the information requested.

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### **How long does a local planning authority have to respond to an article 12 notice?**

A local planning authority must respond to an article 12 notice within the statutory time period for determining the application in question ([http://planningguidance.communities.gov.uk/blog/guidance/determining-a-planning-application/what-are-the-time-periods-for-determining-a-planning-application/#paragraph\\_001](http://planningguidance.communities.gov.uk/blog/guidance/determining-a-planning-application/what-are-the-time-periods-for-determining-a-planning-application/#paragraph_001)). Depending on the type of application, this would be 8, 13 or 16 weeks after the day the application is received, or an extended period agreed in writing between the applicant and local planning authority. Where possible, local planning authorities are encouraged to respond to such notices as soon as possible to facilitate further negotiations between the parties. If the statutory time period has already passed or will pass in 7 working days or less, the local planning authority must respond to the article 12 notice within 7 working days.

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### **Can the article 12 procedure apply to applications which are subject to Environmental Impact Assessment?**

The article 12 procedure can apply to applications which are subject to Environmental Impact Assessment. However, they cannot be used to resolve disputes over information that is necessary to meet requirements under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 [\[2\]](http://www.legislation.gov.uk/uksi/2011/1824/contents/made) (<http://www.legislation.gov.uk/uksi/2011/1824/contents/made>).

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### **What steps are available to an applicant in cases where the local planning authority has served a non-validation notice?**

After receiving a non-validation notice and after the relevant time period has passed without the local planning authority granting or refusing to grant planning permission, an applicant may appeal to the Planning Inspectorate against non-determination of the application.

In such cases, the statutory time period will be considered to have begun at the point where the local planning authority has received the fee, documents and other information necessary to validate the application

([http://planningguidance.communities.gov.uk/blog/guidance/making-an-application-2/validation-requirements/#paragraph\\_016](http://planningguidance.communities.gov.uk/blog/guidance/making-an-application-2/validation-requirements/#paragraph_016)), but excluding the disputed information specified in the article 12 notice. The Planning Inspectorate will consider the merits of the validation dispute and the appeal itself.

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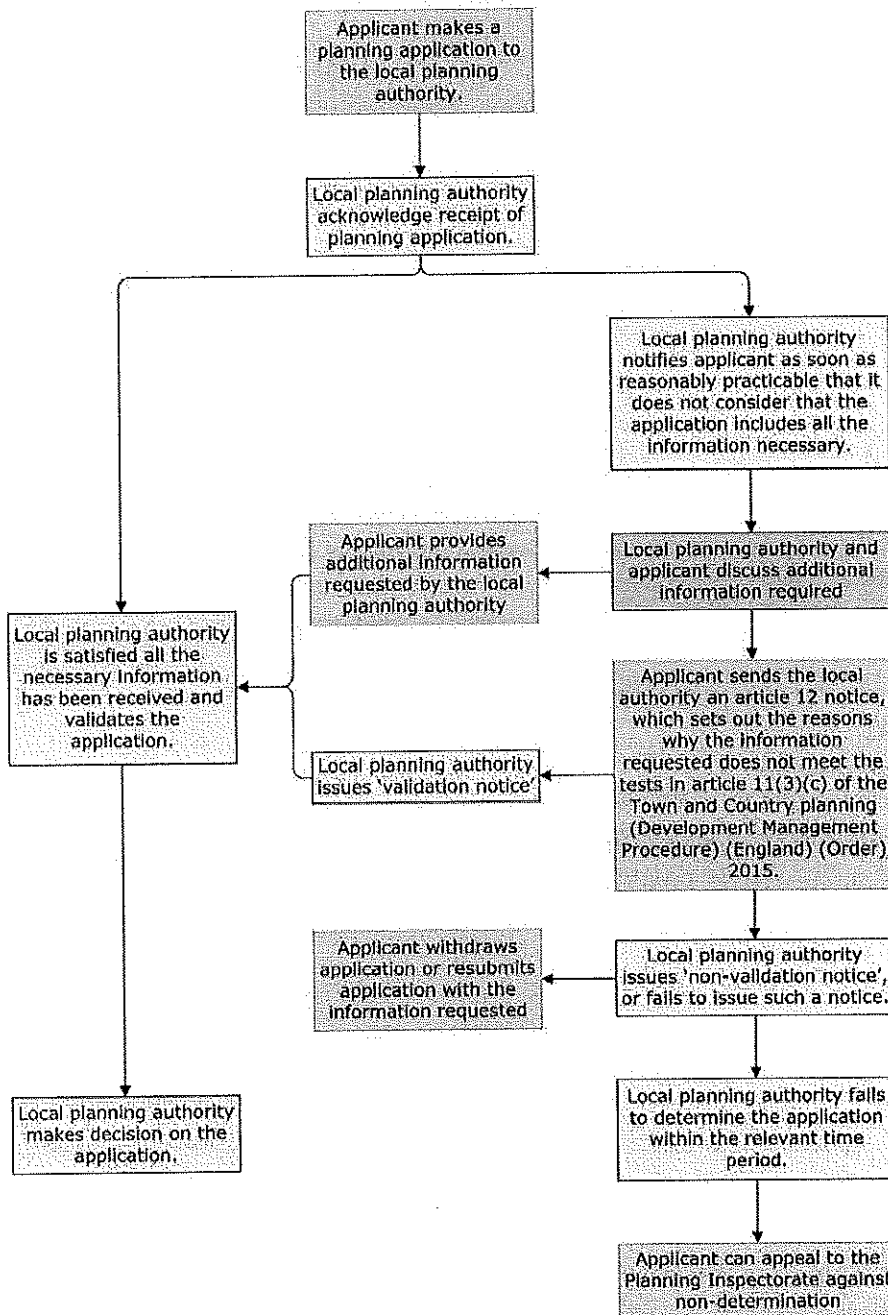
### **What happens if the local planning authority fails to respond to an article 10A notice?**

If the local planning authority fails to respond to an article 12 notice or determine the application within the relevant time periods

([http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/receipt-of-an-application/delay-in-the-validation-of-an-application/#paragraph\\_051](http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/receipt-of-an-application/delay-in-the-validation-of-an-application/#paragraph_051)), the applicant has a right of appeal to the Planning Inspectorate against non-determination.

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### **What is the process for handling validation disputes?**



(<http://planningguidance.communities.gov.uk/wp-content/uploads/2013/07/making-an-application.jpg>)

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- Dealing with 'repeat applications' for development that has already been refused (<http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/receipt-of-an-application/dealing-with-repeat-applications-for-development-that-have-already-been-refused/>)

### Dealing with 'repeat applications' for development that has already been refused

#### Can an application be made for a development which has already been refused?

An application can be made for a development which has already been refused. However local planning authorities have the power to decline an application for planning permission which is similar to an application that, within the last two

years, has been dismissed by the Secretary of State on appeal or refused following call-in. A local planning authority may also decline to determine an application for planning permission if it has refused more than one similar application within the last two years and there has been no appeal to the Secretary of State. In declining to determine an application, a local planning authority must be of the view that there has been no significant change in the development plan (so far as relevant to the application) and any other material considerations since the similar application was refused, or dismissed on appeal.

This power includes the ability to decline to determine applications for listed building consent and applications for the prior approval of a local planning authority for development which is permitted under the Town and Country Planning (General Permitted Development) Order 2015 [\[2\]](http://www.legislation.gov.uk/uksi/2015/596/made) (<http://www.legislation.gov.uk/uksi/2015/596/made>).

Where a local planning authority declines to determine an application, it should notify the applicant that it has exercised its power under section 70A of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/70A) (<http://www.legislation.gov.uk/ukpga/1990/8/section/70A>), or section 81A of the Planning (Listed Buildings and Conservation Areas) Act 1990, to decline to determine the application and should return the application to the applicant.

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### **What constitutes a similar application?**

Section 70A(8) of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/70A) (<http://www.legislation.gov.uk/ukpga/1990/8/section/70A>) defines applications for planning permission as 'similar' if (and only if) the local planning authority thinks that the development and the land to which the applications relate are the same or substantially the same.

Section 81A(7) of the Planning (Listed Buildings and Conservation Areas) Act 1990 defines an application for listed building consent or conservation area consent as similar if (and only if) the local planning authority thinks that the building and works to which the applications relate are the same or substantially the same.

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### **Must a local planning authority decline to determine repeat planning applications?**

Where an authority considers that an application is similar, it is not automatically obliged to decline to determine the application. The purpose of these powers is to inhibit the use of 'repeat' applications that the local planning authority believes are submitted with the intention of, over time, wearing down opposition to proposed developments. They are, however, designed to be flexible and to give local planning authorities the discretion to entertain 'repeat' planning applications where they are satisfied that a genuine attempt has been made to overcome the planning objections which led to rejection of the previous proposal or there has been a material change in circumstances.

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### **Can an applicant appeal against a local planning authority's decision to decline to determine an application?**

An application which a local planning authority declines to determine should be returned to the applicant and should then be regarded by the authority as withdrawn. Applicants have no right of appeal against a local planning authority's decision not to determine an application except where the authority has failed to give notice of their decision not to determine an application. An applicant may, however, apply for judicial review of an authority's decision to exercise its power under these sections.

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## 5. Changes after validation of an application

(<http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/changes-after-validation-of-an-application/>)

### Changes after validation of an application

#### Can additional information be requested by the local planning authority after an application has been validated?

Information can be requested after the application has been validated, although normal time periods for determining the application continue to apply unless a longer period is agreed in writing between the applicant and local planning authority to extend the determination period.

Any request for further information under section 62(3) of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/62) must meet the tests in section 62(4A) [\[3\]](http://www.legislation.gov.uk/ukpga/2013/27/section/6/enacted)

(<http://www.legislation.gov.uk/ukpga/2013/27/section/6/enacted>) and must not affect the validity of an application, where it has been validated and registered.

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#### Can an applicant amend an application after it has been submitted?

It is possible for an applicant to suggest changes to an application before the local planning authority has determined the proposal. It is equally possible after the consultation period for the local planning authority to ask the applicant if it would be possible to revise the application to overcome a possible objection. It is at the discretion of the local planning authority whether to accept such changes, to determine if the changes need to be reconsulted upon ([http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/what-local-planning-authority-consultation-takes-place-before-a-planning-application-is-decided-and-with-who/#paragraph\\_001](http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/what-local-planning-authority-consultation-takes-place-before-a-planning-application-is-decided-and-with-who/#paragraph_001)), or if the proposed changes are so significant as to materially alter the proposal such that a new application should be submitted.

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## 6. The planning register (<http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/the-planning-register/>)

### The planning register

#### Is there a public record of planning applications which have been made?

Article 40 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 [\[4\]](http://www.legislation.gov.uk/uksi/2015/595/article/40/made) (<http://www.legislation.gov.uk/uksi/2015/595/article/40/made>) requires each local planning authority to maintain a register of planning applications in relation to their area.



The planning register is held at the local planning authority's offices. Article 40 (14) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 [\[2\]](http://www.legislation.gov.uk/ukSI/2015/595/article/40/made) (<http://www.legislation.gov.uk/ukSI/2015/595/article/40/made>) makes provision for the register to be made available online.

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### **Does the planning register need to record all information (including representations by third parties) relating to a planning application?**

It is for local planning authorities to decide what information beyond the statutory minimum (as defined in article 40 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 [\[2\]](http://www.legislation.gov.uk/ukSI/2015/595/article/40/made) (<http://www.legislation.gov.uk/ukSI/2015/595/article/40/made>)) should be included on the planning register. In doing so, local planning authorities should have regard to the Code of Recommended Practice for Local Authorities on Data Transparency [\[2\]](https://www.gov.uk/government/publications/local-authority-data-transparency-code) (<https://www.gov.uk/government/publications/local-authority-data-transparency-code>) which sets out the Government's expectations for the publication of public data. A local planning authority may consider redacting sensitive information from the register such as signatures, email addresses and telephone numbers


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### **Do district councils need to record applications involving 'county matters'?**

In two tier areas it is only the district which must keep the planning register; the county is under no duty to keep a planning register. Under article 11(4) of the Town and Country Planning Development Management Procedure (England) Order 2015 [\[2\]](http://www.legislation.gov.uk/ukSI/2015/595/article/11/made) (<http://www.legislation.gov.uk/ukSI/2015/595/article/11/made>), a copy of any application made to the county, as well as accompanying plans, drawings and information, must be sent to the district by the county. Hard copies or electronic copies are acceptable. Copies sent electronically must meet the requirements of article 2(3) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 [\[2\]](http://www.legislation.gov.uk/ukSI/2015/595/article/2/made) (<http://www.legislation.gov.uk/ukSI/2015/595/article/2/made>).

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# Planning Practice Guidance <http://planningguidance.communities.gov.uk>

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Guidance

## Minerals

Print 

1. Minerals Overview (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/minerals-overview/>)

### Minerals Overview

#### What are mineral resources and why is planning permission required?

Mineral resources are defined as natural concentrations of minerals or, in the case of aggregates, bodies of rock that are, or may become, of potential economic interest due to their inherent properties. They make an essential contribution to the country's prosperity and quality of life. Details of existing minerals, their location, and uses can be found through Mineral Planning Factsheets [\[2\]](http://www.bgs.ac.uk/mineralsuk/planning/mineralPlanningFactsheets.html)

(<http://www.bgs.ac.uk/mineralsuk/planning/mineralPlanningFactsheets.html>) produced by the British Geological Survey.

Planning for the supply of minerals has a number of special characteristics that are not present in other development:

- minerals can only be worked (i.e. extracted) where they naturally occur, so location options for the economically viable and environmentally acceptable extraction of minerals may be limited. This means that it is necessary to consider protecting minerals from non-minerals development and has implications for the preparation of minerals plans and approving non-mineral development in defined mineral safeguarding areas;
- working is a temporary use of land, although it often takes place over a long period of time;
- working may have adverse and positive environmental effects, but some adverse effects can be effectively mitigated;
- since extraction of minerals is a continuous process of development, there is a requirement for routine monitoring, and if necessary, enforcement to secure compliance with conditions that are necessary to mitigate impacts of minerals working operations; and
- following working, land should be restored to make it suitable for beneficial after-use.

Since some minerals permissions last for many years, there may be a need to carry out periodic reviews

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/review-of-minerals-planning-conditions/coverage-and-frequency-of-periodic-reviews/>) of the planning conditions attached to that permission to help ensure that the sites operate to continuously high working and environmental standards. Section 97 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/97)

(<http://www.legislation.gov.uk/ukpga/1990/8/section/97>) of, Part II of Schedule 5 to and Schedule 9 to the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/schedule/9)

(<http://www.legislation.gov.uk/ukpga/1990/8/schedule/9>) establish a range of orders (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/minerals-planning-orders/>) for mineral planning authorities to control minerals development.

The mineral planning authority is the county council (in two-tier parts of the country), the unitary authority, or the national park authority. Minerals extraction may only take place if the operator has obtained both planning permission and any other permits and approvals. These include permits from bodies such as the Environment Agency, and licenses from Natural England and, in relation to coal resources, the Coal Authority.

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2. Minerals Safeguarding (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/minerals-safeguarding/>)

## Minerals Safeguarding

### What is the purpose of safeguarding mineral resources?

Since minerals are a non-renewable resource, minerals safeguarding is the process of ensuring that non-minerals development does not needlessly prevent the future extraction of mineral resources, of local and national importance.

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### What steps should mineral planning authorities take to safeguard mineral resources?

Mineral planning authorities should adopt a systematic approach for safeguarding mineral resources, which:

- uses the best available information on the location of all mineral resources in the authority area. This may include use of British Geological Survey maps as well as industry sources;
- consults with the minerals industry, other local authorities (especially district authorities in two-tier areas), local communities and other relevant interests to define Minerals Safeguarding Areas (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/definitions-terms-used-in-the-minerals-guidance/>);
- sets out Minerals Safeguarding Areas on the policies map that accompanies the local plan and define Mineral Consultation Areas (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/definitions-terms-used-in-the-minerals-guidance/>); and
- adopts clear development management policies which set out how proposals for non-minerals development in Minerals Safeguarding Areas will be handled, and what action applicants for development should take to address the risk of losing the ability to extract the resource. This may include policies that encourage the prior extraction of minerals, where practicable, if it is necessary for non-mineral development to take place in Minerals Safeguarding Areas and to prevent the unnecessary sterilisation of minerals.

Detailed advice on mineral safeguarding may be found in the British Geological Survey report "Mineral safeguarding in England : good practice advice" (<http://www.bgs.ac.uk/downloads/directDownload.cfm?id=2069&noexcl=true&t=Mineral%20safeguarding%20in%20England%3A%20good%20practice%20adv>) (PDF).

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### Is it appropriate to safeguard mineral resources in designated areas and urban areas?

Safeguarding mineral resources should be defined in designated areas and urban areas where necessary to do so. For example, safeguarding of minerals beneath large regeneration projects in brownfield land areas can enable suitable use of the mineral and stabilisation of any potentially unstable land (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/assessing-environmental-impacts-from-minerals-extraction/quarry-slope-stability/>) before any non-minerals development takes place.

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### What is the role of the district council, as the local planning authority, in safeguarding minerals?

Whilst district councils are not mineral planning authorities, they have an important role in safeguarding minerals in three ways:

- having regard to the local minerals plan when identifying suitable areas for non-mineral development in their local plans. District councils should show Mineral Safeguarding Areas on their policy maps;
- in those areas where a mineral planning authority has defined a Minerals Consultation Area (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/definitions-terms-used-in-the-minerals-guidance/>), consulting the mineral planning authority and taking account of the local minerals plan before determining a planning application on any proposal for non-minerals development within it; and
- when determining planning applications, doing so in accordance with development policy on minerals safeguarding, and taking account of the views of the mineral planning authority on the risk of preventing minerals extraction.

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### **Why should planning authorities safeguard existing, planned and potential storage, handling and transport sites?**

Planning authorities should safeguard existing, planned and potential storage, handling and transport sites to:

- ensure that sites for these purposes are available should they be needed; and
- prevent sensitive or inappropriate development that would conflict with the use of sites identified for these purposes.

In areas where there are county and district authorities, responsibility for safeguarding facilities and sites for the storage, handling and transport of minerals in local plans will rest largely with the district planning authority. Exceptions will be where such facilities and sites are located at quarries or aggregate wharves or rail terminals.

Planning authorities should consider the possibility of combining safeguarded sites for storage, handling and transport of minerals with those for processing and distribution of recycled and secondary aggregate. This will require close co-operation between planning authorities.

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## **3. Planning for minerals extraction**

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/planning-for-minerals-extraction/>)

### **Planning for minerals extraction**

#### **How should mineral planning authorities identify locations for minerals development?**

Mineral planning authorities are encouraged to plan for minerals extraction using Ordnance Survey-based proposals maps and relevant evidence provided by the minerals industry and other appropriate bodies. Further information on the preparation of local plans can be found at the Local Plans section of the guidance (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>).

This approach will allow mineral planning authorities to highlight areas where mineral extraction is expected to take place, as well as managing potentially conflicting objectives for use of land.

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#### **How should mineral planning authorities plan for minerals extraction?**

Mineral planning authorities should plan for the steady and adequate supply of minerals in one or more of the following ways (in order of priority):

- designating Specific Sites – where viable resources are known to exist, landowners are supportive of minerals development and the proposal is likely to

be acceptable in planning terms. Such sites may also include essential operations associated with mineral extraction;

- designating Preferred Areas, which are areas of known resources where planning permission might reasonably be anticipated. Such areas may also include essential operations associated with mineral extraction; and/or
- designating Areas of Search – areas where knowledge of mineral resources may be less certain but within which planning permission may be granted, particularly if there is a potential shortfall in supply.

National Park Authorities are not expected to designate Preferred Areas or Areas of Search given their overarching responsibilities for managing National Parks.

Furthermore, in exceptional circumstances, such as where a local authority area is largely made up of designated areas such as Areas of Outstanding Natural Beauty, it may be appropriate for mineral planning authorities to rely largely on policies which set out the general conditions against which applications will be assessed.

In planning for minerals extraction, mineral planning authorities are expected to co-operate with other authorities

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### **Why should mineral planning authorities seek to designate Specific Sites as a priority?**

Designating Specific Sites in minerals plans provides the necessary certainty on when and where development may take place. The better the quality of data available to mineral planning authorities, the better the prospect of a site being designated as a Specific Site.

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### **Under what circumstances would it be preferable to focus on extensions to existing sites rather than plan for new sites?**

The suitability of each proposed site, whether an extension to an existing site or a new site, must be considered on its individual merits, taking into account issues such as:

- need for the specific mineral;
- economic considerations (such being able to continue to extract the resource, retaining jobs, being able to utilise existing plant and other infrastructure), and;
- positive and negative environmental impacts (including the feasibility of a strategic approach to restoration).
- the cumulative impact of proposals in an area.

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## **4. Assessing environmental impacts from minerals extraction**

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/assessing-environmental-impacts-from-minerals-extraction/>)

### **Assessing environmental impacts from minerals extraction**

#### **How and when are the details of any significant environmental impacts best addressed?**

Significant environmental impacts are best addressed through consideration of an Environmental Statement

(<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/preparing-an-environmental-statement/>) which will have to accompany nearly all planning applications for new mineral working. Statutory regulators must be consulted as part of the Environmental Impact Assessment (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact->

assessment/) process. This ensures that the mineral planning authority has sufficient information on all environmental matters at the time the planning decision is made.

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### What is the relationship between planning and other regulatory regimes?

The planning and other regulatory regimes are separate but complementary. The planning system controls the development and use of land in the public interest and, as stated in paragraphs [120](#)

([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph\\_120](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph_120)) and [122](#) of the National Planning Policy Framework ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph\\_122](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph_122)), this includes ensuring that new development is appropriate for its location – taking account of the effects (including cumulative effects) of pollution on health, the natural environment or general amenity, and the potential sensitivity of the area or proposed development to adverse effects from pollution.

In doing so the focus of the planning system should be on whether the development itself is an acceptable use of the land, and the impacts of those uses, rather than any control processes, health and safety issues or emissions themselves where these are subject to approval under regimes. Mineral planning authorities should assume that these non-planning regimes will operate effectively.

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### What are the environmental issues of minerals working that should be addressed by mineral planning authorities?

The principal issues that mineral planning authorities should address, bearing in mind that not all issues will be relevant at every site to the same degree, include:

- noise associated with the operation (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/assessing-environmental-impacts-from-minerals-extraction/noise-emissions/>)
- dust (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/assessing-environmental-impacts-from-minerals-extraction/dust-emissions/>);
- air quality (<http://planningguidance.communities.gov.uk/blog/guidance/air-quality-new/why-should-planning-be-concerned-about-air-quality/>);
- lighting (<http://planningguidance.communities.gov.uk/blog/guidance/light-pollution/>);
- visual impact on the local and wider landscape;
- landscape character;
- archaeological and heritage features (<http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/>) (further guidance can be found under the Minerals and Historic Environment Forum's Practice Guide on mineral extraction and archaeology <http://www.english-heritage.org.uk/publications/mineral-extraction-and-archaeology/>);
- traffic (<http://planningguidance.communities.gov.uk/blog/guidance/travel-plans-transport-assessments-and-statements-in-decision-taking/>);
- risk of contamination to land (<http://planningguidance.communities.gov.uk/blog/guidance/land-affected-by-contamination/>);
- soil resources;
- geological structure;

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### Related policy

#### National Planning Policy Framework

- Paragraph 120 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph\\_120](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph_120))
- Paragraph 122 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph\\_122](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph_122))

- impact on best and most versatile agricultural land (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/definitions-terms-used-in-the-minerals-guidance/>);
- blast vibration;
- flood risk (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/>);
- land stability (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/assessing-environmental-impacts-from-minerals-extraction/quarry-slope-stability/>)/subsidence;
- internationally, nationally or locally designated wildlife sites, protected habitats and species, and ecological networks;
- impacts on nationally protected landscapes (National Parks, the Broads and Areas of Outstanding Natural Beauty);
- nationally protected geological and geo-morphological sites and features;
- site restoration and aftercare (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/restoration-and-aftercare-of-minerals-sites/>);
- surface and, in some cases, ground water issues;
- water abstraction.

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### What issues are for other regulatory regimes to address?

Since minerals extraction is an on-going use of land, the majority of the development activities related to the mineral operation will be for the mineral planning authority to address. However, separate licensing, permits or permissions relating to minerals extraction may be required. These include:

- permits relating to surface water, groundwater and mining waste, which the Environment Agency [\[2\]](http://www.environment-agency.gov.uk/business/regulation/139378.aspx) (<http://www.environment-agency.gov.uk/business/regulation/139378.aspx>) is responsible for issuing;
- European Protected Species Licences, issued by Natural England [\[2\]](http://www.naturalengland.org.uk/) (<http://www.naturalengland.org.uk/>) (where appropriate), and;
- a licence for any extraction of coal, or of any mineral which passes through the coal seam, will need to be granted by the Coal Authority [\[2\]](http://coal.decc.gov.uk/) (<http://coal.decc.gov.uk/>).

There may also be additional consents, such as stopping up rights of way or temporary road orders which must be obtained.

Hydrocarbon extraction will involve other regulations (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/planning-policy-for-hydrocarbon-extraction/the-planning-application-process/>).

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### How should mineral operators seek to minimise the impact of development upon properties and the local environment in close proximity to mineral workings?

Minerals operators should look to agree a programme of work with the mineral planning authority which takes into account, as far as is practicable, the potential impacts on the local community and local environment (including wildlife), the proximity to occupied properties, and legitimate operational considerations over the expected duration of operations.

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### What are the environmental impacts of mineral extraction from building stone quarries?



Mineral planning authorities should recognise that, compared to other types of mineral extraction, most building stone quarries are small-scale and have a far lower rate of extraction when compared to other quarries. This means that their local environmental impacts may be significantly less. Such quarries often continue in operation for a very long period, and may be worked intermittently but intensively (“campaign working”), involving stockpiling of stone.

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### **How should mineral planning authorities assess the cumulative impact of minerals development?**

Some parts of a mineral planning authority area may have been subjected to successive mineral development (such as aggregate extraction or surface coal mining) over a number of years. Mineral planning authorities should include appropriate policies in their minerals local plan, where appropriate, to ensure that the cumulative impact of a proposed mineral development on the community and the environment will be acceptable. The cumulative impact of mineral development is also capable of being a material consideration when determining individual planning applications.

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### **Are separation distances/buffer zones appropriate?**

Separation distances/buffer zones may be appropriate in specific circumstances where it is clear that, based on site specific assessments and other forms of mitigation measures (such as working scheme design and landscaping) a certain distance is required between the boundary of the minerals extraction area and occupied residential property.

Any proposed separation distance should be established on a site-specific basis and should be effective, properly justified, and reasonable. It should take into account:

- the nature of the mineral extraction activity;
- the need to avoid undue sterilisation of mineral resources,
- location and topography;
- the characteristics of the various environmental effects likely to arise; and
- the various mitigation measures that can be applied.

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- **Noise emissions** (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/assessing-environmental-impacts-from-minerals-extraction/noise-emissions/>)

### **Noise emissions**

#### **How should minerals operators seek to control noise emissions?**

Those making mineral development proposals, including those for related similar processes such as aggregates recycling and disposal of construction waste, should carry out a noise impact assessment, which should identify all sources of noise and, for each source, take account of the noise emission, its characteristics, the proposed operating locations, procedures, schedules and duration of work for the life of the operation, and its likely impact on the surrounding neighbourhood.

Proposals for the control or mitigation of noise emissions should:

- consider the main characteristics of the production process and its environs, including the location of noise-sensitive properties and sensitive environmental sites;
- assess the existing acoustic environment around the site of the proposed operations, including background noise levels at nearby noise-sensitive properties;

- estimate the likely future noise from the development and its impact on the neighbourhood of the proposed operations;
- identify proposals to minimise, mitigate or remove noise emissions at source;
- monitor the resulting noise to check compliance with any proposed or imposed conditions.

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### **How should mineral planning authorities determine the impact of noise?**

Mineral planning authorities should take account of the prevailing acoustic environment and in doing so consider whether or not noise from the proposed operations would:

- give rise to a significant adverse effect;
- give rise to an adverse effect; and
- enable a good standard of amenity to be achieved.

In line with the Explanatory Note of the Noise Policy Statement for England, this would include identifying whether the overall effect of the noise exposure (<http://planningguidance.communities.gov.uk/blog/guidance/noise/>) would be above or below the significant observed adverse effect level and the lowest observed adverse effect level for the given situation. As noise is a complex technical issue, it may be appropriate to seek experienced specialist assistance when applying this policy.

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### **What are the appropriate noise standards for mineral operators for normal operations?**

Mineral planning authorities should aim to establish a noise limit, through a planning condition, at the noise-sensitive property that does not exceed the background noise level ( $L_{A90,1h}$ ) by more than 10dB(A) during normal working hours (0700-1900). Where it will be difficult not to exceed the background level by more than 10dB(A) without imposing unreasonable burdens on the mineral operator, the limit set should be as near that level as practicable. In any event, the total noise from the operations should not exceed 55dB(A) LAeq, 1h (free field). For operations during the evening (1900-2200) the noise limits should not exceed the background noise level ( $L_{A90,1h}$ ) by more than 10dB(A) and should not exceed 55dB(A) LAeq, 1h (free field). For any operations during the period 22.00 – 07.00 noise limits should be set to reduce to a minimum any adverse impacts, without imposing unreasonable burdens on the mineral operator. In any event the noise limit should not exceed 42dB(A) LAeq,1h (free field) at a noise sensitive property.

Where the site noise has a significant tonal element, it may be appropriate to set specific limits to control this aspect. Peak or impulsive noise, which may include some reversing beepers, may also require separate limits that are independent of background noise (e.g.  $L_{max}$  in specific octave or third-octave frequency bands – and that should not be allowed to occur regularly at night.)

Care should be taken, however, to avoid any of these suggested values being implemented as fixed thresholds as specific circumstances may justify some small variation being allowed.

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### **What type of operations may give rise to particularly noisy short-term activities and what noise limits may be appropriate?**

Activities such as soil-stripping, the construction and removal of baffle mounds, soil storage mounds and spoil heaps, construction of new permanent landforms and aspects of site road construction and maintenance.

Increased temporary daytime noise limits of up to 70dB(A) LAeq 1h (free field) for periods of up to eight weeks in a year at specified noise-sensitive properties should be considered to facilitate essential site preparation and restoration work and construction of baffle mounds where it is clear that this will bring longer-term environmental benefits to the site or its environs.

Where work is likely to take longer than eight weeks, a lower limit over a longer period should be considered. In some wholly exceptional cases, where there is no viable alternative, a higher limit for a very limited period may be appropriate in order to attain the environmental benefits. Within this framework, the 70 dB (A) LAeq 1h (free field) limit referred to above should be regarded as the normal maximum.

An explanation of the technical terms used in this section can be found at the end of this guidance

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/definitions-terms-used-in-the-minerals-guidance/technical-noise-terms/>).

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- **Dust emissions** (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/assessing-environmental-impacts-from-minerals-extraction/dust-emissions/>)

## Dust emissions

### How should mineral operators seek to minimise dust emissions?

Where dust emissions are likely to arise, mineral operators are expected to prepare a dust assessment study, which should be undertaken by a competent person/organisation with acknowledged experience of undertaking this type of work.

There are five key stages to a dust assessment study:

- establish baseline conditions of the existing dust climate around the site of the proposed operations;
- identify site activities that could lead to dust emission without mitigation;
- identify site parameters which may increase potential impacts from dust;
- recommend mitigation measures, including modification of site design
- make proposals to monitor and report dust emissions to ensure compliance with appropriate environmental standards and to enable an effective response to complaints.

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## Stages of the dust assessment study

ID 27-024-20140306 Last updated 06 03 2014

### Stage 1: Establish existing baseline conditions

Existing ambient conditions should be recorded over a period sufficient to identify seasonal variations in the range of existing conditions which naturally exist (ideally by a dust-monitoring programme). The assessment should take into account the principal existing dust sources (other than the site) such as air pollution from urban and industrial areas, existing mineral operations, agricultural activities and construction activities.

The location of residential areas, schools and other dust-sensitive land uses should be identified in relation to the site, as well as proposed or likely sources of dust emission from within the site.

The assessment should explain how topography may affect the emission and dispersal of site dust, particularly the influence of areas of woodland, downwind or adjacent to the site boundary, and of valley or hill formations in altering local wind patterns.

The assessment should explain how climate is likely to influence patterns of dispersal by analysing data from the UK Meteorological Office or other recognised agencies on wind conditions, local rainfall and ground moisture conditions.

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### **Stage 2: Identify site activities that could lead to dust emission without mitigation**

Potential dust sources should be identified and their potential to emit dust assessed with respect to the duration of the activity or the potential of dust to become airborne.

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### **Stage 3: Identify site parameters which may increase potential impacts from dust**

This brings together information collected in Stages 1 and 2 with information on sensitive land uses around the site in order to understand how these uses could be affected by dust. Computer modelling techniques can be used to understand how dust could disperse from a site. Alternatively, a more qualitative approach, relying on professional judgement, could be used to bring together the data collected in Stages 1 and 2.

ID 27-027-20140306 Last updated 06 03 2014

### **Stage 4: Recommend mitigation measures and site design modifications**

Measures to control dust should be specified and described in terms of their potential to reduce dust and consequent impacts.

ID 27-028-20140306 Last updated 06 03 2014

### **What facilities are sensitive or less sensitive to dust emissions?**

The relationship of the activities within mineral workings to surrounding land uses will vary from site to site. Since the nature of those land uses varies, so will their sensitivity to dust. Some environmental features may also be sensitive to dust.

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### **What additional dust control measures might be necessary?**

Additional measures to control fine particulates (PM<sub>10</sub>) to address any impacts of dust might be necessary if, within a site, the actual source of emission (e.g. the haul roads, crushers, stockpiles etc.) is in close proximity to any residential property or other sensitive use. Operators should follow the assessment framework for considering the impacts of PM<sub>10</sub> from a proposed site.

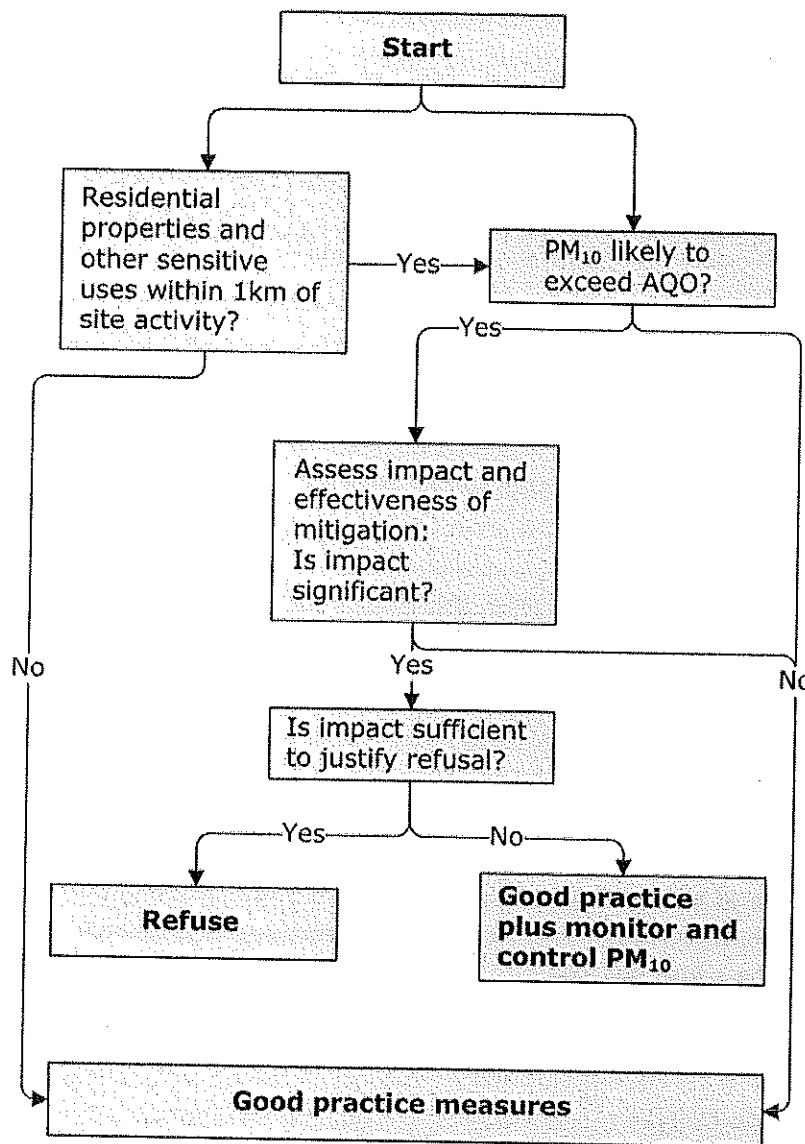
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### **When should this additional assessment be carried out?**

The actual cut-off point for consideration of additional assessments for individual proposals will vary according to local circumstances (such as the topography, the nature of the landscape, the respective location of the site and the nearest residential property or other sensitive use in relation to the prevailing wind direction and visibility).

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### **Site Assessment flow chart**



([http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/minerals1\\_033.jpg](http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/minerals1_033.jpg))

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- Quarry-slope stability (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/assessing-environmental-impacts-from-minerals-extraction/quarry-slope-stability/>)

### Quarry-slope stability

#### What factors should be considered in assessing quarry-slope stability?

The consideration of slope stability that is needed at the time of an application will vary between mineral workings depending on a number of factors, e.g. depth of working; the nature of materials excavated; the life of the working the length of time interim slopes are expected to be in place; and the nature of the restoration proposals.

Appraisal of slope stability for new workings should be based on existing information, which aims to:

- identify any potential hazard to people and property and environmental assets and assess its significance, and;
- identify any features which could adversely affect the stability of the working to enable basic quarry design to be undertaken.

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5. Charging for site visits (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/charging-for-site-visits/>)

### Charging for site visits

#### Can mineral planning authorities charge for site visits?

Under the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012, mineral planning authorities can charge for a maximum of eight site visits for monitoring site operations within any 12 month period where the site is operational, or one visit in other circumstances <sup>1</sup>

(<http://www.legislation.gov.uk/uksi/2012/2920/contents/made>). Additional site visits may be undertaken but they cannot be charged.

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#### What powers do mineral planning authorities have to enforce mineral permissions?

There are a range of powers available to mineral planning authorities to take enforcement action in respect of breaches of planning control. These are set out principally in Part VII <sup>1</sup> (<http://www.legislation.gov.uk/ukpga/1990/8/part/VII>) of the Town and Country Planning Act 1990. These powers include the power under section 196A for the mineral planning authority to enter land and buildings in connection with their enforcement

(<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/>) functions.

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### 6. Restoration and aftercare of minerals sites

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/restoration-and-aftercare-of-minerals-sites/>)

#### Restoration and aftercare of minerals sites

##### Who is responsible for restoration and aftercare of minerals sites?

Responsibility for the restoration and aftercare (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/restoration-and-aftercare-of-minerals-sites/aftercare-conditions/>) of mineral sites, including financial responsibility, lies with the minerals operator and, in the case of default, with the landowner.

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##### When should site restoration and aftercare be considered?

The most appropriate form of site restoration to facilitate different potential after uses should be addressed in both local minerals plans, which should include policies to ensure worked land is reclaimed at the earliest opportunity and that high quality restoration and aftercare of mineral sites takes place, and on a site-by-site basis following discussions between the minerals operator and the mineral planning authority

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##### What are the key stages that must be considered when considering restoration and aftercare conditions?

Restoration and aftercare of mineral sites involves a number of key stages, which mineral planning authorities should take into account as appropriate when preparing restoration and aftercare conditions:

- stripping of soils and soil-making materials and either their storage or their direct replacement (i.e. 'restoration') on another part of the site;
- storage and replacement of overburden;

- achieving the landscape and landform objectives for the site, including filling operations if required, following mineral extraction;
- restoration, including soil placement, relief of compaction and provision of surface features;
- aftercare

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/restoration-and-aftercare-of-minerals-sites/aftercare-conditions/>).

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### **When should proposals for land restoration and aftercare be submitted to the mineral planning authority?**

The minerals operator should submit the proposals as part of the planning application (section 72 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/72) (<http://www.legislation.gov.uk/ukpga/1990/8/section/72>) and Schedule 5 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/schedule/5) (<http://www.legislation.gov.uk/ukpga/1990/8/schedule/5>) of the Town and Country Planning Act 1990 advise on the conditions which may be imposed on the grant of planning permission for development consisting of the winning and working of minerals).

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### **How much detail on restoration and aftercare should be provided with the planning application?**

The level of detail required on restoration and aftercare will depend on the circumstances of each specific site including the expected duration of operations on the site. It must be sufficient to clearly demonstrate that the overall objectives of the scheme are practically achievable, and it would normally include:

- an overall restoration strategy, identifying the proposed afteruse of the site;
- information about soil resources and hydrology, and how the topsoil/subsoil/overburden/soil making materials are to be handled whilst extraction is taking place;
- where the land is agricultural land, an assessment of the agricultural land classification grade; and
- landscape strategy

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/restoration-and-aftercare-of-minerals-sites/landscape-strategy/>).

Where working is proposed on the best and most versatile agricultural land ([http://planningguidance.communities.gov.uk/blog/guidance/natural-environment/brownfield-land-soils-and-agricultural-land/#paragraph\\_026](http://planningguidance.communities.gov.uk/blog/guidance/natural-environment/brownfield-land-soils-and-agricultural-land/#paragraph_026)) the outline strategy should show, where practicable, how the methods used in the restoration and aftercare enable the land to retain its longer term capability, though the proposed after-use need not always be for agriculture.

Restoration may, in some cases, need to be undertaken in phases so as to minimise local disturbance and impacts.

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### **How should the mineral planning authority ensure that applicants will deliver sound restoration and aftercare proposals?**

Mineral planning authorities should secure the restoration and aftercare of a site through imposition of suitable planning conditions (<http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/>) and, where necessary, through planning obligations (<http://planningguidance.communities.gov.uk/blog/guidance/planning-obligations/>).

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### **How must mineral planning authorities frame planning**

### **conditions for restoration and aftercare?**

Conditions must be drafted in such a way that, even if the interest of the applicant applying for permission is subsequently disposed of, the requirements for restoration and aftercare can still be fulfilled, whether by a new operator or in the case of default, by the land-owner.

The exact planning conditions should be framed with the intended after-use in mind, and will vary according to the:

- characteristics of the individual site;
- intended after-use;
- type of mineral to be worked;
- method of working;
- timescale of the working;
- general character of, and planning policies for the area.

In framing planning conditions, mineral planning authorities should seek to have 'progressive' or 'rolling' restoration and aftercare to minimise the area of land occupied at any one time by the mineral working. This is unless doing so would be likely to adversely affect the standard of reclamation achieved, or would be impractical having regard to the type of operation and nature of the site.

ID 27-042-20140306 Last updated 06 03 2014

### **How detailed should restoration and aftercare planning conditions be for short-term extraction?**

For mineral extraction sites where expected extraction is likely to last for a short period of time, it is usually appropriate for the mineral planning authority to impose a detailed set of planning conditions relating to restoration and aftercare as part of the planning permission.

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### **How detailed should restoration and aftercare planning conditions be for long-term extraction?**

For mineral extraction sites where expected extraction is likely to last for many years, early agreement on the details of at least the later stages of aftercare may not be appropriate. In such cases, it would still be appropriate:

- for the applicant to provide a general outline of the final landform and intended after-use;
- for the mineral planning authority to agree at the outset outlines of requirements covering the main stages of reclamation of a site (e.g. filling, restoration and aftercare), together with detailed schemes for stripping and storage of soil materials

The level of detail provided by the applicant to the mineral planning authority must be sufficient to clearly demonstrate that the overall objectives of the scheme are practically achievable.

Planning conditions for proposals with a longer term duration should:

- normally require the submission of a detailed scheme or schemes for restoration and aftercare, for agreement, by some specific stage towards the end of the life of the permission;
- where progressive reclamation is to be carried out, require submission of schemes for agreement from time to time as appropriate.

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### **What are the possible forms of afteruse following mineral extraction?**

There are many possible uses of land once minerals extraction is complete and restoration and aftercare of land is complete. These include:



- creation of new habitats and biodiversity;
- use for agriculture;
- forestry;
- recreational activities;
- waste management, including waste storage; and
- the built environment, such as residential, industrial and retail where appropriate.

Some former mineral sites may also be restored as a landfill facility using suitable imported waste materials as an intermediate stage in restoration prior to an appropriate after use.

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### **Is planning permission required for any forms of afteruse?**

Separate planning permission is likely to be required for most forms of afteruse, except:

- agriculture and forestry;
- uses for which planning permission is granted under a Local Development Order;
- nature conservation and informal recreation which do not involve substantial public use.

Applications for afteruse will usually be decided by the district planning authority but in some instances, and depending on the type of afteruse, responsibility will rest with the mineral planning authority.

ID 27-046-20140306 Last updated 06 03 2014

### **How should mineral planning authorities deal with any concerns about funding of site restoration or aftercare?**

Mineral planning authorities should address any concerns about the funding of site restoration principally through appropriately worded planning conditions.

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### **When is a financial guarantee justified?**

A financial guarantee to cover restoration and aftercare costs will normally only be justified in exceptional cases. Such cases, include:

- very long-term new projects where progressive reclamation is not practicable, such as an extremely large limestone quarry;
- where a novel approach or technique is to be used, but the minerals planning authority considers it is justifiable to give permission for the development;
- where there is reliable evidence of the likelihood of either financial or technical failure, but these concerns are not such as to justify refusal of permission.

However, where an operator is contributing to an established mutual funding scheme, such as the Mineral Products Association Restoration Guarantee Fund or the British Aggregates Association Restoration Guarantee Fund, it should not be necessary for a minerals planning authority to seek a guarantee against possible financial failure, even in such exceptional circumstances.

ID 27-048-20140306 Last updated 06 03 2014

### **How and when should minerals planning authorities seek a financial guarantee?**

Mineral planning authorities should seek to meet any justifiable and reasonable concerns about financial liabilities relating to the restoration of the site through agreeing a planning obligation or voluntary agreement at the time a planning permission is given.

ID 27-049-20140306 Last updated 06 03 2014

- **Aftercare conditions** (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/restoration-and-aftercare-of-minerals-sites/aftercare-conditions/>)

### **Aftercare conditions**

#### **What is the purpose of aftercare conditions?**

Aftercare conditions are required to ensure that, following site restoration, the land is brought up to the required standard which enables it to be used for the intended afteruse.

ID 27-050-20140306 Last updated 06 03 2014

#### **What is the appropriate form of aftercare conditions?**

Mineral planning authorities may impose aftercare conditions in one of two ways:

- at the time of granting planning permission, specifying detailed steps to be taken; or
- through a planning condition which requires an aftercare scheme to be submitted by the applicant or other appropriate person for approval.

ID 27-051-20140306 Last updated 06 03 2014

#### **What are the limitations imposed on aftercare conditions?**

There are several limitations imposed on aftercare conditions, as follows:

- they may only be imposed on permissions in conjunction with a restoration condition;
- they may only be imposed in relation to land which is to be used for agriculture, forestry or amenity (including biodiversity) following minerals working;
- they can require only planting, cultivating, fertilising, watering, draining or otherwise treating the land;
- they can only start following compliance with a restoration condition and the mineral planning authority cannot require any steps to be taken after the end of a five year aftercare period without the agreement of the minerals operator (Schedule 5 of the Town and Country Planning Act 1990 sets out the conditions relating to mineral working).

ID 27-052-20140306 Last updated 06 03 2014

#### **How do aftercare conditions apply where progressive restoration takes place?**

Where sites are subject to progressive restoration, the aftercare period for each part of the site will begin once the restoration condition for the relevant part of the site has been met.

ID 27-053-20140306 Last updated 06 03 2014

#### **Who must a mineral planning authority consult before imposing aftercare conditions?**

The mineral planning authority must consult Natural England (if the proposed restoration is for agriculture) or the Forestry Commission (if the restoration is for forestry use).

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#### **When should an aftercare scheme be submitted for approval by the mineral planning authority?**

An aftercare scheme should be submitted to the mineral planning authority at least six months prior to the start of aftercare on all or part of the mineral site.

ID 27-055-20140306 Last updated 06 03 2014

### **What information is required from a mineral operator to secure a successful aftercare scheme?**

The mineral planning authority should seek to ensure that the operator provides:

- an outline strategy of commitments for the five year aftercare period (or longer if agreed between the applicant and the mineral planning authority); and
- at the start of aftercare, and in each year of the aftercare period, a review of the previous years' management and a detailed programme for the forthcoming year.

ID 27-056-20140306 Last updated 06 03 2014

### **What should be contained in an outline strategy?**

The outline strategy should broadly outline the steps to be carried out in the aftercare period and their timing within the overall programme. These should include, as appropriate:

- timing and pattern of vegetation establishment;
- cultivation practices;
- secondary treatments;
- drainage;
- management of soil, fertility, weeds etc;
- irrigation and watering.

A map should accompany the outline strategy, identifying clearly all areas subject to aftercare management, with separate demarcation of areas according to differences in the year of aftercare and proposed management. Where a choice of options is retained this should be made clear together with criteria to be followed in choosing between them.

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### **What should be included in the detailed programme?**

The detailed programme should:

- elaborate on the outline strategy for work to be carried out in the forthcoming year;
- confirm that steps already specified in detail in the outline strategy will be carried out as originally intended;
- include any modifications to original proposals e.g. due to differences between actual and anticipated site conditions.

ID 27-058-20140306 Last updated 06 03 2014

- **Landscape strategy** (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/restoration-and-aftercare-of-minerals-sites/landscape-strategy/>)

### **Landscape strategy**

#### **What should be included in a landscape strategy?**

A site-specific landscape strategy to accompany applications for either a new site or any significant extension to an existing working site should include:

- defining the key landscape opportunities and constraints;
- considering potential directions of working, significant waste material locations, degrees of visual exposure etc;
- identifying the need for additional screening during operations;
- identifying proposed afteruses and options for the character for the restored landscape

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## 7. Planning for Aggregate Minerals

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/planning-for-aggregate-minerals/>)

### Planning for Aggregate Minerals

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**This section is comprised of:**

- The Managed Aggregate Supply System  
(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/planning-for-aggregate-minerals/the-managed-aggregate-supply-system/>)
- Local Aggregate Assessments  
(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/planning-for-aggregate-minerals/local-aggregate-assessments/>)
- Aggregate Working Parties  
(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/planning-for-aggregate-minerals/aggregate-working-parties/>)
- The role of the National Aggregate Co-ordinating Group  
(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/planning-for-aggregate-minerals/the-role-of-the-national-aggregate-co-ordinating-group/>)
- Aggregate landbanks  
(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/planning-for-aggregate-minerals/aggregate-landbanks/>)
- The Managed Aggregate Supply System  
(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/planning-for-aggregate-minerals/the-managed-aggregate-supply-system/>)

### The Managed Aggregate Supply System

#### What is the Managed Aggregate Supply System?

The Managed Aggregate Supply System seeks to ensure a steady and adequate supply of aggregate mineral, to handle the significant geographical imbalances in the occurrence of suitable natural aggregate resources, and the areas where they are most needed. It requires mineral planning authorities which have adequate resources of aggregates to make an appropriate contribution to national as well as local supply, while making due allowance for the need to control any environmental damage to an acceptable level. It also ensures that areas with smaller amounts of aggregate make some contribution towards meeting local and national need, where that can be done sustainably.

The Managed Aggregate Supply System works through national, sub-national and local partners working together to deliver a steady and adequate supply of aggregates, as follows:

- at local level, mineral planning authorities are expected to prepare Local Aggregate Assessments  
(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/planning-for-aggregate-minerals/local-aggregate-assessments/>), to assess the demand for and supply of aggregates;
- at sub-national level, mineral planning authorities belong to and are supported by Aggregate Working Parties  
(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/planning-for-aggregate-minerals/aggregate-working-parties/>), who produce fit-for-purpose and comprehensive data on aggregates covering specific geographical areas; and
- at national level, there exists the National Aggregate Co-ordinating Group  
(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/planning-for-aggregate-minerals/the-role-of-the-national-aggregate-co-ordinating-group/>), who monitor the overall provision of aggregates in England.

A key additional tool which underpins the working of the Managed Aggregate Supply System is the aggregate landbank

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/planning-for->

aggregate-minerals/aggregate-landbanks/), which is principally a monitoring tool and the main basis for the mineral planning authority to consider whether to review the local plan.

ID 27-060-20140306 Last updated 06 03 2014

- **Local Aggregate Assessments** (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/planning-for-aggregate-minerals/local-aggregate-assessments/>)

### **Local Aggregate Assessments**

#### **What is a Local Aggregate Assessment?**

A Local Aggregate Assessment is an annual assessment of the demand for and supply of aggregates in a mineral planning authority's area.

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#### **What should a Local Aggregate Assessment contain?**

A Local Aggregate Assessment should contain three elements:

- a forecast of the demand for aggregates based on both the rolling average of 10-years sales data and other relevant local information;
- an analysis of all aggregate supply options, as indicated by landbanks, mineral plan allocations and capacity data e.g. marine licences for marine aggregate extraction, recycled aggregates and the potential throughputs from wharves. This analysis should be informed by planning information, the aggregate industry and other bodies such as local enterprise partnerships; and
- an assessment of the balance between demand and supply, and the economic and environmental opportunities and constraints that might influence the situation. It should conclude if there is a shortage or a surplus of supply and, if the former, how this is being addressed.

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#### **What are the supply options on which Local Aggregate Assessments should be based?**

Local Aggregate Assessments should consider all aggregate supply options, including the following:

- recycled aggregates, including from construction, demolition and excavation waste;
- secondary aggregates, whose sources come from industrial wastes such as glass (cullet), incinerator bottom ash, railway ballast, fine ceramic waste (pitcher) and scrap tyres; and industrial and minerals by-products, notably waste from china clay, coal and slate extraction and spent foundry sand. They can also include hydraulically-bound materials;
- marine aggregates from The Crown Estate. Information will cover the areas licensed by the Marine Management Organisation for marine sand and gravel dredging and, as they are prepared over time, Marine Plans [\[2\]](https://www.gov.uk/government/publications/uk-marine-policy-statement) (<https://www.gov.uk/government/publications/uk-marine-policy-statement>);
- imports into and exports out of the mineral planning authority area. The mineral planning authority must capture the amount of aggregate that it is importing and exporting as part of its Assessment (this will usually be captured through the four yearly Aggregate Minerals Survey); and
- land-won resources, including landbanks and site specific allocations.

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#### **Can mineral planning authorities prepare a Local Aggregate Assessment solely on the basis of a 10 year average supply?**

Local Aggregate Assessments must also consider other relevant local information in addition to the 10 year rolling supply, which seeks to look ahead at possible future demand, rather than rely solely on past sales. Such information may include, for example, levels of planned construction and housebuilding in their area and throughout the country. Mineral Planning Authorities should also look at average sales over the last three years in particular to identify the general trend of demand as part of the consideration of whether it might be appropriate to increase supply.

ID 27-064-20140306 Last updated 06 03 2014

### **What sources of information are there to assist in the preparation of Local Aggregate Assessments?**

Sources of information include, but are not limited to:

- the Annual Minerals Raised Inquiry Survey, which sets out sales of each type of mineral in Great Britain;
- the four-yearly Aggregate Minerals Surveys on the sales, movement, consumption and permitted reserves of aggregate minerals;
- local data on the arisings of and recovery/disposal routes of Construction and Demolition waste, including inert waste used to restore mineral sites. This includes data available from the Environment Agency;
- the Annual Report of the Aggregate Working Party, which sets out sales of aggregates, aggregate mineral reserves, local information on Construction and Demolition waste, secondary aggregates, and planning permissions;
- any Annual Monitoring Reports prepared by mineral planning authorities setting out the effectiveness of mineral policy and providing information to be used in reviewing and preparing new policies;
- published National and Sub National Guidelines on future aggregates provision; and
- data and information on mineral resources held by the British Geological Survey and the Crown Estate.

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### **Should the Local Aggregate Assessment separately consider the need for different types of aggregate?**

For some types of aggregate (such as high quality polished stone value, concreting sand and building sand), it will be necessary to carry out a separate assessment for different types of aggregate in preparing a Local Aggregate Assessment. This is critical to ensure that the quality of aggregate is appropriate for its intended use, since not all aggregates can be used for all construction purposes.

ID 27-066-20140306 Last updated 06 03 2014

### **Does each minerals planning authority have to prepare a local aggregate assessment?**

A mineral planning authority must either prepare a Local Aggregate Assessment on its own or jointly with one or more other minerals planning authority if it wishes.

Even if there is no aggregate extraction in a mineral planning authority area, a Local Aggregate Assessment is required if that area produces, imports or exports aggregate, (including secondary or recycled aggregate) or has an aggregate wharf. However, in such circumstances there may be benefits in preparing one jointly with other mineral planning authorities.

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### **What is the purpose of the national and sub-national guidelines published by Government?**

The latest national and sub-national guidelines published by the Government are the "National and regional guidelines for aggregates provision in England 2005 to 2020" (<https://www.gov.uk/government/publications/national-and-regional-guidelines-for-aggregates-provision-in-england-2005-to-2020>).

The Government's national and sub-national guidelines serve two purposes:

- they seek to provide an indication of the total amount of aggregate provision that the mineral planning authorities, collectively within each Aggregate Working Party, should aim to provide; and
- they will provide individual mineral planning authorities, where they are having difficulty in obtaining data, with some understanding or context of the overall demand and possible sources that might be available in their Aggregate Working Party area.

Although these guidelines should be considered on this basis and not as rigid standards, they are nonetheless capable of being a material consideration when determining the soundness of minerals plans and in making decisions on individual planning applications.

ID 27-068-20140306 Last updated 06 03 2014

### **Should Aggregate Working Parties simply meet the total set out in the Sub-National Guidelines?**

The basis for the provision of the supply of aggregates is through the Local Aggregate Assessment. Mineral planning authorities may decide, collectively, to plan for more or less than set out in the Guidelines based on their Local Aggregate Assessment. Such provision must be supported by robust evidence and be properly justified, having regard to local and national need.

ID 27-070-20140306 Last updated 06 03 2014

### **Can Mineral Planning Authorities simply use figures apportioned from the sub-national guidelines by the Aggregate Working Party as a substitute for Local Aggregate Assessments?**

Individual mineral planning authorities must prepare Local Aggregate Assessments (either on their own or jointly with other mineral planning authorities), although in those areas where apportionment of the land-won element has already taken place, those figures may be used as an indicator as to how much should be planned for.

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- **Aggregate Working Parties** (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/planning-for-aggregate-minerals/aggregate-working-parties/>)

### **Aggregate Working Parties**

#### **What are Aggregate Working Parties?**

Aggregate Working Parties are technical advisory groups of mineral planning authorities and other relevant organisations covering specific geographical areas who work together to:

- produce fit-for-purpose and comprehensive data on aggregate demand and supply in their area; and
- provide advice to individual mineral planning authorities and to the National Aggregate Co-ordinating Group.

ID 27-071-20140306 Last updated 06 03 2014

### **Who are the Members of Aggregate Working Parties?**

Membership should comprise each mineral planning authority, aggregate industry representation and the Marine Management Organisation where necessary. Other organisations are allowed to attend at the discretion of the Working Party.

Each mineral planning authority should belong to an Aggregate Working Party. However, in order to allow each authority to deal best with its own local issues, the authority should align itself with neighbouring and other authorities with whom it considers appropriate. Mineral planning authorities should not feel compelled to work within imposed geographical boundaries, nor to work on the basis of former government office region boundaries.

ID 27-072-20140306 Last updated 06 03 2014

### **What is the role of each Aggregate Working Party?**

The role of each Aggregate Working Party is three-fold:

- to consider, scrutinise and provide advice on the Local Aggregate Assessment of each mineral planning authority in its area;
- to provide an assessment on the position of overall demand and supply for the Aggregate Working Party area, including whether, in its view, the area is making a full contribution towards meeting both national and local aggregate needs. This assessment should be based on local aggregate assessments and should be informed by other economic data. It should also include an indication of emerging trends of demand in the Aggregate Working Party area; and
- to obtain, collect and report on data on minerals activity in their area. This includes annual data on sales, permissions and mineral reserves in their area, and data on recycled and secondary sources.

ID 27-073-20140306 Last updated 06 03 2014

### **What are the working arrangements for each Aggregate Working Party?**

It will be for each Aggregate Working Party to decide on the Chairman and frequency of meetings. Each Aggregate Working Party should operate in a transparent manner, with all minutes of meetings and annual reports being made publicly available.

ID 27-074-20140306 Last updated 06 03 2014

### **Does belonging to an Aggregate Working Party mean that the mineral planning authority fulfils the requirements of the Duty to Co-operate?**

Active membership of the Aggregate Working Party will help mineral planning authorities demonstrate compliance with the Duty to Co-operate (<http://planningguidance.communities.gov.uk/blog/guidance/duty-to-cooperate/>), but is not sufficient in itself to fulfil the Duty.

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### **Does the mineral planning authority have to accept the advice of the Aggregate Working Party on a suitable Local Aggregate Assessment figure?**

The mineral planning authority does not have to be bound by the advice of the Aggregate Working Party, but the views of the Aggregate Working Party are capable of being a material consideration in making decisions on individual planning applications, and should be taken into account in preparing mineral plans.

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- The role of the National Aggregate Co-ordinating Group

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/planning-for-aggregate-minerals/the-role-of-the-national-aggregate-co-ordinating-group/>)

### **The role of the National Aggregate Co-ordinating Group**

#### **What is the role of the National Aggregate Co-ordinating Group?**

The purpose of the National Aggregate Co-ordinating Group is to monitor the overall provision of aggregates in England, and to provide timely advice to Government and individual Aggregate Working Parties. Its specific activities include:

- monitoring annual reports produced by each Aggregate Working Party, with particular scrutiny of the landbank position;
- examining any significant difference between individual Aggregate Working Party reports and the relevant National and Sub-National Guideline figure, in order to understand the reason for such a difference, and whether it raises issues of concern about ensuring a steady and adequate provision of aggregates in England. The National Aggregate Co-ordinating Group should share its findings with both the individual Aggregate Working Party and Government as necessary; and
- providing guidance to Government on future National and Sub-National requirements for aggregates supply. This will include whether, and when, it needs to review National and Sub-National guidelines for aggregate provision in England.

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#### **Who belongs to the National Aggregate Co-ordinating Group?**

The National Aggregate Co-ordinating Group comprises of representatives from each Aggregate Working Party, as well as from key Government departments and other organisations as deemed appropriate by the Department for Communities and Local Government.

ID 27-078-20140306 Last updated 06 03 2014

#### **Should Aggregate Working Parties take account of the advice of the National Aggregate Co-ordinating Group?**

The advice of the National Aggregate Co-ordinating Group to each Aggregate Working Party should be taken into account in preparing mineral plans. Their advice is capable of being a material consideration in making decisions on individual planning applications.

ID 27-079-20140306 Last updated 06 03 2014

- Aggregate Landbanks (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/planning-for-aggregate-minerals/aggregate-landbanks/>)

### **Aggregate Landbanks**

#### **What are landbanks of aggregate mineral reserves?**

Landbanks of aggregate mineral reserves, or aggregate landbanks, are principally a monitoring tool to provide a mineral planning authority with early warning of possible disruption to the provision of an adequate and steady supply of land-won aggregates in their particular area.

Aggregate landbanks should be used principally as a trigger for a mineral planning authority to review the current provision of aggregates in its area and consider whether to conduct a review of the allocation of sites in the plan. In doing so, it may take into account the remaining planned provision in the minerals local plan.

ID 27-080-20140306 Last updated 06 03 2014

### **Why do we have different aggregate landbanks for crushed rock and sand and gravel?**

Separate landbanks are required for crushed rock and sand and gravel because they partly serve different markets and have different site infrastructure requirements. In general, quarries producing rock aggregates will need a longer security of reserves to justify capital investment in, for example, crushing equipment.

ID 27-081-20140306 Last updated 06 03 2014

### **How do I use aggregate landbanks?**

Aggregate landbanks are an essential component of planning decision-making:

- they are the basis on which the level of provision of new areas for aggregate extraction should be calculated when preparing local mineral plans;
- they are an important means of assessing when a mineral planning authority should review the current provision of aggregates in its area; and consider whether to conduct a review of allocation of sites in its local minerals plan; and
- for decision-making, low landbanks may be an indicator that suitable applications should be permitted as a matter of importance to ensure the steady and adequate supply of aggregates.

ID 27-082-20140306 Last updated 06 03 2014

### **How and when do I calculate aggregate landbanks?**

Aggregate landbanks should be recalculated each year. The length of the aggregate landbank is the sum in tonnes of all permitted reserves for which valid planning permissions are extant, divided by the annual rate of future demand based on the latest annual Local Aggregate Assessment.

In calculating landbanks, the term permitted reserve includes current non-working sites but excludes those sites where mineral working cannot take place until there has been a review of the planning conditions attached to their planning permission.

ID 27-083-20140306 Last updated 06 03 2014

### **Is a landbank above the minimum level justification to refuse planning permission?**

There is no maximum landbank level and each application for minerals extraction must be considered on its own merits regardless of the length of the landbank. However, where a landbank is below the minimum level this may be seen as a strong indicator of urgent need.

There are a number of reasons why an application for aggregate minerals development is brought forward in an area where there exists an adequate landbank. These could include:

- significant future increases in demand that can be forecast with reasonable certainty;
- the location of the consented reserve is inappropriately located relative to the main market areas;
- the nature, type and qualities of the aggregate such as its suitability for a particular use within a distinct and separate market; and
- known constraints on the availability of consented reserves that might limit output over the plan period.

ID 27-084-20140306 Last updated 06 03 2014

### **Should mineral planning authorities maintain separate landbanks for different types of aggregate?**

Where there is a distinct market for a specific type or quality of aggregate (such as high specification rock, or sand used for concrete or sand for asphalt), a separate landbank calculation based on provision to that market may be justified for that material or those materials. This is because materials of different physical properties and quality are often needed to meet different end uses, and the scope to substitute one aggregate material for another can be limited.

ID 27-085-20140306 Last updated 06 03 2014

## 8. Planning for Industrial Minerals

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/planning-for-industrial-minerals/>)

### Planning for Industrial Minerals

#### How should mineral planning authorities plan for industrial minerals?

Mineral planning authorities should recognise that there are marked differences in geology, physical and chemical properties, markets and supply and demand between different industrial minerals, which can have different implications for their extraction. These include:

- geology influencing the size of an industrial mineral resource, how it may be extracted and the amount of mineral waste generated;
- the fact that markets are based on the consistent physical and/or chemical properties of each mineral. Different uses can require different specifications, and industrial minerals are often not interchangeable in use;
- the potential for the quality of a mineral extracted from a single site varying considerably. This may require multiple extraction faces within one quarry, or supplies of specific feedstock from several different quarries, to enable blending of lower specification material with that of higher grade. Alternatively, it may result in only a small proportion being suitable for specific industrial end-uses, with remaining minerals occasionally being used for alternative purposes such as aggregates;
- industrial minerals being essential raw materials for a wide range of downstream manufacturing industries. Their economic importance therefore extends well beyond the sites from which they are extracted;
- some industries are dependent on several industrial minerals. The loss of supply of one mineral could create difficulties for manufacturers even if the other minerals remain available.

ID 27-086-20140306 Last updated 06 03 2014

#### What are stocks of permitted reserves for industrial minerals?

Stocks of permitted reserves are a monitoring tool to aid decision-making on planning applications at existing industrial minerals sites. They should be used as an indicator to assess when further permitted reserves are required at an industrial minerals site.

ID 27-087-20140306 Last updated 06 03 2014

#### How and when should the required stock of permitted reserves for industrial minerals be calculated?

Stocks of permitted reserves should be calculated when a planning application is submitted to extract the mineral (through either a site extension or a new site) or when new capital investment is proposed.

The overall amount required should be directly linked to the scale of capital investment to construct and operate the required facility (such as a cement plant or brick factory).

ID 27-088-20140306 Last updated 06 03 2014

### **Would existing stocks of permitted reserves provide justification to refuse planning permission?**

Each application for minerals extraction must be considered on its own merits, regardless of the current stock of permitted reserves. However, low stocks of permitted reserves to justify capital investment may be seen as a strong indicator of urgent need.

ID 27-089-20140306 Last updated 06 03 2014

### **How do you calculate the required stock of permitted reserves for silica sand sites?**

The required stock of permitted reserves for each silica sand site should be based on the average of the previous 10 years sales. The calculations should have regard to the quality of sand and the use to which the material is put.

ID 27-090-20140306 Last updated 06 03 2014

### **Should mineral planning authorities allow time extensions to extract peat from existing sites?**

Mineral planning authorities should consider time extensions to existing peat sites on a case-by-case basis. Such applications are likely to come through seeking a variation of a planning condition. The National Planning Policy Framework requires the impacts from proposals such as that on climate change and biodiversity, to be fully considered, which are likely to constrain the circumstances by which any permission might be forthcoming. Instances where an extension might be necessary may include to allow sufficient time to extract further small quantities of peat, and the subsequent proper restoration of the land.

ID 27-224-20141017 Last updated 17 10 2014

## **9. Planning for Hydrocarbon extraction**

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/planning-for-hydrocarbon-extraction/>)

### **Planning for Hydrocarbon extraction**

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**This section is comprised of**

- The Phases of onshore hydrocarbon extraction  
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- Determining the planning application  
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- Annex A: Shale gas and coalbed methane/coal seam gas (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/planning-for-hydrocarbon-extraction/annex-a-shale-gas-and-coalbed-methane-coal-seam-gas/>)
- Annex B: Outline of process for drilling an exploratory well (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/planning-for-hydrocarbon-extraction/annex-b-outline-of-process-for-drilling-an-exploratory-well/>)
- Annex C: Model planning conditions for surface area (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/planning-for-hydrocarbon-extraction/annex-c-model-planning-conditions-for-surface-area/>)
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## The Phases of onshore hydrocarbon extraction

### What are conventional and unconventional hydrocarbons?

Hydrocarbon extraction covers both conventional and unconventional hydrocarbons.

Conventional hydrocarbons are oil and gas where the reservoir is sandstone or limestone.

Unconventional hydrocarbons refers to oil and gas which comes from sources such as shale or coal seams which act as the reservoirs.

As an emerging form of energy supply, there is a pressing need to establish – through exploratory drilling – whether or not there are sufficient recoverable quantities of unconventional hydrocarbons such as shale gas and coalbed methane (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/planning-for-hydrocarbon-extraction/annex-a-shale-gas-and-coalbed-methane-coal-seam-gas/>) present to facilitate economically viable full scale production.

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### What are the phases of onshore hydrocarbon extraction?

There are three phases of onshore hydrocarbon extraction: exploration, testing (appraisal) and production.

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### When is planning permission required for the extraction of hydrocarbons?

Planning permission is required for each phase of hydrocarbon extraction, although some initial seismic work may have deemed planning consent under Part 17 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 [☑](#)

(<http://www.legislation.gov.uk/uksi/2015/596/schedule/2/made>).

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### Can a single planning application cover more than one phase of extraction?

Applications are able to cover more than one phase of extraction. The operator will need to provide all relevant information, including environmental information, to support the full extent of the application.

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### What is the exploratory phase of hydrocarbon extraction?

The exploratory phase seeks to acquire geological data to establish whether hydrocarbons are present. It may involve seismic surveys, exploratory drilling and, in the case of shale gas, hydraulic fracturing.

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### **What geological data will operators collect before carrying out any exploratory drilling?**

It is a matter for individual operators to determine how much preliminary data is necessary before undertaking exploratory drilling. However, preliminary data which the operator might obtain to consider the most appropriate locations for exploratory drilling include:

- existing geological and other relevant data to gather information about rock formations under the earth's surface;
- information from earlier drilling for oil, water, coal or other minerals and mining or quarrying activities;
- information on aquifers and groundwater resources; seismic reflection, gravity and magnetic surveys and remote sensing data e.g. satellite photographs, and results of previous seismic surveys.

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### **Why carry out seismic surveys?**

Seismic surveys are essential to understand the structure under the earth's surface and be able to predict the depths of the key target formations. Operators will often wish to conduct new surveys with the latest technology, even where previous survey data exists. Among other things, this helps to determine the most promising target for drilling.

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### **How long does exploratory drilling last?**

For conventional hydrocarbons, exploration drilling onshore is a short-term, but intensive, activity. Typically, site construction, drilling and site clearance will take between 12 to 25 weeks.

For unconventional hydrocarbons exploratory drilling may take considerably longer, especially if there is going to be hydraulic fracturing and, in the case of coalbed methane, removing water from the coal seam.

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### **What is the appraisal phase of hydrocarbon extraction?**

The appraisal phase takes place following exploration when the existence of oil or gas has been proved, but the operator needs further information about the extent of the deposit or its production characteristics to establish whether it can be economically exploited.

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### **What does the appraisal phase involve?**

The appraisal phase can take several forms including additional seismic work, longer-term flow tests, or the drilling of further wells. This may involve additional drilling at another site away from the exploration site or additional wells at the original exploration site. For unconventional hydrocarbons it may involve further hydraulic fracturing followed by flow testing to establish the economic viability of the resource and its potential productive life. Much will depend on the size and complexity of the hydrocarbon reservoir involved.

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### **What is the production phase of hydrocarbon extraction?**

The production phase normally involves the drilling of a number of wells. This may be wells used at the sites at the exploratory and/or appraisal phases of hydrocarbon development, or from a new site. Associated equipment such as pipelines, processing facilities and temporary storage tanks are also likely to be required.

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### **How will any additional sites for appraisal or production be determined?**

Any additional sites, following exploration, will be selected by the operator taking account of what they have learnt or discovered through previous phases. In doing so, they should take also account of their ability to access the resource whilst seeking to minimise or avoid any adverse environmental and amenity issues.

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### **What is the production life of an oil or gas field?**

Production life of an oil or gas field can be up to 20 years, possibly more. When production ceases, the facilities should be dismantled and the sites restored to their former use, or, in some circumstances, an appropriate new use.


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#### **• How Mineral Planning Authorities plan for Hydrocarbon extraction**

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/planning-for-hydrocarbon-extraction/how-mineral-planning-authorities-plan-for-hydrocarbon-extraction/>)

### **How Mineral Planning Authorities plan for Hydrocarbon extraction**



#### **In what areas can hydrocarbon extraction take place?**

The exploratory, appraisal or production phase of hydrocarbon extraction can only take place in areas where the Department of Energy and Climate Change have issued a licence under the Petroleum Act 1998 (Petroleum Licence). The Department of Energy and Climate Change produce a regularly updated "Wallmap displaying current fields and licences  (<https://www.gov.uk/oil-and-gas-onshore-maps-and-gis-shapefiles>)" detailing those areas currently under licence.

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### **How should mineral planning authorities plan for hydrocarbon extraction?**

Mineral planning authorities are encouraged to make appropriate provision for hydrocarbons in local minerals plans through:

- use of published data on information on the location of conventional and unconventional hydrocarbons, for example, that on the Department of Energy and Climate Change's "Oil and Gas: onshore exploration and production  (<https://www.gov.uk/oil-and-gas-onshore-exploration-and-production>)" pages of their website;
- use of ordnance survey based policies maps; and
- available data on existing wells (also available on the Department of Energy and Climate Change's "Oil and Gas: onshore exploration and production  (<https://www.gov.uk/oil-and-gas-onshore-exploration-and-production>)" webpages.

This approach will allow mineral planning authorities to highlight areas where proposals for hydrocarbon extraction may come forward, as well as managing potentially conflicting objectives for use of land.

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### **What are mineral planning authorities expected to include in their local plans on hydrocarbons?**

Where mineral planning authorities consider it is necessary to update their local plan and they are in a Petroleum Licence Area, they are expected to include the following:

- Petroleum Licence Areas on their policies maps;
- Criteria-based policies for each of the exploration, appraisal and production phases of hydrocarbon extraction. These policies should set clear guidance and criteria for the location and assessment of hydrocarbon extraction within the Petroleum Licence Areas.

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### **Can mineral planning authorities include site-specific locations in their local plans?**

Existing hydrocarbon extraction sites should be identified in local plans, through the local plan site allocation process, where appropriate, and mineral planning authorities may include specific locations should the onshore oil and gas industry wish to promote specific sites.

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### **Should mineral planning authorities be safeguarding areas for the extraction of hydrocarbons?**

There is normally no need to create mineral safeguarding areas specifically for extraction of hydrocarbons given the depth of the resource, the ability to utilise directional drilling and the small surface area requirements of well pads.

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#### **• The Planning Application Process**

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/planning-for-hydrocarbon-extraction/the-planning-application-process/>)

#### **The Planning Application Process**

#### **What is the role of planning in obtaining permissions for drilling wells?**

Planning permission is one of the main regulatory requirements that operators must meet before drilling a well, for both conventional and unconventional hydrocarbons. A flow chart setting out the process for drilling an exploratory well, and how these regulatory regimes interact, is set out at Annex B (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/planning-policy-for-hydrocarbon-extraction/annex-b-outline-of-process-for-drilling-an-exploratory-well/>), and explained in more detail through the “Regulatory Roadmap: Onshore oil and gas exploration in the UK regulation and best practice” (<https://www.gov.uk/government/publications/regulatory-roadmap-onshore-oil-and-gas-exploration-in-the-uk-regulation-and-best-practice>)” practice guidance published by the Department of Energy and Climate Change in December 2013.

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#### **Who are the key regulators for hydrocarbon extraction?**

The key regulators for hydrocarbon extraction are:

- **Department of Energy and Climate Change** – issues Petroleum Licences, gives consent to drill under the Licence once other permissions and approvals are in place, and have responsibility for assessing risk of and monitoring seismic activity, as well as granting consent to flaring or venting;
- **Mineral Planning Authorities** – grant permission for the location of any wells and wellpads, and impose conditions to ensure that the impact on the use of the land is acceptable;
- **Environment Agency** – protect water resources (including groundwater aquifers), ensure appropriate treatment and disposal of mining waste, emissions



to air, and suitable treatment and manage any naturally occurring radioactive materials; and

- **Health and Safety Executive** – regulates the safety aspects of all phases of extraction, in particular responsibility for ensuring the appropriate design and construction of a well casing for any borehole.

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### **What other bodies may be involved in the process of consenting hydrocarbon extraction?**

Other bodies which may be involved in the consenting of the process include:

- **the Coal Authority**, whose permission will be required should drilling go through a coal seam;
- **Natural England**, who may need to issue European Protected Species Licences in certain circumstances;
- the **British Geological Survey**, who need to be notified by licensees of their intention to undertake drilling and, upon completion of drilling, must also receive drilling records and cores; and
- **Hazardous Substances Authorities**, who may need to provide hazardous substances consents.

There may also be additional consents and orders, such as stopping up rights of way or temporary road orders, which must be obtained.

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### **What hydrocarbon issues can mineral planning authorities leave to other regulatory regimes?**

Some issues may be covered by other regulatory regimes but may be relevant to mineral planning authorities in specific circumstances. For example, the Environment Agency has responsibility for ensuring that risk to groundwater is appropriately identified and mitigated. Where an Environmental Statement is required, mineral planning authorities can and do play a role in preventing pollution of the water environment from hydrocarbon extraction, principally through controlling the methods of site construction and operation, robustness of storage facilities, and in tackling surface water drainage issues.

There exist a number of issues which are covered by other regulatory regimes and mineral planning authorities should assume that these regimes will operate effectively. Whilst these issues may be put before mineral planning authorities, they should not need to carry out their own assessment as they can rely on the assessment of other regulatory bodies. However, before granting planning permission they will need to be satisfied that these issues can or will be adequately addressed by taking the advice from the relevant regulatory body:

- Mitigation of seismic risks –the Department of Energy and Climate Change is responsible for controls, usually through the licence consent regime, to mitigate seismic risks. Seismic assessment of the geology of the area to establish the geological conditions, risk of seismic activity and mitigation measures to put in place is required by the Department of Energy and Climate Change for all hydraulic fracturing processes;
- Well design and construction – the Health and Safety Executive are responsible for enforcement of legislation concerning well design and construction. Before design and construction operators must assess and take account of the geological strata, and fluids within them, as well as any hazards that the strata may contain;
- Well integrity during operation – under health and safety legislation the integrity of the well is subject to examination by independent qualified experts throughout its operation, from design through construction and until final plugging at the end of operation;

- Operation of surface equipment on the well pad – whilst planning conditions may be imposed to prevent run-off of any liquid from the pad, and to control any impact on local amenity (such as noise), the actual operation of the site's equipment should not be of concern to mineral planning authorities as these are controlled by the Environment Agency and the Health and Safety Executive;
- Mining waste – the Environment Agency is responsible for ensuring that extractive wastes do not harm human health and the environment. An environmental permit is required for phases of hydrocarbon extraction and this will require the operator to produce and implement a waste management plan;
- Chemical content of hydraulic fracturing fluid – this is covered by the environmental permit as operators are obliged to inform the Environment Agency of all chemicals that they may use as part of any hydraulic fracturing process;
- Flaring or venting of any gas produced as part of the exploratory phase will be subject to Department of Energy and Climate Change controls and will be regulated by the Environment Agency. Mineral planning authorities will, however, need to consider how issues of noise and visual impact will be addressed;
- Final off-site disposal of water – Water that comes back to the surface following hydraulic fracturing may contain naturally occurring radioactive materials. Whilst storage on-site and the traffic impact of any movement of water is of clear interest to local authorities, it is the responsibility of the Environment Agency to ensure that the final treatment/disposal at suitable water treatment facilities is acceptable
- Well decommissioning/abandonment – following exploration, the well is likely to be suspended and abandoned for a period of time. Health and Safety Legislation requires its design and construction that, so far as reasonably practicable, there is no unplanned escape of fluids from it. The mineral planning authority is responsible for ensuring the wells are abandoned and the site is restored.

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- **Development Management procedures**

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/planning-for-hydrocarbon-extraction/development-management-procedures/>)

### **Development Management procedures**

#### **What role do statutory and non-statutory consultees have at the pre-application stage?**

Statutory consultees for planning applications play an important role at the pre-application stage of hydrocarbon extraction since they will be involved in providing advice to the mineral planning authority on a formal planning application. In the case of hydrocarbon extraction, relevant non-statutory consultees such as the Health and Safety Executive also play an important role. Pre-application discussions with statutory and relevant non-statutory consultees may also provide prospective operators with an opportunity to share information that may be relevant to obtain other permits and licences. The Environment Agency strongly recommends that prospective operators undertake pre-planning and pre-permitting discussions with them.

Also see the guidance on Making an application

(<http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/>).

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#### **Should planning performance agreements be used for hydrocarbon extraction?**

Mineral planning authorities and operators should seriously consider planning performance agreements where they consider the size and complexity of any proposed extraction justifies such an agreement being drawn up.

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### **What information should be included on a location plan for oil and gas extraction?**

The location plan should include all land necessary to carry out the proposed development (e.g. land required for access to the site from a public highway, visibility splays, landscaping, car parking and open areas around buildings) and should identify sufficient roads and/or buildings on adjoining land to ensure that the exact location of the application site is clear. A distinction should be made in the location plan between those areas where surface works are proposed and those where only underground operations are proposed to take place. The location plan should identify the surface area of the application site by edging it clearly with a red line. A dotted red line should edge the likely extent (including length and direction) of any lateral boreholes. The underground area should be indicated even where it is within the area of the surface workings.

A blue line should be drawn around any other land owned or controlled by the prospective minerals operator, close to or adjoining the surface area of the application site. At the exploratory stage, the location plan should identify indicative underground zones where lateral drilling and hydraulic fracturing (if applicable) may take place.

At the appraisal or production stage the location plan should also show the area where extraction of oil and gas is likely to take place, using a shaded red area.

A location plan should be based on an up-to-date map and wherever possible scaled to fit onto A4 or A3 size paper.

Also see the guidance on Making an application (<http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/>).

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### **What issues should mineral planning authorities include on their local list for exploration of hydrocarbons?**

Mineral planning authorities should normally expect to include on their local list those issues for which they are, or may be responsible, for assessing, when dealing with planning applications for exploratory hydrocarbon development. This list should be consistent with the spirit of this guidance.

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### **What constitutes an application for an exploratory well?**

The precise nature of what is included in an application for exploration will depend in part on the applicant. The applicant and the Department of Energy and Climate Change will already have agreed a work programme which might include acquisition of seismic data and one or more exploratory wells as part of the exploration licence application.

All exploratory phases will involve drilling vertically downwards, perhaps including directional drilling. However, the exploratory phase may include horizontal drilling once the appropriate rock formation is reached, and for unconventional hydrocarbons – hydraulic fracturing.

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### **Can vertical and horizontal drilling, including hydraulic fracturing, be included in one application for exploratory drilling?**

As far as it is practical to do so, any application for exploratory drilling should cover as much of the exploratory activity as possible, including the likely number of wellheads and extent of drilling, to avoid further planning applications at a later date.

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- **Environmental Impact Assessment**

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/planning-for-hydrocarbon-extraction/eia/>)

### **Environmental Impact Assessment**

#### **When is an Environmental Impact Assessment required for hydrocarbon extraction?**

The mineral planning authority should consider whether any proposal for onshore oil and gas extraction requires an Environmental Impact Assessment.

Applications for the exploratory and appraisal phases are likely to fall under paragraph 2 of Schedule 2 to the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. An Environmental Impact Assessment is therefore required if the project is likely to have significant environmental effects. A flow chart summarising the screening process is set out under the National Planning Practice Guidance for Environmental Impact Assessment (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/when-is-environmental-impact-assessment-required/establishing-whether-a-proposed-development-requires-an-environmental-impact-assessment/>). Whilst all applications must be assessed on a case-by-case basis, it is unlikely that an Environmental Impact Assessment will be required for exploratory drilling operations which do not involve hydraulic fracturing. However, when considering the need for an assessment, it is important to consider factors such as the nature, size and location of the proposed development

(<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/considering-and-determining-planning-applications-that-have-been-subject-to-an-environmental-impact-assessment/annex/>) (selection criteria for screening Schedule 2 development are set out in Schedule 3 to the Regulations).

Applications for the production phase are also likely to fall under paragraph 2 of Schedule 2 to the 2011 Regulations, in which cases they should be screened for likely significant effects, but applications where more than 500 tonnes of oil or 500,000 cubic metres of gas will be extracted per day may fall under Schedule 1, in which case an Environmental Impact Assessment is mandatory (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/considering-and-determining-planning-applications-that-have-been-subject-to-an-environmental-impact-assessment/annex/>).

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#### **Should mineral planning authorities take account of the environmental effects of the production phase of hydrocarbon extraction at the exploration phase?**

Individual applications for the exploratory phase should be considered on their own merits. They should not take account of hypothetical future activities for which consent has not yet been sought, since the further appraisal and production phases will be the subject of separate planning applications and assessments.

When determining applications for subsequent phases, the fact that exploratory drilling has taken place on a particular site is likely to be material in determining the suitability of continuing to use that site only insofar as it establishes the presence of hydrocarbon resources.

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#### **Can information used in complying with other regulatory**

### regimes be used to inform an environmental statement?

Information prepared as part of the high level environmental risk assessment or the preparation of the environmental permit (where required) may be used to inform, or be included as part of the environmental statement.

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### What is the area that an Environmental Impact Assessment must cover?

An Environmental Impact Assessment must cover the geographical area where the impacts occur, both above and below ground. This is likely to be a broader area than the application area.

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### What are the legal obligations on mineral planning authorities and operators with regard to European sites designated under the Birds or Habitats Directives and Sites of Special Scientific Interest?

Guidance [\[2\]](http://www.defra.gov.uk/habitats-review) (<http://www.defra.gov.uk/habitats-review>) on the law affecting European sites and Sites of Specific Scientific Interest is being prepared by the Department for Environment, Food & Rural Affairs and will replace the advice previously set out in Circular 06/05: Biodiversity and Geological Conservation [\[3\]](https://www.gov.uk/government/publications/biodiversity-and-geological-conservation-circular-06-2005) (<https://www.gov.uk/government/publications/biodiversity-and-geological-conservation-circular-06-2005>).

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- Determining the planning application

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/planning-for-hydrocarbon-extraction/determining-the-planning-application/>)

### Determining the planning application

#### Do mineral planning authorities need to assess demand for, or consider alternatives to oil and gas resources when determining planning applications?

Mineral planning authorities should take account of Government energy policy, which makes it clear that energy supplies should come from a variety of sources. This includes onshore oil and gas, as set out in the Government's Annual Energy Statement [\[4\]](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/254250/FINAL_PDF_of_AES_2013_-_accessible_ve)

([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/254250/FINAL\\_PDF\\_of\\_AES\\_2013\\_-\\_accessible\\_ve](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/254250/FINAL_PDF_of_AES_2013_-_accessible_ve) published in October 2013).

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### How should National Parks, the Broads, Areas of Outstanding Natural Beauty and World Heritage Sites plan for unconventional hydrocarbons?

In considering applications for unconventional hydrocarbon development in National Parks, the Broads and Areas of Outstanding Natural Beauty, mineral planning authorities should give great weight to conserving their landscape and scenic beauty. These areas have the highest status of protection in relation to landscape and scenic beauty, and the conservation of wildlife and cultural heritage in these areas should be given great weight.

Where applications represent major development, planning permission should be refused in National Parks, the Broads and Areas of Outstanding Natural Beauty except in exceptional circumstances and where it can be demonstrated they are in the public interest. The assessment that needs to be carried out, including any detrimental effect on the environment, such as the noise and traffic which may be associated with hydraulic fracturing, is set out in paragraph 116 of the National Planning Policy Framework

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### Related policy

#### National Planning Policy Framework

- Paragraph 116 (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/planning-for-hydrocarbon-extraction/determining-the-planning-application/>)
- Paragraph 133 (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/planning-for-hydrocarbon-extraction/determining-the-planning-application/>)

([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph\\_116](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph_116)).

World Heritage Sites are heritage assets of the highest significance. Where a proposed development for unconventional hydrocarbons would lead to substantial harm to or loss of a World Heritage Site, mineral planning authorities should refuse consent unless wholly exceptional circumstances apply. The test to be considered by mineral planning authorities is set out in paragraph 133 of the National Planning Policy Framework

([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/12-conserving-and-enhancing-the-historic-environment/#paragraph\\_133](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/12-conserving-and-enhancing-the-historic-environment/#paragraph_133)).

Where appropriate, planning conditions can be imposed to ensure that development is made acceptable in planning terms before it can proceed.

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sustainable-development/delivering-sustainable-development/12-conserving-and-enhancing-the-historic-environment/#paragraph\_133)

### **How should planning authorities seek to mitigate the environmental effects of mineral extraction?**

Mineral planning authorities should use appropriate planning conditions, having regard to the issues for which they have responsibility, to mitigate against any adverse environmental impact. Some examples of model conditions covering various areas that may be associated with exploration of hydrocarbons are attached at Annex C

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/planning-for-hydrocarbon-extraction/annex-c-model-planning-conditions-for-surface-area/>).

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### **Are separation distances or buffer zones acceptable?**

Above ground separation distances are acceptable in specific circumstances where it is clear that, based on site specific assessments and other forms of mitigation measures (such as working scheme design and landscaping) a certain distance is required between the boundary of the minerals site and the adjacent development.

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- Aftercare and restoration (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/planning-for-hydrocarbon-extraction/aftercare-and-restoration/>)

### **Aftercare and restoration**

#### **How will the mineral planning authority ensure that applicants will deliver sound restoration and aftercare proposals?**

Mineral planning authorities will ensure the proper restoration and aftercare of a site through imposition of suitable planning conditions and, where necessary, through section 106 Agreements. For hydrocarbon extraction sites where expected extraction is likely to last for a short period of time, it is appropriate for the mineral planning authority to impose a detailed set of planning conditions as part of the planning application.

Also see guidance on 'Who is responsible for the restoration and aftercare of minerals sites?

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/restoration-and-aftercare-of-minerals-sites/>).

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- Annex A: Shale Gas, coalbed methane and underground coal gasification

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/planning-for-hydrocarbon-extraction/annex-a-shale-gas-and-coalbed-methane-coal-seam-gas/>)

## **Annex A: Shale Gas, coalbed methane and underground coal gasification**

### **What is shale gas?**

Shale gas is methane found in rocks deep below the earth's surface which had previously been considered too impermeable ('tight') to allow for economic recovery (See Figure 1 below).

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### **What is hydraulic fracturing?**

Hydraulic fracturing is the process of opening and/or extending existing narrow fractures or creating new ones (fractures are typically hairline in width) in gas or oil-bearing rock, which allows gas or oil to flow into wellbores to be captured.

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### **How does the hydraulic fracturing process work?**

During hydraulic fracturing, a mixture of water, sand and possibly some chemical additives is pumped under pressure down a borehole into the rock unit. The sand is used to prop the fractures open to increase gas extraction.

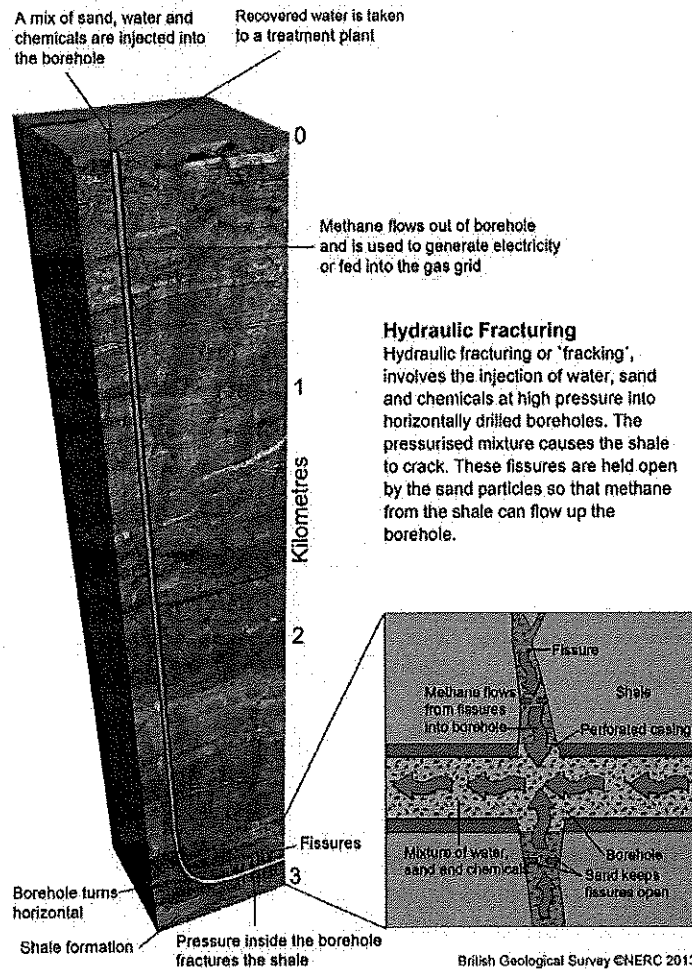
The borehole is lined with a steel casing and cement and a "perforating gun" is used to create perforations to allow the hydraulic fracturing fluid to be injected into the rock.

Plugs may be used to divide the well into smaller sections (termed stages). Stages are fractured sequentially, beginning with the stage furthest away. After the hydraulic fracturing is done, such plugs can be drilled through and the well is depressurised.

In this way, the system is designed to be a closed loop, so that when the high pressure is removed, the hydraulic fracturing fluid returns to the surface for treatment and storage. The flowback water also may contain salts and other dissolved minerals from the shale rock formation. Estimates vary on what percentage of the hydraulic fracturing fluid returns to the surface: from 25-75%. This wide range is explained by differences in the properties of the shale and its response to the hydraulic fracturing.

ID 27-130-20140306 Last updated 06 03 2014

### **Figure 1: Shale gas extraction**



([http://planningguidance.communities.gov.uk/wp-content/uploads/2014/01/fig-1\\_shale-gas-extraction.jpg](http://planningguidance.communities.gov.uk/wp-content/uploads/2014/01/fig-1_shale-gas-extraction.jpg))

Source: British Geological Survey [www.bgs.ac.uk](http://www.bgs.ac.uk)

(<http://www.bgs.ac.uk/research/energy/shaleGas/basics.html>) ([www.bgs.ac.uk](http://www.bgs.ac.uk))

(<http://www.bgs.ac.uk>)

ID 27-131-20140306 Last updated 06 03 2014

### What is coalbed methane?

Coalbed methane is methane that is extracted from unworked coal seams. The Coal Authority have produced an interactive map viewer <http://coal.decc.gov.uk/en/coal/cms/publications/data/map/map.aspx> which provides information on the location of coalfields in England.

ID 27-132-20140306 Last updated 06 03 2014

### How is coalbed methane extracted?

Extraction of coalbed methane is usually from one of two sources:

- drilling vertically into a coal seam (making use of pre-existing fracture patterns); or more likely
- directional drilling along a coal seam

In some cases the coals may be fractured to improve flow rates; the well is then pumped to remove water and lower the pressure within the seam to allow release of methane.

ID 27-133-20140306 Last updated 06 03 2014



**At what depths is coalbed methane likely to be extracted?**

Extraction is likely to be achievable between 200 and 1500 metres, depending on the coal permeability and other issues. At shallower depths the gas pressure in the coal is likely to be insufficient, while at depths greater than 1500 metres the pressure of the overlying strata is likely to have reduced coal permeability restricting the flow of methane.

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**What is the appropriate distance for the spacing of coalbed methane wells?**

The usual spacing of vertical coalbed methane wells is one for every 500 to 1000 metres, though directional drilling of a number of wells from a single surface location offers one way of reducing the number of surface drill sites and pipelines.

ID 27-135-20140306 Last updated 06 03 2014

**How does coalbed methane affect the ability to extract the coal?**

Extracting coalbed methane does not detrimentally affect the physical properties of coal, or prevent it from being worked at a later date.

ID 27-136-20140306 Last updated 06 03 2014

**What are the key factors to consider when considering coalbed methane exploration/production?**

There are two main factors to consider:

- unlike underground coal mining, extraction of coalbed methane does not cause subsidence of the land surface;
- removing the water is commonly required to initiate gas production. Such de-watering can take an extended period of time.

ID 27-137-20140306 Last updated 06 03 2014

**What is Underground Coal Gasification?**

Underground Coal Gasification is a process involving controlled combustion of coal seams beneath the ground and the recovery of the resulting gases. The coal can be accessed by carefully controlled directional drilling of several wells that penetrate the coal seam for an appropriate distance.

ID 27-225-20141017 Last updated 17 10 2014

**How many wells are required for Underground Coal Gasification?**

Underground Coal Gasification requires a minimum of two wells:

- An access well to inject steam and air or oxygen to trigger and maintain the combustion of the seam
- A production well which recovers the resulting gas-water vapour mixture to the surface for treatment.

Sometimes a separate ignition well is drilled, through which a small amount of gas is injected to initiate combustion.

ID 27-226-20141017 Last updated 17 10 2014

**What is the surface footprint for Underground Coal Gasification projects?**

The surface footprint depends on the scale of the proposal. It is likely to consist of:

- a minimum of one drilling pad
- facilities to provide steam and possibly oxygen to regulate the combustion reaction
- facilities to process the product gas (these could be located off site and the product gas transported to them via pipeline)

Larger schemes would likely contain several drill pads but could share the other necessary facilities.

ID 27-227-20141017 Last updated 17 10 2014

### **How do Underground Coal Gasification projects extend beyond the initial area?**

Once all the coal along the length of the access well(s) has combusted, the development would have to move along the same coal seam or exploit another seam above or below the one previously combusted.

ID 27-228-20141017 Last updated 17 10 2014

### **Where synthetic gas (syngas) produced from Underground Coal Gasification is used for power generation, will an element of carbon capture and storage need to apply?**

It is the UK Government's policy, set out in the overarching National Policy Planning statement [\[2\]](#)

([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/37046/1938-overarching-nps-for-energy-en1.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/37046/1938-overarching-nps-for-energy-en1.pdf)) for Energy (EN1), that any new coal-fired power station should demonstrate that it is "carbon capture ready" before planning consent may be given. This requirement applies to any new power station that uses coal as a fuel, whether directly in a pulverised coal power station or indirectly in an Integrated Gasification Combined Cycle plant. For an Integrated Gasification Combined Cycle plant, the policy will apply regardless of where the syngas is generated, whether that is at an on-site or off-site gasification unit. Consistent with this we will expect this requirement to apply where underground coal gasification is used to produce syngas for power generation.

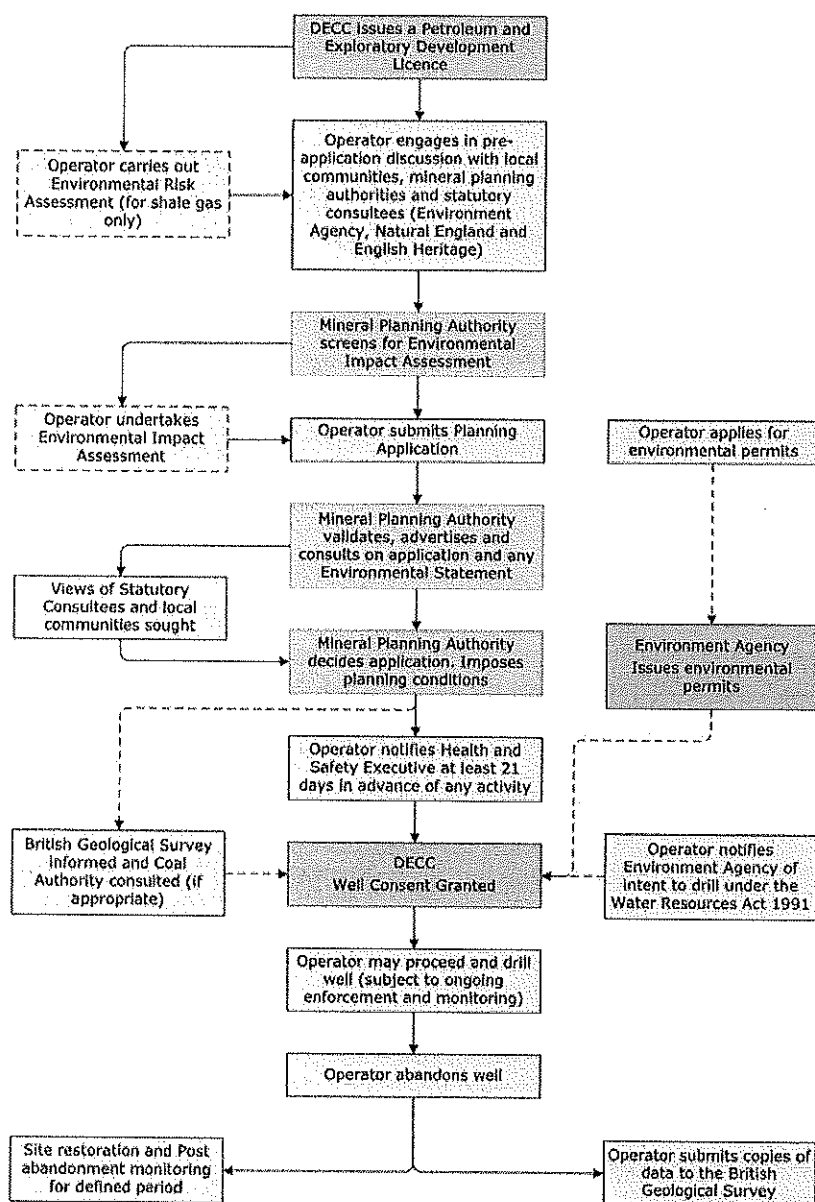
New power stations that use fossil fuel or fuel produced from fossil fuel, as in gasification, will also be subject to the Emissions Performance Standard. The Standard, introduced through provisions of the Energy Act 2013, recently came into force and places a limit on the amount of carbon dioxide emissions that new fossil fuel power stations can emit.

ID 27-229-20141017 Last updated 17 10 2014

- **Annex B: Outline of process for drilling an exploratory well**

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/planning-for-hydrocarbon-extraction/annex-b-outline-of-process-for-drilling-an-exploratory-well/>)

### **Annex B: Outline of process for drilling an exploratory well**



([http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/minerals2\\_140.jpg](http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/minerals2_140.jpg))

ID 27-138-20140306 Last updated 06 03 2014

• Annex C : Model planning conditions for surface area

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/planning-for-hydrocarbon-extraction/annex-c-model-planning-conditions-for-surface-area/>)

**Annex C : Model planning conditions for surface area**

**Ground and Surface water**

The boreholes must be constructed so as to prevent uncontrolled discharge of artesian groundwater to surface, and to prevent uncontrolled discharge of water or contamination into or between individual aquifers or different geological formations.

Any oils, fuels, lubricants or other liquid materials shall be located on an impervious base and/or within an impervious bunded area or purpose made self-bunding tanks so as to prevent any discharge or spillage into any watercourse, land or underground strata. Spill kits shall also be located in appropriate locations around the Site and utilised in the event of any accidental discharge/spillages.

No ground or surface water contaminated by oil, grease or other pollutants used on or in connection with the site operations shall be discharged into any ditch or watercourse.

ID 27-139-20140306 Last updated 06 03 2014

### **Visual intrusion and landscaping**

No development shall be commenced until a scheme providing full details of site landscaping works has been submitted to, and approved in writing, by the Local Planning Authority. Such a scheme shall include a planting plan and schedule of plants noting species, plant sizes and proposed numbers/densities. Thereafter the approved landscaping scheme shall be implemented in full.

Any trees or shrubs planted or retained in accordance with this condition which are removed, uprooted, destroyed, die or become severely damaged or diseased within 5 years of planting shall be replaced within the next planting season.

ID 2a-140-20140306 Last updated 06 03 2014

### **Noise control and monitoring**

Prior to the commencement of the drilling operations hereby permitted, a detailed noise monitoring scheme shall be submitted to, and approved in writing by the Mineral Planning Authority. The scheme shall include the locations and times for noise monitoring to be carried out commencing from the start of drilling operations.

Noise monitoring shall thereafter be carried out in accordance with the approved Noise Monitoring scheme and the results of the each noise monitoring exercise shall be submitted to the mineral planning authority within 7 days of the monitoring being carried out. Noise monitoring shall commence within 12 hours of drilling commencing.

In the event that noise monitoring indicates that noise levels have exceeded the maximum permitted noise level, drilling operations shall cease within [x] hours and until such time that further noise mitigation measures which shall be firstly approved in writing by the mineral planning authority have been installed and employed within the site.

All plant and machinery shall be adequately maintained and silenced in accordance with the manufacturer's recommendations at all times.

ID 27-141-20140306 Last updated 06 03 2014

### **Dust and air quality**

Prior to the commencement of the drilling operations hereby permitted, a detailed dust management plan shall be submitted to, and approved in writing by the mineral planning authority.

No activity hereby permitted shall cause dust to be emitted so as to adversely affect adjacent residential properties and/ or other sensitive uses and/ or local environment. Should such an emission occur, the activity shall be suspended until a revised dust management plan is submitted and approved by the mineral planning authority.

ID 27-142-20140306 Last updated 06 03 2014

### **Lighting**

Prior to the commencement of development, details of proposed lighting, including siting, height, design and position of floodlights, shall be submitted to and approved in writing to the Local Planning Authority. The lighting shall be implemented in accordance with these details and no other form of floodlighting shall be implemented on the application site without the prior written approval of the Local Planning Authority.

ID 2a-143-20140306 Last updated 06 03 2014

## Soils

Prior to the construction of the drilling pad all available topsoil shall be stripped from the site and shall be stored in separate mounds within the site for use in the restoration of the site. The soils shall only be stripped when they are in a dry and friable condition.

All topsoil and subsoil mounds shall be graded and grass seeded within one month of the first planting season and thereafter retained in a grassed, weed free condition throughout the duration of the development pending their use in the restoration of the site.

ID 27-144-20140306 Last updated 06 03 2014

## Protected species and wildlife habitats

Prior to the commencement of development, a method statement for the protection of wildlife, flora and fauna during construction and during operation of the facility shall be submitted to and approved in writing by the mineral planning authority.

No later than one year before the decommissioning of the site, an ecological survey shall take place to establish the presence, or otherwise, of any protected species on the site within the site boundary and immediately outside. The survey and measures for the protection of and minimisation of disturbance during the decommissioning phase shall be submitted to the mineral planning authority for approval in writing. The development shall be implemented strictly in accordance with approved details of protection.

ID 27-145-20140306 Last updated 06 03 2014

## Restoration and after care

Within (time to be specified) months of the certification in writing by the Local Planning Authority of the completion of restoration, as defined in this permission, a scheme and programme for the aftercare of the site shall be submitted to the Local Planning Authority for approval in writing.

The scheme and programme shall contain details of the following:

- Maintenance and management of the restored site to promote its agricultural, forestry or amenity use.
- Weed control where necessary.
- Measures to relieve compaction or improve drainage.
- An annual inspection to be undertaken in conjunction with representatives of the Mineral Planning Authority to assess the aftercare works that are required in the following year.

or

Within 3 months of the date of this permission a detailed restoration and year aftercare scheme shall be submitted for the written approval of the Mineral Planning Authority. The scheme shall include details of the following:

- treatment of the borehole;
- soil remediation and reinstatement measures along with details of proposed grass seed mixes;
- the removal of all building, plant, equipment, machinery, fencing, temporary surfacing materials from the Site and access track not required for the purpose of restoration and aftercare;
- a 5 year aftercare programme.

The Site shall be restored in accordance with the approved restoration scheme and the Site thereafter managed in accordance with the approved 5 year aftercare programme. The aftercare period shall commence from the date that the Local Planning Authority confirms that the restoration works have been carried out and fully implemented in accordance with approved details.

ID 27-146-20140306 Last updated 06 03 2014

- **Annex D: Underground storage of natural gas**

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/planning-for-hydrocarbon-extraction/annex-d-underground-storage-of-natural-gas/>)

### **Annex D: Underground storage of natural gas**

#### **Are all proposals for underground storage of gas handled by the mineral planning authority?**

Mineral planning authorities in England will be responsible for determining underground gas storage proposals in their areas which:

- have an expected working capacity below 43 million standard cubic metres; or
- have an expected maximum flow rate below 4.5 million standard cubic metres per day.

Applications for storage projects above this size [link](#)

(<https://www.gov.uk/government/policies/providing-regulation-and-licensing-of-energy-industries-and-infrastructure/supporting-pages/planning-and-consents-for-national-energy-infrastructure>), are dealt with under the Planning Act 2008 (see section 1.8 of the Gas Supply Infrastructure and Gas and Oil Pipelines National Policy Statement, (EN-4)), and must be made to the Secretary of State for Energy and Climate Change.

ID 27-230-20141017 Last updated 17 10 2014

#### **Who are the key regulators for underground gas storage?**

The key regulators for underground gas storage are:

- **Health and Safety Executive**, who regulate safety during the design, construction, operation and decommissioning of underground gas storage sites. They are also responsible for regulating the safety of pipelines connecting to the storage facility and, where the proposal is to use a depleted oil or gas reservoir, for ensuring the appropriate design and construction of a well casing for any borehole.
- **Environment Agency**, who are responsible for protecting water resources (including groundwater aquifers), ensuring the appropriate treatment and disposal of waste arising from the construction and operation of the site, and air emissions;
- **Mineral Planning Authorities**, who grant permission for the location of those gas storage surface activities for which they hold planning responsibility. They are also responsible for ensuring geological integrity given the risks of subsidence and other impact on the use of land;
- **Hazardous Substances Authorities**, who are usually local planning authorities, who may need to provide hazardous substances consents; and
- **Department of Energy and Climate Change** who, if the thresholds referred to in paragraph 7 above are met, are the decision-making authority for applications for Development Consent Orders under the Planning Act 2008. If sought by the developer, a Development Consent Order might also include powers of compulsory acquisition and directions that planning permission and hazardous substances consent are deemed to be granted. Where the proposal is to use a depleted oil and gas reservoir, the applicant must also submit a field development plan to the Department of Energy and Climate Change for approval.

ID 27-231-20141017 Last updated 17 10 2014

#### **What sort of underground structures might be suitable for the storage of natural gas?**

There are a number of types of underground structures suitable for storing gas, created both as the result of human activity or through natural causes. Each has distinct physical characteristics which are likely to govern the deliverability and operational ranges and thus the economic viability of a particular storage type.

Typical types of storage include:

- **depleted hydrocarbon (gas, or less commonly oil) reservoirs** – using the pre-existing suitable, well-investigated geological structure that has been proven to retain hydrocarbons over millions of years. Large volumes of gas are pumped in through wells and when needed later, are withdrawn through these wells;
- **halite (rock salt) deposits** – cavities (or caverns) are created within thick underground rock salt deposits and are able to effectively confine gases pumped into the void. These voids can be excavated by conventional underground mining, or more commonly, by drilling a borehole into the salt and pumping fresh water down to dissolve the salt, forming brine which is then extracted by pumping;
- **lined rock caverns (including those created from mining minerals)** – these are small volume storage facilities generally constructed in regions lacking suitably developed halite deposits or porous and permeable strata, and where the lining is usually constructed from concrete and steel; and
- **unlined rock caverns** – the storage of some forms of hydrocarbons in mined voids is possible in certain rock types other than salt, for example storage of liquid petroleum gas in chalk.

ID 27-232-20141017 Last updated 17 10 2014

### **What depths are suitable for underground storage of natural gas?**

There is no set depth that is suitable for underground gas storage, since much will depend on the nature of suitable geological strata and works required to prevent leakage of gas into surrounding strata. For example:

- storage in mined rock caverns lined with sheet steel supported by concrete can be as low as 100 to 200 metres below the surface;
- storage in former salt caverns or former oil reservoirs will generally be at depths between around 200 metres and 700 metres; whilst
- storage in onshore depleted hydrocarbon fields currently takes place at depths between around 400 and 1,000 metres, with some proposals involving depths of 1,300 to 2,300 metres.

ID 27-233-20141017 Last updated 17 10 2014

### **What are the key considerations for exploring the suitability of underground gas storage facilities?**

The key factors to consider when evaluating the potential for underground storage of gas include:

- the integrity of the geological structure and proposed works such that there is no possibility of uncontrolled gas escape;
- results of advanced modelling of likely gas pressure regimes and behaviour, since these will control the pressures and amounts of gas that can be stored and recovered, and the rates of injection and withdrawal of gas;
- the number and locations of wells required for effective use of the facility; and
- surface considerations, including any infrastructure required to support the storage facility and the movement of gas to and from the facility.

The suitability for each type and location of underground gas facility will depend on detailed site investigation and characterisation studies that are likely to be required to prove the integrity of the proposed storage location.

ID 27-234-20141017 Last updated 17 10 2014

### **What information should be provided to planning authorities to help them make an informed decision on the suitability of the local geology?**

Planning authorities should expect the applicant to provide a detailed geological assessment to demonstrate the suitability of the geology at the site for the type of underground gas storage proposed. For example:

- for porous rock, a depleted or partially depleted oil or gas field, the applicant's geological assessment should determine the suitability of the rocks for underground gas storage;
- for salt cavities, the geological assessment should demonstrate the integrity of overlying strata and the risk of collapse of the salt cavern. The assessment should also cover issues such as salt thickness, salt purity, the ability of the site to store the proposed quantity of gas, and other factors which will affect the design of the salt cavern. The assessment should also cover the long term integrity of the strata after decommissioning or closure of the storage facility.

In determining the geological integrity of underground storage facilities, planning authorities should liaise closely with the Health and Safety Executive and the Environment Agency given their role in preventing major accidents involving hazardous substances and in limiting the consequences of any accident to people and the environment.

ID 27-235-20141017 Last updated 17 10 2014

10. Planning for coal extraction (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/planning-for-coal-extraction/>)

### **Planning for coal extraction**

#### **How are environmental impacts of surface coal mining proposals assessed?**

The environmental impacts of coal extraction should be considered in the same way as for other minerals

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/assessing-environmental-impacts-from-minerals-extraction/>). However, both coal operators and mineral planning authorities must have regard to the environmental duty placed on them under section 53 of the Coal Industry Act 1994 [\[a\]](#)

(<http://www.legislation.gov.uk/ukpga/1994/21/section/53>) when preparing and determining planning applications

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#### **What specific issues should mineral planning authorities consider for underground mining?**

Underground coal mining can raise additional issues to surface coal mining which mineral planning authorities may need to consider. These include: the potential effects of subsidence, including the potential hazard of old mine workings; the treatment and pumping of underground water; monitoring and preventative measures for potential gas emissions; and the method of disposal of colliery spoil.

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11. Minerals planning orders (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/minerals-planning-orders/>)

### **Minerals planning orders**

#### **What are minerals planning orders?**

Section 97 of, Part II of Schedule 5 [\[a\]](#)

(<http://www.legislation.gov.uk/ukpga/1990/8/section/97>) and Schedule 9 to the Town and Country Planning Act 1990 [\[a\]](#)

(<http://www.legislation.gov.uk/ukpga/1990/8/schedule/9>) establish a range of orders by which minerals planning authorities can control minerals development (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/definitions-terms->



used-in-the-minerals-guidance/), some of which apply to all development and others which apply only to minerals extraction. These can be used by minerals planning authorities to:

- revoke a planning permission for minerals development (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/minerals-planning-orders/modification-and-revocation-orders/>), (where the permission to carry out development is removed);
- modify a planning permission (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/minerals-planning-orders/modification-and-revocation-orders/>) (where the terms of a planning permission are amended);
- discontinue or modify use of land for minerals extraction (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/minerals-planning-orders/discontinuance-orders/>);
- prohibit resumption of minerals planning permissions (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/minerals-planning-orders/prohibition-orders/>);
- suspend a planning permission (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/minerals-planning-orders/suspension-orders/>).

Section 100 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/100) (<http://www.legislation.gov.uk/ukpga/1990/8/section/100>) and Schedule 9 to the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/schedule/9) (<http://www.legislation.gov.uk/ukpga/1990/8/schedule/9>) also give the Secretary of State default powers to make certain orders.

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### **When should minerals planning orders be used?**

The use of an order will depend on the circumstances of the individual case and the working status of the site. Where mineral planning authorities do decide to make an order they must have regard to the development plan and to any other material considerations. In most circumstances compensation (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/minerals-planning-orders/compensation-payable-when-a-mineral-planning-order-is-used/>) is payable.

Orders should be considered as an action of last resort where discussions with the owner and operator have been unable to resolve the problem. However, operators may voluntarily agree that certain permissions may be modified or given up, in which case, the mineral planning authority should issue a Prohibition Order (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/minerals-planning-orders/prohibition-orders/>).

ID 27-150-20140306 Last updated 06 03 2014

### **Can mineral planning authorities use orders as an alternative to periodic reviews of minerals planning conditions or enforcement powers?**

Mineral planning authorities should not use their order making powers as a substitute for, or to supplement, periodic reviews (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/review-of-minerals-planning-conditions/coverage-and-frequency-of-periodic-reviews/>) of minerals planning conditions. Nor should orders be used as a substitute for planning enforcement powers. However, there may be exceptional circumstances in between periodic reviews, or prior to the first review, where a material change in circumstances makes it unacceptable for the development to continue under the existing conditions.

ID 27-151-20140306 Last updated 06 03 2014

- **Modification and Revocation Orders**

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/minerals-planning-orders/modification-and-revocation-orders/>)

## **Modification and Revocation Orders**

### **When can Modification and Revocation Orders be used?**

Modification and Revocation Orders may only be made before buildings or operations have been completed or a change of use has occurred. In the case of minerals development

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/definitions-terms-used-in-the-minerals-guidance/>) an order can only be made before minerals development begins or in respect of uncompleted parts of the minerals development. For example, aftercare conditions can only be imposed before soils have been replaced and restoration conditions satisfied.

ID 27-152-20140306 Last updated 06 03 2014

### **Can a Modification/Revocation Order come into effect without being confirmed by the Secretary of State?**

The Secretary of State needs to confirm a Modification or Revocation Order before it can come into effect unless all the following conditions are met:

- the order applies to full rather than outline planning permission;
- the owner and occupier of the land and all those who in the mineral planning authority's opinion will be affected by the order have informed the mineral planning authority in writing that they do not wish to object to it;
- the mineral planning authority has advertised the making of the order in the prescribed manner and sent a copy of the advertisement to the Secretary of State within three days of the publication of the advertisement;
- the Secretary of State has not received any objections, and;
- the original planning permission was not granted or deemed to have been granted by the Secretary of State (see section 99 of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/99) (<http://www.legislation.gov.uk/ukpga/1990/8/section/99>)).

ID 27-153-20140306 Last updated 06 03 2014

### **What happens if anyone objects to a notice?**

Where there is an objection, the views of the person will be heard by a Planning Inspector. This can be through a local inquiry, a hearing or written representations depending on the circumstances (see section 98 of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/98)

(<http://www.legislation.gov.uk/ukpga/1990/8/section/98>)).

ID 27-154-20140306 Last updated 06 03 2014

- **Discontinuance Orders** (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/minerals-planning-orders/discontinuance-orders/>)

## **Discontinuance Orders**

### **What are Discontinuance Orders?**

Discontinuance Orders are orders that require changes to the use of land for minerals development

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/definitions-terms-used-in-the-minerals-guidance/>). Such an order may:

- stop the use of land for minerals development;
- impose additional conditions on its continuing use;
- require buildings or works to be altered or removed; and/or
- require that any plant or machinery used for minerals development should be altered or removed.

ID 27-155-20140306 Last updated 06 03 2014

### **Why use a Discontinuance Order?**

Typical circumstances when a Discontinuance Order may be appropriate include:

- where minerals development (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/definitions-terms-used-in-the-minerals-guidance/>) began in breach of planning control but where enforcement action is not appropriate; or
- where it represents the most effective method of modifying the use (e.g. to ensure the restoration) of a large site which is subject to more than one planning permission.

ID 27-156-20140306 Last updated 06 03 2014

### **Can a Discontinuance Order impose aftercare conditions?**

Aftercare conditions may be imposed by a Discontinuance Order if the order also imposes, or the minerals site is already subject to, planning conditions which require restoration of the site.

ID 27-157-20140306 Last updated 06 03 2014

### **Who can confirm a Discontinuance Order?**

A Discontinuance Order must be confirmed (with or without any modifications) by the Secretary of State in order to come into effect regardless of whether or not there is a local inquiry, hearing or written representation.

ID 27-158-20140306 Last updated 06 03 2014

- Prohibition Orders (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/minerals-planning-orders/prohibition-orders/>)

### **Prohibition Orders**

#### **What are Prohibition Orders?**

Prohibition Orders are orders whose purpose is to make it absolutely clear that minerals development

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/definitions-terms-used-in-the-minerals-guidance/>) has stopped and cannot resume without a fresh planning permission, and to secure the restoration of the land.

This type of order can also impose other requirements including removal of machinery, compliance with existing planning conditions, and any restoration conditions (see paragraph 3(3) of Schedule 9 to the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/schedule/9) (<http://www.legislation.gov.uk/ukpga/1990/8/schedule/9>)).

ID 27-159-20140306 Last updated 06 03 2014

#### **When can a Prohibition Order take effect?**

A Prohibition Order may only take effect if confirmed by the Secretary of State, with or without any modifications (see paragraph 4 of Schedule 9 of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/schedule/9)

(<http://www.legislation.gov.uk/ukpga/1990/8/schedule/9>)).

ID 27-160-20140306 Last updated 06 03 2014

#### **Can a Prohibition Order apply to more than one planning permission?**

A Prohibition Order can encompass any number of permissions which apply to the land or site(s) to which it relates.

ID 27-161-20140306 Last updated 06 03 2014

#### **What conditions must be met before a Prohibition Order can**

**be made?**

A Prohibition Order may only be made where it appears to the mineral planning authority that minerals development has occurred but has permanently ceased

ID 27-162-20140306 Last updated 06 03 2014

**How will a mineral planning authority know if minerals development has permanently ceased?**

A mineral planning authority may assume that minerals development has permanently ceased only when:

- no minerals development has occurred to any substantial extent at the site for at least two years, and;
- it appears to the mineral planning authority, on the evidence available to them at the time when they make the order, that resumption to any substantial extent at the site is unlikely (see paragraph 3(2) of Schedule 9 of the Town and Country Planning Act 1990 [\[a\]](http://www.legislation.gov.uk/ukpga/1990/8/schedule/9) (<http://www.legislation.gov.uk/ukpga/1990/8/schedule/9>)).

ID 27-163-20140306 Last updated 06 03 2014

**Can a mineral planning authority grant a fresh planning permission for extraction on a site subject to a Prohibition Order?**

A mineral planning authority may grant a fresh planning permission for extraction on a site subject to planning permission, but they must first revoke the Prohibition Order. This does not require confirmation by the Secretary of State. A new planning permission would be required to enable minerals development

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/definitions-terms-used-in-the-minerals-guidance/>) to be resumed (see paragraph 4(8) of Schedule 9 of the Town and Country Planning Act 1990 [\[a\]](http://www.legislation.gov.uk/ukpga/1990/8/schedule/9) (<http://www.legislation.gov.uk/ukpga/1990/8/schedule/9>)).

ID 27-164-20140306 Last updated 06 03 2014

**How will mineral planning authorities decide whether resumption of minerals working may take place?**

A mineral planning authority's decision whether resumption of minerals working may take place will depend on the circumstances of the case, including the scale of the minerals operation and past levels of minerals production.

Mineral planning authorities would need to weigh up evidence supplied by the operators/owners on:

- the pattern and programme of their operations including forecasts of trends in
- production and markets for their products;
- the quality and quantity of workable mineral; and,
- whether there is a real genuine intention to work the site.

In the event of a planning inquiry the mineral planning authority will need to be able to demonstrate that their decision to make an order is a reasonable one in the light of such issues and all other material considerations.

ID 27-165-20140306 Last updated 06 03 2014

**Can a Prohibition Order impose aftercare conditions?**

A Prohibition Order can impose aftercare conditions if the order also imposes, or the site in question is already subject to, restoration conditions.

ID 27-166-20140306 Last updated 06 03 2014

- **Suspension Orders** (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/minerals-planning-orders/suspension-orders/>)

## **Suspension Orders**

### **What is a Suspension Order?**

A Suspension Order is a holding measure which restricts the resumption of minerals development (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/definitions-terms-used-in-the-minerals-guidance/>) for a period of time at a site where work is temporarily suspended (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/definitions-terms-used-in-the-minerals-guidance/>), before either the resumption of development or the making of a prohibition order. It does not and cannot prevent the recommencement of minerals development.

ID 27-167-20140306 Last updated 06 03 2014

### **When should a Suspension Order be used?**

Suspension Orders should be used to deal with environmental problems arising at sites where minerals development (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/definitions-terms-used-in-the-minerals-guidance/>) has been temporarily suspended (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/definitions-terms-used-in-the-minerals-guidance/>), but the mineral planning authority believes that an operator intends to resume working in the foreseeable future.

ID 27-168-20140306 Last updated 06 03 2014

### **When can Suspension Orders take effect?**

Suspension Orders can only take effect once they are confirmed, with or without modifications, by the Secretary of State.

ID 27-169-20140306 Last updated 06 03 2014

### **What can a Suspension Order cover and not cover?**

A Suspension Order may require steps to be taken for the protection of the environment, including measures to preserve the amenities of the area in which the land is situated, to protect it from damage or to prevent deterioration in the condition of the land while development is suspended. Examples of this include the removal of plant or equipment or tidying up the site; the provision of fencing and other safety measures (if existing powers in other legislation prove insufficient).

A Suspension Order may not include restoration or aftercare conditions.

ID 27-170-20140306 Last updated 06 03 2014

### **By when must actions covered by a Suspension Order be taken?**

Actions covered by a Suspension Order must be carried out by the date specified by the mineral planning authority.

ID 27-171-20140306 Last updated 06 03 2014

### **What is a Supplementary Suspension Order?**

A Supplementary Suspension Order is a further order which may be made to take account of changing circumstances after a Suspension Order has come into force.

ID 27-172-20140306 Last updated 06 03 2014

### **When can a Supplementary Suspension Order be used?**

Circumstances which might warrant a Supplementary Suspension Order include:

- delays in resumption of minerals development (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/definitions-terms-used-in-the-minerals-guidance/>), to secure the site for a further period of time;
- additional or alternative steps are needed to protect the environment; or
- resumption of development is sooner than anticipated.

Supplementary Suspension Orders must be confirmed by the Secretary of State except when they revoke a Suspension Order or a previous Supplementary Suspension Order and do not require that any fresh steps be taken to protect the natural environment.

ID 27-173-20140306 Last updated 06 03 2014

### **When should Suspension Orders and Supplementary Suspension Orders be reviewed?**

Suspension Orders and Supplementary Suspension Orders should be reviewed at intervals of not more than five years, to ensure that they do not remain in force indefinitely without the mineral planning authority considering what other action to take (see paragraph 9 of Schedule 9 to the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/schedule/9) (<http://www.legislation.gov.uk/ukpga/1990/8/schedule/9>)).

ID 27-174-20140306 Last updated 06 03 2014

### **How does minerals development recommence on land subject to a Suspension Order?**

The operator must notify the mineral planning authority in advance of the intended date of restarting minerals development (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/definitions-terms-used-in-the-minerals-guidance/>), and the mineral planning authority must revoke the order within two months of the date that working has resumed to a substantial extent.

If the mineral planning authority does not revoke the order, the operator may apply to the Secretary of State for its revocation and either the operator or the mineral planning authority may request a hearing prior to the decision being made.

ID 27-175-20140306 Last updated 06 03 2014

- Compensation payable when a mineral planning order is used (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/minerals-planning-orders/compensation-payable-when-a-mineral-planning-order-is-used/>)

### **Compensation payable when a mineral planning order is used**

#### **When is compensation payable when these minerals planning orders are used, and to whom?**

Minerals planning orders may attract compensation by the mineral planning authority to the operator if they are confirmed by the Secretary of State and a valid claim is made (see the Town and Country Planning (Compensation for Restrictions on Mineral Working and Mineral Waste Depositing) Regulations 1997 [\[2\]](http://www.legislation.gov.uk/uksi/1997/1111/contents/made) (<http://www.legislation.gov.uk/uksi/1997/1111/contents/made>)).

ID 27-176-20140306 Last updated 06 03 2014

#### **Who pays out compensation when an order is confirmed by the Secretary of State?**

Any compensation is paid by the mineral planning authority when an order is confirmed by the Secretary of State.

ID 27-177-20140306 Last updated 06 03 2014

## 12. Review of minerals planning conditions

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/review-of-minerals-planning-conditions/>)

### Review of minerals planning conditions

#### What minerals sites are subject to review of minerals planning conditions?

There are two categories of sites which are subject to reviews of minerals planning conditions:

- dormant sites

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/review-of-minerals-planning-conditions/dormant-sites/>), where planning permission was granted between 21 July 1943 and 22 February 1982, but where extraction has yet to take place. Most of these sites had few, if any, operating and restoration conditions attached to them. These may include the few remaining Interim Development Orders which were granted between 21 July 1943 and 1 July 1948 (see section 22 [\[2\]](http://www.legislation.gov.uk/ukpga/1991/34/section/22) (<http://www.legislation.gov.uk/ukpga/1991/34/section/22>) of and Schedule 2 to the Planning and Compensation Act 1991 [\[2\]](http://www.legislation.gov.uk/ukpga/1991/34/schedule/2) (<http://www.legislation.gov.uk/ukpga/1991/34/schedule/2>)); and

- those sites where minerals extraction is taking place, but whose permission will last for many years. In such circumstances, a periodic review (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/review-of-minerals-planning-conditions/coverage-and-frequency-of-periodic-reviews/>) of the conditions attached to the original planning permission can help ensure that the sites operate to continuously high working and environmental standards. Legislation setting out how these periodic reviews should be carried out can be found at section 96 of and Schedule 14 to the Environment Act 1995 [\[2\]](http://www.legislation.gov.uk/ukpga/1995/25/schedule/14) (<http://www.legislation.gov.uk/ukpga/1995/25/schedule/14>), and section 10 [\[2\]](http://www.legislation.gov.uk/ukpga/2013/27/section/10/enacted) (<http://www.legislation.gov.uk/ukpga/2013/27/section/10/enacted>) of and Schedule 3 to the Growth and Infrastructure Act 2013 [\[2\]](http://www.legislation.gov.uk/ukpga/2013/27/schedule/3/enacted) (<http://www.legislation.gov.uk/ukpga/2013/27/schedule/3/enacted>).

ID 27-178-20140306 Last updated 06 03 2014

#### What are the main steps to be followed in reviewing minerals planning conditions?

The main steps to be followed in reviewing minerals conditions, including for dormant sites

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/review-of-minerals-planning-conditions/dormant-sites/>), is set out in this flowchart

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/flowchart-and-forms-relating-to-review-of-mineral-planning-conditions/overview-of-review-of-mineral-planning-conditions/>).

ID 27-179-20140306 Last updated 06 03 2014

- Dormant sites (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/review-of-minerals-planning-conditions/dormant-sites/>)

#### Dormant sites

##### When can dormant sites start development?

Minerals development

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/definitions-terms-used-in-the-minerals-guidance/>) cannot lawfully commence until the applicant has submitted an application for appropriate minerals conditions and conditions have been agreed by the mineral planning authority. An application for conditions may need to be accompanied by an Environmental Statement (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/preparing-an-environmental-statement/>) under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 [\[2\]](http://www.legislation.gov.uk/uksi/2011/1824/contents/made) (<http://www.legislation.gov.uk/uksi/2011/1824/contents/made>).

ID 27-180-20140306 Last updated 06 03 2014

### **Who can apply for the determination of new conditions for Interim Development Order sites?**

Those entitled to apply for the determination of new conditions for Interim Development Order sites are:

- the freeholder of any part of the land to which the permission relates;
- the tenant of any part of the land to which the permission relates with more than seven years lease left to run; or
- any person who is entitled to an interest in any minerals in the land to which the permission relates.

ID 2a-181-20140306 Last updated 06 03 2014

### **What happens if a site crosses minerals planning authority boundaries?**

Mineral planning authorities only have administrative responsibility for land within their administrative area. An existing permission which straddles an administrative boundary must be treated as two (or more) permissions. Planning authorities should co-ordinate their approach and where necessary make arrangements to discharge any of their relevant functions jointly.

ID 27-182-20140306 Last updated 06 03 2014

### **What is the procedure for applying for approval of conditions?**

Applications for approval of conditions must be made on an official form (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/flowchart-and-forms-relating-to-review-of-mineral-planning-conditions/application-for-determination-of-conditions-to-which-interim-development-order-permission-old-mining-permission-is-to-be-subject-application-for-determination-of-conditions-on-an-interim-development/>) obtainable from the mineral planning authority and must be accompanied by the appropriate certificates that the necessary publicity, notification and certification requirements have been complied with.

ID 27-183-20140306 Last updated 06 03 2014

### **What happens if more than one person applies?**

If there is more than one person eligible to apply and each makes a separate application, the mineral planning authority must treat all the applications as a single application served on the date on which the latest application was made. It must notify each applicant of receipt of the applications and their determination separately. Where the mineral planning authority has already determined an application, then no further applications may be made by any person.

ID 27-184-20140306 Last updated 06 03 2014

### **How should mineral planning authorities handle permissions where the Interim Development Order covers only part of a working site?**

If the Interim Development Order covers only part of a working site, then mineral planning authorities are still required to review the conditions. However, there will be a need to impose fewer conditions in certain circumstances, for example:

- where an applicant can demonstrate that a 'dormant' permission has been active in recent years;
- that operations have been only temporarily suspended (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/definitions-terms-used-in-the-minerals-guidance/>), and;



- that the imposition of full modern conditions would fundamentally affect the economic viability (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/definitions-terms-used-in-the-minerals-guidance/>) of the operation.

In deciding what conditions to apply, mineral planning authorities should take account of any later planning permissions for winning and working or depositing of mineral waste on adjacent land which forms part of the same planning unit, and to later planning permissions or consents.

ID 27-185-20140306 Last updated 06 03 2014

### **Are there any restrictions on planning conditions that may be imposed as part of the review of planning conditions?**

There are three main restrictions on planning conditions that may be imposed as part of the review of planning conditions:

- all conditions must meet the policy tests (<http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/>), be necessary and should not affect the economic viability (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/definitions-terms-used-in-the-minerals-guidance/>) of the operation (e.g. conditions which restrict the total quantity of mineral for extraction).
- all final applications must include a condition that the winning and working of minerals or depositing of mineral waste must cease not later than 21 February 2042, except where the original permission is already time-limited (see Schedule 2 to the Planning and Compensation Act 1991 [\[2\]](http://www.legislation.gov.uk/ukpga/1991/34/schedule/2) (<http://www.legislation.gov.uk/ukpga/1991/34/schedule/2>) and Schedule 13 of the Environment Act 1995 [\[3\]](http://www.legislation.gov.uk/ukpga/1995/25/schedule/13) (<http://www.legislation.gov.uk/ukpga/1995/25/schedule/13>)); and
- conditions may be used to withdraw any outstanding permitted development rights only if there are exceptional and sound planning reasons for doing so.

ID 27-186-20140306 Last updated 06 03 2014

### **Is compensation payable for imposing updated planning conditions on dormant sites?**

Compensation is not payable for imposing updated planning conditions on dormant sites.

ID 27-187-20140306 Last updated 06 03 2014

### **Can the applicant appeal the imposition of conditions?**

The applicant can appeal the imposition of conditions on dormant sites as part of a periodic review if the applicant considers that the conditions imposed are unreasonable.

ID 27-188-20140306 Last updated 06 03 2014

### **Coverage and frequency of periodic reviews**

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/review-of-minerals-planning-conditions/coverage-and-frequency-of-periodic-reviews/>)

### **Coverage and frequency of periodic reviews**

#### **What sites are subject to periodic reviews of planning permissions?**

All mining sites

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/definitions-terms-used-in-the-minerals-guidance/>), including any extensions to sites granted after the initial minerals planning permission, are subject to periodic reviews of planning permissions. Mineral planning authorities can review mining sites with a single permission or the aggregate of two or more permissions.

ID 27-189-20140306 Last updated 06 03 2014

### **How should reviews apply where there is more than one minerals permission on the same site?**

Different operators on a mining site

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/definitions-terms-used-in-the-minerals-guidance/>) are encouraged to co-ordinate with each other to facilitate a single review of the site. This may require preparation of a single Environmental Statement

(<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/preparing-an-environmental-statement/>).

ID 27-190-20140306 Last updated 06 03 2014

### **How should satellite sites be treated?**

Some minerals operations rely on a number of 'satellite' sites serving a central processing facility. Some of these sites may be active, whilst others may be held in reserve to be brought into production as the market dictates or as other sites are worked out. Whether or not such satellite sites should be regarded as one minerals site or several different minerals sites will depend upon a number of factors, such as:

- their location;
- their distance from each other and from the central processing facility;
- whether it is clear that the various sites form part of a co-ordinated approach to ensure the sustainability of the processing facility;
- the date of the relevant planning permissions (because these will determine in which phase a site falls to be reviewed or whether it is subject to initial review at all); and
- whether it makes sense to review them all at the same time or separately.

Mineral planning authorities should justify their approach for treating satellite sites. In doing so, they should not separate permissions so as to ensure that some land is classified as a dormant site

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/review-of-minerals-planning-conditions/dormant-sites/>) when the sensible approach is to treat the various permissions as a single operation, albeit separated by some distance.

ID 27-191-20140306 Last updated 06 03 2014

### **How frequently should reviews take place?**

There is no fixed period when periodic reviews should take place so long as the first review is no earlier than 15 years after planning permission is granted or, in the case of an old permission, 15 years of the date of the initial review. Any further reviews should be at least 15 years after the date of the last review (see section 10 [\[2\]](http://www.legislation.gov.uk/ukpga/2013/27/section/10/enacted) (<http://www.legislation.gov.uk/ukpga/2013/27/section/10/enacted>) of, and Schedule 3 to, the Growth and Infrastructure Act 2013 [\[3\]](http://www.legislation.gov.uk/ukpga/2013/27/schedule/3/enacted) (<http://www.legislation.gov.uk/ukpga/2013/27/schedule/3/enacted>)).

Mineral planning authorities should usually only seek a review of planning conditions when monitoring visits have revealed an issue that is not adequately regulated by planning conditions, which the operator has been made aware of and has not been able to address.

The form for application for determination of conditions can be found here (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/flowchart-and-forms-relating-to-review-of-mineral-planning-conditions/application-for-determination-of-conditions-to-which-a-mineral-sitemining-site-is-to-be-subject-application-for-determination-of-conditions-for-mineral-sitemining-site/>).

ID 27-192-20140306 Last updated 06 03 2014

### **What conditions are in place until a review is completed?**

Operators at sites where extraction is taking place can continue to work under the existing planning conditions that apply to the planning permission(s), until the new conditions are finally decided.

ID 27-193-20140306 Last updated 06 03 2014

### **What types of conditions will be appropriate?**

The appropriate types of conditions to impose will vary on each particular case, but regard should be had to all material planning conditions including:

- type of mineral;
- nature and extent of existing working;
- the location of the site;
- the length of time that minerals extraction has taken place at the site;
- land quality and proposed after-use; and
- the availability of suitable restoration materials.

ID 27-194-20140306 Last updated 06 03 2014

### **Can a periodic review of conditions cover ancillary mining development?**

Ancillary mining development which is covered by a review of minerals planning conditions includes development:

- granted deemed planning consent under Part 17 of Schedule 2 to the Town and Country (General Permitted Development) (England) Order 2015 [\[a\]](http://www.legislation.gov.uk/ukSI/2015/596/schedule/2/made) (<http://www.legislation.gov.uk/ukSI/2015/596/schedule/2/made>);
- that would normally be granted deemed planning consent under Part 17 [\[a\]](http://www.legislation.gov.uk/ukSI/2015/596/schedule/2/made) (<http://www.legislation.gov.uk/ukSI/2015/596/schedule/2/made>), but where the original permitted rights have been withdrawn; or
- granted consent as part of a planning permission for minerals extraction or the depositing of mineral waste.

The review should exclude certain development from its scope. These include on-site cement works and brickworks, as well as any off-site remote processing plants. It should also exclude processing plant at a mine or quarry where winning and working has ceased but the plant is continuing to process material from other active mines or quarries.

ID 27-195-20150415 Last updated 15 04 2015

### **What can new conditions for ancillary mining development cover?**

New conditions for ancillary mining development following a review can:-

- withdraw permitted development rights for future ancillary development, where there are exceptional and sound planning reasons for doing so;
- impose conditions regulating the future operation of existing ancillary development;
- require the removal of ancillary development from the site only as part of a restoration condition once mining operations ceased.

ID 27-196-20140306 Last updated 06 03 2014

### **What should new conditions for ancillary mining development not cover?**

New conditions cannot require the removal of ancillary development which:

- is clearly related to the planning permission; and
- may need to continue operating, or is capable of continuing to operate, after minerals extraction has ceased.

ID 27-197-20140306 Last updated 06 03 2014

### **Is a condition relating to subsequent infilling as a landfill site covered by any review?**

A condition relating to subsequent infilling as a landfill site is covered by any review so long as it is part of the same permission as that for the minerals extraction.

ID 27-198-20140306 Last updated 06 03 2014

### **How do mineral planning authorities start the process of reviewing planning conditions?**

The process for reviewing planning conditions start when the mineral planning authority serves written notice on owners of land or the operator. This should be at least 12 months before the review date set by the mineral planning authority (see paragraphs 2A, 4 and 12 of Schedule 14 to the Environment Act 1995 [\[2\]](http://www.legislation.gov.uk/ukpga/1995/25/schedule/14) (<http://www.legislation.gov.uk/ukpga/1995/25/schedule/14>)).

The mineral planning authority should send a reminder notice to the applicant if it has not received an application for review of conditions within eight weeks of the review date.

ID 27-199-20140306 Last updated 06 03 2014

### **Can minerals operators or landowners apply for a delay in reviewing the planning conditions?**

A landowner or minerals operator may apply to the mineral planning authority for postponement of the date specified in the written notice for submission of new conditions within three months of the date the notice was served.

Such requests for postponement should be on the grounds that the existing planning conditions are satisfactory, and, if accepted, mineral planning authorities are encouraged to postpone reviews for 10 to 15 years.

ID 27-200-20140306 Last updated 06 03 2014

### **What information should minerals operators or landowners provide if they want to submit an application to postpone a review of their planning conditions?**

Paragraph 5 of Schedule 14 to the Environment Act 1995 [\[2\]](http://www.legislation.gov.uk/ukpga/1995/25/schedule/14) (<http://www.legislation.gov.uk/ukpga/1995/25/schedule/14>) requires that an application for postponement of a review of planning conditions should contain the following information:

- the existing planning conditions in relation to the site;
- the reasons why the minerals operator or landowner considers that the conditions to be satisfactory; and
- the date which the minerals operator or landowner wishes to be substituted for the review date.

ID 27-201-20140306 Last updated 06 03 2014

### **How long does the mineral planning authority have to decide whether to accept a postponement of a review of minerals conditions?**

Mineral planning authorities have three months to decide whether to accept, accept but modify the date proposed by the minerals operator or landowner, or refuse the application for postponing a review of minerals planning conditions. The minerals planning authority must set out its reasons in writing.

Should the mineral planning authority fail to give written notice of a decision within three months, then the application for postponing the review of planning conditions is deemed to have been approved.

ID 27-202-20140306 Last updated 06 03 2014

### **Are there any requirements to publicise a review of minerals permissions?**

There is no statutory requirement on mineral planning authorities to publicise an application for a review of conditions where the minerals development (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/definitions-terms-used-in-the-minerals-guidance/>) is not subject to an Environmental Impact Assessment.

Reviews where an Environmental Impact Assessment is required are subject to public consultation arrangements (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/the-procedures-for-submitting-an-environmental-statement/>).

ID 27-203-20140306 Last updated 06 03 2014

### **How long does the mineral planning authority have to determine the permission?**

The minerals planning authority has a period of three months to determine the permission if no Environmental Statement (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/preparing-an-environmental-statement/>) is required except where a different time period is agreed in writing between the mineral planning authority and the applicant. Should it fail to give written notice of a decision within this period, the application and the conditions the application proposes are deemed to have been approved (see Schedule 14 to the Environment Act 1995 [□](http://www.legislation.gov.uk/ukpga/1995/25/schedule/14) (<http://www.legislation.gov.uk/ukpga/1995/25/schedule/14>)).

Where an Environmental Statement is required, the mineral planning authority has 16 weeks to determine an application. If it does not determine the application within this date, however, the application and conditions are not automatically approved. The applicant may appeal to the Secretary of State to determine these conditions after this time.

ID 27-204-20140306 Last updated 06 03 2014

### **Should mineral planning authorities issue screening opinions along with their notice to carry out a review?**

Wherever possible mineral planning authorities should issue screening opinions as to whether the remaining permitted minerals development (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/definitions-terms-used-in-the-minerals-guidance/>) (i.e. the whole of the remaining development for which permission has been granted, not just the development taking place over the forthcoming 15 years) requires Environmental Impact Assessment ([http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/what-development-is-covered-by-the-regulations/list-of-relevant-development-consent-mechanisms-and-controls/#paragraph\\_013](http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/what-development-is-covered-by-the-regulations/list-of-relevant-development-consent-mechanisms-and-controls/#paragraph_013)) at the same time as sending to operators advance notice of a review.

ID 27-205-20140306 Last updated 06 03 2014

### **How much of the site area is covered by a review of minerals conditions?**

Where an Environmental Statement (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/preparing-an-environmental-statement/>) is required, environmental information is required for the whole minerals site covered by that permission before new operating conditions can be determined.

ID 27-206-20140306 Last updated 06 03 2014

### Why are there automatic suspensions?

Where the site is 'stalled' owing to the lack of an adequate Environmental Statement (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/preparing-an-environmental-statement/>) or information, automatic suspensions

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/review-of-minerals-planning-conditions/coverage-and-frequency-of-periodic-reviews/automatic-suspensions/>) are in place to give the operator notice that it needs to provide the information or else the mineral planning authority may serve a prohibition notice.

ID 27-207-20140306 Last updated 06 03 2014

### What is the procedure for finalising stalled minerals conditions reviews?

Environmental Statements

(<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/preparing-an-environmental-statement/>) must provide an up-to-date assessment of the likely significant environmental effects of the whole of the remaining permitted development over the lifetime of the permission(s). It should therefore reflect current and future planned minerals development (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/definitions-terms-used-in-the-minerals-guidance/>), up-to-date policy requirements and also take account of any changes in site boundaries since the application was submitted

ID 27-208-20140306 Last updated 06 03 2014

### Are the timescales for preparing an Environmental Statement of submitting further information fixed?

The Town and Country Planning (Environmental Impact Assessment) Regulations 2011 [\[2\]](http://www.legislation.gov.uk/ukSI/2011/1824/contents/made) (<http://www.legislation.gov.uk/ukSI/2011/1824/contents/made>) allow discretion for the minerals planning authority or Secretary of State to extend the period for submission of a new Environmental Statement (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/preparing-an-environmental-statement/>).

Additional time should only be granted where there is a clear and limited timescale and the minerals planning authority is convinced that no environmental harm will result from the delay.

ID 27-209-20140306 Last updated 06 03 2014

### When should a mineral planning authority consider making a Prohibition Order?

Mineral planning authorities are under a duty to make a Prohibition Order where:

- a site has been suspended for two years for failure to provide an Environmental Statement (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/preparing-an-environmental-statement/>) or relevant information; and
- it considers that the tests for issuing a Prohibition Order (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/minerals-planning-orders/prohibition-orders/>) are met.

There are unlikely to be many cases in which, after two years' suspension, the mineral planning authority would not be acting rationally in assuming that working had permanently ceased.

ID 27-210-20140306 Last updated 06 03 2014

### When can the applicant appeal against the determination of conditions by the mineral planning authority?

The applicant can appeal against the determination of conditions by the mineral

planning authority if:

- the conditions determined by the mineral planning authority are different from those submitted by the applicant, and the applicant considers them unreasonable in any respect;
- the applicant disagrees with any conclusion by the mineral planning authority that there would be an impact on economic viability (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/definitions-terms-used-in-the-minerals-guidance/>) but that compensation is not payable.

The appeal must be lodged within six months of notice of the decision. The form to use can be found [here](#)

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/flowchart-and-forms-relating-to-review-of-mineral-planning-conditions/appeals-to-the-secretary-of-state-mineral-sitemining-site-environment-act-1995/>).

ID 27-211-20140306 Last updated 06 03 2014

### **When can the applicant not appeal against the decision of the mineral planning authority?**

The applicant cannot appeal against a decision by the mineral planning authority that the imposition of new conditions would not restrict working rights.

ID 27-212-20140306 Last updated 06 03 2014

### **Can the applicant claim compensation as a result of any reviews of planning conditions?**

The applicant can claim compensation as a result of any reviews of planning conditions where:

- the mineral planning authority determines conditions different from those submitted by the applicant; and
- The effect of new conditions, other than restoration or aftercare conditions, is to prejudice adversely to an unreasonable degree either the economic viability (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/definitions-terms-used-in-the-minerals-guidance/>) of the operation or the asset value (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/definitions-terms-used-in-the-minerals-guidance/>) of the site, taking account of the expected remaining life of the site.

The extent of compensation payable is restricted by the Town and Country Planning (Compensation for Restrictions on Mineral Working and Mineral Waste Depositing) Regulations 1997 [\[2\]](#)

(<http://www.legislation.gov.uk/ukSI/1997/1111/contents/made>).

ID 27-213-20140306 Last updated 06 03 2014

### **What steps should the minerals planning authority take if it considers that the review of conditions would impact on working rights?**

Mineral planning authorities should discuss the proposed conditions with the operator who should provide information about the economic viability (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/definitions-terms-used-in-the-minerals-guidance/>) of the operation and asset value (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/definitions-terms-used-in-the-minerals-guidance/>) of the site. In the light of that information, the mineral planning authority should either moderate the restriction or they must issue a separate notice and be prepared for a compensation claim.

ID 27-214-20140306 Last updated 06 03 2014

### 13. Flowchart and Forms relating to review of mineral planning conditions

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/flowchart-and-forms-relating-to-review-of-mineral-planning-conditions/>)

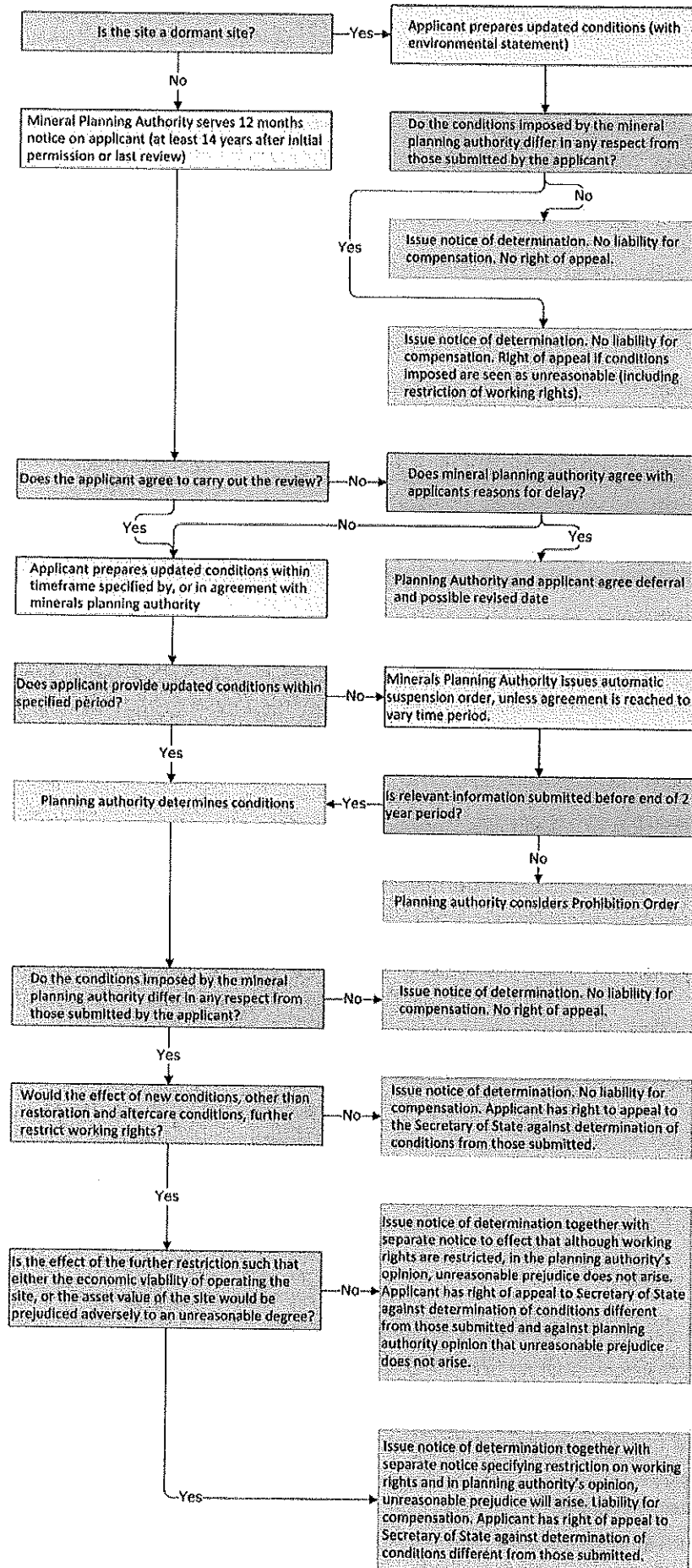
#### **Flowchart and Forms relating to review of mineral planning conditions**

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- Flowchart: Overview of review of mineral planning conditions  
(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/annex-a-flowchart-and-forms/overview-of-review-of-mineral-planning-conditions/>)
- Form: Appeals to the secretary of state mineral site/mining site environment act 1995  
(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/annex-a-flowchart-and-forms/appeals-to-the-secretary-of-state-mineral-sitemining-site-environment-act-1995/>)
- Form: Application for determination of conditions to which a mineral site/mining site is to be subject / Application for determination of conditions for mineral site/mining site  
(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/annex-a-flowchart-and-forms/application-for-determination-of-conditions-to-which-a-mineral-sitemining-site-is-to-be-subject-application-for-determination-of-conditions-for-mineral-sitemining-site/>)
- Form: Application for determination of conditions to which interim development order permission (old mining permission) is to be subject application for determination of conditions on an interim development order permission  
(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/annex-a-flowchart-and-forms/application-for-determination-of-conditions-to-which-interim-development-order-permission-old-mining-permission-is-to-be-subject-application-for-determination-of-conditions-on-an-interim-development/>)
- Overview of review of mineral planning conditions  
(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/flowchart-and-forms-relating-to-review-of-mineral-planning-conditions/overview-of-review-of-mineral-planning-conditions/>)

#### **Overview of review of mineral planning conditions**





([http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/minerals3\\_221.jpg](http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/minerals3_221.jpg))

ID 27-217-20140306 Last updated 06 03 2014

- Appeals to the secretary of state mineral site/mining site environment act 1995  
(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/flowchart-and-forms-relating-to-review-of-mineral-planning-conditions/appeals-to-the-secretary-of-state-mineral-sitemining-site-environment-act-1995/>)

### **Appeals to the secretary of state mineral site/mining site environment act 1995**

Download: Official Form For Appeals To The Secretary Of State Mineral Site/Mining Site Environment Act 1995  
([http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/27-222-20140120\\_minerals-form\\_2-13-2.pdf](http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/27-222-20140120_minerals-form_2-13-2.pdf)) (PDF)

ID 27-218-20140306 Last updated 06 03 2014

- Application for determination of conditions to which a mineral site/mining site is to be subject / Application for determination of conditions for mineral site/mining site  
(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/flowchart-and-forms-relating-to-review-of-mineral-planning-conditions/application-for-determination-of-conditions-to-which-a-mineral-sitemining-site-is-to-be-subject-application-for-determination-of-conditions-for-mineral-sitemining-site/>)

### **Application for determination of conditions to which a mineral site/mining site is to be subject / Application for determination of conditions for mineral site/mining site**

Download: Official Form For Application For Determination Of Conditions To Which A Mineral Site/Mining Site Is To Be Subject / Application For Determination Of Conditions For Mineral Site/Mining Site  
([http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/27-223-20140120\\_minerals-form\\_2-13-3.pdf](http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/27-223-20140120_minerals-form_2-13-3.pdf)) (PDF)

ID 27-219-20140306 Last updated 06 03 2014

- Application for determination of conditions to which interim development order permission (old mining permission) is to be subject / Application for determination of conditions on an interim development order permission  
(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/flowchart-and-forms-relating-to-review-of-mineral-planning-conditions/application-for-determination-of-conditions-to-which-interim-development-order-permission-old-mining-permission-is-to-be-subject-application-for-determination-of-conditions-on-an-interim-development/>)

### **Application for determination of conditions to which interim development order permission (old mining permission) is to be subject / Application for determination of conditions on an interim development order permission**

Download: Official Form For Application For Determination Of Conditions To Which Interim Development Order Permission (Old Mining Permission) Is To Be Subject / Application For Determination Of Conditions On An Interim Development Order Permission ([http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/27-224-20140120\\_minerals-form\\_2-13-4.pdf](http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/27-224-20140120_minerals-form_2-13-4.pdf)) (PDF)

ID 27-220-20140306 Last updated 06 03 2014

## 14. Definitions / terms used in the minerals guidance

(<http://planningguidance.communities.gov.uk/blog/guidance/minerals/definitions-terms-used-in-the-minerals-guidance/>)

### **Definitions / terms used in the minerals guidance**

#### **Definitions / terms used in the minerals guidance**

**Aftercare** – operations necessary to maintain restored land in a condition necessary for an agreed afteruse to continue.

**Afteruse** – the use that land, used for minerals working, is put to after restoration.

**Aggregate minerals** – minerals which are used primarily to support the construction industry including soft sand, sand and gravel, and crushed rock.

**Asset value** of the site is value of the remaining minerals in the ground for which planning permission exists and stockpiled material, together with the land, buildings and fixed plant and machinery. The key test is whether a significant quantity of workable material would be lost relative to the amount of workable material in the site for which planning permission exists.

**Best and most versatile agricultural land** – land in grades 1, 2 and 3a of the Agricultural Land Classification.

**Directional drilling** – non-vertical wells which begin with slanted but straight holes often used for mineral exploration and to avoid surface obstacles. Wells may also begin vertically but progressively build angle to intercept the hydrocarbon reservoir in a longer section than can be achieved by vertical drilling. Such non-vertical wells can be deployed radially from a single well pad.

**Economic viability** in the context of review of mineral permissions means the ability of a site to produce sufficient revenue to cover all of its operating costs (including finance costs and depreciation) and produce an appropriate return on capital. The key test is the extent to which the further restrictions imposed by new conditions would cause extra operating costs or restrict revenue to the extent that economic viability would be prejudiced adversely to an unreasonable degree.

**Flow-testing** – various tests to determine the hydrocarbon flow potential from the well, the reservoir characteristics and the nature of the hydrocarbons and other fluids present, often performed at different levels in a well.

**Industrial minerals** – minerals which are necessary to support industrial and manufacturing processes and other non-aggregate uses. These include minerals of recognised national importance including: brickclay (especially Etruria Marl and fireclay), silica sand (including high grade silica sands), industrial grade limestone, cement raw materials, gypsum, salt, fluorspar, tungsten, kaolin, ball clay and potash.

**Minerals Consultation Area** – a geographical area, based on a Mineral Safeguarding Area, where the district or borough council should consult the Mineral Planning Authority for any proposals for non-minerals development

**Minerals development** means development consisting of the winning and working of minerals or involving the depositing of mineral waste.

**Minerals Safeguarding Area** – an area designated by a Mineral Planning Authority which covers known deposits of minerals which are desired to be kept safeguarded from unnecessary sterilisation by non-mineral development

**Mining site** refers to the land to which a minerals permission relates, which may include the total area of land to which two or more planning permissions for minerals development relates if the mineral planning authority considers it desirable.

**Permitted reserves** – sites where planning permission has been granted for development but where extraction has still to take place or is not yet completed. It may cover the whole or part of a site.

**Restoration** – the return of land following mineral extraction to an acceptable condition, whether for resumption of the former land use or for a new use.

**Reclamation Plans** – plans which indicate how the restoration and aftercare of the site is to be integrated with the working scheme, and demonstrate the suitability of the proposals of the proposed after-use.

**Temporarily suspended** is when minerals development has not been carried out to any substantial extent for at least twelve months but it appears that a resumption of operations is likely.

**Well pad** – A pad is a location for siting the wellheads for a number of horizontal, directional or vertically drilled wells.

**Winning** a mineral means making the mineral available or accessible to be removed from land.

**Working** a mineral means to remove it from its position in or under the land.

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- **Technical noise terms** (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/definitions-terms-used-in-the-minerals-guidance/technical-noise-terms/>)

### Technical noise terms

**Background noise level:** The A-weighted sound pressure level of the residual noise at the assessment with no operation occurring at the proposed site, defined in terms of the  $L_{A90,T}$ .

**Decibel (dB):** A unit of level derived from the logarithm of the ratio between the value of a quantity and a reference level. For sound pressure level the reference quantity is 20 micro-pascals, the threshold of hearing (0 dB). 140 dB(A) is the threshold of pain.

**dB(A):** Decibels measured on a sound level meter incorporating a frequency weighting (A weighting) which differentiates between sounds of different frequency (pitch) in a similar way to the human ear. Measurements in dB(A) broadly agree with people's assessment of loudness.

**Free Field:** An external sound field in which no significant sound reflections occur (apart from the ground).

**LA90,T:** The "A weighted" noise level exceeded for 90 per cent of the specified measurement period (T).


**LAeq,T:** The "A weighted" equivalent continuous sound level – the sound level of a notionally steady sound having the same energy as the actual fluctuating sound over the same time period (T).

**Lmax:** The highest noise level recorded during a noise event or measuring period. The time weighting should be stated.

ID 27-222-20140306 Last updated 06 03 2014

Return to Minerals (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/definitions-terms-used-in-the-minerals-guidance/>)

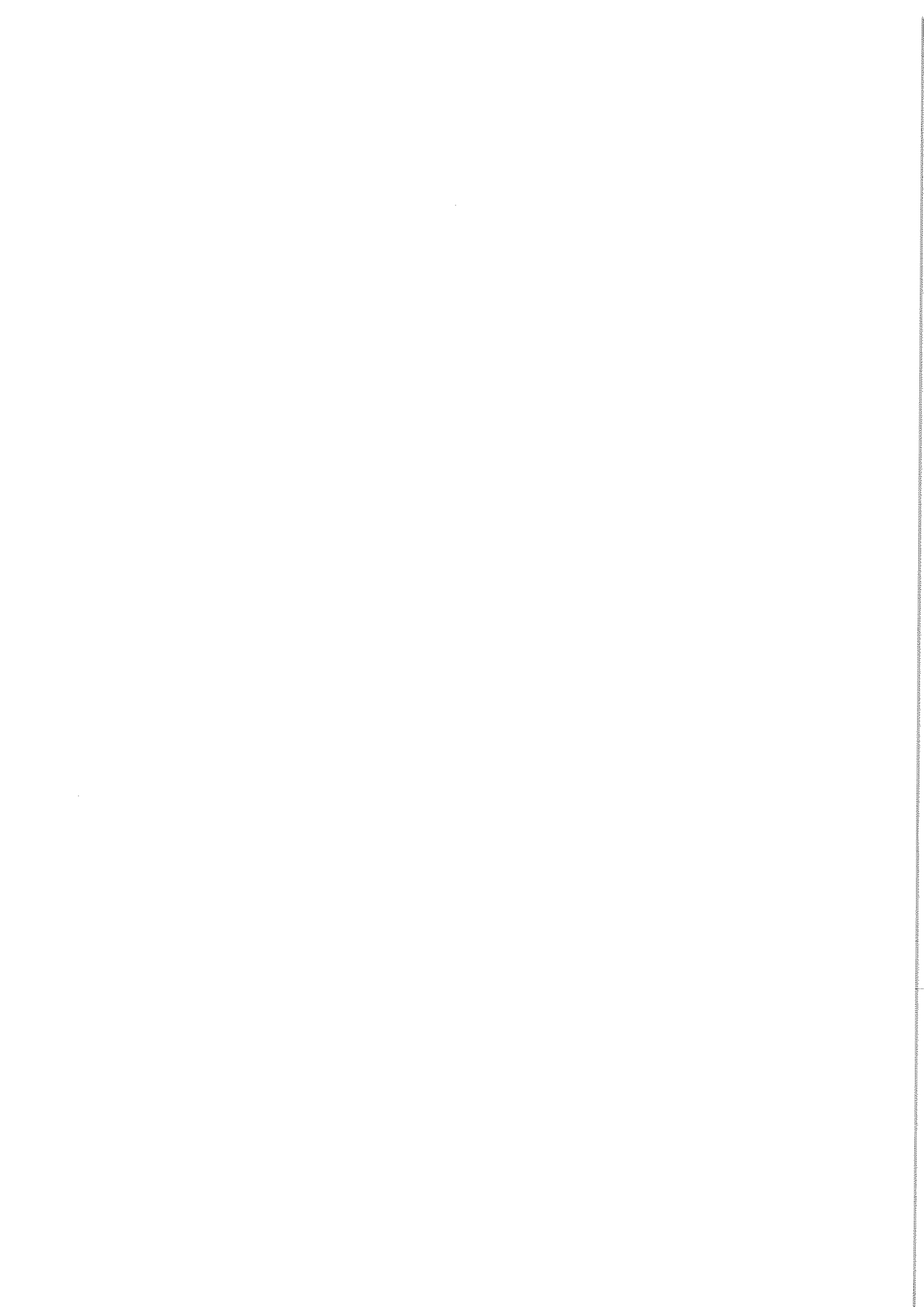
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 Department for Communities & Local Government  
(<https://www.gov.uk/government/organisations/department-for-communities-and-local-government>)

# Planning Practice Guidance

## Section Four (N-S):

- Natural Environment
- Neighbourhood Planning
- Noise
- Open space, sports and recreation facilities, public rights of way and local green space
- Planning obligations
- Renewable and low carbon energy
- Rural Housing
- Starter Homes
- Strategic environmental assessment and sustainability appraisal



# Planning Practice Guidance <http://planningguidance.communities.gov.uk>

Guidance

## Natural Environment


Print 

1. Landscape (<http://planningguidance.communities.gov.uk/blog/guidance/natural-environment/landscape/>)

### Landscape

#### How can the character of landscapes be assessed to inform plan-making and planning decisions?

One of the core principles in the National Planning Policy Framework is that planning should recognise the intrinsic character and beauty of the countryside. Local plans should include strategic policies for the conservation and enhancement of the natural environment, including landscape. This includes designated landscapes but also the wider countryside.

Where appropriate, landscape character assessments should be prepared to complement Natural England's National Character Area profiles. Landscape Character Assessment is a tool to help understand the character and local distinctiveness of the landscape and identify the features that give it a sense of place. It can help to inform, plan and manage change and may be undertaken at a scale appropriate to local and neighbourhood plan-making. Natural England provides guidance on undertaking these assessments 

(<http://www.naturalengland.org.uk/ourwork/landscape/englands/character/assessment/default.aspx>)



ID 8-001-20140306 Last updated 06 03 2014

### Related policy

#### National Planning Policy Framework

- Paragraph 17 ([http://planningguidance.com/sustainable-development/#paragraph\\_17](http://planningguidance.com/sustainable-development/#paragraph_17))
- Paragraphs 156-157 ([http://planningguidance.com/sustainable-development/plan-making/#paragraph\\_156](http://planningguidance.com/sustainable-development/plan-making/#paragraph_156))
- Paragraph 170 ([http://planningguidance.com/sustainable-development/plan-making/#paragraph\\_170](http://planningguidance.com/sustainable-development/plan-making/#paragraph_170))



#### How can I find out about National Parks, the Broads and Areas of Outstanding Natural Beauty?


Information about the National Parks and Broads and the Government's priorities for these protected landscapes is in the National Parks Circular, English National Parks and the Broads – UK Government Vision and Circular 2010  (<https://www.gov.uk/government/publications/english-national-parks-and-the-broads-uk-government-vision-and-circular-2010>). There is no equivalent circular on Areas of Outstanding Natural Beauty, but Natural England has published information on these areas 



(<http://www.naturalengland.org.uk/ourwork/conservation/designations/aonb/default.aspx>).

ID 8-002-20140306 Last updated 06 03 2014

#### How can I find out about the legal duties of local planning authorities in relation to National Parks and Areas of Outstanding Natural Beauty?

Section 11A(2) of the National Parks and Access to the Countryside Act 1949  (<http://www.legislation.gov.uk/ukpga/Geo6/12-13-14/97>), Section 17A of the Norfolk and Suffolk Broads Act 1988 

(<http://www.legislation.gov.uk/ukpga/1988/4/section/17A>) and Section 85 of the Countryside and Rights of Way Act 2000 

(<http://www.legislation.gov.uk/ukpga/2000/37/section/85>) require that 'in exercising or performing any functions in relation to, or so as to affect, land' in National Parks and Areas of Outstanding Natural Beauty, relevant authorities 'shall have regard' to their purposes. A list of the public bodies and persons covered under "relevant authorities" is found in Defra guidance on the 'have regard' duty  (<http://archive.defra.gov.uk/rural/documents/protected/npaonb-duties-guide.pdf>). Natural England has published good practice guidance on the 'have regard' duty  (<http://publications.naturalengland.org.uk/publication/30037>).

This duty is particularly important to the delivery of the statutory purposes of protected areas. The duty applies to all local planning authorities, not just national park authorities. The duty is relevant in considering development proposals that are situated outside National Park or Area of Outstanding Natural Beauty boundaries, but which might have an impact on the setting of, and implementation of, the statutory purposes of these protected areas.

ID 8-003-20140306 Last updated 06 03 2014

### **Does planning need to take account of management plans for National Parks and Areas of Outstanding Natural Beauty?**

Planning policies and decisions should be based on up-to-date information about the natural environment and other characteristics of the area. As part of this, local planning authorities and neighbourhood planning bodies should have regard to management plans for National Parks and Areas of Outstanding Natural Beauty, as these documents underpin partnership working and delivery of designation objectives. The management plans highlight the value and special qualities of these designations to society and show communities and partners how their activity contributes to protected landscape purposes.

National Parks and Areas of Outstanding Natural Beauty management plans do not form part of the statutory development plan, but may contribute to setting the strategic context for development by providing evidence and principles, which should be taken into account in the local planning authorities' Local Plans and any neighbourhood plans in these areas.

National Parks and Areas of Outstanding Natural Beauty management plans may also be material considerations in making decisions on individual planning applications, where they raise relevant issues.

ID 8-004-20140306 Last updated 06 03 2014

### **How is major development defined in National Parks and Areas of Outstanding Natural Beauty, for the purposes of the consideration of planning applications in these areas?**

Planning permission should be refused for major development in a National Park, the Broads or an Area of Outstanding Natural Beauty except in exceptional circumstances and where it can be demonstrated to be in the public interest. Whether a proposed development in these designated areas should be treated as a major development, to which the policy in paragraph 116 of the Framework applies, will be a matter for the relevant decision taker, taking into account the proposal in question and the local context. The Framework is clear that great weight should be given to conserving landscape and scenic beauty in these designated areas irrespective of whether the policy in paragraph 116 is applicable.

ID 8-005-20140306 Last updated 06 03 2014

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#### **Related policy**

##### **National Planning Policy Framework**

- Paragraph 165 ([http://planningguidance.com/sustainable-development/plan-making/#paragraph\\_165](http://planningguidance.com/sustainable-development/plan-making/#paragraph_165))

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#### **Related policy**

##### **National Planning Policy Framework**

- Paragraph 116 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph\\_116](http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph_116))



## What are Heritage Coasts and where can I find out about them?

Local planning authorities should maintain the character of the undeveloped coast, protecting and enhancing its distinctive landscapes, particularly in areas defined as Heritage Coast, and improve public access to and enjoyment of the coast. Heritage Coasts are stretches of our most beautiful, undeveloped coastline which are managed to conserve their natural beauty and, where appropriate, to improve accessibility for visitors. Most of the defined Heritage Coast is covered (on land) by either Area of Outstanding Natural Beauty or National Park designations. Natural England has published advice on Heritage Coasts [\[2\]](http://www.naturalengland.org.uk/ourwork/conservation/designations/heritagecoasts/default.aspx)

(<http://www.naturalengland.org.uk/ourwork/conservation/designations/heritagecoasts/default.aspx>). The Marine Management Organisation [\[2\]](http://www.marinemangement.org.uk/marineplanning/about/index.htm)

(<http://www.marinemangement.org.uk/marineplanning/about/index.htm>) produces guidance on marine planning which may also be relevant to protecting Heritage Coasts.

ID 8-006-20140306 Last updated 06 03 2014

2. Biodiversity and ecosystems (<http://planningguidance.communities.gov.uk/blog/guidance/natural-environment/biodiversity-ecosystems-and-green-infrastructure/>)

### Biodiversity and ecosystems

#### Is there a statutory basis for planning to seek to minimise impacts on biodiversity and provide net gains in biodiversity where possible?

Yes. Section 40 of the Natural Environment and Rural Communities Act 2006 [\[2\]](http://www.legislation.gov.uk/ukpga/2006/16/section/40) (<http://www.legislation.gov.uk/ukpga/2006/16/section/40>), which places a duty on all public authorities in England and Wales to have regard, in the exercise of their functions, to the purpose of conserving biodiversity. A key purpose of this duty is to embed consideration of biodiversity as an integral part of policy and decision making throughout the public sector, which should be seeking to make a significant contribution to the achievement of the commitments made by Government in its Biodiversity 2020 strategy [\[2\]](https://www.gov.uk/government/publications/biodiversity-2020-a-strategy-for-england-s-wildlife-and-ecosystem-services)

(<https://www.gov.uk/government/publications/biodiversity-2020-a-strategy-for-england-s-wildlife-and-ecosystem-services>).

Guidance on statutory obligations concerning designated sites and protected species is published separately because its application is wider than planning and links are provided to external guidance. Local planning authorities should take a pragmatic approach – the aim should be to fulfil statutory obligations in a way that minimises delays and burdens.

The National Planning Policy Framework is clear that pursuing sustainable development includes moving from a net loss of biodiversity to achieving net gains for nature, and that a core principle for planning is that it should contribute to conserving and enhancing the natural environment and reducing pollution.

ID 8-007-20140306 Last updated 06 03 2014

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### Related policy

#### National Planning Policy Framework

- Paragraph 114 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph\\_114](http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph_114))

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### Related policy

#### National Planning Policy Framework

- Paragraph 9 ([http://planningguidance.com/sustainable-development/#paragraph\\_9](http://planningguidance.com/sustainable-development/#paragraph_9))
- Paragraph 17 – 7th bullet ([http://planningguidance.com/sustainable-development/#paragraph\\_17](http://planningguidance.com/sustainable-development/#paragraph_17))
- Paragraph 109 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph\\_109](http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph_109))
- Paragraph 113 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph\\_113](http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph_113))
- Paragraph 114 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph\\_114](http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph_114))

- sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph\_114
- Paragraph 117 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph\\_117](http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph_117))
- Paragraph 118 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph\\_118](http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph_118))
- Paragraph 119 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph\\_119](http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph_119))
- Paragraph 157 – Last bullet ([http://planningguidance.com/sustainable-development/plan-making/#paragraph\\_157](http://planningguidance.com/sustainable-development/plan-making/#paragraph_157))

### **How should local planning authorities set about planning for biodiversity and geodiversity?**

Local and neighbourhood plans and planning decisions have the potential to affect biodiversity or geodiversity outside as well as inside designated areas of importance for biodiversity or geodiversity. Local planning authorities and neighbourhood planning bodies should therefore seek opportunities to work collaboratively with other partners, including Local Nature Partnerships  (<https://www.gov.uk/government/policies/protecting-biodiversity-and-ecosystems-at-home-and-abroad/supporting-pages/local-nature-partnerships>), to develop and deliver a strategic approach to protecting and improving the natural environment based on local priorities and evidence. Equally, they should consider the opportunities that individual development proposals may provide to enhance biodiversity and contribute to wildlife and habitat connectivity in the wider area.

In considering how development can affect biodiversity, and how biodiversity benefits could be delivered through the planning system, it is useful to consider:

- the policies and commitments in Biodiversity 2020 [\[2\]](https://www.gov.uk/government/publications/biodiversity-2020-a-strategy-for-england-s-wildlife-and-ecosystem-services) (<https://www.gov.uk/government/publications/biodiversity-2020-a-strategy-for-england-s-wildlife-and-ecosystem-services>);
- the contents of any existing biodiversity strategies covering the relevant local or neighbourhood plan area and any local biodiversity action plans;
- the potential effects of a development on the habitats or species on the Natural Environment and Rural Communities Act 2006 section 41 list (in Biodiversity 2020 [\[2\]](https://www.gov.uk/government/publications/biodiversity-2020-a-strategy-for-england-s-wildlife-and-ecosystem-services) (<https://www.gov.uk/government/publications/biodiversity-2020-a-strategy-for-england-s-wildlife-and-ecosystem-services>))
- whether an ecological survey ([http://planningguidance.communities.gov.uk/blog/guidance/natural-environment/biodiversity-ecosystems-and-green-infrastructure/#paragraph\\_018](http://planningguidance.communities.gov.uk/blog/guidance/natural-environment/biodiversity-ecosystems-and-green-infrastructure/#paragraph_018)) is appropriate;
- the factors listed in guidance on local ecological networks ([http://planningguidance.communities.gov.uk/blog/guidance/natural-environment/biodiversity-ecosystems-and-green-infrastructure/#paragraph\\_009](http://planningguidance.communities.gov.uk/blog/guidance/natural-environment/biodiversity-ecosystems-and-green-infrastructure/#paragraph_009)) that supports National Planning Policy Framework paragraph 117.

The statutory obligations in regard to international and national designated sites of importance for biodiversity must also be considered.

ID 8-008-20140306 Last updated 06 03 2014

### **What are local ecological networks and what evidence should be taken into account in identifying and mapping them?**

The components of an ecological network are explained at section 2.12 of the Natural Environment White Paper [\[2\]](http://www.official-documents.gov.uk/document/cm80/8082/8082.pdf) (<http://www.official-documents.gov.uk/document/cm80/8082/8082.pdf>).

Relevant evidence in identifying and mapping local ecological networks includes:

- the broad geological, geomorphological and bio-geographical character of the area, creating its main landscapes types;
- key natural systems and processes within the area, including fluvial and coastal;
- the location and extent of internationally, nationally and locally designated sites;
- the distribution of protected and priority habitats and species [\[2\]](http://www.naturalengland.org.uk/ourwork/planningdevelopment/spatialplanning/standingadvice/advice.aspx) (<http://www.naturalengland.org.uk/ourwork/planningdevelopment/spatialplanning/standingadvice/advice.aspx>);
- areas of irreplaceable natural habitat [\[2\]](http://www.naturalengland.org.uk/ourwork/conservation/biodiversity/englands/habitats.aspx) (<http://www.naturalengland.org.uk/ourwork/conservation/biodiversity/englands/habitats.aspx>), such as ancient woodland or limestone pavement, the significance of which may be derived from habitat age, uniqueness, species diversity and/or the impossibilities of re-creation;
- habitats where specific land management practices are required for their conservation;
- main landscape features which, due to their linear or continuous nature, are important for the migration, dispersal and genetic exchanges of plants and animals, including any potential for new habitat corridors to link any isolated sites that hold nature conservation value, and therefore improve species dispersal;

- areas with potential for habitat enhancement or restoration, including those necessary to help biodiversity adapt to climate change or which could assist with the habitats shifts and species migrations arising from climate change;
- an audit of green space within built areas and where new development is proposed;
- information on the biodiversity and geodiversity value of previously developed sites and the opportunities for incorporating this in developments; and
- areas of geological value which would benefit from enhancement and management.

Local Nature Partnerships can be a useful source of information for existing ecological networks.

ID 8-009-20140306 Last updated 06 03 2014

### **How can evidence on ecology be gathered and kept up to date?**

A Local Record Centre can be an effective mechanism for facilitating access to environmental information which may be held across many public and voluntary organisations. Such centres provide a one-stop information source, often serving a specific county or grouping of local authorities. Their main function is to collate, manage and disseminate biodiversity information but they may also hold other types of environmental data and can also advise on evidence gathering.

The local planning authority can provide contact details if it supports a Local Record Centre.

ID 8-010-20140306 Last updated 06 03 2014

### **What are the legal obligations on local planning authorities and developers regarding European sites designated under the Birds or Habitats Directives, protected species and Sites of Special Scientific Interest?**

Updated guidance on the law affecting European sites, protected species and Sites of Special Scientific Interest is being prepared by Defra [\[2\]](#) (<http://www.defra.gov.uk/habitats-review/>) and will replace the advice set out in Circular 06/05: Biodiversity and Geological Conservation [\[2\]](#) (<https://www.gov.uk/government/publications/biodiversity-and-geological-conservation-circular-06-2005>).

ID 8-011-20140612 Last updated 12 06 2014

### **Why are Local Sites important and how can I find out more about them?**

Local designated sites (which include 'Local Wildlife Sites' and 'Local Geological Sites') make an important contribution to ecological networks and are overseen by Local Sites systems. These systems vary considerably in terms of size (both the administrative area they cover and the number of sites selected) and cover contrasting landscapes in coastal, rural and urban situations. Local Sites systems encompass both biodiversity and geological conservation. Natural England [\[2\]](#)

(<http://www.naturalengland.org.uk/ourwork/conservation/designations/localsites/default.aspx>) has published advice on the development and management of systems to

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#### **Related policy**

##### **National Planning Policy Framework**

- Paragraph 118 – 119 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph\\_118](http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph_118))

identify locally designated sites. The advice proposes frameworks and standards for their operation as well as for the selection, protection and management of the sites themselves.

ID 8-012-20140306 Last updated 06 03 2014

## How are ecosystems services taken into account in planning?

The National Planning Policy Framework states that the planning system should recognise the wider benefits of ecosystem services. Information about ecosystems services is in Biodiversity 2020, A strategy for England's biodiversity and ecosystems services [\[2\]](https://www.gov.uk/government/publications/biodiversity-2020-a-strategy-for-england-s-wildlife-and-ecosystem-services)

(<https://www.gov.uk/government/publications/biodiversity-2020-a-strategy-for-england-s-wildlife-and-ecosystem-services>). An introductory guide to valuing ecosystems services has also been published by Defra along with a practice guide, which could, where appropriate, inform plan-making and decision-taking on planning applications. The National Pollinator Strategy: for bees and other pollinators in England [\[2\]](http://www.gov.uk/government/publications/national-pollinator-strategy-for-bees-and-other-pollinators-in-england) (<http://www.gov.uk/government/publications/national-pollinator-strategy-for-bees-and-other-pollinators-in-england>) is a ten year plan to protect pollinating insects which support our food production and the diversity of our environment.

ID 8-013-20160211 Last updated 11 02 2016

## What are Nature Improvement Areas?

Natural England [\[2\]](http://www.naturalengland.org.uk/ourwork/conservation/biodiversity/funding/nia/default.aspx)

(<http://www.naturalengland.org.uk/ourwork/conservation/biodiversity/funding/nia/default.aspx>) has published information about Nature Improvement Areas and progress in 12 pilot areas from which local planning authorities and other partners elsewhere can learn.

ID 8-014-20140306 Last updated 06 03 2014

## How should biodiversity be taken into account in preparing a planning application?

Information on biodiversity impacts and opportunities (<http://planningguidance.communities.gov.uk/blog/guidance/natural-environment/green-infrastructure/>) should inform all stages of , development (including, for instance, site selection and design including any pre-application consultation (<http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/>) as well as the application itself. An ecological survey will be necessary in advance of a planning application if the type and location of development are such that the impact on biodiversity may be significant and existing information is lacking or inadequate. Pre-application discussion can help scope whether this is the case and, if so, the survey work required.

Where an Environmental Impact Assessment

(<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/>) is not needed it might still be appropriate to undertake an ecological survey, for example, where protected species may be present. Separate guidance [\[2\]](http://www.defra.gov.uk/habitats-review/) (<http://www.defra.gov.uk/habitats-review/>) is to be published by Defra on statutory obligations in regard to protected species which will replace the advice set out in Circular 06/05: Biodiversity and Geological Conservation [\[2\]](https://www.gov.uk/government/publications/biodiversity-and-geological-conservation-circular-06-2005) (<https://www.gov.uk/government/publications/biodiversity-and-geological-conservation-circular-06-2005>).

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### Related policy

#### National Planning Policy Framework

- Paragraph 109 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph\\_109](http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph_109))

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### Related policy

#### National Planning Policy Framework

- Paragraph 118 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph\\_118](http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph_118))

Local planning authorities should only require ecological surveys where clearly justified, for example if they consider there is a reasonable likelihood of a protected species being present and affected by development. Assessments should be proportionate to the nature and scale of development proposed and the likely impact on biodiversity. Further guidance on information requirements is set out in making an application

(<http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/>).

Planning conditions (<http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/>), legal agreements

(<http://planningguidance.communities.gov.uk/blog/guidance/planning-obligations/>) or undertakings may be appropriate in order to provide for monitoring and/or biodiversity management plans where these are needed.

ID 8-016-20140612 Last updated 12 06 2014

## How can development not only protect but also enhance biodiversity?

Biodiversity maintenance and enhancements through the planning system have the potential to make a significant contribution to the achievement of Biodiversity 2020 targets [\[2\]](https://www.gov.uk/government/publications/biodiversity-2020-a-strategy-for-england-s-wildlife-and-ecosystem-services) (<https://www.gov.uk/government/publications/biodiversity-2020-a-strategy-for-england-s-wildlife-and-ecosystem-services>).

Biodiversity enhancement in and around development should be led by a local understanding of ecological networks, and should seek to include:

- habitat restoration, re-creation and expansion;
- improved links between existing sites;
- buffering of existing important sites;
- new biodiversity features within development; and
- securing management for long term enhancement.

ID 8-017-20140306 Last updated 06 03 2014

## What questions should be considered in applying policy to avoid, mitigate or compensate for significant harm to biodiversity?

The following questions are relevant when applying the 'mitigation hierarchy' at paragraph 118 of the National Planning Policy Framework:

### Information

- in cases where biodiversity may be affected, is any further information needed to meet statutory obligations as signposted in guidance [\[3\]](http://www.naturalengland.org.uk/information_for/local_authority_and_policy_makers/default.aspx) ([http://www.naturalengland.org.uk/information\\_for/local\\_authority\\_and\\_policy\\_makers/default.aspx](http://www.naturalengland.org.uk/information_for/local_authority_and_policy_makers/default.aspx)) published by Defra/Natural England
- where an Environmental Impact Assessment has been undertaken, what evidence on ecological effects has already been provided in the Environmental Report and is this sufficient without having to undertake more work?
- is the significance of the effects clear? And
- is relevant internal or external expertise available?

Avoidance – can significant harm to wildlife species and habitats be avoided for example through locating on an alternative site with less harmful impacts?

Mitigation – where significant harm cannot be wholly or partially avoided, can it be minimised by design or by the use of effective mitigation measures that can be secured by, for example, conditions or planning obligations?

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## Related policy

### National Planning Policy Framework

- Paragraph 118 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph\\_118](http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph_118))

**Compensation** – where, despite whatever mitigation would be effective, there would still be significant residual harm, as a last resort, can this be properly compensated for by measures to provide for an equivalent value of biodiversity?

Where a development cannot satisfy the requirements of the 'mitigation hierarchy', planning permission should be refused as per paragraph 118 of the National Planning Policy Framework.

ID 8-018-20140306 Last updated 06 03 2014

### **Where significant harm to biodiversity is unavoidable, how can mitigation or compensation measures be ensured?**

The usual means to ensure that mitigation or compensation measures are secured is through planning conditions

(<http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/>)

or planning obligations

(<http://planningguidance.communities.gov.uk/blog/guidance/planning-obligations/>),

depending on circumstances.

Where compensation is required a number of avenues have been available. The applicant might offer a scheme tailored to the specific context, or consider the potential for biodiversity offsetting with the local planning authority.

A biodiversity offsetting consultation led by Defra has recently closed and Defra are considering the consultation responses. Biodiversity offsets are measurable conservation outcomes resulting from actions designed to compensate for residual adverse biodiversity impacts arising from a development after mitigation measures have been taken. The goal of biodiversity offsets is to achieve no net loss and preferably a net gain of biodiversity.

Special compensation considerations apply in the case of sites protected by the European Habitats and Wild Birds Directives. If harm to such sites is to be allowed (because there are no alternatives and 'imperative reasons of overriding public interest' can be shown) the Directive requires that all necessary compensatory measures are taken to ensure the overall coherence of the network of European sites as a whole is protected.

ID 8-020-20140306 Last updated 06 03 2014

### **How can I find out whether an area is 'ancient woodland'?**

A starting point to establish whether an area is ancient woodland is to look at the relevant ancient woodland inventory. These inventories comprise county maps of sites (generally greater than two hectares) that are thought to have been continuously wooded since 1600 AD. The national inventory [\[2\]](http://www.gis.naturalengland.org.uk/pubs/gis/tech_aw.htm)

([http://www.gis.naturalengland.org.uk/pubs/gis/tech\\_aw.htm](http://www.gis.naturalengland.org.uk/pubs/gis/tech_aw.htm)) is published and updated by Natural England. Both Ancient Semi-Natural Woodland (ASNW) as well as Plantations on Ancient Woodland Sites (PAWS) are ancient woodland. Both types should be treated equally in terms of the protection afforded to ancient woodland in the National Planning Policy Framework. The Forestry Commission can also advise on all issues in relation to ancient woodlands.

ID 8-021-20140306 Last updated 06 03 2014

### **Should local planning authorities consult the Forestry Commission where development proposals affect ancient woodland?**

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#### **Related policy**

##### **National Planning Policy Framework**

- Paragraph 118 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph\\_11E](http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph_11E))

Local planning authorities are advised to consult the Forestry Commission [\(http://www.forestry.gov.uk/\)](http://www.forestry.gov.uk/) about development proposals that contain or are likely to affect Ancient Semi-Natural woodlands or Plantations on Ancient Woodlands Sites (PAWS) (as defined and recorded in Natural England's Ancient Woodland inventory  [\(http://www.gis.naturalengland.org.uk/pubs/gis/tech\\_aw.htm\)](http://www.gis.naturalengland.org.uk/pubs/gis/tech_aw.htm)), including proposals where any part of the development site is within 500 metres of an ancient semi-natural woodland or ancient replanted woodland, and where the development would involve erecting new buildings, or extending the footprint of existing buildings.

ID 8-022-20140306 Last updated 06 03 2014

### **How can I find out whether trees that could be affected by a development proposal are 'aged or veteran' trees?**

Guidance on the features and importance of veteran trees is provided by Natural England  [\(http://publications.naturalengland.org.uk/publication/75035\)](http://publications.naturalengland.org.uk/publication/75035). Local Records Centres and other organisations with an interest in trees may be able to advise on the location of known veteran trees.

ID 8-023-20140306 Last updated 06 03 2014

## **3. Green Infrastructure (<http://planningguidance.communities.gov.uk/blog/guidance/natural-environment/green-infrastructure/>)**

### **Green Infrastructure**

#### **What is green infrastructure?**

Green infrastructure is a network of multifunctional green space, urban and rural, which is capable of delivering a wide range of environmental and quality of life benefits for local communities.

Green infrastructure is not simply an alternative description for conventional open space  [\(http://planningguidance.planningportal.gov.uk/blog/guidance/open-space-sports-and-recreation-facilities-public-rights-of-way-and-local-green-space/\)](http://planningguidance.planningportal.gov.uk/blog/guidance/open-space-sports-and-recreation-facilities-public-rights-of-way-and-local-green-space/). As a network it includes parks, open spaces, playing fields, woodlands, but also street trees, allotments and private gardens. It can also include streams, canals and other water bodies and features such as green roofs and walls.

ID 8-027-2160211 Last updated 1 21 2160

#### **Why is green infrastructure important to delivering sustainable development?**

Green infrastructure is important to the delivery of high quality sustainable development, alongside other forms of infrastructure such as transport, energy, waste and water. Green infrastructure provides multiple benefits, notably ecosystem services, at a range of scales, derived from natural systems and processes, for the individual, for society, the economy and the environment. To ensure that these benefits are delivered, green infrastructure must be well planned, designed and maintained. Green infrastructure should, therefore, be a key consideration in both local plans and planning decisions where relevant.

ID 8-028-20160211 Last updated 11 02 2016

#### **What is a strategic approach to green infrastructure?**

To assist in planning positively for green infrastructure local planning authorities may wish to prepare an authority-wide green infrastructure framework or strategy. This should be evidence-based by, for example, including an



assessment of current green infrastructure provision that identifies gaps in the network and the components and opportunities for improvement. The assessment can inform the role of green infrastructure in local and neighbourhood plans, infrastructure delivery plans and Community Infrastructure Levy (CIL) [schedules](http://planningguidance.planningportal.gov.uk/blog/guidance/community-infrastructure-levy/spending-the-levy/).

Local Plans should identify the strategic location of existing and proposed green infrastructure networks. Where appropriate, supplementary planning documents [\[2\]](http://planningguidance.planningportal.gov.uk/blog/guidance/local-plans/adoption-monitoring-and-supplementary-planning-documents/) (http://planningguidance.planningportal.gov.uk/blog/guidance/local-plans/adoption-monitoring-and-supplementary-planning-documents/) can set out how the planning, design and management components of the green infrastructure strategy for the area will be delivered.

This strategic approach to green infrastructure may cross administrative boundaries. Therefore neighbouring authorities, working collaboratively with other stakeholders including Local Nature Partnerships (LNPs) and Local Enterprise Partnerships (LEPs), may wish to consider how wider strategies for their areas can help address cross-boundary issues and help meet the Duty to Cooperate [\[2\]](http://planningguidance.planningportal.gov.uk/blog/guidance/duty-to-cooperate/what-is-the-duty-to-cooperate-and-what-does-it-require/) (http://planningguidance.planningportal.gov.uk/blog/guidance/duty-to-cooperate/what-is-the-duty-to-cooperate-and-what-does-it-require/).

ID 8-029-20160211 Last updated 11 02 2016

## How can green infrastructure help to deliver wider planning policy?

Green infrastructure can help to deliver a variety of planning policies including:

### Building a strong, competitive economy

Green infrastructure can drive economic growth and regeneration, helping to create high quality environments which are attractive to businesses and investors.

### Delivering a wide choice of high quality homes

Green infrastructure can help deliver quality of life and provide opportunities for recreation, social interaction and play in new and existing neighbourhoods [\[2\]](http://planningguidance.planningportal.gov.uk/blog/guidance/open-space-sports-and-recreation-facilities-public-rights-of-way-and-local-green-space/) (http://planningguidance.planningportal.gov.uk/blog/guidance/open-space-sports-and-recreation-facilities-public-rights-of-way-and-local-green-space/). More broadly, green infrastructure exists within a wider landscape context and can reinforce and enhance local landscape character, contributing to a sense of place. Green infrastructure is also an important approach to delivering ecosystem services and ecological networks.

### Requiring good design

Well-designed [\[2\]](http://planningguidance.planningportal.gov.uk/blog/guidance/design/) (http://planningguidance.planningportal.gov.uk/blog/guidance/design/) green infrastructure helps create a sense of place by responding to, and enhancing, local landscape character. Green infrastructure can also help create safe and accessible environments in new development and the regeneration of brownfield sites in existing built up areas.

### Promoting healthy communities

Green infrastructure can improve public health and community wellbeing [\[2\]](http://planningguidance.planningportal.gov.uk/blog/guidance/health-and-wellbeing/) (http://planningguidance.planningportal.gov.uk/blog/guidance/health-and-wellbeing/) by improving environmental quality, providing opportunities for recreation and exercise and delivering mental and physical health benefits. Green infrastructure also helps reduce air pollution, noise and the impacts of extreme heat and extreme rainfall events.

### Meeting the challenge of climate change, flooding and coastal change

Green infrastructure can help urban, rural and coastal communities mitigate the risks associated with climate change [\[2\]](http://planningguidance.planningportal.gov.uk/blog/guidance/climate-change/) (http://planningguidance.planningportal.gov.uk/blog/guidance/climate-change/) and adapt to its impacts by storing carbon; improving drainage (including the use of sustainable drainage systems) and managing flooding and water resources; improving water quality; reducing the urban heat-island effect and; where

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## Related policy

National Planning Policy Framework

- Paragraph 18 (http://planningguidance.com/sustainable-development/delivering-sustainable-development/#paragraph\_18)
- Paragraph 47 (http://planningguidance.com/sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#paragraph\_47)
- Paragraph 56 (http://planningguidance.com/sustainable-development/delivering-sustainable-development/7-requiring-good-design/#paragraph\_56)
- Paragraph 69 (http://planningguidance.com/sustainable-development/delivering-sustainable-development/8-promoting-healthy-communities/#paragraph\_69)
- Paragraph 93 (http://planningguidance.com/sustainable-development/delivering-sustainable-

appropriate, supporting adaptive management in coastal areas. Green infrastructure networks also help species adapt to climate change by providing opportunities for movement.

#### Conserving and enhancing the natural environment

The components of green infrastructure exist within the wider landscape context and should enhance local landscape character and contribute to place-making. High quality networks of multifunctional green infrastructure provide a range of ecosystem services and can make a significant contribution to halting the decline in biodiversity [\[2\]](#)

(<http://planningguidance.planningportal.gov.uk/blog/guidance/natural-environment>).

ID 8-030-20160211 Last updated 11 02 2016

development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph\_93)

- Paragraph 109 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph\\_10!](http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph_10)

### **How should green infrastructure be planned for in the long term?**

As with other forms of infrastructure, green infrastructure requires sustainable management and maintenance arrangements to be in place if it is to provide benefits and services in the long term. Arrangements for managing green infrastructure, and for funding its management over the long-term, should be identified as early as possible when planning green infrastructure and factored into the way that it is designed and implemented.

ID 8-031-20160211 Last updated 11 02 2016

### **How should green infrastructure be considered in planning decisions?**

Where appropriate, planning proposals should incorporate green infrastructure in line with local and neighbourhood plan policies and site specific considerations. As a component of sustainable development, green infrastructure should be considered at an early stage of a planning proposal. Depending on individual circumstances, planning obligations, conditions or the Community Infrastructure Levy [\[2\]](#) (<http://planningguidance.planningportal.gov.uk/blog/guidance/community-infrastructure-levy/spending-the-levy/>) may all be potential mechanisms for securing and funding green infrastructure.

ID 8-032-2160211 Last updated 1 21 2160

## **4. Brownfield land, soils and agricultural land**

(<http://planningguidance.communities.gov.uk/blog/guidance/natural-environment/brownfield-land-soils-and-agricultural-land/>)

### **Brownfield land, soils and agricultural land**

#### **Can brownfield land have a high ecological value?**

It can do. A core principle in the National Planning Policy Framework is to encourage the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high environmental value. This means that planning needs to take account of issues such as the biodiversity value which may be present on a brownfield site before decisions are taken.

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#### **Related policy**

##### **National Planning Policy Framework**

- Paragraph 111 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-](http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-development/11-)

Defra has published information on Open Mosaic Habitats [\[2\]](http://jncc.defra.gov.uk/PDF/UKBAP_PriorityHabitatDesc-Rev2011.pdf) ([http://jncc.defra.gov.uk/PDF/UKBAP\\_PriorityHabitatDesc-Rev2011.pdf](http://jncc.defra.gov.uk/PDF/UKBAP_PriorityHabitatDesc-Rev2011.pdf)), a specific type of habitat that is of high ecological value and which occurs on brownfield land. Where insufficient information is available, survey work may be appropriate to assess ecological value before decisions on development are taken.

In addition, planning may need to take account of contamination. (<http://planningguidance.communities.gov.uk/blog/guidance/land-affected-by-contamination/>)

ID 8-024-20140306 Last updated 06 03 2014

- conserving-and-enhancing-the-natural-environment/#paragraph\_111
- Paragraph 120 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph\\_120](http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph_120))

## Should planning take account of soil?

The National Planning Policy Framework states that the planning system should protect and enhance valued soils and prevent the adverse effects of unacceptable levels of pollution

([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph\\_109](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph_109)). This is because soil is an essential finite resource that provides important 'ecosystem services' (<http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/annex-2-glossary/>), for example as a growing medium for food, timber and other crops, as a store for carbon and water, as a reservoir of biodiversity and as a buffer against pollution.

As part of the Government's 'Safeguarding our Soils' strategy, Defra has published a code of practice [\[3\]](https://www.gov.uk/government/publications/code-of-practice-for-the-sustainable-use-of-soils-on-construction-sites) (<https://www.gov.uk/government/publications/code-of-practice-for-the-sustainable-use-of-soils-on-construction-sites>) on the sustainable use of soils on construction sites, which may be helpful in development design and setting planning conditions.

ID 8-025-20140306 Last updated 06 03 2014

## How can planning take account of the quality of agricultural land?

The National Planning Policy Framework expects local planning authorities to take into account the economic and other benefits of the best and most versatile agricultural land. This is particularly important in plan making when decisions are made on which land should be allocated for development. Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality. The Agricultural Land Classification [\[4\]](http://archive.defra.gov.uk/foodfarm/landmanage/land-use/documents/alc-guidelines-1988.pdf) (<http://archive.defra.gov.uk/foodfarm/landmanage/land-use/documents/alc-guidelines-1988.pdf>) provides a method for assessing the quality of farmland to enable informed choices to be made about its future use within the planning system.

Natural England provides further information on Agricultural Land Classification [\[5\]](http://publications.naturalengland.org.uk/publication/35012) (<http://publications.naturalengland.org.uk/publication/35012>). The Agricultural Land Classification system classifies land into five grades, with Grade 3 subdivided into Sub-grades 3a and 3b. The best and most versatile land is defined as Grades 1, 2 and 3a and is the land which is most flexible, productive and efficient in response to inputs and which can best deliver food and non food crops for future generations. Natural England has a statutory role in advising local planning authorities about land quality issues.

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### Related policy


#### National Planning Policy Framework

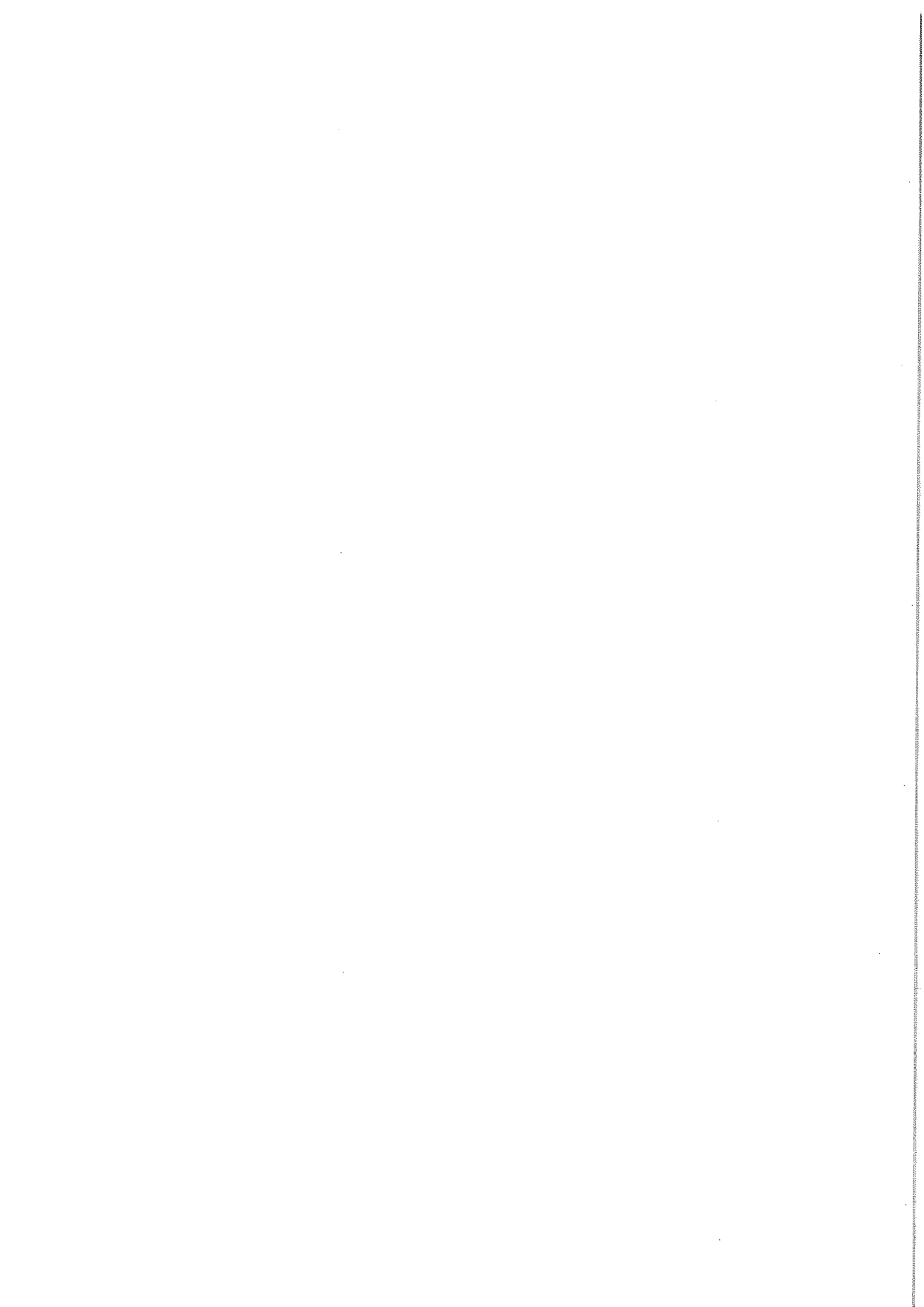
- Paragraph 112 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph\\_109](http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph_109))

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 Department for Communities & Local Government  
(<https://www.gov.uk/government/organisations/department-for-communities-and-local-government>)



# Planning Practice Guidance [\(http://planningguidance.communities.gov.uk\)](http://planningguidance.communities.gov.uk)

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Guidance

## Neighbourhood Planning

Print 

### 1. What is neighbourhood planning?

[\(http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/what-is-neighbourhood-planning/\)](http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/what-is-neighbourhood-planning/)

#### What is neighbourhood planning?

#### What is neighbourhood planning?

Neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and shape the development and growth of their local area. They are able to choose where they want new homes, shops and offices to be built, have their say on what those new buildings should look like and what infrastructure should be provided, and grant planning permission for the new buildings they want to see go ahead. Neighbourhood planning provides a powerful set of tools for local people to ensure that they get the right types of development for their community where the ambition of the neighbourhood is aligned with the strategic needs and priorities of the wider local area.

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#### What can communities use neighbourhood planning for?

Local communities can choose to:

- set planning policies through a neighbourhood plan that is used in determining planning applications. For further details in this guidance click here (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/what-is-neighbourhood-planning/what-is-a-neighbourhood-plan-and-what-is-its-relationship-to-a-local-plan/>).
- grant planning permission through Neighbourhood Development Orders and Community Right to Build Orders for specific development which complies with the order. For further details in this guidance click here (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/what-is-neighbourhood-planning/what-is-a-neighbourhood-development-order/>).

Neighbourhood planning is not a legal requirement but a right which communities in England can choose to use. Communities may decide that they could achieve the outcomes they want to see through other planning routes, such as incorporating their proposals for the neighbourhood into the Local Plan (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>), or through other planning mechanisms such as Local Development Orders ([http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-types-of-area-wide-local-planning-permission-are-there/#paragraph\\_076](http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-types-of-area-wide-local-planning-permission-are-there/#paragraph_076)) and supplementary planning documents ([http://planningguidance.communities.gov.uk/blog/guidance/local-plans/adoption-monitoring-and-supplementary-planning-documents/#paragraph\\_027](http://planningguidance.communities.gov.uk/blog/guidance/local-plans/adoption-monitoring-and-supplementary-planning-documents/#paragraph_027)) or through pre-application consultation on development proposals. Communities and local planning authorities should discuss the different choices communities have to achieving their ambitions for their neighbourhood.

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## What are the benefits to a community of developing a neighbourhood plan or Order?

Neighbourhood planning enables communities to play a much stronger role in shaping the areas in which they live and work and in supporting new development proposals. This is because unlike the parish, village or town plans that communities may have prepared, a neighbourhood plan forms part of the development plan and sits alongside the Local Plan (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>) prepared by the local planning authority. Decisions on planning applications will be made using both the Local Plan and the neighbourhood plan, and any other material considerations.

Neighbourhood planning provides the opportunity for communities to set out a positive vision for how they want their community to develop over the next ten, fifteen, twenty years in ways that meet identified local need and make sense for local people. They can put in place planning policies that will help deliver that vision or grant planning permission for the development they want to see.

To help deliver their vision communities that take a proactive approach by drawing up a neighbourhood plan or Order and secure the consent of local people in a referendum, will benefit from 25 percent of the revenues from the Community Infrastructure Levy arising from the development that takes place in their area.

Communities without a parish or town council will still benefit from this incentive. If there is no Parish or Town Council the charging authority will retain the Levy receipts but should engage with the communities where development has taken place and agree with them how best to spend the neighbourhood funding. Charging authorities should set out clearly and transparently their approach to engaging with neighbourhoods using their regular communication tools e.g. website, newsletters, etc. The use of neighbourhood funds should therefore match priorities expressed by local communities, including priorities set out formally in neighbourhood plans.

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- What is a neighbourhood plan and what is its relationship to a Local Plan?

(<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/what-is-neighbourhood-planning/what-is-a-neighbourhood-plan-and-what-is-its-relationship-to-a-local-plan/>)

## What is a neighbourhood plan and what is its relationship to a Local Plan?

### What should a Neighbourhood Plan address?

A neighbourhood plan should support the strategic development needs set out in the Local Plan (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/preparing-a-local-plan/>) and plan positively to support local development (as outlined in paragraph 16 of the National Planning Policy Framework ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/#paragraph\\_16](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/#paragraph_16))).

A neighbourhood plan must address the development and use of land. This is because if successful at examination and referendum the neighbourhood plan will become part of the statutory development plan once it has been made (brought into legal force) by the planning authority. Applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise (see section 38(6) of the Planning and Compulsory Purchase Act 2004 [\[2\]](http://www.legislation.gov.uk/ukpga/2004/5/section/38) (<http://www.legislation.gov.uk/ukpga/2004/5/section/38>)).

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### Related policy

#### National Planning Policy Framework

- Paragraph 16 ([http://planningguidance.com/sustainable-development/#paragraph\\_16](http://planningguidance.com/sustainable-development/#paragraph_16))



Neighbourhood planning can inspire local people and businesses to consider other ways to improve their neighbourhood than through the development and use of land. They may identify specific action or policies to deliver these improvements. Wider community aspirations than those relating to development and use of land can be included in a neighbourhood plan, but actions dealing with non land use matters should be clearly identifiable. For example, set out in a companion document or annex.

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### **Must a community ensure its neighbourhood plan is deliverable?**

If the policies and proposals are to be implemented as the community intended a neighbourhood plan needs to be deliverable. The National Planning Policy Framework requires that the sites and the scale of development identified in a plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably (<http://planningguidance.communities.gov.uk/blog/guidance/viability-guidance/>) is threatened.

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### **Does a neighbourhood plan have the same legal status as the Local Plan?**

A neighbourhood plan attains the same legal status as the Local Plan (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>) once it has been agreed at a referendum and is made (brought into legal force) by the local planning authority. At this point it becomes part of the statutory development plan. Applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise (see section 38(6) of the Planning and Compulsory Purchase Act 2004 [ⓧ](http://www.legislation.gov.uk/ukpga/2004/5/section/38) (<http://www.legislation.gov.uk/ukpga/2004/5/section/38>)).

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### **What weight can be attached to an emerging neighbourhood plan when determining planning applications?**

Planning applications are decided in accordance with the development plan, unless material considerations indicate otherwise. An emerging neighbourhood plan may be a material consideration. Paragraph 216 of the National Planning Policy Framework ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/annex-1-implementation/#paragraph\\_216](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/annex-1-implementation/#paragraph_216)) sets out the weight that may be given to relevant policies in emerging plans in decision taking. Factors to consider include the stage of preparation of the plan and the extent to which there are unresolved objections to relevant policies. Whilst a referendum ensures that the community has the final say on whether the neighbourhood plan comes into force, decision makers should respect evidence of local support prior to the referendum when seeking to apply weight to an emerging neighbourhood plan. The consultation statement submitted with the draft neighbourhood plan should reveal the quality and effectiveness of the consultation that has informed the plan proposals. And all representations on the proposals should have been submitted to the local planning authority by the close of the local planning authority's publicity period ([http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/submitting-a-neighbourhood-plan-or-order-to-a-local-planning-authority/#paragraph\\_054](http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/submitting-a-neighbourhood-plan-or-order-to-a-local-planning-authority/#paragraph_054)). It is for the decision maker in each case to determine what is a material consideration and what weight to give to it.

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#### **Related policy**

##### **National Planning Policy Framework**

- Paragraph 216 (<http://planningguidance.com/sustainable-development/annex-1-implementation/#paragraph>)

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### **How should planning applications be decided where there is an emerging neighbourhood plan but the local planning authority cannot demonstrate a five-year supply of deliverable housing sites?**

Where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites, decision makers may still give weight to relevant policies in the emerging neighbourhood plan, even though these policies should not be considered up-to-date.

Paragraph 216 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/annex-1-implementation/#paragraph\\_216](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/annex-1-implementation/#paragraph_216)) of the National Planning Policy Framework sets out the weight that may be given to relevant policies in emerging plans in decision taking.

Further assistance to decision makers in these circumstances can be found in guidance on the relationship between a neighbourhood plan and a local plan ([http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/what-is-neighbourhood-planning/what-is-a-neighbourhood-plan-and-what-is-its-relationship-to-a-local-plan/#paragraph\\_007](http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/what-is-neighbourhood-planning/what-is-a-neighbourhood-plan-and-what-is-its-relationship-to-a-local-plan/#paragraph_007)).

Documentation produced in support of or in response to emerging neighbourhood plans, such as basic conditions statements, consultation statements, representations made during the pre-examination publicity period and independent examiners' reports, may also be of assistance to decision makers in their deliberations.

Planning Practice Guidance also addresses the question of prematurity in relation to neighbourhood plans

([http://planningguidance.communities.gov.uk/blog/guidance/determining-a-planning-application/how-must-decisions-on-applications-for-planning-permission-be-made/#paragraph\\_014](http://planningguidance.communities.gov.uk/blog/guidance/determining-a-planning-application/how-must-decisions-on-applications-for-planning-permission-be-made/#paragraph_014)).

ID 41-082-20160211 Last updated 11 02 2016

### **How should planning applications be decided where there is a made neighbourhood plan but the local planning authority cannot demonstrate a five-year supply of deliverable housing sites?**

Neighbourhood plans are an important part of the plan-led system. The Government's policy intention when introducing neighbourhood planning was to provide a powerful set of tools for local people to ensure they get the right types of development for their community, while also planning positively to support strategic development needs.

Decision makers may find themselves considering applications in an area with a neighbourhood plan that has passed referendum and been "made", and thus forms part of the development plan, but where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.

In such instances paragraph 49 of the Framework is clear that "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." Paragraph 49 applies to policies in the statutory development plan documents which have been adopted or approved in relation to a local planning authority area. It also applies to policies in made neighbourhood plans.

Where the development plan is absent, silent or the relevant policies are out of date, paragraph 14 of the Framework states that the presumption in favour of sustainable development requires the granting of planning permission, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or specific policies in the Framework indicate development should be restricted.

In this situation, when assessing the adverse impacts of the proposal against the policies in the Framework as a whole, decision makers should include within their assessment those policies in the Framework that deal with neighbourhood planning.

This includes paragraphs 183–185

([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph\\_183](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph_183)) of the Framework; and paragraph 198 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/decision-taking/#paragraph\\_198](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/decision-taking/#paragraph_198)) which states that where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted.

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### **In what circumstances might it be justifiable to refuse planning permission before a neighbourhood plan is made (brought into force) on the grounds of prematurity?**

Guidance on the relevance of prematurity to a decision on a planning application can be found here

([http://planningguidance.communities.gov.uk/blog/guidance/determining-a-planning-application/how-must-decisions-on-applications-for-planning-permission-be-made/#paragraph\\_014](http://planningguidance.communities.gov.uk/blog/guidance/determining-a-planning-application/how-must-decisions-on-applications-for-planning-permission-be-made/#paragraph_014)).

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### **Can a Neighbourhood Plan come forward before an up-to-date Local Plan is in place?**

Neighbourhood plans, when brought into force, become part of the development plan for the neighbourhood area. They can be developed before or at the same time as the local planning authority is producing its Local Plan (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>).

A draft neighbourhood plan or Order must be in general conformity with the strategic policies of the development plan in force if it is to meet the basic condition (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/the-basic-conditions-that-a-draft-neighbourhood-plan-or-order-must-meet-if-it-is-to-proceed-to-referendum/>). Although a draft Neighbourhood Plan or Order is not tested against the policies in an emerging Local Plan the reasoning and evidence informing the Local Plan process is likely to be relevant to the consideration of the basic conditions against which a neighbourhood plan is tested. For example, up-to-date housing needs evidence ([http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/preparing-a-neighbourhood-plan-or-order/#paragraph\\_040](http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/preparing-a-neighbourhood-plan-or-order/#paragraph_040)) is relevant to the question of whether a housing supply policy in a neighbourhood plan or Order contributes to the achievement of sustainable development.

Where a neighbourhood plan is brought forward before an up-to-date Local Plan is in place the qualifying body and the local planning authority should discuss and aim to agree the relationship between policies in:

- the emerging neighbourhood plan

- the emerging Local Plan
- the adopted development plan

with appropriate regard to national policy and guidance.

The local planning authority should take a proactive and positive approach, working collaboratively with a qualifying body particularly sharing evidence and seeking to resolve any issues to ensure the draft neighbourhood plan has the greatest chance of success at independent examination.

The local planning authority should work with the qualifying body to produce complementary neighbourhood and Local Plans. It is important to minimise any conflicts between policies in the neighbourhood plan and those in the emerging Local Plan, including housing supply policies. This is because section 38(5) of the Planning and Compulsory Purchase Act 2004 [\[2\]](http://www.legislation.gov.uk/ukpga/2004/5/section/38)

(<http://www.legislation.gov.uk/ukpga/2004/5/section/38>) requires that the conflict must be resolved by the decision maker favouring the policy which is contained in the last document to become part of the development plan. Neighbourhood plans should consider providing indicative delivery timetables, and allocating reserve sites to ensure that emerging evidence of housing need is addressed. This can help minimise potential conflicts and ensure that policies in the neighbourhood plan are not overridden by a new Local Plan.

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- **What is a Neighbourhood Development Order?**

(<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/what-is-neighbourhood-planning/what-is-a-neighbourhood-development-order/>)

## **What is a Neighbourhood Development Order?**

### **What type of permission can be granted by a Neighbourhood Development Order?**

A Neighbourhood Development Order can grant planning permission for specific types of development in a specific neighbourhood area. A Neighbourhood Development Order can therefore:

- apply to a specific site, sites, or wider geographical area
- grant planning permission for a certain type or types of development (<http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/>)
- grant planning permission outright or subject to conditions (<http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/>).

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### **What type of development can be granted planning permission by a Neighbourhood Development Order?**

A Neighbourhood Development Order can be used to permit:

- building operations (e.g. structural alterations, construction, demolition or other works carried out by a builder)
- material changes of use of land and buildings; and/or
- engineering operations

Further information and a definition of development can be found here (<http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/>).

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## What is a Community Right to Build Order and what can it do?

A Community Right to Build Order is a form of Neighbourhood Development Order that can be used to grant planning permission for small scale development for community benefit on a specific site or sites in a neighbourhood area.

A Community Right to Build Order can be used for example to approve the building of homes, shops, businesses, affordable housing for rent or sale, community facilities or playgrounds. Where the community organisation wishes to develop the land itself (subject to acquiring the land if appropriate), then the resulting assets can only be disposed of, improved or developed in a manner which the organisation considers benefits the local community or a section of it.

The legislation also provides a mechanism that enables housing developed using a Community Right to Build Order to be retained as housing that is affordable in perpetuity. This is achieved by disappling certain statutory rights of tenants of long leases to buy their freehold and the statutory right given to qualifying tenants to acquire social housing (see paragraphs 11 and 12 of Schedule 4C to the Town and Country Planning Act 1990 (as amended) [\[2\]](http://www.legislation.gov.uk/ukpga/2011/20/schedule/11/enacted) (<http://www.legislation.gov.uk/ukpga/2011/20/schedule/11/enacted>) and Part 7 of the Neighbourhood Planning (General) Regulations 2012 [\[2\]](http://www.legislation.gov.uk/uksi/2012/637/part/7/made) (<http://www.legislation.gov.uk/uksi/2012/637/part/7/made>) (as amended [\[2\]](http://www.legislation.gov.uk/uksi/2013/235/made) (<http://www.legislation.gov.uk/uksi/2013/235/made>)).

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## Is there development that cannot be granted planning permission by a Neighbourhood Development Order or a Community Right to Build Order?

An Order must meet the basic conditions

(<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/the-basic-conditions-that-a-draft-neighbourhood-plan-or-order-must-meet-if-it-is-to-proceed-to-referendum/>) for neighbourhood planning and it cannot include development defined in section 61K of the Town and Country Planning Act 1990 (as amended) [\[2\]](http://www.legislation.gov.uk/ukpga/2011/20/schedule/9/enacted) (<http://www.legislation.gov.uk/ukpga/2011/20/schedule/9/enacted>). This includes;

- development normally dealt with by a county planning authority, for example minerals and waste related development
- development described in Schedule 1 to the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (as amended) [\[2\]](http://www.legislation.gov.uk/uksi/2011/1824/schedule/1/made) (<http://www.legislation.gov.uk/uksi/2011/1824/schedule/1/made>) which automatically requires an Environmental Impact Assessment (and in the case of a Community Right to Build Order any Environmental Impact Assessment development)
- development of nationally significant infrastructure projects (which are defined in the Planning Act 2008 [\[2\]](http://www.legislation.gov.uk/ukpga/2008/29/contents) (<http://www.legislation.gov.uk/ukpga/2008/29/contents>))

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## 2. Who leads neighbourhood planning in an area?

(<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/who-leads-neighbourhood-planning-in-an-area/>)

### Who leads neighbourhood planning in an area?

### Who leads neighbourhood planning in an area?

Where a community wants to take up the opportunities offered by neighbourhood planning, the legislation enables three types of organisation, known as qualifying bodies, to lead it:

- a parish or town council
- a neighbourhood forum
- a community organisation

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## **What is the role of a parish or town council in neighbourhood planning?**

In a designated neighbourhood area which contains all or part of the administrative area of a town or parish council, the town or parish council is responsible for neighbourhood planning.

Where a parish or town council chooses to produce a neighbourhood plan or Order it should work with other members of the community who are interested in, or affected by, the neighbourhood planning proposals to allow them to play an active role in preparing a neighbourhood plan or Order.

The relationship between any group and the formal functions of the town or parish council should be transparent to the wider public. A parish or town council may choose to establish an advisory committee or sub-committee under section 102(4) of the Local Government Act 1972 [\[2\]](http://www.legislation.gov.uk/ukpga/1972/70/section/102)

(<http://www.legislation.gov.uk/ukpga/1972/70/section/102>) and appoint local people (who need not be parish councillors) to those bodies. Members of such committees or sub-committees would have voting rights under section 13(3), (4) (e) or (4)(h) of the Local Government and Housing Act 1989 [\[2\]](http://www.legislation.gov.uk/ukpga/1989/42/section/13) (<http://www.legislation.gov.uk/ukpga/1989/42/section/13>). The terms of reference for a steering group or other body should be published and the minutes of meetings made available to the public.

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## **What is a designated neighbourhood forum?**

A designated neighbourhood forum is an organisation or group empowered to lead the neighbourhood planning process in a neighbourhood area where there is no town or parish council.

A group or organisation must apply to the local planning authority to be designated as a neighbourhood forum (a forum application). Those making a forum application must show how they have sought to comply with the conditions for neighbourhood forum designation. These are set out in section 61F(5) of the Town and Country Planning Act 1990 as applied to Neighbourhood plans by section 38A of the Planning and Compulsory Purchase Act 2004 [\[2\]](http://www.legislation.gov.uk/ukpga/2011/20/schedule/9/enacted) (<http://www.legislation.gov.uk/ukpga/2011/20/schedule/9/enacted>).

To be designated a neighbourhood forum must have a membership that includes a minimum of 21 individuals who either:

- live in the neighbourhood area
- work there; and/or
- are elected members for a local authority that includes all or part of the neighbourhood area

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### **What if a prospective neighbourhood forum does not have a member from each category, can it still be designated?**

A prospective neighbourhood forum is not required to have a member from each membership category in order to be designated. A neighbourhood forum must have an open membership policy, but it cannot force people to be a part of something they may not wish to be a part of. The local planning authority must consider whether the prospective neighbourhood forum has secured or taken reasonable steps to attempt to secure membership from each category and from different places and sections of the community in that area (see section 61F(7)(a)(i) and (ii) of the of the Town and Country Planning Act 1990 as applied to Neighbourhood plans by section 38A of the Planning and Compulsory Purchase Act 2004 [\[2\]](#)

(<http://www.legislation.gov.uk/ukpga/2011/20/schedule/9/enacted>)).

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### **Can businesses be part of a neighbourhood forum?**

Membership of a designated neighbourhood forum must be open to those working in a neighbourhood area as they will have an interest in the future of an area and the direction that its growth should take.

Individuals in businesses can take the lead in neighbourhood planning. They may wish to consider doing so particularly in areas that are wholly or predominantly business in nature. They should work closely with residents and others. They can ask their local planning authority to consider designating a neighbourhood area as a business area (see section 61H of the of the Town and Country Planning Act 1990 [\[2\]](#) (<http://www.legislation.gov.uk/ukpga/2011/20/schedule/9/enacted>)).

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### **Can any community organisation develop a Community Right to Build Order in an area?**

Any community organisation can develop a Community Right to Build Order in an area provided they meet the conditions set out in paragraph 3 of Schedule 4C to the Town and Country Planning Act 1990 (as amended) [\[2\]](#)

(<http://www.legislation.gov.uk/ukpga/2011/20/schedule/11/enacted>) and in regulation 13 of the Neighbourhood Planning (General) Regulations 2012 [\[2\]](#)

(<http://www.legislation.gov.uk/uksi/2012/637/regulation/13/made>) (as amended) [\[2\]](#)

(<http://www.legislation.gov.uk/uksi/2013/235/made>)). This means the community

organisation must be a body corporate and meet minimum membership requirements. Its constitution must allow people who live or work in the neighbourhood area to become voting members. Those who live in the area must have the majority of voting rights. The constitution must also ensure that the community organisation's assets can only be disposed of, improved, or developed for the benefit of the community.

A community organisation does not need to be designated by the local planning authority in order for it to develop a Community Right to Build Order in a designated neighbourhood area. The local planning authority must however consider whether the organisation meets the legal requirements to be a community organisation when a Community Right to Build Order proposal is submitted to it.

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### **Can a community organisation that meets the conditions also produce a neighbourhood plan or a Neighbourhood Development Order?**

Community organisations can only produce a Community Right to Build Order, they cannot produce a neighbourhood plan unless they are also a designated neighbourhood forum.

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### 3. The role of the local planning authority in neighbourhood planning

(<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/the-role-of-the-local-planning-authority-in-neighbourhood-planning/>)

#### **The role of the local planning authority in neighbourhood planning**

##### **What role should the local planning authority play in neighbourhood planning?**

A local planning authority must:

- take decisions at key stages in the neighbourhood planning process
- provide advice or assistance to a parish council, neighbourhood forum or community organisation that is producing a neighbourhood plan or Order as required by paragraph 3 of Schedule 4B to the Town and Country Planning Act 1990 (as amended) [\[2\]](http://www.legislation.gov.uk/ukpga/2011/20/schedule/10/enacted)  
(<http://www.legislation.gov.uk/ukpga/2011/20/schedule/10/enacted>).

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##### **How should a local planning authority carry out its neighbourhood planning functions?**

A local planning authority should:

- be proactive in providing information to communities about neighbourhood planning
- fulfil its duties and take decisions as soon as possible, and within statutory time periods  
([http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/the-role-of-the-local-planning-authority-in-neighbourhood-planning/#paragraph\\_081](http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/the-role-of-the-local-planning-authority-in-neighbourhood-planning/#paragraph_081)) where these apply
- set out a clear and transparent decision making timetable and share this with those wishing to prepare a neighbourhood plan or an Order
- constructively engage with the community throughout the process.

ID 41-022-20150209 Last updated 09 02 2015

##### **Is there a time period within which a local planning authority must take decisions?**

Where a local planning authority has the responsibility for the neighbourhood planning process, it should make every effort to conclude each stage promptly. Timely decision taking is important particularly at the start and at the end of the process. Examples might be when taking the decision on whether to designate a neighbourhood forum, and when satisfying itself that a neighbourhood plan or an Order proposal has met the relevant legal tests and should proceed to referendum.

In the case of an application for a neighbourhood area to be designated, regulations prescribe the time period within which a local planning authority must make a decision, further details can be found here [\[2\]](http://www.legislation.gov.uk/uksi/2015/20/contents/made)  
(<http://www.legislation.gov.uk/uksi/2015/20/contents/made>).

ID 41-081-20150209 Last updated 09 02 2015



## **Who takes the decisions on neighbourhood planning in a local planning authority?**

The Council's Executive takes the decisions on neighbourhood planning in a local planning authority (where the authority operates executive arrangements). The Executive may be able to delegate others in the authority to discharge these duties. The neighbourhood planning functions may be delegated to a committee or another authority. For further details see the Local Government Act 2000 [\[2\]](http://www.legislation.gov.uk/ukpga/2000/22/contents) (<http://www.legislation.gov.uk/ukpga/2000/22/contents>) and the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 [\[2\]](http://www.legislation.gov.uk/uksl/2000/2853/contents/made) (<http://www.legislation.gov.uk/uksl/2000/2853/contents/made>).

ID 41-023-20140306 Last updated 06 03 2014

## **4. Designating a neighbourhood area**

(<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/designating-a-neighbourhood-area/>)

### **Designating a neighbourhood area**

#### **What is the process for designating a neighbourhood area?**

An application must be made by a parish or town council or a prospective neighbourhood forum (or a community organisation in the case of a Community Right to Build Order) to the local planning authority for a neighbourhood area to be designated (see regulation 5 of the Neighbourhood Planning (General) Regulations 2012 [\[2\]](http://www.legislation.gov.uk/uksl/2012/637/regulation/5/made)

(<http://www.legislation.gov.uk/uksl/2012/637/regulation/5/made>) (as amended) [\[2\]](http://www.legislation.gov.uk/uksl/2013/235/made)

(<http://www.legislation.gov.uk/uksl/2013/235/made>)). This must include a statement explaining why the proposed neighbourhood area is an appropriate area.

ID 41-024-20140306 Last updated 06 03 2014

#### **Should the community consult the local planning authority before making an area application?**

The community should consult the local planning authority before making an area application. There should be a positive and constructive dialogue about the planning ambitions of the community and any wider planning considerations that might influence the neighbourhood planning process if the outcome of that process is to be a neighbourhood plan or Order that meets the basic conditions (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/the-basic-conditions-that-a-draft-neighbourhood-plan-or-order-must-meet-if-it-is-to-proceed-to-referendum/>) for neighbourhood planning.

ID 41-025-20140306 Last updated 06 03 2014

#### **Can a parish council propose a multi-parish neighbourhood area?**

A single parish council (as a relevant body) can apply for a multi-parished neighbourhood area to be designated, as long as that multi-parished area includes all or part of that parish council's administrative area.

ID 41-026-20140306 Last updated 06 03 2014

#### **In a multi-parished neighbourhood area when does a town or parish council need to gain the consent of the other town or parish council/s in order to take the lead in producing a neighbourhood plan or Order?**

A single parish or town council (as a relevant body) can apply for a multi-parished neighbourhood area to be designated as long as that multi-parished area includes all or part of that parish or town council's administrative area. But when the parish or town council begins to develop a neighbourhood plan or Order (as a qualifying body) it needs to secure the consents of the other parish councils to undertake neighbourhood planning activities. Gaining this consent is important if the pre-submission publicity and consultation and subsequently the submission to the local planning authority are to be valid.

ID 41-027-20140306 Last updated 06 03 2014

### **Can a group apply for a neighbourhood area to be designated if they are not a designated neighbourhood forum?**

A group can apply for a neighbourhood area to be designated even if it is not yet a designated neighbourhood forum. However, in order to be sure that the group is the appropriate body to lead neighbourhood planning in that area, the group must demonstrate that it is capable of becoming the designated neighbourhood forum for the neighbourhood area they are applying to have designated.

The organisation or body should be able to demonstrate that it is capable of meeting the conditions for designation (see section 61F(5) of the Town and Country Planning Act 1990 as applied to Neighbourhood plans by section 38A of the Planning and Compulsory Purchase Act 2004 [\[a\]](http://www.legislation.gov.uk/ukpga/2011/20/schedule/9/enacted) (<http://www.legislation.gov.uk/ukpga/2011/20/schedule/9/enacted>)). It may wish to explain what steps it has taken and is taking towards meeting the conditions for designation. For example it may have a draft written constitution with an open membership policy.

ID 41-028-20140306 Last updated 06 03 2014

### **Can a community organisation apply to have a neighbourhood area designated?**

A community organisation ([http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/who-leads-neighbourhood-planning-in-an-area/#paragraph\\_019](http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/who-leads-neighbourhood-planning-in-an-area/#paragraph_019)) (or prospective community organisation) can apply for a neighbourhood area to be designated in connection with a Community Right to Build Order proposal (or anticipated proposal). This can include all or part of a parish council's administrative area, if that area has not already been designated.

ID 41-029-20140306 Last updated 06 03 2014

### **Can a neighbourhood area cross local planning authority administrative boundaries?**

A parish council, prospective neighbourhood forum or community organisation can put forward the neighbourhood area that they consider appropriate for neighbourhood planning; this does not have to follow administrative boundaries. The area application must be made to each of the local planning authorities which has part of its administrative area within the proposed neighbourhood area.

ID 41-030-20140306 Last updated 06 03 2014

### **How should local planning authorities work together when cross boundary neighbourhood planning is proposed?**

Where a neighbourhood area is proposed that crosses the administrative boundaries of two or more local planning authorities, the authorities are encouraged to agree a lead authority to handle neighbourhood planning in a particular neighbourhood area. A lead authority approach:

- simplifies the process for the community
- minimises the duplication of work by the local planning authorities
- provides opportunities for authorities to share resources

ID 41-031-20140306 Last updated 06 03 2014

### **What flexibility is there in setting the boundaries of a neighbourhood area?**

In a parished area a local planning authority is required to have regard to the desirability of designating the whole of the area of a parish or town council as a neighbourhood area (see 61G(4) of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/2011/20/schedule/9/enacted) (<http://www.legislation.gov.uk/ukpga/2011/20/schedule/9/enacted>)). Where only a part of a parish council's area is proposed for designation, it is helpful if the reasons for this are explained in the supporting statement. Equally, town or parish councils may want to work together and propose that the designated neighbourhood area should extend beyond a single town or parish council's own boundaries.

In areas where there is no parish or town council those wishing to produce a neighbourhood plan or Order must put forward a neighbourhood area using their understanding and knowledge of the geography and character of the neighbourhood.

ID 41-032-20140306 Last updated 06 03 2014

### **What could be considerations when deciding the boundaries of a neighbourhood area?**

The following could be considerations when deciding the boundaries of a neighbourhood area:

- village or settlement boundaries, which could reflect areas of planned expansion
- the catchment area for walking to local services such as shops, primary schools, doctors' surgery, parks or other facilities
- the area where formal or informal networks of community based groups operate
- the physical appearance or characteristics of the neighbourhood, for example buildings may be of a consistent scale or style
- whether the area forms all or part of a coherent estate either for businesses or residents
- whether the area is wholly or predominantly a business area
- whether infrastructure or physical features define a natural boundary, for example a major road or railway line or waterway
- the natural setting or features in an area
- size of the population (living and working) in the area

Electoral ward boundaries can be a useful starting point for discussions on the appropriate size of a neighbourhood area; these have an average population of about 5,500 residents.

ID 41-033-20140306 Last updated 06 03 2014

### **Can those who have submitted an area application change the boundaries once the application has been submitted?**

There is no specific provision for withdrawing an area application once it has been submitted. If those making an area application subsequently want to change the neighbourhood area they should inform the local planning authority concerned. Where the local planning authority has not yet made a decision on the area application, it has the option of advising that a new application be submitted with the revised boundary. If the local planning authority accepts the new application it must publish and consult on this new area application for at least six weeks.

ID 41-034-20140306 Last updated 06 03 2014

### **Must a local planning authority designate a neighbourhood area and must this be the area applied for?**

A local planning authority must designate a neighbourhood area if it receives a valid application and some or all of the area has not yet been designated (see section 61G(5) of the Town and Country Planning Act 1990 Act as applied to Neighbourhood plans by section 38A of the Planning and Compulsory Purchase Act 2004 [\[a\]](http://www.legislation.gov.uk/ukpga/2011/20/schedule/9/enacted) (<http://www.legislation.gov.uk/ukpga/2011/20/schedule/9/enacted>)).

The local planning authority should take into account the relevant body's statement explaining why the area applied for is considered appropriate to be designated as such. See section 61G(2) [\[a\]](http://www.legislation.gov.uk/ukpga/2011/20/schedule/9/enacted) (<http://www.legislation.gov.uk/ukpga/2011/20/schedule/9/enacted>) and Schedule 4C(5) (1) [\[a\]](http://www.legislation.gov.uk/ukpga/2011/20/schedule/11) (<http://www.legislation.gov.uk/ukpga/2011/20/schedule/11>) of the Town and Country Planning Act 1990 Act, as amended, for a description of 'relevant body'.

The local planning authority should aim to designate the area applied for. However, a local planning authority can refuse to designate the area applied for if it considers the area is not appropriate. Where it does so, the local planning authority must give reasons. The authority must use its powers of designation to ensure that some or all of the area applied for forms part of one or more designated neighbourhood areas.

When a neighbourhood area is designated a local planning authority should avoid pre-judging what a qualifying body may subsequently decide to put in its draft neighbourhood plan or Order. It should not make assumptions about the neighbourhood plan or Order that will emerge from developing, testing and consulting on the draft neighbourhood plan or Order when designating a neighbourhood area.

ID 41-035-20140306 Last updated 06 03 2014

### **Can a neighbourhood area include land allocated in the Local Plan as a strategic site?**

A neighbourhood area can include land allocated in a Local Plan (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>) as a strategic site. Where a proposed neighbourhood area includes such a site, those wishing to produce a neighbourhood plan or Order should discuss with the local planning authority the particular planning context and circumstances that may inform the local planning authority's decision on the area it will designate.

ID 41-036-20140306 Last updated 06 03 2014

### **Can a local planning authority amend the boundary of a neighbourhood area once it has been designated?**

A local planning authority can amend the boundary of a neighbourhood area after it has been designated only if the local planning authority is responding to a new application for a neighbourhood area to be designated.

ID 41-037-20140306 Last updated 06 03 2014

### **Can a local planning authority consult on applications to designate a neighbourhood area and a neighbourhood forum at the same time?**

A local planning authority can consult on applications to designate a neighbourhood area and a neighbourhood forum at the same time. However, if the neighbourhood area then designated is not the same as the one originally applied for, a prospective neighbourhood forum may find that it has to revisit its membership, purpose or constitution and submit a revised forum application.

ID 41-038-20140306 Last updated 06 03 2014

### **What should a local planning authority do if it receives more than one neighbourhood forum application for the same area or part of the same area?**

A local planning authority can only designate one neighbourhood forum for a neighbourhood area. Where there are competing forum applications the local planning authority should encourage a dialogue between the applicants in order that they can consider working together as a single neighbourhood forum. The onus is on the prospective neighbourhood forums to be constructive and to reach an agreed solution.

If prospective neighbourhood forums cannot agree to work together one course of action open to a local planning authority is first to designate a neighbourhood area if it has not already done so. This provides certainty about the conditions that any organisation or body will need to meet in order to be designated as the neighbourhood forum for the particular neighbourhood area.

The local planning authority can then assess each neighbourhood forum application against the conditions for designation and evaluate each application in light of the factors set out in section 61F(5) and section 61F(7) of the Town and Country Planning Act 1990 Act as applied to Neighbourhood plans by section 38A of the Planning and Compulsory Purchase Act 2004 [\[2\]](http://www.legislation.gov.uk/ukpga/2011/20/schedule/9/enacted) (<http://www.legislation.gov.uk/ukpga/2011/20/schedule/9/enacted>).

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## **5. Preparing a neighbourhood plan or Order**

(<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/preparing-a-neighbourhood-plan-or-order/>)

### **Preparing a neighbourhood plan or Order**

#### **What evidence is needed to support a neighbourhood plan or Order?**

While there are prescribed documents that must be submitted with a neighbourhood plan or Order there is no 'tick box' list of evidence required for neighbourhood planning. Proportionate, robust evidence should support the choices made and the approach taken. The evidence should be drawn upon to explain succinctly the intention and rationale of the policies in the draft neighbourhood plan or the proposals in an Order.

A local planning authority should share relevant evidence, including that gathered to support its own plan-making, with a qualifying body. Further details of the type of evidence supporting a Local Plan can be found here [Local Plan \(http://planningguidance.communities.gov.uk/blog/guidance/local-plans/\)](http://planningguidance.communities.gov.uk/blog/guidance/local-plans/).

Neighbourhood plans are not obliged to contain policies addressing all types of development. However, where they do contain policies relevant to housing supply, these policies should take account of latest and up-to-date evidence of housing need.

In particular, where a qualifying body is attempting to identify and meet housing need, a local planning authority should share relevant evidence on housing need gathered to support its own plan-making.

ID 41-040-20160211 Last updated 11 02 2016

### **How should the policies in a neighbourhood plan be drafted?**

A policy in a neighbourhood plan should be clear and unambiguous. It should be drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications. It should be concise, precise and supported by appropriate evidence. It should be distinct to reflect and respond to the unique characteristics and planning context of the specific neighbourhood area for which it has been prepared.

ID 41-041-20140306 Last updated 06 03 2014

### **Can a neighbourhood plan allocate sites for development?**

A neighbourhood plan can allocate sites for development. A qualifying body should carry out an appraisal of options and an assessment of individual sites against clearly identified criteria. Guidance on assessing sites and on viability can be found here (<http://planningguidance.communities.gov.uk/blog/guidance/housing-and-economic-land-availability-assessment/>) and here (<http://planningguidance.communities.gov.uk/blog/guidance/viability-guidance/>).

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### **What if a local planning authority is also intending to allocate sites in the same neighbourhood area?**

If a local planning authority is also intending to allocate sites in the same neighbourhood area the local planning authority should avoid duplicating planning processes that will apply to the neighbourhood area. It should work constructively with a qualifying body to enable a neighbourhood plan to make timely progress. A local planning authority should share evidence with those preparing the neighbourhood plan, in order for example, that every effort can be made to meet identified local need through the neighbourhood planning process.

ID 41-043-20140306 Last updated 06 03 2014

### **Can a neighbourhood plan allocate additional or alternative sites to those in a Local Plan?**

A neighbourhood plan can allocate additional sites to those in a Local Plan (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>) where this is supported by evidence to demonstrate need above that identified in the Local Plan.

A neighbourhood plan can propose allocating alternative sites to those in a Local Plan, but a qualifying body should discuss with the local planning authority why it considers the Local Plan allocations no longer appropriate.

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#### **Related policy**

##### **National Planning Policy Framework**

- Paragraph 16 ([http://planningguidance.com/sustainable-development/#paragraph\\_16](http://planningguidance.com/sustainable-development/#paragraph_16))

The resulting draft neighbourhood plan must meet the basic conditions if it is to proceed. National planning policy states that it should support the strategic development needs set out in the Local Plan, plan positively to support local development and should not promote less development than set out in the Local Plan or undermine its strategic policies (see paragraph 16 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/#paragraph\\_16](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/#paragraph_16)) and paragraph 184 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph\\_184](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph_184)) of the National Planning Policy Framework). Nor should it be used to constrain the delivery of a strategic site allocated for development in the Local Plan.

- Paragraph 184 ([http://planningguidance.com/sustainable-development/plan-making/#paragraph\\_184](http://planningguidance.com/sustainable-development/plan-making/#paragraph_184))

Should there be a conflict between a policy in a neighbourhood plan and a policy in a Local Plan, section 38(5) of the Planning and Compulsory Purchase Act 2004 [\[2\]](http://www.legislation.gov.uk/ukpga/2004/5/section/38) (<http://www.legislation.gov.uk/ukpga/2004/5/section/38>) requires that the conflict must be resolved in favour of the policy which is contained in the last document to become part of the development plan.

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### **Should a neighbourhood plan consider infrastructure?**

A qualifying body may wish to consider what infrastructure needs to be provided in their neighbourhood area alongside development such as homes, shops or offices. Infrastructure is needed to support development and ensure that a neighbourhood can grow in a sustainable way.

The following may be important considerations for a qualifying body to consider when addressing infrastructure in a neighbourhood plan:

- what additional infrastructure may be needed to enable development proposed in a neighbourhood plan to be delivered in a sustainable way
- how any additional infrastructure requirements might be delivered
- what impact the infrastructure requirements may have on the viability of a proposal in a draft neighbourhood plan and therefore its delivery
- what are the likely impacts of proposed site allocation options or policies on physical infrastructure and on the capacity of existing services, which could help shape decisions on the best site choices

Qualifying bodies should engage infrastructure providers (e.g. utility companies, transport infrastructure providers and local health commissioners) in this process, advised by the local planning authority.

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### **What should a qualifying body do if it identifies a need for new or enhanced infrastructure?**

A qualifying body should set out in their draft neighbourhood plan the prioritised infrastructure required to address the demands of the development identified in the plan.

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## **6. Consulting on, and publicising, a neighbourhood plan or Order**

(<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/consulting-on-and-publicising-a-neighbourhood-plan-or-order/>)

### **Consulting on, and publicising, a neighbourhood plan or Order**

## What is the role of the wider community in neighbourhood planning?

A qualifying body should be inclusive and open in the preparation of its neighbourhood plan or Order and ensure that the wider community:

- is kept fully informed of what is being proposed
- is able to make their views known throughout the process
- has opportunities to be actively involved in shaping the emerging neighbourhood plan or Order
- is made aware of how their views have informed the draft neighbourhood plan or Order.

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## Should other public bodies, landowners and the development industry be involved in preparing a draft neighbourhood plan or Order?

A qualifying body must consult any of the consultation bodies whose interest it considers may be affected by the draft neighbourhood plan or Order proposal. The consultation bodies are set out in Schedule 1 to the Neighbourhood Planning (General) Regulations 2012 [\[2\]](http://www.legislation.gov.uk/uksi/2012/637/schedule/1/made)

(<http://www.legislation.gov.uk/uksi/2012/637/schedule/1/made>) (as amended) [\[3\]](http://www.legislation.gov.uk/uksi/2013/235/made) (<http://www.legislation.gov.uk/uksi/2013/235/made>). Other public bodies, landowners and the development industry should be involved in preparing a draft neighbourhood plan or Order. By doing this qualifying bodies will be better placed to produce plans that provide for sustainable development which benefits the local community whilst avoiding placing unrealistic pressures on the cost and deliverability of that development.

ID 41-048-20140306 Last updated 06 03 2014

## At what stage does the pre-submission consultation take place on a draft neighbourhood plan or Order?

Before the formal pre-submission consultation takes place a qualifying body should be satisfied that it has a complete draft neighbourhood plan or Order. It is not appropriate to consult on individual policies for example. Where options have been considered as part of the neighbourhood planning process earlier engagement should be used to narrow and refine options. The document that is consulted on at the pre-submission stage should contain only the preferred approach.

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## What are the pre-submission publicity and consultation requirements for neighbourhood planning?

A qualifying body must publicise the draft neighbourhood plan or Order for at least six weeks and consult any of the consultation bodies whose interests it considers may be affected by the draft plan or order proposal (see regulation 14 [\[4\]](http://www.legislation.gov.uk/uksi/2012/637/regulation/14/made) (<http://www.legislation.gov.uk/uksi/2012/637/regulation/14/made>) and regulation 21 [\[5\]](http://www.legislation.gov.uk/uksi/2012/637/regulation/21/made) (<http://www.legislation.gov.uk/uksi/2012/637/regulation/21/made>) of the Neighbourhood Planning (General) Regulations 2012) (as amended) [\[6\]](http://www.legislation.gov.uk/uksi/2013/235/made) (<http://www.legislation.gov.uk/uksi/2013/235/made>). The consultation bodies are set out in Schedule 1 [\[7\]](http://www.legislation.gov.uk/uksi/2012/637/schedule/1/made) (<http://www.legislation.gov.uk/uksi/2012/637/schedule/1/made>) to the Regulations.

ID 41-050-20140306 Last updated 06 03 2014



## Is additional publicity or consultation required where European directives might apply?

European directives, incorporated into UK law, may apply to a draft neighbourhood plan or Order. Where they do apply a qualifying body must make sure that it also complies with any specific publicity and consultation requirements set out in the relevant legislation. The local planning authority should provide advice on this.

The legislation that may be of particular relevance to neighbourhood planning is:

- the Environmental Assessment of Plans and Programmes Regulations 2004 (as amended)
- the Conservation of Habitats and Species Regulations 2010 (as amended)
- the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (as amended)

It may be appropriate, and in some cases a requirement, that the statutory environmental bodies English Heritage [\[2\]](http://www.english-heritage.org.uk/professional/advice/our-planning-role/charter/the-role-of-english-heritage/) (<http://www.english-heritage.org.uk/professional/advice/our-planning-role/charter/the-role-of-english-heritage/>), the Environment Agency [\[3\]](http://www.environment-agency.gov.uk/research/planning/33368.aspx) (<http://www.environment-agency.gov.uk/research/planning/33368.aspx>) and Natural England [\[4\]](http://www.naturalengland.org.uk/ourwork/planningdevelopment/default.aspx) (<http://www.naturalengland.org.uk/ourwork/planningdevelopment/default.aspx>) be consulted. For example, a draft neighbourhood plan proposal must be assessed to determine whether it is likely to have significant environmental effects. The environmental assessment consultation bodies ([http://planningguidance.communities.gov.uk/blog/guidance/strategic-environmental-assessment-and-sustainability-appraisal/sustainability-appraisal-requirements-for-neighbourhood-plans/#paragraph\\_035](http://planningguidance.communities.gov.uk/blog/guidance/strategic-environmental-assessment-and-sustainability-appraisal/sustainability-appraisal-requirements-for-neighbourhood-plans/#paragraph_035)) must be consulted as part of this process (see also guidance on Strategic Environmental Assessment found here) (<http://planningguidance.communities.gov.uk/blog/guidance/strategic-environmental-assessment-and-sustainability-appraisal/strategic-environmental-assessment-and-sustainability-appraisal-and-how-does-it-relate-to-strategic-environmental-assessment/>).

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## 7. Submitting a neighbourhood plan or Order to a local planning authority

(<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/submitting-a-neighbourhood-plan-or-order-to-a-local-planning-authority/>)

### Submitting a neighbourhood plan or Order to a local planning authority

#### What must a local planning authority consider when a neighbourhood plan or Order is submitted to it?

A local planning authority must satisfy itself that a draft neighbourhood plan or Order submitted to it for independent examination complies with all the relevant statutory requirements.

ID 41-052-20140306 Last updated 06 03 2014

#### Does the local planning authority consider whether a neighbourhood plan or Order meets the basic conditions when a neighbourhood plan or Order is submitted to it?

When a draft neighbourhood plan or Order is submitted to a local planning authority the authority is considering the draft plan or order against the statutory requirements set out in paragraph 6 of Schedule 4B of the Town and Country Planning Act 1990 (as amended) [\[5\]](http://www.legislation.gov.uk/ukpga/2011/20/schedule/10/enacted)

(<http://www.legislation.gov.uk/ukpga/2011/20/schedule/10/enacted>). A local planning authority has to be satisfied that a basic condition statement has been

submitted but it is not required to consider whether the draft plan or order meets the basic conditions. It is only after the independent examination has taken place and after the examiner's report has been received that the local planning authority comes to its formal view on whether the draft neighbourhood plan or Order meets the basic conditions. The local planning authority should provide constructive comments on an emerging plan or Order before it is submitted.

ID 41-053-20140306 Last updated 06 03 2014

## What happens when a draft neighbourhood plan or Order submitted to the local planning authority meets the requirement in the legislation?

Where the draft neighbourhood plan or Order submitted to a local planning authority meets the requirements in the legislation, the local planning authority must publicise the neighbourhood plan or Order for a minimum of six weeks, invite representations, notify any consultation body referred to in the consultation statement and send the draft neighbourhood plan or Order to independent examination (see regulations 16 [16](http://www.legislation.gov.uk/uksi/2012/637/regulation/16/made),

17 [17](http://www.legislation.gov.uk/uksi/2012/637/regulation/17/made)

(<http://www.legislation.gov.uk/uksi/2012/637/regulation/17/made>), 23 [23](http://www.legislation.gov.uk/uksi/2012/637/regulation/23/made)

(<http://www.legislation.gov.uk/uksi/2012/637/regulation/23/made>) and 24 [24](http://www.legislation.gov.uk/uksi/2012/637/regulation/24/made)

(<http://www.legislation.gov.uk/uksi/2012/637/regulation/24/made>) of the

Neighbourhood Planning (General) Regulations 2012 (as amended) [16](http://www.legislation.gov.uk/uksi/2013/235/made)

(<http://www.legislation.gov.uk/uksi/2013/235/made>)).

ID 41-054-20140306 Last updated 06 03 2014

8. The Independent Examination (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/the-independent-examination/>)

### The Independent Examination

#### What is the independent examiner's role?

When considering the content of a neighbourhood plan or Order proposal, an independent examiner's role is limited to testing whether or not a draft neighbourhood plan or Order meets the basic conditions

(<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/the-basic-conditions-that-a-draft-neighbourhood-plan-or-order-must-meet-if-it-is-to-proceed-to-referendum/>), and other matters set out in paragraph 8 of Schedule 4B to the Town and Country Planning Act 1990 (as amended) [16](http://www.legislation.gov.uk/ukpga/2011/20/schedule/10/enacted)

(<http://www.legislation.gov.uk/ukpga/2011/20/schedule/10/enacted>). The independent examiner is not testing the soundness

([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph\\_182](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph_182)) of a neighbourhood plan or examining other material considerations.

ID 41-055-20140306 Last updated 06 03 2014

#### How is a neighbourhood plan or Order examined?

It is expected that the examination of a draft neighbourhood plan or Order will not include a public hearing. Rather the examiner should reach a view by considering written representations (see paragraph 9(1) of Schedule 4B to the Town and Country Planning Act 1990 (as amended) [16](http://www.legislation.gov.uk/ukpga/2011/20/schedule/10/enacted)

(<http://www.legislation.gov.uk/ukpga/2011/20/schedule/10/enacted>)). As a consequence the basic conditions statement is likely to be the main way that a qualifying body can seek to demonstrate to the independent examiner that its draft neighbourhood plan or Order meets the basic conditions.

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### Related policy

#### National Planning Policy Framework

- Paragraph 182 ([http://planningguidance.com/sustainable-development/plan-making/#paragraph\\_182](http://planningguidance.com/sustainable-development/plan-making/#paragraph_182))

Where the independent examiner considers it necessary to ensure adequate examination of an issue or to give a person a fair chance to put a case, they must hold a hearing to listen to oral representations about a particular issue.

The subject of a hearing is determined by the independent examiner based on their initial views of the draft plan or Order proposals and any other supporting documents submitted by the qualifying body and the representations received from interested parties.

ID 41-056-20140306 Last updated 06 03 2014

### **How can the public make their views known to the independent examiner?**

Those wishing to make their views known to the independent examiner, or who wish to submit evidence for the examiner to consider, will do this by submitting written representations to the local planning authority during the statutory publicity period on the submitted draft neighbourhood plan or Order, which must be at least six weeks.

Representations should address whether or not the draft neighbourhood plan or Order proposal meets the basic conditions and other matters that the independent examiner is required to consider under paragraph 8 of Schedule 4B to the Town and Country Planning Act 1990 (as amended) [\[2\]](http://www.legislation.gov.uk/ukpga/2011/20/schedule/10/enacted) (<http://www.legislation.gov.uk/ukpga/2011/20/schedule/10/enacted>). Representations may also address whether the referendum area should be extended beyond the neighbourhood area. Anyone wishing to make a case for an oral hearing should do so as part of a written representation.

ID 41-057-20140306 Last updated 06 03 2014

### **Can anyone choose to speak if a public hearing is held?**

It is for the independent examiner to decide:

- the format and scope of the hearing
- who will be invited to speak at a hearing, in addition to the local planning authority and the qualifying body that submitted the neighbourhood plan or Order
- the questions to be asked at the hearing.

ID 41-058-20140306 Last updated 06 03 2014

### **Does an independent examiner consider the referendum area as part of their report?**

When the examiner is minded to recommend that the neighbourhood plan or Order (as modified) should proceed to referendum, the examiner must recommend whether the referendum area should extend beyond the neighbourhood area. If the examiner recommends that the area should be extended they must state what they consider that extended area should be.

It may be appropriate to extend the referendum area beyond the neighbourhood area, for example where the scale or nature of the proposals in the draft neighbourhood plan or Order are such that they will have a substantial, direct and demonstrable impact beyond the neighbourhood area.

ID 41-059-20140306 Last updated 06 03 2014

## **9. The neighbourhood planning referendum**

(<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/the-neighbourhood-planning-referendum/>)

## The neighbourhood planning referendum

### Who is responsible for organising the referendum?

The 'relevant council' (see Schedule 4B to the Town and Country Planning Act 1990 (as amended) [\[2\]](#)

(<http://www.legislation.gov.uk/ukpga/2011/20/schedule/10/enacted>)) must make arrangements for the referendum/s to take place. Relevant councils are:

- district councils;
- London boroughs;
- metropolitan district councils; and
- county councils in any area in England for which there is no district council.

(Unitary authorities are either district councils or county councils that perform the functions of the other type of council as well.)

Where the relevant council for a referendum is not the local planning authority, the two authorities must co-operate as required by regulation 16 of the Neighbourhood Planning (Referendum) Regulations 2012 (as amended) [\[2\]](#)

(<http://www.legislation.gov.uk/ukdsi/2012/9780111525050/regulation/16>).

ID 41-060-20140306 Last updated 06 03 2014

### What are the rules for the referendum process?

The rules covering all aspects of organising and conducting the polls can be found in the Neighbourhood Planning (Referendum) Regulations 2012 [\[2\]](#)

(<http://www.legislation.gov.uk/ukdsi/2012/9780111525050/contents>) (as amended by the Neighbourhood Planning (Referendum) (Amendment) Regulations 2013 [\[2\]](#) (<http://www.legislation.gov.uk/ukdsi/2013/9780111534984/contents>) and 2014) and the Neighbourhood Planning (Prescribed Dates) Regulations 2012 [\[2\]](#) (<http://www.legislation.gov.uk/ukdsi/2012/2030/contents/made>).

A qualifying body, the local planning authority and the relevant electoral services team should establish an early dialogue as part of any project planning process.

ID 41-061-20140306 Last updated 06 03 2014

### Who votes in a referendum?

A person is entitled to vote if at the time of the referendum, they meet the eligibility criteria to vote in a local election for the area and if they live in the referendum area.

In a 'designated business area' (see section 61H of the Town and Country Planning Act 1990 Act as amended [\[2\]](#)

(<http://www.legislation.gov.uk/ukpga/2011/20/schedule/9/enacted>)) both residents and non-domestic rate payers get an opportunity to vote in referendums on whether the neighbourhood plan or Order should come into legal force (see paragraphs 12(4) and 15 of Schedule 4B to the Town and Country Planning Act 1990 (as amended) [\[2\]](#) (<http://www.legislation.gov.uk/ukpga/2011/20/schedule/10/enacted>) and Schedules 6 to 8 of the Neighbourhood planning (Referendums) (Amendment) Regulations 2013 (as amended) [\[2\]](#) (<http://www.legislation.gov.uk/ukdsi/2013/9780111534984/schedule/1>)).

ID 41-062-20140306 Last updated 06 03 2014

### What happens in a business area if residents and businesses voting in referendums do not agree?

In a designated business area, if a majority of those who have voted in one of the referendums vote in support of making the draft neighbourhood plan or Order and the majority of those who vote in the other referendum do not support the making of the draft plan or Order, the local planning authority must decide whether the neighbourhood plan or Order should be brought into force.

A local planning authority is advised to set out its decision-making criteria in this scenario in advance of the referendum taking place. It may for example, wish to consider criteria related to the level of support the neighbourhood plan or Order proposal received at each referendum, the relative size of the electorate or the characteristics of the neighbourhood area.

ID 41-063-20140306 Last updated 06 03 2014

### **What does a local planning authority do if the majority of those who vote are in favour of a neighbourhood plan or Order coming into force?**

If the majority of those who vote in a referendum are in favour of the draft neighbourhood plan or Order (or, where there is also a business referendum, a majority vote in favour of both referendums), then the neighbourhood plan or Order must be made (brought into legal force) by the local planning authority. Local planning authorities should do this promptly following the announcement of the referendum result. Where there is also a business referendum and a majority of those voting, vote in favour of the proposals in only one of the referendums, then the local planning authority may make the neighbourhood plan or Order but is not required to.

There are narrow circumstances where the local planning authority is not required to make the neighbourhood plan or Order. These are where it considers that the making of the neighbourhood plan or Order would breach, or otherwise be incompatible with, any EU or human rights obligations (see section 61E(8) of the Town and Country Planning Act 1990 Act as amended [\[2\]](http://www.legislation.gov.uk/ukpga/2011/20/schedule/9/enacted) (<http://www.legislation.gov.uk/ukpga/2011/20/schedule/9/enacted>)).

ID 41-064-20140306 Last updated 06 03 2014

## **10. A summary of the key stages in neighbourhood planning**

(<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/key-stages-in-neighbourhood-planning/>)

### **A summary of the key stages in neighbourhood planning**

#### **Step 1: Designating neighbourhood area and if appropriate neighbourhood forum**

- Relevant body (parish / town council, prospective neighbourhood forum or community organisation) submits an application to the local planning authority (LPA) to designate a neighbourhood area
- local planning authority publicises and consults on the area application for minimum 6 weeks (or minimum of 4 weeks where the area to which the application relates is the whole of the area of a parish council and is wholly within the area of one local planning authority)
- local planning authority designates a neighbourhood area within the statutory timescales [\[2\]](http://www.legislation.gov.uk/uksi/2015/20/contents/made) (<http://www.legislation.gov.uk/uksi/2015/20/contents/made>)
- In an area without a town or parish council a prospective neighbourhood forum submits an application to be the designated neighbourhood forum for a neighbourhood area
- local planning authority publicises and consults on the forum application for minimum 6 weeks

- local planning authority takes decision on whether to designate the neighbourhood forum

## **Step 2: Preparing a draft neighbourhood plan or Order**

Qualifying body develops proposals (advised or assisted by the local planning authority)

- gather baseline information and evidence
- engage and consult those living and working in the neighbourhood area and those with an interest in or affected by the proposals (e.g. service providers)
- talk to land owners and the development industry
- identify and assess options
- determine whether a plan or an Order is likely to have significant environmental effect
- start to prepare proposals documents e.g. basic conditions statement

## **Step 3: Pre-submission publicity & consultation**

The qualifying body:

- publicises the draft plan or Order and invites representations
- consults the consultation bodies as appropriate
- sends a copy of the draft plan or Order to the local planning authority
- where European Obligations apply, complies with relevant publicity and consultation requirements
- considers consultation responses and amends plan / Order if appropriate
- prepares consultation statement and other proposal documents

## **Step 4: Submission of a neighbourhood plan or Order proposal to the local planning authority**

- Qualifying body submits the plan or Order proposal to the local planning authority
- Local planning authority checks that submitted proposal complies with all relevant legislation
- If the local planning authority finds that the plan or order meets the legal requirements it:
  - publicises the proposal for minimum 6 weeks and invites representations
  - notifies consultation bodies referred to in the consultation statement
  - appoints an independent examiner (with the agreement of the qualifying body)

## **Step 5: Independent Examination**

- local planning authority sends plan / Order proposal and representation to the independent examiner
- independent examiner undertakes examination
- independent examiner issues a report to the local planning authority and qualifying body
- local planning authority publishes report
- local planning authority considers report and reaches own view (save in respect of community right to build orders where the report is binding)
- local planning authority takes the decision on whether to send the plan / Order to referendum

## **Steps 6 and 7: Referendum and Making the neighbourhood plan or Order (bringing it into force)**

- relevant council publishes information statement
- relevant council publishes notice of referendum/s
- polling takes place (in a business area an additional referendum is held)
- results declared
- subject to results local planning authority considers plan / order in relation to EU obligations and Convention rights
- If the plan / Order is compatible with EU obligations and does not breach Convention rights – local planning authority makes the plan or Order.

ID 41-080-20150209 Last updated 09 02 2015

11. The basic conditions that a draft neighbourhood plan or Order must meet if it is to proceed to referendum (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/the-basic-conditions-that-a-draft-neighbourhood-plan-or-order-must-meet-if-it-is-to-proceed-to-referendum/>)

### **The basic conditions that a draft neighbourhood plan or Order must meet if it is to proceed to referendum**

#### **What are the basic conditions that a draft neighbourhood plan or Order must meet if it is to proceed to referendum?**

Only a draft neighbourhood Plan or Order that meets each of a set of basic conditions can be put to a referendum and be made. The basic conditions are set out in paragraph 8(2) of Schedule 4B to the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/2011/20/schedule/9/enacted) (<http://www.legislation.gov.uk/ukpga/2011/20/schedule/9/enacted>) as applied to neighbourhood plans by section 38A of the Planning and Compulsory Purchase Act 2004. The basic conditions are:

- having regard to national policies and advice contained in guidance issued by the Secretary of State it is appropriate to make the order (or neighbourhood plan). Click here for more details in this guidance (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/the-basic-conditions-that-a-draft-neighbourhood-plan-or-order-must-meet-if-it-is-to-proceed-to-referendum/national-policy-and-advice/>).
- having special regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic interest that it possesses, it is appropriate to make the order. This applies only to Orders. Click here for more details in this guidance (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/the-basic-conditions-that-a-draft-neighbourhood-plan-or-order-must-meet-if-it-is-to-proceed-to-referendum/listed-buildings-and-conservation-areas/>).
- having special regard to the desirability of preserving or enhancing the character or appearance of any conservation area, it is appropriate to make the order. This applies only to Orders. Click here for more details in this guidance (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/the-basic-conditions-that-a-draft-neighbourhood-plan-or-order-must-meet-if-it-is-to-proceed-to-referendum/listed-buildings-and-conservation-areas/>).
- the making of the order (or neighbourhood plan) contributes to the achievement of sustainable development. Click here for more details in this guidance (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/the-basic-conditions-that-a-draft-neighbourhood-plan-or-order-must-meet-if-it-is-to-proceed-to-referendum/sustainable-development/>).
- the making of the order (or neighbourhood plan) is in general conformity with the strategic policies contained in the development plan for the area of the

authority (or any part of that area). Click here for more details in this guidance (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/the-basic-conditions-that-a-draft-neighbourhood-plan-or-order-must-meet-if-it-is-to-proceed-to-referendum/general-conformity-with-the-strategic-policies-contained-in-the-development-plan/>).

- the making of the order (or neighbourhood plan) does not breach, and is otherwise compatible with, EU obligations. Click here for more details in this guidance (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/the-basic-conditions-that-a-draft-neighbourhood-plan-or-order-must-meet-if-it-is-to-proceed-to-referendum/eu-obligations/>).
- prescribed conditions are met in relation to the Order (or plan) and prescribed matters have been complied with in connection with the proposal for the order (or neighbourhood plan). Click here for more details in this guidance (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/the-basic-conditions-that-a-draft-neighbourhood-plan-or-order-must-meet-if-it-is-to-proceed-to-referendum/other-basic-conditions/>).

ID 41-065-20140306 Last updated 06 03 2014

### **When should a qualifying body consider the basic conditions that a neighbourhood plan or Order needs to meet?**

Throughout the process of developing a neighbourhood plan or Order a qualifying body should consider how it will demonstrate that its neighbourhood plan or Order will meet the basic conditions that must be met if the plan or order is to be successful at independent examination. The basic conditions statement is likely to be the main way that a qualifying body can seek to demonstrate to the independent examiner that its draft neighbourhood plan or Order meets the basic conditions. A qualifying body is advised to discuss and share early drafts of its basic conditions statement with the local planning authority.

ID 41-066-20140306 Last updated 06 03 2014

### **What should a local planning authority do to assist a qualifying body in considering the basic conditions?**

A local planning authority should provide constructive comments on the emerging neighbourhood plan or Order proposal prior to submission and discuss the contents of any supporting documents, including the basic conditions statement. If a local planning authority considers that a draft neighbourhood plan or Order may fall short of meeting one or more of the basic conditions they should discuss their concerns with the qualifying body in order that these can be considered before the draft neighbourhood plan or Order is formally submitted to the local planning authority.

ID 41-067-20140306 Last updated 06 03 2014

### **What must a qualifying body do to demonstrate that its neighbourhood plan or Order meets the basic conditions?**

A statement (a basic conditions statement) setting out how a draft neighbourhood plan or Order meets the basic conditions must accompany the draft neighbourhood plan or Order when it is submitted to the local planning authority (see regulation 15(1)(d) [\[1\]](http://www.legislation.gov.uk/uksi/2012/637/regulation/15/made) (<http://www.legislation.gov.uk/uksi/2012/637/regulation/15/made>) and regulation 22(1)(e) [\[2\]](http://www.legislation.gov.uk/uksi/2012/637/regulation/22/made) (<http://www.legislation.gov.uk/uksi/2012/637/regulation/22/made>) of the Neighbourhood Planning (General) Regulations 2012 (as amended)).

ID 41-068-20140306 Last updated 06 03 2014



- National policy and advice (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/the-basic-conditions-that-a-draft-neighbourhood-plan-or-order-must-meet-if-it-is-to-proceed-to-referendum/national-policy-and-advice/>)

## National policy and advice

### What does having regard to national policy mean?

A neighbourhood plan or Order must not constrain the delivery of important national policy objectives. The National Planning Policy Framework (<http://planningguidance.communities.gov.uk/blog/policy/>) is the main document setting out the Government's planning policies for England and how these are expected to be applied.

ID 41-069-20140306 Last updated 06 03 2014

### Which national policies are relevant to a neighbourhood plan or Order?

Paragraph 16 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/#paragraph\\_16](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/#paragraph_16)) of the National Planning Policy Framework is clear that those producing neighbourhood plans or Orders should support the strategic development needs set out in Local Plans (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>), including policies for housing and economic development. Qualifying bodies should plan positively to support local development, shaping and directing development in their area that is outside the strategic elements of the Local Plan. More specifically paragraph 184 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph\\_184](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph_184)) of the National Planning Policy Framework states that neighbourhood plans and Orders should not promote less development than set out in the Local Plan or undermine its strategic policies.

The content of a draft neighbourhood plan or Order will dictate which additional national policy is or is not a relevant consideration to take into account. The basic condition allows qualifying bodies, the independent examiner and local planning authority to reach a view in those cases where different parts of national policy need to be balanced.

A qualifying body is advised to set out in its basic conditions statement how they have had regard to national policy and considered whether a particular policy is or is not relevant. A qualifying body is encouraged to set out the particular national policies that it has considered, and how the policies in a draft neighbourhood plan or the development proposals in an Order take account of national policy and advice.

ID 41-070-20140306 Last updated 06 03 2014

- Listed buildings and conservation areas (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/the-basic-conditions-that-a-draft-neighbourhood-plan-or-order-must-meet-if-it-is-to-proceed-to-referendum/listed-buildings-and-conservation-areas/>)

## Listed buildings and conservation areas

### When do the basic conditions relating to listed buildings and conservation areas apply?

Basic conditions (b) and (c) (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/the-basic-conditions-that-a-draft-neighbourhood-plan-or-order-must-meet-if-it-is-to-proceed-to-referendum/>) that relate to listed buildings and conservation areas apply to a

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## Related policy

National Planning Policy Framework (<http://planningguidance.commu>)

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## Related policy

### National Planning Policy Framework

- Paragraph 16 ([http://planningguidance.com sustainable-development/#paragraph\\_16](http://planningguidance.com sustainable-development/#paragraph_16))
- Paragraph 184 ([http://planningguidance.com sustainable-development/plan-making/#paragraph\\_184](http://planningguidance.com sustainable-development/plan-making/#paragraph_184))

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## Related policy

National Planning Policy Framework

draft neighbourhood Development Order or a Community Right to Build Order so that making the order will not weaken the statutory protections for listed buildings and conservation areas. Further information on conserving and enhancing the historic environment can be found in paragraphs 126 – 141 of the National Planning Policy Framework

([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/12-conserving-and-enhancing-the-historic-environment/#paragraph\\_126](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/12-conserving-and-enhancing-the-historic-environment/#paragraph_126)) and here

(<http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/>).

- Paragraph 126 – 141 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/12-conserving-and-enhancing-the-historic-environment/#paragraph\\_126](http://planningguidance.com/sustainable-development/delivering-sustainable-development/12-conserving-and-enhancing-the-historic-environment/#paragraph_126))

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- Sustainable development (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/the-basic-conditions-that-a-draft-neighbourhood-plan-or-order-must-meet-if-it-is-to-proceed-to-referendum/sustainable-development/>)

## Sustainable development

### What must a qualifying body do to demonstrate that a draft Neighbourhood Plan or Order contributes to sustainable development?

This basic condition is consistent with the planning principle that all plan-making and decision-taking should help to achieve sustainable development. A qualifying body must demonstrate how its plan or Order will contribute to improvements in environmental, economic and social conditions or that consideration has been given to how any potential adverse effects arising from the proposals may be prevented, reduced or offset (referred to as mitigation measures).

In order to demonstrate that a draft neighbourhood plan or Order contributes to sustainable development, sufficient and proportionate evidence should be presented on how the draft neighbourhood plan or Order guides development to sustainable solutions. There is no legal requirement for a neighbourhood plan to have a sustainability appraisal

(<http://planningguidance.communities.gov.uk/blog/guidance/strategic-environmental-assessment-and-sustainability-appraisal/>). However, qualifying bodies may find this a useful approach for demonstrating how their draft plan or order meets the basic condition. Material produced as part of the Sustainability Appraisal of the Local Plan (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>) may be relevant to a neighbourhood plan.

ID 41-072-20140306 Last updated 06 03 2014

### Is an environmental assessment required of a neighbourhood plan?

A neighbourhood plan may require an environmental assessment (<http://planningguidance.communities.gov.uk/blog/guidance/strategic-environmental-assessment-and-sustainability-appraisal/>) if it is likely to have a significant effect on the environment. Where this is the case the draft neighbourhood plan may fall within the scope of the Environmental Assessment of Plans and Programmes Regulations 2004. This may be the case, for example, where a neighbourhood plan allocates sites for development.

A qualifying body is strongly encouraged to consider the environmental implications of its proposals at an early stage, and to seek the advice of the local planning authority on whether the Environmental Assessment of Plans and Programmes Regulations 2004 are likely to apply.

ID 41-073-20140306 Last updated 06 03 2014

- General conformity with the strategic policies contained in the development plan (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/the-basic-conditions-that-a-draft-neighbourhood-plan-or-order-must-meet-if-it-is-to-proceed-to-referendum/general-conformity-with-the-strategic-policies-contained-in-the-development-plan/>)

## General conformity with the strategic policies contained in the development plan

### What is meant by 'general conformity'?

When considering whether a policy is in general conformity a qualifying body, independent examiner, or local planning authority, should consider the following:

- whether the neighbourhood plan policy or development proposal supports and upholds the general principle that the strategic policy is concerned with
- the degree, if any, of conflict between the draft neighbourhood plan policy or development proposal and the strategic policy
- whether the draft neighbourhood plan policy or development proposal provides an additional level of detail and/or a distinct local approach to that set out in the strategic policy without undermining that policy
- the rationale for the approach taken in the draft neighbourhood plan or Order and the evidence to justify that approach

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### What is meant by strategic policies?

Paragraph 156 of the National Planning Policy Framework ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph\\_156](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph_156)) sets out the strategic matters about which local planning authorities are expected to include policies in their Local Plans (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>). The basic condition addresses strategic policies no matter where they appear in the development plan. It does not presume that every policy in a Local Plan is strategic or that the only policies that are strategic are labelled as such.

ID 41-075-20140306 Last updated 06 03 2014

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### Related policy

#### National Planning Policy Framework

- Paragraph 156 ([http://planningguidance.com/sustainable-development/plan-making/#paragraph\\_156](http://planningguidance.com/sustainable-development/plan-making/#paragraph_156))

### How is a strategic policy determined?

Strategic policies will be different in each local planning authority area. When reaching a view on whether a policy is a strategic policy the following are useful considerations:

- whether the policy sets out an overarching direction or objective
- whether the policy seeks to shape the broad characteristics of development
- the scale at which the policy is intended to operate
- whether the policy sets a framework for decisions on how competing priorities should be balanced
- whether the policy sets a standard or other requirement that is essential to achieving the wider vision and aspirations in the Local Plan
- in the case of site allocations, whether bringing the site forward is central to achieving the vision and aspirations of the Local Plan
- whether the Local Plan identifies the policy as being strategic

Planning practice guidance on Local Plans

(<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>) provides further advice on strategic policies.

ID 41-076-20140306 Last updated 06 03 2014

## How does a qualifying body know what is a strategic policy?

A local planning authority should set out clearly its strategic policies in accordance with paragraph 184 of the National Planning Policy Framework ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph\\_184](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph_184)) and provide details of these to a qualifying body and to the independent examiner.

ID 41-077-20140306 Last updated 06 03 2014

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## Related policy

### National Planning Policy Framework

- Paragraph 184 ([http://planningguidance.com/sustainable-development/plan-making/#paragraph\\_184](http://planningguidance.com/sustainable-development/plan-making/#paragraph_184))

- EU obligations (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/the-basic-conditions-that-a-draft-neighbourhood-plan-or-order-must-meet-if-it-is-to-proceed-to-referendum/eu-obligations/>)

## EU obligations

### What are the relevant EU obligations?

A neighbourhood plan or Order must be compatible with European Union obligations, as incorporated into UK law, in order to be legally compliant. There are four directives that may be of particular relevance to neighbourhood planning:

- *Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (often referred to as the Strategic Environmental Assessment (SEA) Directive).*

This seeks to provide a high level of protection of the environment by integrating environmental considerations

(<http://planningguidance.communities.gov.uk/blog/guidance/strategic-environmental-assessment-and-sustainability-appraisal/>) into the process of preparing plans and programmes. It may be of relevance to neighbourhood plans.

- *Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (often referred to as the Environmental Impact Assessment (EIA) Directive).*

Environmental Impact Assessment

(<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/>) is a procedure to be followed for certain types of proposed development. This is to ensure that decisions are made in full knowledge of any likely significant effects on the environment and that the public are given early and effective opportunities to participate in the decision making procedures. It may be of relevance to Neighbourhood Development Orders.

- *Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora and Directive 2009/147/EC on the conservation of wild birds (often referred to as the Habitats and Wild Birds Directives respectively). These aim to protect and improve Europe's most important habitats and species. They may be of relevance to both neighbourhood plans or Orders.*

Other European directives, such as the Waste Framework Directive (2008/98/EC), Air Quality Directive (2008/50/EC) or the Water Framework Directive (2000/60/EC) may apply to the particular circumstances of a draft neighbourhood plan or Order.

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- Other basic conditions (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/the-basic-conditions-that-a-draft-neighbourhood-plan-or-order-must-meet-if-it-is-to-proceed-to-referendum/other-basic-conditions/>)

### Other basic conditions

#### Are there any other basic conditions that apply besides those set out in the primary legislation?


Regulations 32 and 33 of the Neighbourhood Planning (General) Regulations 2012 [\[2\]](http://www.legislation.gov.uk/uksi/2012/637/part/9/made) (<http://www.legislation.gov.uk/uksi/2012/637/part/9/made>) (as amended) [\[2\]](http://www.legislation.gov.uk/uksi/2013/235/made) (<http://www.legislation.gov.uk/uksi/2013/235/made>) set out two basic conditions in addition to those set out in the primary legislation. These are:

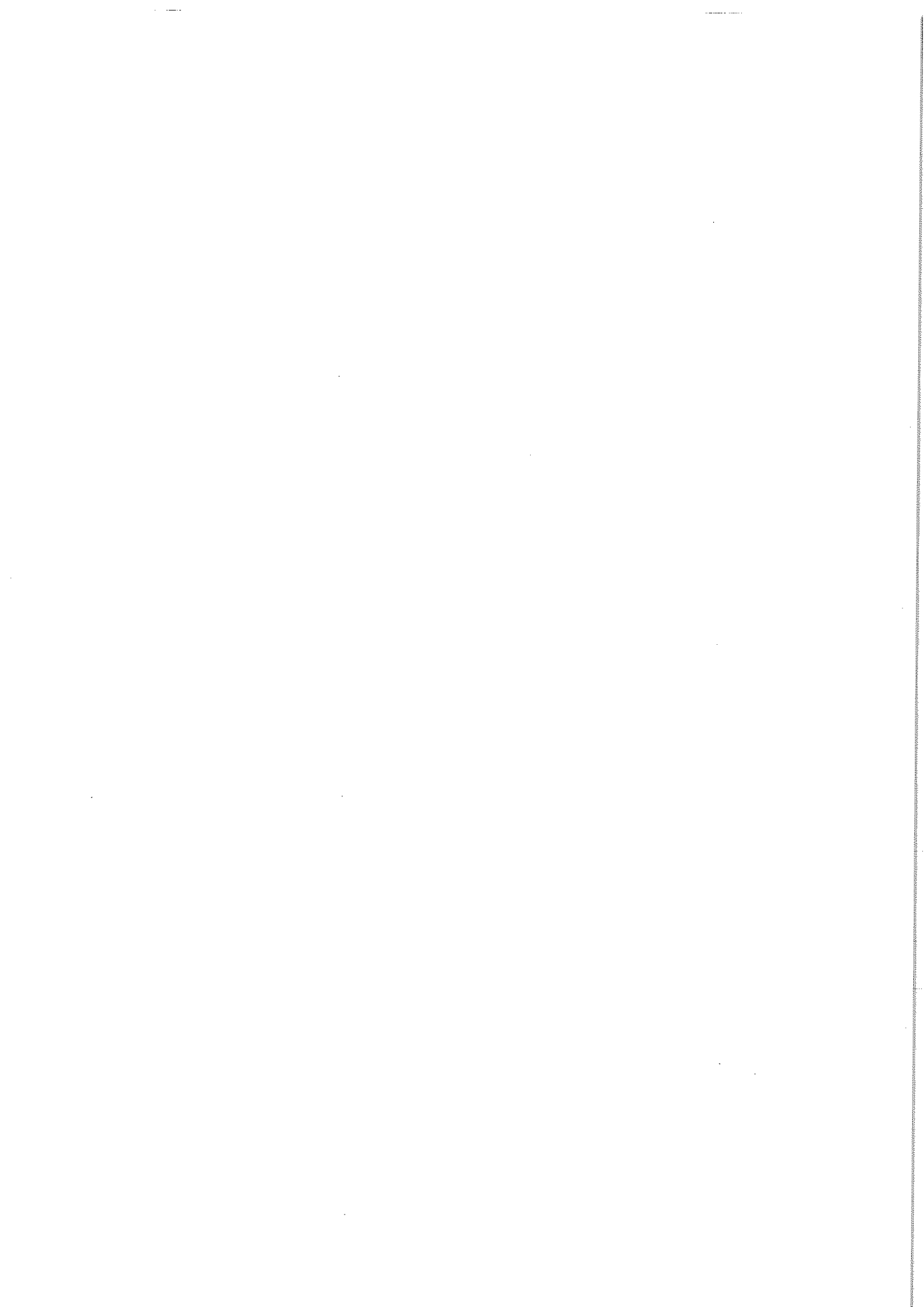
- the making of the neighbourhood plan is not likely to have a significant effect on a European site (as defined in the Conservation of Habitats and Species Regulations 2012) or a European offshore marine site (as defined in the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007) (either alone or in combination with other plans or projects). (See Schedule 2 to the Neighbourhood Planning (General) Regulations 2012 [\[2\]](http://www.legislation.gov.uk/uksi/2012/637/schedule/2/made) (<http://www.legislation.gov.uk/uksi/2012/637/schedule/2/made>) (as amended) [\[2\]](http://www.legislation.gov.uk/uksi/2013/235/made) (<http://www.legislation.gov.uk/uksi/2013/235/made>) in relation to the examination of neighbourhood development plans.)
- having regard to all material considerations, it is appropriate that the Neighbourhood Development Order is made (see Schedule 3 to the Neighbourhood Planning (General) Regulations 2012 [\[2\]](http://www.legislation.gov.uk/uksi/2012/637/schedule/3/made) (<http://www.legislation.gov.uk/uksi/2012/637/schedule/3/made>) (as amended) [\[2\]](http://www.legislation.gov.uk/uksi/2013/235/made) (<http://www.legislation.gov.uk/uksi/2013/235/made>), where the development described in an order proposal is EIA development (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/>).

ID 41-079-20140306 Last updated 06 03 2014

Return to Neighbourhood Planning (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/the-basic-conditions-that-a-draft-neighbourhood-plan-or-order-must-meet-if-it-is-to-proceed-to-referendum/>)

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 Department for Communities & Local Government  
(<https://www.gov.uk/government/organisations/department-for-communities-and-local-government>)



# Planning Practice Guidance <http://planningguidance.communities.gov.uk>

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## Guidance

# Noise

Print 

1. Noise (<http://planningguidance.communities.gov.uk/blog/guidance/noise/noise-guidance/>)

## Noise

### When is noise relevant to planning?

Noise needs to be considered when new developments may create additional noise and when new developments would be sensitive to the prevailing acoustic environment. When preparing local or neighbourhood plans, or taking decisions about new development, there may also be opportunities to consider improvements to the acoustic environment.

ID 30-001-20140306 Last updated 06 03 2014

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### Related policy

#### National Planning Policy Framework

- Paragraph 123 ([http://planningguidance.communities.gov.uk/national-planning-policy-framework/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph\\_123](http://planningguidance.communities.gov.uk/national-planning-policy-framework/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph_123))

### Can noise override other planning concerns?

It can, but neither the Noise Policy Statement for England [\[2\]](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69533/pb13750-noise-policy.pdf) ([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69533/pb13750-noise-policy.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69533/pb13750-noise-policy.pdf)) nor the National Planning Policy Framework (which reflects the Noise Policy Statement) expects noise to be considered in isolation, separately from the economic, social and other environmental dimensions of proposed development.

ID 30-002-20140306 Last updated 06 03 2014

### How to determine the noise impact?

Local planning authorities' plan-making and decision taking should take account of the acoustic environment and in doing so consider:

- whether or not a significant adverse effect is occurring or likely to occur;
- whether or not an adverse effect is occurring or likely to occur; and
- whether or not a good standard of amenity can be achieved.

In line with the Explanatory Note of the Noise Policy Statement for England, this would include identifying whether the overall effect of the noise exposure (including the impact during the construction phase wherever applicable) is, or would be, above or below the significant observed adverse effect level and the lowest observed adverse effect level for the given situation. As noise is a complex technical issue, it may be appropriate to seek experienced specialist assistance when applying this policy.

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### Observed Effect Levels

- **Significant observed adverse effect level:** This is the level of noise exposure above which significant adverse effects on health and quality of life occur.

- **Lowest observed adverse effect level:** this is the level of noise exposure above which adverse effects on health and quality of life can be detected.
- **No observed effect level:** this is the level of noise exposure below which no effect at all on health or quality of life can be detected.

See Explanatory Note to the Noise Policy Statement [\[2\]](#)

([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69533/pb13750-noise-policy.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69533/pb13750-noise-policy.pdf)) for England for further information.

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### How to recognise when noise could be a concern?

At the lowest extreme, when noise is not noticeable, there is by definition no effect. As the noise exposure increases, it will cross the no observed effect level as it becomes noticeable. However, the noise has no adverse effect so long as the exposure is such that it does not cause any change in behaviour or attitude. The noise can slightly affect the acoustic character of an area but not to the extent there is a perceived change in quality of life. If the noise exposure is at this level no specific measures are required to manage the acoustic environment.

As the exposure increases further, it crosses the lowest observed adverse effect level boundary above which the noise starts to cause small changes in behaviour and attitude, for example, having to turn up the volume on the television or needing to speak more loudly to be heard. The noise therefore starts to have an adverse effect and consideration needs to be given to mitigating and minimising those effects (taking account of the economic and social benefits being derived from the activity causing the noise).

Increasing noise exposure will at some point cause the significant observed adverse effect level boundary to be crossed. Above this level the noise causes a material change in behaviour such as keeping windows closed for most of the time or avoiding certain activities during periods when the noise is present. If the exposure is above this level the planning process should be used to avoid this effect occurring, by use of appropriate mitigation such as by altering the design and layout. Such decisions must be made taking account of the economic and social benefit of the activity causing the noise, but it is undesirable for such exposure to be caused.

At the highest extreme, noise exposure would cause extensive and sustained changes in behaviour without an ability to mitigate the effect of noise. The impacts on health and quality of life are such that regardless of the benefits of the activity causing the noise, this situation should be prevented from occurring.

This table summarises the noise exposure hierarchy, based on the likely average response.

Perception	Examples of Outcomes	Increasing Effect Level	Action
Not noticeable	No Effect	No Observed Effect	No specific measures required
Noticeable and not intrusive	Noise can be heard, but does not cause any change in behaviour or attitude. Can slightly affect the acoustic character of the area but not such that there is a perceived change in the quality of life.	No Observed Adverse Effect	No specific measures required
		Lowest Observed Adverse Effect Level	



<b>Noticeable and intrusive</b>	Noise can be heard and causes small changes in behaviour and/or attitude, e.g. turning up volume of television; speaking more loudly; where there is no alternative ventilation, having to close windows for some of the time because of the noise. Potential for some reported sleep disturbance. Affects the acoustic character of the area such that there is a perceived change in the quality of life.	Observed Adverse Effect	Mitigate and reduce to a minimum
		Significant Observed Adverse Effect Level	
<b>Noticeable and disruptive</b>	The noise causes a material change in behaviour and/or attitude, e.g. avoiding certain activities during periods of intrusion; where there is no alternative ventilation, having to keep windows closed most of the time because of the noise. Potential for sleep disturbance resulting in difficulty in getting to sleep, premature awakening and difficulty in getting back to sleep. Quality of life diminished due to change in acoustic character of the area.	Significant Observed Adverse Effect	Avoid
<b>Noticeable and very disruptive</b>	Extensive and regular changes in behaviour and/or an inability to mitigate effect of noise leading to psychological stress or physiological effects, e.g. regular sleep deprivation/awakening; loss of appetite, significant, medically definable harm, e.g. auditory and non-auditory	Unacceptable Adverse Effect	Prevent

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**What factors influence whether noise could be a concern?**

The subjective nature of noise means that there is not a simple relationship between noise levels and the impact on those affected. This will depend on how various factors combine in any particular situation.

These factors include:

- the source and absolute level of the noise together with the time of day it occurs. Some types and level of noise will cause a greater adverse effect at night than if they occurred during the day – this is because people tend to be more sensitive to noise at night as they are trying to sleep. The adverse effect can also be greater simply because there is less background noise at night;
- for non-continuous sources of noise, the number of noise events, and the frequency and pattern of occurrence of the noise;
- the spectral content of the noise (ie whether or not the noise contains particular high or low frequency content) and the general character of the noise (ie whether or not the noise contains particular tonal characteristics or other particular features). The local topology and topography should also be taken into account along with the existing and, where appropriate, the planned character of the area.

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**Related policy**

**National Planning Policy Framework**

- Paragraph 123 ([http://planningguidance.communit-sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph\\_123](http://planningguidance.communit-sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph_123)) (Bull 3 (<http://planningguidance.communit-sustainable-development/delivering-sustainable-development/11-conserving-and->

More specific factors to consider when relevant:

- where applicable, the cumulative impacts of more than one source should be taken into account along with the extent to which the source of noise is intermittent and of limited duration;
- consideration should also be given to whether adverse internal effects can be completely removed by closing windows and, in the case of new residential development, if the proposed mitigation relies on windows being kept closed most of the time. In both cases a suitable alternative means of ventilation is likely to be necessary. Further information on ventilation can be found in the Building Regulations [\[2\]](#)  
(<http://www.planningportal.gov.uk/buildingregulations/approveddocuments/part/>).
- In cases where existing noise sensitive locations already experience high noise levels, a development that is expected to cause even a small increase in the overall noise level may result in a significant adverse effect occurring even though little to no change in behaviour would be likely to occur.
- Where relevant, Noise Action Plans, and, in particular the Important Areas identified through the process associated with the Environmental Noise Directive and corresponding regulations should be taken into account. Defra's website has information on Noise Action Plans and Important Areas [\[2\]](#)  
(<https://www.gov.uk/government/publications/noise-action-plans-large-urban-areas-roads-and-railways>). Local authority environmental health departments will also be able to provide information about Important Areas.
- The effect of noise on wildlife. Noise can adversely affect wildlife and ecosystems. Further information may be found on Defra's website [\[2\]](#)  
(<http://randd.defra.gov.uk/Default.aspx?Menu=Menu&Module=More&Location=None&ProjectID=18136&FromSearch=Y&Publisher=1&SearchText=effects>). Particular consideration should be given to noisy development affecting designated sites ([http://planningguidance.communities.gov.uk/blog/guidance/natural-environment/biodiversity-ecosystems-and-green-infrastructure/#paragraph\\_011](http://planningguidance.communities.gov.uk/blog/guidance/natural-environment/biodiversity-ecosystems-and-green-infrastructure/#paragraph_011)).
- If external amenity spaces are an intrinsic part of the overall design, the acoustic environment of those spaces should be considered so that they can be enjoyed as intended.
- The potential effect of a new residential development being located close to an existing business that gives rise to noise should be carefully considered. This is because existing noise levels from the business even if intermittent (for example, a live music venue) may be regarded as unacceptable by the new residents and subject to enforcement action. To help avoid such instances, appropriate mitigation should be considered, including optimising the sound insulation provided by the new development's building envelope. In the case of an established business, the policy set out in the third bullet of paragraph 123 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph\\_123](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph_123)) of the Framework should be followed.
- Some commercial developments including fast food restaurants, night clubs and public houses can have particular impacts, not least because activities are often at their peak in the evening and late at night. Local planning authorities will wish to bear in mind not only the noise that is generated within the premises but also the noise that may be made by customers in the vicinity.

When proposed developments could include activities that would be covered by the licensing regime, local planning authorities should consider whether the potential for adverse noise impacts will be addressed through licensing controls (including licence conditions [\[2\]](#)

(<https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003>)). Local planning authorities should not however presume that licence conditions will provide for noise management in all instances and should liaise with the licensing authority.

enhancing-the-natural-environment/#paragraph\_123))

ID 30-006-20141224 Last updated 24 12 2014

### **Enforcement action against a statutory nuisance**

Noise can constitute a statutory nuisance and is subject to the provisions of the Environmental Protection Act 1990 and other relevant law. This includes noise affecting balconies and gardens.

When assessing whether a statutory nuisance exists, local authorities will consider a number of relevant factors, including the noise level, its duration, how often it occurs, the time of day or night that it occurs and the 'character of the locality'. The factors influencing the 'character of the locality' may include long-established sources of noise in the vicinity – for example, church bells, industrial premises, music venues or public houses.

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### **How can the adverse effects of noise be mitigated?**

This will depend on the type of development being considered and the character of the proposed location. In general, for noise making developments, there are four broad types of mitigation:

- **engineering:** reducing the noise generated at source and/or containing the noise generated;
- **layout:** where possible, optimising the distance between the source and noise-sensitive receptors and/or incorporating good design to minimise noise transmission through the use of screening by natural or purpose built barriers, or other buildings;
- **using planning conditions/obligations** to restrict activities allowed on the site at certain times and/or specifying permissible noise levels differentiating as appropriate between different times of day, such as evenings and late at night, and;
- **mitigating** the impact on areas likely to be affected by noise including through noise insulation when the impact is on a building.

For noise sensitive developments mitigation measures can include avoiding noisy locations; designing the development to reduce the impact of noise from the local environment; including noise barriers; and, optimising the sound insulation provided by the building envelope. Care should be taken when considering mitigation to ensure the envisaged measures do not make for an unsatisfactory development (see the guidance on design (<http://planningguidance.communities.gov.uk/blog/guidance/design/>) for more information).

ID 30-008-20140306 Last updated 06 03 2014




### **Are there further considerations relating to mitigating the impact of noise on residential developments?**

Yes – the noise impact may be partially off-set if the residents of those dwellings have access to:

- a relatively quiet facade (containing windows to habitable rooms) as part of their dwelling, and/or;
- a relatively quiet external amenity space for their sole use, (e.g. a garden or balcony). Although the existence of a garden or balcony is generally desirable, the intended benefits will be reduced with increasing noise exposure and could be such that significant adverse effects occur, and/or;
- a relatively quiet, protected, nearby external amenity space for sole use by a limited group of residents as part of the amenity of their dwellings, and/or;
- a relatively quiet, protected, external publically accessible amenity space (e.g. a public park or a local green space designated because of its tranquillity) that is nearby (e.g. within a 5 minutes walking distance).


The management of the noise associated with particular development types is

considered in the following documents:

- Mineral extraction – National Planning Practice Guidance: Minerals (<http://planningguidance.communities.gov.uk/blog/guidance/minerals/>);
- Aircraft noise – Aviation Policy Framework  (<https://www.gov.uk/government/publications/aviation-policy-framework>);
- Wind turbines – National Planning Practice Guidance for Renewable and low carbon energy (<http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/>) including ETSU R 97  ([https://whitehall-admin.production.alpha.gov.co.uk/government/uploads/system/uploads/attachment\\_data/file/49869/ETSU\\_Full\\_copy\\_\\_Searchab](https://whitehall-admin.production.alpha.gov.co.uk/government/uploads/system/uploads/attachment_data/file/49869/ETSU_Full_copy__Searchab));
- The National Policy Statements for Energy, Renewable Energy, Ports, Hazardous Waste and Waste Water  (<http://infrastructure.planningportal.gov.uk/legislation-and-advice/national-policy-statements>).

ID 30-009-20140306 Last updated 06 03 2014

### Can Local Plans include noise standards?

Yes, local planning authorities working with local communities and business may decide to develop and include in their Local Plans specific standards to apply to various forms of proposed development and locations in their area. Care should be taken, however, to avoid these being implemented as fixed thresholds as specific circumstances may justify some variation being allowed. Noise standards developed through Local Plans only need be concerned with the management of noise to and from the local environment (with the exception of teaching and learning spaces within schools where external noise is also a consideration in building regulations  ([http://www.planningportal.gov.uk/uploads/br/BR\\_PDF\\_AD\\_E\\_2010.pdf](http://www.planningportal.gov.uk/uploads/br/BR_PDF_AD_E_2010.pdf))).

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### Are noise concerns relevant to neighbourhood planning?

Noise concerns can be relevant to neighbourhood planning, and it is important to consider potential changes in the acoustic environment when drawing up a neighbourhood plan or considering a neighbourhood development order. The local planning and environmental health departments will be able to advise whether noise could be a concern.

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### What factors are relevant to identifying areas of tranquillity?

There are no precise rules, but for an area to be protected for its tranquillity it is likely to be relatively undisturbed by noise from human caused sources that undermine the intrinsic character of the area. Such areas are likely to be already valued for their tranquillity, including the ability to perceive and enjoy the natural soundscape, and are quite likely to be seen as special for other reasons including their landscape.

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## Planning Practice Guidance (<http://planningguidance.communities.gov.uk>)

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Guidance

# Open space, sports and recreation facilities, public rights of way and local green space

Print 

## 1. Open space, sports and recreation facilities

(<http://planningguidance.communities.gov.uk/blog/guidance/open-space-sports-and-recreation-facilities-public-rights-of-way-and-local-green-space/open-space-sports-and-recreation-facilities/>)

### Open space, sports and recreation facilities

#### How should open space be taken into account in planning?

Open space should be taken into account in planning for new development and considering proposals that may affect existing open space (see National Planning Policy Framework paragraphs 73-74

([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/8-promoting-healthy-communities/#paragraph\\_73](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/8-promoting-healthy-communities/#paragraph_73))). Open space, which includes all open space of public value, can take many forms, from formal sports pitches to open areas within a development, linear corridors and country parks. It can provide health and recreation benefits to people living and working nearby; have an ecological value and contribute to green infrastructure

(<http://planningguidance.communities.gov.uk/blog/guidance/natural-environment/green-infrastructure/>) (see National Planning Policy Framework paragraph 114

([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph\\_114](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph_114))), as well as being an important part of the landscape and setting of built development, and an important component in the achievement of sustainable development (see National Planning Policy Framework paragraphs 6-10

(<http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/>)).

It is for local planning authorities to assess the need for open space and opportunities for new provision in their areas. In carrying out this work, they should have regard to the duty to cooperate

(<http://planningguidance.communities.gov.uk/blog/guidance/duty-to-cooperate/>) where open space serves a wider area. Guidance on Local Green Space designation, which may form part of the overall open space network within an area, can be found here (<http://planningguidance.communities.gov.uk/blog/guidance/open-space-sports-and-recreation-facilities-public-rights-of-way-and-local-green-space/local-green-space-designation/>).

ID 37-001-20140306 Last updated 06 03 2014

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### Related policy

#### National Planning Policy Framework:

- Paragraph 70 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/8-promoting-healthy-communities/#paragraph\\_70](http://planningguidance.com/sustainable-development/delivering-sustainable-development/8-promoting-healthy-communities/#paragraph_70))
- Paragraphs 73-74 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/8-promoting-healthy-communities/#paragraph\\_73](http://planningguidance.com/sustainable-development/delivering-sustainable-development/8-promoting-healthy-communities/#paragraph_73))
- Paragraphs 156-157 ([http://planningguidance.com/sustainable-development/plan-making/#paragraph\\_156](http://planningguidance.com/sustainable-development/plan-making/#paragraph_156))
- Paragraph 162 ([http://planningguidance.com/sustainable-development/plan-making/#paragraph\\_162](http://planningguidance.com/sustainable-development/plan-making/#paragraph_162))
- Paragraph 171 ([http://planningguidance.com/sustainable-development/plan-making/#paragraph\\_171](http://planningguidance.com/sustainable-development/plan-making/#paragraph_171))

## How do local planning authorities and developers assess the needs for sports and recreation facilities?

Authorities and developers may refer to Sport England's guidance [\[2\]](http://www.sportengland.org/facilities-planning/planning-for-sport/planning-tools-and-guidance/) (<http://www.sportengland.org/facilities-planning/planning-for-sport/planning-tools-and-guidance/>) on how to assess the need for sports and recreation facilities.

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## Who should local planning authorities consult in cases where development would affect existing open space, sports and recreation facilities?

Local planning authorities are required [\[2\]](http://www.legislation.gov.uk/ukxi/2015/595/contents/made) (<http://www.legislation.gov.uk/ukxi/2015/595/contents/made>) to consult Sport England [\[2\]](http://www.sportengland.org/facilities-planning/) (<http://www.sportengland.org/facilities-planning/>) in certain cases where development affects the use of land as playing fields (<http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/table-2-statutory-consultees-on-applications-for-planning-permission-and-heritage-applications/>).

Where there is no requirement to consult, local planning authorities are advised to consult Sport England in cases where development might lead to:

- loss of, or loss of use for sport, of any major sports facility;
- proposals which lead to the loss of use for sport of a major body of water;
- creation of a major sports facility;
- creation of a site for one or more playing pitches;
- development which creates opportunities for sport (such as the creation of a body of water bigger than two hectares following sand and gravel extraction);
- artificial lighting of a major outdoor sports facility;
- a residential development of 300 dwellings or more.

Authorities should also consider whether there are planning policy reasons to engage other consultees ([http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/other-organisations-non-statutory-consultees/#paragraph\\_022](http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/other-organisations-non-statutory-consultees/#paragraph_022)).

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## 2. Public rights of way and National Trails

(<http://planningguidance.communities.gov.uk/blog/guidance/open-space-sports-and-recreation-facilities-public-rights-of-way-and-local-green-space/public-rights-of-way-and-national-trails/>)

### Public rights of way and National Trails

#### Where can I find information on public rights of way and National Trails?

Local highway authorities hold information about the location of public rights of way in the areas they cover. They are required to record the existence and location of rights of way on a definitive map. Natural England also has information about public rights of way [\[2\]](https://www.gov.uk/outdoor-access-recreation/rights-of-way-open-access) (<https://www.gov.uk/outdoor-access-recreation/rights-of-way-open-access>) and National Trails [\[2\]](https://www.gov.uk/government/publications/management-of-national-trails-the-new-deal) (<https://www.gov.uk/government/publications/management-of-national-trails-the-new-deal>).

Public rights of way form an important component of sustainable transport links and should be protected or enhanced. The Defra Rights of Way Circular (1/09) [\[2\]](https://www.gov.uk/government/publications/rights-of-way-circular-1-09) (<https://www.gov.uk/government/publications/rights-of-way-circular-1-09>) gives advice to

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### Related policy

#### National Planning Policy Framework

- Paragraph 69 ([http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/other-organisations-non-statutory-consultees/#paragraph\\_022](http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/other-organisations-non-statutory-consultees/#paragraph_022))

local authorities on recording, managing and maintaining, protecting and changing public rights of way. It also contains guidance on the consideration of rights of way in association with development. The Circular also covers the statutory procedures for diversion or extinguishment of a public right of way.

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- Paragraph 75 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/8-promoting-healthy-communities/#paragraph\\_75](http://planningguidance.com/sustainable-development/delivering-sustainable-development/8-promoting-healthy-communities/#paragraph_75))
- Paragraph 156 ([http://planningguidance.com/sustainable-development/plan-making/#paragraph\\_156](http://planningguidance.com/sustainable-development/plan-making/#paragraph_156))
- Paragraph 162 ([http://planningguidance.com/sustainable-development/plan-making/#paragraph\\_162](http://planningguidance.com/sustainable-development/plan-making/#paragraph_162))

3. Local Green Space designation (<http://planningguidance.communities.gov.uk/blog/guidance/open-space-sports-and-recreation-facilities-public-rights-of-way-and-local-green-space/local-green-space-designation/>)

## Local Green Space designation

### What is Local Green Space designation?

Local Green Space designation is a way to provide special protection against development for green areas of particular importance to local communities.

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### How is land designated as Local Green Space?

Local Green Space designation is for use in Local Plans (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>) or Neighbourhood Plans

(<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/>).

These plans can identify on a map ('designate') green areas for special protection. Anyone who wants an area to be designated as Local Green Space should contact the local planning authority about the contents of its local plan or get involved in neighbourhood planning.

ID 37-006-20140306 Last updated 06 03 2014

### How does Local Green Space designation relate to development?

Designating any Local Green Space will need to be consistent with local planning for sustainable development in the area. In particular, plans must identify sufficient land in suitable locations to meet identified development needs and the Local Green Space designation should not be used in a way that undermines this aim of plan making.

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### What if land has planning permission for development?

Local Green Space designation will rarely be appropriate where the land has planning permission for development. Exceptions could be where the development would be compatible with the reasons for designation or where planning permission is no longer capable of being implemented.

ID 37-008-20140306 Last updated 06 03 2014

### **Can all communities benefit from Local Green Space?**

Local Green Spaces may be designated where those spaces are demonstrably special to the local community, whether in a village or in a neighbourhood in a town or city.

ID 37-009-20140306 Last updated 06 03 2014

### **What if land is already protected by Green Belt or as Metropolitan Open Land (in London)?**

If land is already protected by Green Belt policy, or in London, policy on Metropolitan Open Land, then consideration should be given to whether any additional local benefit would be gained by designation as Local Green Space.

One potential benefit in areas where protection from development is the norm (e.g. villages included in the green belt) but where there could be exceptions is that the Local Green Space designation could help to identify areas that are of particular importance to the local community.

ID 37-010-20140306 Last updated 06 03 2014

### **What if land is already protected by designations such as National Park, Area of Outstanding Natural Beauty, Site of Special Scientific Interest, Scheduled Monument or conservation area?**

Different types of designations are intended to achieve different purposes. If land is already protected by designation, then consideration should be given to whether any additional local benefit would be gained by designation as Local Green Space.

ID 37-011-20140306 Last updated 06 03 2014

### **What about new communities?**

New residential areas may include green areas that were planned as part of the development. Such green areas could be designated as Local Green Space if they are demonstrably special and hold particular local significance.

ID 37-012-20140306 Last updated 06 03 2014

### **What types of green area can be identified as Local Green Space?**

The green area will need to meet the criteria set out in paragraph 77 of the National Planning Policy Framework ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/8-promoting-healthy-communities/#paragraph\\_77](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/8-promoting-healthy-communities/#paragraph_77)). Whether to designate land is a matter for local discretion. For example, green areas could include land where sports pavilions, boating lakes or structures such as war memorials are located, allotments, or urban spaces that provide a tranquil oasis.

ID 37-013-20140306 Last updated 06 03 2014

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### **Related policy**

#### **National Planning Policy Framework**

- Paragraph 77 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/8-promoting-healthy-communities/#paragraph\\_77](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/8-promoting-healthy-communities/#paragraph_77))



## How close does a Local Green Space need to be to the community it serves?

The proximity of a Local Green Space to the community it serves will depend on local circumstances, including why the green area is seen as special, but it must be reasonably close. For example, if public access is a key factor, then the site would normally be within easy walking distance of the community served.

ID 37-014-20140306 Last updated 06 03 2014

## How big can a Local Green Space be?

There are no hard and fast rules about how big a Local Green Space can be because places are different and a degree of judgment will inevitably be needed. However, paragraph 77 of the National Planning Policy Framework ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/8-promoting-healthy-communities/#paragraph\\_77](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/8-promoting-healthy-communities/#paragraph_77)) is clear that Local Green Space designation should only be used where the green area concerned is not an extensive tract of land. Consequently blanket designation of open countryside adjacent to settlements will not be appropriate. In particular, designation should not be proposed as a 'back door' way to try to achieve what would amount to a new area of Green Belt by another name.

ID 37-015-20140306 Last updated 06 03 2014

## Is there a minimum area?

Provided land can meet the criteria at paragraph 77 of the National Planning Policy Framework ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/8-promoting-healthy-communities/#paragraph\\_77](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/8-promoting-healthy-communities/#paragraph_77)) there is no lower size limit for a Local Green Space.

ID 37-016-20140306 Last updated 06 03 2014

## What about public access?

Some areas that may be considered for designation as Local Green Space may already have largely unrestricted public access, though even in places like parks there may be some restrictions. However, other land could be considered for designation even if there is no public access (e.g. green areas which are valued because of their wildlife, historic significance and/or beauty).

Designation does not in itself confer any rights of public access over what exists at present. Any additional access would be a matter for separate negotiation with land owners, whose legal rights must be respected.

ID 37-017-20140306 Last updated 06 03 2014

## What about public rights of way?

Areas that may be considered for designation as Local Green Space may be crossed by public rights of way (<http://planningguidance.communities.gov.uk/blog/guidance/open-space-sports-and-re...>

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### Related policy

#### National Planning Policy Framework

- Paragraph 77 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/8-promoting-healthy-communities/#paragraph\\_77](http://planningguidance.com/sustainable-development/delivering-sustainable-development/8-promoting-healthy-communities/#paragraph_77))

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### Related policy

#### National Planning Policy Framework

- Paragraph 77 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/8-promoting-healthy-communities/#paragraph\\_77](http://planningguidance.com/sustainable-development/delivering-sustainable-development/8-promoting-healthy-communities/#paragraph_77))

recreation-facilities-public-rights-of-way-and-local-green-space/public-rights-of-way-and-national-trails/). There is no need to designate linear corridors as Local Green Space simply to protect rights of way, which are already protected under other legislation.

ID 37-018-20140306 Last updated 06 03 2014

### **Does land need to be in public ownership?**

A Local Green Space does not need to be in public ownership. However, the local planning authority (in the case of local plan making) or the qualifying body (in the case of neighbourhood plan making) should contact landowners at an early stage about proposals to designate any part of their land as Local Green Space. Landowners will have opportunities to make representations in respect of proposals in a draft plan.

ID 37-019-20140306 Last updated 06 03 2014

### **Would designation place any restrictions or obligations on landowners?**

Designating a green area as Local Green Space would give it protection consistent with that in respect of Green Belt, but otherwise there are no new restrictions or obligations on landowners.

ID 37-020-20140306 Last updated 06 03 2014

### **Who will manage Local Green Space?**

Management of land designated as Local Green Space will remain the responsibility of its owner. If the features that make a green area special and locally significant are to be conserved, how it will be managed in the future is likely to be an important consideration. Local communities can consider how, with the landowner's agreement, they might be able to get involved, perhaps in partnership with interested organisations that can provide advice or resources.

ID 37-021-20140306 Last updated 06 03 2014

### **Can a Local Green Space be registered as an Asset of Community Value?**

Land designated as Local Green Space may potentially also be nominated for listing by the local authority as an Asset of Community Value [\[A\]](https://www.gov.uk/government/publications/community-right-to-bid-non-statutory-advice-note-for-local-authorities) (<https://www.gov.uk/government/publications/community-right-to-bid-non-statutory-advice-note-for-local-authorities>). Listing gives community interest groups an opportunity to bid if the owner wants to dispose of the land.


ID 37-022-20140306 Last updated 06 03 2014

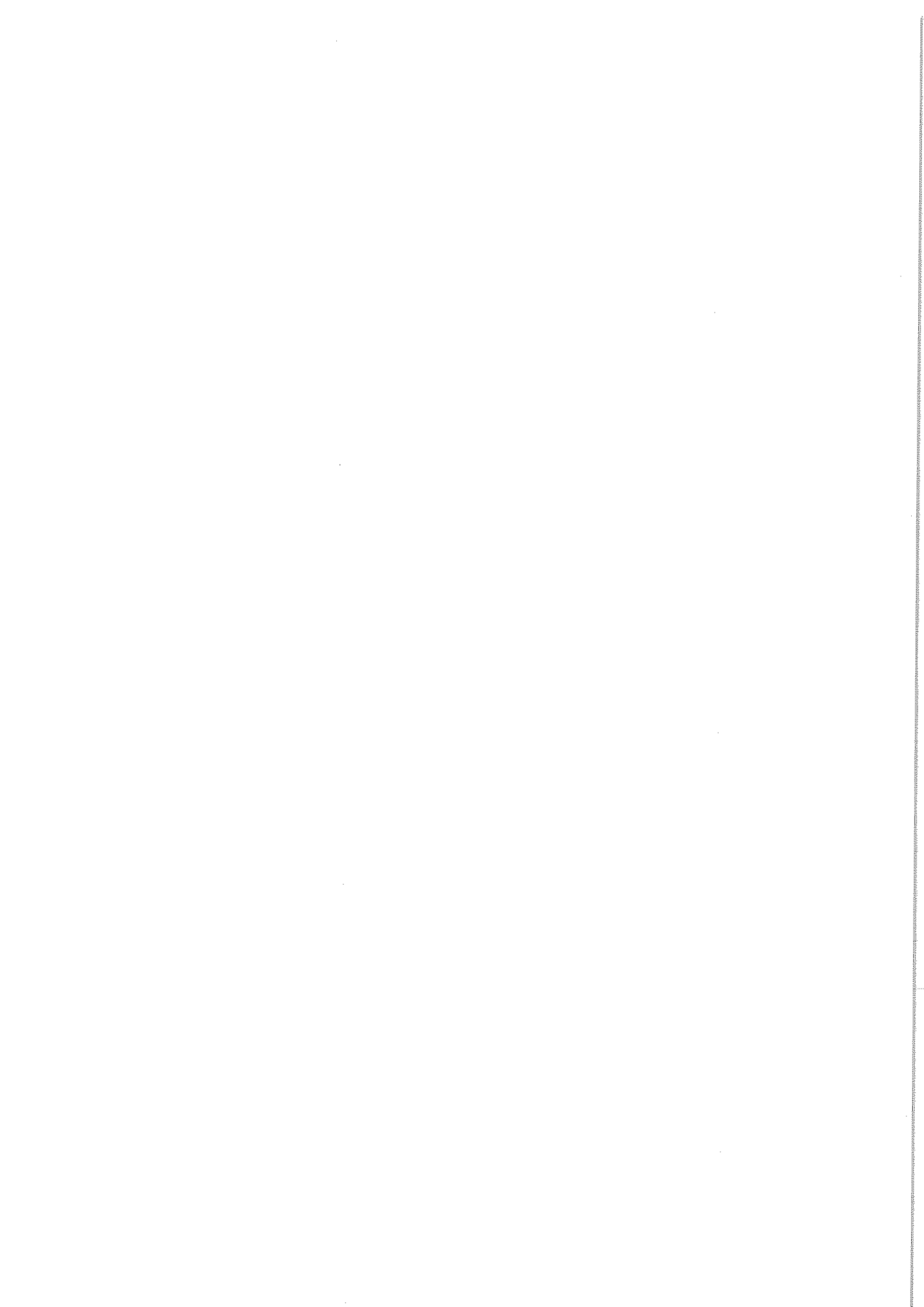
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### **Related policy**

#### **National Planning Policy Framework:**

- Paragraphs 76-78 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/8-promoting-healthy-communities/#paragraph\\_76](http://planningguidance.com/sustainable-development/delivering-sustainable-development/8-promoting-healthy-communities/#paragraph_76))

 Department for Communities & Local Government  
(<https://www.gov.uk/government/organisations/department-for-communities-and-local-government>)



# Planning Practice Guidance (<http://planningguidance.communities.gov.uk>)

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Guidance


## Planning obligations

Print 

1. Planning obligations (<http://planningguidance.communities.gov.uk/blog/guidance/planning-obligations/planning-obligations-guidance/>)


### Planning obligations

#### When can planning obligations be sought by the local planning authority?

Planning obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms. Planning obligations may only constitute a reason for granting planning permission if they meet the tests that they are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind. These tests are set out as statutory tests in the Community Infrastructure Levy Regulations 2010  (<http://www.legislation.gov.uk/ukdsi/2010/9780111492390/part/11>) and as policy tests in the National Planning Policy Framework.

ID 23b-001-20150326 Last updated 26 03 2015

#### How do planning obligations relate to other contributions?

Developers may be asked to provide contributions for infrastructure in several ways. This may be by way of the Community Infrastructure Levy and planning obligations in the form of section 106 agreements and section 278 highway agreements  (<http://www.legislation.gov.uk/ukpga/1980/66/section/278>).

Developers will also have to comply with any conditions (<http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/>) attached to their planning permission. Local authorities should ensure that the combined total impact of such requests does not threaten the viability of the sites and scale of development identified in the development plan.

Where the levy is in place for an area, charging authorities should work proactively with developers to ensure they are clear about the authorities' infrastructure needs and what developers will be expected to pay for through which route. There should be not actual or perceived 'double dipping' with developers paying twice for the same item of infrastructure.

ID 23b-002-20140306 Last updated 06 03 2014

#### Should policy on seeking planning obligations be set out in the development plan?

Policies for seeking planning obligations should be set out in a Local Plan (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>); neighbourhood plan (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/>) and where applicable in the London Plan to enable fair and open testing of the policy at examination. Supplementary planning documents should

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#### Related policy

##### National Planning Policy Framework

- Paragraph 204 ([http://planningguidance.com/sustainable-development/decision-taking/#paragraph\\_204](http://planningguidance.com/sustainable-development/decision-taking/#paragraph_204))

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#### Related policy

##### National Planning Policy Framework

- Paragraph 173 ([http://planningguidance.com/sustainable-development/plan-making/#paragraph\\_173](http://planningguidance.com/sustainable-development/plan-making/#paragraph_173))

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#### Related policy

##### National Planning Policy Framework

- Paragraph 153 ([http://planningguidance.com/sustainable-development/plan-making/#paragraph\\_153](http://planningguidance.com/sustainable-development/plan-making/#paragraph_153))

not be used to add unnecessarily to the financial burdens on development and should not be used to set rates or charges which have not been established through development plan policy.

Planning obligations assist in mitigating the impact of development which benefits local communities and supports the provision of local infrastructure. Local communities should be involved in the setting of planning obligations policies in a Local Plan

(<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>); neighbourhood plan (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/>) and where applicable in the London Plan.

ID 23b-003-20150326 Last updated 26 03 2015

### **Does the local planning authority have to justify its requirements for planning obligations?**


In all cases, including where tariff style charges are sought, the local planning authority must ensure that the obligation meets the relevant tests for planning obligations in that they are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind.

Planning obligations should not be sought where they are clearly not necessary to make the development acceptable in planning terms.

Planning obligations must be fully justified and evidenced. Where affordable housing contributions are being sought, planning obligations should not prevent development from going forward.

ID 23b-004-20150326 Last updated 26 03 2015

### **Can planning obligations be required for permitted development?**

By its nature permitted development should already be generally acceptable in planning terms and therefore planning obligations would ordinarily not be necessary. Any planning obligations entered into should be limited only to matters requiring prior approval 

(<http://www.legislation.gov.uk/ukxi/2013/1101/contents/made>) and should not, for instance, seek contributions for affordable housing.

ID 23b-005-20140306 Last updated 06 03 2014

### **Are planning obligations negotiable?**

Obligations should only be sought where they are necessary to make the development acceptable in planning terms. Where they provide essential site specific items to mitigate the impact of the development, such as a necessary road improvement, there may only be limited opportunity to negotiate. Where local planning authorities are requiring affordable housing obligations or tariff style contributions to infrastructure, they should be flexible in their requirements. Their policy should be clear that such planning obligations will take into account specific site circumstances.

ID 23b-006-20140306 Last updated 06 03 2014

### **What evidence is required to support negotiations on planning obligations?**

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#### **Related policy**

##### **National Planning Policy Framework**

- Paragraph 204 ([http://planningguidance.com/sustainable-development/decision-taking/#paragraph\\_204](http://planningguidance.com/sustainable-development/decision-taking/#paragraph_204))

Policy for seeking planning obligations should be grounded in an understanding of development viability

(<http://planningguidance.communities.gov.uk/blog/guidance/viability-guidance/>) through the plan making process.

On individual schemes, applicants should submit evidence on scheme viability (<http://planningguidance.communities.gov.uk/blog/guidance/viability-guidance/>) where obligations are under consideration. Wherever possible, applicants should provide viability evidence through an open book approach to improve the review of evidence submitted and for transparency.

ID 23b-007-20150326 Last updated 26 03 2015

### **Are planning obligation contributions required by local planning authorities publically available?**

Local planning authorities are required to keep a copy of any planning obligation together with details of any modification or discharge of the planning obligation and make these publically available on their planning register

(<http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/the-planning-register/>).

Local planning authorities are expected to use all of the funding they receive through planning obligations in accordance with the terms of the individual planning obligation agreement. This will ensure that new developments are acceptable in planning terms; benefit local communities and support the provision of local infrastructure. To ensure transparency local planning authorities are encouraged to make publically available information as to what planning obligation contributions are received and how these contributions are used. This information could be published in the authority's monitoring report ([http://planningguidance.communities.gov.uk/blog/guidance/local-plans/adoption-monitoring-and-supplementary-planning-documents/#paragraph\\_027](http://planningguidance.communities.gov.uk/blog/guidance/local-plans/adoption-monitoring-and-supplementary-planning-documents/#paragraph_027)) or through separate periodic reports published on the local planning authority's website.

ID 23b-024-20150326 Last updated 26 03 2015

### **When should discussions on planning obligations take place?**

Discussions about planning obligations should take place as early as possible in the planning process, including at the pre-application

(<http://planningguidance.communities.gov.uk/blog/guidance/before-submitting-an-application/>) stage. This will prevent delays in finalising those planning applications which are granted subject to the completion of planning obligation agreements.

Can planning obligations or heads of terms be on a local list?

([http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/local-information-requirements/#paragraph\\_042](http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/validation-requirements/local-information-requirements/#paragraph_042))

Local planning authorities are encouraged to inform and involve all parties with an interest in the land and relevant infrastructure providers, including county councils where appropriate, at an early stage to prevent delays to the process.

ID 23b-025-20150326 Last updated 26 03 2015

### **How can relevant infrastructure issues be taken into account during discussions on planning obligations?**

Local planning authorities are encouraged to work with relevant infrastructure providers at an early stage of the planning process when planning obligations are being discussed in order to prevent delays to the agreement of planning

obligations. For two tier council areas this should include county councils who provide services such as education. County councils can also be statutory consultees in the planning application process as set out in Table 2 of the Planning Guidance

(<http://planningguidance.communities.gov.uk/blog/guidance/consultation-and-pre-decision-matters/table-2-statutory-consultees-on-applications-for-planning-permission-and-heritage-applications/>).

ID 23b-026-20150326 Last updated 26 03 2015

### **Are there standard templates for the agreement of planning obligations?**

Local planning authorities are encouraged to use and publish standard forms and templates to assist with the process of agreeing planning obligations. These could include model agreements and clauses (including those already published by other bodies), that could be made publically available to help with the planning application process. Any further information required by the local planning authority, or issues raised by the applicant regarding planning obligations, should be addressed at an early stage of the planning application process. Use of model agreements does not remove the requirement for local planning authorities to consider on a case by case basis whether a planning obligation is necessary to make the development acceptable in planning terms.

ID 23b-027-20150326 Last updated 26 03 2015

### **Is there a timeframe for negotiating planning obligations?**

Planning obligations should be negotiated to enable decisions on planning applications to be made within the statutory time limits (<http://planningguidance.communities.gov.uk/blog/guidance/determining-a-planning-application/what-are-the-time-periods-for-determining-a-planning-application/>) or a longer period where agreed in writing between the local planning authority and the applicant.

ID 23b-028-20150326 Last updated 26 03 2015

### **Do applicants have to agree to a planning obligation?**

Applicants do not have to agree to a proposed planning obligation. However, this may lead to a refusal of planning permission or non-determination of the application. An appeal may be made against the non-determination or refusal of planning permission.

ID 23b-008-20140306 Last updated 06 03 2014

### **Can local planning authorities draw on other resources and expertise in considering planning obligations?**

It may be appropriate in some cases to consider collaborative agreements to make use of the skills of officers from other local planning authorities or contractual arrangements to make use of external third party experts so that planning obligations can be agreed quickly and effectively. Local planning authorities and developers may want to discuss the provision of extra resources to enable the speedy determination of planning obligations, for example when handling large and possibly detailed planning applications.

ID 23b-029-20150326 Last updated 26 03 2015

### **Can an agreed planning obligation be changed?**



Planning obligations can be renegotiated at any point, where the local planning authority and developer wish to do so. Where there is no agreement to voluntarily renegotiate, and the planning obligation predates April 2010 or is over 5 years old, an application may be made to the local planning authority to change the obligation where it “no longer serves a useful purpose” or would continue to serve a useful purpose in a modified way (see Section 106A of the Town and Country Planning Act 1990 [\[2\]](#))

(<http://www.legislation.gov.uk/ukpga/1990/8/section/106A>).

In addition, Section 106BA of the 1990 Act [\[2\]](#)

(<http://www.legislation.gov.uk/ukpga/1990/8/section/106B>) (inserted by the Growth and Infrastructure Act 2013) allows applications to be made to modify the affordable housing requirements of any Section 106 agreement regardless of when it was signed. This review must be based on economic viability and cannot take into account other aspects of the planning consent. It addresses affordable housing requirements only. Further guidance can be found here [\[2\]](#)

(<https://www.gov.uk/government/publications/section-106-affordable-housing-requirements-review-and-appeal>).

ID 23b-009-20140306 Last updated 06 03 2014

### **Do local planning authorities have to pay back unspent planning obligations?**

Local planning authorities are expected to use all of the funding received by way of planning obligations, as set out in individual agreements, in order to make development acceptable in planning terms. Agreements should normally include clauses stating when and how the funds will be used by and allow for their return, after an agreed period of time, where they are not.

ID 23b-010-20140306 Last updated 06 03 2014

### **Can there be an appeal against a refusal to change a planning obligation (Section 106 agreement)?**

Applications made to local planning authorities to modify a planning obligation, which pre dates April 2010 or is over 5 years old, may result in refusal or non-determination. If so, an appeal may be made. An appeal to the Planning Inspectorate under section 106B of the Town and Country Planning Act (1990) [\[2\]](#) (<http://www.legislation.gov.uk/ukpga/1990/8/section/106B>) must be made within 6 months of a decision by the local authority not to amend the obligation, or within 6 months starting at the 8 weeks from the date of request to amend if no decision is issued.


An appeal to the Planning Inspectorate on affordable housing viability under section 106BC of the 1990 Act [\[2\]](#)

(<http://www.legislation.gov.uk/ukpga/1990/8/section/106B>) must be made within 6 months of a decision by the local authority not to amend the obligation, or within 6 months commencing with the date which is 28 days (35 days if the Mayor of London is involved) from date of request to amend if no decision is issued. Further guidance can be found on Gov.uk titled “Section 106 affordable housing requirements: review and appeal [\[2\]](#)”

(<https://www.gov.uk/government/publications/section-106-affordable-housing-requirements-review-and-appeal>).

ID 23b-011-20140306 Last updated 06 03 2014


### **Are there any circumstances where infrastructure contributions through planning obligations should not be sought from developers?**

As set out in the Starter Homes Written Ministerial Statement   
(<https://www.gov.uk/government/speeches/starter-homes>) of 2 March 2015, starter homes exception sites should not be required to make affordable housing or tariff-style section 106 contributions.

ID 23b-031-20150814 Last updated 14 08 2015

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 Department for Communities & Local Government  
(<https://www.gov.uk/government/organisations/department-for-communities-and-local-government>)

## Planning Practice Guidance (<http://planningguidance.communities.gov.uk>)

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Guidance

### Renewable and low carbon energy

Print 

#### 1. Planning for renewable & low carbon energy – introduction

(<http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/planning-for-renewable-low-carbon-energy-introduction/>)


##### Planning for renewable & low carbon energy – introduction

###### Why is planning for renewable and low carbon energy important?


Increasing the amount of energy from renewable and low carbon technologies will help to make sure the UK has a secure energy supply, reduce greenhouse gas emissions to slow down climate change and stimulate investment in new jobs and businesses. Planning has an important role in the delivery of new renewable and low carbon energy infrastructure in locations where the local environmental impact is acceptable.

ID 5-001-20140306 Last updated 06 03 2014

###### Are all energy developments handled by local planning authorities?

Local planning authorities are responsible for renewable and low carbon energy development of 50 megawatts or less installed capacity (under the Town and Country Planning Act 1990). Renewable and low carbon development over 50 megawatts capacity are currently considered by the Secretary of State for Energy under the Planning Act 2008 

(<https://www.gov.uk/government/policies/providing-regulation-and-licensing-of-energy-industries-and-infrastructure/supporting-pages/planning-and-consents-for-national-energy-infrastructure>), and the local planning authority is a statutory consultee. It is the Government's intention to amend legislation so that all applications for onshore wind energy development are handled by local planning authorities.

Microgeneration is often permitted development 

(<https://www.planningportal.gov.uk/permission/house>) and may not require an application for planning permission.

ID 5-002-20150618 Last updated 18 06 2015

#### 2. Developing a strategy for renewable and low carbon energy

(<http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/developing-a-strategy-for-renewable-and-low-carbon-energy/>)

##### Developing a strategy for renewable and low carbon energy

###### How can local planning authorities develop a positive strategy to promote the delivery of renewable and low carbon energy?

The National Planning Policy Framework explains that all communities have a responsibility to help increase the use and supply of green energy, but this does not mean that the need for renewable energy automatically overrides

environmental protections and the planning concerns of local communities. As with other types of development, it is important that the planning concerns of local communities are properly heard in matters that directly affect them.

Local and neighbourhood plans are the key to delivering development that has the backing of local communities. When drawing up a Local Plan local planning authorities should first consider what the local potential is for renewable and low carbon energy generation. In considering that potential, the matters local planning authorities should think about include:

- the range of technologies that could be accommodated and the policies needed to encourage their development in the right places;
- the costs of many renewable energy technologies are falling, potentially increasing their attractiveness and the number of proposals;
- different technologies have different impacts and the impacts can vary by place;
- the UK has legal commitments to cut greenhouse gases and meet increased energy demand from renewable sources. Whilst local authorities should design their policies to maximise renewable and low carbon energy development, there is no quota which the Local Plan has to deliver.

There is information below on community-led renewable energy initiatives.

ID 5-003-20140306 Last updated 06 03 2014

### **What is the role for community led renewable energy initiatives?**

Community initiatives are likely to play an increasingly important role and should be encouraged as a way of providing positive local benefit from renewable energy development. Further information for communities interested in developing their own initiatives is provided by the Department of Energy and Climate Change. Local planning authorities may wish to establish policies which give positive weight to renewable and low carbon energy initiatives which have clear evidence of local community involvement and leadership.

Neighbourhood plans are an opportunity for communities to plan for community led renewable energy developments. Neighbourhood Development Orders and Community Right to Build Orders can be used to grant planning permission for renewable energy development. To support community based initiatives a local planning authority should set out clearly any strategic policies that those producing neighbourhood plans or Orders will need to consider when developing proposals that address renewable energy development. Local planning authorities should also share relevant evidence that may assist those producing a neighbourhood plan or Order, as part of their duty to advise or assist. As part of a neighbourhood plan, communities can also look at developing a community energy plan to underpin the neighbourhood plan.

ID 5-004-20140306 Last updated 06 03 2014

### **How can local planning authorities identify suitable areas for renewable and low carbon energy?**

There are no hard and fast rules about how suitable areas for renewable energy should be identified, but in considering locations, local planning authorities will need to ensure they take into account the requirements of the technology ([http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/developing-a-strategy-for-renewable-and-low-carbon-energy/#paragraph\\_006](http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/developing-a-strategy-for-renewable-and-low-carbon-energy/#paragraph_006)) and, critically, the potential impacts on the local environment, including from cumulative impacts (<http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon->

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#### **Related policy**

##### **National Planning Policy Framework**

- Paragraph 98 (<http://planningguidance.com/sustainable-development/delivering-sustainable-development/10-meeting-the-challenge->

energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph\_022). The views of local communities likely to be affected should be listened to.

of-climate-change-flooding-and-coastal-change/#paragraph\_98)

When identifying suitable areas it is also important to set out the factors that will be taken into account when considering individual proposals in these areas. These factors may be dependent on the investigatory work underpinning the identified area.

There is a methodology available from the Department of Energy and Climate Change's website on assessing the capacity for renewable energy development which can be used and there may be existing local assessments. However, the impact of some types of technologies may have changed since assessments were drawn up (e.g. the size of wind turbines has been increasing). In considering impacts, assessments can use tools to identify where impacts are likely to be acceptable. For example, landscape character areas could form the basis for considering which technologies at which scale may be appropriate in different types of location. Landscape Character Assessment is a process used to explain the type and characteristics of landscape in an area. Natural England has used Landscape Character Assessment to identify 159 National Character Areas in England which provide a national level database. Landscape Character Assessment carried out at a county or district level may provide a more appropriate scale for assessing the likely landscape and visual impacts of individual proposals. Some renewable energy schemes may have visual impacts on the marine and coastal environment and it may be appropriate to also to assess potential impacts on seascape character.

Identifying areas suitable for renewable energy in plans gives greater certainty as to where such development will be permitted. For example, where councils have identified suitable areas for large scale solar farms, they should not have to give permission outside those areas for speculative applications involving the same type of development when they judge the impact to be unacceptable.

In the case of wind turbines [\[2\]](http://www.parliament.uk/documents/commons-vote-office/June%202015/18%20June/1-DCLG-Planning.pdf) (<http://www.parliament.uk/documents/commons-vote-office/June%202015/18%20June/1-DCLG-Planning.pdf>), a planning application should not be approved unless the proposed development site is an area identified as suitable for wind energy development in a Local or Neighbourhood Plan.

There is information in the rest of the guidance on technical considerations ([http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/developing-a-strategy-for-renewable-and-low-carbon-energy/#paragraph\\_006](http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/developing-a-strategy-for-renewable-and-low-carbon-energy/#paragraph_006)), criteria-based policies ([http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/developing-a-strategy-for-renewable-and-low-carbon-energy/#paragraph\\_007](http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/developing-a-strategy-for-renewable-and-low-carbon-energy/#paragraph_007)), buffer zones ([http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/developing-a-strategy-for-renewable-and-low-carbon-energy/#paragraph\\_008](http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/developing-a-strategy-for-renewable-and-low-carbon-energy/#paragraph_008)) and decentralised energy ([http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/developing-a-strategy-for-renewable-and-low-carbon-energy/#paragraph\\_009](http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/developing-a-strategy-for-renewable-and-low-carbon-energy/#paragraph_009)).

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### **How are 'suitable areas' defined in relation to wind energy development?**

Suitable areas [\[2\]](http://www.parliament.uk/documents/commons-vote-office/June%202015/18%20June/1-DCLG-Planning.pdf) (<http://www.parliament.uk/documents/commons-vote-office/June%202015/18%20June/1-DCLG-Planning.pdf>) for wind energy development will need to have been allocated clearly in a Local or Neighbourhood Plan. Maps showing the wind resource as favourable to wind turbines or similar will not be sufficient.

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### **What technical considerations relating to renewable energy**

## technologies affect their siting?

Examples of the considerations for particular renewable energy technologies that can affect their siting include proximity of grid connection infrastructure and site size, and:

- for biomass, appropriate transport links,
- for hydro-electric power, sources of water,
- for wind turbines, predicted wind resource, considerations relating to air safeguarding, electromagnetic interference and access for large vehicles.

Discussions with industry experts can help to identify the siting requirements and likely impacts of technologies. The National Policy Statements [\[2\]](https://www.gov.uk/consents-and-planning-applications-for-national-energy-infrastructure-projects) (<https://www.gov.uk/consents-and-planning-applications-for-national-energy-infrastructure-projects>) on the Department of Energy and Climate Change's website give generic and technology specific advice relevant to siting particular technologies. The Environment Agency has published advice showing which areas may be suitable for open loop ground source heat pumps [\[3\]](http://www.environment-agency.gov.uk/business/topics/128133.aspx) (<http://www.environment-agency.gov.uk/business/topics/128133.aspx>) as well as advice on the technologies it regulates.

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## Do criteria based policies have a role in planning for renewable energy?

Policies based on clear criteria can be useful when they are expressed positively (i.e. that proposals will be accepted where the impact is or can be made acceptable). In thinking about criteria the National Policy Statements [\[4\]](https://www.gov.uk/consents-and-planning-applications-for-national-energy-infrastructure-projects) (<https://www.gov.uk/consents-and-planning-applications-for-national-energy-infrastructure-projects>) published by the Department of Energy and Climate Change provide a useful starting point. These set out the impacts particular technologies can give rise to and how these should be addressed.

In shaping local criteria for inclusion in Local Plans and considering planning applications in the meantime, it is important to be clear that:

- the need for renewable or low carbon energy does not automatically override environmental protections;
- cumulative impacts require particular attention, especially the increasing impact that wind turbines and large scale solar farms can have on landscape and local amenity as the number of turbines and solar arrays in an area increases;
- local topography is an important factor in assessing whether wind turbines and large scale solar farms could have a damaging effect on landscape and recognise that the impact can be as great in predominately flat landscapes as in hilly or mountainous areas;
- great care should be taken to ensure heritage assets are conserved in a manner appropriate to their significance, including the impact of proposals on views important to their setting;
- proposals in National Parks and Areas of Outstanding Natural Beauty, and in areas close to them where there could be an adverse impact on the protected area, will need careful consideration;
- protecting local amenity is an important consideration which should be given proper weight in planning decisions.

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## Are buffer zones/separation distances appropriate between renewable energy development and other land uses?

Local planning authorities should not rule out otherwise acceptable renewable energy developments through inflexible rules on buffer zones or separation distances. Other than when dealing with set back distances for safety, distance of itself does not necessarily determine whether the impact of a proposal is unacceptable. Distance plays a part, but so does the local context including factors such as topography, the local environment and near-by land uses. This is why it is important to think about in what circumstances proposals are likely to be acceptable and plan on this basis.

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### **How can decentralised energy opportunities be identified?**

There is an important contribution to be made by planning that is independent of the contribution from other regimes such as building regulations. For example, getting the right land uses in the right place can underpin the success of a district heating scheme. Similarly, planning can influence opportunities for recovering and using waste heat from industrial installations.

Planning can provide opportunities for, and encourage energy development which will produce waste heat, to be located close to existing or potential users of the heat. Planning can also help provide the new customers for the heat by encouraging development which could make use of the heat.

Information on local heat demand is published by the Department of Energy and Climate Change to assist planners and developers in identifying locations with opportunities for heat supply. See the national heat map [\[2\]](http://tools.decc.gov.uk/nationalheatmap) (<http://tools.decc.gov.uk/nationalheatmap>) and the UK CHP development map [\[3\]](https://www.gov.uk/combined-heat-and-power) (<https://www.gov.uk/combined-heat-and-power>). This information will be supplemented in future by further work, including detailed mapping, on the potential for combined heat and power and district heating and cooling.

View the National Planning Policy Framework definition of 'Decentralised Energy' (<http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/annex-2-glossary/#decentralised-energy>).

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3. Particular planning considerations for hydropower, active solar technology, solar farms and wind turbines (<http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/>)

### **Particular planning considerations for hydropower, active solar technology, solar farms and wind turbines**

#### **What are the planning considerations that relate to specific renewable energy technologies?**

Renewable energy developments should be acceptable for their proposed location. In addition to the factors that should be considered regarding the acceptability of a location for any form of renewable energy development ([http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/developing-a-strategy-for-renewable-and-low-carbon-energy/#paragraph\\_007](http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/developing-a-strategy-for-renewable-and-low-carbon-energy/#paragraph_007)) there are particular considerations for the following technologies: hydropower ([http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph\\_011](http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph_011)), active solar technology (photovoltaics and solar water heating)


([http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph\\_012](http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph_012)), solar farms

(<http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar>

farms-and-wind-turbines/#paragraph\_013) and wind turbines ([http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph\\_014](http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph_014)). Also, local planning authorities may wish to consider how planning conditions or planning obligations can mitigate the impacts described.


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### **What are the particular planning considerations that relate to Hydropower?**

Planning applications for hydropower should normally be accompanied by a Flood Risk Assessment. Early engagement with the local planning authority and the Environment Agency will help to identify the potential planning issues, which are likely to be highly specific to the location. Advice on environmental protection for new hydropower schemes has been published by the Environment Agency  (<http://www.environment-agency.gov.uk/business/topics/water/32022.aspx>).

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### **What are the particular planning considerations that relate to Active solar technology (Photovoltaic and Solar Water Heating)**

Active solar technology, (photovoltaic and solar water heating) on or related to a particular building is often permitted development  (<https://www.planningportal.gov.uk/permission/house>) (which does not require a planning application) provided the installation is not of an unusual design, or does not involve a listed building, and is not in a designated area.

Where a planning application is required, factors to bear in mind include:

- the importance of siting systems in situations where they can collect the most energy from the sun;
- need for sufficient area of solar modules to produce the required energy output from the system;
- the effect on a protected area such as an Area of Outstanding Natural Beauty or other designated areas;
- the colour and appearance of the modules, particularly if not a standard design.

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### **What are the particular planning considerations that relate to large scale ground-mounted solar photovoltaic Farms?**

The deployment of large-scale solar farms can have a negative impact on the rural environment, particularly in undulating landscapes. However, the visual impact of a well-planned and well-screened solar farm can be properly addressed within the landscape if planned sensitively.

Particular factors a local planning authority will need to consider include:

- encouraging the effective use of land by focussing large scale solar farms on previously developed and non agricultural land, provided that it is not of high environmental value;
- where a proposal involves greenfield land, whether (i) the proposed use of any agricultural land has been shown to be necessary and poorer quality land has been used in preference to higher quality land; and (ii) the proposal allows for continued agricultural use where applicable and/or encourages biodiversity improvements around arrays. See also a speech by the Minister

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#### **Related policy**

##### **National Planning Policy Framework**

- Paragraph 112 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph\\_112](http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph_112))



for Energy and Climate Change, the Rt Hon Gregory Barker MP, to the solar PV industry on 25 April 2013 [\[2\]](https://www.gov.uk/government/speeches/gregory-barker-speech-to-the-large-scale-solar-conference) (<https://www.gov.uk/government/speeches/gregory-barker-speech-to-the-large-scale-solar-conference>) and Written Ministerial Statement – Solar energy: protecting the local and global environment – made on 25 March 2015 [\[3\]](http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2015-03-25/HCWS488/)

(<http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2015-03-25/HCWS488/>).

- that solar farms are normally temporary structures and planning conditions can be used to ensure that the installations are removed when no longer in use and the land is restored to its previous use;
- the proposal's visual impact, the effect on landscape of glint and glare (see guidance on landscape assessment ([http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph\\_022](http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph_022))) and on neighbouring uses and aircraft safety;
- the extent to which there may be additional impacts if solar arrays follow the daily movement of the sun;
- the need for, and impact of, security measures such as lights and fencing;
- great care should be taken to ensure heritage assets are conserved in a manner appropriate to their significance, including the impact of proposals on views important to their setting. As the significance of a heritage asset derives not only from its physical presence, but also from its setting, careful consideration should be given to the impact of large scale solar farms on such assets. Depending on their scale, design and prominence, a large scale solar farm within the setting of a heritage asset may cause substantial harm to the significance of the asset;
- the potential to mitigate landscape and visual impacts through, for example, screening with native hedges;
- the energy generating potential, which can vary for a number of reasons including, latitude and aspect.

The approach to assessing cumulative landscape and visual impact of large scale solar farms is likely to be the same as assessing the impact of wind turbines ([http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph\\_023](http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph_023)). However, in the case of ground-mounted solar panels it should be noted that with effective screening and appropriate land topography the area of a zone of visual influence could be zero.

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### **What are the particular planning considerations that relate to wind turbines?**

The following questions should be considered when determining applications for wind turbines:

- Do local people have the final say on wind farm applications?  
([http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph\\_033](http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph_033))
- How are noise impacts of wind turbines assessed  
([http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph\\_015](http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph_015))?

- Is safety an issue when wind turbine applications are assessed ([http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph\\_016](http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph_016))?
- Is interference with electromagnetic transmissions an issue for wind turbine applications ([http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph\\_017](http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph_017))?
- How can the risk of wind turbines ([http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph\\_018](http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph_018)) be assessed for ecology?
- How should heritage be taken into account ([http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph\\_019](http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph_019)) in assessing wind turbine applications?
- Is shadow flicker and reflected light an issue ([http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph\\_020](http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph_020)) for wind turbine applications?
- How to assess the likely energy output ([http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph\\_021](http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph_021)) of a wind turbine?
- How should cumulative landscape and visual impacts ([http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph\\_022](http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph_022)) from wind turbines be assessed?
- What information is needed to assess cumulative landscape and visual impacts ([http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph\\_023](http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph_023)) of wind turbines?
- Decommissioning wind turbines ([http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph\\_024](http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph_024))

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## Do local people have the final say on wind farm applications?

The Written Ministerial Statement 

(<http://www.parliament.uk/documents/commons-vote-office/June%202015/18%20June/1-DCLG-Planning.pdf>) made on 18 June 2015 is quite clear that when considering applications for wind energy development, local planning authorities should (subject to the transitional arrangement) only grant planning permission if:

- the development site is in an area identified as suitable for wind energy development in a Local or Neighbourhood Plan; and
- following consultation, it can be demonstrated that the planning impacts identified by affected local communities have been fully addressed and therefore the proposal has their backing.

Whether the proposal has the backing of the affected local community is a planning judgement for the local planning authority.

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### How are noise impacts of wind turbines assessed?

The report, 'The assessment and rating of noise from wind farms' (ETSU-R-97) [\[X\]](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/49869/ETSU_Full_copy_Searchable_.pdf) ([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/49869/ETSU\\_Full\\_copy\\_Searchable\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/49869/ETSU_Full_copy_Searchable_.pdf)) should be used by local planning authorities when assessing and rating noise from wind energy developments. Good practice guidance on noise assessments of wind farms has been prepared by the Institute Of Acoustics. The Department of Energy and Climate Change accept that it represents current industry good practice and endorses it as a supplement to ETSU-R-97. It is available on the Department of Energy and Climate Change's website [\[X\]](https://www.gov.uk/government/policies/increasing-the-use-of-low-carbon-technologies/supporting-pages/onshore-wind) (<https://www.gov.uk/government/policies/increasing-the-use-of-low-carbon-technologies/supporting-pages/onshore-wind>).

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### Is safety an issue when wind turbine applications are assessed?

Safety may be an issue in certain circumstances, but risks can often be mitigated through appropriate siting and consultation with affected bodies:

*Buildings* – Fall over distance (i.e. the height of the turbine to the tip of the blade) plus 10% is often used as a safe separation distance. This is often less than the minimum desirable distance between wind turbines and occupied buildings calculated on the basis of expected noise levels and due to visual impact.

*Power lines* – National Grid, and/or the relevant Distribution Network Operators will be able to advise on the required standards for wind turbines being separated from existing overhead power lines.

*Air traffic and safety* – Wind turbines may have an adverse affect on air traffic movement and safety. Firstly, they may represent a risk of collision with low flying aircraft, and secondly, they may interfere with the proper operation of radar by limiting the capacity to handle air traffic, and aircraft instrument landing systems. There is a 15 kilometre (km) consultation zone and 30km or 32km advisory zone around every civilian air traffic radar, although objections can be raised to developments that lie beyond the 32km advisory zone. There is a c.15km statutory safeguarding consultation zone around Ministry of Defence aerodromes within which wind turbine proposals would be assessed for physical obstruction. See the Town and Country Planning (safeguarded aerodromes, technical sites and military explosives storage areas) direction 2002. Further advice on wind energy and aviation can be found on the Civil Aviation Authority [\[X\]](http://www.caa.co.uk/homepage.aspx?catid=1) (<http://www.caa.co.uk/homepage.aspx?catid=1>) and National Air Control Transport Services [\[X\]](http://www.nats.aero/) (<http://www.nats.aero/>) websites.

*Defence* – Wind turbines can adversely affect a number of Ministry Of Defence operations including radars, seismological recording equipment, communications facilities, naval operations and low flying. Developers and local planning authorities should consult with the Ministry of Defence [\[X\]](https://www.gov.uk/government/publications/wind-farms-ministry-of-defence-safeguarding) (<https://www.gov.uk/government/publications/wind-farms-ministry-of-defence-safeguarding>) if a proposed turbine is 11 metres (m) to blade tip or taller, and/or has a rotor diameter of 2m or more.

*Radar* – In addition to air traffic radar, wind turbines may affect other radar installations such as weather radar operated by the Meteorological Office.

*Strategic Road Network* – The Highways Agency / Department for Transport have produced advice for siting wind turbines safely in relation to the strategic road network titled "The strategic road network and the delivery of sustainable

development" (2013) [\[X\]](#)

([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/237412/dft-circular-strategic-road.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/237412/dft-circular-strategic-road.pdf)).

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### **Is interference with electromagnetic transmissions an issue for wind turbine applications?**

Wind turbines can potentially affect electromagnetic transmissions (e.g. radio, television and phone signals). Specialist organisations responsible for the operation of electromagnetic links typically require 100m clearance either side of a line of sight link from the swept area of turbine blades. OFCOM acts as a central point of contact for identifying specific consultees relevant to a site.

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### **How can the risk of wind turbines be assessed for ecology?**

Evidence suggests that there is a risk of collision between moving turbine blades and birds and/or bats. Other risks including disturbance and displacement of birds and bats and the drop in air pressure close to the blades which can cause barotrauma (lung expansion) in bats, which can be fatal. Whilst these are generally a relatively low risk, in some situations, such as in close proximity to important habitats used by birds or bats, the risk is greater and the impacts on birds and bats should therefore be assessed. Advice on assessing risks is available from Natural England's website [\[X\]](#)

(<https://www.gov.uk/government/organisations/natural-england>).

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### **How should heritage be taken into account in assessing wind turbine applications?**

As the significance of a heritage asset derives not only from its physical presence, but also from its setting, careful consideration should be given to the impact of wind turbines on such assets. Depending on their scale, design and prominence a wind turbine within the setting of a heritage asset may cause substantial harm to the significance of the asset.

ID 5-019-20140306 Last updated 06 03 2014

### **Is shadow flicker and reflected light an issue for wind turbine applications?**

Under certain combinations of geographical position and time of day, the sun may pass behind the rotors of a wind turbine and cast a shadow over neighbouring properties. When the blades rotate, the shadow flicks on and off; the impact is known as 'shadow flicker'. Only properties within 130 degrees either side of north, relative to the turbines can be affected at these latitudes in the UK – turbines do not cast long shadows on their southern side.

Modern wind turbines can be controlled so as to avoid shadow flicker when it has the potential to occur. Individual turbines can be controlled to avoid shadow flicker at a specific property or group of properties on sunny days, for specific times of the day and on specific days of the year. Where the possibility of shadow flicker exists, mitigation can be secured through the use of conditions.

Although problems caused by shadow flicker are rare, where proposals for wind turbines could give rise to shadow flicker, applicants should provide an analysis which quantifies the impact. Turbines can also cause flashes of reflected light, which can be visible for some distance. It is possible to ameliorate the flashing but it is not possible to eliminate it.

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### **How to assess the likely energy output of a wind turbine?**

As with any form of energy generation this can vary and for a number of reasons. With wind turbines the mean wind speed at hub height (along with the statistical distribution of predicted wind speeds about this mean and the wind turbines used) will determine the energy captured at a site. The simplest way of expressing the energy capture at a site is by use of the 'capacity factor'. This though will vary with location and even by turbine in an individual wind farm. This can be useful information in considering the energy contribution to be made by a proposal, particularly when a decision is finely balanced.

ID 5-021-20140306 Last updated 06 03 2014

### **How should cumulative landscape and visual impacts from wind turbines be assessed?**

Cumulative landscape impacts and cumulative visual impacts are best considered separately. The cumulative landscape impacts are the effects of a proposed development on the fabric, character and quality of the landscape; it is concerned with the degree to which a proposed renewable energy development will become a significant or defining characteristic of the landscape.

Cumulative visual impacts concern the degree to which proposed renewable energy development will become a feature in particular views (or sequences of views), and the impact this has upon the people experiencing those views. Cumulative visual impacts may arise where two or more of the same type of renewable energy development will be visible from the same point, or will be visible shortly after each other along the same journey. Hence, it should not be assumed that, just because no other sites will be visible from the proposed development site, the proposal will not create any cumulative impacts.

ID 5-022-20140306 Last updated 06 03 2014

### **What information is needed to assess cumulative landscape and visual impacts of wind turbines?**

In identifying impacts on landscape, considerations include: direct and indirect effects, cumulative impacts and temporary and permanent impacts. When assessing the significance of impacts a number of criteria should be considered including the sensitivity of the landscape and visual resource and the magnitude or size of the predicted change. Some landscapes may be more sensitive to certain types of change than others and it should not be assumed that a landscape character area deemed sensitive to one type of change cannot accommodate another type of change.

In assessing the impact on visual amenity, factors to consider include: establishing the area in which a proposed development may be visible, identifying key viewpoints, the people who experience the views and the nature of the views.

The Historic England website provides information on undertaking historic landscape characterisation and how this relates to landscape character assessment.

The bullets below set out the type of information that can usefully inform assessments.

#### **Information to inform landscape and visual impact assessments**

- a base plan of all existing windfarms, consented developments and applications received, showing all schemes within a defined radius of the centre of the proposal under consideration
- for those existing or proposed windfarms within a defined radius of the proposal under consideration, a plan showing cumulative 'zones of visual influence'. (A zone of visual influence is the area from which a development or other structure is theoretically visible). The aim of the plan should be to clearly identify the zone of visual influence of each windfarm, and those areas from where one or more windfarms are likely to be seen
- the base plan and plan of cumulative zones of visual influence will need to reflect local circumstances, for example, the areas covered should take into account the extent to which factors such as the topography and the likely visibility of proposals in prevailing meteorological conditions may vary
- maps of cumulative zones of visual influence are used to identify appropriate locations for visual impact studies. These include locations for simultaneous visibility assessments (i.e. where two or more schemes are visible from a fixed viewpoint without the need for an observer to turn their head, and repetitive visibility assessments (i.e. where the observer is able to see two or more schemes but only if they turn around)
- sequential effects on visibility occur when an observer moves through a landscape and sees two or more schemes. Common routes through a landscape (e.g. major roads; long distance paths or cycle routes) can be identified as 'journey scenarios' and the proposals impact on them can be assessed
- photomontages showing all existing and consented turbines, and those for which planning applications have been submitted, in addition to the proposal under consideration. The viewpoints used could be those identified using the maps of cumulative zones of visual influence. The photomontages could be annotated to include the dimensions of the existing turbines, the distance from the viewpoint to the different schemes, the arc of view and the format and focal length of the camera used
- at the most detailed level, description and assessment of cumulative impacts may include the following landscape issues: scale of development in relation to landscape character or designations, sense of distance, existing focal points in the landscape, skylining (where additional development along a skyline appears disproportionately dominant) and sense of remoteness or wildness

ID 5-023-20140306 Last updated 06 03 2014

### **Decommissioning wind turbines**

Local planning authorities should consider using planning conditions to ensure that redundant turbines are removed when no longer in use and land is restored to an appropriate use.

ID 5-024-20140306 Last updated 06 03 2014

### **When is pre-application consultation with the local community compulsory for wind turbine proposals?**

There is a legal requirement to carry out pre-application consultation with the local community for planning applications for wind turbine development involving more than 2 turbines or where the hub height of any turbine exceeds 15 metres as identified in Article 3 of the Town and Country Planning (Development Management Procedure) (England) (Order) 2015 [\[2\]](http://www.legislation.gov.uk/ukxi/2015/595/article/3/made) (<http://www.legislation.gov.uk/ukxi/2015/595/article/3/made>).

The following questions should be considered when undertaking compulsory pre-application consultation with the local community for wind turbine proposals:

- Who is responsible for conducting compulsory pre-application consultation with the local community for wind turbine proposals? ([http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph\\_026](http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph_026))
- What must a prospective applicant for planning permission for a wind turbine do when undertaking compulsory pre-application consultation with the local community? ([http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph\\_027](http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph_027))
- How can a prospective applicant for planning permission for a wind turbine establish who needs to be consulted? ([http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph\\_028](http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph_028))
- Will compulsory pre-application consultation with the local community apply to planning applications for wind turbine(s) determined by the Secretary of State? ([http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph\\_029](http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph_029))
- What role can the local planning authority play in compulsory pre-application consultation with the local community for wind turbine proposals? ([http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph\\_030](http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph_030))
- What happens if a prospective applicant for a wind turbine does not comply with the requirement to undertake compulsory pre-application consultation with the local community? ([http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph\\_031](http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph_031))

ID 5-025-20150415 Last updated 15 04 2015

### **Who is responsible for conducting compulsory pre-application consultation with the local community for wind turbine proposals?**

The requirement to undertake compulsory pre-application consultation with the local community is the responsibility of the prospective applicant for planning permission.

ID 5-026-20140410 Last updated 10 04 2014

### **What must a prospective applicant for planning permission for a wind turbine(s) do when undertaking compulsory pre-application consultation with the local community?**

The requirements that must be fulfilled are set out in Sections 61W and 61X of the Town and Country Planning Act 1990 [\[2\]](#)

(<http://www.legislation.gov.uk/ukpga/2011/20/part/6/chapter/4/enacted>) and Article 4 of the Town and Country Planning (Development Management Procedure)

(England) (Order) 2015 [↗](#)

(<http://www.legislation.gov.uk/ukxi/2015/595/article/4/made>). In summary, a prospective applicant for planning permission must:

- publicise the proposal in such a way as the applicant reasonably considers is likely to bring it to the attention of a majority of the people who live at, or otherwise occupy, premises in the vicinity of the land;
- set out how persons may contact them regarding the proposal. The applicant must give sufficient information about the proposed timetable to ensure that people wishing to comment on the proposed development may do so in good time;
- if they decide to go ahead with making an application for planning permission, have regard to any responses received when finalising the application to be submitted;
- when submitting their application explain how the local community has been consulted, what comments have been received, and how account has been taken of those comments.

These are minimum requirements, but it is in the prospective applicant's interest to conduct pre-application consultation to an appropriate standard to ensure that they fully understand the views of those within the vicinity of the land to which the application relates.

ID 5-027-20150415 Last updated 15 04 2015

### **How can a prospective applicant for planning permission for a wind turbine(s) establish who needs to be consulted?**

Where it is required, compulsory pre-application consultation must meet the legislative requirements set out in Section 61W of the Town and Country Planning Act 1990 [↗](#)

(<http://www.legislation.gov.uk/ukpga/2011/20/part/6/chapter/4/enacted>). These require that applicants must publicise the proposal in such a way as the applicant reasonably considers is likely to bring it to the attention of a majority of persons who live at or otherwise occupy premises in the vicinity of the land.

There is no one size fits all approach to pre-application consultation and, providing it meets the legislative requirements, decisions on the nature and extent of consultation will need to be made on a case by case basis and in light of the relevant circumstances. Pre-application consultation should be proportionate to the scale and nature of a proposed development, the local context and the people that might be materially affected by the planning impacts of the development.

When deciding how and who to consult, prospective applicants will need to consider what is necessary in the specific circumstances of their proposal but a useful starting point is to consider the extent of engagement with the local community a local planning authority would normally undertake if a formal planning application were to be submitted. Prospective applicants are encouraged to discuss these matters with the local planning authority ([http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph\\_030](http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph_030)).

ID 5-028-20140410 Last updated 10 04 2014

### **Will compulsory pre-application consultation with the local community apply to planning applications for wind turbine(s) determined by the Secretary of State?**



Compulsory pre-application consultation with the local community applies to applications under Part 3 of the Town and Country Planning Act [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/contents) (<http://www.legislation.gov.uk/ukpga/1990/8/contents>) which meet the criteria ([http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph\\_025](http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph_025)). Specific provision is made so that the duty applies to applications meeting the criteria ([http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph\\_025](http://planningguidance.communities.gov.uk/blog/guidance/renewable-and-low-carbon-energy/particular-planning-considerations-for-hydropower-active-solar-technology-solar-farms-and-wind-turbines/#paragraph_025)) made directly to the Secretary of State where a local planning authority has been designated as poorly performing under section 62A of the 1990 Act [\[2\]](http://www.legislation.gov.uk/ukpga/2013/27/section/1/enacted) (<http://www.legislation.gov.uk/ukpga/2013/27/section/1/enacted>).

ID 5-029-20140410 Last updated 10 04 2014

### **What role can the local planning authority play in compulsory pre-application consultation with the local community for wind turbine proposals?**

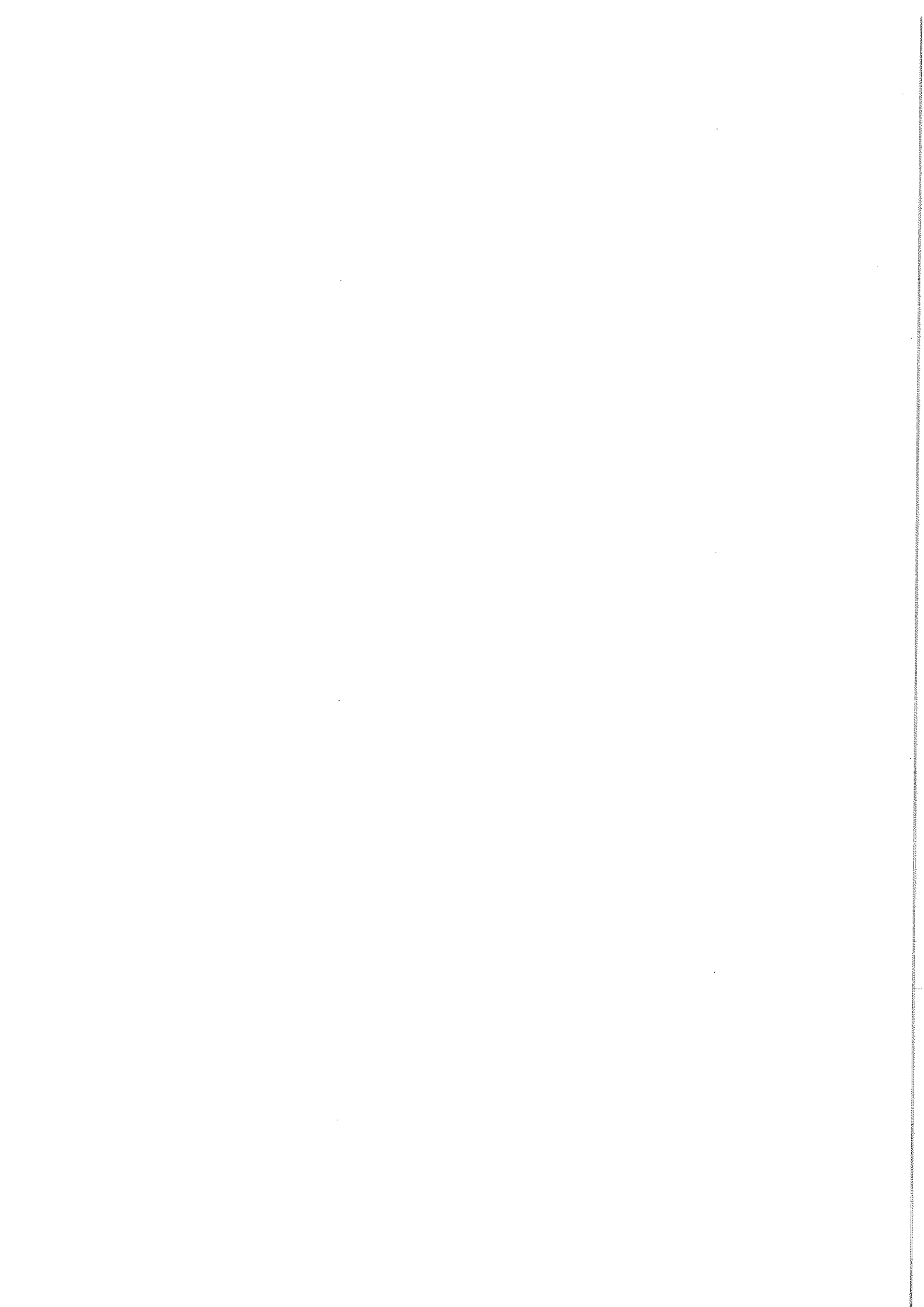
Local planning authorities are encouraged to work constructively with prospective applicants undertaking compulsory pre-application consultation with the local community. Under Section 61W(7) of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/2011/20/part/6/chapter/4/enacted) (<http://www.legislation.gov.uk/ukpga/2011/20/part/6/chapter/4/enacted>), an applicant must have regard to the advice (if any) given by the local planning authority about local good practice. More general information on the role of the local planning authorities at the pre-application stage is available in this guidance suite (<http://planningguidance.communities.gov.uk/blog/guidance/before-submitting-an-application/who-can-be-involved-at-the-pre-application-stage/the-local-planning-authority-at-the-pre-application-stage/>).

ID 5-030-20140410 Last updated 10 04 2014

### **What happens if a prospective applicant for a wind turbine does not comply with the requirement to undertake compulsory pre-application consultation with the local community?**

If the requirements set out in Sections 61W and 61X of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/2011/20/part/6/chapter/4/enacted) (<http://www.legislation.gov.uk/ukpga/2011/20/part/6/chapter/4/enacted>) and Article 4 of the Town and Country Planning (Development Management Procedure) (England) Order 2010 [\[2\]](http://www.legislation.gov.uk/uksi/2015/595/article/4/made) (<http://www.legislation.gov.uk/uksi/2015/595/article/4/made>) have not been met and a planning application is submitted, the local planning authority will not be able to validate it until the prospective applicant complies.

ID 5-031-20150415 Last updated 15 04 2015



# Planning Practice Guidance <http://planningguidance.communities.gov.uk>

## Guidance

# Rural Housing

Print 

## 1. How should local authorities support sustainable rural communities?

(<http://planningguidance.communities.gov.uk/blog/guidance/rural-housing/how-should-local-authorities-support-sustainable-rural-communities/>)

### How should local authorities support sustainable rural communities?

- It is important to recognise the particular issues facing rural areas in terms of housing supply and affordability, and the role of housing in supporting the broader sustainability of villages and smaller settlements. This is clearly set out in the National Planning Policy Framework, in the core planning principles ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/#paragraph\\_17](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/#paragraph_17)), the section on supporting a prosperous rural economy ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/3-supporting-a-prosperous-rural-economy/#paragraph\\_28](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/3-supporting-a-prosperous-rural-economy/#paragraph_28)) and the section on housing ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#paragraph\\_54](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#paragraph_54)).
- A thriving rural community in a living, working countryside depends, in part, on retaining local services and community facilities such as schools, local shops, cultural venues, public houses and places of worship. Rural housing is essential to ensure viable use of these local facilities.
- Assessing housing need and allocating sites should be considered at a strategic level and through the Local Plan and/or neighbourhood plan process. However, all settlements can play a role in delivering sustainable development in rural areas ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#paragraph\\_55](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#paragraph_55)) – and so blanket policies restricting housing development in some settlements and preventing other settlements from expanding should be avoided unless their use can be supported by robust evidence.
- The National Planning Policy Framework also recognises that different sustainable transport policies and measures will be required in different communities and opportunities to maximise sustainable transport solutions ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/4-promoting-sustainable-transport/#paragraph\\_34](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/4-promoting-sustainable-transport/#paragraph_34)) will vary from urban to rural areas ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/4-promoting-sustainable-transport/#paragraph\\_29](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/4-promoting-sustainable-transport/#paragraph_29)).

ID 50-001-20140306 Last updated 06 03 2014

## Related policy


### National Planning Policy Framework

- Paragraph 17 (bullet point 5) ([http://planningguidance.com/sustainable-development/#paragraph\\_17](http://planningguidance.com/sustainable-development/#paragraph_17))
- Paragraph 28 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/3-supporting-a-prosperous-rural-economy/#paragraph\\_28](http://planningguidance.com/sustainable-development/delivering-sustainable-development/3-supporting-a-prosperous-rural-economy/#paragraph_28))
- Paragraph 29 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/4-promoting-sustainable-transport/#paragraph\\_29](http://planningguidance.com/sustainable-development/delivering-sustainable-development/4-promoting-sustainable-transport/#paragraph_29))
- Paragraph 34 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/4-promoting-sustainable-transport/#paragraph\\_34](http://planningguidance.com/sustainable-development/delivering-sustainable-development/4-promoting-sustainable-transport/#paragraph_34))
- Paragraph 54 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#paragraph\\_54](http://planningguidance.com/sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#paragraph_54))

quality-homes/#paragraph\_54)

- Paragraph 55 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#paragraph\\_55](http://planningguidance.com/sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#paragraph_55))

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 Department for Communities & Local Government  
(<https://www.gov.uk/government/organisations/department-for-communities-and-local-government>)

## Planning Practice Guidance (<http://planningguidance.communities.gov.uk>)

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Guidance

### Starter Homes

Print 

1. Starter Homes (<http://planningguidance.communities.gov.uk/blog/guidance/starter-homes/starter-homes-guidance/>)

#### Starter Homes

##### What is the

##### Starter Homes exception site policy

(<http://www.publications.parliament.uk/pa/cm201415/cmhansrd/cm150302/wmstext/150302m0001.htm#150302200000>)

The Written Ministerial Statement 

(<http://www.publications.parliament.uk/pa/cm201415/cmhansrd/cm150302/wmstext/150302m0001.htm#1503022000006>) sets out how the Starter Homes exception sites policy helps to meet the housing needs of young first time buyers, many of whom increasingly cannot afford to buy their own home, by allowing Starter Homes to be offered to them at below their open market value. The exception site policy enables applications for development for Starter Homes on under-used or unviable industrial and commercial land that has not been currently identified for housing. It also encourages local planning authorities not to seek section 106 affordable housing and tariff-style contributions that would otherwise apply. Local planning authorities should work in a positive and proactive way with landowners and developers to secure a supply of land suitable for Starter Homes exception sites to deliver housing for young first time buyers in their area.

ID 55-001-20150318 Last updated 18 03 2015

##### What are the key characteristics for a Starter Home?

A Starter Home is expected to be well designed and suitable for young first time buyers. Local planning authorities and developers should work together to determine what size and type of Starter Home is most appropriate for a particular Starter Home exemption site reflecting their knowledge of local housing markets and sites. A Starter Home is not expected to be priced after the discount significantly more than the average price paid by a first time buyer. This would mean the discounted price should be no more than £250,000 outside London and £450,000 in London.

ID 55-002-20150318 Last updated 18 03 2015

##### Who is eligible for a Starter Home?

Local planning authorities should put in place planning obligations (<http://planningguidance.communities.gov.uk/blog/guidance/planning-obligations/planning-obligations-guidance/>) to ensure that Starter Homes are offered for sale at a minimum of 20% below its open market value of the property. Such properties are expected to be offered to people who have not previously been a home buyer and want to own and occupy a home, and who are below the age of 40 at the time of purchase.

ID 55-003-20150318 Last updated 18 03 2015

##### How will the minimum 20% discount for Starter Homes be funded?

To deliver the minimum 20% discount, local planning authorities should not seek section 106 affordable housing contributions, including any tariff-based contributions to general infrastructure pots, from developments of Starter

Homes. Local planning authorities will still be able to seek other section 106 contributions to mitigate the impact of development to make it acceptable in planning terms, including addressing any necessary infrastructure. Local planning authorities will also be eligible for the New Homes Bonus on Starter Homes.

ID 55-004-20150318 Last updated 18 03 2015

### **How should the discount and age restriction for Starter Homes be enforced?**

On Starter Homes exception sites, local planning authorities should include in the relevant section 106 agreement a requirement on the developer to offer Starter Homes to a first time buyer under the age of 40 for a discount of at least 20% below the open market value of the property, and for there to be appropriate restrictions to ensure that Starter Homes are not resold or let at their open market value for 5 years following the initial sale. Local planning authorities should enforce these planning obligations (<http://planningguidance.communities.gov.uk/blog/guidance/planning-obligations/planning-obligations-guidance/>) in the usual way.

ID 55-005-20150318 Last updated 18 03 2015

### **What is the role of the national Starter Homes register and how should local planning authorities use it?**

The national Starter Homes Register, managed by the Home Builders Federation allowing first time buyers to register their interest in the scheme, provides a valuable source of information about potential demand for Starter Homes and identifying who may be eligible for Starter Homes developments. Local planning authorities can use this as evidence when developing their Local Plan (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>) and associated documents. It will also allow those registering to receive information about Starter Homes sites as they start to emerge.

ID 55-006-20150318 Last updated 18 03 2015

### **What land is suitable for Starter Homes exception sites?**

Starter Homes exception sites are expected to be on land that has been in commercial or industrial use, and which has not currently been identified for residential development. Suitable sites are likely to be under-used or no longer viable for commercial or industrial purposes, but with remediation and infrastructure costs that are not too great so as to render Starter Homes financially unviable.

The types and sizes of site suitable for Starter Homes are likely to vary across the country, and will reflect the pattern of existing and former industrial and commercial use as well as local market conditions. Land in both public and private ownership can be considered.

Where applications for Starter Homes come forward on such exception sites, they should be approved unless the local planning authority can demonstrate that there are overriding conflicts with the National Planning Policy Framework (<http://planningguidance.communities.gov.uk/blog/policy/>) that cannot be mitigated.

ID 55-007-20150318 Last updated 18 03 2015

### **What are underused or unviable industrial and commercial sites?**

Local planning authorities can take into account a number of factors when assessing whether an industrial or commercial site is underused or unviable. Indicators may include whether:

- the land value for the site is significantly below that of other sites with a similar permitted use in the area;
- there is a high percentage of vacant units, and whether these have been vacant for some time;
- land allocated for employment use has not been marketed actively for some period of time or, if actively marketed, has failed to attract any interest over a reasonable period of time; and
- there has been a lack of recent development activity to improve the commercial or industrial site.

Employment land which is being used productively or which is allocated and viable for employment purposes is not to be regarded as underused or unviable.

ID 55-008-20150318 Last updated 18 03 2015

### **Should Starter Homes be allowed on land allocated for industrial or commercial use in local plans which has not been developed?**

Land allocated for industrial or commercial use in local (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>) or neighbourhood plans (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/>) can be used for Starter Homes where this land is underused or unviable for those purposes. Local planning authorities should keep allocated employment land under regular review as required under paragraph 22 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/#paragraph\\_22](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/#paragraph_22)) of the National Planning Policy Framework.

ID 55-009-20150327 Last updated 27 03 2015

### **How should local planning authorities deal with Starter Homes as part of their five year housing supply**

([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#paragraph\\_47](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#paragraph_47))?

Local planning authorities should work with landowners and developers to secure a supply of Starter Homes exception sites suitable for housing for first time buyers. As such homes will come forward as windfall sites, local planning authorities should not make an allowance for them in their five-year housing land supply ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#paragraph\\_47](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#paragraph_47)) until such time as they have compelling evidence that they will consistently become available in the local area. Local planning authorities can count Starter Homes against their housing requirement.

ID 55-010-20150318 Last updated 18 03 2015

### **What are the design requirements for Starter Homes developments?**

Starter Homes developments should be well designed and of a high quality, and developers are expected to work with local planning authorities and local communities to achieve this.

The Government's Design Advisory Panel, involving leading industry experts, has published an initial set of exemplar designs for Starter Homes for wider comment. The Panel's exemplars show good design in a local context. Starter Home developments do not have to conform to these exemplars, but planning applications for Starter Homes are expected to include sufficient design details, including visual material similar in scope to that set out in the Panel's document, so that communities can see the quality of homes being offered when they are submitted for consideration.

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#### **Related policy**

##### **National Planning Policy Framework**

- Paragraph 22 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/#paragraph\\_22](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/#paragraph_22))

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#### **Related policy**

##### **National Planning Policy Framework**

- Paragraph 47 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#paragraph\\_47](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/#paragraph_47))


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### **Can market homes be built on Starter Homes sites?**

Local planning authorities can use their discretion to include a small proportion of market homes on Starter Homes exception sites where it is necessary for the financial viability (<http://planningguidance.communities.gov.uk/blog/guidance/viability-guidance/>) of the site. The market homes on the site will attract section 106 or Community Infrastructure Levy (<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/>) contributions in the usual way.

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 Department for Communities & Local Government  
(<https://www.gov.uk/government/organisations/department-for-communities-and-local-government>)



## Planning Practice Guidance (<http://planningguidance.communities.gov.uk>)

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Guidance

# Strategic environmental assessment and sustainability appraisal

Print 

## 1. Strategic environmental assessment and sustainability appraisal



(<http://planningguidance.communities.gov.uk/blog/guidance/strategic-environmental-assessment-and-sustainability-appraisal/strategic-environmental-assessment-and-sustainability-appraisal-and-how-does-it-relate-to-strategic-environmental-assessment/>)



### Strategic environmental assessment and sustainability appraisal

#### What is a sustainability appraisal, and how does it relate to strategic environmental assessment?

A sustainability appraisal is a systematic process that must be carried out during the preparation of a Local Plan (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>). Its role is to promote sustainable development by assessing the extent to which the emerging plan, when judged against reasonable alternatives, will help to achieve relevant environmental, economic and social objectives.

This process is an opportunity to consider ways by which the plan can contribute to improvements in environmental, social and economic conditions, as well as a means of identifying and mitigating any potential adverse effects that the plan might otherwise have. By doing so, it can help make sure that the proposals in the plan are the most appropriate given the reasonable alternatives. It can be used to test the evidence underpinning the plan and help to demonstrate how the tests of soundness have been met. Sustainability appraisal should be applied as an iterative process informing the development of the Local Plan.

Section 19 of the Planning and Compulsory Purchase Act 2004  (<http://www.legislation.gov.uk/ukpga/2004/5/section/19>) requires a local planning authority to carry out a sustainability appraisal of each of the proposals in a Local Plan (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>) during its preparation. More generally, section 39 of the Act  (<http://www.legislation.gov.uk/ukpga/2004/5/section/39>) requires that the authority preparing a Local Plan must do so "with the objective of contributing to the achievement of sustainable development".

Sustainability appraisals incorporate the requirements of the Environmental Assessment of Plans and Programmes Regulations 2004  (<http://www.legislation.gov.uk/uksi/2004/1633/contents/made>) (commonly referred to as the 'Strategic Environmental Assessment Regulations'), which implement the requirements of the European Directive 2001/42/EC  (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0042:EN:NOT>) (the 'Strategic Environmental Assessment Directive') on the assessment of the effects of certain plans and programmes on the environment. Sustainability appraisal ensures that potential environmental effects are given full consideration alongside social and economic issues.

Strategic environmental assessment alone can be required in some limited situations where sustainability appraisal is not needed. This is usually only where either neighbourhood plans ([http://planningguidance.communities.gov.uk/blog/guidance/strategic-environmental-assessment-and-sustainability-appraisal/sustainability-appraisal-requirements-for-neighbourhood-plans/#paragraph\\_026](http://planningguidance.communities.gov.uk/blog/guidance/strategic-environmental-assessment-and-sustainability-appraisal/sustainability-appraisal-requirements-for-neighbourhood-plans/#paragraph_026)) or supplementary planning documents

([http://planningguidance.communities.gov.uk/blog/guidance/strategic-environmental-assessment-and-sustainability-appraisal/sustainability-appraisal-requirements-for-local-plans/#paragraph\\_008](http://planningguidance.communities.gov.uk/blog/guidance/strategic-environmental-assessment-and-sustainability-appraisal/sustainability-appraisal-requirements-for-local-plans/#paragraph_008)) could have significant environmental effects.

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### **What is the Strategic Environmental Assessment Directive?**

The Strategic Environmental Assessment Directive [\[2\]](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX;32001L0042:EN:NOT) (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX;32001L0042:EN:NOT>) is a European Union requirement that seeks to provide a high level of protection of the environment by integrating environmental considerations into the process of preparing certain plans and programmes.

The aim of the Directive is "to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this Directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment."

The Strategic Environmental Assessment Directive is implemented through the Environmental Assessment of Plans and Programmes Regulations 2004 [\[2\]](http://www.legislation.gov.uk/ukSI/2004/1633/contents/made) (<http://www.legislation.gov.uk/ukSI/2004/1633/contents/made>), which apply to a plan or programme related solely to England (or part of England), or to England (or part of England) and any other part of the United Kingdom. Where the Directive applies there are some specific requirements that must be complied with ([http://planningguidance.communities.gov.uk/blog/guidance/strategic-environmental-assessment-and-sustainability-appraisal/strategic-environmental-assessment-and-sustainability-appraisal-and-how-does-it-relate-to-strategic-environmental-assessment/#paragraph\\_004](http://planningguidance.communities.gov.uk/blog/guidance/strategic-environmental-assessment-and-sustainability-appraisal/strategic-environmental-assessment-and-sustainability-appraisal-and-how-does-it-relate-to-strategic-environmental-assessment/#paragraph_004)) and which, in the case of Local Plans (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>), should be addressed as an integral part of the sustainability appraisal process.

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### **What is the difference between sustainability appraisal, strategic environmental assessment and Environmental Impact Assessment?**

Sustainability appraisal and strategic environmental assessment are tools used at the plan-making stage to assess the likely effects of the plan when judged against reasonable alternatives. A sustainability appraisal of the proposals in each Local Plan ([http://planningguidance.communities.gov.uk/blog/guidance/local-plans/preparing-a-local-plan/#paragraph\\_012](http://planningguidance.communities.gov.uk/blog/guidance/local-plans/preparing-a-local-plan/#paragraph_012)) is required by section 19 of the Planning and Compulsory Purchase Act 2004 [\[2\]](http://www.legislation.gov.uk/ukpga/2004/5/section/19) (<http://www.legislation.gov.uk/ukpga/2004/5/section/19>) and incorporates the required strategic environmental assessment.

Strategic environmental assessment alone can be required in some exceptional situations. This is usually only where either neighbourhood plans ([http://planningguidance.communities.gov.uk/blog/guidance/strategic-environmental-assessment-and-sustainability-appraisal/sustainability-appraisal-requirements-for-neighbourhood-plans/#paragraph\\_026](http://planningguidance.communities.gov.uk/blog/guidance/strategic-environmental-assessment-and-sustainability-appraisal/sustainability-appraisal-requirements-for-neighbourhood-plans/#paragraph_026)) or supplementary planning documents ([http://planningguidance.communities.gov.uk/blog/guidance/strategic-environmental-assessment-and-sustainability-appraisal/sustainability-appraisal-requirements-for-local-plans/#paragraph\\_008](http://planningguidance.communities.gov.uk/blog/guidance/strategic-environmental-assessment-and-sustainability-appraisal/sustainability-appraisal-requirements-for-local-plans/#paragraph_008)) could have significant environmental effects.

In contrast Environmental Impact Assessment (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/>) is applied to individual projects which are likely to have significant environmental effects (also see The Town and Country Planning (Environmental Impact Assessment) Regulations 2011 [\[2\]](http://www.legislation.gov.uk/ukSI/2011/1824/contents/made) (<http://www.legislation.gov.uk/ukSI/2011/1824/contents/made>)).

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### **Table: The Strategic Environmental Assessment Regulations**

**requirements checklist**

Strategic Environmental Assessment Regulations requirements checklist	Plan-making stage
<p><b>Preparation of environmental report (regulation 12)</b></p> <p>Preparation of an environmental report that identifies describes and evaluates the likely significant effects on the environment of implementing the plan or programme and reasonable alternatives taking into account the objectives and geographical scope of the plan or programme (regulation 12 (2)).</p> <p>The report shall include such of the information referred to in Schedule 2 as may reasonably be required, taking into account current knowledge and methods of assessment, the contents and level of detail in the plan or programme, its stage in the decision-making process and the extent to which certain matters are more appropriately assessed at different levels in the process to avoid duplication of the assessment (regulation 12(3)). Information may be provided by reference to relevant information obtained at other levels of decision-making or through other EU legislation (regulation 12 (4)).</p> <p>When deciding on the scope and level of detail of information to be included in the environmental report the consultation bodies should be consulted.</p>	<p>For Local Plans, see here (<a href="http://planningguidance.communities.gov.uk/blog/guidance/environmental-assessment-and-sustainability-appraisal/susappraisal-requirements-for-local-plans/#paragraph_019">http://planningguidance.communities.gov.uk/blog/guidance/environmental-assessment-and-sustainability-appraisal/susappraisal-requirements-for-local-plans/#paragraph_019</a>) an A-C of this flowchart (<a href="http://planningguidance.communities.gov.uk/blog/guidance/environmental-assessment-and-sustainability-appraisal/susappraisal-requirements-for-local-plans/#paragraph_013">http://planningguidance.communities.gov.uk/blog/guidance/environmental-assessment-and-sustainability-appraisal/susappraisal-requirements-for-local-plans/#paragraph_013</a>).</p> <p>For neighbourhood plans, see here (<a href="http://planningguidance.communities.gov.uk/blog/guidance/environmental-assessment-and-sustainability-appraisal/susappraisal-requirements-for-neighbourhood-plans/#paragraph_039">http://planningguidance.communities.gov.uk/blog/guidance/environmental-assessment-and-sustainability-appraisal/susappraisal-requirements-for-neighbourhood-plans/#paragraph_039</a>) and Stages B-D of this flowchart (<a href="http://planningguidance.communities.gov.uk/blog/guidance/environmental-assessment-and-sustainability-appraisal/susappraisal-requirements-for-neighbourhood-plans/#paragrap">http://planningguidance.communities.gov.uk/blog/guidance/environmental-assessment-and-sustainability-appraisal/susappraisal-requirements-for-neighbourhood-plans/#paragrap</a>)</p>
<p><b>The information referred to in Schedule 2 is:</b></p> <p><b>a)</b> An outline of the contents, main objectives of the plan or programme, and relationship with other relevant plans and programmes.</p>	<p>For Local Plans, see Stage A of this flowchart (<a href="http://planningguidance.communities.gov.uk/blog/guidance/environmental-assessment-and-sustainability-appraisal/susappraisal-requirements-for-local-plans/#paragraph_013">http://planningguidance.communities.gov.uk/blog/guidance/environmental-assessment-and-sustainability-appraisal/susappraisal-requirements-for-local-plans/#paragraph_013</a>).</p> <p>For neighbourhood plans, see Stage B of this flowchart (<a href="http://planningguidance.communities.gov.uk/blog/guidance/environmental-assessment-and-sustainability-appraisal/susappraisal-requirements-for-neighbourhood-plans/#paragrap">http://planningguidance.communities.gov.uk/blog/guidance/environmental-assessment-and-sustainability-appraisal/susappraisal-requirements-for-neighbourhood-plans/#paragrap</a>)</p>
<p><b>b)</b> The relevant aspects of the current state of the environment and the likely evolution thereof without implementation of the plan or programme.</p>	<p>For Local Plans, see here (<a href="http://planningguidance.communities.gov.uk/blog/guidance/environmental-assessment-and-sustainability-appraisal/susappraisal-requirements-for-local-plans/#paragraph_016">http://planningguidance.communities.gov.uk/blog/guidance/environmental-assessment-and-sustainability-appraisal/susappraisal-requirements-for-local-plans/#paragraph_016</a>) an A of this flowchart (<a href="http://planningguidance.communities.gov.uk/blog/guidance/environmental-assessment-and-sustainability-appraisal/susappraisal-requirements-for-local-plans/#paragraph_013">http://planningguidance.communities.gov.uk/blog/guidance/environmental-assessment-and-sustainability-appraisal/susappraisal-requirements-for-local-plans/#paragraph_013</a>).</p> <p>For neighbourhood plans, see here (<a href="http://planningguidance.communities.gov.uk/blog/guidance/environmental-assessment-and-sustainability-appraisal/susappraisal-requirements-for-neighbourhood-plans/#paragrap">http://planningguidance.communities.gov.uk/blog/guidance/environmental-assessment-and-sustainability-appraisal/susappraisal-requirements-for-neighbourhood-plans/#paragrap</a>) and Stage B of this flowchart (<a href="http://planningguidance.communities.gov.uk/blog/guidance/environmental-assessment-and-sustainability-appraisal/susappraisal-requirements-for-neighbourhood-plans/#paragrap">http://planningguidance.communities.gov.uk/blog/guidance/environmental-assessment-and-sustainability-appraisal/susappraisal-requirements-for-neighbourhood-plans/#paragrap</a>)</p>
<p><b>c)</b> The environment characteristics of areas likely to be significantly affected.</p>	<p>For Local Plans, see Stage A of this flowchart (<a href="http://planningguidance.communities.gov.uk/blog/guidance/environmental-assessment-and-sustainability-appraisal/susappraisal-requirements-for-local-plans/#paragraph_013">http://planningguidance.communities.gov.uk/blog/guidance/environmental-assessment-and-sustainability-appraisal/susappraisal-requirements-for-local-plans/#paragraph_013</a>).</p> <p>For neighbourhood plans, see Stage B of this flowchart (<a href="http://planningguidance.communities.gov.uk/blog/guidance/environmental-assessment-and-sustainability-appraisal/susappraisal-requirements-for-neighbourhood-plans/#paragrap">http://planningguidance.communities.gov.uk/blog/guidance/environmental-assessment-and-sustainability-appraisal/susappraisal-requirements-for-neighbourhood-plans/#paragrap</a>)</p>

<p><b>d)</b> Any existing environmental problems which are relevant to the plan or programme including, in particular, those relating to any areas of a particular environmental importance, such as areas designated pursuant to Directives 2009/147/EC (Conservation of Wild Birds)  (<a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32009L0147:EN:NOT">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32009L0147:EN:NOT</a>) and 92/43/EEC (Habitats Directive).  (<a href="http://ec.europa.eu/environment/nature/legislation/habitatsdirective/">http://ec.europa.eu/environment/nature/legislation/habitatsdirective/</a>)</p>	<p>For Local Plans, see Stage A of this flowchart (<a href="http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-local-plans/#paragraph_013">http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-local-plans/#paragraph_013</a>). For neighbourhood plans, see Stage B of this flowchart (<a href="http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-neighbourhood-plans/#paragrap">http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-neighbourhood-plans/#paragrap</a>)</p>
<p><b>e)</b> The environmental protection objectives, established at international, Community or national level, which are relevant to the plan or programme and the way those objectives and any environmental considerations have been taken into account during its preparation.</p>	<p>For Local Plans, see Stages A and B of this flowchart (<a href="http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-local-plans/#paragraph_013">http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-local-plans/#paragraph_013</a>). For neighbourhood plans, see Stage B of this flowchart (<a href="http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-neighbourhood-plans/#paragrap">http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-neighbourhood-plans/#paragrap</a>)</p>
<p><b>f)</b> The likely significant effects on the environment, including on issues such as biodiversity, population, human health, fauna, flora, soil, water, air, climatic factors, material assets, cultural heritage including architectural and archaeological heritage, landscapes and the interrelationship between the above factors. These effects should include secondary, cumulative, synergistic, short, medium and long-term permanent and temporary, positive and negative effects.</p>	<p>For Local Plans, see Stage B of this flowchart (<a href="http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-local-plans/#paragraph_013">http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-local-plans/#paragraph_013</a>). For neighbourhood plans, see Stage C of this flowchart (<a href="http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-neighbourhood-plans/#paragrap">http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-neighbourhood-plans/#paragrap</a>)</p>
<p><b>g)</b> The measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment of implementing the plan or programme.</p>	<p>For Local Plans, see here (<a href="http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-local-plans/#paragraph_017">http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-local-plans/#paragraph_017</a>) and (<a href="http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-local-plans/#paragraph_018">http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-local-plans/#paragraph_018</a>) and B of this flowchart (<a href="http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-local-plans/#paragraph_013">http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-local-plans/#paragraph_013</a>). For neighbourhood plans, see here (<a href="http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-neighbourhood-plans/#paragraph_037">http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-neighbourhood-plans/#paragraph_037</a>) and here (<a href="http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-neighbourhood-plans/#paragraph_038">http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-neighbourhood-plans/#paragraph_038</a>) and Stage C of this flowchart (<a href="http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-neighbourhood-plans/#paragrap">http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-neighbourhood-plans/#paragrap</a>)</p>

<p><b>h)</b> An outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken including any difficulties (such as technical deficiencies or lack of know-how) encountered in compiling the required information.</p>	<p>For Local Plans, see here (<a href="http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-local-plans/#paragraph_017">http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-local-plans/#paragraph_017</a>) and (<a href="http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-local-plans/#paragraph_018">http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-local-plans/#paragraph_018</a>) and B of this flowchart (<a href="http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-local-plans/#paragraph_013">http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-local-plans/#paragraph_013</a>).                  For neighbourhood plans, see here (<a href="http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-neighbourhood-plans/#paragrap">http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-neighbourhood-plans/#paragrap</a>) and here (<a href="http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-neighbourhood-plans/#paragrap">http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-neighbourhood-plans/#paragrap</a>) and Stage C of this flowchart (<a href="http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-neighbourhood-plans/#paragrap">http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-neighbourhood-plans/#paragrap</a>)</p>
<p><b>i)</b> A description of measures envisaged concerning monitoring in accordance with regulation 17.</p>	<p>For Local Plans, see Stage B of this flowchart (<a href="http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-local-plans/#paragraph_013">http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-local-plans/#paragraph_013</a>).                  For neighbourhood plans, see Stage C of this flowchart (<a href="http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-neighbourhood-plans/#paragrap">http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-neighbourhood-plans/#paragrap</a>)</p>
<p><b>j)</b> A non-technical summary of the information provided under the above headings.</p>	<p>For Local Plans, see here (<a href="http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-local-plans/#paragraph_019">http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-local-plans/#paragraph_019</a>) and C of this flowchart (<a href="http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-local-plans/#paragraph_013">http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-local-plans/#paragraph_013</a>).                  For neighbourhood plans, see here (<a href="http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-neighbourhood-plans/#paragraph_039">http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-neighbourhood-plans/#paragraph_039</a>) and Stage D of this flowchart (<a href="http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-neighbourhood-plans/#paragrap">http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-neighbourhood-plans/#paragrap</a>)</p>

<p><b>Consultation procedures (regulation 13)</b></p> <p>As soon as reasonably practicable after their preparation, the draft plan or programme and environmental report shall be sent to the consultation bodies and brought to the attention of the public, who should be invited to express their opinion. The period within which opinions must be sent must be of such length as will ensure an effective opportunity to express their opinion.</p>	<p>For Local Plans, see here (<a href="http://planningguidance.communities.gov.uk/blog/guidance/environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-local-plans/#paragraph_020">http://planningguidance.communities.gov.uk/blog/guidance/environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-local-plans/#paragraph_020</a>) or (<a href="http://planningguidance.communities.gov.uk/blog/guidance/environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-local-plans/#paragraph_015">http://planningguidance.communities.gov.uk/blog/guidance/environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-local-plans/#paragraph_015</a>) and A of this flowchart (<a href="http://planningguidance.communities.gov.uk/blog/guidance/environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-local-plans/#paragraph_013">http://planningguidance.communities.gov.uk/blog/guidance/environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-local-plans/#paragraph_013</a>).</p> <p>For neighbourhood plans, see here (<a href="http://planningguidance.communities.gov.uk/blog/guidance/environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-neighbourhood-plans/#paragrap">http://planningguidance.communities.gov.uk/blog/guidance/environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-neighbourhood-plans/#paragrap</a>) and here (<a href="http://planningguidance.communities.gov.uk/blog/guidance/environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-local-plans/#paragraph_015">http://planningguidance.communities.gov.uk/blog/guidance/environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-local-plans/#paragraph_015</a>) and E of this flowchart (<a href="http://planningguidance.communities.gov.uk/blog/guidance/environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-neighbourhood-plans/#paragrap">http://planningguidance.communities.gov.uk/blog/guidance/environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-neighbourhood-plans/#paragrap</a>)</p>
<p><b>Information as to adoption of plan or programme (regulation 16)</b></p> <p>As soon as reasonably practicable after the plan or programme is adopted, the consultation bodies, the public and the Secretary of State (who will inform any other EU Member States consulted) shall be informed and the following made available:</p> <ul style="list-style-type: none"> <li>• the plan or programme adopted</li> <li>• the environmental report</li> <li>• a statement summarising: <ul style="list-style-type: none"> <li>(a) how environmental considerations have been integrated into the plan or programme;</li> <li>(b) how the environmental report has been taken into account;</li> <li>(c) how opinions expressed in response to: <ul style="list-style-type: none"> <li>(i) the invitation referred to in regulation 13(2)(d);</li> <li>(ii) action taken by the responsible authority in accordance with regulation 13(4),</li> </ul> </li> </ul> </li> </ul> <p>have been taken into account;</p> <ul style="list-style-type: none"> <li>(d) how the results of any consultations entered into under regulation 14(4) have been taken into account;</li> <li>(e) the reasons for choosing the plan or programme as adopted, in the light of the other reasonable alternatives dealt with; and</li> <li>(f) the measures that are to be taken to monitor the significant environmental effects of the implementation of the plan or programme. (regulation 16)</li> </ul>	<p>For Local Plans, see here (<a href="http://planningguidance.communities.gov.uk/blog/guidance/environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-local-plans/#paragraph_024">http://planningguidance.communities.gov.uk/blog/guidance/environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-local-plans/#paragraph_024</a>) and E of this flowchart (<a href="http://planningguidance.communities.gov.uk/blog/guidance/environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-local-plans/#paragraph_013">http://planningguidance.communities.gov.uk/blog/guidance/environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-local-plans/#paragraph_013</a>).</p> <p>For neighbourhood plans, see here (<a href="http://planningguidance.communities.gov.uk/blog/guidance/environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-neighbourhood-plans/#paragrap">http://planningguidance.communities.gov.uk/blog/guidance/environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-neighbourhood-plans/#paragrap</a>) and Stage F of this flowchart (<a href="http://planningguidance.communities.gov.uk/blog/guidance/environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-neighbourhood-plans/#paragrap">http://planningguidance.communities.gov.uk/blog/guidance/environmental-assessment-and-sustainability-appraisal/sus-appraisal-requirements-for-neighbourhood-plans/#paragrap</a>)</p>

**Monitoring of implementation of plans or programmes (regulation 17)**

Monitoring of significant environmental effects of the plan's or programme's implementation with the purpose of identifying unforeseen adverse effects at an early stage and being able to undertake appropriate remedial action (regulation 17 (1)). Monitoring arrangements may comprise or include arrangements established for other purposes (regulation 17 (2)).

For Local Plans, see here

([http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sustainability-appraisal-requirements-for-local-plans/#paragraph\\_025](http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sustainability-appraisal-requirements-for-local-plans/#paragraph_025)) at E of this flowchart

([http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sustainability-appraisal-requirements-for-local-plans/#paragraph\\_013](http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sustainability-appraisal-requirements-for-local-plans/#paragraph_013)).

For neighbourhood plans, see here

([http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sustainability-appraisal-requirements-for-neighbourhood-plans/#paragraph\\_013](http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sustainability-appraisal-requirements-for-neighbourhood-plans/#paragraph_013)) and Stage F of this flowchart

([http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sustainability-appraisal-requirements-for-neighbourhood-plans/#paragraph\\_013](http://planningguidance.communities.gov.uk/blog/guidance-environmental-assessment-and-sustainability-appraisal/sustainability-appraisal-requirements-for-neighbourhood-plans/#paragraph_013))

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## 2. Sustainability appraisal requirements for Local Plans

(<http://planningguidance.communities.gov.uk/blog/guidance/strategic-environmental-assessment-and-sustainability-appraisal/sustainability-appraisal-requirements-for-local-plans/>)

### Sustainability appraisal requirements for Local Plans

#### What documents in a Local Plan require a sustainability appraisal?

Sustainability appraisal is required during the preparation of a Local Plan (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>). The local planning authority must carry out an appraisal of the sustainability of the proposals. This will help the authority to assess how the plan will contribute to the achievement of sustainable development.

It applies to any of the documents that can form part of a Local Plan, including core strategies, site allocation documents and area action plans. Neighbourhood plans, supplementary planning documents, the Statement of Community Involvement, the Local Development Scheme or the Authority Monitoring Report are excluded from this requirement.

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#### When should a local planning authority start the sustainability appraisal process?

Sustainability appraisal is integral to the preparation and development of a Local Plan (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>), to identify how sustainable development is being addressed, so work should start at the same time that work starts on developing the plan. The relationship between the sustainability appraisal and Local Plan preparation processes is shown here. The sustainability appraisal process should be taken into account when the local planning authority develops its timetable for the preparation of the Local Plan as outlined in the Local Development Scheme.

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#### Is strategic environmental assessment required in addition to sustainability appraisal?

Strategic environmental assessment considers only the environmental effects of a plan, whereas sustainability appraisal considers the plan's wider economic and social effects in addition to its potential environmental impacts. Sustainability appraisal should meet all of the requirements of the Environmental Assessment of Plans and Programmes Regulations 2004 [\[2\]](#)

(<http://www.legislation.gov.uk/uksi/2004/1633/contents/made>), so a separate strategic environmental assessment should not be required.

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### **Do supplementary planning documents require a sustainability appraisal or strategic environmental assessment?**

Supplementary planning documents do not require a sustainability appraisal but may in exceptional circumstances require a strategic environmental assessment if they are likely to have significant environmental effects that have not already been assessed during the preparation of the Local Plan ([http://planningguidance.communities.gov.uk/blog/guidance/local-plans/adoption-monitoring-and-supplementary-planning-documents/#paragraph\\_027](http://planningguidance.communities.gov.uk/blog/guidance/local-plans/adoption-monitoring-and-supplementary-planning-documents/#paragraph_027)).

A strategic environmental assessment is unlikely to be required where a supplementary planning document deals only with a small area at a local level (see regulation 5(6) of the Environmental Assessment of Plans and Programmes Regulations 2004 [\[2\]](http://www.legislation.gov.uk/ukSI/2004/1633/regulation/5/made)), unless it is considered that there are likely to be significant environmental effects.

Before deciding whether significant environment effects are likely, the local planning authority should take into account the criteria specified in Schedule 1 to the Environmental Assessment of Plans and Programmes Regulations 2004 and consult the consultation bodies.

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### **What level of detail is required in a sustainability appraisal?**

The sustainability appraisal should only focus on what is needed to assess the likely significant effects of the Local Plan (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>). It should focus on the environmental, economic and social impacts that are likely to be significant. It does not need to be done in any more detail, or using more resources, than is considered to be appropriate for the content and level of detail in the Local Plan.

ID 11-009-20140306 Last updated 06 03 2014

### **Who is responsible for ensuring that the sustainability appraisal requirements have been met?**

The local planning authority is responsible for ensuring that the sustainability appraisal has been carried out in accordance with the relevant planning and environmental assessment legislation.

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### **How does the sustainability appraisal relate to other forms of Impact Assessment?**

A sustainability appraisal should incorporate the requirements of the Environmental Assessment of Plans and Programmes Regulations 2004 [\[2\]](http://www.legislation.gov.uk/ukSI/2004/1633/introduction/made) (<http://www.legislation.gov.uk/ukSI/2004/1633/introduction/made>). The Local Plan (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>) may also require a Habitats Regulations Assessment [\[2\]](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69580/pb13809-habitats-guidance.pdf) ([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69580/pb13809-habitats-guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69580/pb13809-habitats-guidance.pdf)), as set out in the Conservation of Habitats and Species Regulations 2010 (as amended) [\[2\]](http://www.legislation.gov.uk/ukSI/2010/490/contents/made) (<http://www.legislation.gov.uk/ukSI/2010/490/contents/made>) if it is considered likely to have significant effects on European habitats or species. The sustainability appraisal should take account of the findings of a Habitats Regulations Assessment, if one is undertaken.

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### **How should the sustainability appraisal process be applied**



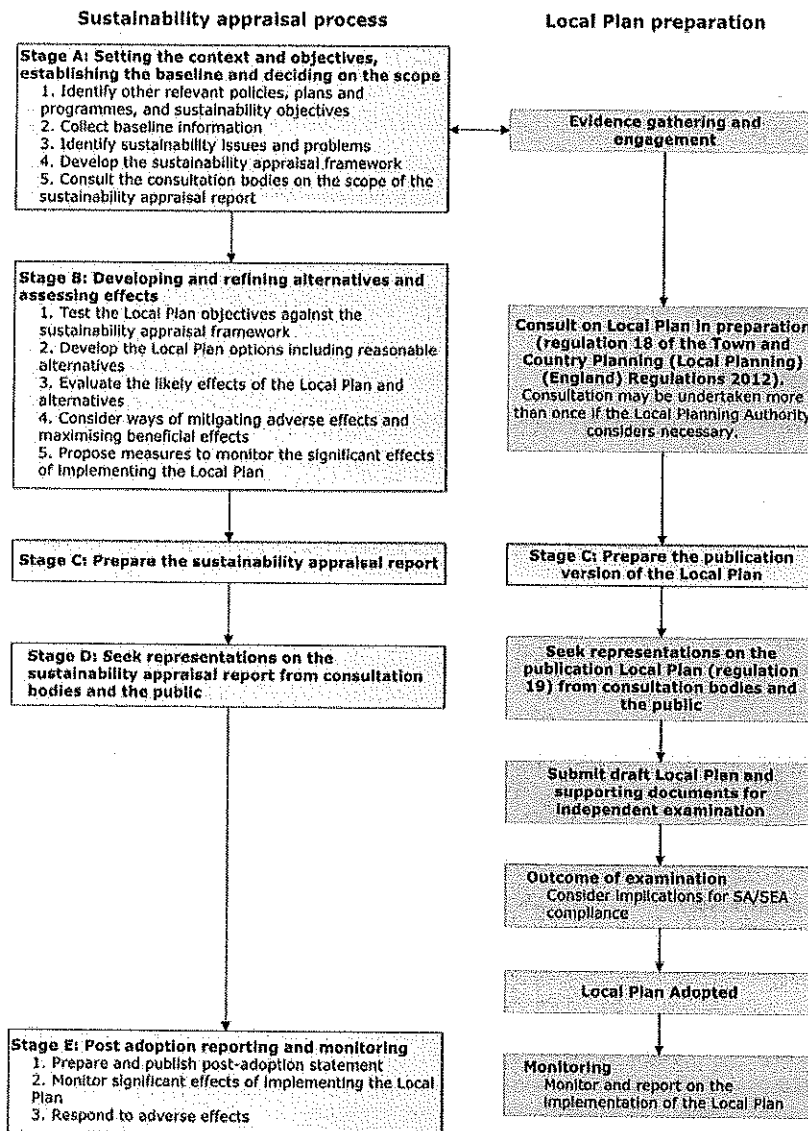
## to Local Plan preparation?

The key stages of Local Plan

(<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>) preparation and their relationship with the sustainability appraisal process are shown here.

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## Sustainability appraisal process



([http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/sea1\\_013.jpg](http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/sea1_013.jpg))

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## What is required at the scoping stage?

The scoping stage (Stage A) must identify the scope and level of detail of the information to be included in the sustainability appraisal report. It should set out the context, objectives and approach of the assessment; and identify relevant environmental, economic and social issues and objectives.

Although the scoping stage is a requirement of the process, a formal scoping report is not required by law but is a useful way of presenting information at the scoping stage. A key aim of the scoping procedure is to help ensure the sustainability appraisal process is proportionate and relevant to the Local Plan (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>) being assessed.

When deciding on the scope and level of detail of the information that must be included in the report, the plan-maker must consult the consultation bodies. Where a consultation body decides to respond, it should do so within five weeks of receipt of the request. (See regulation 12(5) and 12(6) of the Environmental Assessment of Plans and Programmes Regulations 2004 [\[2\]](http://www.legislation.gov.uk/uksl/2004/1633/regulation/12/made) (<http://www.legislation.gov.uk/uksl/2004/1633/regulation/12/made>).

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### **Who are the consultation bodies?**

Regulation 4 of the Environmental Assessment of Plans and Programmes Regulations 2004 [\[2\]](http://www.legislation.gov.uk/uksl/2004/1633/regulation/4/made) (<http://www.legislation.gov.uk/uksl/2004/1633/regulation/4/made>) defines certain organisations with environmental responsibilities as consultation bodies. In England the consultation bodies are Historic England, Natural England and the Environment Agency.

Although this guidance covers England, some local planning authorities may need to consult the relevant consultation bodies in the Devolved Administrations to help them determine whether their plan is likely to have significant environmental effects.

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### **What is baseline information?**

The term 'baseline information' refers to the existing environmental, economic and social characteristics of the area likely to be affected by the Local Plan (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>), and their likely evolution without implementation of new policies.

The area likely to be affected may lie outside the local planning authority boundary and plan makers may need to obtain information from other local planning authorities.

Baseline information provides the basis against which to assess the likely effects of alternative proposals in the plan.

Wherever possible, data should be included on historic and likely future trends, including a 'business as usual' scenario (i.e. anticipated trends in the absence of new policies being introduced). This information will enable the potential effects of the implementation of the Local Plan to be assessed in the context of existing and potential environmental, economic and social trends.

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### **How should plan-makers develop and refine options and assess effects?**

Plan-makers should assess the policies in a draft Local Plan (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>), and the reasonable alternatives, to identify the likely significant effects of the available options (Stage B). Forecasting and evaluation of the significant effects should help to develop and refine the proposals in each Local Plan document.

Reasonable alternatives should be identified and considered at an early stage in the plan making process, as the assessment of these should inform the local planning authority in choosing its preferred approach (when developing alternatives, paragraph 152 of the National Planning Policy Framework should be referred to).

Stage B should also involve considering ways of mitigating any adverse effects, maximising beneficial effects and ways of monitoring likely significant effects.

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### **How should the sustainability appraisal assess alternatives and identify likely significant effects?**

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The sustainability appraisal needs to compare all reasonable alternatives including the preferred approach and assess these against the baseline environmental, economic and social characteristics of the area and the likely situation if the Local Plan (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>) were not to be adopted.

The sustainability appraisal should predict and evaluate the effects of the preferred approach and reasonable alternatives and should clearly identify the significant positive and negative effects of each alternative.

The sustainability appraisal should identify, describe and evaluate the likely significant effects on environmental, economic and social factors using the evidence base. Criteria for determining the likely significance of effects on the environment are set out in Schedule 1 to the Environmental Assessment of Plans and Programmes Regulations 2004 [\[2\]](http://www.legislation.gov.uk/uksi/2004/1633/schedule/1/made) (<http://www.legislation.gov.uk/uksi/2004/1633/schedule/1/made>).

The sustainability appraisal should identify any likely significant adverse effects and measures envisaged to prevent, reduce and, as fully as possible, offset them. The sustainability appraisal must consider all reasonable alternatives and assess them in the same level of detail as the option the plan-maker proposes to take forward in the Local Plan (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>) (the preferred approach).

Reasonable alternatives are the different realistic options considered by the plan-maker in developing the policies in its plan. They must be sufficiently distinct to highlight the different sustainability implications of each so that meaningful comparisons can be made. The alternatives must be realistic and deliverable.

The sustainability appraisal should outline the reasons the alternatives were selected, the reasons the rejected options were not taken forward and the reasons for selecting the preferred approach in light of the alternatives. It should provide conclusions on the overall sustainability of the different alternatives, including those selected as the preferred approach in the Local Plan. Any assumptions used in assessing the significance of effects of the Local Plan should be documented.

The development and appraisal of proposals in Local Plan documents should be an iterative process, with the proposals being revised to take account of the appraisal findings. This should inform the selection, refinement and publication of proposals (when preparing a Local Plan, paragraph 152 of the National Planning Policy Framework should be considered).

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### **What should the sustainability appraisal report accompanying the publication of the draft Local Plan cover?**

Regulation 12 of the Environmental Assessment of Plans and Programmes Regulations 2004 [\[2\]](http://www.legislation.gov.uk/uksi/2004/1633/regulation/12/made) (<http://www.legislation.gov.uk/uksi/2004/1633/regulation/12/made>) sets out the formal requirements of an 'environmental report', which should form an integral part of the sustainability appraisal report and is a core output of any strategic environmental assessment. An environmental report for the purpose of the regulations must identify, describe and evaluate the likely significant effects on the environment of implementing the Local Plan (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>) policies and of the reasonable alternatives taking into account the objectives and geographical scope of the Local Plan. The sustainability appraisal report must clearly show how these requirements have been met as well as recording the wider assessment of social and economic effects.

The sustainability appraisal must include a non-technical summary of the information within the main report. The summary should be prepared with a range of readers in mind, and provide a clear, accessible overview of the process and findings.

## **Related policy**

### **National Planning Policy Framework**

- Paragraph 152 ([http://planningguidance.communit sustainable-development/plan-making/#paragraph\\_152](http://planningguidance.communit sustainable-development/plan-making/#paragraph_152))

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### **Who should be consulted on the sustainability appraisal?**

The local planning authority must consult the consultation bodies and other parties who, in its opinion, are affected or likely to be affected by, or have an interest in, the decisions involved in the assessment and adoption or making of the plan. Further details on consultation procedures are set out in regulation 13 of the Environmental Assessment of Plans and Programmes Regulations 2004 [\[2\]](http://www.legislation.gov.uk/ukSI/2004/1633/regulation/13/made) (<http://www.legislation.gov.uk/ukSI/2004/1633/regulation/13/made>).

The local planning authority may also want to consult those they are inviting representations from, as part of the development of the Local Plan (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>) itself. The sustainability appraisal report, including the non-technical summary, must be published alongside the draft Local Plan for a minimum of six weeks.

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### **Should the sustainability appraisal report be updated if the draft Local Plan is modified following responses to consultations?**

The sustainability appraisal report will not necessarily have to be amended if the Local Plan (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>) is modified following responses to consultations. Modifications to the sustainability appraisal should be considered only where appropriate and proportionate to the level of change being made to the Local Plan. A change is likely to be significant if it substantially alters the Plan and/ or is likely to give to significant effects.

Further assessment may be required if the changes have not previously been assessed and are likely to give rise to significant effects. A further round of consultation on the sustainability appraisal may also be required in such circumstances but this should only be undertaken where necessary. Changes to the Local Plan that are not significant will not require further sustainability appraisal work.

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### **What is the role of the sustainability appraisal report at examination of the Local Plan?**

The sustainability appraisal report should be submitted with the Local Plan (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>) to the Secretary of State for independent examination. The sustainability appraisal report will be examined as part of the evidence base for the Local Plan.

The sustainability appraisal report should help to integrate different areas of evidence and to demonstrate why the proposals in the Local Plan are the most appropriate.

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### **Will the sustainability appraisal report have to be amended if modifications to the Local Plan are proposed at examination?**

It is up to the local planning authority to decide whether the sustainability appraisal report should be amended following proposed changes to an emerging plan. A local planning authority can ask the Inspector to recommend changes to the submission Local Plan

(<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>) to make it sound or they can propose their own changes.

If the local planning authority assesses that necessary changes are significant, and were not previously subject to sustainability appraisal, then further sustainability appraisal may be required and the sustainability appraisal report should be updated and amended accordingly.

ID 11-023-20140306 Last updated 06 03 2014

### **What information should be provided following the adoption of a Local Plan?**

Regulation 16 of the Environmental Assessment of Plans and Programmes Regulations 2004 [\[2\]](#)

(<http://www.legislation.gov.uk/ukxi/2004/1633/regulation/16/made>) sets out the post-adoption requirements of the local planning authority.

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### **Does the local planning authority have to monitor the significant effects of implementing the adopted Local Plan?**

Local planning authorities should monitor the significant environmental effects of implementing the Local Plan

(<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>) (as required by Regulation 17 of the Environmental Assessment of Plans and Programmes Regulations 2004 [\[2\]](#)

(<http://www.legislation.gov.uk/ukxi/2004/1633/regulation/17/made>)). This will enable local planning authorities to identify unforeseen adverse effects at an early stage and to enable appropriate remedial actions.

Details of monitoring arrangements must be included in the sustainability appraisal report, the post-adoption statement or in the Local Plan itself. The monitoring results should be reported in the local planning authority's Monitoring Report.

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## **3. Strategic environmental assessment requirements for neighbourhood plans**

(<http://planningguidance.communities.gov.uk/blog/guidance/strategic-environmental-assessment-and-sustainability-appraisal/sustainability-appraisal-requirements-for-neighbourhood-plans/>)

### **Strategic environmental assessment requirements for neighbourhood plans**

#### **Does a neighbourhood plan require a sustainability appraisal?**

There is no legal requirement for a neighbourhood plan

(<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/what-is-neighbourhood-planning/>) to have a sustainability appraisal as set out in section 19 of the Planning and Compulsory Purchase Act 2004. However, a qualifying body must demonstrate how its plan or order will contribute to achieving sustainable development

([http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/the-basic-conditions-that-a-draft-neighbourhood-plan-or-order-must-meet-if-it-is-to-proceed-to-referendum/sustainable-development/#paragraph\\_072](http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/the-basic-conditions-that-a-draft-neighbourhood-plan-or-order-must-meet-if-it-is-to-proceed-to-referendum/sustainable-development/#paragraph_072)). A sustainability appraisal may be a useful approach for doing this and the guidance on sustainability appraisal of Local Plans ([http://planningguidance.communities.gov.uk/blog/guidance/strategic-environmental-assessment-and-sustainability-appraisal/sustainability-appraisal-requirements-for-local-plans/#paragraph\\_005](http://planningguidance.communities.gov.uk/blog/guidance/strategic-environmental-assessment-and-sustainability-appraisal/sustainability-appraisal-requirements-for-local-plans/#paragraph_005)) should be referred to.

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#### **Does a neighbourhood plan require a strategic environmental assessment?**

In some limited circumstances, where a neighbourhood plan

(<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/what-is-neighbourhood-planning/>) is likely to have significant environmental effects, it may require a strategic environmental assessment. Draft neighbourhood plan

proposals should be assessed to determine whether the plan is likely to have significant environmental effects. This process is commonly referred to as a "screening" assessment and the requirements are set out in regulation 9 of the Environmental Assessment of Plans and Programmes Regulations 2004 [\[a\]](http://www.legislation.gov.uk/ukSI/2004/1633/introduction/made) (<http://www.legislation.gov.uk/ukSI/2004/1633/introduction/made>).

If likely significant environmental effects are identified, an environmental report must be prepared in accordance with paragraphs (2) and (3) of regulation 12 of those Regulations.

One of the basic conditions that will be tested by the independent examiner ([http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/the-basic-conditions-that-a-draft-neighbourhood-plan-or-order-must-meet-if-it-is-to-proceed-to-referendum/eu-obligations/#paragraph\\_078](http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/the-basic-conditions-that-a-draft-neighbourhood-plan-or-order-must-meet-if-it-is-to-proceed-to-referendum/eu-obligations/#paragraph_078)) is whether the making of the neighbourhood plan is compatible with European Union obligations (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/the-basic-conditions-that-a-draft-neighbourhood-plan-or-order-must-meet-if-it-is-to-proceed-to-referendum/eu-obligations/>) (including under the Strategic Environmental Assessment Directive).

ID 11-027-20150209 Last updated 09 02 2015

### **How do you know if a draft neighbourhood plan might have significant environmental effects?**

To decide whether a draft neighbourhood plan (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/what-is-neighbourhood-planning/>) might have significant environmental effects, it must be assessed (screened) at an early stage of the plan's preparation according to the requirements set out in regulation 9 of the Environmental Assessment of Plans and Programmes Regulations 2004 [\[a\]](http://www.legislation.gov.uk/ukSI/2004/1633/introduction/made) (<http://www.legislation.gov.uk/ukSI/2004/1633/introduction/made>). These include a requirement to consult the environmental assessment consultation bodies.

Each consultation body will be able to advise on particular topics relevant to its specific area of expertise and responsibility, and the specific information that it holds.

Where it is determined that the plan is unlikely to have significant environmental effects (and, accordingly, does not require an environmental assessment), a statement of reasons for the determination should be prepared. A copy of the statement must be submitted with the neighbourhood plan proposal and made available to the independent examiner.

The local planning authority, as part of its duty to advice or assist, should consider putting in place processes to determine whether the proposed neighbourhood plan will require a strategic environmental assessment. The qualifying body should work with the local planning authority to be sure that the authority has the information it needs.

ID 11-028-20150209 Last updated 09 02 2015

### **What do you do if a neighbourhood plan is likely to have a significant environmental effect?**

Where a neighbourhood plan (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/what-is-neighbourhood-planning/>) is likely to have a significant effect on the environment a strategic environmental assessment must be carried out and an environmental report prepared in accordance with paragraphs (2) and (3) of regulation 12 of the Environmental Assessment of Plans and Programmes Regulations 2004 [\[a\]](http://www.legislation.gov.uk/ukSI/2004/1633/introduction/made) (<http://www.legislation.gov.uk/ukSI/2004/1633/introduction/made>).

Whether a neighbourhood plan proposal requires a strategic environmental assessment, and (if so) the level of detail needed, will depend on what is proposed. A strategic environmental assessment may be required, for example, where:

- a neighbourhood plan allocates sites for development

- the neighbourhood area contains sensitive natural or heritage assets that may be affected by the proposals in the plan
- the neighbourhood plan is likely to have significant environmental effects that have not already been considered and dealt with through a sustainability appraisal of the Local Plan  
(<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>).

ID 11-046-20150209 Last updated 09 02 2015

### **What is the relationship between a Strategic Environmental Assessment and a Habitats Assessment?**

Strategic environmental assessment is a process for evaluating, at the earliest appropriate stage, the environmental effects of a plan before it is made. A Habitats Regulations assessment identifies whether a plan is likely to have a significant effect on a European site, either alone or in combination with other plans or projects. This assessment must determine whether significant effects on a European site can be ruled out on the basis of objective information.

If the conclusion is that the plan is likely to have a significant effect on a European site then an appropriate assessment of the implications of the plan for the site, in view of the site's conservation objectives, must be undertaken. If a plan is one which has been determined to require an appropriate assessment under the Habitats directive then it will normally also require a Strategic Environmental Assessment.

Guidance on statutory obligations concerning designated sites and protected species is published separately because its application is wider than planning. Updated guidance on the law affecting European sites, protected species and Sites of Special Scientific Interest is being prepared by the Department for Environment, Food & Rural Affairs and will replace the advice set out in Circular 06/05: Biodiversity and Geological Conservation [\[2\]](https://www.gov.uk/government/publications/biodiversity-and-geological-conservation-circular-06-2005)

(<https://www.gov.uk/government/publications/biodiversity-and-geological-conservation-circular-06-2005>)

ID 11-047-20150209 Last updated 09 02 2015

### **When should a plan-maker start producing a strategic environmental assessment?**

Where it is determined that a neighbourhood plan (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/what-is-neighbourhood-planning/>) is likely to have significant effects on the environment and that a strategic environmental assessment must be carried out, work on this should start at the earliest opportunity. This is so that the processes for gathering evidence for the environmental report and for producing the draft neighbourhood plan can be integrated, and to allow the assessment process to inform the choices being made in the plan.

ID 11-029-20150209 Last updated 09 02 2015

### **What level of detail is required in a strategic environmental assessment?**

The strategic environmental assessment should only focus on what is needed to assess the likely significant effects of the neighbourhood plan (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/what-is-neighbourhood-planning/>) proposal. It should focus on the environmental impacts which are likely to be significant. It does not need to be done in any more detail, or using more resources, than is considered to be appropriate for the content and level of detail in the neighbourhood plan.

ID 11-030-20150209 Last updated 09 02 2015

### **Who is responsible for ensuring that the strategic environmental assessment requirements have been met?**

It is the responsibility of the local planning authority to ensure that all the regulations appropriate to the nature and scope of a neighbourhood plan (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/what-is-neighbourhood-planning/>) proposal submitted to it have been met in order for the proposal to progress. The local planning authority must decide whether the neighbourhood plan proposal is compatible with EU obligations (including obligations under the Strategic Environmental Assessment Directive):

- when it takes the decision on whether the neighbourhood plan should proceed to referendum; and
- when it takes the decision on whether or not to make the neighbourhood plan (which brings it into legal force).

A qualifying body should make every effort to ensure that the draft neighbourhood plan that it submits to the local planning authority:

- meets each of the basic conditions
- has been prepared in accordance with the correct process and all those required to be consulted have been
- is accompanied by all the required documents

One of the following documents must be included with a neighbourhood plan proposal when it is submitted to the local planning authority:

- a statement of reasons for a determination under regulation 9(t) of the Environmental Assessment of Plans and Programmes Regulations 2004 [\[2\]](http://www.legislation.gov.uk/ukSI/2004/1633/introduction/made) (<http://www.legislation.gov.uk/ukSI/2004/1633/introduction/made>) that the proposal is unlikely to have significant environmental effects or
- an environmental report prepared in accordance with paragraphs (2) and (3) of regulation 12 of the Environmental Assessment of Plans and Programmes Regulations 2004 [\[2\]](http://www.legislation.gov.uk/ukSI/2004/1633/introduction/made) (<http://www.legislation.gov.uk/ukSI/2004/1633/introduction/made>)

The local planning authority should discuss the steps that the qualifying body needs to take and what needs to be produced in order to comply with the Environmental Assessment of Plans and Programmes Regulations 2004 [\[2\]](http://www.legislation.gov.uk/ukSI/2004/1633/introduction/made) (<http://www.legislation.gov.uk/ukSI/2004/1633/introduction/made>) as part of meeting its duty to advise or assist the qualifying body with neighbourhood planning.

The local planning authority should consider what further assistance it can provide to help a qualifying body comply with the regulations, for example making available information and evidence that may help a qualifying body that is preparing the environmental report where one is required.

ID 11-031-20150209 Last updated 09 02 2015

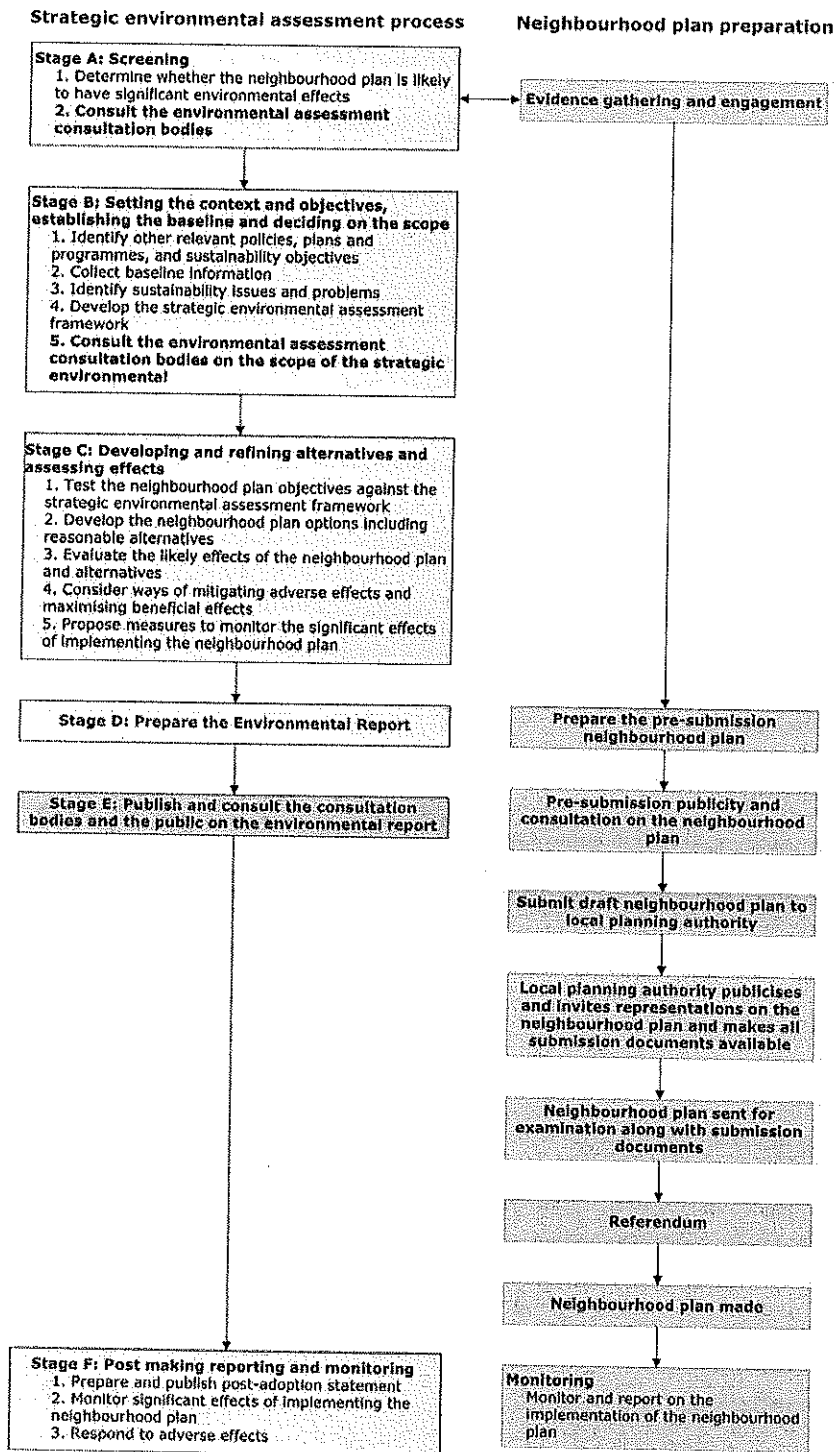
### **How should the strategic environmental assessment process be applied to neighbourhood plan preparation?**

The key stages of neighbourhood plan (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/what-is-neighbourhood-planning/>) preparation and their relationship with the strategic environmental assessment process are shown here

ID 11-032-20140306 Last updated 06 03 2014

### **Strategic environmental assessment process**





([http://planningguidance.communities.gov.uk/wp-content/uploads/2015/02/sea2\\_033\\_20150209\\_fixed.jpg](http://planningguidance.communities.gov.uk/wp-content/uploads/2015/02/sea2_033_20150209_fixed.jpg))

ID 11-033-20150209 Last updated 09 02 2015

### What is required at the scoping stage?

The scoping stage (Stage B) must identify the scope and level of detail of the information to be included in the environmental report. It should set out the context, objectives and approach of the assessment; establish the baseline; and identify relevant environmental issues and objectives.

Although the scoping stage is a requirement of the process, a formal scoping report is not required by law but is a useful way of presenting information at the scoping stage. A key aim of the scoping procedure is to help ensure the strategic environmental assessment is proportionate and relevant to

the neighbourhood plan

(<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/what-is-neighbourhood-planning/>) being assessed.

The consultation bodies must be consulted on the scope and level of detail of the information that must be included within the report.

Where a consultation body decides to respond, it should do so within five weeks of receipt of the request. (See regulation 12(5) and 12(6) of the Environmental Assessment of Plans and Programmes Regulations 2004 [\[2\]](http://www.legislation.gov.uk/uksi/2004/1633/regulation/12/made) (<http://www.legislation.gov.uk/uksi/2004/1633/regulation/12/made>).

ID 11-034-20150209 Last updated 09 02 2015

### **Who are the consultation bodies?**

Regulation 4 of the Environmental Assessment of Plans and Programmes Regulations 2004 [\[2\]](http://www.legislation.gov.uk/uksi/2004/1633/regulation/4/made) (<http://www.legislation.gov.uk/uksi/2004/1633/regulation/4/made>) defines certain organisations with environmental responsibilities as consultation bodies. In England the environmental assessment consultation bodies are Historic England, Natural England and the Environment Agency.

Although this guidance covers England, the relevant consultation bodies in the Devolved Administrations may need to be consulted to help determine whether the plan is likely to have significant environmental effects.

ID 11-035-20150209 Last updated 09 02 2015

### **What is baseline information?**

The term 'baseline information' refers to the existing environmental characteristics of the area likely to be affected by the neighbourhood plan (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/what-is-neighbourhood-planning/>), and its likely evolution without implementation of the neighbourhood plan.

The area likely to be affected may lie outside the designated neighbourhood area and the local planning authority boundary and plan makers may need to obtain information from other local planning authorities.

Baseline information provides the basis against which to assess the likely effects of alternative proposals in the draft plan.

Wherever possible data should be included on historic and likely future trends, including a 'no neighbourhood plan' or 'business as usual' scenario (i.e. anticipated trends in the absence of the neighbourhood plan being introduced). This information will enable the potential environmental effects of the implementation of the neighbourhood plan to be assessed in the context of existing and potential environmental trends. The local planning authority may be able to provide this 'baseline information'.

ID 11-036-20140306 Last updated 06 03 2014

### **How should plan-makers develop and refine options and assess effects?**

Proposals in a draft neighbourhood plan (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/what-is-neighbourhood-planning/>), and the reasonable alternatives should be assessed to identify the likely significant effects of the available options (Stage C). Forecasting and evaluation of the significant effects should help to develop and refine the proposals in the neighbourhood plan.

Reasonable alternatives should be identified and considered at an early stage in the plan making process as the assessment of these should inform the preferred approach.

This stage should also involve considering ways of mitigating any adverse effects, maximising beneficial effects and ways of monitoring likely significant effects.

ID 11-037-20150209 Last updated 09 02 2015

### **How should the strategic environmental assessment assess alternatives and identify likely significant effects?**

The strategic environmental assessment needs to compare the alternatives including the preferred approach, and assess these against the baseline environmental characteristics of the area and the likely situation if the neighbourhood plan

(<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/what-is-neighbourhood-planning/>) were not to be made. The strategic environmental assessment should predict and evaluate the effects of the preferred approach and reasonable alternatives and should clearly identify the significant positive and negative effects of each alternative.

The strategic environmental assessment should identify, describe and evaluate the likely significant effects on environmental factors using the evidence base. Criteria for determining the likely significance of effects on the environment are set out in Schedule 1 to the Environmental Assessment of Plans and Programmes Regulations 2004 [\[2\]](#)

(<http://www.legislation.gov.uk/ukSI/2004/1633/schedule/1/made>).

The strategic environmental assessment should identify any likely significant adverse effects and measures envisaged to prevent, reduce, and, as fully as possible, offset them. Reasonable alternatives must be considered and assessed in the same level of detail as the preferred approach intended to be taken forward in the neighbourhood plan (the preferred approach). Reasonable alternatives are the different realistic options considered while developing the policies in the draft plan. They must be sufficiently distinct to highlight the different environmental implications of each so that meaningful comparisons can be made. The alternatives must be realistic and deliverable.

The strategic environmental assessment should outline the reasons the alternatives were selected, the reasons the rejected options were not taken forward and the reasons for selecting the preferred approach in light of the alternatives. It should provide conclusions on the overall environmental impact of the different alternatives, including those selected as the preferred approach in the neighbourhood plan

(<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/what-is-neighbourhood-planning/>). Any assumptions used in assessing the significance of effects of the neighbourhood plan should be documented.

The development and appraisal of proposals in the neighbourhood plan should be an iterative process, with the proposals being revised to take account of the appraisal findings. This should inform the selection, refinement and publication of the preferred approach for consultation.

ID 11-038-20150209 Last updated 09 02 2015

### **What should the environmental report accompanying the draft neighbourhood plan cover?**

Regulation 12 of the Environmental Assessment of Plans and Programmes Regulations 2004 [\[2\]](#) (<http://www.legislation.gov.uk/ukSI/2004/1633/regulation/12/made>) sets out the requirements of an environmental report, which is a core output of any strategic environmental assessment. An environmental report for the purpose of the regulations must identify, describe and evaluate the likely significant effects on the environment of implementing the neighbourhood plan (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/what-is-neighbourhood-planning/>) policies and of the reasonable alternatives taking into account the objectives and geographical scope of the neighbourhood plan. The environmental report must clearly show how these requirements have been met.

The environmental report must include a non-technical summary of the information within the main report. The summary should be prepared with a range of readers in mind, and provide a clear, accessible overview of the process and findings.

ID 11-039-20140306 Last updated 06 03 2014

### Who should be consulted on the environmental report?

The environmental report, including the non-technical summary, must be made available alongside the draft neighbourhood plan. The consultation bodies should be sent a copy of these documents and the documents publicised in order to bring them to the attention of those members of the public likely to be affected by, or have an interest in the decisions involved in the assessment and development of the neighbourhood plan

(<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/>).

The consultation bodies and the interested parties should have an opportunity to express their opinion and be given sufficient time to do so. These procedures can be incorporated into the pre-submission publicity and consultation process for the neighbourhood plan

([http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/consulting-on-and-publicising-a-neighbourhood-plan-or-order/#paragraph\\_051](http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/consulting-on-and-publicising-a-neighbourhood-plan-or-order/#paragraph_051)).

Full details are set out in Regulation 13 of the Environmental Assessment of Plans and Programmes Regulations 2004 [\[2\]](#)

(<http://www.legislation.gov.uk/uksl/2004/1633/regulation/13/made>).

ID 11-040-20140306 Last updated 06 03 2014

### Should the environmental report be updated if the draft neighbourhood plan is modified following responses to consultations?

The environmental report will not necessarily have to be amended if the neighbourhood plan

(<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/what-is-neighbourhood-planning/>) is modified following responses to consultation.

Modifications to the environmental report should be considered only where appropriate and proportionate to the level of change being made to the neighbourhood plan. A change is likely to be significant if it substantially alters the draft plan and or is likely to give rise to significant environmental effects. Further assessment may be required if the changes have not previously been assessed and are likely to give rise to significant effects.

Changes that are not significant will not require further environmental assessment work.

ID 11-041-20140306 Last updated 06 03 2014

### What is the role of the environmental report at the independent examination of the neighbourhood plan?

One of the basic conditions that will be tested by the independent examiner ([http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/the-basic-conditions-that-a-draft-neighbourhood-plan-or-order-must-meet-if-it-is-to-proceed-to-referendum/eu-obligations/#paragraph\\_078](http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/the-basic-conditions-that-a-draft-neighbourhood-plan-or-order-must-meet-if-it-is-to-proceed-to-referendum/eu-obligations/#paragraph_078)) is whether the neighbourhood plan (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/what-is-neighbourhood-planning/>) is compatible with European Union obligations, as transposed into UK law. The basic condition statement submitted to the local planning authority with the draft plan should set out how the plan meets this basic condition. One of the following documents must be included with a neighbourhood plan proposal when it is submitted to the local planning authority, and made available to the independent examiner:

- a statement of reasons for a determination under regulation 9(1) of the Environmental Assessment of Plans and Programmes Regulations 2004 [\[2\]](#) (<http://www.legislation.gov.uk/uksl/2004/1633/introduction/made>) that the proposal is unlikely to have significant environmental effects; or
- an environmental report prepared in accordance with paragraphs (2) and (3) of regulation 12 of the Environmental Assessment of Plans and Programmes

Regulations 2004 [\[2\]](#)

(<http://www.legislation.gov.uk/ukxi/2004/1633/introduction/made>).

When submitted to the local planning authority, the neighbourhood plan must be accompanied by a consultation statement. This statement should set out:

- who has been consulted during the preparation of the plan, including the preparation of the environmental report;
- how they were consulted;
- a summary of the main issues and concerns raised by those consulted; and
- how these issues and concerns have been considered and, where relevant, addressed in the neighbourhood plan.

This statement will also be submitted to the independent examiner.

ID 11-042-20150209 Last updated 09 02 2015

### **Will the environmental report have to be amended if modifications to the neighbourhood plan are proposed at examination?**

The independent examiner of a neighbourhood plan (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/what-is-neighbourhood-planning/>) is testing whether the plan meets (or can be modified to meet) the basic conditions and will make recommendations to the local planning authority. The local planning authority will then reach its own view, informed by the examiner's report.

If the local planning authority assesses that the proposed changes are likely to have significant environmental effects which were not previously assessed then the strategic environmental assessment should be continued and the environment report amended accordingly in consultation with the qualifying body.

ID 11-043-20140306 Last updated 06 03 2014

### **What information should be provided following the making of a neighbourhood plan?**

Regulation 16 of the Environmental Assessment of Plans and Programmes Regulations 2004 [\[2\]](#)

(<http://www.legislation.gov.uk/ukxi/2004/1633/regulation/16/made>) sets out the requirements of the local planning authority once the neighbourhood plan (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/what-is-neighbourhood-planning/>) has been made.

ID 11-044-20140306 Last updated 06 03 2014


### **Does the local planning authority have to monitor the significant effects of implementing the neighbourhood plan once it has been made?**

Monitoring the significant effects of the implementation of a neighbourhood plan that was subject to a strategic environmental assessment should be undertaken (see Regulation 17 of the Environmental Assessment of Plans and Programmes Regulations 2004 [\[2\]](#)

(<http://www.legislation.gov.uk/ukxi/2004/1633/regulation/17/made>)). This will enable unforeseen adverse effects to be identified at an early stage and to enable appropriate remedial actions. The local planning authority should consider arrangements to monitor the significant effects of implementing the neighbourhood plan

(<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/what-is-neighbourhood-planning/>) and reporting this issue in its Monitoring Report.

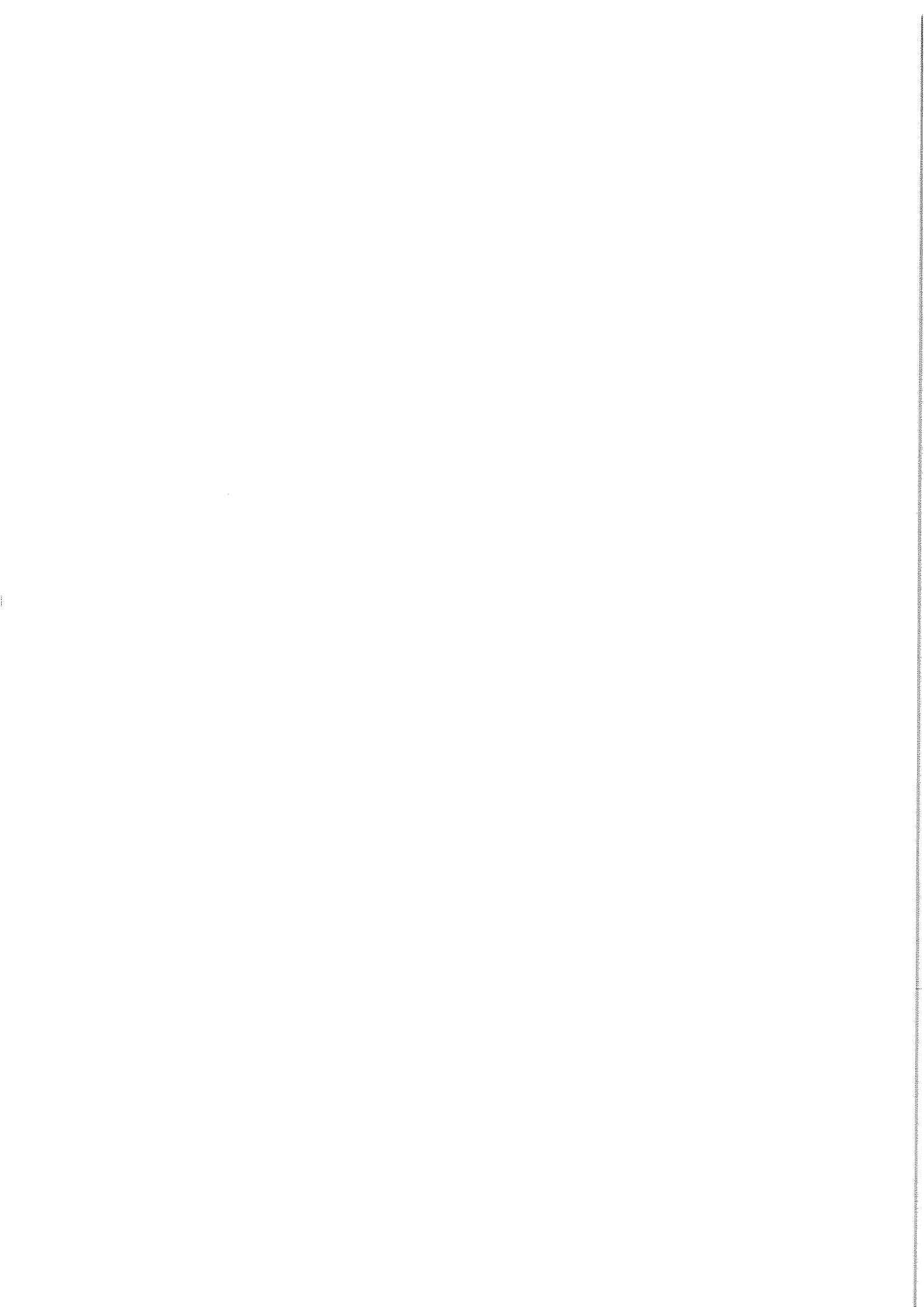
ID 11-045-20140306 Last updated 06 03 2014

 Department for Communities & Local Government  
(<https://www.gov.uk/government/organisations/department-for-communities-and-local-government>)

# Planning Practice Guidance

## Section Five (T-Z):

- Transport evidence bases in plan making and decision taking
- Travel plans, transport assessments and statements
- Tree Preservation Orders and trees in conservation areas
- Use of Planning Conditions
- Viability
- Waste
- Water supply, wastewater and water quality
- When is permission required?





## Planning Practice Guidance (<http://planningguidance.communities.gov.uk>)

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Guidance

# Transport evidence bases in plan making and decision taking

Print 

## 1. Transport evidence bases in plan making and decision taking


(<http://planningguidance.communities.gov.uk/blog/guidance/transport-evidence-bases-in-plan-making/transport-evidence-bases-in-plan-making-guidance/>)

### Transport evidence bases in plan making and decision taking

#### Why establish a transport evidence base for Local Plans?

It is important for local planning authorities to undertake an assessment of the transport implications in developing or reviewing their Local Plan so that a robust transport evidence base may be developed to support the preparation and/or review of that Plan. A robust transport evidence base can facilitate approval of the Local Plan and reduce costs and delays to the delivery of new development, thus reducing the burden on the public purse and private sector.

The transport evidence base should identify the opportunities for encouraging a shift to more sustainable transport usage, where reasonable to do so; and highlight the infrastructure requirements for inclusion in infrastructure spending plans linked to the Community Infrastructure Levy, section 106 provisions and other funding sources.

Local planning authorities should also refer to the Department for Transport's Circular 02/2013 'The Strategic Road Network and the Delivery of Sustainable Development'  (<https://www.gov.uk/government/publications/strategic-road-network-and-the-delivery-of-sustainable-development>)

ID 54-001-20141010 Last updated 10 10 2014

#### What is the purpose of a transport evidence base to support the Local Plan?

A robust evidence base will enable an assessment of the transport impacts of both existing development as well as that proposed, and can inform sustainable approaches to transport at a plan-making level. This will include consideration of viability and deliverability.

A robust assessment will establish evidence that may be useful in:

- improving the sustainability of transport provision
- enhancing accessibility
- creating choice amongst different modes of transport
- improving health and well-being
- supporting economic vitality
- improving public understanding of the transport implications of development
- enabling other highway and transport authorities/service providers to support and deliver the transport infrastructure that conforms to the Local Plan
- supporting local shops and the high street

ID 54-002-20141010 Last updated 10 10 2014

### **What key issues should be considered in developing the transport evidence base to support the Local Plan?**

The key issues, which should be considered in developing a transport evidence base, include the need to:

- assess the existing situation and likely generation of trips over time by all modes and the impact on the locality in economic, social and environmental terms
- assess the opportunities to support a pattern of development that, where reasonable to do so, facilitates the use of sustainable modes of transport
- highlight and promote opportunities to reduce the need for travel where appropriate
- identify opportunities to prioritise the use of alternative modes in both existing and new development locations if appropriate
- consider the cumulative impacts of existing and proposed development on transport networks
- assess the quality and capacity of transport infrastructure and its ability to meet forecast demands
- identify the short, medium and long-term transport proposals across all modes

The outcome could include assessing where alternative allocations or mitigation measures would improve the sustainability, viability and deliverability of proposed land allocations (including individual sites) provided these are compliant with national policy as a whole.

ID 54-003-20141010 Last updated 10 10 2014

### **When should the transport assessment of the Local Plan be undertaken?**

An assessment of the transport implications should be undertaken at a number of stages in the preparation of a Local Plan:

- as part of the initial evidence base in terms of issues and opportunities
- as part of the options testing
- as part of the preparation of the final submission

The last of these stages should highlight the scale of and priorities for investment requirements and support infrastructure spending plans. Like a sustainability appraisal, it will be an iterative process and become more refined and detailed as the process draws to a conclusion.

ID 54-004-20141010 Last updated 10 10 2014

### **What baseline information should inform a transport assessment of a Local Plan?**

The following list indicates the key aspects that should be addressed in the transport assessment. This list is not exhaustive, and there may be additional issues that are important to consider locally.

- all current transport issues as they affect all modes and freight covering, for example, accessibility, congestion, mobility, safety, pollution, affordability, carbon reduction across the whole Plan area and, within relevant areas of the Plan, including existing settlements and proposed land allocations

- the potential options to address the issues identified and any gaps in the networks in the short, medium and longer term covering, for example, accessibility, congestion, mobility, safety, pollution, carbon reduction
- the locations of proposed land allocations and areas/corridors of development and potential options for the provision of sustainable transport and transport networks to serve them
- solutions to support a pattern of development that, where reasonable to do so, facilitates the use of sustainable modes of transport
- the scope and options for maximising travel planning and behavioural change.
- accessibility of transport nodes such as rail / bus stations to facilitate integrated solutions

The transport assessment should be produced at a Local Plan level in partnership with all relevant transport and planning authorities, transport providers and key stakeholders, for example, the Local Economic Partnership. It may be appropriate for the transport assessment to cover an area wider than the Local Plan at least initially given the size of some travel to work areas (this would be similar to the Strategic Housing Market Assessment). This process should help to identify any potential measures that may be required to mitigate negative impacts.

ID 54-005-20141010 Last updated 10 10 2014

### **What detailed information is required for the transport assessment of the Local Plan?**

Much information required for the transport assessment will already be available, not least from the development needs and land availability assessments. Local planning authorities will need to consider the demographics of the area and also the desired or perceived changes likely to take place in the life of the Plan as they might affect the transport network.

Other considerations that could be included are:

- baseline existing conditions, which need to be established accurately to understand fully the context of the Local Plan policies and proposals
- the existing integrated transport networks and any gaps in these as well as service and quality
- opportunities to change to other forms of transport
- the current use and demand by all different types of transport including cumulative trips into and out of the area
- the availability of information from travel plans, previous assessments, transport operators etc
- capacity data on rail and tram networks and constraints across the area
- walking and cycling facilities and movements including future predicted trips
- description and functional classification of the road network
- current traffic flows including peak periods on roads, links and key junctions
- parking facilities, including any park and ride and existing under-provision of off-street parking spaces
- journey purpose of trips
- identification and assessment of key links and junctions on the highway network to establish existing conditions
- committed network improvements
- personal injury accident records, including cyclist safety

- any programmed public transport improvements including type, timing and promoter information
- pollution, including baseline carbon emissions broken down by type of travel
- existing transport-related environmental impacts
- established best practice in transport provision and the share of each type
- at a broad level, journey purpose and origin and destination currently and how it is likely to change or desired to change – for all types of transport

The above is not exhaustive, and other issues may need to be included as appropriate to give a complete baseline for the Plan area and how it will change. Early engagement between interested parties is important in agreeing the level and scope of assessment required.

ID 54-006-20141010 Last updated 10 10 2014

### **How can a transport assessment of the Local Plan be undertaken?**

A transport assessment is likely to be scenario based and in terms of projections look at a range of potential outcomes given a number of assumptions, for example, a movement in the proportion of people using different forms of transport consistent with best practice.

Transport data should be included that reflects the typical (neutral) flow conditions on the network (for example, non-school holiday periods, typical weather conditions etc.) in the area of the Plan, and should be valid for the intended purposes. It should also take account of holiday periods in tourist areas, where peaks could occur in periods that might normally be considered non-neutral. The recommended periods for data collection are spring and autumn, which include the neutral months of April, May, June, September and October. Further advice is available from the Highways Agency, as described for traffic in the Design Manual for Roads and Bridges [\[2\]](#)

(<http://www.dft.gov.uk/ha/standards/dmr/>) (Volume 13, Part 4 [\[2\]](#)  
(<https://www.gov.uk/government/publications/coba-11-user-manual>)).

In terms of road traffic, but not other types of traffic, where there is a need to project existing or historical traffic data for future year assessments, the preferred option is the use of appropriate local traffic forecasts (such as the Trip End Model Presentation Program used for transport planning purposes), provided they offer a robust assessment. In some cases, National Road Traffic Forecast growth rates would be appropriate. However, it is important to ensure that this does not just perpetuate existing travel patterns but, where reasonable to do so, facilitates the use of sustainable modes of transport.

The use of any area-wide traffic models or background growth rates should be agreed with the relevant transport or highway authority at the evidence gathering stage of the Local Plan. Care needs to be taken when considering using any model that it takes account of the need to address historic travel patterns not necessarily reinforce them.

To assess the availability of the capacity of the road network, the transport assessment should take into account:

- recent counts for peak period turning movements at critical strategic junctions, for example, in certain instances where there is known to be a significant level of heavy goods vehicles traffic, a classified count (identifying all vehicles separately) should be provided
- 12 hour/24 hour automatic traffic counts

Additional counts that may be required on the strategic parts of the road network could include:

- manual turning counts (which should be conducted at 15 minute intervals) to identify all strategically relevant highway network peak periods
- queue length surveys at key strategic signal junctions to establish demand and actual traffic flows
- journey time surveys
- freight counts
- abnormal load counts
- pedestrian and cyclists counts

Capacity assessments for roads, rail and bus should also be obtained.

ID 54-007-20141010 Last updated 10 10 2014

### **How should the impact of land allocations be considered in assessing the transport implications of Local Plans?**

The first step in quantifying the impact of proposed land allocations in the Local Plan on the transport system is to provide an estimate of the person trips (for all types of transport) that are likely to be generated by it.

In all cases, an analysis of development-related trips using an appropriate database or an alternative methodology should be agreed with the relevant highway authorities, as this will form the major element of the assessment.

An assessment of the impacts of the proposed additional land allocations can be initiated once initial potential allocations have been determined. There needs to be a description of the type of development at each of the locations proposed in as much detail as possible at the time. Where this is not possible, a "likely" scenario will need to be employed to set out the potential transport impact. Information that could be required includes:

- location plans of each site
- description of all the proposed land uses
- scale of development – such as the number of residential units or gross floor area of development – subdivided by land use where appropriate/possible
- site area in hectares
- likely proposed access to existing transport infrastructure for all types of travel
- where known, the likely proposed parking strategy
- development phasing, where applicable
- potential for securing travel planning benefits and enhanced sustainable transport provision

The above requirements are not exhaustive and will require adaptation to reflect the knowledge about the potential site allocations and developments as well as the type and scale of the proposed developments.

ID 54-008-20141010 Last updated 10 10 2014

### **How should safety considerations be addressed and accident analysis used effectively in the transport assessment of the Local Plan?**

All types of transport should be covered by safety considerations and accident analysis, taking into account the objective of facilitating, where reasonable to do so, the use of sustainable modes of transport. The level of detail required will be dependent on the stage of the Local Plan.

The transport assessment should identify any significant highway safety issues and provide an analysis of the recent accident history of the affected/impacted areas. The extent of the safety issue considerations and accident analysis will depend on the scale and type of developments in the context of the character of the affected Strategic Road Network. The need to minimise conflicts between vehicles and other road user groups should be adequately addressed.

Critical locations on the road network with poor accident records should be identified. This is to determine if the proposed land allocations will exacerbate existing problems and whether highway mitigation works or traffic management measures will be required to alleviate such problems. The accident records should be compared with accident rates on similar local roads.

Where the Strategic Road Network is involved, we recommend that appropriate national statistics are also used as a comparison.

ID 54-009-20141010 Last updated 10 10 2014

### **How is the WebTAG approach useful in the transport assessment of the Local Plan?**

An assessment should adopt the principles of WebTAG [\[2\]](https://www.gov.uk/transport-analysis-guidance-webtag) (<https://www.gov.uk/transport-analysis-guidance-webtag>) by assessing the potential impacts of development within the framework of WebTAG objectives. For most Local Plan assessments the full methodology recommended will not be appropriate. The Highways Agency's Project Appraisal Report System [\[2\]](http://assets.highways.gov.uk/specialist-information/guidance-and-best-practice-value-management/PARUserNotes63.pdf) (<http://assets.highways.gov.uk/specialist-information/guidance-and-best-practice-value-management/PARUserNotes63.pdf>) may provide some useful guidance on methods more appropriate in these cases. Assessments involving major new transport infrastructure should, however, employ the methods set out in WebTAG.

Although this approach is typically applied when planning for local transport infrastructure, adopting this approach for Local Plan transport assessments will ensure that any proposed land allocation impact is considered in the context of two alternative scenarios – 'with development' and 'without development' – and will enable a comparative analysis of the transport effects of the proposed allocation.

ID 54-010-20141010 Last updated 10 10 2014

### **Over how long a period should the assessment of the transport impact of the Local Plan cover?**

The assessment should ideally cover the period of the Local Plan, taking into account all the changes and improvements in, for example, technology and behaviour that is likely to happen in that time. Circular 02/2013 [\[2\]](https://www.gov.uk/government/publications/strategic-road-network-and-the-delivery-of-sustainable-development) (<https://www.gov.uk/government/publications/strategic-road-network-and-the-delivery-of-sustainable-development>) sets out provisions for the Strategic Road Network and assessment years at paragraphs 25 to 27.

ID 54-011-20141010 Last updated 10 10 2014

### **What should be considered in regard to the development of airport and airfield facilities and their role in serving business, leisure, training and emergency service needs? (National Planning Policy Framework paragraph 33**


[http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/4-promoting-sustainable-transport/#paragraph\\_33](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/4-promoting-sustainable-transport/#paragraph_33))

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#### **Related policy**

##### **National Planning Policy Framework**

- Paragraph 17 ([http://planningguidance.com/sustainable-development/#paragraph\\_17](http://planningguidance.com/sustainable-development/#paragraph_17))


Aviation makes a significant contribution to economic growth across the country, including in relation to small and medium sized airports and airfields (aerodromes). An aerodrome will form part of a larger network. Local planning authorities should have regard to the extent to which an aerodrome contributes to connectivity outside the authority's own boundaries, working together with other authorities and Local Enterprise Partnerships as required by the National Planning Policy Framework. As well as the National Planning Policy Framework, local planning authorities should have regard to the Aviation Policy Framework,  (<https://www.gov.uk/government/publications/aviation-policy-framework>) which sets out Government policy to allow aviation to continue making a significant contribution (National Planning Policy Framework paragraph 160 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph\\_160](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/plan-making/#paragraph_160))).

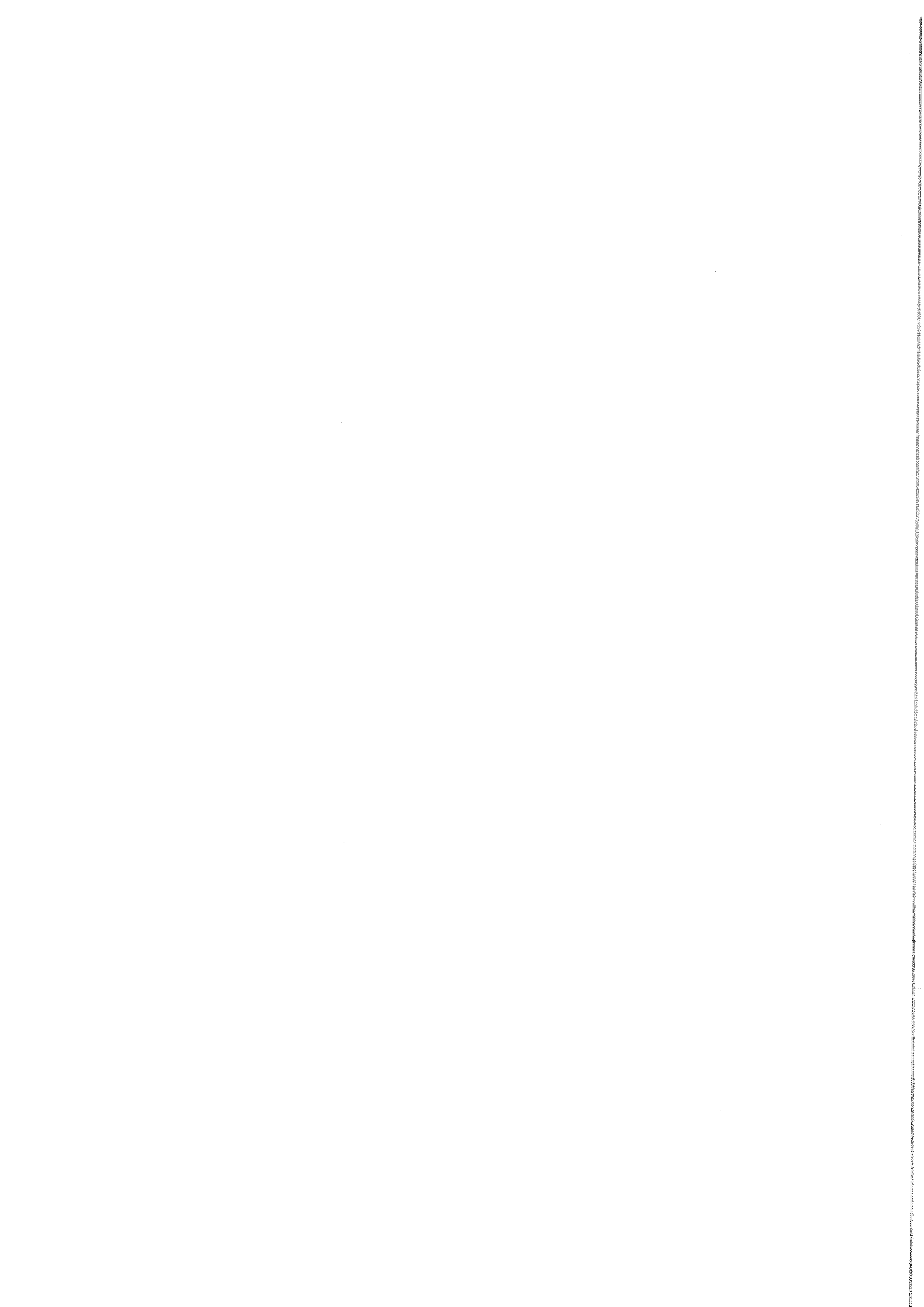
A working or former aerodrome could be put forward for consideration as a site for mixed use development (National Planning Policy Framework paragraph 17 ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/#paragraph\\_17](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/#paragraph_17))) that includes continuing, adapting or restoring aviation services in addition to other uses.

ID 54-012-20150313 Last updated 13 03 2015

- Paragraph 33 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/4-promoting-sustainable-transport/#paragraph\\_33](http://planningguidance.com/sustainable-development/delivering-sustainable-development/4-promoting-sustainable-transport/#paragraph_33))
- Paragraph 160 ([http://planningguidance.com/sustainable-development/plan-making/#paragraph\\_160](http://planningguidance.com/sustainable-development/plan-making/#paragraph_160))

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 Department for Communities & Local Government  
(<https://www.gov.uk/government/organisations/department-for-communities-and-local-government>)





## Planning Practice Guidance (<http://planningguidance.communities.gov.uk>)

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Guidance

# Travel plans, transport assessments and statements in decision-taking

Print 


### 1. Overarching principles on Travel Plans, Transport Assessments and Statements

(<http://planningguidance.communities.gov.uk/blog/guidance/travel-plans-transport-assessments-and-statements-in-decision-taking/overarching-principles-on-travel-plans-transport-assessments-and-statements/>)

#### Overarching principles on Travel Plans, Transport Assessments and Statements

This guidance relates only to Travel Plans, Transport Assessments and Statements in relation to decision-taking.

It may also be useful in plan-making if local planning authorities are of the view that Transport Assessments can beneficially inform their Local Plans (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>) (for example, in order to facilitate the use of sustainable modes of transport).

Further guidance on transport issues can be found on the Department for Transport's website  (<https://www.gov.uk/government/organisations/department-for-transport>).

ID 42-001-20140306 Last updated 06 03 2014

#### What are Travel Plans, Transport Assessments and Statements?

Travel Plans, Transport Assessments and Statements are all ways of assessing and mitigating the negative transport impacts of development in order to promote sustainable development. They are required for all developments which generate significant amounts of movements.

ID 42-002-20140306 Last updated 06 03 2014

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#### Related policy

##### National Planning Policy Framework

- Paragraph 32 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/4-promoting-sustainable-transport/#paragraph\\_32](http://planningguidance.com/sustainable-development/delivering-sustainable-development/4-promoting-sustainable-transport/#paragraph_32))
- Paragraph 36 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/4-promoting-sustainable-transport/#paragraph\\_36](http://planningguidance.com/sustainable-development/delivering-sustainable-development/4-promoting-sustainable-transport/#paragraph_36))

#### What are Travel Plans?

Travel Plans are long-term management strategies for integrating proposals for sustainable travel into the planning process. They are based on evidence of the anticipated transport impacts of development and set measures to promote and encourage sustainable travel (such as promoting walking and cycling). They should not, however, be used as an excuse for unfairly penalising drivers and cutting provision for cars in a way that is unsustainable and could have negative impacts on the surrounding streets.

Travel Plans should where possible, be considered in parallel to development proposals and readily integrated into the design and occupation of the new site rather than retrofitted after occupation.

Where there may be more effective or sustainable outcomes, and in order to mitigate the impact of the proposed development, consideration may be given to travel planning over a wider area.

ID 42-003-20140306 Last updated 06 03 2014

### **What are Transport Assessments and Statements?**

Transport Assessments and Statements are ways of assessing the potential transport impacts of developments (and they may propose mitigation measures to promote sustainable development. Where that mitigation relates to matters that can be addressed by management measures, the mitigation may inform the preparation of Travel Plans).

Transport Assessments are thorough assessments of the transport implications of development, and Transport Statements are a 'lighter-touch' evaluation to be used where this would be more proportionate to the potential impact of the development (i.e. in the case of developments with anticipated limited transport impacts).

Where the transport impacts of development are not significant, it may be that no Transport Assessment or Statement or Travel Plan is required. Local planning authorities, developers, relevant transport authorities, and neighbourhood planning organisations should agree what evaluation is needed in each instance.

ID 42-004-20140306 Last updated 06 03 2014

### **How do Travel Plans, Transport Assessments and Statements relate to each other?**

The development of Travel Plans and Transport Assessments or Transport Statements should be an iterative process as each may influence the other.

The primary purpose of a Travel Plan is to identify opportunities for the effective promotion and delivery of sustainable transport initiatives e.g. walking, cycling, public transport and tele-commuting, in connection with both proposed and existing developments and through this to thereby reduce the demand for travel by less sustainable modes. As noted above, though, they should not be used as way of unfairly penalising drivers.

Transport Assessments and Transport Statements primarily focus on evaluating the potential transport impacts of a development proposal. (They may consider those impacts net of any reductions likely to arise from the implementation of a Travel Plan, though producing a Travel Plan is not always required). The Transport Assessment or Transport Statement may propose mitigation measures where these are necessary to avoid unacceptable or "severe" impacts. Travel Plans can play an effective role in taking forward those mitigation measures which relate to on-going occupation and operation of the development.

Transport Assessments and Statements can be used to establish whether the residual transport impacts of a proposed development are likely to be “severe”, which may be a reason for refusal, in accordance with the National Planning Policy Framework.

ID 42-005-20140306 Last updated 06 03 2014

## Why are Travel Plans, Transport Assessments and Statements important?

Travel Plans, Transport Assessments and Statements can positively contribute to:

- encouraging sustainable travel;
- lessening traffic generation and its detrimental impacts;
- reducing carbon emissions and climate impacts;
- creating accessible, connected, inclusive communities;
- improving health outcomes and quality of life;
- improving road safety; and
- reducing the need for new development to increase existing road capacity or provide new roads.

They support national planning policy which sets out that planning should actively manage patterns of growth in order to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable.

Government’s policy on parking is set out in the National Planning Policy Framework. Travel Plans, Assessments and Statements can also be important tools to improve the quality of town centre parking (and where, necessary to improve the vitality of town centres, the quantity too).

Local planning authorities and developers should both consider the wider benefits of Travel Plans, Transport Assessments and Statements such as helping to promote the attractiveness of a district or site to new visitors and releasing land for development that would otherwise be taken up by required related parking.

Many military establishments are located in isolated areas and the lack of choice that military families have over the location of their service accommodation means some face transport difficulties. When considering transport issues local authorities should consider the particular requirements of any Armed Forces families in their area.

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## What key principles should be taken into account in preparing a Travel Plan, Transport Assessment or Statement?

Travel Plans, Transport Assessments and Statements should be:

- proportionate to the size and scope of the proposed development to which they relate and build on existing information wherever possible;
- established at the earliest practicable possible stage of a development proposal;
- be tailored to particular local circumstances (other locally-determined factors and information beyond those which are set out in this guidance may need to be considered in these studies provided there is robust evidence for doing so locally);

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## Related policy

### National Planning Policy Framework

- Paragraph 17 – Bullet point 11 ([http://planningguidance.com/sustainable-development/#paragraph\\_17](http://planningguidance.com/sustainable-development/#paragraph_17))
- Paragraph 23 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/2-ensuring-the-vitality-of-town-centres/#paragraph\\_23](http://planningguidance.com/sustainable-development/delivering-sustainable-development/2-ensuring-the-vitality-of-town-centres/#paragraph_23))
- Paragraph 29 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/4-promoting-sustainable-transport/#paragraph\\_29](http://planningguidance.com/sustainable-development/delivering-sustainable-development/4-promoting-sustainable-transport/#paragraph_29))
- Paragraph 40 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/4-promoting-sustainable-transport/#paragraph\\_40](http://planningguidance.com/sustainable-development/delivering-sustainable-development/4-promoting-sustainable-transport/#paragraph_40))

- be brought forward through collaborative ongoing working between the Local Planning Authority/ Transport Authority, transport operators, Rail Network Operators, Highways Agency where there may be implications for the strategic road network [\[2\] \(https://www.gov.uk/government/publications/strategic-road-network-and-the-delivery-of-sustainable-development\)](https://www.gov.uk/government/publications/strategic-road-network-and-the-delivery-of-sustainable-development) and other relevant bodies. Engaging communities and local businesses in Travel Plans, Transport Assessments and Statements can be beneficial in positively supporting higher levels of walking and cycling (which in turn can encourage greater social inclusion, community cohesion and healthier communities).

In order to make these documents as useful and accessible as possible any information or assumptions should be set out in a clear and publicly accessible form:

- the timeframes over which they are conducted or operate should be appropriate in relation to the nature of developments to which they relate (and planned changes to transport infrastructure and management in the area);
- Local Planning Authorities should advise qualifying bodies for the purposes of Neighbourhood Planning on whether Travel Plans, Transport Assessments and Statements should be prepared, and the benefits of doing so, as part of the duty to support.

Local Planning Authorities may wish to consult the relevant bodies on planning applications likely to affect transport infrastructure, such as Rail Network Operators where a development is likely to impact on the operation of level crossings.

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## **Can Travel Plans, Transport Assessments or Transport Statements be used to justify higher parking charges or other constraints on car users?**

While Travel Plans are intended to promote the most sustainable forms of transport, such as active travel, they should not be used to justify penalising motorists – for instance through higher parking charges, tougher enforcement or reduced parking provision (which can simply lead to more on street parking).

Nor should they be used to justify

(<http://planningguidance.communities.gov.uk/blog/guidance/design/>) aggressive traffic calming measures, such as speed humps.

Maximum parking standards can lead to poor quality development and congested streets, local planning authorities should seek to ensure parking provision is appropriate to the needs of the development and not reduced below a level that could be considered reasonable.

Travel Plans, Transport Assessments and Statements should reflect the important role that appropriate parking facilities can play in rejuvenating local shops, high streets and town centres

(<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-the-vitality-of-town-centres/>).

ID 42-008-20140306 Last updated 06 03 2014

2. Travel Plans (<http://planningguidance.communities.gov.uk/blog/guidance/travel-plans-transport-assessments-and-statements-in-decision-taking/travel-plans/>)

### **Travel Plans**

#### **When is a Travel Plan required?**

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Paragraph 36 of the National Planning Policy Framework ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/4-promoting-sustainable-transport/#paragraph\\_36](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/4-promoting-sustainable-transport/#paragraph_36)) sets out that all developments which generate significant amounts of transport movement should be required to provide a Travel Plan.

Local planning authorities must make a judgement as to whether a proposed development would generate significant amounts of movement on a case by case basis (i.e. significance may be a lower threshold where road capacity is already stretched or a higher threshold for a development which proposes no car parking in an area of high public transport accessibility).

In determining whether a Travel Plan will be needed for a proposed development the local planning authorities should take into account the following considerations:

- the Travel Plan policies (if any) of the Local Plan;
- the scale of the proposed development and its potential for additional trip generation (smaller applications with limited impacts may not need a Travel Plan);
- existing intensity of transport use and the availability of public transport;
- proximity to nearby environmental designations or sensitive areas;
- impact on other priorities/ strategies (such as promoting walking and cycling);
- the cumulative impacts of multiple developments within a particular area;
- whether there are particular types of impacts around which to focus the Travel Plan (e.g. minimising traffic generated at peak times); and
- relevant national policies, including the decision to abolish maximum parking standards for both residential and non-residential development.

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### **How should the need for and scope of a Travel Plan be established?**

The anticipated need for a Travel Plan should be established early on, preferably in the pre-application stage but otherwise within the application determination process itself.

Consideration should be given at the pre-application stage to:

- the form and scope of the Travel Plan;
- the outcomes sought by the Travel Plan;
- the processes, timetables and costs potentially involved in delivering the required outcomes (including any relevant conditions and obligations);
- the scope of the information needed; and
- the proposals for the ongoing management, implementation and review processes.

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### **What information should be included in Travel Plans?**

Travel Plans should identify the specific required outcomes, targets and measures, and set out clear future monitoring and management arrangements all of which should be proportionate. They should also consider what additional measures may be required to offset unacceptable impacts if the targets should not be met.

### **Related policy**

#### **National Planning Policy Framework**

- Paragraph 36 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/4-promoting-sustainable-transport/#paragraph\\_36](http://planningguidance.com/sustainable-development/delivering-sustainable-development/4-promoting-sustainable-transport/#paragraph_36))

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### **Related policy**

#### **National Planning Policy Framework**

Travel Plans should set explicit outcomes rather than just identify processes to be followed (such as encouraging active travel or supporting the use of low emission vehicles). They should address all journeys resulting from a proposed development by anyone who may need to visit or stay and they should seek to fit in with wider strategies for transport in the area.

They should evaluate and consider:

- benchmark travel data including trip generation databases;
- information concerning the nature of the proposed development and the forecast level of trips by all modes of transport likely to be associated with the development;
- relevant information about existing travel habits in the surrounding area;
- proposals to reduce the need for travel to and from the site via all modes of transport; and
- provision of improved public transport services.

They may also include:

- parking strategy options (if appropriate – and having regard to national policy on parking standards ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/4-promoting-sustainable-transport/#paragraph\\_39](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/4-promoting-sustainable-transport/#paragraph_39)) and the need to avoid unfairly penalising motorists ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/4-promoting-sustainable-transport/#paragraph\\_40](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/4-promoting-sustainable-transport/#paragraph_40))); and
- proposals to enhance the use of existing, new and improved public transport services and facilities for cycling and walking both by users of the development and by the wider community (including possible financial incentives).

These active measures may assist in creating new capacity within the local network that can be utilised to accommodate the residual trip demand of the site(s) under consideration.

It is often best to retain the ability to establish certain elements of the Travel Plan or review outcomes after the development has started operating so that it can be based upon the occupational and operational characteristics of the development.

Any sanctions (for example financial sanctions on breaching outcomes/ processes) need to be reasonable and proportionate, with careful attention paid to the viability of the development. It may often be more appropriate to use non-financial sanctions where outcomes/ processes are not adhered to (such as more active or different marketing of sustainable transport modes or additional traffic management measures). Relevant implications for planning permission must be set out clearly, including (for example) whether the Travel Plan is secured by a condition or planning obligation.

Travel Plans can only impose such requirements where these are consistent with Government policy on planning obligations.

ID 42-011-20140306 Last updated 06 03 2014

### How should Travel Plans be monitored?

Travel Plans need to set out clearly what data is to be collected, and when, establishing the baseline conditions in relation to any targets.

- Paragraph 39 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/4-promoting-sustainable-transport/#paragraph\\_39](http://planningguidance.com/sustainable-development/delivering-sustainable-development/4-promoting-sustainable-transport/#paragraph_39))
- Paragraph 40 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/4-promoting-sustainable-transport/#paragraph\\_40](http://planningguidance.com/sustainable-development/delivering-sustainable-development/4-promoting-sustainable-transport/#paragraph_40))

The length of time over which monitoring will occur and the frequency will depend on the nature and scale of the development and should be agreed as part of the Travel Plan with the developer or qualifying body for neighbourhood planning. Who has responsibility for monitoring compliance should be clear.

Monitoring requirements should only cease when there is sufficient evidence for all parties to be sure that the travel patterns of the development are in line with the objectives of the Travel Plan. This includes meeting the agreed targets over a consistent period of time. At this point the Travel Plan would become a voluntary initiative.

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### 3. Transport Assessments and Statements

(<http://planningguidance.communities.gov.uk/blog/guidance/travel-plans-transport-assessments-and-statements-in-decision-taking/transport-assessments-and-statements/>)

#### Transport Assessments and Statements

##### When are Transport Assessment and Transport Statements required?

Paragraph 32 of the National Planning Policy Framework ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/4-promoting-sustainable-transport/#paragraph\\_32](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/4-promoting-sustainable-transport/#paragraph_32)) sets out that all developments that generate significant amounts of transport movement should be supported by a Transport Statement or Transport Assessment.

Local planning authorities must make a judgement as to whether a development proposal would generate significant amounts of movement on a case by case basis (i.e. significance may be a lower threshold where road capacity is already stretched or a higher threshold for a development in an area of high public transport accessibility).

In determining whether a Transport Assessment or Statement will be needed for a proposed development local planning authorities should take into account the following considerations:

- the Transport Assessment and Statement policies (if any) of the Local Plan;
- the scale of the proposed development and its potential for additional trip generation (smaller applications with limited impacts may not need a Transport Assessment or Statement);
- existing intensity of transport use and the availability of public transport;
- proximity to nearby environmental designations or sensitive areas ;
- impact on other priorities/ strategies (such as promoting walking and cycling);
- the cumulative impacts of multiple developments within a particular area; and
- whether there are particular types of impacts around which to focus the Transport Assessment or Statement (e.g. assessing traffic generated at peak times).

ID 42-013-20140306 Last updated 06 03 2014

##### How should the need for and scope of a Transport Assessment or Statement be established?

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#### Related policy

##### National Planning Policy Framework

- Paragraph 32 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/4-promoting-sustainable-transport/#paragraph\\_32](http://planningguidance.com/sustainable-development/delivering-sustainable-development/4-promoting-sustainable-transport/#paragraph_32))

The need for, scale, scope and level of detail required of a Transport Assessment or Statement should be established as early in the development management process as possible as this may therefore positively influence the overall nature or the detailed design of the development.

Key issues to consider at the start of preparing a Transport Assessment or Statement may include:

- the planning context of the development proposal;
- appropriate study parameters (i.e. area, scope and duration of study);
- assessment of public transport capacity, walking/ cycling capacity and road network capacity;
- road trip generation and trip distribution methodologies and/ or assumptions about the development proposal;
- measures to promote sustainable travel;
- safety implications of development; and
- mitigation measures (where applicable) – including scope and implementation strategy.

It is important to give appropriate consideration to the cumulative impacts arising from other committed development (i.e. development that is consented or allocated where there is a reasonable degree of certainty will proceed within the next three years). At the decision-taking stage this may require the developer to carry out an assessment of the impact of those adopted Local Plan allocations which have the potential to impact on the same sections of transport network as well as other relevant local sites benefitting from as yet unimplemented planning approval.

Transport Assessments or Statements may identify the need for associated studies or may feed into other studies. However care should be taken to establish the full range of studies that will be required of development at the earliest opportunity as it is unlikely that a Transport Assessment or Statement in itself could fulfil the specific role required of a transport element of an Environmental Impact Assessment (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/>) where this is required. Particular attention should be given to this issue where there are environmentally sensitive areas nearby and where the proposal could have implications for breach of statutory thresholds in relation to noise and air quality either as a result of traffic generated by the site or as a consequence of the impact of existing traffic on the site under consideration.

ID 42-014-20140306 Last updated 06 03 2014

### **What information should be included in Transport Assessments and Statements?**

The scope and level of detail in a Transport Assessment or Statement will vary from site to site but the following should be considered when settling the scope of the proposed assessment:

- information about the proposed development, site layout, (particularly proposed transport access and layout across all modes of transport)
- information about neighbouring uses, amenity and character, existing functional classification of the nearby road network;
- data about existing public transport provision, including provision/ frequency of services and proposed public transport changes;
- a qualitative and quantitative description of the travel characteristics of the proposed development, including movements across all modes of transport that would result from the development and in the vicinity of the site;

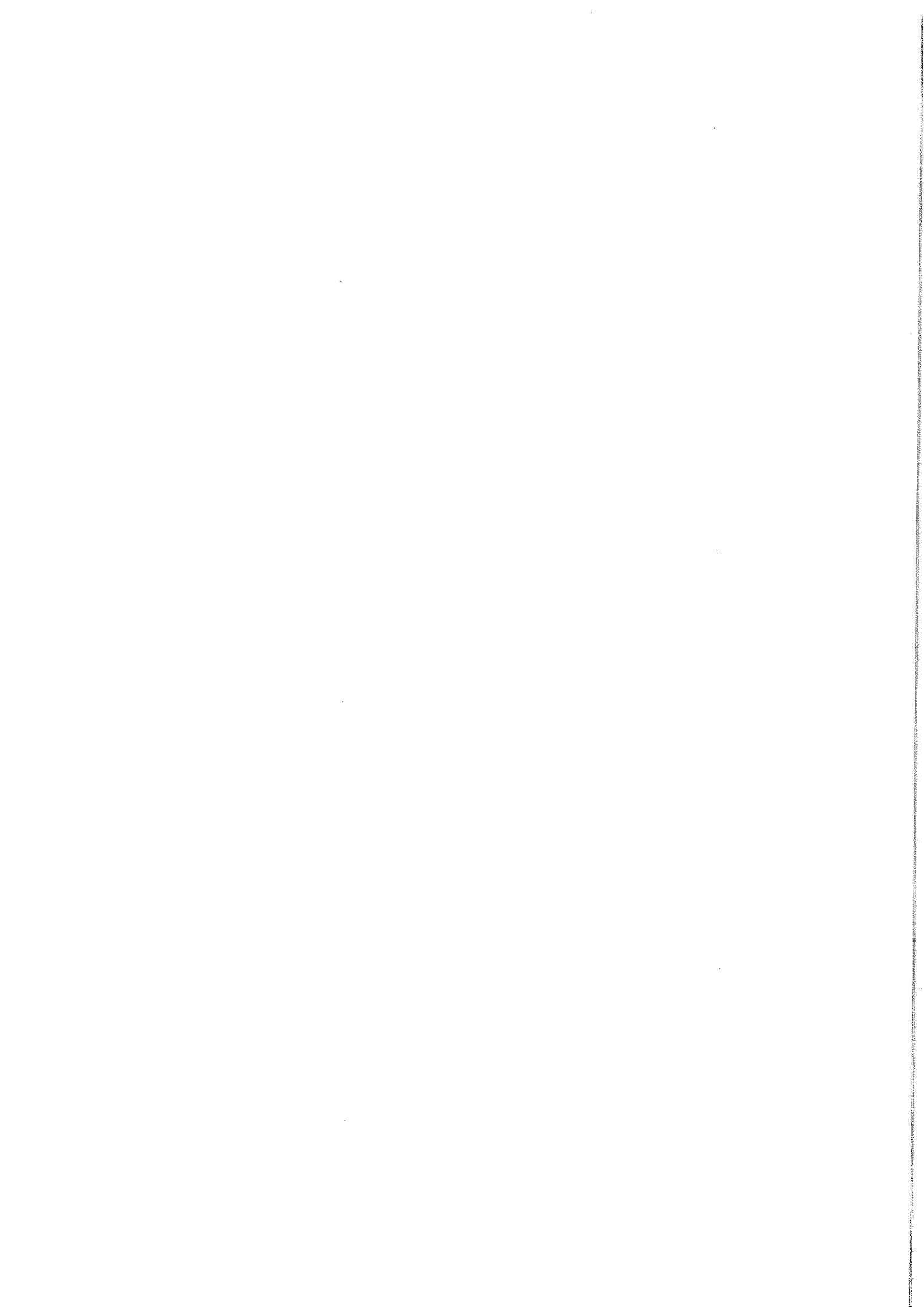


- an assessment of trips from all directly relevant committed development in the area (i.e. development that there is a reasonable degree of certainty will proceed within the next three years);
- data about current traffic flows on links and at junctions (including by different modes of transport and the volume and type of vehicles) within the study area and identification of critical links and junctions on the highways network;
- an analysis of the injury accident records on the public highway in the vicinity of the site access for the most recent three-year period, or five-year period if the proposed site has been identified as within a high accident area;
- an assessment of the likely associated environmental impacts of transport related to the development, particularly in relation to proximity to environmentally sensitive areas (such as air quality management areas or noise sensitive areas);
- measures to improve the accessibility of the location (such as provision/enhancement of nearby footpath and cycle path linkages) where these are necessary to make the development acceptable in planning terms;
- a description of parking facilities in the area and the parking strategy of the development;
- ways of encouraging environmental sustainability by reducing the need to travel; and
- measures to mitigate the residual impacts of development (such as improvements to the public transport network, introducing walking and cycling facilities, physical improvements to existing roads).

In general, assessments should be based on normal traffic flow and usage conditions (e.g. non-school holiday periods, typical weather conditions) but it may be necessary to consider the implications for any regular peak traffic and usage periods (such as rush hours). Projections should use local traffic forecasts such as TEMPRO drawing where necessary on National Road Traffic Forecasts for traffic data.

The timeframe that the assessment covers should be agreed with the local planning authority in consultation with the relevant transport network operators and service providers. However, in circumstances where there will be an impact on a national transport network, this period will be set out in the relevant Government policy.

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## Planning Practice Guidance (<http://planningguidance.communities.gov.uk>)

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Guidance


### Tree Preservation Orders and trees in conservation areas

Print 

1. Tree Preservation Orders – general (<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/tree-preservation-orders-general/>)

#### Tree Preservation Orders – general

##### What is a Tree Preservation Order?

A Tree Preservation Order is an order made by a local planning authority in England to protect specific trees, groups of trees or woodlands in the interests of amenity. An Order prohibits 

(<http://www.legislation.gov.uk/ukxi/2012/605/regulation/13/made>) the:

- cutting down
- topping
- lopping
- uprooting
- wilful damage
- wilful destruction

of trees without the local planning authority's written consent. If consent is given, it can be subject to conditions which have to be followed. In the Secretary of State's view, cutting roots is also a prohibited activity and requires the authority's consent.

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
##### What are a tree owner's responsibilities?

Owners of protected trees must not carry out, or cause or permit the carrying out of, any of the prohibited activities without the written consent of the local authority. As with owners of unprotected trees, they are responsible for maintaining their trees, with no statutory rules setting out how often or to what standard. The local planning authority cannot require maintenance work to be done to a tree just because it is protected. However, the authority can encourage good tree management, particularly when determining applications for consent under a Tree Preservation Order. This will help to maintain and enhance the amenity provided by protected trees.

Arboricultural advice from competent contractors and consultants, or the authority, will help to inform tree owners of their responsibilities and options. It is important that trees are inspected regularly and necessary maintenance carried out to make sure they remain safe and healthy.

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##### What are the relevant laws?

The law on Tree Preservation Orders is in Part VIII of the Town and Country Planning Act 1990  (<http://www.legislation.gov.uk/ukpga/1990/8/part/VIII>) as amended and in the Town and Country Planning (Tree Preservation) (England) Regulations 2012  (<http://www.legislation.gov.uk/ukxi/2012/605/contents/made>) which came into force on 6 April 2012. Section 192 of the Planning Act 2008  (<http://www.legislation.gov.uk/ukpga/2008/29/notes/division/6/54/14>) made further amendments to the 1990 Act which allowed for the transfer of provisions from

within existing Tree Preservation Orders to regulations. Part 6 of the Localism Act 2011 amended section 210 of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/2011/20/part/6) (<http://www.legislation.gov.uk/ukpga/2011/20/part/6>) concerning time limits for proceedings in regard to non-compliance with Tree Preservation Order regulations.

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### **What happens to Tree Preservation Orders made before the Town and Country Planning (Tree Preservation) (England) Regulations 2012 came into force on 6 April 2012?**

The Town and Country Planning (Tree Preservation)(England) Regulations 2012 [\[2\]](http://www.legislation.gov.uk/uksi/2012/605/contents/made) (<http://www.legislation.gov.uk/uksi/2012/605/contents/made>) introduced a single set of procedures for all trees covered by tree preservation orders.

Consequently:

- Orders made before 6 April 2012 continue to protect the trees or woodlands they cover
- the legal provisions listed in Orders made before 6 April 2012 have been automatically cancelled and replaced by the provisions in the new regulations. Only the information necessary to identify these Orders and identify the trees or woodlands they protect is retained
- there is no need for Orders made before 6 April 2012 to be remade, amended or reissued.

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### **Who makes Tree Preservation Orders and why?**

Local planning authorities can make a Tree Preservation Order [\[2\]](http://www.legislation.gov.uk/uksi/2012/605/regulation/3/made) (<http://www.legislation.gov.uk/uksi/2012/605/regulation/3/made>) if it appears to them to be 'expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/198)' (<http://www.legislation.gov.uk/ukpga/1990/8/section/198>).


Authorities can either initiate this process (<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-tree-preservation-orders/>) themselves or in response to a request made by any other party. When deciding whether an Order is appropriate, authorities are advised to take into consideration what 'amenity' means in practice, ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/tree-preservation-orders-general/#paragraph\\_007](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/tree-preservation-orders-general/#paragraph_007)) what to take into account when assessing amenity value ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/tree-preservation-orders-general/#paragraph\\_008](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/tree-preservation-orders-general/#paragraph_008)), what 'expedient' means in practice ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/tree-preservation-orders-general/#paragraph\\_010](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/tree-preservation-orders-general/#paragraph_010)), what trees can be protected ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/tree-preservation-orders-general/#paragraph\\_011](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/tree-preservation-orders-general/#paragraph_011)) and how they can be identified ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/tree-preservation-orders-general/#paragraph\\_009](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/tree-preservation-orders-general/#paragraph_009)).

When granting planning permission authorities have a duty [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/197) (<http://www.legislation.gov.uk/ukpga/1990/8/section/197>) to ensure, whenever appropriate, that planning conditions are used to provide for tree preservation and planting. Orders should be made in respect of trees where it appears necessary in connection with the grant of permission (<http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/>).

Flowchart 1 ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/annex-a-flowcharts/flowchart-1-making-and-confirming-a-tree-preservation-order/#paragraph\\_172](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/annex-a-flowcharts/flowchart-1-making-and-confirming-a-tree-preservation-order/#paragraph_172)) shows the process for making an Order.

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### **Can county councils make Tree Preservation Orders?**

County councils can make Tree Preservation Orders but there are restrictions  (<http://www.legislation.gov.uk/ukpga/1990/8/schedule/1/paragraph/13>) in areas where there is both a district planning authority and a county planning authority. In these areas the county council may only make an Order:

- Where necessary in connection with the grant of planning permission
- On land which is not wholly lying within the area of a single district council
- On land in which the county council holds an interest.

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### **What does 'amenity' mean in practice?**

'Amenity' is not defined in law, so authorities need to exercise judgment when deciding whether it is within their powers to make an Order.

Orders should be used to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public. Before authorities make or confirm an Order they should be able to show that protection would bring a reasonable degree of public benefit in the present or future.

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### **What might a local authority take into account when assessing amenity value?**

When considering whether trees should be protected by an Order, authorities are advised to develop ways of assessing the amenity value of trees in a structured and consistent way, taking into account the following criteria:

#### *Visibility*

The extent to which the trees or woodlands can be seen by the public will inform the authority's assessment of whether the impact on the local environment is significant. The trees, or at least part of them, should normally be visible from a public place, such as a road or footpath, or accessible by the public.

#### *Individual, collective and wider impact*

Public visibility alone will not be sufficient to warrant an Order. The authority is advised to also assess the particular importance of an individual tree, of groups of trees or of woodlands by reference to its or their characteristics including:

- size and form;
- future potential as an amenity;
- rarity, cultural or historic value;
- contribution to, and relationship with, the landscape; and
- contribution to the character or appearance of a conservation area.

#### *Other factors*

Where relevant to an assessment of the amenity value of trees or woodlands, authorities may consider taking into account other factors, such as importance to nature conservation or response to climate change. These factors alone would not warrant making an Order.

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### **What can help local authorities identify trees that may need protection?**

An authority's tree strategy may identify localities or populations of trees as priorities for the making or reviewing of Orders. Authorities may also refer to existing registers, recording trees of particular merit, to assist in their selection of trees suitable for inclusion in an Order.

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### What does 'expedient' mean in practice?

Although some trees or woodlands may merit protection on amenity grounds it may not be expedient to make them the subject of an Order. For example, it is unlikely to be necessary to make an Order in respect of trees which are under good arboricultural or silvicultural management.

It may be expedient to make an Order if the authority believes there is a risk of trees being felled, pruned or damaged in ways which would have a significant impact on the amenity of the area. But it is not necessary for there to be immediate risk for there to be a need to protect trees. In some cases the authority may believe that certain trees are at risk as a result of development pressures and may consider, where this is in the interests of amenity, that it is expedient to make an Order. Authorities can also consider other sources of risks to trees with significant amenity value. For example, changes in property ownership and intentions to fell trees are not always known in advance, so it may sometimes be appropriate to proactively make Orders as a precaution.

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### What trees can be protected?

An Order can be used to protect individual trees, trees within an area, groups of trees or whole woodlands. Protected trees can be of any size or species ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/exceptions-relating-to-applications-to-carry-out-work-on-trees-subject-to-a-tree-preservation-order/#paragraph\\_084](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/exceptions-relating-to-applications-to-carry-out-work-on-trees-subject-to-a-tree-preservation-order/#paragraph_084)).

Orders covering a woodland protect the trees and saplings of whatever size within the identified area, including those planted or growing naturally after the Order was made. This is because the purpose of the Order is to safeguard the woodland as a whole, which depends on regeneration or new planting.

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### Can shrubs and hedges be protected by a Tree Preservation Order?

Authorities may only use an Order to protect anything that may ordinarily be termed a tree. This would not normally include shrubs, but could include, for example, trees in a hedge or an old hedge which has become a line of trees of a reasonable height. The removal of countryside hedgerows is regulated under different legislation [\[2\]](https://www.gov.uk/protection-of-countryside-hedgerows) (<https://www.gov.uk/protection-of-countryside-hedgerows>).

Guidance on tree size in conservation areas can be found here ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/protecting-trees-in-conservation-areas/exceptions-relating-to-section-211-notices/#paragraph\\_131](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/protecting-trees-in-conservation-areas/exceptions-relating-to-section-211-notices/#paragraph_131)).

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### What if trees are on Forestry Commission, Crown or local authority land, in a churchyard or in, or near, an aerodrome or scheduled monument?

Special considerations ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/tree-preservation-orders-general/trees-and-forestry-commission-crown-or-local-authority-land-churchyards-aerodromes-and-scheduled-monuments/#paragraph\\_014](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/tree-preservation-orders-general/trees-and-forestry-commission-crown-or-local-authority-land-churchyards-aerodromes-and-scheduled-monuments/#paragraph_014)) apply in some of these circumstances.

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- Trees and Forestry Commission, Crown or local authority land, churchyards, aerodromes and scheduled monuments (<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/tree-preservation-orders-general/trees-and-forestry-commission-crown-or-local-authority-land-churchyards-aerodromes-and-scheduled-monuments/>)

## **Trees and Forestry Commission, Crown or local authority land, churchyards, aerodromes and scheduled monuments**

### **What if trees are on land owned or managed by the Forestry Commission or in which it has an interest?**

Local planning authorities are encouraged to liaise with the Forestry Commission [\[2\]](http://www.forestry.gov.uk/england) (<http://www.forestry.gov.uk/england>) when considering making a Tree Preservation Order on land in which the Forestry Commission has an interest.

The Regulations will have no effect [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/200)

(<http://www.legislation.gov.uk/ukpga/1990/8/section/200>) in respect of anything done by, or on behalf of, the Forestry Commission on land it owns or manages (the Public Forest Estate) or in which it has an interest. This is also the case in respect of works done by or on behalf of a person under a working plan or plan of operations, approved by the Forestry Commission under:

- an existing forestry dedication covenant;
- a grant scheme or loan administered by the Forestry Commission; and/or
- If an authority identifies trees which it would have made subject to an Order but for the Forestry Commission's interest in the land, it may ask the Commission to let it know when that interest in the land is likely to cease.

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### **What if trees are on Crown land?**

Authorities may make Orders relating to Crown land without the consent of the appropriate Crown body (known as the 'appropriate authority' [\[2\]](http://www.legislation.gov.uk/ukpga/2004/5/schedule/3) (<http://www.legislation.gov.uk/ukpga/2004/5/schedule/3>)). However, when considering protecting trees on Crown land authorities are advised to discuss the matter with that body.

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### **What if trees are on local authority land?**

Local planning authorities may make Orders in relation to land that they own.

ID 36-016-20140306 Last updated 06 03 2014

### **What if trees are in a churchyard?**

Trees in churchyards may be protected by an Order. When considering protecting trees in churchyards authorities are advised to liaise with the relevant diocese.

ID 36-017-20140306 Last updated 06 03 2014

### **What if trees are on or near an aerodrome?**

Authorities considering making an Order on or near civil or military aerodromes are advised to consult the owner or operator, or the Ministry of Defence.

ID 36-018-20140306 Last updated 06 03 2014

### **What if trees are within or near a scheduled monument?**

Authorities are advised to consult Historic England [\[2\]](http://www.historicengland.org.uk/)

(<http://www.historicengland.org.uk/>) before making Orders on trees within or close to a scheduled monument [\[2\]](http://www.legislation.gov.uk/ukpga/1979/46) (<http://www.legislation.gov.uk/ukpga/1979/46>).

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2. Making Tree Preservation Orders (<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-tree-preservation-orders/>)

## **Making Tree Preservation Orders**

### **How are Tree Preservation Orders made?**

If a local planning authority makes an Order, it will serve notice on people with an interest in the land, inviting representations about any of the trees covered by the Order. A copy of the Order will also be made available for public inspection. Following consideration of any objections and comments [\[2\]](http://www.legislation.gov.uk/ukxi/2012/605/regulation/6/made) (<http://www.legislation.gov.uk/ukxi/2012/605/regulation/6/made>) the authorities can decide whether or not to confirm the Order ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/confirming-tree-preservation-orders/#paragraph\\_037](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/confirming-tree-preservation-orders/#paragraph_037)).

Flowchart 1 (<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/annex-a-flowcharts/flowchart-1-making-and-confirming-a-tree-preservation-order/>) shows the process for making and confirming a Tree Preservation Order.

ID 36-020-20140306 Last updated 06 03 2014

### Is a site visit needed?

Before making an Order a local planning authority officer should visit the site of the tree or trees in question and consider whether or not an Order is justified. Further site visits may be appropriate following emergency situations where on the initial visit the authority did not fully assess the amenity value of the trees or woodlands concerned.

ID 36-021-20140306 Last updated 06 03 2014

### What evidence should be collected on a site visit?

Where a Tree Preservation Order may be justified, the officer should gather sufficient information to enable an accurate Order to be drawn up. The officer should record the number and species (or at least the genus) of the individual trees or groups of trees to be included in the Order and their location. A general description of genera should be sufficient for areas of trees or woodlands. It is, however, important to gather enough information to be able to accurately map their boundaries.

The officer should also record other information that may be essential or helpful in the future. This may include:

- information on any people with a legal interest in the land affected by the Order (further guidance can be found here ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/informing-people-that-a-tree-preservation-order-has-been-made/#paragraph\\_031](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/informing-people-that-a-tree-preservation-order-has-been-made/#paragraph_031)) and here ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/informing-people-that-a-tree-preservation-order-has-been-made/#paragraph\\_032](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/informing-people-that-a-tree-preservation-order-has-been-made/#paragraph_032));
- the present use of the land;
- the tree's or trees' importance as a wildlife habitat; and/or
- trees which are not to be included in the Order.

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### Does the local planning authority have rights of entry to make a Tree Preservation Order?

Any person duly authorised in writing by the authority may enter land [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/214B) (<http://www.legislation.gov.uk/ukpga/1990/8/section/214B>) for the purpose of surveying it in connection with making or confirming an Order if there are reasonable grounds for entering for that purpose. However, the authority cannot enter Crown land [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/325A) (<http://www.legislation.gov.uk/ukpga/1990/8/section/325A>) without consent from the appropriate Crown body. [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/293) (<http://www.legislation.gov.uk/ukpga/1990/8/section/293>)

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### How should the Tree Preservation Order be presented?



The Order must be set out using the standard form [\[2\]](#)

(<http://www.legislation.gov.uk/uksi/2012/605/regulation/3/made>) of Order in the Schedule to the Town and Country Planning (Tree Preservation) (England) Regulations 2012 [\[2\]](#) (<http://www.legislation.gov.uk/uksi/2012/605/schedule/made>) (or in a form substantially to the same effect). A Word version of the standard form is available here [\[2\]](#)

([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/82790/120405\\_-\\_2012\\_-\\_Form\\_of\\_Tree\\_Preservatio\\_Arial\\_FINAL.doc](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/82790/120405_-_2012_-_Form_of_Tree_Preservatio_Arial_FINAL.doc)).

The Order must specify the trees or woodlands as being within four categories (individual, area, group and woodland). Any combination of these categories may be used in a single Order. The Order must also include, or have annexed to it, a map [\[2\]](#) (<http://www.legislation.gov.uk/uksi/2012/605/regulation/3/made>) giving a clear indication of the position of the protected trees, groups of trees or woodlands.

ID 36-024-20140306 Last updated 06 03 2014

### **How accurate does the description and location of trees need to be in an Order?**

The legislation does not require authorities to describe the trees in the Order with full scientific names or plot them on the map with pinpoint accuracy. But authorities should bear in mind that successful prosecutions for contravening Orders will be difficult where Orders do not show clearly which trees are meant to be protected.

The standard form of Order [\[2\]](#)

(<http://www.legislation.gov.uk/uksi/2012/605/schedule/made>) provides examples of how information should be recorded in a schedule. Authorities are advised to enter 'None' against any categories not used in the Order.

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### **When should the individual category be used?**

If trees merit protection in their own right, authorities should specify them as individual trees in the Order.

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### **When should the group category be used?**

The group category should be used to protect groups of trees where the individual category would not be appropriate and the group's overall impact and quality merits protection.

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### **When should the woodland category be used?**

The woodland category's purpose is to safeguard a woodland as a whole. So it follows that, while some trees may lack individual merit, all trees within a woodland that merits protection are protected and made subject to the same provisions and exemptions. In addition, trees and saplings which grow naturally or are planted within the woodland area after the Order is made are also protected by the Order.

It is unlikely to be appropriate to use the woodland classification in gardens.

The woodland category should not hinder beneficial woodland management. Whether or not they make an Order, authorities can consider encouraging landowners to bring their woodlands into proper management under the grant schemes run by the Forestry Commission [\[2\]](#) (<http://www.forestry.gov.uk/england>). If a woodland subject to an Order is not brought into such a scheme, authorities can still encourage applications to manage the trees in ways that would benefit the woodland without making a serious impact on local amenity, for example by making a single application for regularly repeated operations

([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/#paragraph\\_071](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/#paragraph_071)).

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### **When should the area category be used?**

The area category is one way of protecting individual trees dispersed over an area. Authorities may either protect all trees within an area defined on the Order's map or only those species which it is expedient to protect in the interests of amenity.

The area category is intended for short-term protection in an emergency and may not be capable of providing appropriate long-term protection. The Order will protect only those trees standing at the time it was made, so it may over time become difficult to be certain which trees are protected. Authorities are advised to only use this category as a temporary measure until they can fully assess and reclassify the trees in the area. In addition, authorities are encouraged to resurvey existing Orders which include the area category ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/varying-and-revoking-tree-preservation-orders/#paragraph\\_051](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/varying-and-revoking-tree-preservation-orders/#paragraph_051)).

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### **When does a Tree Preservation Order come into effect?**

An Order comes into effect <sup>1</sup>

(<http://www.legislation.gov.uk/ukxi/2012/605/regulation/4/made>) on the day the authority makes it. This provisional effect lasts for six months, unless the authority first either confirms the Order to provide long-term protection or decides not to confirm it. Further guidance can be found here ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/confirming-tree-preservation-orders/#paragraph\\_037](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/confirming-tree-preservation-orders/#paragraph_037)) and here ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/confirming-tree-preservation-orders/#paragraph\\_038](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/confirming-tree-preservation-orders/#paragraph_038)).

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## **3. Informing people that a Tree Preservation Order has been made**

(<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/informing-people-that-a-tree-preservation-order-has-been-made/>)

### **Informing people that a Tree Preservation Order has been made**

#### **How does the local planning authority inform people that a Tree Preservation Order has been made?**

The local authority must <sup>1</sup>

(<http://www.legislation.gov.uk/ukxi/2012/605/regulation/5/made>), as soon as practicable after making an Order and before it is confirmed, serve 'persons interested' <sup>2</sup> (<http://www.legislation.gov.uk/ukxi/2012/605/regulation/2/made>) in the land affected by the Order':

- a copy of the Order (including the map); and
- a notice (a 'Regulation 5 notice') containing specified information.

The authority must also be able to prove that it has done this in one of a number of different ways <sup>3</sup> (<http://www.legislation.gov.uk/ukpga/1990/8/section/329>). In addition, the authority must make available a copy of the Order at its offices.

ID 36-031-20140306 Last updated 06 03 2014

### **Who must the local authority inform?**

The 'persons interested in the land affected by the Order' are every owner and occupier of the land on which the protected trees stand and every other person the authority knows is entitled to carry out certain works [\[2\]](http://www.legislation.gov.uk/uksi/2012/605/regulation/2/made) (<http://www.legislation.gov.uk/uksi/2012/605/regulation/2/made>) to any of those trees or in relation to the affected land.

The authority may decide to notify other people, groups, authorities and organisations (such as parish councils and the Forestry Commission). It can also consider displaying site notices.

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### **What must be in a Regulation 5 notice?**

A Regulation 5 notice [\[2\]](http://www.legislation.gov.uk/uksi/2012/605/regulation/5/made)

(<http://www.legislation.gov.uk/uksi/2012/605/regulation/5/made>) must:

- state the reasons for making the Order;
- explain that objections or representations about any of the trees, groups of trees or woodlands covered by the Order may be made to the authority in accordance with Regulation 6 [\[2\]](http://www.legislation.gov.uk/uksi/2012/605/regulation/6/made) (<http://www.legislation.gov.uk/uksi/2012/605/regulation/6/made>);
- contain a copy of Regulation 6; and
- specify a date (at least 28 days after the date of the notice) by which any objection or representation ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/commenting-on-newly-made-tree-preservation-orders/#paragraph\\_34](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/commenting-on-newly-made-tree-preservation-orders/#paragraph_34)) must be received by the authority.

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## **4. Commenting on newly made Tree Preservation Orders**

(<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/commenting-on-newly-made-tree-preservation-orders/>)

### **Commenting on newly made Tree Preservation Orders**

#### **Can people object to, or comment on, a Tree Preservation Order?**

People must be given the opportunity to object to, or comment on, a new Tree Preservation Order. Before deciding whether to confirm an Order, the local authority must take into account all 'duly made' [\[2\]](http://www.legislation.gov.uk/uksi/2012/605/regulation/6/made) (<http://www.legislation.gov.uk/uksi/2012/605/regulation/6/made>) objections and representations that have not been withdrawn.

Objections and representations are duly made if:

- They are made in writing and:
  - delivered to, or could reasonably be expected to be delivered to, the authority not later than the date specified in the Regulation 5 notice ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/commenting-on-newly-made-tree-preservation-orders/#paragraph\\_34](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/commenting-on-newly-made-tree-preservation-orders/#paragraph_34));
  - specify the particular trees, groups of trees or woodlands in question;
  - in the case of an objection, state the reasons for the objection;
- In a particular case, the authority is satisfied that compliance with the above requirements could not reasonably have been expected.

ID 36-34-20140306 Last updated 06 03 2014

#### **How long should the local authority allow for people to make representations?**

The authority should ensure that all notified parties are given at least 28 days from the date of the notice to submit their representations.

ID 36-035-20140306 Last updated 06 03 2014

## Are the reasons for objecting restricted?

Objections to a new Tree Preservation Order can be made on any grounds.

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5. Confirming Tree Preservation Orders (<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/confirming-tree-preservation-orders/>)

## Confirming Tree Preservation Orders

### How do local planning authorities confirm Tree Preservation Orders?

Authorities can confirm Orders [\[2\]](#)

(<http://www.legislation.gov.uk/uksi/2012/605/regulation/7/made>), either without modification or with modification, to provide long-term tree protection. They may also decide not to confirm the Order, which will stop its effect. Authorities cannot confirm an Order unless they have first considered any duly made objections or other representations

(<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/commenting-on-newly-made-tree-preservation-orders/>).

Flowchart 1 ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/annex-a-flowcharts/flowchart-1-making-and-confirming-a-tree-preservation-order/#paragraph\\_172](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/annex-a-flowcharts/flowchart-1-making-and-confirming-a-tree-preservation-order/#paragraph_172)) shows the process for confirming an Order.

Authorities should bear in mind that, since they are responsible for making and confirming Orders, they are in effect both proposer and judge. They should therefore consider how best to demonstrate that they have made their decisions at this stage in an even-handed and open manner.

ID 36-037-20140306 Last updated 06 03 2014

### Is there a time limit for confirming Orders?

Authorities can only confirm [\[2\]](#)

(<http://www.legislation.gov.uk/uksi/2012/605/regulation/4/made>) an Order within a six month period beginning with the date on which the Order was made ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-tree-preservation-orders/#paragraph\\_030](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-tree-preservation-orders/#paragraph_030)). If this deadline is missed and an authority still considers protection necessary it will have to make a new Order.

ID 36-038-20140306 Last updated 06 03 2014

### Can the authority confirm a modified Order?

The authority can decide to confirm an Order in relation to some, but not all, of the trees originally specified in the Order it made.

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### What changes to an Order should not be confirmed by the authority?

The authority should not confirm an Order it has modified by adding references to trees, groups of trees or woodlands in the Schedule to the Order or the map to which the Order did not previously apply. Nor should the authority confirm an Order if it has made substantial changes to it, for example by changing an area classification to a woodland classification. To protect additional trees or make other significant changes the authority should consider either varying the Order ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/varying-and-revoking-tree-preservation-orders/#paragraph\\_050](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/varying-and-revoking-tree-preservation-orders/#paragraph_050)) after it has been confirmed or making a further Order.

ID 36-040-20140306 Last updated 06 03 2014

### **How does the authority modify an Order?**

It must clearly indicate modifications on the Order, for example by using distinctive type.

ID 36-041-20140306 Last updated 06 03 2014

### **How does the authority confirm an Order?**

The authority must make a formal note of its final decision by endorsing [\[2\]](http://www.legislation.gov.uk/uksi/2012/605/regulation/7/made) (http://www.legislation.gov.uk/uksi/2012/605/regulation/7/made) the Order and recording the date. The standard form of Order [\[2\]](http://www.legislation.gov.uk/uksi/2012/605/schedule/made) (http://www.legislation.gov.uk/uksi/2012/605/schedule/made) shows what information is required.

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### **What does the authority do if it decides not to confirm an Order?**

After deciding not to confirm an Order the authority must still record [\[2\]](http://www.legislation.gov.uk/uksi/2012/605/regulation/9/made) (http://www.legislation.gov.uk/uksi/2012/605/regulation/9/made) this decision on endorsing the Order. The Order's effect will stop on the date of its decision, which must be recorded on the Order. The standard form of Order [\[2\]](http://www.legislation.gov.uk/uksi/2012/605/schedule/made) (http://www.legislation.gov.uk/uksi/2012/605/schedule/made) shows what information is required.

ID 36-043-20140306 Last updated 06 03 2014

### **How should the authority inform people about its decisions?**

When the authority has decided to confirm an Order it should, as soon as practicable, notify [\[2\]](http://www.legislation.gov.uk/uksi/2012/605/regulation/8/made) (http://www.legislation.gov.uk/uksi/2012/605/regulation/8/made) all people previously served ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/informing-people-that-a-tree-preservation-order-has-been-made/#paragraph\\_032](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/informing-people-that-a-tree-preservation-order-has-been-made/#paragraph_032)) with the made Order. They should be notified of the:

- order's confirmation;
- date it was confirmed;
- time within which an application may be made to the High Court; and
- grounds on which an application to the High Court may be made ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/confirming-tree-preservation-orders/#paragraph\\_047](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/confirming-tree-preservation-orders/#paragraph_047)).

If the authority has confirmed the Order with modifications, then it should serve a copy [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/329) (http://www.legislation.gov.uk/ukpga/1990/8/section/329) of the Order as confirmed.

If the authority has decided not to confirm an Order it should promptly notify all people previously served with the made Order and withdraw the publicly available copy.

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### **How can the public get access to Tree Preservation Orders?**

The authority should make a copy of the Order as confirmed available for public inspection [\[2\]](http://www.legislation.gov.uk/uksi/2012/605/regulation/5/made) (http://www.legislation.gov.uk/uksi/2012/605/regulation/5/made) at its offices, replacing the copy of the made Order. In addition, a confirmed Order should be recorded promptly in the local land charges register as a charge on the land on which the trees are standing. It is not a charge on any other land.

Authorities should consider how best to be in a position to respond to enquiries about whether particular trees in their area are protected.

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### **Is there a right of appeal against made or confirmed Tree**

## Preservation Orders?

The legislation provides no right of appeal to the Secretary of State against an authority either making or confirming an Order. There is, however, a right of appeal ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/appealing-against-local-authority-decisions-on-applications/#paragraph\\_101](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/appealing-against-local-authority-decisions-on-applications/#paragraph_101)) to the Secretary of State following an application to carry out work on trees protected by an Order that is refused, granted subject to conditions, or not determined.

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## Can the validity of a Tree Preservation Order be challenged?

The validity of an Order [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/284) (<http://www.legislation.gov.uk/ukpga/1990/8/section/284>) cannot be challenged in any legal proceedings except by way of application to the High Court on a point of law. The Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/288) (<http://www.legislation.gov.uk/ukpga/1990/8/section/288>) and the Civil Procedure Rules 1998 [\[2\]](http://www.justice.gov.uk/courts/procedure-rules/civil) (<http://www.justice.gov.uk/courts/procedure-rules/civil>) set out the application process.

Anyone considering challenging the validity of an Order in the High Court is advised to seek legal advice.

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## 6. Varying and revoking Tree Preservation Orders

(<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/varying-and-revoking-tree-preservation-orders/>)

### Varying and revoking Tree Preservation Orders

#### Can local planning authorities vary or revoke Tree Preservation Orders?

Local planning authorities have powers to vary (change) or revoke (cancel) their Orders [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/schedule/1/paragraph/13) (<http://www.legislation.gov.uk/ukpga/1990/8/schedule/1/paragraph/13>). Authorities must use the procedures set out in the Town and Country Planning (Tree Preservation) (England) Regulations 2012 to vary [\[2\]](http://www.legislation.gov.uk/uksi/2012/605/regulation/10/made) (<http://www.legislation.gov.uk/uksi/2012/605/regulation/10/made>) or revoke [\[2\]](http://www.legislation.gov.uk/uksi/2012/605/regulation/11/made) (<http://www.legislation.gov.uk/uksi/2012/605/regulation/11/made>) any of their Orders.

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#### What is the decision-making process for varying or revoking a Tree Preservation Order?

Flowchart 2 (<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/annex-a-flowcharts/flowchart-2-varying-or-revoking-a-tree-preservation-order/>) shows the decision-making process for varying or revoking Orders

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#### Why do local authorities vary or revoke Orders?

Authorities can vary or revoke confirmed Orders to help deliver appropriate tree protection. They may decide to vary or revoke Orders because, for example:

- land has been developed;
- trees standing when the Order was made have been removed (lawfully or otherwise);
- replacement trees have been planted;
- trees, for whatever reason, no longer merit protection by an Order;
- new trees meriting protection by an Order have been planted;

- the map included in the original Order is now unreliable;
- the Order includes classifications that no longer provide appropriate or effective tree protection; or
- errors in the Order's Schedule or map have come to light.

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### **Why do authorities review their Orders?**

Reassessing Orders helps to ensure that protection is still merited and Orders contain appropriate classifications. So authorities are advised to keep their Orders under review. For example, authorities should consider reviewing Orders protecting trees and woodlands affected by development or other change in land use since the Order was made. In addition, authorities may wish to set up a programme to review Orders that include the area classification ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-tree-preservation-orders/#paragraph\\_029](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-tree-preservation-orders/#paragraph_029)).

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### **How do authorities vary Orders?**

The requirements [☒](http://www.legislation.gov.uk/ukSI/2012/605/regulation/10/made) (<http://www.legislation.gov.uk/ukSI/2012/605/regulation/10/made>) an authority must meet when varying an Order will depend on whether or not additional trees will be protected.

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### **How does an authority vary an Order without adding trees?**

The local authority should make a formal 'variation order' that identifies the Order being varied, the variations made and the date the variation order is made. It must endorse the original Order with a statement that it has been varied and specifying the date on which the variation order takes effect. The standard form of Order [☒](http://www.legislation.gov.uk/ukSI/2012/605/schedule/made) (<http://www.legislation.gov.uk/ukSI/2012/605/schedule/made>) includes a draft endorsement for variation.

The authority must make a copy of the variation order available for public inspection. It must also notify people interested in the land ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/informing-people-that-a-tree-preservation-order-has-been-made/#paragraph\\_032](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/informing-people-that-a-tree-preservation-order-has-been-made/#paragraph_032)) affected by the variation Order. The authority must serve a copy of the variation Order on such people along with a statement explaining the effect of the variation. The authority has discretion whether to undertake wider notification and publicity if it considers this would be appropriate.

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### **How does an authority vary an Order to add trees?**

If an authority wants to vary an Order to add new trees, it must follow procedures additional to those for varying an Order without adding trees. These are similar to those for making ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-tree-preservation-orders/#paragraph\\_020](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-tree-preservation-orders/#paragraph_020)) and confirming ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/confirming-tree-preservation-orders/#paragraph\\_037](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/confirming-tree-preservation-orders/#paragraph_037)) a new Order. The authority decides whether or not the variation Order should be confirmed and cannot confirm it without first considering any duly made objections and representations.

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### **What if an authority decides not to confirm a variation order that adds trees?**

Where an authority decides not to confirm a variation order that adds trees it must:

- endorse the variation Order, recording its decision not to confirm the variation order, including the date of the decision;
- notify the people who were affected by the variation order of its decision; and
- withdraw from public inspection the copy of the variation order which was made available when it was first made.

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### **How do authorities revoke Orders?**

Where an Authority intends to revoke an Order, it can consider notifying or consulting local people and groups, authorities and organisations. It can also consider some form of publicity.

Where an authority decides to revoke an Order it must then follow the procedures [\[2\]](http://www.legislation.gov.uk/uksi/2012/605/regulation/11/made) (http://www.legislation.gov.uk/uksi/2012/605/regulation/11/made) set out in the Town and Country Planning (Tree Preservation) (England) Regulations 2012.

Flowchart 2 (http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/annex-a-flowcharts/flowchart-2-varying-or-revoking-a-tree-preservation-order/) shows the process for revoking Orders.

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### **What if an authority wants to revoke and replace an Order?**

Authorities can revoke an Order and at the same time make a new Order or new Orders to take its place. For example, an authority may wish to replace an Order containing an area classification with new Orders protecting individual trees or groups of trees. In such cases authorities should bear in mind any unfinished matters relating to the old Order. For example, an authority might have to take into account an unfulfilled condition or notice requiring a replacement tree, or an ongoing appeal.

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## **7. Making applications to carry out work on trees protected by a Tree Preservation Order**

(http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/)

### **Making applications to carry out work on trees protected by a Tree Preservation Order**

#### **How is an application made to carry out work on trees protected by a Tree Preservation Order?**

Apart from limited exceptions (http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/#paragraph\_060), permission must be sought from the local planning authority by submitting a standard application form. The form is available from the Planning Portal [\[2\]](http://www.planningportal.gov.uk/apply) (http://www.planningportal.gov.uk/apply) or the authority. It is important that the information on the form makes clear what the proposed work is and provides adequate information to support the case.

Flowchart 3 (http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/annex-a-flowcharts/flowchart-3-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/) shows the process for applications to carry out work to protected trees.

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#### **Is permission needed to carry out all work on trees protected by a Tree Preservation Order?**



Anyone wanting to cut down, top, lop or uproot trees subject to an Order must [\[2\]](http://www.legislation.gov.uk/uksi/2012/605/regulation/13/made) first apply to the local planning authority [\[2\]](http://www.legislation.gov.uk/uksi/2012/605/regulation/16/made) for its consent unless the proposed work is exempt through an exception [\[2\]](http://www.legislation.gov.uk/uksi/2012/605/regulation/14/made). Where an exception applies ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/#paragraph\\_060](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/#paragraph_060)) the authority's consent to carry out works is not needed, but notice of those works may need to be given to the authority.

There are further exceptions [\[2\]](http://www.legislation.gov.uk/uksi/2012/605/regulation/15/made) (<http://www.legislation.gov.uk/uksi/2012/605/regulation/15/made>) relating to trees growing in a conservation area that are not subject to an Order ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/protecting-trees-in-conservation-areas/#paragraph\\_116](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/protecting-trees-in-conservation-areas/#paragraph_116)).

Tree owners, their agents and contractors, statutory undertakers and other bodies should take care not to exceed an exception. Before carrying out work they believe is exempt, they may wish to obtain advice from a qualified arboriculturist and/or confirmation from the authority of what is and what is not required.

If an authority receives notice of work under any exception it may decide to inform the notifier that it considers the exemption does not apply and, if necessary, seek injunctive relief in the crown courts.

In addition, the authority's consent is not needed in certain specific circumstances [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/200) (<http://www.legislation.gov.uk/ukpga/1990/8/section/200>) where the Regulations are deemed to have no effect. This will be the case, for instance ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/tree-preservation-orders-general/trees-and-forestry-commission-crown-or-local-authority-land-churchyards-aerodromes-and-scheduled-monuments/#paragraph\\_014](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/tree-preservation-orders-general/trees-and-forestry-commission-crown-or-local-authority-land-churchyards-aerodromes-and-scheduled-monuments/#paragraph_014)), in respect of anything done by, or on behalf of, the Forestry Commission on land it owns or manages or in which it has an interest.

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## What are the exceptions relating to trees subject to an Order?


An exception [\[2\]](http://www.legislation.gov.uk/uksi/2012/605/regulation/14/made) (<http://www.legislation.gov.uk/uksi/2012/605/regulation/14/made>) may exempt landowners or their agents from the normal requirement to seek the local planning authority's consent before carrying out work on trees subject to an Order. These exceptions include certain work;

- on dead trees and branches;  
([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/exceptions-relating-to-applications-to-carry-out-work-on-trees-subject-to-a-tree-preservation-order/#paragraph\\_079](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/exceptions-relating-to-applications-to-carry-out-work-on-trees-subject-to-a-tree-preservation-order/#paragraph_079))
- on dangerous trees and branches;  
([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/exceptions-relating-to-applications-to-carry-out-work-on-trees-subject-to-a-tree-preservation-order/#paragraph\\_080](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/exceptions-relating-to-applications-to-carry-out-work-on-trees-subject-to-a-tree-preservation-order/#paragraph_080))
- to comply with an Act of Parliament  
([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/exceptions-relating-to-applications-to-carry-out-work-on-trees-subject-to-a-tree-preservation-order/#paragraph\\_081](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/exceptions-relating-to-applications-to-carry-out-work-on-trees-subject-to-a-tree-preservation-order/#paragraph_081));
- to prevent or abate a nuisance  
([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/exceptions-relating-to-applications-to-carry-out-work-on-trees-subject-to-a-tree-preservation-order/#paragraph\\_082](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/exceptions-relating-to-applications-to-carry-out-work-on-trees-subject-to-a-tree-preservation-order/#paragraph_082));

- necessary to implement a planning permission ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/exceptions-relating-to-applications-to-carry-out-work-on-trees-subject-to-a-tree-preservation-order/#paragraph\\_083](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/exceptions-relating-to-applications-to-carry-out-work-on-trees-subject-to-a-tree-preservation-order/#paragraph_083));
- on fruit trees ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/exceptions-relating-to-applications-to-carry-out-work-on-trees-subject-to-a-tree-preservation-order/#paragraph\\_084](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/exceptions-relating-to-applications-to-carry-out-work-on-trees-subject-to-a-tree-preservation-order/#paragraph_084));
- by or for statutory undertakers ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/exceptions-relating-to-applications-to-carry-out-work-on-trees-subject-to-a-tree-preservation-order/#paragraph\\_085](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/exceptions-relating-to-applications-to-carry-out-work-on-trees-subject-to-a-tree-preservation-order/#paragraph_085));
- for highway operations ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/exceptions-relating-to-applications-to-carry-out-work-on-trees-subject-to-a-tree-preservation-order/#paragraph\\_086](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/exceptions-relating-to-applications-to-carry-out-work-on-trees-subject-to-a-tree-preservation-order/#paragraph_086));
- by the Environment Agency and drainage bodies ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/exceptions-relating-to-applications-to-carry-out-work-on-trees-subject-to-a-tree-preservation-order/#paragraph\\_087](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/exceptions-relating-to-applications-to-carry-out-work-on-trees-subject-to-a-tree-preservation-order/#paragraph_087)); and
- for national security purposes ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/exceptions-relating-to-applications-to-carry-out-work-on-trees-subject-to-a-tree-preservation-order/#paragraph\\_088](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/exceptions-relating-to-applications-to-carry-out-work-on-trees-subject-to-a-tree-preservation-order/#paragraph_088)).


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### Is consent required for work on diseased and/or dying trees?

The local planning authority's consent is needed for carrying out work on diseased and/or dying trees unless some other exemption applies. One example is work urgently necessary to remove an immediate risk of serious harm ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/exceptions-relating-to-applications-to-carry-out-work-on-trees-subject-to-a-tree-preservation-order/#paragraph\\_080](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/exceptions-relating-to-applications-to-carry-out-work-on-trees-subject-to-a-tree-preservation-order/#paragraph_080)). Another example is government authorities requiring the destruction of particular trees to tackle a serious plant disease  (<http://www.forestry.gov.uk/forestry/infd-8naduy>). If they serve a notice under plant health legislation this would constitute an obligation by or under an Act of Parliament ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/exceptions-relating-to-applications-to-carry-out-work-on-trees-subject-to-a-tree-preservation-order/#paragraph\\_081](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/exceptions-relating-to-applications-to-carry-out-work-on-trees-subject-to-a-tree-preservation-order/#paragraph_081)).

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### What about tree work that may affect birds, bats and other wildlife?

Anyone carrying out work to a tree, even under an exception, should ensure they do not contravene laws protecting wildlife ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/#paragraph\\_070](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/#paragraph_070)). If in doubt they are advised to seek advice from the authority or Natural England  (<https://www.gov.uk/government/organisations/natural-england>) on how to proceed.

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### Who can apply for consent under a Tree Preservation Order?

Anyone can apply for consent under an Order. The applicant will usually be the owner of the tree or trees in question or an arboricultural contractor or other person acting as the applicant's agent.

Also, a person can apply to carry out work on a neighbour's protected tree. But such an applicant is advised to first consult the tree's owner and also notify them promptly after submitting their application. The authority may ask the applicant about their legal interest in the tree and consult the tree's owner. If the authority grants consent it will be for the applicant to get any necessary permission (for access to the land, for example) from the owner, before carrying out the work.

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### Can people talk to the local authority before making an application?

A potential applicant or their agent may wish to first discuss the proposal informally with the authority. The authority should consider visiting the site at this stage.

Early discussion will give the authority a chance to:

- explain whether the work proposed is exempt ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/#paragraph\\_059](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/#paragraph_059)) from the need to apply for consent or requires an application to the Forestry Commission ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/tree-preservation-orders-general/trees-and-forestry-commission-crown-or-local-authority-land-churchyards-aerodromes-and-scheduled-monuments/#paragraph\\_014](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/tree-preservation-orders-general/trees-and-forestry-commission-crown-or-local-authority-land-churchyards-aerodromes-and-scheduled-monuments/#paragraph_014)) rather than the authority;
- guide the applicant generally about Tree Preservation Order procedures and the authority's policies; and
- give advice on presenting an application.

Where there has been no pre-application discussion the applicant may, after discussion with the authority, still modify the application in writing or withdraw it and submit a new one. But authorities should never prolong this discussion to apply pressure on the applicant to agree to unwanted changes.

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### How are applications made in order to be valid?

To be valid, an application for works to trees covered by a Tree Preservation Order must:

- be made to the authority on the standard application form published by the Secretary of State and available on the Planning Portal [http://www.planningportal.gov.uk/wps/portal/portalhome/unauthenticatedhome!/ut/p/c5/04\\_SB8K8xLLM9MSSzPy8xBz9CP0os3gjtXBnJydDRwMLbzdLA09nSw\\_zsKBAIwN3U\\_fwKA6zeHMXS4gKd29TRwNPI0s3eRn5uqX5CdneboqKglAGUwqhol/dl3/d3/L2dBISEvZ0FBIS9nQSEh](http://www.planningportal.gov.uk/wps/portal/portalhome/unauthenticatedhome!/ut/p/c5/04_SB8K8xLLM9MSSzPy8xBz9CP0os3gjtXBnJydDRwMLbzdLA09nSw_zsKBAIwN3U_fwKA6zeHMXS4gKd29TRwNPI0s3eRn5uqX5CdneboqKglAGUwqhol/dl3/d3/L2dBISEvZ0FBIS9nQSEh) website or from the authority;
- include the information required by the form (the guidance notes for the standard form [http://www.planningportal.gov.uk/uploads/lapp/guidance/guidance\\_note-works\\_to\\_trees.pdf](http://www.planningportal.gov.uk/uploads/lapp/guidance/guidance_note-works_to_trees.pdf)) help applicants provide the necessary information);
- be accompanied by a plan which clearly identifies the tree or trees on which work is proposed;
- be accompanied by such information as is necessary to clearly specify the work for which consent is sought;
- state the reasons for making the application; and
- be accompanied, as applicable, by appropriate evidence describing any structural damage to property or in relation to tree health or safety.

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### **How detailed should the plan be?**

The applicant is not necessarily required to provide a formal scaled location or site plan. But the plan must identify clearly the tree or trees in question and, where appropriate, should identify main features of property affected by the application.

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### **How detailed should the description of proposed work be?**

It is essential that an application sets out clearly what work is proposed. This will help the authority to ensure that approved work has not been exceeded and support enforcement. Applicants are advised not to submit their applications until they are in a position to present clear proposals. Authorities must not consider applications that do not meet the applicable procedural requirements [\[2\]](http://www.legislation.gov.uk/ukxi/2012/605/regulation/16/made) (<http://www.legislation.gov.uk/ukxi/2012/605/regulation/16/made>).

When applying for consent to remove trees, applicants should include their proposals for replacement planting ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/taking-decisions-on-applications-for-consent-under-a-tree-preservation-order/#paragraph\\_097](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/taking-decisions-on-applications-for-consent-under-a-tree-preservation-order/#paragraph_097)). Prior discussion with the applicant should help the authority to set a mutually acceptable condition that makes clear the number, size, species and location of the replacement trees and the period within which they are to be planted.

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### **How much information does an applicant have to give?**

Applicants must provide reasons for proposed work. They should demonstrate that the proposal is a proportionate solution to their concerns and meets the requirements of sound arboriculture. The authority may ask for more information or evidence to help determine an application, but it has no power to require information beyond that specified in the standard application form.

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### **What supporting information is needed for applications for works to protected trees that relate to alleged damage to property?**

It is important that applications suggesting that the proposed tree work is necessary to address tree-related subsidence damage are properly supported by appropriate information. The standard application form requires evidence that demonstrates that the tree is a material cause of the problem and that other factors have been eliminated as potential influences so far as possible. The guidance notes for the standard application form [\[2\]](http://www.planningportal.gov.uk/uploads/lapp/guidance/guidance_note-works_to_trees.pdf) ([http://www.planningportal.gov.uk/uploads/lapp/guidance/guidance\\_note-works\\_to\\_trees.pdf](http://www.planningportal.gov.uk/uploads/lapp/guidance/guidance_note-works_to_trees.pdf)) list the requirements.

Applicants should support claims that trees are damaging lighter structures and surfaces, such as garden walls, drains, paving and drives, by providing technical evidence from a relevant engineer, building/drainage surveyor or other appropriate expert.

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### **What about applications that may affect wildlife?**

Applicants, agents and authorities must have regard to statutory obligations concerning protected species. Where there is evidence that protected species such as bats may be present and might be affected by the proposed work the applicant, their agent and the authority should have regard to the relevant legislation and guidance [\[2\]](https://www.gov.uk/government/policies/protecting-biodiversity-and-ecosystems-at-home-and-abroad/supporting-pages/wildlife-crime) (<https://www.gov.uk/government/policies/protecting-biodiversity-and-ecosystems-at-home-and-abroad/supporting-pages/wildlife-crime>).

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### What about applications for more than one operation?

Only one application is needed to carry out a number of different activities on the same tree or to carry out activities on a number of trees.

Where appropriate, authorities should encourage single applications for regularly repeated operations and phased works or programmes of work on trees under good management. In these cases the authority should satisfy itself that the proposed works are appropriate for this type of consent and that the relevant evidence supports this. The authority must ensure that applications clearly specify the proposed works and their timing or frequency.

A programme of works could describe the classes of works which will need to be carried out as routine maintenance during the specified period. A programme including tree felling should be more specific and should, where appropriate, cater for replacement tree planting.

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### How can applications be submitted?

The applicant may submit [\[2\]](#)

(<http://www.legislation.gov.uk/ukxi/2012/605/regulation/16/made>) the completed application form and accompanying documents to the authority by post, hand or electronic means – fax, email or online through the Planning Portal [\[2\]](#)

(<http://www.planningportal.gov.uk/planning/applications/howtoapply/permissions/types>). It is important that the applicant provides the authority with any additional required information at the same time as the form. Only one copy of each application document needs to be submitted.

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### How does the local authority validate an application?

The authority should clearly mark the application with the date of receipt. Before it accepts an application the authority should check that the trees are in fact subject to an Order currently in force and verify that the application [\[2\]](#) (<http://www.legislation.gov.uk/ukxi/2012/605/regulation/16/made>) is both valid and complete [\[2\]](#) (<http://www.legislation.gov.uk/ukpga/1990/8/section/327A>). Authorities should aim to determine validity within three working days from the date of receipt.

If the necessary requirements

([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/#paragraph\\_065](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/#paragraph_065)) are met, the authority should validate the application. It should assess the quality of additional information submitted with an application form during the determination of the application.

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### What about invalid applications?

The authority cannot validate an application that does not satisfy the necessary requirements ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/#paragraph\\_065](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/#paragraph_065)). If it has not received all the relevant documents and information the authority should declare the application invalid, decline to determine it and inform the applicant of their decision.

If the authority decides an application is invalid the applicant may have the right of appeal ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/appealing-against-local-authority-decisions-on-applications/#paragraph\\_101](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/appealing-against-local-authority-decisions-on-applications/#paragraph_101)).

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### **What about vague or ambiguous applications?**

Where necessary, the authority should consider referring a vague or ambiguous application back to the applicant and ask for clarification. Any necessary minor clarification should be confirmed in writing by the applicant either in a separate letter or by modifying the original application. For significant changes that alter the nature of a proposal, for example where consent is sought for felling instead of pruning, the applicant should withdraw the original application and submit a new one.

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### **How does the local authority acknowledge a valid application?**

The authority should acknowledge receipt in writing, confirming the date on which the complete application was received and the date after which an appeal may be made against non-determination. The authority can briefly explain whether or not it will be inviting comments on the application from local residents, authorities or groups, and whether it intends to visit the site.

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### **How does the local authority publicise applications?**

The authority must keep a register <sup>(2)</sup> (<http://www.legislation.gov.uk/ukSI/2012/605/regulation/12/made>) of all applications for consent under an Order. This register must be available for inspection by the public at all reasonable hours. Authorities are encouraged to make their registers available online. Where local people might be affected by an application or where there is likely to be a good deal of public interest, the authority should consider displaying a site notice or notifying the residents, authorities or groups affected. In addition, where a neighbour submits an application, the authority should make sure the owner or occupier of the land on which the tree stands is informed and given a chance to comment.

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### **Can the applicant appeal if the authority does not validate their application?**

The applicant has the right to appeal ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/appealing-against-local-authority-decisions-on-applications/#paragraph\\_101](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/appealing-against-local-authority-decisions-on-applications/#paragraph_101)) to the Secretary of State if an authority fails to determine an application within an eight-week period <sup>(2)</sup> (<http://www.legislation.gov.uk/ukSI/2012/605/regulation/19/made>).

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- Exceptions relating to applications to carry out work on trees subject to a Tree Preservation Order (<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/exceptions-relating-to-applications-to-carry-out-work-on-trees-subject-to-a-tree-preservation-order/>)

### **Exceptions relating to applications to carry out work on trees subject to a Tree Preservation Order**

#### **What are the exceptions for work on dead trees and branches?**

Unless work is urgently necessary because there is an immediate risk of serious harm (<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/exceptions-relating-to-applications-to-carry-out-work-on-trees-subject-to-a-tree->

preservation-order/#paragraph\_080), five working days prior written notice must be given to the authority before cutting down or carrying out other work on a dead tree. The authority's consent for such work is not required.

The exceptions allow removal of dead branches from a living tree without prior notice or consent.

Tree owners, their agents and authorities should consider biodiversity. Dead trees and branches can provide very valuable habitats for plants and wildlife, which may also be protected under other legislation. To conserve biodiversity it can be good practice to retain dead wood on living trees and at least the lower trunk of dead 'ancient' or 'veteran' trees unless, for example, safety reasons justify removal. Safety has priority

([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/exceptions-relating-to-applications-to-carry-out-work-on-trees-subject-to-a-tree-preservation-order/#paragraph\\_080](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/exceptions-relating-to-applications-to-carry-out-work-on-trees-subject-to-a-tree-preservation-order/#paragraph_080)), but safety considerations may not necessitate removal of all dead branches on living trees or the whole of a dead tree. It may be helpful to seek expert arboricultural and ecological advice.

Where a dead tree not covered by the woodland classification is removed, the landowner has a duty to plant a replacement tree

(<http://www.legislation.gov.uk/ukpga/1990/8/section/206>).

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### **What is the exception for work on dangerous trees and branches?**

Where a tree presents an immediate risk of serious harm and work is urgently needed to remove that risk, tree owners or their agents must give written notice to the authority as soon as practicable after that work becomes necessary. Work should only be carried out to the extent that it is necessary to remove the risk.

In deciding whether work to a tree or branch is urgently necessary because it presents an immediate risk of serious harm, the Secretary of State's view is that there must be a present serious safety risk. This need not be limited to that brought about by disease or damage to the tree. It is sufficient to find that, by virtue of the state of a tree, its size, its position and such effect as any of those factors have, the tree presents an immediate risk of serious harm that must be dealt with urgently. One consideration would be to look at what is likely to happen, such as injury to a passing pedestrian.

If the danger is not immediate the tree does not come within the meaning of the exception.

Where a tree is not covered by the woodland classification and is cut down because there is an urgent necessity to remove an immediate risk of serious harm, the landowner has a duty to plant a replacement tree of an appropriate size and species  (<http://www.legislation.gov.uk/ukpga/1990/8/section/206>).

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### **What is the exception for work to comply with an Act of Parliament?**

The authority's consent is not required for carrying out work on trees and woodlands subject to an Order if that work is in compliance with any obligation imposed by or under an Act of Parliament. This exception will apply, for example, where the Forestry Commission has granted a felling licence  (<http://www.forestry.gov.uk/forestry/Inf-d-6dfk86>) under the Forestry Act 1967.

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### **What is the exception for work to prevent or abate a nuisance?**

The authority's consent is not required for carrying out the minimum of work on a tree protected by an Order that is necessary to prevent or abate a nuisance. Here 'nuisance' is used in its legal sense, not its general sense. The courts have held that this means the nuisance must be actionable in law – where it is causing, or there is an immediate risk of it causing, actual damage.

When deciding what is necessary to prevent or abate a nuisance, tree owners and, where applicable, their neighbours and local authorities, should consider whether steps other than tree work might be taken. For example, there may be engineering solutions for structural damage to buildings.

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### **Is there an exception for tree work relating to planning permission and permitted development?**

The authority's consent is not required for carrying out work on trees subject to an Order so far as such work is necessary to implement a full planning permission. For example, the Order is overridden if a tree has to be removed to make way for a new building for which full planning permission has been granted. Conditions or information attached to the permission may clarify what work is exempt.

However, the authority's consent is required for work on trees subject to an Order if:

- development under a planning permission has not been commenced within the relevant time limit (i.e. the permission has 'expired');
- only outline planning permission has been granted; and
- it is not necessary to carry out works on protected trees in order to implement a full planning permission.

The authority's consent is also required, for example, for work on trees protected by an Order that is necessary to implement permitted development rights under the Town and Country Planning (General Permitted Development) Order 2015 [\[a\]](http://www.legislation.gov.uk/uksi/2015/596/contents/made).

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### **What is the exception for work to fruit trees?**

The authority's consent is not required for carrying out work on a tree subject to an Order and cultivated for the production of fruit in the course of a business or trade if the work is in the interests of that business or trade.

The authority's consent is otherwise generally required for carrying out prohibited activities to a fruit tree protected by an Order and not cultivated on a commercial basis. However, the authority's consent is not needed before pruning any tree cultivated for the production of fruit, as long as the work is carried out in accordance with good horticultural practice.

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### **What is the exception for work by or for statutory undertakers?**

The authority's consent is not required in certain circumstances for work carried out by, or at the request of, those statutory undertakers listed in the Town and Country Planning (Tree Preservation) (England) Regulations 2012 [\[a\]](http://www.legislation.gov.uk/uksi/2012/605/regulation/14/made). These statutory undertakers, or contractors working at their request, are advised to liaise with local authorities prior to carrying out work to trees protected by an Order. It is expected that all vegetation control is carried out in accordance with best arboricultural practice. They should also take care to not contravene the provisions of legislation protecting plants and wildlife ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/#paragraph\\_062](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/#paragraph_062)).



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### **Is there an exception for work relating to highway operations?**

The authority's consent is not required for cutting down, topping, lopping or uprooting a tree protected by an Order to enable the implementation of a highway order or scheme made or confirmed by the Secretary of State for Transport under Schedule 1 of the Highways Act 1980 [\[2\]](http://www.legislation.gov.uk/ukpga/1980/66/schedule/1) (<http://www.legislation.gov.uk/ukpga/1980/66/schedule/1>).

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### **What are the exceptions for work by or for the Environment Agency and drainage bodies**

The Environment Agency [\[2\]](https://www.gov.uk/government/organisations/environment-agency) (<https://www.gov.uk/government/organisations/environment-agency>) does not need to obtain the authority's consent before cutting down, topping, lopping or uprooting trees protected by an Order to enable it to carry out its permitted development rights. Similarly, land drainage boards [\[2\]](http://www.legislation.gov.uk/ukpga/1991/59/contents) (<http://www.legislation.gov.uk/ukpga/1991/59/contents>) do not need to obtain consent before cutting down or carrying out certain works to trees protected by an Order.

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### **What is the exception for work relating to national security?**

The authority's consent is not required for carrying out work on trees protected by an Order if that work is urgently necessary for national security purposes.

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## **8. Taking decisions on applications for consent under a Tree Preservation Order**

(<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/taking-decisions-on-applications-for-consent-under-a-tree-preservation-order/>)

### **Taking decisions on applications for consent under a Tree Preservation Order**

#### **What is the decision-making process for applications for consent under a Tree Preservation Order?**

In considering an application, the local planning authority should assess the impact of the proposal on the amenity of the area and whether the proposal is justified, having regard to the reasons and additional information put forward in support of it. The authority must be clear about what work it will allow and any associated conditions. Appeals

(<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/appealing-against-local-authority-decisions-on-applications/>) against an authority's decision to refuse consent can be made to the Secretary of State.

In certain circumstances, compensation

(<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/compensating-for-loss-or-damage/>) may be payable by the local planning authority for loss or damage which results from the authority refusing consent or granting consent with conditions. However, there are strict criteria and limitations on what compensation may be payable.

Flowchart 3 (<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/annex-a-flowcharts/flowchart-3-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/>) shows the decision-making process for applications for consent to undertake work on protected trees.

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## How does the local planning authority consider an application?

If the authority did not visit the site before the application was made then an officer should do so at this stage.

The authority should assess whether or not the proposed work is exempt ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/#paragraph\\_060](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/#paragraph_060)) from the requirement to obtain its consent.

When considering an application the authority is advised to:

- assess the amenity value ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/tree-preservation-orders-general/#paragraph\\_008](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/tree-preservation-orders-general/#paragraph_008)) of the tree or woodland and the likely impact of the proposal on the amenity of the area;
- consider, in the light of this assessment, whether or not the proposal is justified, having regard to the reasons and additional information put forward in support of it;
- consider whether any loss or damage ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/compensating-for-loss-or-damage/#paragraph\\_112](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/compensating-for-loss-or-damage/#paragraph_112)) is likely to arise if consent is refused or granted subject to conditions;
- consider whether any requirements apply in regard to protected species;
- consider other material considerations, including development plan policies where relevant; and
- ensure that appropriate expertise informs its decision.

Authorities should bear in mind that they may be liable to pay compensation (<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/compensating-for-loss-or-damage/>) for loss or damage as a result of refusing consent or granting consent subject to conditions. However, if the authority believes that some loss or damage is foreseeable, it should not grant consent automatically. It should take this factor into account alongside other key considerations, such as the amenity value of the tree and the justification for the proposed works, before reaching its final decision.

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## Must there be an arboricultural need for the work?

In general terms, it follows that the higher the amenity value of the tree or woodland and the greater any negative impact of proposed works on amenity, the stronger the reasons needed before consent is granted. However, if the amenity value is lower and the impact is likely to be negligible, it may be appropriate to grant consent even if the authority believes there is no particular arboricultural need for the work.

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## What about applications relating to woodland?

An authority dealing with an application relating to woodland must  (<http://www.legislation.gov.uk/ukSI/2012/605/regulation/17/made>) grant consent so far as accords with good forestry practice unless it is satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area. The UK Forestry Standard  (<http://www.forestry.gov.uk/ukfs>) and its supporting Guidelines define the Government's standards and requirements.

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## What about applications relating to a conservation area?

Where an application relates to trees in a conservation area ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/protecting-trees-in-conservation-areas/#paragraph\\_119](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/protecting-trees-in-conservation-areas/#paragraph_119)) the authority must [legislate](http://www.legislation.gov.uk/ukpga/1990/9/section/72) (<http://www.legislation.gov.uk/ukpga/1990/9/section/72>) pay special attention to the desirability of preserving or enhancing the character or appearance of that area.

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### **What about a local planning authority making an application to itself?**

The authority is responsible for determining applications it makes to itself. It must [legislate](http://www.legislation.gov.uk/uksi/1992/1492/note/made) (<http://www.legislation.gov.uk/uksi/1992/1492/note/made>) publicise such an application by displaying a notice on or near the site for at least 21 days. This site notice must:

- identify the trees and clearly set out the proposed work and the authority's reasons for the application;
- include an address where a copy of the application can be inspected;
- include an address to which any comments about the application should be sent; and
- give a date by which representations have to be made. This must be at least 21 days from the site notice's date of display.

Before reaching its decision the authority must take into account any representations made by the date given in the site notice; and it must give notice of its decision to all people who made representations.

Generally, the decision is to be taken by a committee or officer of the authority other than the one with responsibilities for management of the land in question.

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### **What can the local planning authority decide?**

When determining applications for consent under an Order, the authority may [legislate](http://www.legislation.gov.uk/uksi/2012/605/regulation/17/made) (<http://www.legislation.gov.uk/uksi/2012/605/regulation/17/made>):

- grant consent unconditionally;
- grant consent subject to such conditions ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/taking-decisions-on-applications-for-consent-under-a-tree-preservation-order/#paragraph\\_096](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/taking-decisions-on-applications-for-consent-under-a-tree-preservation-order/#paragraph_096)) as it thinks fit;
- refuse consent ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/taking-decisions-on-applications-for-consent-under-a-tree-preservation-order/#paragraph\\_099](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/taking-decisions-on-applications-for-consent-under-a-tree-preservation-order/#paragraph_099)).

The authority must decide the application before it, so it should not issue a decision which substantively alters the work applied for. The authority could, however, grant consent for less work than that applied for.

The authority should make absolutely clear in its decision notice what is being authorised. This is particularly important where the authority grants consent for some of the operations in an application and refuses consent for others.

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### **What about granting consent subject to conditions?**

A condition may [legislate](http://www.legislation.gov.uk/uksi/2012/605/regulation/17/made) (<http://www.legislation.gov.uk/uksi/2012/605/regulation/17/made>):

- relate to the planting of replacement trees ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/taking-decisions-on-applications-for-consent-under-a-tree-preservation-order/#paragraph\\_097](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/taking-decisions-on-applications-for-consent-under-a-tree-preservation-order/#paragraph_097));
- require further approvals to be obtained from the person giving the consent;
- regulate the standard of the authorised work;

- allow repeated operations to be carried out (works may be carried out only once unless a condition specifies otherwise); and/or
- impose a time limit on the duration of consent other than the default two year period ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/taking-decisions-on-applications-for-consent-under-a-tree-preservation-order/#paragraph\\_098](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/taking-decisions-on-applications-for-consent-under-a-tree-preservation-order/#paragraph_098)).

A condition should:

- relate to the authorised work;
- be fair and reasonable in the circumstances of each case;
- be imposed only where there is a definite need for it; and
- be worded precisely, so the applicant is left in no doubt about its interpretation and the authority is satisfied it can be enforced.

The authority is responsible for enforcing all conditions in a consent, so its decision notice should clearly state the reasons for its conditions ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/taking-decisions-on-applications-for-consent-under-a-tree-preservation-order/#paragraph\\_099](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/taking-decisions-on-applications-for-consent-under-a-tree-preservation-order/#paragraph_099)). This is particularly important where repeated operations have been applied for. In such cases the authority should make the scope, timing and limit of the work clear.

The authority should use its power to impose conditions to ensure that tree work or planting is carried out in accordance with good arboricultural practice.

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### What about conditions requiring tree replacement?

If an authority grants consent for a tree to be felled and wishes there to be a replacement tree or trees, it must make this a condition within the decision. If it does not make such a condition it cannot serve a tree replacement notice ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/replacing-protected-trees/#paragraph\\_151](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/replacing-protected-trees/#paragraph_151)) requiring replacement.

Where an authority grants consent for work in woodland ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/taking-decisions-on-applications-for-consent-under-a-tree-preservation-order/#paragraph\\_092](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/taking-decisions-on-applications-for-consent-under-a-tree-preservation-order/#paragraph_092)) that does not require a felling licence <sup>1</sup> (<http://www.forestry.gov.uk/forestry/inf-d6dfk86>) it may impose a condition to replant the land. The authority may wish to consult the Forestry Commission <sup>2</sup> (<http://www.forestry.gov.uk/england>) on the details of such a condition.

The authority may enforce replanting by serving a tree replacement notice ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/replacing-protected-trees/#paragraph\\_151](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/replacing-protected-trees/#paragraph_151)) on the landowner.

Replacement trees planted under a condition rather than because of an obligation under section 206 <sup>3</sup> (<http://www.legislation.gov.uk/ukpga/1990/8/section/206>) of the Town and Country Planning Act 1990 are not automatically protected by the original Order. So, the authority should consider varying the Order where, for example, replacement trees are of a different species to that referred to in the Order.

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### How long does consent last for?

By default, consent is valid for two years <sup>4</sup> (<http://www.legislation.gov.uk/uksi/2012/605/regulation/17/made>) beginning with the date of its grant. However, the authority may decide to set a different time limit with a condition in the consent. A tree owner may use an unused and unexpired consent obtained by a former owner. If any specified time limit expires, and the tree owner wishes to carry out a prohibited activity in respect of protected tree, a further application for consent has to be made.

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### **What information should be provided by an authority if it refuses consent or imposes conditions?**

When an authority decides to refuse consent or grant consent subject to conditions its decision notice should clearly state what the decision is and the reasons for that decision. These should specifically address each of the applicant's reasons for making the application. In addition, the authority should:

- give its reasons for each condition imposed;
- explain the applicant's right of appeal ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/appealing-against-local-authority-decisions-on-applications/#paragraph\\_101](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/appealing-against-local-authority-decisions-on-applications/#paragraph_101)) to the Secretary of State against the decision and give the contact details of the Planning Inspectorate; and
- explain the applicant's right to compensation for loss or damage ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/compensating-for-loss-or-damage/#paragraph\\_108](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/compensating-for-loss-or-damage/#paragraph_108)) as a result of the authority's decision, and how a claim should be made.

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### **What about advice and information to accompany the decision?**

The authority may wish to attach to its decision notice advice and information (sometimes known as an 'informative') relating to the decision. For example:

- How best to plant a replacement tree
- How to carry out work in accordance with good practice.
- How to protect wildlife and biodiversity
- Where to get independent specialist advice

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## **9. Appealing against local authority decisions on applications**

(<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/appealing-against-local-authority-decisions-on-applications/>)

### **Appealing against local authority decisions on applications**

#### **Can people appeal against decisions on applications for consent under a Tree Preservation Order?**

Following an application to a local planning authority for consent to cut down or carry out work on a tree subject to an Order, an applicant can appeal to the Secretary of State. The various grounds on which an appeal may be made are set out in Regulation 19 [\[2\]](#)

(<http://www.legislation.gov.uk/uksi/2012/605/regulation/19/made>). These appeals are handled by the Planning Inspectorate on the Secretary of State's behalf.

If the local authority has not decided an application for consent within eight weeks from the day it is received, then the applicant may appeal on grounds of non-determination.

The appellant may withdraw their appeal at any time.

The authority may issue a decision more than eight weeks after it receives an application, but cannot decide the application once an appeal has been made and remains outstanding.

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### **How are appeals made?**

Regulations 19-23 [\[2\]](#) (<http://www.legislation.gov.uk/uksi/2012/605/regulation/19/made>) set out the appeal procedures. Applicants (or their agents) must make any appeal in writing by notice to the Planning Inspectorate. The Planning

Inspectorate publishes the appeal form and detailed guidance on the appeal process. Both are available on the Planning Portal [\[2\]](http://www.planningportal.gov.uk/planning/appeals/treepreservation) (<http://www.planningportal.gov.uk/planning/appeals/treepreservation>) website.

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### **How are appeals decided?**

The Planning Inspectorate deals with most appeals through a written representations appeal procedure. An Inspector makes a decision in light of the grounds of appeal and:

- The information available when the local planning authority made its original decision on the application for consent
- The authority's decision and supporting information in that decision
- Any further information requested by the Inspector.

Alternatively, the appeal may be heard by an Inspector at a hearing or public local inquiry.

Whichever appeal procedure is used, the Inspector will consider:

- The amenity value of the tree or trees in question
- How that amenity value would be affected by the proposed work
- The reasons given for the application.

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### **What about appeal costs?**

The local planning authority and the appellant normally meet their own expenses. However, both the authority and the appellant can apply for some or all of their appeal costs. In certain circumstances, third parties may be able to apply for costs. Whichever appeal procedure is used, an application can be made for an award of costs on the grounds of another party's unreasonable behaviour which causes unnecessary expense. Additionally, the Inspector may make an award of costs, in full or in part, if they judge that a party has behaved unreasonably resulting in unnecessary expense and another party has not made an application for costs. There are strict deadlines within which costs applications must be made

(<http://planningguidance.communities.gov.uk/blog/guidance/appeals/>).

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### **Must local planning authorities register appeals?**

Regulation 12 [\[2\]](http://www.legislation.gov.uk/ukSI/2012/605/regulation/12/made) (<http://www.legislation.gov.uk/ukSI/2012/605/regulation/12/made>) requires authorities to keep a register of all appeals under Orders they have made.

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### **Can the appeal decision be challenged?**

The validity of the Secretary of State's appeal decision can only be challenged through an application to the High Court. Further details are available in the Planning Inspectorate's appeals guidance available on the Planning Portal [\[2\]](http://www.planningportal.gov.uk/planning/appeals/treepreservation) (<http://www.planningportal.gov.uk/planning/appeals/treepreservation>) website.

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10. Compensating for loss or damage (<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/compensating-for-loss-or-damage/>)

### **Compensating for loss or damage**


#### **What is the decision-making process regarding compensation?**

Flowchart 4 (<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/annex-a-flowcharts/flowchart-4-compensation/>) shows the decision-making process regarding compensation.

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### **In what circumstances may a local planning authority be liable to pay compensation?**

An authority is only liable to pay compensation in certain circumstances and there are strict criteria and limitations. Subject to provisions relating to forestry operations in protected woodland

([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/compensating-for-loss-or-damage/#paragraph\\_111](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/compensating-for-loss-or-damage/#paragraph_111)), an authority may be liable to pay compensation for loss or damage 


(<http://www.legislation.gov.uk/ukxi/2012/605/regulation/24/made>) caused or incurred in consequence of it:

- refusing any consent under an Order;
- granting a consent subject to conditions; or
- refusing any consent, agreement or approval required under a condition

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### **What are the limits for making claims for compensation?**

No claim can be made for loss or damage incurred before an application for consent to undertake work on a protected tree was made.


Legislation  (<http://www.legislation.gov.uk/ukxi/2012/605/regulation/24/made>) sets out circumstances in which a claim cannot be made. Subject to provisions relating to forestry operations in protected woodland

([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/compensating-for-loss-or-damage/#paragraph\\_111](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/compensating-for-loss-or-damage/#paragraph_111)), a claim for compensation must be for not less than £500 and made to the authority either:

- within 12 months of the date of the authority's decision; or
- within 12 months of the date of the Secretary of State's decision (if an appeal has been made).

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### **What limits the local authority's liability to pay compensation?**

Legislation  (<http://www.legislation.gov.uk/ukxi/2012/605/regulation/24/made>) limits the authority's liability by setting out circumstances in which a claim cannot be made ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/compensating-for-loss-or-damage/#paragraph\\_109](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/compensating-for-loss-or-damage/#paragraph_109)) and circumstances in which compensation is not payable.

Subject to specific provisions relating to forestry operations in protected woodland ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/compensating-for-loss-or-damage/#paragraph\\_111](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/compensating-for-loss-or-damage/#paragraph_111)), any claimant who can establish that they have suffered loss or damage as a result of an authority either refusing consent or imposing conditions in respect of protected trees is entitled to claim compensation. However the authority's liability is limited. In such cases, compensation is not payable for any:

- loss or damage which was:
  - reasonably foreseeable by that person; and
  - attributable to that person's failure to take reasonable steps to avert the loss or damage or mitigate its extent;
- loss or damage which, having regard to the application and the documents and particulars accompanying it, was not reasonably foreseeable when consent was refused or was granted subject to conditions;
- loss of development value or other diminution in the value of land; and/or

- costs incurred in making an appeal to the Secretary of State against the refusal of any consent or the grant of consent subject to conditions.

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### **What are the special considerations relating to compensation and forestry operations in protected woodland?**

If an authority refuses consent for felling in protected woodland in the course of forestry operations:

- it shall not be required to pay compensation other than to the owner of the land
- it shall not be required to pay compensation if more than 12 months have elapsed since the date of the authority's decision, or, in the case of an appeal to the Secretary of State, the final determination of that appeal
- the amount payable is limited to any depreciation in the value of the trees attributable to deterioration in the quality of the timber in consequence of the authority's decision.

Advice may be sought from the Forestry Commission [\[2\]](#)

(<http://www.forestry.gov.uk/england>) about the relevant provisions of the Forestry Act 1967 [\[2\]](#) (<http://www.legislation.gov.uk/ukpga/1967/10/section/11>).

The authority is liable to pay compensation for any loss or damage caused or incurred as a result of complying with a condition where:

- the authority has granted consent for felling in the course of forestry operations all or part of a woodland area to which an order applies;
- the authority imposes a replanting condition ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/taking-decisions-on-applications-for-consent-under-a-tree-preservation-order/#paragraph\\_097](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/taking-decisions-on-applications-for-consent-under-a-tree-preservation-order/#paragraph_097));
- the Forestry Commission decides not to make any grant or loan under section 1 of the Forestry Act 1979 [\[2\]](#) (<http://www.legislation.gov.uk/ukpga/1979/21/section/1>) in respect of the required replanting for the reason that the condition frustrates the use of the woodland area for the growing of timber or other forest products for commercial purposes and in accordance with the rules or practice of good forestry.

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### **What should the local authority consider when deciding a claim for compensation?**

If a claim is made to the authority it should consider whether any loss or damage has arisen as a consequence of the decision. It should consider whether that loss or damage has arisen within the 12 months following its decision or, in the case of an appeal to the Secretary of State, the final determination of that appeal. The authority is advised to bear in mind the limitations to its liability to pay compensation covered in the answers to the previous questions. It should have regard to the reasons given for the work applied for and any reports or other supporting documents duly submitted.

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### **What if there is a dispute about a claim for compensation?**

Authorities and claimants are encouraged to try to reach an agreement. Any question of disputed compensation must [\[2\]](#) (<http://www.legislation.gov.uk/uksi/2012/605/regulation/24/made>) be referred to, and determined by, the Lands Chamber of the Upper Tribunal [\[2\]](#) (<http://www.justice.gov.uk/tribunals/lands>).

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11. Protecting trees in conservation areas (<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/protecting-trees-in-conservation-areas/>)

### **Protecting trees in conservation areas**

#### **What is the decision-making process for tree protection in conservation areas?**

Flowchart 5 ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/annex-a-flowcharts/flowchart-5-notices-for-work-to-trees-in-a-conservation-area/#paragraph\\_171](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/annex-a-flowcharts/flowchart-5-notices-for-work-to-trees-in-a-conservation-area/#paragraph_171)) shows the decision-making process regarding notices for work to trees in a conservation area ([http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/how-do-heritage-assets-become-designated/#paragraph\\_023](http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/how-do-heritage-assets-become-designated/#paragraph_023)).

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#### **What about trees in a conservation area that are already protected by a Tree Preservation Order?**

Trees in a conservation area ([http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/how-do-heritage-assets-become-designated/#paragraph\\_023](http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/how-do-heritage-assets-become-designated/#paragraph_023)) that are already protected by a Tree Preservation Order are subject to the normal procedures and controls for any tree covered by such an Order ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/tree-preservation-orders-general/#paragraph\\_001](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/tree-preservation-orders-general/#paragraph_001)).

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#### **What about trees in a conservation area that are not protected by a Tree Preservation Order?**

Trees in a conservation area ([http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/how-do-heritage-assets-become-designated/#paragraph\\_023](http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/how-do-heritage-assets-become-designated/#paragraph_023)) that are not protected by an Order are protected by the provisions in section 211 of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/211) (<http://www.legislation.gov.uk/ukpga/1990/8/section/211>). These provisions require people to notify the local planning authority, using a 'section 211 notice' (<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/protecting-trees-in-conservation-areas/section-211-notices/>), six weeks before carrying out certain work on such trees, unless an exception (<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/protecting-trees-in-conservation-areas/exceptions-relating-to-section-211-notices/>) applies. The work may go ahead before the end of the six week period if the local planning authority gives consent. This notice period gives the authority an opportunity to consider whether to make an Order ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/protecting-trees-in-conservation-areas/#paragraph\\_119](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/protecting-trees-in-conservation-areas/#paragraph_119)) on the tree.

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#### **What about trees on Crown Land within a conservation area that are not protected by a Tree Preservation Order?**

The Crown must [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/211) (<http://www.legislation.gov.uk/ukpga/1990/8/section/211>) give six weeks' notice for works to trees in a conservation area ([http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/how-do-heritage-assets-become-designated/#paragraph\\_023](http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/how-do-heritage-assets-become-designated/#paragraph_023)), unless an exception (<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/protecting-trees-in-conservation-areas/exceptions-relating-to-section-211-notices/>) applies or the local planning authority has given consent.

Where work is carried out on a regular basis, the local authority and the appropriate authority of the Crown [\[2\]](http://www.legislation.gov.uk/ukpga/2004/5/schedule/3) (<http://www.legislation.gov.uk/ukpga/2004/5/schedule/3>) should consider following the guidance here ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/protecting-trees-in-conservation-areas/section-211-notices/#paragraph\\_126](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/protecting-trees-in-conservation-areas/section-211-notices/#paragraph_126)).

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### **How should the local authority deal with a section 211 notice?**

The authority can deal with a section 211 notice (<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/protecting-trees-in-conservation-areas/section-211-notices/>) in one of three ways. It may:

- make a Tree Preservation Order if justified in the interests of amenity ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/protecting-trees-in-conservation-areas/#paragraph\\_119](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/protecting-trees-in-conservation-areas/#paragraph_119)), preferably within six weeks of the date of the notice;
- decide not to make an Order and inform the person who gave notice that the work can go ahead; or
- decide not to make an Order and allow the six-week notice period to end, after which the proposed work may be done within two years of the date of the notice.

While bearing in mind the six-week notice period, the authority should allow sufficient time for it to receive objections to the work. The authority should consider duly submitted objections when deciding whether the proposals are inappropriate and whether an Order should be made.

A section 211 notice is not, and should not be treated as, an application for consent under an Order. So the authority cannot:

- refuse consent; or
- grant consent subject to conditions.

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### **How does the local authority decide whether a tree in a conservation area merits a Tree Preservation Order?**

The authority's main consideration should be the amenity value ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/tree-preservation-orders-general/#paragraph\\_007](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/tree-preservation-orders-general/#paragraph_007)) of the tree. In addition, authorities must [\[2\]](http://www.legislation.gov.uk/ukpga/1990/9/section/72) (<http://www.legislation.gov.uk/ukpga/1990/9/section/72>) pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area ([http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/how-do-heritage-assets-become-designated/#paragraph\\_023](http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/how-do-heritage-assets-become-designated/#paragraph_023)).

Even if the tree's amenity value may merit an Order the authority can still decide that it would not be expedient

([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/tree-preservation-orders-general/#paragraph\\_010](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/tree-preservation-orders-general/#paragraph_010)) to make one.

If an Order is made, in addition to fulfilling the usual statutory requirements, the authority should also provide a copy of the new Order to any agent who submitted the section 211 notice. It should also explain to the person who gave notice that an application for consent under the Order may be made at any time.

ID 36-119-20140306 Last updated 06 03 2014

### **What if work is done to trees in a conservation area, that are not protected by a Tree Preservation Order, without a section 211 notice being submitted?**

Anyone who cuts down, uproots, tops, lops, wilfully destroys or wilfully damages a tree in a conservation area

([http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/how-do-heritage-assets-become-designated/#paragraph\\_023](http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/how-do-heritage-assets-become-designated/#paragraph_023)) (if that tree is not already protected by an Order), or causes or permits such work, without giving a section 211 notice (or otherwise contravenes section 211 of the Town and Country Planning Act 1990 <sup>2</sup>)

(<http://www.legislation.gov.uk/ukpga/1990/8/section/211>) is guilty of an offence, unless an exception (<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/protecting-trees-in-conservation-areas/exceptions-relating-to-section-211-notices/>) applies. The same penalties as those for contravening an Order apply ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/how-are-offences-against-a-tree-preservation-order-enforced-including-tree-replacement/#paragraph\\_138](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/how-are-offences-against-a-tree-preservation-order-enforced-including-tree-replacement/#paragraph_138)).

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### When must replacement trees be planted?

If a tree in a conservation area

([http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/how-do-heritage-assets-become-designated/#paragraph\\_023](http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/how-do-heritage-assets-become-designated/#paragraph_023)) is removed, uprooted or destroyed in contravention of section 211 of the Town and Country Planning Act 1990 <sup>2</sup>

(<http://www.legislation.gov.uk/ukpga/1990/8/section/211>), the landowner has a duty <sup>2</sup> (<http://www.legislation.gov.uk/ukpga/1990/8/section/213>) to plant another tree of an appropriate size and species at the same place as soon as he or she reasonably can. The same duty applies if a tree in a conservation area is removed because it is dead or presents an immediate risk of serious harm

([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/exceptions-relating-to-applications-to-carry-out-work-on-trees-subject-to-a-tree-preservation-order/#paragraph\\_080](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/exceptions-relating-to-applications-to-carry-out-work-on-trees-subject-to-a-tree-preservation-order/#paragraph_080)). The duty attaches to subsequent owners of the land.

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### How does the local authority enforce the duty to plant a replacement tree?

The authority may enforce this duty <sup>2</sup>

(<http://www.legislation.gov.uk/ukpga/1990/8/section/207>) by serving a tree replacement notice ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/replacing-protected-trees/#paragraph\\_151](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/replacing-protected-trees/#paragraph_151)). There is a right of appeal <sup>2</sup> (<http://www.legislation.gov.uk/ukpga/1990/8/section/208>) against a tree replacement notice however the authority has powers to dispense <sup>2</sup>

(<http://www.legislation.gov.uk/ukpga/1990/8/section/213>) with the duty to plant a replacement tree. Any request for such a dispensation should be put to the authority in writing.

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- Section 211 notices (<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/protecting-trees-in-conservation-areas/section-211-notices/>)

### Section 211 notices

#### What is a Section 211 notice?

A section 211 notice is a notice submitted to the local planning authority by landowners or their agents. It notifies the authority of proposed work on trees in a conservation area that are not subject to a Tree Preservation Order.

'Protecting trees in conservation areas

(<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/protecting-trees-in-conservation-areas/>)' gives guidance on the circumstances where a section 211 notice may be required.

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### **What form should a section 211 notice take?**

A section 211 notice does not have to be in any particular form. It may be helpful to use the standard application form for work to trees protected by an Order (available from the Planning Portal [\[2\]](http://www.planningportal.gov.uk/planning/applications/howtoapply/permissiontypes)) (<http://www.planningportal.gov.uk/planning/applications/howtoapply/permissiontypes>) as a section 211 notice, but the authority cannot insist on this.

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### **What information should be in a section 211 notice?**

A section 211 notice must describe the work proposed and include sufficient particulars to identify the tree or trees. Where a number of trees or operations are involved, it should make clear what work is proposed to which tree. A notice must include the date it is submitted. A plan is not mandatory but can be helpful.

Sufficient information in a section 211 notice will help the local authority to verify that the proposed work, if undertaken, has not been exceeded and support enforcement action if appropriate. People should not submit a section 211 notice until they are in a position to present clear proposals. They should consider first discussing their ideas with an arboriculturist or the authority's tree officer.

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### **What about section 211 notices for more than one operation?**

Only one section 211 notice is needed to carry out a number of different operations on the same tree or to carry out work on a number of trees.

To avoid the need for repeated notices over a relatively short period of time, one notice may, where appropriate, be submitted for repeated operations, phased works or programmes of work ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/#paragraph\\_071](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/#paragraph_071)).

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### **What should the local authority do with a vague or ambiguous section 211 notice?**

The authority is advised to refer a section 211 notice containing insufficient or unclear information back to the person who submitted it. The authority may wish to provide information to help them resubmit an appropriate notice.

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### **Should the local authority acknowledge receipt of a section 211 notice?**

A section 211 notice should be acknowledged, although the authority should first consider whether the proposed work is exempt (<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/protecting-trees-in-conservation-areas/exceptions-relating-to-section-211-notices/>) from the requirement to give this notice or requires a felling licence [\[2\]](http://www.forestry.gov.uk/forestry/infd-6dfk86) (<http://www.forestry.gov.uk/forestry/infd-6dfk86>). In either case it should promptly inform the person who gave the notice. Otherwise the authority should acknowledge receipt of the notice in writing.

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### **Does the local authority have to keep a register of section 211 notices?**

The authority must [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/214) keep available for public inspection a register of all section 211 notices. Authorities are encouraged to make these registers available online. The register should include:

- the date of the section 211 notice;
- the name of the person who served it;
- the address of the land where the tree stands;
- the proposed work;
- sufficient information to identify the tree;
- the authority's decision (if any);
- the date of the authority's decision date (if any); and
- an index for tracing entries.

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### **Does the local authority have to publicise section 211 notices?**

A section 211 notice does not need to be publicised. However the authority can consider publicising a section 211 notice in order to seek the views of local residents, groups or authorities, particularly where there is likely to be public interest.

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- Exceptions relating to section 211 notices

[\(http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/protecting-trees-in-conservation-areas/exceptions-relating-to-section-211-notices/\)](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/protecting-trees-in-conservation-areas/exceptions-relating-to-section-211-notices/)

### **Exceptions relating to section 211 notices**

#### **Is a section 211 notice required for a tree of any size?**

People are not required [\[2\]](http://www.legislation.gov.uk/uksi/2012/605/regulation/15/made)

[to submit a section 211 notice to the local planning authority for:](http://www.legislation.gov.uk/uksi/2012/605/regulation/15/made)

- the cutting down, topping or lopping or uprooting of a tree whose diameter does not exceed 75 millimetres; or
- the cutting down or uprooting of a tree, whose diameter does not exceed 100 millimetres, for the sole purpose of improving the growth of other trees (e.g. thinning as part of forestry operations).

In either case, the diameter of the tree is to be measured over the bark of the tree at 1.5 metres above ground level. These exemptions do not apply in circumstances where a tree has more than one stem at a point 1.5 metres above the natural ground level if any stem when measured over its bark at that point exceeds the relevant minimum.

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### **What other types of tree work do not require a section 211 notice?**

A section 211 notice is not required where the cutting down, topping, lopping or uprooting of a tree is permissible under an exception to the requirement to apply for consent under a Tree Preservation Order

[\[2\]](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/#paragraph_060) (http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/#paragraph\_060). Nor is a section 211 notice required for:

- the cutting down, topping, lopping or uprooting of a tree by, or on behalf of, the authority;
- the cutting down, topping, lopping or uprooting of a tree by or on behalf of the Forestry Commission [\[2\]](http://www.legislation.gov.uk/uksi/2012/605/regulation/15/made)

(<http://www.forestry.gov.uk/website/ffhomepages.nsf/hp/England>) on land in which it has an interest; or

- cutting down a tree in accordance with a felling licence [\[2\]](http://www.forestry.gov.uk/forestry/infd-6dfk86) (<http://www.forestry.gov.uk/forestry/infd-6dfk86>) or a plan of woodland operations agreed by the Forestry Commission.

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### **Is a section 211 notice required for work to dead or dangerous trees in conservation areas?**

Unless there is an immediate risk of serious harm, anyone proposing to carry out work on a tree in a conservation area

([http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/how-do-heritage-assets-become-designated/#paragraph\\_023](http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/how-do-heritage-assets-become-designated/#paragraph_023)) on the grounds that it is dead must [\[2\]](http://www.legislation.gov.uk/ukxi/2012/605/regulation/14/made)

(<http://www.legislation.gov.uk/ukxi/2012/605/regulation/14/made>) give the authority five days notice before carrying out the proposed work. Where such a tree requires urgent work to remove an immediate risk of serious harm, written notice is required as soon as practicable after the work becomes necessary.

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### **Is a section 211 notice needed where a planning application includes tree work in a conservation area?**

An authority may treat a planning application for development

([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/tree-preservation-orders-general/#paragraph\\_005](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/tree-preservation-orders-general/#paragraph_005)) in a conservation area

([http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/how-do-heritage-assets-become-designated/#paragraph\\_023](http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/how-do-heritage-assets-become-designated/#paragraph_023)) that includes specified tree work as a section 211 notice if the applicant has clearly stated that it should be considered as such. However, if work is proposed to trees other than those immediately affected by a proposed development then a separate section 211 notice should be submitted. Where an authority has granted planning permission for development in a conservation area, only tree works necessary to implement the development may be carried out ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/exceptions-relating-to-applications-to-carry-out-work-on-trees-subject-to-a-tree-preservation-order/#paragraph\\_083](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/exceptions-relating-to-applications-to-carry-out-work-on-trees-subject-to-a-tree-preservation-order/#paragraph_083)). The authority may use conditions or informatives attached to the permission to clarify this requirement.

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12. Enforcing tree protection offences (<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/how-are-offences-against-a-tree-preservation-order-enforced-including-tree-replacement/>)

#### **Enforcing tree protection offences**

##### **How are offences against a Tree Preservation Order enforced?**

Anyone who contravenes an Order by damaging or carrying out work on a tree protected by an Order without getting permission from the local planning authority is guilty of an offence and may be fined.

There is also a duty requiring landowners to replace a tree removed, uprooted or destroyed in contravention of an Order. This duty also applies if a tree outside woodland is removed because it is dead or presents an immediate risk of serious harm. The local planning authority may also impose a condition requiring replacement planting when granting consent under an Order for the removal of trees. The authority can enforce tree replacement by serving a 'tree replacement notice'.

More information about tree replacement can be found here ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/replacing-protected-trees/#paragraph\\_151](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/replacing-protected-trees/#paragraph_151)).

More information about investigations, injunctions and temporary stop notices can be found here ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/how-are-offences-against-a-tree-preservation-order-enforced-including-tree-replacement/procedures-for-criminal-investigations-by-local-planning-authorities/#paragraph\\_148](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/how-are-offences-against-a-tree-preservation-order-enforced-including-tree-replacement/procedures-for-criminal-investigations-by-local-planning-authorities/#paragraph_148)).

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### **What is the decision-making process regarding offences?**

Flowchart 6 (<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/annex-a-flowcharts/flowchart-6-offences/>) shows the decision-making process regarding offences. This process applies to contraventions of Tree Preservation Orders. Unless stated, it also applies to work to trees in conservation areas ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/protecting-trees-in-conservation-areas/#paragraph\\_114](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/protecting-trees-in-conservation-areas/#paragraph_114)) that contravenes section 211 of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/211) (<http://www.legislation.gov.uk/ukpga/1990/8/section/211>).

Local planning authorities should consider publishing tree protection enforcement policies and having clear written procedures to deal with cases. These procedures may require close liaison between tree officers, enforcement officers and legal advisers.

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### **What are the offences and who can be guilty of committing them?**

Section 210(1) [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/210) (<http://www.legislation.gov.uk/ukpga/1990/8/section/210>) and Section 202C(2) of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/202C) (<http://www.legislation.gov.uk/ukpga/1990/8/section/202C>) provide that anyone who, in contravention of a Tree Preservation Order

- cuts down, uproots or wilfully destroys a tree; or
- tops, lops or wilfully damages a tree in a way that is likely to destroy it; or
- causes or permits such activities

is guilty of an offence.

Section 210(4) of the Act [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/210) (<http://www.legislation.gov.uk/ukpga/1990/8/section/210>) sets out that it is also an offence for anyone to contravene the provisions of an Order other than those mentioned above. For example, anyone who lops a tree in contravention of an Order, but in a way that the tree is not likely to be destroyed, would be guilty of this offence.

For the purposes of the Act, a person does not have to obliterate a tree in order to 'destroy' it. It is sufficient for the tree to be rendered useless as an amenity or as something worth preserving.

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### **What are the penalties for committing these offences?**

Section 210(2) of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/210) (<http://www.legislation.gov.uk/ukpga/1990/8/section/210>) provides that anyone found guilty of these offences ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/how-are-offences-against-a-tree-preservation-order-enforced-including-tree-replacement/#paragraph\\_137](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/how-are-offences-against-a-tree-preservation-order-enforced-including-tree-replacement/#paragraph_137)) is liable, if convicted in the magistrates' court, to a fine of up to £20,000. In serious cases a person may be committed for trial in the Crown Court and, if convicted, is liable to an unlimited fine. Section 210(3) [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/210) (<http://www.legislation.gov.uk/ukpga/1990/8/section/210>) provides that, in determining the amount of fine, the court shall take into account any financial benefit which has resulted, or is likely to result, from the offence.

There is also a duty requiring landowners to replace a tree removed, uprooted or destroyed in contravention of an Order

([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/replacing-protected-trees/#paragraph\\_154](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/replacing-protected-trees/#paragraph_154)).

Anyone found guilty in the magistrates' court of an offence under Section 210(4) [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/210) (<http://www.legislation.gov.uk/ukpga/1990/8/section/210>) is liable to a fine of up to Level 4 (currently £2,500).

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### **Are there time limits for bringing a prosecution?**

Section 210(4A) and (4B) of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/2011/20/section/126) (<http://www.legislation.gov.uk/ukpga/2011/20/section/126>) set out that, in respect of offences under section 210(4) of the Act, authorities may bring an action within six months beginning with the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings came to the prosecutor's knowledge. However, proceedings cannot commence more than three years after the date the offence was committed.

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### **What if unauthorised work has been attempted?**

Section 210 of the Town and Country Planning Act 1990 provides a clear structure for pursuing criminal enforcement action for unauthorised work. But, where an alleged action falls short of the definition in section 210 of the Town and Country Planning Act 1990, section 1(1) of the Criminal Attempts Act 1981 [\[2\]](http://www.legislation.gov.uk/ukpga/1981/47) (<http://www.legislation.gov.uk/ukpga/1981/47>) may provide an alternative route in some cases where unauthorised work has been attempted.

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### **What options for action do local planning authorities have?**

When faced with what they believe are unauthorised works to protected trees, local authorities may:

- do nothing – but only if justified by the particular circumstances;
- negotiate with the owner ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/how-are-offences-against-a-tree-preservation-order-enforced-including-tree-replacement/#paragraph\\_142](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/how-are-offences-against-a-tree-preservation-order-enforced-including-tree-replacement/#paragraph_142)) to remedy the works to the satisfaction of the authority;
- consider the option of issuing an informal warning to impress on the tree owner or others suspected of unauthorised works that such work may lead to prosecution;
- seek an injunction ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/how-are-offences-against-a-tree-preservation-order-enforced-including-tree-replacement/procedures-for-criminal-investigations-by-local-planning-authorities/#paragraph\\_149](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/how-are-offences-against-a-tree-preservation-order-enforced-including-tree-replacement/procedures-for-criminal-investigations-by-local-planning-authorities/#paragraph_149)) to stop on-going works and prevent anticipated breaches; or
- consider whether the tests for commencing a prosecution ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/how-are-offences-against-a-tree-preservation-order-enforced-including-tree-replacement/procedures-for-criminal-investigations-by-local-planning-authorities/#paragraph\\_148](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/how-are-offences-against-a-tree-preservation-order-enforced-including-tree-replacement/procedures-for-criminal-investigations-by-local-planning-authorities/#paragraph_148)) are met.

ID 36-141-20140306 Last updated 06 03 2014

### **What should local authorities consider when deciding on the best option for action?**

Negotiation may enable the authority to ensure that remedial works to repair, or reduce the impact of, unauthorised works to a protected tree are carried out. The authority should also take into account the legal duty to replace trees



([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/replacing-protected-trees/#paragraph\\_151](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/replacing-protected-trees/#paragraph_151)). Prosecutions cannot require remedial works to the tree but will, where appropriate, both punish offenders and deter potential offenders. The authority should consider whether there is a realistic prospect of a conviction and whether it is in the public interest to prosecute. It should also consider whether it is in the public interest to prosecute some or all of the individuals implicated in the offence.

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### **How can local planning authorities bring successful prosecutions?**

To bring a successful prosecution the authority should have sufficient evidence to show that:

- the tree was protected by an Order at the relevant time, or was in a conservation area;
- an action which is an offence under section 210 of the Town and Country Planning Act 1990 has been carried out; and
- the defendant has carried out, caused or permitted this work.

The elements of the offence must be proved beyond reasonable doubt. It may be possible to bring a separate action for each tree cut down or damaged.

Further guidance can be found here

([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/how-are-offences-against-a-tree-preservation-order-enforced-including-tree-replacement/procedures-for-criminal-investigations-by-local-planning-authorities/#paragraph\\_148](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/how-are-offences-against-a-tree-preservation-order-enforced-including-tree-replacement/procedures-for-criminal-investigations-by-local-planning-authorities/#paragraph_148)).

The burden of proof to show, on the balance of probabilities, that work fell within the terms of a statutory exemption is placed on the defendant.

In general, it is no defence for the defendant to claim ignorance of the existence of an Order. Nevertheless, the authority should ensure that a valid Order exists, that the tree in question was clearly protected by it and that it has carried out its statutory functions properly and complied with all procedural requirements.

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### **What about third parties?**

It is an offence to cause or permit prohibited tree work

([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/how-are-offences-against-a-tree-preservation-order-enforced-including-tree-replacement/#paragraph\\_137](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/how-are-offences-against-a-tree-preservation-order-enforced-including-tree-replacement/#paragraph_137)). Furthermore, under section 44 of the Magistrates' Courts Act 1980 [\[2\]](http://www.legislation.gov.uk/ukpga/1980/43/section/44) (<http://www.legislation.gov.uk/ukpga/1980/43/section/44>) any person who 'aids, abets, counsels or procures the commission by another person of a summary offence shall be guilty of the like offence'. So anyone who engages a person or company that physically carries out unauthorised work may also be subject to enforcement action.

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### **What if an offence is committed by a company?**

Where a company contravenes an Order, section 331 of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/331) (<http://www.legislation.gov.uk/ukpga/1990/8/section/331>) provides that a director, manager or secretary or other similar officer of the company is guilty of the offence if it can be proved it was committed with their consent or connivance, or was attributable to any neglect on their part.

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### **Does the local authority have rights of entry where it suspects an offence?**

Sections 214B [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/214B), 214C [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/214C) and 214D of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/214D) set out provisions relating to rights of entry in respect of protected trees. Authorities may authorise in writing their officers to enter land at a reasonable hour to ascertain whether an offence under section 210 or 211 has been committed if there are reasonable grounds for entering for this purpose. The authority must notify the occupier at least 24 hours' before entering a dwelling or occupied land. To enter Crown land the authority must first get consent from the relevant Crown body [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/293) (which may impose conditions (http://planningguidance.communities.gov.uk/blog/guidance/crown-development/)). In urgent cases or where admission has been, or is reasonably expected to be, refused, a magistrate can issue a warrant enabling a duly authorised officer to enter land.

Anyone who wilfully obstructs an authority officer exercising these rights of entry is guilty of an offence and liable, if convicted in the Magistrates' Court, to a Level 3 fine (currently up to £1,000). See section 214D(3) of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/214D).

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### **Is it appropriate to publicise successful prosecutions?**

Authorities should consider publicising successful prosecutions to help maximise their deterrent value.

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- **Investigations, injunctions and temporary stop notices**

(http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/how-are-offences-against-a-tree-preservation-order-enforced-including-tree-replacement/procedures-for-criminal-investigations-by-local-planning-authorities/)

### **Investigations, injunctions and temporary stop notices**

#### **Procedures for criminal investigations by local planning authorities**

The authority should first investigate whether or not an allegation that a contravention has taken place, or is about to take place, is true. The authority should consider keeping anyone who has notified the authority of a contravention informed of the outcome of the investigation.

Local authority officers conducting criminal investigations must have regard to the codes of practice [\[2\]](https://www.gov.uk/government/publications/police-and-criminal-evidence-act-1984-pce-and-accompanying-codes-of-practice) (https://www.gov.uk/government/publications/police-and-criminal-evidence-act-1984-pce-and-accompanying-codes-of-practice) prepared under section 66 of the Police and Criminal Evidence Act 1984 [\[2\]](http://www.legislation.gov.uk/ukpga/1984/60/section/66) (http://www.legislation.gov.uk/ukpga/1984/60/section/66) and any other relevant codes relating to criminal proceedings. This duty applies when an authority discharges its enforcement powers, including rights of entry, gathering samples from trees or of soil and taking statements. The authority's lawyers should be able to advise officers on how they should apply the codes in practice.

Authorities should liaise with the Forestry Commission if they believe there has been a contravention of the felling licence [\[2\]](http://www.forestry.gov.uk/forestry/inf6-6dfk86) (http://www.forestry.gov.uk/forestry/inf6-6dfk86) provisions of the Forestry Act 1967.

Where Crown land is involved, the local planning authority must secure the consent of 'the appropriate authority' [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/293) (http://www.legislation.gov.uk/ukpga/1990/8/section/293) before taking any step for the purposes of enforcement.

When considering whether to prosecute, the authority should have regard to the Code for Crown Prosecutors <sup>2</sup>

([http://www.cps.gov.uk/publications/code\\_for\\_crown\\_prosecutors](http://www.cps.gov.uk/publications/code_for_crown_prosecutors)) and its own enforcement and prosecution policies.

Prosecutors should ensure that evidence at trial is restricted only to establishing the elements of the offence. For example, knowledge of the existence of the Tree Preservation Order in question is not required. Also, in some cases, accidental destruction of a protected tree is not an offence.

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### Enforcement – injunctions

An injunction is a court order prohibiting a person from taking a particular action. Section 214A of the Town and Country Planning Act 1990 <sup>2</sup> (<http://www.legislation.gov.uk/ukpga/1990/8/section/214A>) enables an authority to apply to the High Court or County Court for an injunction to restrain an actual or apprehended offence under section 210 (contravention of a Tree Preservation Order) or section 211 (prohibited work on trees in a conservation area).

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### Related policy

<sup>2</sup>

### Enforcement – temporary stop notices

Where an authority considers there has been a breach of planning control and immediate action is required to stop an activity endangering the amenity of the area, Section 171E of the Town and Country Planning Act 1990 <sup>2</sup> (<http://www.legislation.gov.uk/ukpga/1990/8/section/171E>) enables the authority to issue a temporary stop notice. This notice can require either an activity to cease or the level of an activity to be reduced or minimised. Such notices may apply to breaches of conditions in planning permissions. Such notices may apply, for example, to breaches of planning conditions requiring physical tree protection. They do not apply to general activities that may be endangering protected trees.

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13. Replacing protected trees (<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/replacing-protected-trees/>)

### Replacing protected trees

#### What is the decision-making process regarding tree replacement?

Flowchart 7 (<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/annex-a-flowcharts/flowchart-7-tree-replacement/>) shows the decision-making process regarding tree replacement. Unless stated, this process applies to trees subject to a Tree Preservation Order and to trees in a conservation area <sup>2</sup> (<http://www.legislation.gov.uk/ukpga/1990/8/section/213>) that are not subject to an Order.

In addition to possible criminal penalties

([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/how-are-offences-against-a-tree-preservation-order-enforced-including-tree-replacement/#paragraph\\_138](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/how-are-offences-against-a-tree-preservation-order-enforced-including-tree-replacement/#paragraph_138)) landowners have a duty, in certain circumstances, to replace trees or to replant in protected woodlands. Also, the local planning authority may impose a condition requiring replacement planting ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/taking-decisions-on-applications-for-consent-under-a-tree-preservation-order/#paragraph\\_097](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/taking-decisions-on-applications-for-consent-under-a-tree-preservation-order/#paragraph_097)) when granting consent under a Tree Preservation Order for the removal of trees.

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#### How can local planning authorities enforce the duties to replace protected trees and woodlands?

The authority can enforce tree replacement duties by serving a tree replacement notice. ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/replacing-protected-trees/#paragraph\\_155](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/replacing-protected-trees/#paragraph_155))

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### **What are the considerations relating to the duty to replace trees protected by a Tree Preservation Order outside woodland?**

Under section 206 of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/206) (<http://www.legislation.gov.uk/ukpga/1990/8/section/206>) landowners have a duty to replace a tree removed, uprooted or destroyed in contravention of the Town and Country Planning (Tree Preservation) (England) Regulations 2012. This duty also applies under section 206 if a tree (except a tree protected as part of a woodland) is removed, uprooted or destroyed because it is dead or presents an immediate risk of serious harm.

The duty transfers to the new owner if the land changes hands.

Replacement trees should be of an appropriate size and species and planted at the same place as soon as the owner of the land can reasonably do this.

Unlike a replacement tree planted under a condition ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/taking-decisions-on-applications-for-consent-under-a-tree-preservation-order/#paragraph\\_097](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/taking-decisions-on-applications-for-consent-under-a-tree-preservation-order/#paragraph_097)), a replacement tree planted because of the duty under section 206 is automatically protected by the original Order. The local planning authority has powers only to enforce the duty to plant one tree to replace one other. But the authority and landowner may agree on planting, for example, one tree of a different species or two trees of a smaller species to replace one of a large species. In these circumstances the authority is advised to vary the Order to bring it formally up to date.

It may not be necessary (or practical) for the replacement tree to be planted in the exact position of the original tree. But the place should at least correspond with the original position described in the Order and shown on the map. Where the Order includes the area classification

([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-tree-preservation-orders/#paragraph\\_029](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-tree-preservation-orders/#paragraph_029)), although the position of every tree will not be shown, the authority is advised to specify replanting as near as is reasonably practical to the original tree's position.

The duty on the owner of the land is to plant a replacement tree as soon as they reasonably can. However, the authority should carefully consider the circumstances of the case (such as the number of trees involved or the time of year) when deciding what timing would be reasonable.

Section 206(2) of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/206) (<http://www.legislation.gov.uk/ukpga/1990/8/section/206>) gives the authority power to dispense with the duty to plant a replacement tree where the landowner makes an application. Any request for the authority to use this power should be made in writing.

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### **What are the considerations relating to the duty to replace trees protected by a Tree Preservation Order in woodland?**

Section 206(3) of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/206) (<http://www.legislation.gov.uk/ukpga/1990/8/section/206>) restricts the landowner's duty to replace trees subject to the woodland classification to those removed, uprooted or destroyed in contravention of the Order. The duty is to plant the same number of trees:

- on or near the land on which the trees stood, or on such other land as may be agreed between the local planning authority and the landowner, and
- in such places as may be designated by the authority

Where the duty arises under section 206, those trees planted within the woodland specified in the Order will be automatically protected by the original Order. The authority should consider varying the Order or making a new one to protect any replacement trees planted in a location not identified in the original Order.

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### **When can local planning authorities serve a tree replacement notice?**

Section 207 of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/207) (<http://www.legislation.gov.uk/ukpga/1990/8/section/207>) gives local planning authorities the powers to enforce an unfulfilled duty under section 206 to replace trees or woodlands by serving on the landowner a 'tree replacement notice'. The authority may also serve a tree replacement notice to enforce any unfulfilled condition of consent granted under a Tree Preservation Order, or imposed by the Secretary of State on appeal, that requires tree replacement.

However, if the local planning authority believes, in the circumstances, that replacement trees should be planted, it should first try to persuade the landowner to comply with the duty voluntarily. The authority should discuss the issue with the landowner and offer relevant advice.

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### **What should the local planning authority consider when deciding whether to serve a tree replacement notice?**

The local planning authority's power to enforce tree replacement is discretionary. Clearly it must be satisfied that the trees were protected at the time they were removed. The authority should also be satisfied that removed trees within an area classification ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-tree-preservation-orders/#paragraph\\_029](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/making-tree-preservation-orders/#paragraph_029)) were present when the Tree Preservation Order was made.

The local planning authority should also consider:

- the impact on amenity of the removal of trees, and whether it would be in the interests of amenity (and, in woodlands, in accordance with the practice of good forestry) to require their replacement;
- whether it would be reasonable to serve a tree replacement notice in the circumstances of the case; and
- the possibility of a wider deterrent effect.

If the authority decides not to take formal enforcement action it should be prepared to explain its reasons to anyone who would like to see action taken.

In addition, the authority may have to decide an application by a landowner asking it to dispense with the tree replacement duty. The authority should give its decision in writing, setting out its reasons.

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### **What about serving a tree replacement notice relating to Crown land?**

The local planning authority is not required to obtain the prior consent of 'the appropriate authority' [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/293) (<http://www.legislation.gov.uk/ukpga/1990/8/section/293>) before serving a tree replacement notice on a Crown body. However, it is required to secure the consent [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/325A) (<http://www.legislation.gov.uk/ukpga/1990/8/section/325A>) of the appropriate authority before entering Crown land to enforce the notice.

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### **When and how should the local planning authority serve a**

**tree replacement notice?**

The local planning authority can only serve a tree replacement notice within four years from the date of the landowner's failure to replant as soon as he or she reasonably could (see section 207(2) of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/207) (<http://www.legislation.gov.uk/ukpga/1990/8/section/207>)). The notice should be served on the landowner. It may be served electronically if the landowner has provided their electronic address to the authority (see section 329(1)(cc) of the Act [\[3\]](http://www.legislation.gov.uk/ukpga/1990/8/section/329) (<http://www.legislation.gov.uk/ukpga/1990/8/section/329>)).

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**What should be in a tree replacement notice?**

A tree replacement notice should make clear whether it relates to non-compliance with a condition or to a duty under section 206 or 213 of the Town and Country Planning Act 1990. It should explain why the authority is exercising the duty and what the landowner must do to comply with it. It should state:

- what has given rise to the duty;
- whether the notice relates to contravening an Order or a section 211 notice;
- whether the notice relates to complying with a condition of consent;
- the number, size and species of the replacement trees
- where the trees are to be planted (including a plan showing their position);
- the period at the end of which the notice is to take effect (the period specified must be a period of not less than 28 days beginning with the date of service of the notice);
- a date by when the tree replacement notice should be complied with (the authority should consider what the landowner can reasonably do);
- that the landowner can appeal against the notice (further guidance can be found here ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/replacing-protected-trees/#paragraph\\_165](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/replacing-protected-trees/#paragraph_165)) and here ([http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/replacing-protected-trees/#paragraph\\_166](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/replacing-protected-trees/#paragraph_166))).

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**What else can be in a tree replacement notice?**

The local planning authority should consider including in the notice:

- reference to the relevant Order or conservation area
- further information about the landowner's right of appeal against the notice
- an explanation of what will happen if the landowner fails to comply with the notice
- contact details of an authority officer who can deal with queries

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**What can the local planning authority do if a tree replacement notice is not complied with?**

Failure to comply with a tree replacement notice is not an offence. If a tree is not planted within the period specified in the notice the authority may extend the period for compliance with the notice. Section 209 of the Town and Country Planning Act 1990 [\[4\]](http://www.legislation.gov.uk/ukpga/1990/8/section/209) (<http://www.legislation.gov.uk/ukpga/1990/8/section/209>) gives authorities powers to take action where a replacement tree has not been planted within the compliance period or within such extended period as the authority may allow. The authority may go on to the land, plant the tree and recover from the landowner any reasonable expenses incurred. The authority should remind the landowner of the duty before the specified period ends and make clear that it will use its powers if the notice is not complied with.

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### **What happens if someone obstructs enforcement action?**

Under section 209(6) of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/209) (<http://www.legislation.gov.uk/ukpga/1990/8/section/209>) anyone who wilfully obstructs a person acting in the exercise of the local planning authority's power to enter land and plant replacement trees is guilty of an offence. They are liable, if convicted in the Magistrates' Court, to a Level 3 fine (currently up to £1000).

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### **Can the landowner recover costs if someone else has contravened the tree protection legislation?**

Section 209(2) of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/209) (<http://www.legislation.gov.uk/ukpga/1990/8/section/209>) includes a provision enabling the landowner to recover from any other person responsible for the cutting down, destruction or removal of the original tree or trees, as a civil debt, any:

- Expenses incurred for the purposes of complying with a tree replacement notice; or
- Sums paid to the authority for planting replacement trees themselves

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### **What other legislation may apply to enforcement action?**

Regulation 14 of the Town and Country Planning General Regulations 1992 [\[2\]](http://www.legislation.gov.uk/uksi/1992/1492/regulation/14/made) (<http://www.legislation.gov.uk/uksi/1992/1492/regulation/14/made>) applies sections 276 [\[2\]](http://www.legislation.gov.uk/ukpga/Geo5and1Edw8/26/49/section/276) (<http://www.legislation.gov.uk/ukpga/Geo5and1Edw8/26/49/section/276>) (power to sell materials removed during work), 289 [\[2\]](http://www.legislation.gov.uk/ukpga/Geo5and1Edw8/26/49/section/289) (<http://www.legislation.gov.uk/ukpga/Geo5and1Edw8/26/49/section/289>) (power to require occupiers to allow work to be carried out by the owner) and 294 [\[2\]](http://www.legislation.gov.uk/ukpga/Geo5and1Edw8/26/49/section/294) (<http://www.legislation.gov.uk/ukpga/Geo5and1Edw8/26/49/section/294>) (limit on liability of agents or trustees) of the Public Health Act 1936 to tree replacement notices.

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### **Is there a right of appeal against a tree replacement notice?**

Section 208 of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/208) (<http://www.legislation.gov.uk/ukpga/1990/8/section/208>), as amended, sets out provisions relating to appeals to the Secretary of State against tree replacement notices. Appeals must be made to the Planning Inspectorate, which handles appeals on behalf of the Secretary of State, before the notice takes effect. The Planning Inspectorate's detailed guidance on making an appeal and the associated form are available on the Planning Portal [\[2\]](http://www.planningportal.gov.uk/planning/appeals/treepreservation) (<http://www.planningportal.gov.uk/planning/appeals/treepreservation>) website.

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### **Can the appeal decision be challenged?**

The appellant or the authority may appeal to the High Court against the Secretary of State's decision on an appeal against a tree replacement notice (see section 289(2) of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/289) (<http://www.legislation.gov.uk/ukpga/1990/8/section/289>)) on a point of law. Details on High Court challenges are in the Planning Inspectorate's guidance on tree replacement appeals, which is available on the Planning Portal [\[2\]](http://www.planningportal.gov.uk/planning/appeals/treepreservation) (<http://www.planningportal.gov.uk/planning/appeals/treepreservation>) website.

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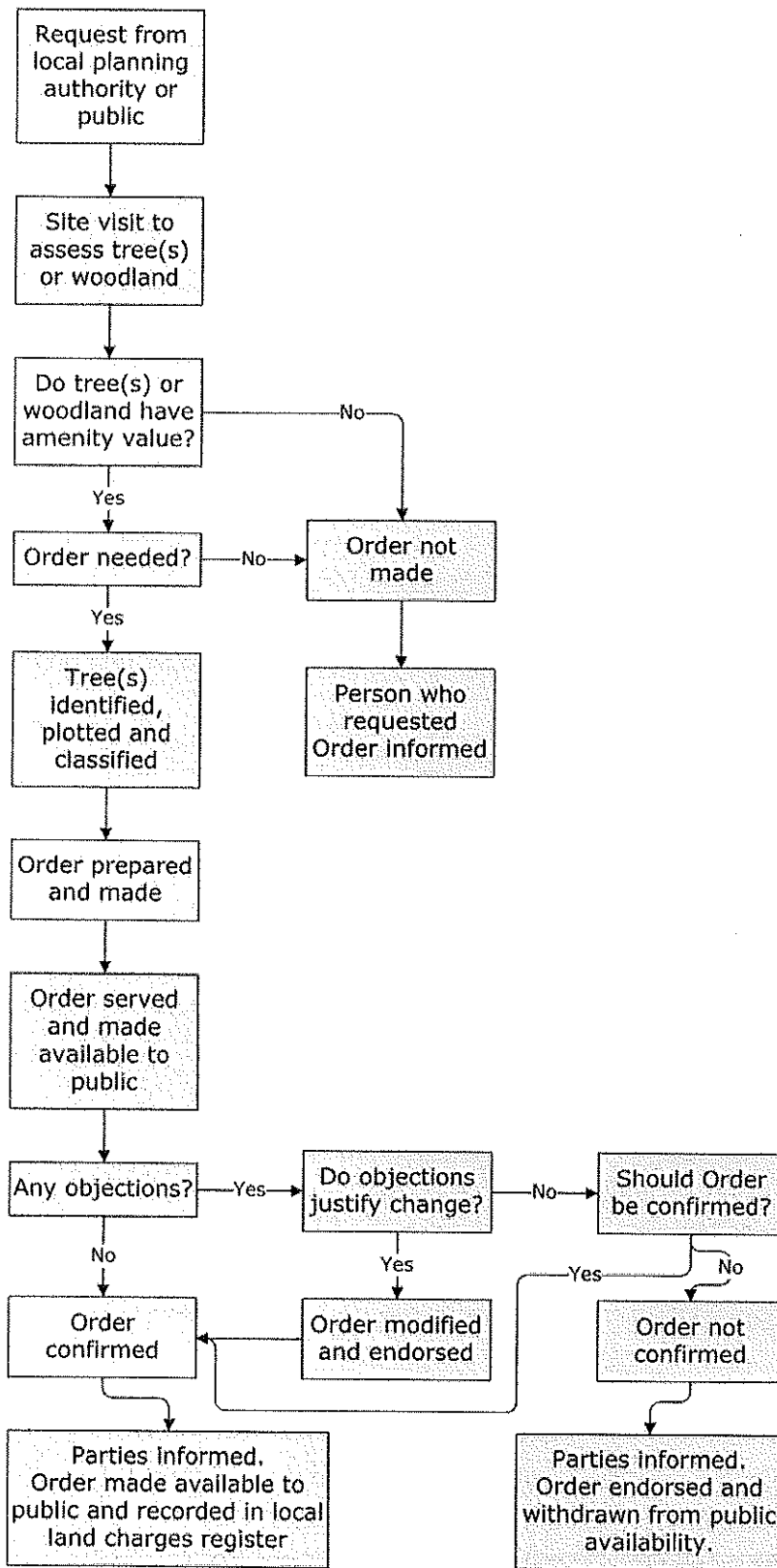
14. Annex A: Flowcharts (<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/annex-a-flowcharts/>)

## Annex A: Flowcharts

- Flowchart 1: Making and confirming a Tree Preservation Order  
(<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/annex-a-flowcharts/flowchart-1-making-and-confirming-a-tree-preservation-order/>)
  - Flowchart 2: Varying or revoking a Tree Preservation Order  
(<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/annex-a-flowcharts/flowchart-2-varying-or-revoking-a-tree-preservation-order/>)
  - Flowchart 3: Applications to carry out work on trees protected by a Tree Preservation Order  
(<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/annex-a-flowcharts/flowchart-3-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/>)
  - Flowchart 4: Compensation  
(<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/annex-a-flowcharts/flowchart-4-compensation/>)
  - Flowchart 5: Notices for work to trees in a conservation area  
(<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/annex-a-flowcharts/flowchart-5-notices-for-work-to-trees-in-a-conservation-area/>)
  - Flowchart 6: Offences  
(<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/annex-a-flowcharts/flowchart-6-offences/>)
  - Flowchart 7: Tree replacement  
(<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/annex-a-flowcharts/flowchart-7-tree-replacement/>)
- 
- Flowchart 1: Making and confirming a Tree Preservation Order  
(<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/annex-a-flowcharts/flowchart-1-making-and-confirming-a-tree-preservation-order/>)

### Flowchart 1: Making and confirming a Tree Preservation Order





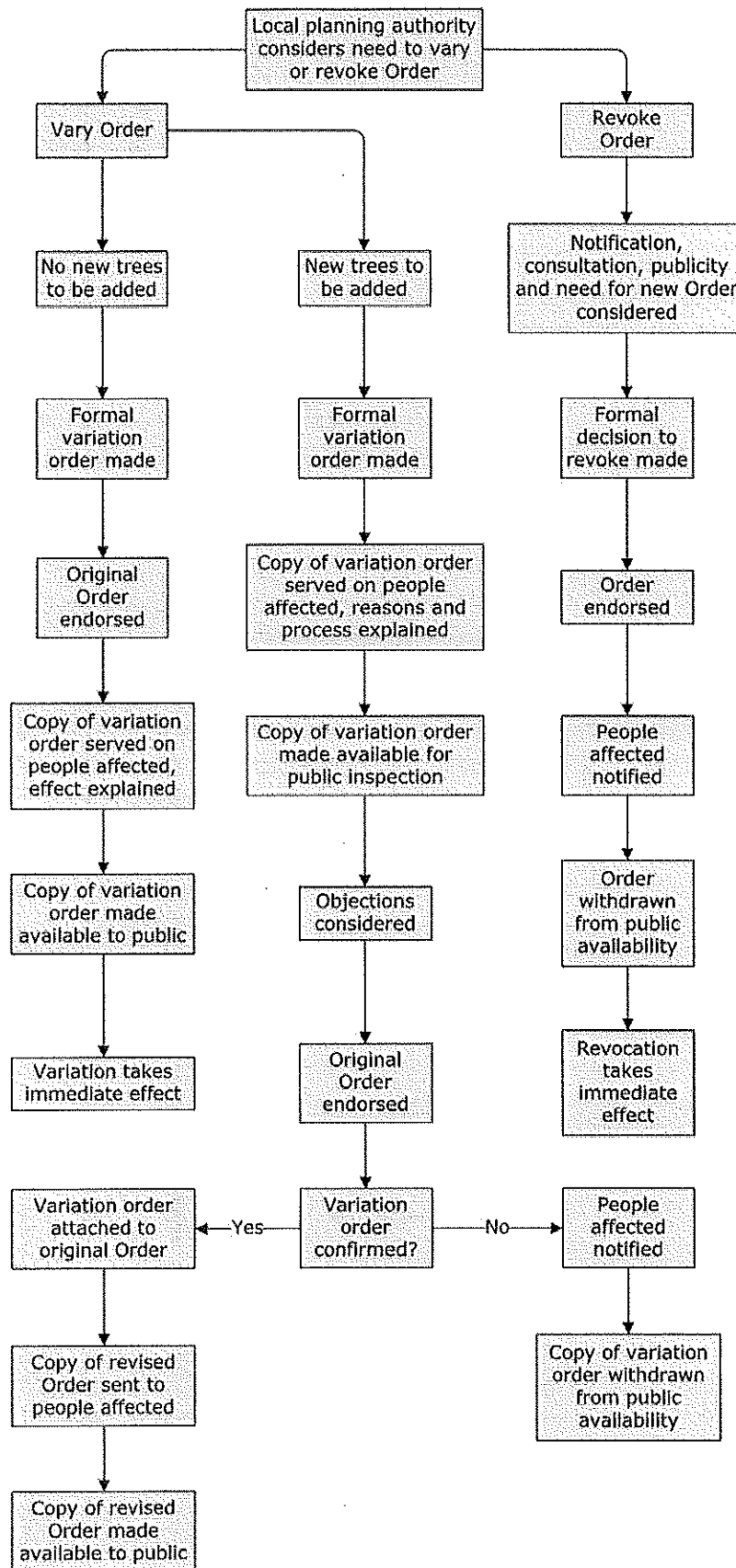
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• Flowchart 2: Varying or revoking a Tree Preservation Order

(<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/annex-a-flowcharts/flowchart-2-varying-or-revoking-a-tree-preservation-order/>)

**Flowchart 2: Varying or revoking a Tree Preservation Order**

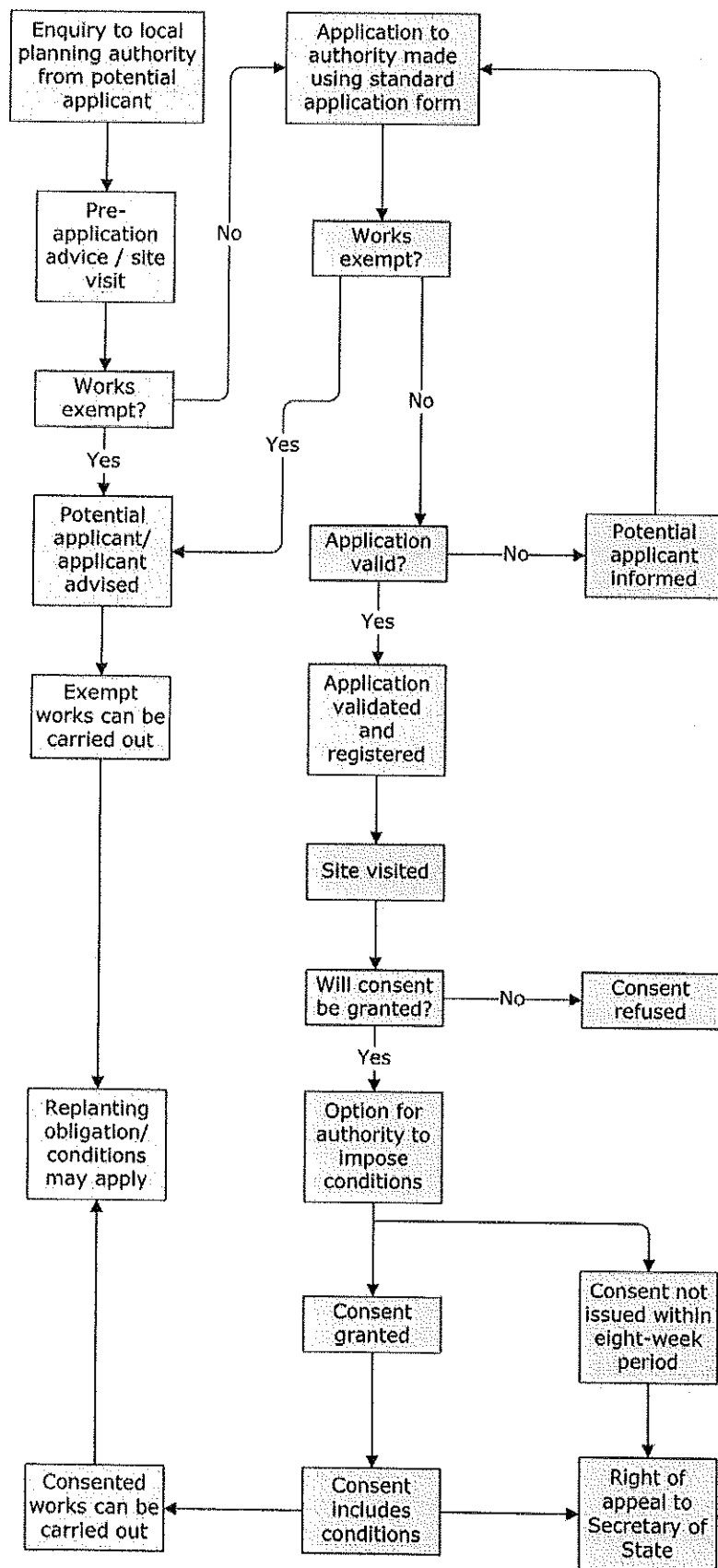


(<http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/tpo2.jpg>)

ID 36-168-20140306 Last updated 06 03 2014

- Flowchart 3: Applications to carry out work on trees protected by a Tree Preservation Order (<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/annex-a-flowcharts/flowchart-3-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/>)

**Flowchart 3: Applications to carry out work on trees protected by a Tree Preservation Order**

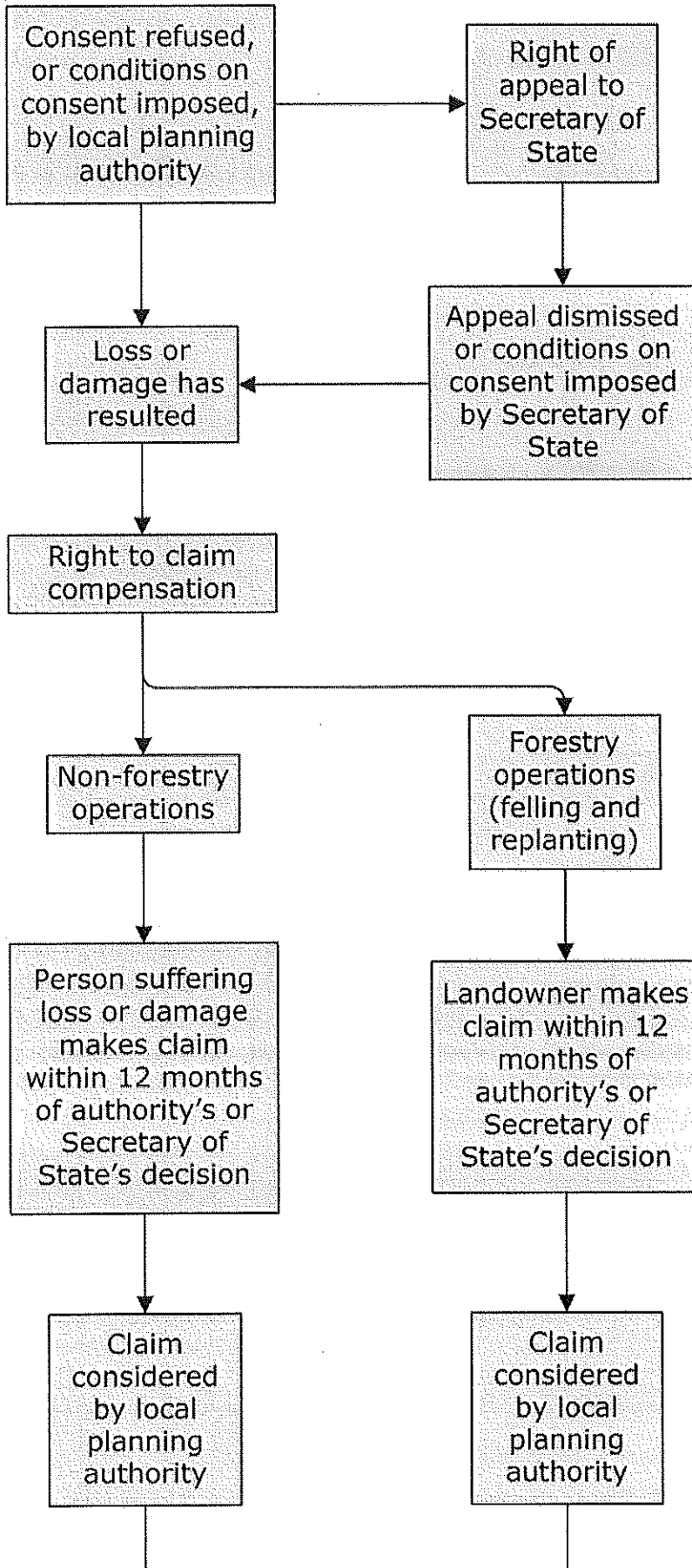


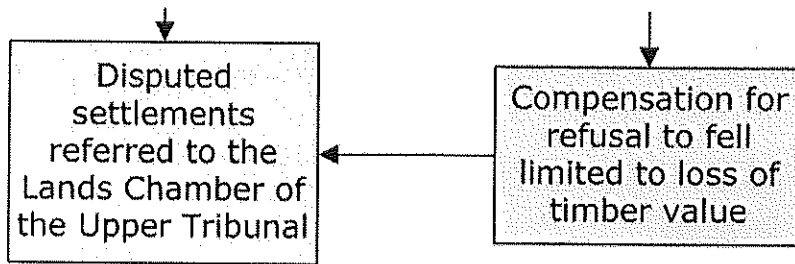
(<http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/tpo3.jpg>)

ID 36-169-20140306 Last updated 06 03 2014

- Flowchart 4: Compensation (<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/annex-a-flowcharts/flowchart-4-compensation/>)

**Flowchart 4: Compensation**





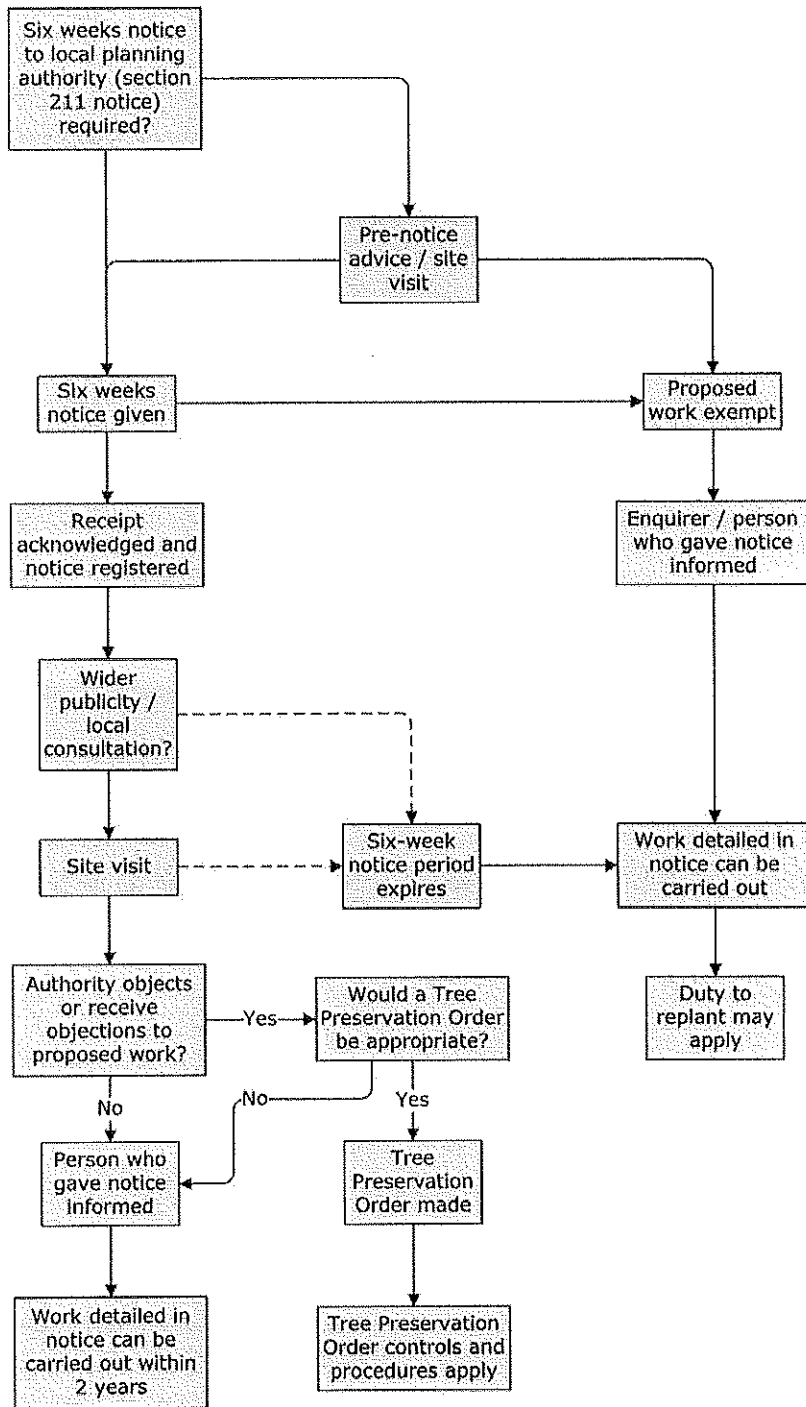
(<http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/tpo4.jpg>)

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- **Flowchart 5: Notices for work to trees in a conservation area**

(<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/annex-a-flowcharts/flowchart-5-notices-for-work-to-trees-in-a-conservation-area/>)

**Flowchart 5: Notices for work to trees in a conservation area**

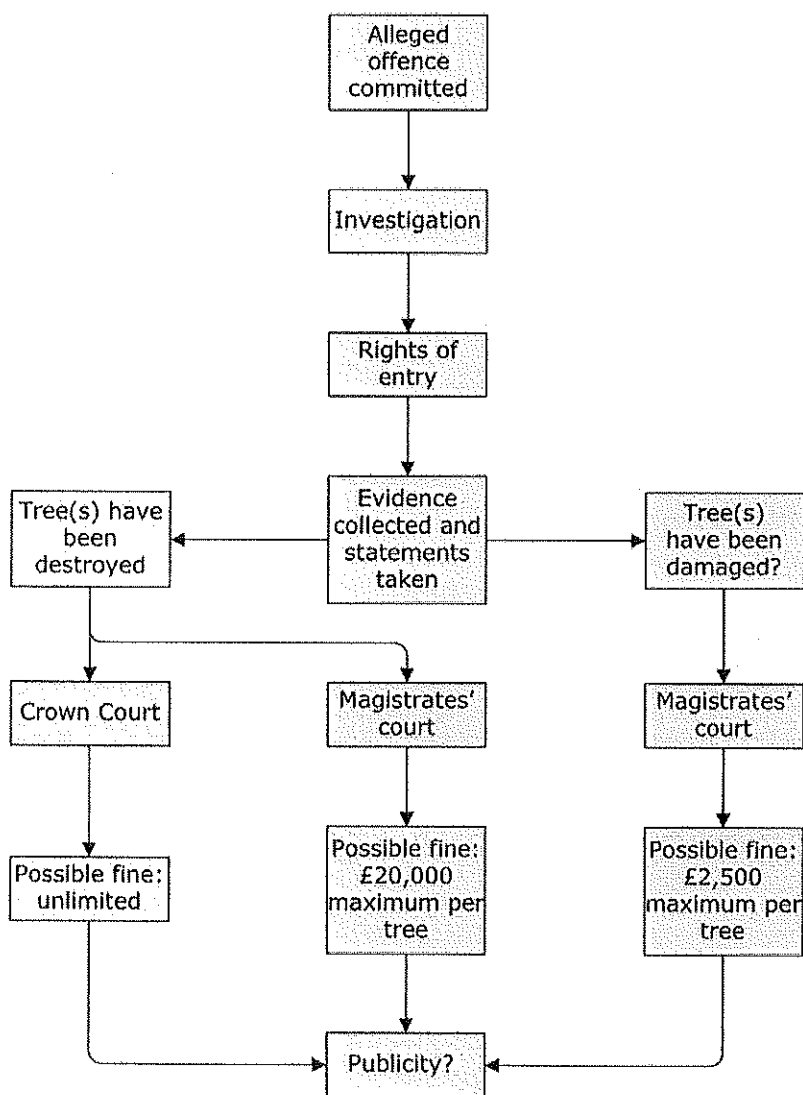


(<http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/tpo5.jpg>)

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- Flowchart 6: Offences (<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/annex-a-flowcharts/flowchart-6-offences/>)

**Flowchart 6: Offences**

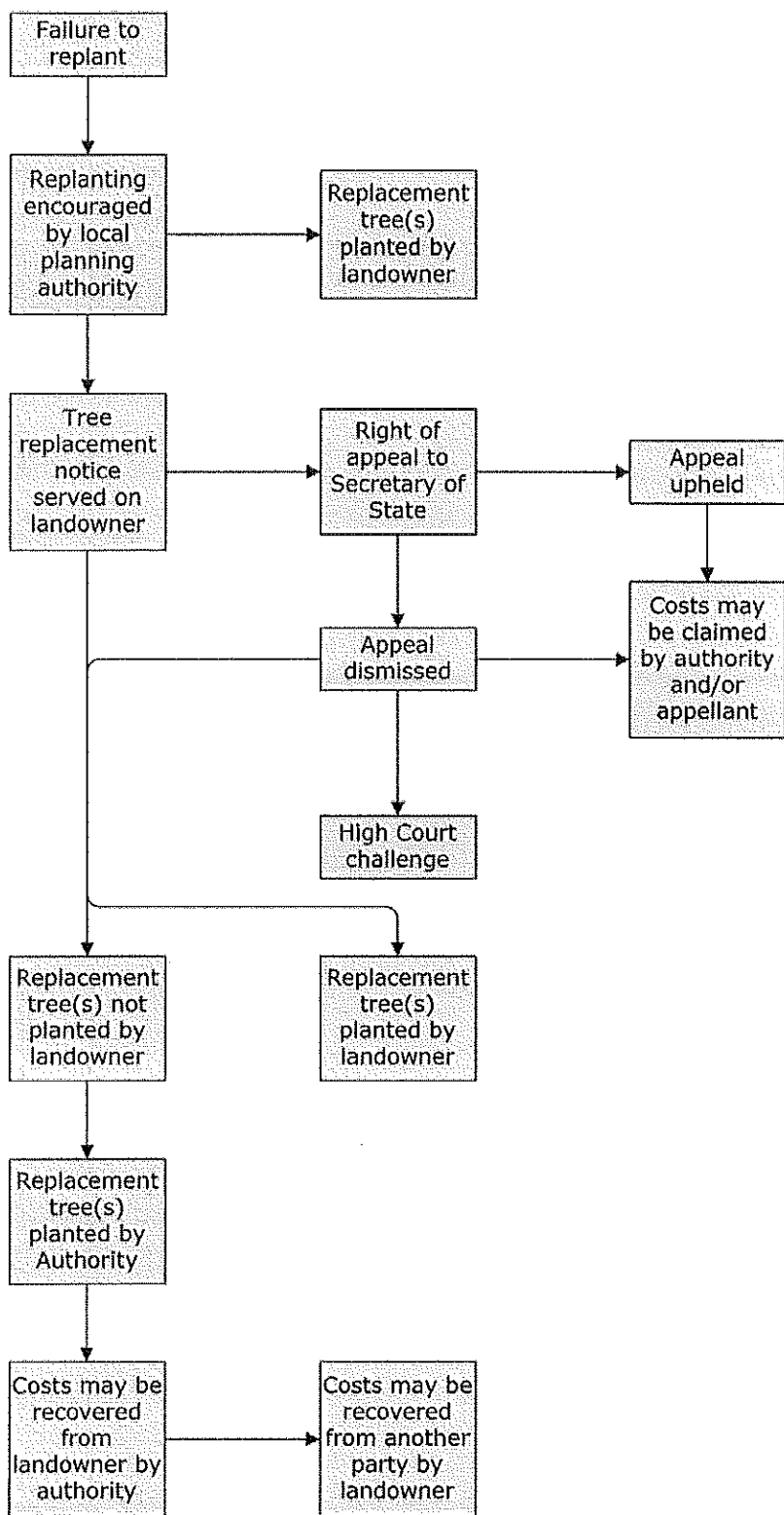


(<http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/tpo6.jpg>)

ID 36-172-20140306 Last updated 06 03 2014

- Flowchart 7: Tree replacement (<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/annex-a-flowcharts/flowchart-7-tree-replacement/>)

**Flowchart 7: Tree replacement**




<http://planningguidance.communities.gov.uk/wp-content/uploads/2014/02/tpo7.jpg>

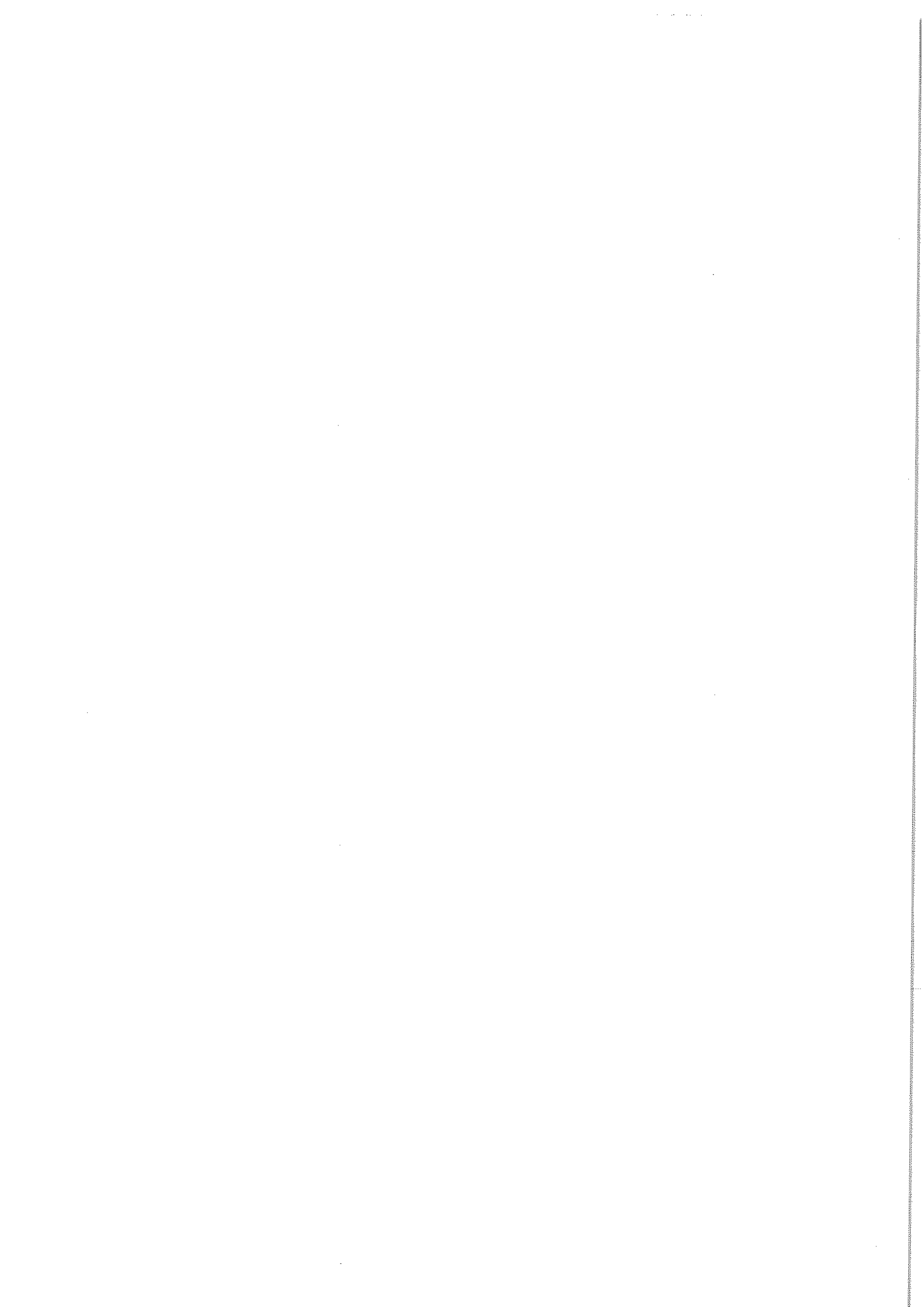
ID 36-173-20140306 Last updated 06 03 2014

Return to Tree Preservation Orders and trees in conservation areas

<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/annex-a-flowcharts/>



 Department for Communities & Local Government  
(<https://www.gov.uk/government/organisations/department-for-communities-and-local-government>)



# Planning Practice Guidance [\(http://planningguidance.communities.gov.uk\)](http://planningguidance.communities.gov.uk)

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Guidance

## Use of Planning Conditions

Print 

1. Why and how are conditions imposed? (<http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/why-and-how-are-conditions-imposed/>)

### Why and how are conditions imposed?

#### Why are conditions imposed on a planning permission?

When used properly, conditions can enhance the quality of development and enable development proposals to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects of the development. The objectives of planning are best served when the power to attach conditions to a planning permission is exercised in a way that is clearly seen to be fair, reasonable and practicable. It is important to ensure that conditions are tailored to tackle specific problems, rather than standardised or used to impose broad unnecessary controls.

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### What are the main legal powers relating to use of conditions?

The main powers relating to local planning authority use of conditions are in Sections 70, 72, 73, 73A, and Schedule 5 of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/70) (<http://www.legislation.gov.uk/ukpga/1990/8/section/70>). Powers to impose conditions on appeal are also given to the Secretaries of State or their Inspectors by sections 77, 79, 177, and Schedule 6 of the Act [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/77) (<http://www.legislation.gov.uk/ukpga/1990/8/section/77>). In some areas there may also be powers under local Acts which complement or vary the powers in the 1990 Act.

Section 70(1)(a) of the Act [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/70) (<http://www.legislation.gov.uk/ukpga/1990/8/section/70>) enables the local planning authority in granting planning permission to impose "such conditions as they think fit". This power must be interpreted in light of material factors such as the National Planning Policy Framework, this supporting guidance on the use of conditions, and relevant case law.

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2. Application of the six tests in National Planning Policy Framework policy (<http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/application-of-the-six-tests-in-nppf-policy/>)

### Application of the six tests in National Planning Policy Framework policy

#### What is the Government's policy on the use of conditions in planning permissions?

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#### Related policy

National Planning Policy Framework

Paragraph 203 of the National Planning Policy Framework ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/decision-taking/#paragraph\\_203](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/decision-taking/#paragraph_203)) states “Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions”

- Paragraph 203 ([http://planningguidance.com/sustainable-development/decision-taking/#paragraph\\_203](http://planningguidance.com/sustainable-development/decision-taking/#paragraph_203))

Paragraph 206 of the National Planning Policy Framework ([http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/decision-taking/#paragraph\\_206](http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/decision-taking/#paragraph_206)) states “Planning conditions should only be imposed where they are:

- Paragraph 206 ([http://planningguidance.com/sustainable-development/decision-taking/#paragraph\\_206](http://planningguidance.com/sustainable-development/decision-taking/#paragraph_206))

- **necessary;**
- **relevant to planning and;**
- **to the development to be permitted;**
- **enforceable;**
- **precise and;**
- **reasonable in all other respects.”**

The policy requirement above is referred to in this guidance as the **six tests**.

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### **How does the Local Planning Authority ensure that the six tests in paragraph 206 of the National Planning Policy Framework have been met?**

Whether it is appropriate for the Local Planning Authority to impose a condition on a grant of planning permission will depend on the specifics of the case. Conditions should help to deliver development plan policy and accord with the requirements of the National Planning Policy Framework, including satisfying the six tests for conditions.

The six tests must all be satisfied each time a decision to grant planning permission subject to conditions is made. The tests are set out below, alongside key considerations:

TEST	KEY QUESTIONS
Necessary	<p><b>Will it be appropriate to refuse planning permission without the requirements imposed by the condition?</b></p> <ul style="list-style-type: none"> <li>• A condition must not be imposed unless there is a definite planning reason for it, ie it is needed to make the development acceptable in planning terms.</li> <li>• If a condition is wider in scope than is necessary to achieve the desired objective it will fail the test of necessity.</li> </ul>

<p><b>Relevant to planning</b></p>	<p><b>Does the condition relate to planning objectives and is it within the scope of the permission to which it is to be attached?</b></p> <ul style="list-style-type: none"> <li>• A condition must not be used to control matters that are subject to specific control elsewhere in planning legislation (for example, advertisement control, listed building consents, or tree preservation).</li> <li>• Specific controls outside planning legislation may provide an alternative means of managing certain matters (for example, works on public highways often require highways' consent).</li> </ul>
<p><b>Relevant to the development to be permitted</b></p>	<p><b>Does the condition fairly and reasonably relate to the development to be permitted?</b></p> <ul style="list-style-type: none"> <li>• It is not sufficient that a condition is related to planning objectives: it must also be justified by the nature or impact of the development permitted.</li> <li>• A condition cannot be imposed in order to remedy a pre-existing problem or issue not created by the proposed development.</li> </ul>
<p><b>Enforceable</b></p>	<p><b>Would it be practicably possible to enforce the condition?</b></p> <ul style="list-style-type: none"> <li>• Unenforceable conditions include those for which it would, in practice, be impossible to detect a contravention or remedy any breach of the condition, or those concerned with matters over which the applicant has no control.</li> </ul>
<p><b>Precise</b></p>	<p><b>Is the condition written in a way that makes it clear to the applicant and others what must be done to comply with it?</b></p> <ul style="list-style-type: none"> <li>• Poorly worded conditions are those that do not clearly state what is required and when must not be used.</li> </ul>
<p><b>Reasonable in all other respects</b></p>	<p><b>Is the condition reasonable?</b></p> <ul style="list-style-type: none"> <li>• Conditions which place unjustifiable and disproportionate burdens on an applicant will fail the test of reasonableness.</li> <li>• Unreasonable conditions cannot be used to make development that is unacceptable in planning terms acceptable.</li> </ul>

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### 3. What approach should be taken to imposing conditions?

(<http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/what-approach-should-be-taken-to-imposing-conditions/>)

#### What approach should be taken to imposing conditions?

#### Are there any circumstances where planning conditions should not be used?

Any proposed condition that fails to meet any of the six tests (<http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/application-of-the-six-tests-in-nppf-policy/>) should not be used. This applies even if the applicant suggests it or agrees on its terms or it is suggested by the members of a planning committee or a third party. Every condition must always be justified by the local planning authority on its own planning merits on a case by case basis. Specific circumstances where conditions should not be used include:

- **Conditions which unreasonably impact on the deliverability of a development:** Conditions which place unjustifiable and disproportionate financial burdens on an applicant will fail the test of reasonableness. In considering issues around viability, local planning authorities should consider policies in the National Planning Policy Framework and supporting guidance on viability (<http://planningguidance.communities.gov.uk/blog/guidance/viability-guidance/>).
- **Conditions reserving outline application details:** Where details have been submitted as part of an outline application, they must be treated by the local planning authority as forming part of the development for which the application is being made. Conditions cannot be used to reserve these details for subsequent approval. The exception is where the applicant has made it clear that the details have been submitted for illustration purposes only.
- **Conditions requiring the development to be carried out in its entirety:** Conditions requiring a development to be carried out in its entirety will fail the test of necessity by requiring more than is needed to deal with the problem they are designed to solve. Such a condition is also likely to be difficult to enforce due to the range of external factors that can influence a decision whether or not to carry out and complete a development.
- **Conditions requiring compliance with other regulatory requirements (e.g. Building Regulations, Environmental Protection Act):** Conditions requiring compliance with other regulatory regimes will not meet the test of necessity and may not be relevant to planning.
- **Conditions requiring land to be given up:** Conditions cannot require that land is formally given up (or ceded) to other parties, such as the Highway Authority.
- **Positively worded conditions requiring payment of money or other consideration:** No payment of money or other consideration can be positively required when granting planning permission. However, where the six tests (<http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/application-of-the-six-tests-in-nppf-policy/>) will be met, it may be possible use a negatively worded condition to prohibit development authorised by the planning permission until a specified action has been taken (for example, the entering into of a planning obligation requiring the payment of a financial contribution towards the provision of supporting infrastructure).

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#### Can conditions be used to require the applicant to submit

**further details after permission has been granted?**

For non outline applications, other than where it will clearly assist with the efficient and effective delivery of development, it is important that the local planning authority limits the use of conditions requiring their approval of further matters after permission has been granted. Where it is justified, the ability to impose conditions requiring submission and approval of further details extends to aspects of the development that are not fully described in the application (e.g. provision of car parking spaces).

Where it is practicable to do so, such conditions should be discussed with the applicant before permission is granted to ensure that unreasonable burdens are not being imposed. The local planning authority should ensure that the timing of submission of any further details meets with the planned sequence for developing the site. Conditions that unnecessarily affect an applicant's ability to bring a development into use, allow a development to be occupied or otherwise impact on the proper implementation of the planning permission should not be used. A condition requiring the re-submission and approval of details that have already been submitted as part of the planning application is unlikely to pass the test of necessity.

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**When can conditions be used that prevent any development until the requirements of the condition have been met (conditions precedent)?**

Care should be taken when considering using conditions that prevent **any** development authorised by the planning permission from beginning until the condition has been complied with. This includes conditions stating that 'no development shall take place until...' or 'prior to any works starting on site...'.

Such conditions should only be used where the local planning authority is satisfied that the requirements of the condition (including the timing of compliance) are so fundamental to the development permitted that it would have been otherwise necessary to refuse the whole permission. A condition precedent that does not meet the legal and policy tests may be found to be unlawful by the courts and therefore cannot be enforced by the local planning authority if it is breached. Development carried out without having complied with a condition precedent would be unlawful and may be the subject of enforcement action.

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**Can conditions be used to stipulate the sequence that development should be carried out in (phasing)?**

Where the circumstances of the application make this necessary and the six tests (<http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/application-of-the-six-tests-in-nppf-policy/>) will be met, conditions can be imposed to ensure that development proceeds in a certain sequence. Conditions may also be used to ensure that a particular element in a scheme is provided by/at a particular stage or before the scheme is brought into use.

It is important that the local planning authority and the applicant discuss and seek to agree any such conditions before planning permission is granted. This is in order to understand how the requirements would fit into the planned sequence for developing the site, impacts on viability, and whether the tests of reasonableness and necessity will be met.

Guidance on multi-stage consents and Environmental Impact Assessment can be found here

(<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/considering-and-determining-planning-applications-that-have-been-subject-to-an-environmental-impact-assessment/multi-stage-consents/>).

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### **When can conditions be used relating to land not in control of the applicant?**

Conditions requiring works on land that is not controlled by the applicant, or that requires the consent or authorisation of another person or body often fail the tests of reasonableness and enforceability. It may be possible to achieve a similar result using a condition worded in a negative form (a *Grampian* condition) – i.e. prohibiting development authorised by the planning permission or other aspects linked to the planning permission (e.g. occupation of premises) until a specified action has been taken (such as the provision of supporting infrastructure). Such conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission.

Where the land or specified action in question is within the control of the local authority determining the application (for example, as highway authority where supporting infrastructure is required) the authority should be able to present clear evidence that this test will be met before the condition is imposed.

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### **Is it possible to use a condition to require an applicant to enter into a planning obligation or an agreement under other powers?**

Planning permission should not be granted subject to a positively worded condition that requires the applicant to enter into a planning obligation under Section 106 of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/106) (<http://www.legislation.gov.uk/ukpga/1990/8/section/106>) or an agreement under other powers. Such a condition is unlikely to pass the test of enforceability.

A negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. Ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed. It encourages the parties to finalise the planning obligation or other agreement in a timely manner and is important in the interests of maintaining transparency.

However, in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk. In such cases the six tests (<http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/application-of-the-six-tests-in-nppf-policy/>) must also be met.

Where consideration is given to using a negatively worded condition, it is important that the local planning authority discusses with the applicant before planning permission is granted the need for a planning obligation or other agreement and the appropriateness of using a condition. The heads of terms or principal terms need to be agreed prior to planning permission being granted to ensure that the test of necessity is met and in the interests of transparency.



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### **What about cases where the same objective can be met using either a condition or a planning obligation?**

It may be possible to overcome a planning objection to a development proposal equally well by imposing a condition on the planning permission or by entering into a planning obligation under section 106 of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/106) (<http://www.legislation.gov.uk/ukpga/1990/8/section/106>). In such cases the local planning authority should use a condition rather than seeking to deal with the matter by means of a planning obligation.

ID 21a-011-20140306 Last updated 06 03 2014

### **Can conditions be used to modify plans and other details submitted with an application?**

If a detail in a proposed development, or the lack of it, is unacceptable in planning terms the best course of action will often be for the applicant to be invited to revise the application. Where this involves significant changes this may result in the need for a fresh planning application.

Depending on the case, it may be possible for the local planning authority to impose a condition making a minor modification to the development permitted. A condition that modifies the development in such a way as to make it substantially different from that set out in the application should not be used.

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### **Can conditions be used to limit the grant of planning permission to only part of the development proposed (a split decision)?**

Express powers to issue split decisions are given to the Secretary of State and Inspectors in Section 79 of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/79) (<http://www.legislation.gov.uk/ukpga/1990/8/section/79>).

In cases where the local planning authority considers part of the development to be unacceptable, it will normally be best to seek amended details from the applicant prior to a decision being made. In exceptional circumstances it may be appropriate to use a condition to grant permission for only part of the development. Such conditions should only be used where the acceptable and unacceptable parts of the proposal are clearly distinguishable and with the agreement of the applicant.

ID 21a-013-20140306 Last updated 06 03 2014

### **When can conditions be used to grant planning permission for a use for a temporary period only?**

Under section 72 of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/72) (<http://www.legislation.gov.uk/ukpga/1990/8/section/72>) the local planning authority may grant planning permission for a specified temporary period only. A condition limiting use to a temporary period only where the proposed development complies with the development plan, or where material considerations indicate otherwise that planning permission should be granted, will rarely pass the test of necessity.

Circumstances where a temporary permission may be appropriate include where a trial run is needed in order to assess the effect of the development on the area or where it is expected that the planning circumstances will change in a particular way at the end of that period.

A temporary planning permission may also be appropriate on vacant land/buildings to enable use for a temporary period prior to any longer term regeneration plans coming forward (a meanwhile use) or more generally to encourage empty property to be brought back into use. This can benefit an area by increasing activity.

It will rarely be justifiable to grant a second temporary permission – further permissions should normally be granted permanently or refused if there is clear justification for doing so. There is no presumption that a temporary grant of planning of planning permission should be granted permanently.

A condition requiring the demolition after a stated period of a building that is clearly intended to be permanent is unlikely to pass the test of reasonableness. Conditions requiring demolition of buildings which are imposed on planning permissions for change of use are unlikely to relate fairly and reasonably to the development permitted.

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### **Is it appropriate to use conditions to limit the benefits of the planning permission to a particular person or group of people?**

Unless the permission otherwise provides, planning permission runs with the land and it is rarely appropriate to provide otherwise. There may be exceptional occasions where granting planning permission for development that would not normally be permitted on the site could be justified on planning grounds because of who would benefit from the permission. For example, conditions limiting benefits to a particular class of people, such as new residential accommodation in the open countryside for agricultural or forestry workers, may be justified on the grounds that an applicant has successfully demonstrated an exceptional need.

A condition used to grant planning permission solely on grounds of an individual's personal circumstances will scarcely ever be justified in the case of permission for the erection of a permanent building, but might, for example, result from enforcement action which would otherwise cause individual hardship.

A condition limiting the benefit of the permission to a company is inappropriate because its shares can be transferred to other persons without affecting the legal personality of the company.

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### **What about conditions that are requested by third parties?**

Third parties such as statutory consultees can suggest conditions to mitigate potential impacts and make a development acceptable in planning terms. The decision as to whether it is appropriate to impose such conditions rests with the local planning authority. As with any condition, the local planning authority should consider whether the six tests

(<http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/application-of-the-six-tests-in-nppf-policy/>) will be met. Where third parties suggest conditions it is essential for them to first consider whether the six tests (<http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/application-of-the-six-tests-in-nppf-policy/>) will be met on a case by case basis with reference to the facts of the proposal under consideration. Blanket standard conditions should not be used without proper consideration of whether they are necessary, and if so, how they would apply to the case in question.

It is not appropriate to require in a condition that a development/requirement should be carried out to the satisfaction of a third party as this decision rests with the local planning authority.

ID 21a-016-20140306 Last updated 06 03 2014

### **Is it appropriate to use conditions to restrict the future use of permitted development rights or changes of use?**

Conditions restricting the future use of permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances. The scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the Town and Country Planning (General Permitted Development) (England) Order 2015 [\[2\]](http://www.legislation.gov.uk/ukSI/2015/596/contents/made) (<http://www.legislation.gov.uk/ukSI/2015/596/contents/made>), so that it is clear exactly which rights have been limited or withdrawn. Area wide or blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity. The local planning authority also has powers under Article 4 [\[2\]](http://www.legislation.gov.uk/ukSI/2015/596/article/4/made) (<http://www.legislation.gov.uk/ukSI/2015/596/article/4/made>) of the Town and Country Planning (General Permitted Development) (England) Order 2015 to enable them to withdraw permitted development rights across a defined area.

ID 21a-017-20140306 Last updated 06 03 2014

### **How can both the local planning authority and the applicant reduce the need for conditions?**

Rigorous application of the six tests (<http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/application-of-the-six-tests-in-nppf-policy/>) can reduce the need for conditions and it is good practice to keep the number of conditions to a minimum wherever possible. Front loading and positive dialogue between the local planning authority and the applicant can also result in planning permission being granted with fewer conditions attached. Effective pre-application discussions can help to establish early in the process what may need to be the subject of conditions. An applicant may, where it is feasible to do so, seek approval at the application stage for matters which may otherwise have been the subject of conditions. This can reduce potential delays between the decision being taken and development taking place on site.

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### **Should the local planning authority agree conditions with an applicant before imposing them?**

It is best practice for a local planning authority to agree proposed conditions with an applicant before a decision is taken, and as early in the planning application process as possible. It is equally open to both the local planning authority and the applicant to initiate discussions about conditions. Agreeing conditions early is beneficial to all parties involved in the process. It can increase the certainty of what is proposed and how it is to be controlled, including highlighting any condition requirements that may impact on the implementation of the development.

A Planning Performance Agreement can also be used to set a timetable for when discussions about conditions should take place.

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### **Is it acceptable for a local planning authority to explain in their Local Plan where conditions may be used?**

Identifying the circumstances in the Local Plan where consideration will be given to using conditions can add certainty to the process. However, it is still necessary to consider whether conditions would be justified in the particular circumstances of each proposed development, as a Local Plan policy cannot be used to justify a condition that does not meet the six tests (<http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/application-of-the-six-tests-in-nppf-policy/>).

ID 21a-020-20140306 Last updated 06 03 2014

### **Can a local planning authority use model conditions?**

Model conditions can improve the efficiency of the planning process. Such conditions should not be applied in a rigid way and without regard to whether the six tests (<http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/application-of-the-six-tests-in-nppf-policy/>) will be met. It is recommended that local planning authorities use national model conditions where appropriate in the interests of maintaining consistency. [Note – a link to national model conditions will be provided when the present PINs/DCLG models have been updated].

ID 21b-021-20140306 Last updated 06 03 2014

### **Can conditions be used to specify the application drawings and other details which form part of the permission?**

Specifying the application drawings and other details which form part of the permission is best practice and creates certainty for all parties, particularly where applications have been subject to a number of revisions.

ID 21a-022-20140306 Last updated 06 03 2014

### **Does the local planning authority need to give reasons for imposing conditions?**

Clear and precise reasons must be given by the local planning authority for the imposition of every condition.

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### **How should a local planning authority order conditions on decision notices?**

In addition to precise drafting, clear ordering of conditions on a decision notice is essential to ensuring that they are understood. It is good practice to list the conditions in the order that they need to be satisfied. A good structure is:

- the standard time limit condition for commencement of development
- the details and drawings subject to which the planning permission is granted
- any pre-commencement conditions
- any pre-occupancy or other stage conditions
- any conditions relating to post occupancy monitoring and management.

ID 21a-024-20140306 Last updated 06 03 2014

### **Can conditions be attached to reserved matters applications relating to outline planning permissions?**

Conditions relating to anything other than the matters to be reserved can only be imposed when outline planning permission is granted. The only conditions which can be imposed when the reserved matters are approved are conditions which directly relate to those reserved matters.

ID 21a-025-20140306 Last updated 06 03 2014

### **What status do informative notes appended to decision notices have?**

Informative notes allow the local planning authority to draw an applicant's attention to other relevant matters – for example the requirement to seek additional consents under other regimes. Informative notes do not carry any legal weight and cannot be used in lieu of planning conditions or a legal obligation to try and ensure adequate means of control for planning purposes

ID 21a-026-20140306 Last updated 06 03 2014

#### **4. Conditions relating to time limits (<http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/conditions-relating-to-time-limits/>)**

### **Conditions relating to time limits**

#### **Should conditions be used to specify the time limit within which development granted planning permission must begin?**

Under section 91 Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/91) (<http://www.legislation.gov.uk/ukpga/1990/8/section/91>) if the local planning authority grants planning permission it is subject to a condition that specifies the time limit within which the development must begin.

The relevant time limit for beginning the development is not later than the expiration of:

- three years beginning with the date on which the permission is granted, or;
- such other period (whether longer or shorter) as the local planning authority may impose.

The local planning authority may wish to consider whether a variation in the time period could assist in the delivery of development. For example, a shorter time period may be appropriate where it would encourage the commencement of development and non-commencement has previously had negative impacts. A longer time period may be justified for very complex projects where there is evidence that three years is not long enough to allow all the necessary preparations to be completed before development can start.

ID 21a-027-20140306 Last updated 06 03 2014

### **What about time limits for outline planning permissions?**

Under section 92 Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/1990/8/section/92) (<http://www.legislation.gov.uk/ukpga/1990/8/section/92>), outline planning permission should be made subject to conditions imposing two types of time-limit, one within which applications must be made for the approval of reserved matters and a second within which the development itself must be started. If the local planning authority considers it appropriate on planning grounds they may use longer or shorter periods, but must clearly give their justification for doing so.

ID 21a-028-20140306 Last updated 06 03 2014

## What happens if planning permission is granted but there is no condition specifying the time limit within which development must begin?

Where planning permission is granted and the decision notice does not include a condition stating the time limit within which development must begin, it is deemed to be granted subject to the condition that the development to which it relates must be begun not later than the expiration of:

- **in the case of applications for planning permission:** three years from the date on which permission was granted
- **in the case of outline planning permission:** three years from the date on which permission was granted to submit all reserved matters, and development to begin within two years of the date on which the final reserved matters are approved.

ID 2a-029-20140306 Last updated 06 03 2014

## 5. Discharging and modifying conditions once planning permission is granted

(<http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/discharging-and-modifying-conditions-once-planning-permission-is-granted/>)

### Discharging and modifying conditions once planning permission is granted

#### Will conditions on planning permissions affect future purchasers of the land?

Unless the permission otherwise states, planning permission runs with the land and any conditions imposed on the permission will bind future owners.

ID 21a-030-20140306 Last updated 06 03 2014

## What options are available to an owner who does not wish to comply with a condition?


Following the decision of a local planning authority to grant planning permission subject to conditions, a developer may consider taking the following actions if they do not wish to be subject to a condition:

- Some or all of the conditions could be removed or changed by making an application to the local planning authority under section 73 of the Town and Country Planning Act 1990 [ⓧ](file://localhost/link%20-%20http://www.legislation.gov.uk/ukpga:1990:8:section:73) (file://localhost/link%20-%20http://www.legislation.gov.uk/ukpga:1990:8:section:73). In deciding an application under section 73, the local planning authority must only consider the disputed condition/s that are the subject of the application – it is not a complete re-consideration of the application. A local planning authority decision to refuse an application under section 73 can be appealed to the Secretary of State, who will also only consider the condition/s in question.

It should be noted that the original planning permission will continue to exist whatever the outcome of the application under section 73. To assist with clarity, decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. In granting permission under section 73 the local planning authority may also impose new conditions – provided the conditions do not materially alter the development that was subject to the original permission and are conditions which could have been imposed on the earlier planning permission. Further guidance on section 73 can be found here (<http://planningguidance.communities.gov.uk/blog/guidance/flexible-options/>).

- Appeal to the Secretary of State against the decision of the local planning authority to grant planning permission subject to conditions. An appeal must

be received within 12 weeks of the date on the decision notice for householder planning applications or 6 months for other planning decision types. A Planning Inspector on behalf of the Secretary of State will re-determine the whole application (not only the decision to impose the conditions) – so there is a risk that the Inspector could refuse planning permission and therefore reverse the decision of the local planning authority. Further guidance on appeals can be found here (<http://planningguidance.communities.gov.uk/blog/guidance/appeals/>).

Development that is taken forward in breach of the conditions may be subject to local authority enforcement action. It is also possible to apply for retrospective planning permission under section 73A of the Town and Country Planning Act 1990  (<http://www.legislation.gov.uk/ukpga/1990/8/section/73A>). Further guidance on enforcement (including section 73A) can be found here (<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/>).

ID 21a-031-20140306 Last updated 06 03 2014

### **How can a developer seek to discharge conditions attached to a planning permission that require local planning authority approval of further details?**

Requests for approval of further details required by conditions must be made to the local planning authority in writing, enclosing any relevant details.

ID 21a-032-20140306 Last updated 06 03 2014

### **Is there a fee payable to a local planning authority to discharge a planning condition?**

The local planning authority will charge an application fee for written requests for both:

- written confirmation of the discharge of conditions; and
- written confirmation that one or more of the conditions imposed on a grant of planning permission have been satisfied

More details on fees can be found here (<http://planningguidance.communities.gov.uk/blog/guidance/fees-for-planning-applications/>). The fee must be paid when the request is made, and cannot be paid retrospectively.

ID 21a-033-20140306 Last updated 06 03 2014

### **How long should it take for a local planning authority to discharge a planning condition?**

Development that is ready to proceed should not be held back by delays in discharging planning conditions. In most cases where the approval is straightforward it is expected that the local planning authority should respond to requests to discharge conditions without delay, and in any event within 21 days. Where the views of a third party such as a statutory consultee are required to discharge a condition, every effort should be made to ensure that the 21 day requirement can still be met.

The local planning authority must give notice to the applicant of its decision within a period of 8 weeks from the date the request was received, or any longer period agreed in writing between the applicant and local planning authority. If no extension of time is agreed for discharging the condition after 12 weeks, the local planning authority must return the fee to the applicant without further delay along with a decision on the request.


It should be noted that this timeframe and the return of fees does not apply to prior approval procedures under Schedule 2 [\[2\]](http://www.legislation.gov.uk/ukxi/2015/596/schedule/2/made)

(<http://www.legislation.gov.uk/ukxi/2015/596/schedule/2/made>) of the Town and Country Planning (General Permitted Development) (England) Order 2015, or where the request relates to a reserved matter, which should be subject to a reserved matters application.

Where an applicant has concerns about the timeliness of the local planning authority in giving notice of its decision, a deemed discharge may be available under Article 28 [\[2\]](http://www.legislation.gov.uk/ukxi/2015/595/article/28/made) (<http://www.legislation.gov.uk/ukxi/2015/595/article/28/made>) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

ID 21a-034-20140306 Last updated 06 03 2014

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# Planning Practice Guidance <http://planningguidance.communities.gov.uk>

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Guidance

## Viability

Print 

1. Viability – a general overview (<http://planningguidance.communities.gov.uk/blog/guidance/viability-guidance/viability-a-general-overview/>)

### Viability – a general overview

#### What does the National Planning Policy Framework expect on viability in planning?

The National Planning Policy Framework says that plans should be deliverable and that the sites and scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened.

Understanding Local Plan viability is critical to the overall assessment of deliverability. Local Plans should present visions for an area in the context of an understanding of local economic conditions and market realities. This should not undermine ambition for high quality design and wider social and environmental benefit but such ambition should be tested against the realistic likelihood of delivery.

The National Planning Policy Framework policy on viability applies also to decision-taking. Decision-taking on individual schemes does not normally require an assessment of viability. However viability can be important where planning obligations or other costs are being introduced. In these cases decisions must be underpinned by an understanding of viability, ensuring realistic decisions are made to support development and promote economic growth. Where the viability of a development is in question, local planning authorities should look to be flexible in applying policy requirements wherever possible.

ID 10-001-20140306 Last updated 06 03 2014

#### Where can more information about viability assessment be found?

There is no standard answer to questions of viability, nor is there a single approach for assessing viability. The National Planning Policy Framework, informed by this Guidance, sets out the policy principles relating to viability assessment. A range of sector led guidance on viability methodologies in plan making and decision taking is widely available.

ID 10-002-20140306 Last updated 06 03 2014

#### Does this guidance apply to viability assessment for the purposes of setting a Community Infrastructure Levy charge?

The Community Infrastructure Levy 

(<https://www.gov.uk/government/publications/community-infrastructure-levy-guidance>) has separate guidance on viability and charge setting. However, the principles

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### Related policy

#### National Planning Policy Framework


- Paragraph 173 ([http://planningguidance.com/sustainable-development/plan-making/#paragraph\\_173](http://planningguidance.com/sustainable-development/plan-making/#paragraph_173))

for understanding viability set out in this document will also be relevant for Community Infrastructure Levy evidence collection. Above all, consistency is required.

ID 10-003-20140306 Last updated 06 03 2014

## What are the underlying principles for understanding viability in planning?

- **Evidence based judgement:** assessing viability requires judgements which are informed by the relevant available facts. It requires a realistic understanding of the costs and the value of development in the local area and an understanding of the operation of the market.
- Understanding past performance, such as in relation to build rates and the scale of historic planning obligations can be a useful start. Direct engagement with the development sector may be helpful in accessing evidence.
- **Collaboration:** a collaborative approach involving the local planning authority, business community, developers, landowners and other interested parties will improve understanding of deliverability and viability. Transparency of evidence is encouraged wherever possible. Where communities are preparing a neighbourhood plan (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/>) (or Neighbourhood Development Order), local planning authorities are encouraged to share evidence to ensure that local viability assumptions are clearly understood.
- **A consistent approach:** local planning authorities are encouraged to ensure that their evidence base for housing, economic and retail policy (<http://planningguidance.communities.gov.uk/blog/guidance/assessment-of-housing-and-economic-development-needs/>) is fully supported by a comprehensive and consistent understanding of viability across their areas. The National Planning Policy Framework requires local planning authorities to consider district-wide development costs when Local Plans are formulated, and where possible to plan for infrastructure and prepare development policies in parallel. A masterplan approach can be helpful in creating sustainable locations, identifying cumulative infrastructure requirements of development across the area and assessing the impact on scheme viability.

Authorities should seek to align the preparation of their Community Infrastructure Levy  (<https://www.gov.uk/government/publications/community-infrastructure-levy-guidance>). Charging Schedules and their Local Plans as far as practical.

ID 10-004-20140306 Last updated 06 03 2014

## 2. Viability and plan making (<http://planningguidance.communities.gov.uk/blog/guidance/viability-guidance/viability-and-plan-making/>)

### Viability and plan making

#### How should viability be assessed in plan-making?

Local Plans (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>) and neighbourhood plans (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/>) should be based on a clear and deliverable vision of the area. Viability assessment should be considered as a tool that can assist with the development of plans and plan policies. It should not compromise the quality of development but should ensure that the Local Plan vision and policies are realistic and provide high level assurance that plan policies are viable.

Development of plan policies should be iterative – with draft policies tested against evidence of the likely ability of the market to deliver the plan’s policies, and revised as part of a dynamic process.

Evidence ([http://planningguidance.communities.gov.uk/blog/guidance/local-plans/preparing-a-local-plan/#paragraph\\_014](http://planningguidance.communities.gov.uk/blog/guidance/local-plans/preparing-a-local-plan/#paragraph_014)) should be proportionate to ensure plans are underpinned by a broad understanding of viability. Greater detail may be necessary in areas of known marginal viability or where the evidence suggests that viability might be an issue – for example in relation to policies for strategic sites which require high infrastructure investment.

ID 10-005-20140306 Last updated 06 03 2014

### Should every site be tested?

Assessing the viability of plans does not require individual testing of every site or assurance that individual sites are viable; site typologies may be used to determine viability at policy level. Assessment of samples of sites may be helpful to support evidence and more detailed assessment may be necessary for particular areas or key sites on which the delivery of the plan relies.

ID 10-006-20140306 Last updated 06 03 2014

### How should costs be considered in plan-making?

Plan makers should consider the range of costs on development. This can include costs imposed through national and local standards, local policies and the Community Infrastructure Levy, as well as a realistic understanding of the likely cost of Section 106 planning obligations and Section 278 agreements for highways works.

Their cumulative cost should not cause development types or strategic sites to be unviable. Emerging policy requirements may need to be adjusted to ensure that the plan is able to deliver sustainable development.

ID 10-007-20140306 Last updated 06 03 2014

### How should changes in values and costs be treated in plan-making?

Plan makers should not plan to the margin of viability but should allow for a buffer to respond to changing markets and to avoid the need for frequent plan updating. Current costs and values should be considered when assessing the viability of plan policy. Policies should be deliverable and should not be based on an expectation of future rises in values at least for the first five years of the plan period. This will help to ensure realism and avoid complicating the assessment with uncertain judgements about the future. Where any relevant future change to regulation or policy (either national or local) is *known*, any likely impact on current costs should be considered.

ID 10-008-20140306 Last updated 06 03 2014

### How should viability be considered for brownfield sites in plan-making?

The National Planning Policy Framework sets out a core planning principle that planning policies should encourage the effective use of land by re-using land that has been previously developed (brownfield land), provided that it is not of high environmental value.

Local Plan policies should reflect the desirability of re-using brownfield land, and the fact that brownfield land is often more expensive to develop. Where the cost of land is a major barrier, landowners should be engaged in considering

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#### Related policy

National Planning Policy Framework

- Paragraph 174 ([http://planningguidance.com/sustainable-development/plan-making/#paragraph\\_174](http://planningguidance.com/sustainable-development/plan-making/#paragraph_174))

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#### Related policy

National Planning Policy Framework

- Paragraph 11f (<http://planningguidance.com/sustainable-development/delivering-sustainable->

options to secure the successful development of sites. Particular consideration should also be given to Local Plan policies on planning obligations, design, density and infrastructure investment, as well as in setting the Community Infrastructure Levy, to promote the viability of brownfield sites across the local area. Provided sites are likely to deliver a competitive return for willing landowners and willing developers authorities should seek to select sites that meet the range of their policy objectives, having regard to any risks to the delivery of their plan. Authorities do not have to allocate only those sites that provide the maximum return for landowners and developers.

Local planning authorities should seek to work with interested parties to promote the redevelopment of brownfield sites, for example Local Enterprise Partnerships.

To incentivise the bringing back into use of brownfield sites, local planning authorities should also look at the different funding mechanisms available to them to cover potential costs of bringing such sites back into use, when considering which sites to allocate. For brownfield sites, assumptions about land values should clearly reflect the levels of mitigation and investment required to bring sites back into use. The impact of land remediation relief could also be considered when looking at the viability of brownfield sites.

ID 10-025-20140306 Last updated 06 03 2014

### **How should different development types be reflected in viability assessments for plan-making?**

Viability assessments should be proportionate, but reflect the range of different development, both residential and commercial, likely to come forward in an area and needed to deliver the vision of the plan. Different types of residential development, such as those wanting to build their own homes and private rented sector housing, are funded and delivered in different ways. This should be reflected in viability assessments.

ID 10-009-20140306 Last updated 06 03 2014

### **How should the viability of planning obligations be considered in plan-making?**

The National Planning Policy Framework is clear that local planning authorities, when requiring obligations, should be sufficiently flexible to prevent planned development being stalled. Planning obligations policies should reflect local viability (<http://planningguidance.communities.gov.uk/blog/guidance/planning-obligations/>).

ID 10-010-20140306 Last updated 06 03 2014

### **What are the key factors to be taken into account in assessing viability in plan-making?**

ID 10-011-20140306 Last updated 06 03 2014

### **Gross Development Value**

For the purposes of plan-making, Gross Development Value is the assessment of the potential value generated by development in the area. On housing schemes, this may be total sales and/or capitalised rental income from

development/11-conserving-and-enhancing-the-natural-environment/#paragraph\_111

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#### **Related policy**

##### **National Planning Policy Framework**

- Paragraph 205 ([http://planningguidance.com/sustainable-development/decision-taking/#paragraph\\_205](http://planningguidance.com/sustainable-development/decision-taking/#paragraph_205))

developments. Grant and other external sources of funding should be considered. On retail and commercial development, broad assessment of value in line with industry practice may be necessary.

Values should be based on comparable, market information. Average figures may need to be used, based on the types of development that the plan is seeking to bring forward. Wherever possible, specific evidence from existing developments should be used after adjustment to take into account types of land use, form of property, scale, location, rents and yields. For housing, historic information about delivery rates can be informative.

ID 10-012-20140306 Last updated 06 03 2014

## Costs

For an area wide viability assessment, a broad assessment of costs is required. This should be based on robust evidence which is reflective of local market conditions. All development costs should be taken into account including:

- build costs based on appropriate data, for example that of the Building Cost Information Service;
- known abnormal costs, including those associated with treatment for contaminated sites or listed buildings, or historic costs associated with brownfield, phased or complex sites;
- infrastructure costs, which might include roads, sustainable drainage systems, and other green infrastructure, connection to utilities and decentralised energy, and provision of social and cultural infrastructure;
- the potential cumulative costs of emerging policy requirements and standards, emerging planning obligations policy and Community Infrastructure Levy charges;
- general finance costs including those incurred through loans; and
- professional, project management, sales and legal costs.

ID 10-013-20140306 Last updated 06 03 2014

## Land Value

Central to the consideration of viability is the assessment of land or site value. The most appropriate way to assess land or site value will vary but there are common principles which should be reflected.

In all cases, estimated land or site value should:

- reflect emerging policy requirements and planning obligations and, where applicable, any Community Infrastructure Levy charge;
- provide a competitive return to willing developers and land owners (including equity resulting from those building their own homes); and
- be informed by comparable, market-based evidence wherever possible. Where transacted bids are significantly above the market norm, they should not be used as part of this exercise.

ID 10-014-20140306 Last updated 06 03 2014

## Competitive return to developers and land owners

The National Planning Policy Framework states that viability should consider “competitive returns to a willing landowner and willing developer to enable the development to be deliverable.” This return will vary significantly between projects to reflect the size and risk profile of the development and the risks to the project. A rigid approach to assumed profit levels should be avoided and comparable schemes or data sources reflected wherever possible.

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### Related policy

#### National Planning Policy Framework

- Paragraph 173  
(<http://planningguidance.com>)

A competitive return for the land owner is the price at which a reasonable land owner would be willing to sell their land for the development. The price will need to provide an incentive for the land owner to sell in comparison with the other options available. Those options may include the current use value of the land or its value for a realistic alternative use that complies with planning policy.

sustainable-development/plan-making/#paragraph\_173)

ID 10-015-20140306 Last updated 06 03 2014

3. Viability and decision taking (<http://planningguidance.communities.gov.uk/blog/guidance/viability-guidance/viability-and-decision-taking/>)

### **Viability and decision taking**

#### **How should viability be assessed in decision-taking?**

Decision-taking on individual applications does not normally require consideration of viability. However, where the deliverability of the development may be compromised by the scale of planning obligations and other costs, a viability assessment may be necessary. This should be informed by the particular circumstances of the site and proposed development in question. Assessing the viability of a particular site requires more detailed analysis than at plan level.

A site is viable if the value generated by its development exceeds the costs of developing it and also provides sufficient incentive for the land to come forward and the development to be undertaken.

ID 10-016-20140306 Last updated 06 03 2014

#### **How should changes in values be treated in decision-taking?**

Viability assessment in decision-taking should be based on current costs and values. Planning applications should be considered in today's circumstances.

However, where a scheme requires phased delivery over the medium and longer term, changes in the value of development and changes in costs of delivery may be considered. Forecasts, based on relevant market data, should be agreed between the applicant and local planning authority wherever possible.

ID 10-017-20140306 Last updated 06 03 2014

#### **How should different development types be treated in decision-taking?**

The viability of individual development types, both commercial and residential, should be considered. Relevant factors will vary from one land use type to another.

For residential schemes, viability will vary with housing type, including housing for sale or rent.

Identifying the viability issues for certain types of housing is discussed below in more detail.

##### **The private rented sector**

Some privately rented homes can come from purpose built schemes held in single ownership which are intended for long term rental. The economics of such schemes differ from build to sale and should be determined on a case by case basis. To help ensure these schemes remain viable while improving the diversity of housing to meet local needs, local planning authorities should consider the appropriate level of planning obligations

(<http://planningguidance.communities.gov.uk/blog/guidance/planning-obligations/planning-obligations-guidance/>), including for affordable housing, and when these payments

are required. So these homes remain available to rent only, local planning authorities may choose to explore using planning obligations (<http://planningguidance.communities.gov.uk/blog/guidance/planning-obligations/planning-obligations-guidance/>) to secure these schemes for a minimum period of time. Local planning authorities should enforce these planning obligations (<http://planningguidance.communities.gov.uk/blog/guidance/planning-obligations/planning-obligations-guidance/>) in the usual way.

### People wishing to build their own homes

Any viability assessment should take account of average plot values and build costs for such development. The build route proposed (e.g. whether it is contractor-led or a DIY project) and any non-development costs related to the project such as project management and professional fees should be considered.

### Older People

For older people's housing, the specific scheme format and projected sales rates may be a factor in assessing viability.

ID 10-018-20150326 Last updated 26 03 2015

## How should viability be considered for brownfield sites in decision-taking?

The National Planning Policy Framework sets out a core planning principle that in decision-taking local planning authorities should encourage the effective use of land by re-using land that has been previously developed (brownfield land), provided that it is not of high environmental value.

Local planning authorities should seek to work with interested parties to promote the redevelopment of brownfield sites, for example Local Enterprise Partnerships.

To incentivise the bringing back into use of brownfield sites, local planning authorities should:

- look at the different funding mechanisms available to them to cover potential costs of bringing such sites back into use
- take a flexible approach in seeking levels of planning obligations and other contributions to ensure that the combined total impact does not make a site unviable.

ID 10-026-20140306 Last updated 06 03 2014

## How should the viability of planning obligations be considered in decision-taking?

In making decisions, the local planning authority will need to understand the impact of planning obligations (<http://planningguidance.communities.gov.uk/blog/guidance/planning-obligations/>) on the proposal. Where an applicant is able to demonstrate to the satisfaction of the local planning authority that the planning obligation would cause the development to be unviable, the local planning authority should be flexible in seeking planning obligations.

This is particularly relevant for affordable housing contributions which are often the largest single item sought on housing developments. These contributions should not be sought without regard to individual scheme viability. The financial viability of the individual scheme should be carefully considered in line with the principles in this guidance.

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### Related policy

#### National Planning Policy Framework

- Paragraph 111 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph\\_111](http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph_111))

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### Related policy

#### National Planning Policy Framework

- Paragraph 176 ([http://planningguidance.com/sustainable-development/plan-making/#paragraph\\_176](http://planningguidance.com/sustainable-development/plan-making/#paragraph_176))
- Paragraph 205 ([http://planningguidance.com/sustainable-development/decision-taking/#paragraph\\_205](http://planningguidance.com/sustainable-development/decision-taking/#paragraph_205))

Assessing viability should lead to an understanding of the scale of planning obligations which are appropriate. However, the National Planning Policy Framework is clear that where safeguards are necessary to make a particular development acceptable in planning terms, and these safeguards cannot be secured, planning permission should not be granted for unacceptable development.

ID 10-019-20140306 Last updated 06 03 2014

### **What are the key factors to be taken into account when assessment of viability is required for decision-taking on planning applications and appeals?**

ID 10-020-20140306 Last updated 06 03 2014

### **Gross Development Value**

On an individual development, detailed assessment of Gross Development Value is required. On housing schemes, this will comprise the assessment of the total sales and/or capitalised rental income from the development. Grant and other external sources of funding should be considered. On retail and commercial development, assessment of value in line with industry practice will be necessary.

Wherever possible, specific evidence from comparable developments should be used after adjustment to take into account types of land use, form of property, scale, location, rents and yields. For housing, historic information about delivery rates can be informative.

ID 10-021-20140306 Last updated 06 03 2014

### **Costs**

Assessment of costs should be based on robust evidence which is reflective of market conditions. All development costs should be taken into account including:

- build costs based on appropriate data, for example that of the Building Cost Information Service;
- abnormal costs, including those associated with treatment for contaminated sites or listed buildings, or historic costs associated with brownfield, phased or complex sites;
- infrastructure costs, which might include roads, sustainable drainage systems, and other green infrastructure, connection to utilities and decentralised energy and provision of social and cultural infrastructure;
- cumulative policy costs and planning obligations. The full cost of planning standards, policies and obligations will need to be taken into account, including the cost of the Community Infrastructure Levy.
- finance costs including those incurred through loans;
- professional, project management and sales and legal costs.

ID 10-022-20140306 Last updated 06 03 2014

### **Land Value**

Central to the consideration of viability is the assessment of land or site value. Land or site value will be an important input into the assessment. The most appropriate way to assess land or site value will vary from case to case but there are common principles which should be reflected.

In all cases, land or site value should:



- reflect policy requirements and planning obligations and, where applicable, any Community Infrastructure Levy charge;
- provide a competitive return to willing developers and land owners (including equity resulting from those wanting to build their own homes); and
- be informed by comparable, market-based evidence wherever possible. Where transacted bids are significantly above the market norm, they should not be used as part of this exercise.

ID 10-023-20140306 Last updated 06 03 2014

### Competitive return to developers and land owners

The National Planning Policy Framework states that viability should consider “competitive returns to a willing landowner and willing developer to enable the development to be deliverable.” This return will vary significantly between projects to reflect the size and risk profile of the development and the risks to the project. A rigid approach to assumed profit levels should be avoided and comparable schemes or data sources reflected wherever possible.

A competitive return for the land owner is the price at which a reasonable land owner would be willing to sell their land for the development. The price will need to provide an incentive for the land owner to sell in comparison with the other options available. Those options may include the current use value of the land or its value for a realistic alternative use that complies with planning policy.

ID 10-024-20140306 Last updated 06 03 2014


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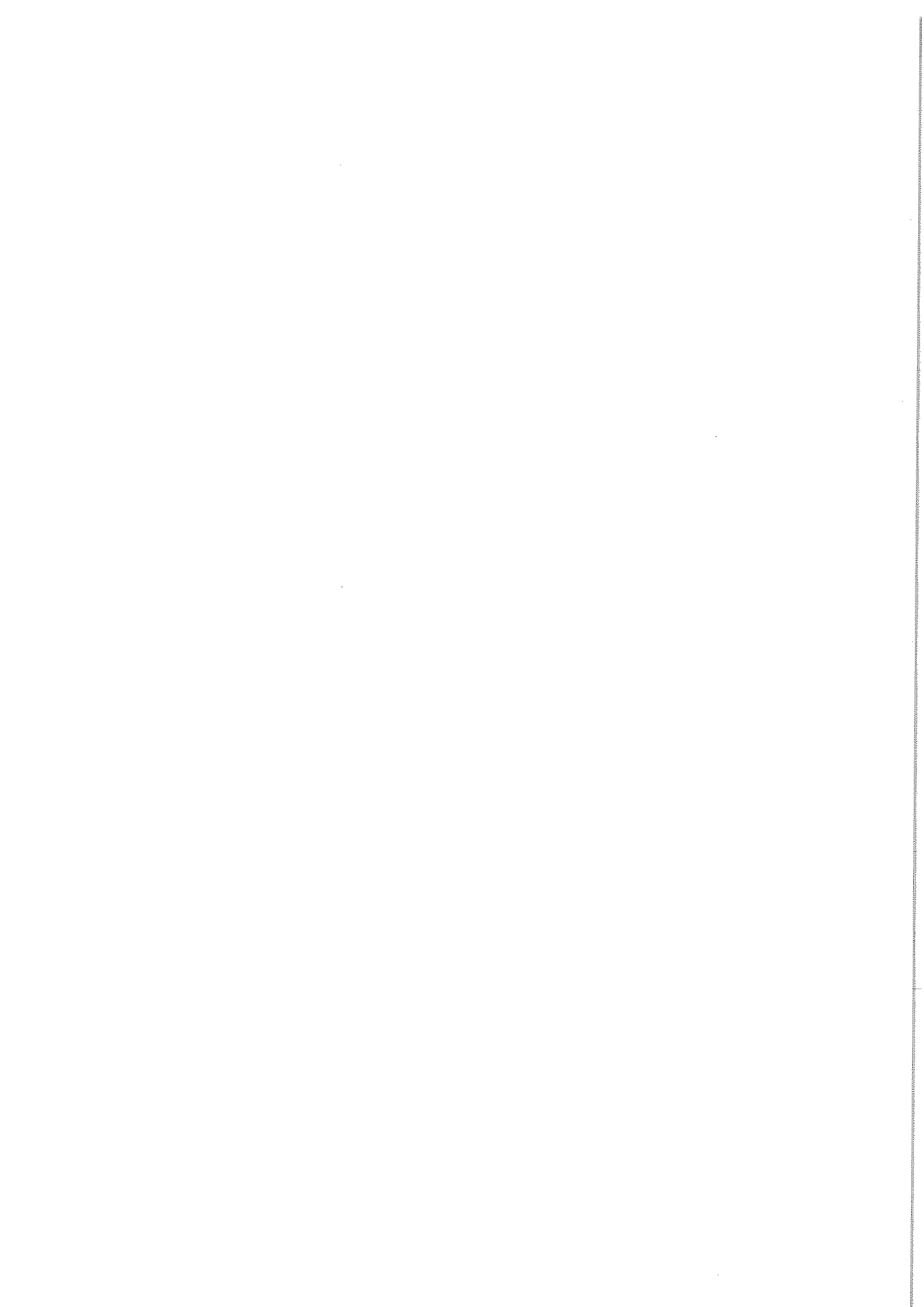
### Related policy

#### National Planning Policy Framework

- Paragraph 173  
([http://planningguidance.com/sustainable-development/plan-making/#paragraph\\_173](http://planningguidance.com/sustainable-development/plan-making/#paragraph_173))

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# Planning Practice Guidance (<http://planningguidance.communities.gov.uk>)

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Guidance

## Waste

Print 

1. Waste – Overview (<http://planningguidance.communities.gov.uk/blog/guidance/waste/waste-overview/>)

### Waste – Overview

#### Who is the planning authority for waste developments?

The waste planning authority is generally the county council (in areas where there are two tiers of local government – county councils and district councils), the unitary authority, or the national park authority. The Town and Country Planning (Prescription of County Matters) (England) Regulations 2003 [\[2\]](http://www.legislation.gov.uk/uksi/2003/1033/contents/made) (<http://www.legislation.gov.uk/uksi/2003/1033/contents/made>) prescribe classes of waste operations and uses of land that should be dealt with as “county matters”.

Interpretation of what is and is not a “county matter” is ultimately a matter for the courts.

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#### What matters come within the scope of ‘waste development’?

Though interpretation is ultimately a matter for the courts, the following is a general, non-exhaustive list of matters which can be considered as waste operations:

- metal recycling sites
- energy from waste incineration and other waste incineration
- landfill and land raising sites (such as soils to re-profile golf courses)
- landfill gas generation plant
- pyrolysis / gasification
- material recovery / recycling facilities
- combined mechanical, biological and/or thermal treatment
- in-vessel composting
- open windrow composting
- anaerobic digestion
- household civic amenity sites
- transfer stations
- waste water management
- dredging tips
- storage of waste
- recycling facilities for construction, demolition and excavation waste.

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#### Are all waste developments handled by the waste planning

## authority?

Waste planning authorities are responsible for determining all waste development except:

- proposed development of a generating station of more than 50 megawatts capacity
- hazardous waste landfill or deep storage facilities for the purpose of final disposal or recovery of hazardous waste accepting more than 100,000 tonnes of hazardous waste per year, or any other hazardous waste facility for the purpose of final disposal or recovery of such waste accepting more than 30,000 tonnes per year. These thresholds apply to any extensions or alterations to existing hazardous waste facilities
- Waste Water Treatment plants with a capacity to exceed a population equivalent of 500,000
- facilities to transfer or store waste water facilities if the capacity for storage of waste water exceeds 350,000 cubic metres.

These applications are dealt with using procedures under the Planning Act 2008 [\[2\]](http://www.legislation.gov.uk/ukpga/2008/29/contents) (<http://www.legislation.gov.uk/ukpga/2008/29/contents>).

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## 2. The role of waste planning in meeting European obligations

(<http://planningguidance.communities.gov.uk/blog/guidance/waste/the-role-of-waste-planning-in-meeting-european-obligations/>)

### The role of waste planning in meeting European obligations

#### What is the role of local planning authorities in meeting the requirements of the European Union Waste Framework Directive?

Waste planning authorities play a role in implementing the following Articles of the EU Waste Framework Directive (2008/98/EC) [\[2\]](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:312:0003:0030:en:PDF) (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:312:0003:0030:en:PDF>) in England:

- **Article 4:** Waste Hierarchy
- **Article 13:** Protection of human health and the environment
- **Article 16:** Principles of proximity and self-sufficiency
- **Article 28:** Waste Management Plans
- **Article 34:** Periodic Inspections

In addition, all planning authorities have a role in implementing Articles 4 and 13. Articles 13, 16 and 34 are implemented in Part 6 of the Waste (England and Wales) Regulations 2011 [\[2\]](http://www.legislation.gov.uk/ukxi/2011/988/pdfs/ukxi_20110988_en.pdf)

([http://www.legislation.gov.uk/ukxi/2011/988/pdfs/ukxi\\_20110988\\_en.pdf](http://www.legislation.gov.uk/ukxi/2011/988/pdfs/ukxi_20110988_en.pdf)).

Implementation of the remaining Articles relies on local planning authorities discharging specific statutory responsibilities under the planning system. A more detailed breakdown may be found here

(<http://planningguidance.communities.gov.uk/blog/guidance/waste/annex-1-summary-of-articles-of-the-waste-framework-directive-200898ec-and-actions-on-local-planning-authorities/>).

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#### How can local planning authorities protect human health and the environment?

Local planning authorities can ensure that waste is handled in a manner which protects human health and the environment through testing the suitability of proposed sites, both in developing their Local Plans and in considering individual planning applications, against the policies in paragraphs 4 to 7 and the factors in Appendix B of National Planning Policy for Waste [\[2\]](#)

(<https://www.gov.uk/government/publications/national-planning-policy-for-waste>). Other ways in which they can deal with this include:

- putting in place suitable planning conditions, and adequate enforcement and monitoring
- working closely with Environmental Health colleagues
- consultation with Public Health England and the Environment Agency (which is mandatory in certain cases) for advice on public health matters and pollution control
- ensuring land raising or landfill sites are restored to beneficial after-uses (e.g. agriculture, biodiversity, forestry, amenity) at the earliest opportunity and to high environmental standards.

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### **What is the obligation on waste planning authorities towards implementing the proximity principle?**

The principles of self-sufficiency and proximity (commonly referred to as the 'proximity principle') are set out in Article 16 of the Waste Framework Directive [\[2\]](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008L0098) (<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008L0098>), Local planning authorities are required, under regulation 18 of the 2011 Regulations [\[2\]](http://www.legislation.gov.uk/ukdsi/2011/9780111506462/contents) (<http://www.legislation.gov.uk/ukdsi/2011/9780111506462/contents>) which transposed the Directive, to have regard to these requirements when exercising their planning functions relating to waste management.

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### **Do the self-sufficiency and proximity principles require each waste planning authority to manage all of its own waste?**

Though this should be the aim, there is no expectation that each local planning authority should deal solely with its own waste to meet the requirements of the self-sufficiency and proximity principles. Nor does the proximity principle require using the absolute closest facility to the exclusion of all other considerations. There are clearly some wastes which are produced in small quantities for which it would be uneconomic to have a facility in each local authority. Furthermore, there could also be significant economies of scale for local authorities working together to assist with the development of a network of waste management facilities to enable waste to be handled effectively.

The ability to source waste from a range of locations/organisations helps ensure existing capacity is used effectively and efficiently, and importantly helps maintain local flexibility to increase recycling without resulting in local overcapacity.

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## **3. Implementing the Waste Hierarchy**

(<http://planningguidance.communities.gov.uk/blog/guidance/waste/implementing-the-waste-hierarchy/>)

### **Implementing the Waste Hierarchy**

#### **Who contributes to moving waste up the Waste Hierarchy?**

Movement of waste up the Waste Hierarchy (see Appendix A of National Planning Policy for Waste [\[2\]](https://www.gov.uk/government/publications/national-planning-policy-for-waste) (<https://www.gov.uk/government/publications/national-planning-policy-for-waste>)) is not just the responsibility of waste planning authorities. All local planning authorities, to the extent appropriate to their responsibilities, should look to drive waste management up the hierarchy.

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### **How is the Waste Hierarchy delivered through Local Plans and in planning decisions?**

Driving waste up the Waste Hierarchy is an integral part of the National Waste Management Plan for England [\[2\]](https://www.gov.uk/government/publications/waste-management-plan-for-england) (<https://www.gov.uk/government/publications/waste-management-plan-for-england>) and national planning policy for waste. All local planning authorities must have regard to the Plan and national policy in preparing their Local Plans. National waste planning policy is capable of being a material consideration in decisions on planning applications for waste management facilities.

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### **How can “non-waste” planning authorities deal with the Waste Hierarchy?**

While such authorities may not have the planning functions in respect of the preparation of Local Plans covering waste, or dealing directly with waste planning applications, they must have regard to national planning policy for waste and are expected to help deliver the Waste Hierarchy. This might include:

- working constructively with waste planning authorities to identify and protect those sites needed for waste management facilities. Local planning authorities should consider the need for waste management alongside other spatial planning objectives
- integrating local waste management opportunities in proposed new development
- considering, where relevant, the likely impact of proposed, non-waste related development on existing waste management sites and on sites and areas allocated for waste management
- promoting sound management of waste from any proposed development, such as encouraging on-site management of waste where this is appropriate, or including a planning condition to encourage or require the developer to set out how waste arising from the development is to be dealt with
- including a planning condition promoting sustainable design of any proposed development through the use of recycled products, recovery of on-site material and the provision of facilities for the storage and regular collection of waste
- ensuring that their collections of household and similar waste are organised so as to help towards achieving the higher levels of the waste hierarchy.

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4. Preparing Local Plans (<http://planningguidance.communities.gov.uk/blog/guidance/waste/preparing-local-plans/>)

#### **Preparing Local Plans**

##### **What should Local Plans deliver?**

The Local Plan relating to waste should identify sufficient opportunities to meet the identified needs of an area for the management of waste, aiming to drive waste management up the Waste Hierarchy. It should ensure that suitable sites and areas for the provision of waste management facilities are identified in appropriate locations.

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### **How should waste planning authorities involve local communities?**

Local Plans are the key to delivering sustainable development that reflects the vision and aspirations of local communities. It is important that waste planning authorities engage and collaborate with local communities in an early and meaningful way when identifying options for managing waste. This is particularly the case when considering proposals for waste management facilities such as incinerators which can be locally controversial. To be effective, engagement should be proactive to ensure that local communities are able to understand the range of options that are available and their implications.

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### **What types of wastes should waste planning authorities plan for?**

Waste planning authorities should plan for the sustainable management of waste including:

- Municipal/household
- Commercial/industrial
- Construction/demolition
- Low Level Radioactive
- Agricultural
- Hazardous
- Waste water

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### **What must Local Plans on waste include to meet the requirements of the Waste Framework Directive?**

Regulations 7 and 8 and Schedule 1 to the 2011 Regulations [\[2\]](http://www.legislation.gov.uk/ukdsi/2011/9780111506462/contents) (<http://www.legislation.gov.uk/ukdsi/2011/9780111506462/contents>) set out what is necessary to meet the requirements of Article 28 of the Directive [\[3\]](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008L0098) (<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008L0098>).

Up-to-date Local Plans dealing with waste are a necessary part of the implementation of this Article of the Directive. The key issues which waste planning authorities must include in their Local Plans to ensure compliance with the Waste Framework Directive are:

- Details of existing major disposal and recovery installations
- An assessment of the need for the closure of existing waste management facilities and the need for additional waste installation infrastructure
- Sufficient information on the location criteria for site identification and on the capacity of future disposal or major recovery installations.

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### **How should the duty to cooperate apply to waste**

## management?

View guidance on the duty to cooperate

(<http://planningguidance.communities.gov.uk/blog/guidance/duty-to-cooperate/>).

Waste is a strategic issue which can be addressed effectively through close co-operation between waste planning authorities and other local planning authorities and public bodies to ensure a suitable and sustainable network of waste management facilities is in place.

There is no definitive list of actions that constitute effective cooperation under the duty. However, it may include:

- gathering, evaluating and ensuring consistency of data and information required to prepare Local Plans. This may include joint commissioning of studies or the joint preparation of an evidence base
- engaging actively in dialogue, particularly on those types of wastes or waste facilities that will impact most on neighbouring authorities
- active engagement, where necessary, with planning authorities wider than just those who are their more immediate neighbours, particularly if dealing with waste streams for which there is a need for few facilities
- jointly monitoring waste arisings and capacity.

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## How should the duty to cooperate apply between waste and district planning authorities?

By the nature of the activity, waste planning policy requires a strategic, cross-boundary approach to ensure that waste is effectively managed and facilities are properly located. Integrated working between county and district planning authorities is critical to the preparation of Local Plans. While the duty to cooperate (<http://planningguidance.communities.gov.uk/blog/guidance/duty-to-cooperate/>) is not a duty to agree, waste planning authorities should make every effort to secure the necessary cooperation on waste matters.

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## Does this apply to identifying suitable sites and areas for waste management facilities?

The duty to cooperate will be particularly important where waste planning authorities are unable to identify sufficient, suitable, opportunities for waste management facilities – for instance, because of a lack of physical capacity or because to do so would cause significant harm to the principles and policies in the National Planning Policy Framework, including the special protection given to the Green Belt. In such circumstances, joint working can ensure sufficient opportunities outside the Green Belt for waste management facilities that, if located in the Green Belt, would be inappropriate development. The search for suitable opportunities should be in line with the waste management hierarchy and, having regard to the self-sufficiency and proximity principles, any planned review of Green Belt boundaries.

Effective cooperation will also be important in ensuring the planned provision of new capacity and its spatial distribution is based on robust analysis of waste management needs including for specific waste streams. Inspectors will recommend that the Local Plan is not adopted if the duty to cooperate has not been complied with and the examination will not proceed any further.

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## How should local planning authorities integrate the need for waste management with other spatial concerns in the preparation of Local Plans?

Opportunities for land to be utilised for waste management should be built into the preparatory work for Local Plans, to the level appropriate to the local planning authorities planning responsibilities. For example:

- suitable previously-developed land, including industrial land, provides opportunities for new waste facilities and priority should be given to reuse of these sites. It is important for waste to be considered alongside other land uses when looking at development opportunities
- as reviews of employment land are undertaken, it is important to build in the needs of waste management before releasing land for other development or when considering areas where major regeneration is proposed
- the integration of local waste management opportunities in new development should be integral to promoting good urban design
- facilitating the co-location of waste sites with end users of waste outputs such as users of fuel, low carbon energy/heat, recyclates and soils.

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## Can Local Plans prescribe specific technologies?

Local plans should not generally prescribe the waste management techniques or technologies that will be used to deal with specific waste streams in the area. Rather, the Plan should identify the type or types of waste management facility that would be appropriately located on the allocated site or in the allocated area. The Government tries not to direct towards one waste technology above any others, when there may be a number of technologies, both existing and developing, that might deliver the same favourable outcome.

Circumstances when it may be more appropriate to prescribe a specific technology include:

- for those sites that are allocated for facilities larger than just local facilities
- for any facilities to deal with municipal waste where a clear service development strategy is required
- when the site is suitable for only one particular type of waste management facility.

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## 5. Preparing Sustainability Appraisals for Local Plans

(<http://planningguidance.communities.gov.uk/blog/guidance/waste/preparing-sustainability-appraisals-for-local-plans/>)

### Preparing Sustainability Appraisals for Local Plans

#### What topics may be included within a set of sustainability objectives for Local Plans?

Waste planning authorities are required to carry out a Sustainability Appraisal (<http://planningguidance.communities.gov.uk/blog/guidance/strategic-environmental-assessment-and-sustainability-appraisal/>) when preparing Local Plans. A list of non-exhaustive topics which could be covered can be found below.

#### Table of possible Topics and Issues for the Appraisal Framework

Topic	Issues
<i>Environmental</i>	

Sustainable use of resources	Level of materials recycling
Climate Change	Greenhouse gas emissions (CO2 and CH4)
	Energy efficiency (consumption and generation)
	Renewable energy generation
	Adaptation to climate change
Air Quality (including dust)	Emissions of pollutants (facilities and transport)
Noise and vibration	The impact of noise and vibration from waste related operations, including facilities and transport
Artificial Light	The impact of artificial light from waste related operations
Odour	The impact of odour from waste related operations
Vermin	The impact of vermin from waste related operations
Water resources and Flood Risk Management	Discharge of pollutants
	Water consumption
	Flood risk (including changes in risk due to climate change)
Sustainable resource use	Waste minimisation
	Moving up the waste hierarchy
	Minimising disposal
	Extent to which planning authority manages its own waste arisings
Land and soil	Land contamination
	Land take
	Use of previously developed land
	Impact on Green Infrastructure
	Use of soils, impact on soil quality (including positive)
Landscape	Impact on landscapes (urban, rural, urban fringe) and nationally protected landscapes
	Impact on Green Belt (e.g. maintain extent, openness)
Biodiversity	Conservation of biodiversity
Historic environment	Protection of built heritage
	Protection of archaeological heritage
<b>Social</b>	
Quality of surroundings	Impact on recreational and open spaces
	Improving the quality of where people live
Transport	Kilometres travelled by waste
	Congestion
	Impact on local infrastructure
	Reducing reliance on the car

	Impact on human health
Access to services	Good and equitable access to services Improved access for those most in need
Public involvement	Opportunities for participation Opportunities for education and awareness raising
<b><i>Economic</i></b>	
Sustainable economic growth	Costs of waste management Economic benefits of waste minimisation and resource efficiency/reuse Inward investment
Employment	Number of jobs created

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### **What types of options could the Sustainability Appraisals of Local Plans consider when identifying reasonable alternatives?**

The Environmental Assessment of Plans and Programme Regulations 2004 [\[2\]](http://www.legislation.gov.uk/ukxi/2004/1633/contents/made) (<http://www.legislation.gov.uk/ukxi/2004/1633/contents/made>) require assessment of reasonable alternatives for achieving the objectives of the plan. What will be a reasonable alternative will depend on the circumstances and scope of the plan but the types of options which the Sustainability Appraisal of local plans could consider include:

- need or demand: waste minimisation, ensuring the plan or strategy has policies in place to promote or to deliver waste minimisation
- mode or process: technological options for managing waste streams
- location: options for strategic approaches to locating facilities.

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## **6. Evidence needed to identify waste requirements in Local Plans**

(<http://planningguidance.communities.gov.uk/blog/guidance/waste/evidence-needed-to-identify-waste-requirements-in-local-plans/>)

### **Evidence needed to identify waste requirements in Local Plans**

#### **How should waste planning authorities identify the need for new waste management facilities?**

Information on the available waste management capacity in the relevant area will help inform forward planning in Local Plans of waste infrastructure required to meet need. It will also require an assessment of future requirements for additional waste management infrastructure, with reference to forecasts for future waste arisings. Assessing waste management needs for Local Plan making is likely to involve:

- understanding waste arisings from within the planning authority area, including imports and exports
- identifying the waste management capacity gaps in total and by particular waste streams
- forecasting the waste arisings both at the end of the period that is being planned for and interim dates

- assessing the waste management capacity required to deal with forecast arisings at the interim dates and end of the plan period.

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- **Assessing existing waste management capacity**

(<http://planningguidance.communities.gov.uk/blog/guidance/waste/evidence-needed-to-identify-waste-requirements-in-local-plans/assessing-existing-waste-management-capacity/>)

### **Assessing existing waste management capacity**

#### **Why is it important to manage waste management capacity at the start of the plan period?**

Identifying the existing waste management capacity is important for establishing the baseline against which the need for new facilities will be assessed. However, waste planning authorities should recognise that capacity of waste management facilities may change depending on a wide range of factors, including market conditions.

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#### **What information should waste planning authorities obtain on existing waste management capacity?**

Waste planning authorities will need to ensure that they have obtained sufficient details on existing waste management facilities to enable them to plan effectively. This is likely to include:

- site location details – name of site and operator, address, postcode, local authority, grid reference etc
- type of facility – what process or processes are occurring on the site and which waste streams they manage
- licence/permit details – reference number, tonnage restrictions, waste type restrictions, dates of renewal, etc and status if not yet licensed and permitted
- capacity information – licensed and permitted throughput by waste type
- site lifetime or maximum capacity – it is important to record the expected lifetime of facilities and, where appropriate, their total remaining capacity
- waste sources – origin of wastes managed, broken down by type and location
- outputs from facility – recovery of material and energy, production and export of
- residues and the destination of these, where appropriate
- additional information – potential of site for increasing throughput, adding further capacity, other waste management uses, etc.

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#### **How should waste planning authorities assess capacity of sites exempt from environmental permits?**

Sites that operate under an exemption from the environmental permitting regime are not obliged to report on the amount of waste they handle. Some assessment of maximum capacity may be made through reference to the maximum amounts of waste permitted under the exemption (information on exempt sites is available from the Environment Agency [\[2\]](https://www.gov.uk/access-the-public-register-for-environmental-information)

(<https://www.gov.uk/access-the-public-register-for-environmental-information>)). If a

waste planning authority is concerned that exempt sites are having a significant impact on local capacity, it may wish to investigate this further. This may involve detailed surveys or obtaining a sample of surveys and extrapolating results.

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### **How should waste planning authorities assess any closure of existing waste management facilities and the need for additional waste installation infrastructure?**

Waste planning authorities should consider whether existing waste management facilities are likely to close, or have closed, during the plan period, and the consequent need for new infrastructure, as part of the preparation of Local Plans, using the best available information from a number of sources.

This might include:

- the Environment Agency, which holds information on waste licences, applications and capacity, and which is required to inspect a number of waste management facilities as part of the permitting regime
- waste management companies or site operators/owners who are willing to share their plans for closing facilities or can provide information on a site closure.

Annex 2 (<http://planningguidance.communities.gov.uk/blog/guidance/waste/annex-2-annual-capacity-of-waste-management-facilities/>) contains an example of the sort of table that could be used to report on the capacity of waste management facilities. This table could be supported by a written commentary that sets out the existing position having regard to the Local Plan and provides sufficient information about the provision that has been made for dealing with waste, so as to inform on where there is a shortfall in meeting demand.

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### **Where can waste planning authorities obtain details of existing major disposal and recovery installations?**

A waste planning authority should already provide this information on their Policies Map or as part of their Local Plan. Where this is not the case, it could be obtained from the Environment Agency public registers [\[2\]](https://www.gov.uk/access-the-public-register-for-environmental-information) (<https://www.gov.uk/access-the-public-register-for-environmental-information>) and Waste Data Interrogator [\[3\]](http://data.gov.uk/dataset/waste-data-interrogator-afa230) (<http://data.gov.uk/dataset/waste-data-interrogator-afa230>).

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- Forecasting waste arisings over the plan period

(<http://planningguidance.communities.gov.uk/blog/guidance/waste/evidence-needed-to-identify-waste-requirements-in-local-plans/forecasting-waste-arisings-over-the-plan-period/>)

### **Forecasting waste arisings over the plan period**

#### **How should waste planning authorities forecast waste arisings?**

Waste planning authorities should anticipate and forecast the amount of waste that should be managed at the end of the plan period. They should also forecast waste arising at specific points within the plan period, so as to enable proper consideration of when certain facilities might be needed. However, the right balance needs to be made between obtaining the best evidence to inform what will be necessary to meet waste needs, while avoiding unnecessary and spurious precision.

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### **How should waste planning authorities forecast future municipal waste arisings?**

Forecasts of future municipal waste arisings are normally central to the development of Municipal Waste Management Strategies [\[2\]](#) (<http://www.legislation.gov.uk/ukpga/2003/33/contents>).

It will be helpful to examine municipal waste arisings according to source (ie household collections, civic amenity site wastes, trade waste etc.). This may allow growth to be attributed to particular factors and to inform future forecasts.

A 'growth profile', setting out the assumed rate of change in waste arisings may be a useful starting point for forecasting municipal waste arisings. The growth profile should be based on two factors:

- household or population growth; and
- waste arisings per household or per capita.

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### **How is a growth profile prepared?**

A growth profile is prepared through a staged process:

- calculate arisings per head by dividing annual arisings by population or household data to establish short- and long-term average annual growth rates per household and
- factor in a range of different scenarios, eg constant rate of growth, progressively lowering growth rates due to waste minimisation initiatives.

The final forecast can then be modelled with scenarios based on the long- and short-term rate of growth per household, together with household forecasts.

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### **What are the key issues which may influence the forecasts of other wastes?**

Although it may not be possible to address growth (or decline) of the other waste streams in quite the same way as for municipal waste, there are similar factors that are likely to influence waste arisings. These might include:

- the influence of the landfill tax and its escalator
- the Aggregates Levy, which may encourage use of construction and demolition wastes
- the impact of producer responsibility measures – covering issues such as packaging, end of life vehicles and batteries – and of integrated product policy initiatives.

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### **How can waste planning authorities forecast future commercial and industrial waste arisings?**

Waste planning authorities can prepare growth profiles, similar to municipal waste, to forecast future commercial and industrial waste arisings. In doing so, however, they should:

- set out clear assumptions on which they make their forecast, and if necessary forecast on the basis of different assumptions to provide a range of waste to be managed
- be clear on rate of growth in arisings being assumed. Waste planning authorities should assume a certain level of growth in waste arisings unless there is clear evidence to demonstrate otherwise.

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### **How should waste planning authorities forecast future construction and demolition waste arisings?**

Waste planning authorities should start from the basis that net arisings of construction and demolition waste will remain constant over time as there is likely to be a reduced evidence base on which forward projections can be based for construction and demolition wastes. However, when forecasting construction and demolition waste arisings, the following may be relevant:

- annual existing returns from waste management facilities
- data from site waste management plans (where available)
- the fact that a sizeable proportion of construction and demolition waste arisings are managed or re-used on-site, or exempt sites, so it is critical that some provision is made for unseen capacity in this way
- any significant planned regeneration or major infrastructure projects over the timescale of the Plan.

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### **How should waste planning authorities forecast future hazardous waste arisings?**

Since existing data on hazardous waste arisings is likely to be robust, waste planning authorities should plan for future hazardous wastes arisings based on extrapolating time series data. View guidance on hazardous substances (<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/>).

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- Using data to monitor and forecast waste needs

(<http://planningguidance.communities.gov.uk/blog/guidance/waste/evidence-needed-to-identify-waste-requirements-in-local-plans/using-data-to-monitor-and-forecast-waste-needs/>)

### **Using data to monitor and forecast waste needs**

#### **What are the potential sources of information of waste data to inform the preparation of Local Plans?**

Planned provision of new capacity and its spatial distribution should be based on robust analysis of best available data, including:

- the waste planning authority's own data (from existing permissions and regular monitoring)
- Municipal waste data from the waste disposal authority, in particular the WasteDataFlow  (<http://www.wastedataflow.org/>) system
- Commercial and industrial waste information, which may be obtained from a number of sources, but in particular the Environment Agency's Waste Data Interrogator  (<http://data.gov.uk/dataset/waste-data-interrogator-afa230>) (which collates information provided by site operators in the site returns that they are required to submit by the conditions of their environmental permit). Other

sources may also be used, including information provided by the waste management industry, bespoke surveys carried out by the waste planning authority, and surveys carried out by central Government

- Radioactive waste data is provided by the Nuclear Decommissioning Authority for all waste from the nuclear industry; information on radioactive waste produced by large industrial sites (installations) can be obtained from the Environment Agency's Pollution Inventory
- Construction and Demolition waste data may be available from annual site returns from individual facilities to the Environment Agency. Other possible sources could include site waste management plans and bespoke surveys. A qualitative assessment approach may also be appropriate
- Hazardous waste – data on volumes of hazardous waste arising may be obtained from the Environment Agency through their Hazardous Waste Data Interrogator
- Other waste streams of local significance – data on other waste streams of regional or local significance may require bespoke collection, or more detailed interrogation of databases held by the Environment Agency, the Department for Environment, Food and Rural Affairs and/or local authorities (including new data streams coming on-line in early 2015 on waste being passed through materials recovery facilities), and water companies.

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### **What principles should waste planning authorities adopt when using data to plan for waste management facilities?**

Given the challenges of obtaining up-to-date and reliable waste data, the following key principles when using waste management data may be helpful:

- Make clear assumptions on how data were handled, as well as their impact (including on forecasting)
- Provide data to an appropriate level of significance, based on their explicit assumptions. In practice, data quoted to more than two or three significant figures will not be helpful and spurious accuracy stemming from precise figures should be avoided
- Plan for a range of each type of waste rather than a specific single figure.

ID 28-036-20141016 Last updated 16 10 2014

- Identifying suitable sites and areas

(<http://planningguidance.communities.gov.uk/blog/guidance/waste/evidence-needed-to-identify-waste-requirements-in-local-plans/identifying-suitable-sites-and-areas/>)

### **Identifying suitable sites and areas**

#### **What factors are likely to drive the siting of required waste management facilities?**

The siting of waste management facilities will be driven by a number of issues including:

- the likely distribution of waste arisings, which for many wastes would be expected to be similar to the existing and anticipated structure and layout of settlements
- the likely catchment and necessary flows of waste for the type of facility being proposed
- physical and environmental constraints limiting the likely opportunities for accommodating suitable waste management facilities. For example, urban



authorities may have limited opportunities to accommodate some types of waste management facility

- suitability of local transport infrastructure and availability of sustainable transport methods.

Significant flows of some industrial wastes, and particularly hazardous industrial wastes and low level radioactive wastes, may arise at clearly defined locations, and have specific treatment and disposal needs.

In considering the broad locations for the pattern of waste management facilities care should be taken, particularly for the smaller scale waste streams, to avoid limiting market flexibility.

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### **What flexibility should waste planning authorities plan for when allocating sites?**

When identifying sites for waste management facilities, waste planning authorities should seek to demonstrate that the stock of allocated land provides sufficient opportunities to meet waste needs. Since it is possible that not all sites for the range of waste arisings that need to be catered for will be developed in practice, waste planning authorities should not rigidly cap development proposals at the level that may be put forward through the Local Plan. However, they may wish to plan for a 'close fit' of land allocations with planned waste management capacity for landfill sites, given that landfill is at the bottom of the Waste Hierarchy.

As part of this process the waste planning authority should consider including policies to help steer the timing of land releases in line with the Local Plan. In doing so, however, they should take account of any identified constraints to site deliverability. This will include marketability to the waste management industry and the 'lead in' times that may arise from new infrastructure required to service sites, which although capable of resolution during the forward look of the Plan (otherwise the allocation should not have been made), could affect deliverability.

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### **What information on the location of waste management facilities should be included in Local Plans?**

Local Plans covering waste should include clearly defined locations and/or areas of search and these should be clearly identified on an Adopted Policies Map.

Such measures should meet European reporting requirements for waste management plans to show existing and proposed waste management sites on a geographical map, and/or include sufficiently precise locational criteria for identifying such sites.

ID 28-039-20141016 Last updated 16 10 2014

### **When is it acceptable for waste planning authorities to identify areas rather than specific sites?**

There may be occasions when a waste planning authority will wish to identify particular areas as suitable for waste management to provide for more flexibility for the market. Such areas could include, for example, particular industrial estates where the waste planning authority is satisfied that any of a number of individual sites would be suitable for waste management.

ID 28-040-20141016 Last updated 16 10 2014

## **Does the preference for suitable brownfield sites rule out greenfield allocations?**

While priority should be given to the re-use of previously developed land, greenfield allocations need not be entirely ruled out if that is the most suitable, sustainable option. Not all brownfield sites will be suitable for the range of waste management facilities required to support the Local Plan and some may be of high environmental value. The concern is to ensure good use of suitable 'brownfield' land and avoid turning unnecessarily to greenfield locations.

ID 28-041-20141016 Last updated 16 10 2014

7. Planning for London's waste (<http://planningguidance.communities.gov.uk/blog/guidance/waste/planning-for-londons-waste/>)

### **Planning for London's waste**

#### **Why are waste targets set out for London boroughs in the London Plan?**

Apportionments of waste to London boroughs set out in the London Plan [\[2\]](https://www.london.gov.uk/priorities/planning/london-plan) (<https://www.london.gov.uk/priorities/planning/london-plan>) provide a benchmark for the preparation of Local Plans and a basis for Annual Monitoring Reports. Waste planning authorities should have regard to the apportionments set out in the London Plan when developing their policies. The Local Waste Plan will need to be in general conformity with the London Plan.

ID 28-042-20141016 Last updated 16 10 2014

#### **How should waste planning authorities in London identify a waste management capacity gap?**

Waste planning authorities will need to plan for the delivery of sites and areas suitable for waste management to fill the gap between existing and required waste management capacity.

The need for replacement capacity should reflect that:

- apportionments provide high-level benchmarks for local planning, and are subject to annual monitoring and regular review
- existing facilities may close sooner or later than predicted
- capacity may be developed at a slower or faster rate than predicted.

ID 28-043-20141016 Last updated 16 10 2014

#### **How should waste planning authorities plan for London's waste?**

Given the unique waste needs of London, there is likely to be a need for waste planning authorities surrounding London to take some of London's waste. The Mayor and waste planning authorities in London should engage constructively, actively and on an ongoing basis with other authorities, under the duty to cooperate, to help manage London's waste.

ID 28-044-20141016 Last updated 16 10 2014

## 8. Determining planning applications

(<http://planningguidance.communities.gov.uk/blog/guidance/waste/determining-planning-applications/>)

### **Determining planning applications**

#### **How are counties and districts expected to work together in**

### **respect of waste development planning applications?**

Reflecting the close co-operation expected between waste planning and district authorities in respect to developing waste planning policy through the duty to cooperate, a collaborative approach should also apply in respect to waste development planning applications. Specifically, pre-planning application discussions between counties and their districts is strongly encouraged. On receipt of applications, county planning authorities are required to consult district authorities <sup>[2]</sup> (<http://www.legislation.gov.uk/ukxi/2015/595/article/24/made>) (who are statutory consultees under Schedule 4 of The Town and Country Planning (Development Management Procedure) (England) Order 2015 <sup>[2]</sup> (<http://www.legislation.gov.uk/ukxi/2015/595/schedule/4/made>) and then consider any subsequent representations as material considerations to be taken into account before determining applications.

ID 28-045-20150415 Last updated 15 04 2015

### **When can unallocated sites be used?**

There may be significant changes in, for example, technological impact and land ownership that occur over a short period of time and provide opportunities that were not anticipated.

In the case of waste disposal facilities, applicants should be able to demonstrate that the envisaged facility will not undermine the waste planning strategy through prejudicing movement up the Waste Hierarchy. If the proposal is consistent with an up to date Local Plan, there is no need to demonstrate 'need'.

Where monitoring indicates that a persistent, and significant gap, exists between what has been planned for and what is occurring in reality, the waste planning authority may consider addressing this through review of the Local Plan.

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### **Should existing waste facilities be expanded/extended?**

The waste planning authority should not assume that because a particular area has hosted, or hosts, waste disposal facilities, that it is appropriate to add to these or extend their life. It is important to consider the cumulative effect of previous waste disposal facilities on a community's wellbeing. Impacts on environmental quality, social cohesion and inclusion and economic potential may all be relevant. Engagement with the local communities affected by previous waste disposal decisions will help in these considerations.

ID 28-047-20141016 Last updated 16 10 2014

### **Are time extensions for landfill sites allowed?**

Waste planning authorities should be aware that the continued provision and availability of waste disposal sites, such as landfill, remain an important part of the network of facilities needed to manage England's waste.

The continued movement of waste up the Waste Hierarchy may mean that landfill sites take longer to reach their full capacity, meaning an extension of time limits to exercise the planning permission may be needed in some circumstances, provided this is in accordance with the Local Plan and having taken into account all material considerations.

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### **Should significant developments include a waste audit?**

For proposals that are likely to generate significant volumes of waste through the development or operational phases it will be useful to include a waste audit as part of the application. This audit should demonstrate that in both construction and operational phases of a proposed development, waste will be minimised as far as possible and that such waste as is generated will be managed in an appropriate manner in accordance with the Waste Hierarchy. In particular, the waste audit could cover the following:

- the anticipated nature and volumes of waste that the development will generate
- where appropriate, the steps to be taken to ensure the maximum amount of waste arising from development on previously developed land is incorporated within the new development
- the steps to be taken to ensure effective segregation of wastes at source including, as appropriate, the provision of waste sorting, storage, recovery and recycling facilities
- any other steps to be taken to manage the waste that cannot be incorporated within the new development or that arises once development is complete.

Before granting planning permission, the local planning authority will need to be satisfied that the impacts of non-waste development on existing waste management facilities are acceptable and do not prejudice the implementation of the Waste Hierarchy. Where appropriate, the local planning authority may require additional waste management measures in order to facilitate the movement of waste management up the Hierarchy. In addition, the potential impacts from noise, vibration, artificial light, dust and odour must be properly considered for any proposed site.

ID 28-049-20141016 Last updated 16 10 2014

## 9. Regulatory regimes (<http://planningguidance.communities.gov.uk/blog/guidance/waste/regulatory-regimes/>)

### Regulatory regimes

#### What is the relationship between planning and other regulatory regimes?

The planning system controls the development and use of land in the public interest. This includes consideration of the impacts on the local environment and amenity taking into account the criteria set out in Appendix B to National Planning Policy for Waste [\[2\]](https://www.gov.uk/government/publications/national-planning-policy-for-waste) (<https://www.gov.uk/government/publications/national-planning-policy-for-waste>).

There exist a number of issues which are covered by other regulatory regimes and waste planning authorities should assume that these regimes will operate effectively. The focus of the planning system should be on whether the development itself is an acceptable use of the land and the impacts of those uses, rather than any control processes, health and safety issues or emissions themselves where these are subject to approval under other regimes. However, before granting planning permission they will need to be satisfied that these issues can or will be adequately addressed by taking the advice from the relevant regulatory body.

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#### What is the main role of the environmental permit?

The role of the environmental permit, regulated by the Environment Agency, is to provide the required level of protection for the environment from the operation of a waste facility. The permit will aim to prevent pollution through the use of measures to prohibit or limit the release of substances to the

environment to the lowest practicable level. It also ensures that ambient air and water quality meet standards that guard against impacts to the environment and human health.

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### **How should the developer, waste planning authority and Environment Agency work together at pre-application and application stage?**

The Environment Agency plays an important role at the pre-application stage of proposals for waste management facilities, especially large-scale proposals, since they may be involved in providing advice to the waste planning authority on a formal planning application. Pre-application discussions with the Environment Agency will help developers identify and respond to any key issues that could affect planning and/or permitting decisions when they are locating and designing developments. Applicants are encouraged, but are not required, to submit their application for planning permission and an environmental permit at the same time to minimise the extent of additional work and ensure integrated and timely decisions. Further advice can be found in "Guidance for developments requiring planning permission and environmental permits" ([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/297009/LIT\\_7260\\_bba627.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/297009/LIT_7260_bba627.pdf)) published by the Environment Agency in October 2012.

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## 10. Inspections and Monitoring (<http://planningguidance.communities.gov.uk/blog/guidance/waste/inspections-and-monitoring/>)

### **Inspections and Monitoring**

#### **What inspections should the local planning authority carry out?**

Article 34 of the Waste Framework Directive and Regulation 19(2) of the Waste (England and Wales) Regulations 2011 require local planning authorities to carry out appropriate inspections of waste management facilities.

There is no prescription on the frequency and requirements of such inspections, which is left to the discretion of authorities to determine. In practice such inspections are likely to occur either as part of any wider inspection to check compliance with the terms of the planning permission, or as part of an investigation of any allegation of a breach of planning control such as a failure to comply with planning conditions.

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#### **What should waste planning authorities monitor?**

To ensure compliance with the Waste Framework Directive, waste planning authorities should use the Annual Monitoring Reports to ensure there is sufficient information to determine the location and capacity of existing major disposal and recovery installations, and of future disposal or major recovery installations. Authorities should also use the Annual Monitoring Reports to review the assessment in the Local Plan of the need for closure of existing waste installations and of the need for additional waste installations.

Waste planning authorities should monitor at least the following:

- **Land allocations**
  - Consideration should be given to why any allocated sites and areas have not been taken up as anticipated. If there are doubts about the prospects

of particular land allocations coming forward, and this would damage the planning strategy, consideration will need to be given to bringing forward alternative, or additional, allocations. Monitoring should also take into account any new site-specific data relevant to the original site appraisal process, as well as any additional considerations, such as changes in environmental legislation or new waste treatment technologies.

- **Changes to waste management capacities and the need for additional waste infrastructure**

- It will be important to consider both permissions granted and additions to the stock of waste management facilities, both by waste management type and by waste stream.
- Account should be taken of any sites that have been closed, completed, or that have reached the end of their lifetime. Comparison between completed capacity and permissions granted can help to give a broad indication of trends in waste management. By building up a picture of trends in delivery rates, a planning authority is in a better position to understand the scale of land allocations required to deliver the planning strategy. Monitoring should also address the capacity of permitted and registered exempt sites. A suggested form to adopt is set out in Annex 2 (<http://planningguidance.communities.gov.uk/blog/guidance/waste/annex-2-annual-capacity-of-waste-management-facilities/>).

- **Annual arisings**

- Forecasts of future waste arisings from various sources are important to underpin the assessment of need for new waste management capacity.

It is up to each waste planning authority to develop its own indicators. However, where information is shared, a common approach to monitoring and consistency in recording permissions and changes in the stock of waste management facilities will help avoid unnecessary confusion and duplication of activity.

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11. **Annex 1: Summary of articles of the Waste Framework Directive (2008/98EC) and actions on local planning authorities** (<http://planningguidance.communities.gov.uk/blog/guidance/waste/annex-1-summary-of-articles-of-the-waste-framework-directive-200898ec-and-actions-on-local-planning-authorities/>)

### **Annex 1: Summary of articles of the Waste Framework Directive (2008/98EC) and actions on local planning authorities**

<b>Waste Framework Directive 2008/98/EC</b>	<b>Delivery mechanism / Action</b>
<p><b>Article 4: Waste Hierarchy</b></p> <p>The following waste hierarchy shall apply as a priority order in waste prevention and management legislation and policy:</p> <ul style="list-style-type: none"> <li>• prevention;</li> <li>• preparing for re-use;</li> <li>• recycling;</li> <li>• other recovery, e.g. energy recovery; and</li> <li>• disposal</li> </ul>	<p>Waste planning authorities need to consider the hierarchy of waste management options when drawing up Local Plans in line with National Planning Policy for Waste.</p> <p>The waste hierarchy is also capable of being a material consideration when determining individual proposals for waste management facilities. All local planning authorities can make a contribution to promoting the sound management of waste as part of any proposed development.</p>

<p><b>Article 13: Protection of Human Health and the Environment</b></p> <p>Member states shall take the necessary measures to ensure that waste management is carried out without endangering human health, without harming the environment and, in particular:</p> <ul style="list-style-type: none"> <li>• without risk to water, air, soil, plants or animals;</li> <li>• without causing a nuisance through noise or odours; and</li> <li>• without adversely affecting the countryside or places of special interest.</li> </ul>	<p>Planning Authorities must have regard to the provisions of Article 13 when exercising planning functions to the extent that those functions relate to waste management.</p> <p>This is to ensure that any waste is handled in a manner which guards against harm to human health and the environment when exercising their planning functions to the extent that those functions relate to waste management.</p>
<p><b>Article 16: Principles of self-sufficiency and proximity</b></p> <p>Member States shall establish an integrated and adequate network of waste disposal installations and of installations for the recovery of mixed municipal waste collected from private households.</p> <p>The network shall enable waste to be disposed of or recovered in one of the nearest appropriate installations, by means of the most appropriate methods and technologies, in order to ensure a high level of protection for the environment and public</p>	<p>Planning Authorities must have regard to the provisions of Article 16 when exercising planning functions to the extent that those functions relate to waste management.</p> <p>Waste planning authorities should ensure that, as far as is practicable, sufficient waste disposal facilities and facilities for the recovery of mixed municipal waste collected from households exist within their Local Plan area.</p> <p>Waste planning authorities should ensure that waste disposal facilities and facilities for the recovery of mixed municipal waste collected from households are appropriately sited to ensure compliance with the proximity principle. This can include joint working with other planning authorities to develop an extensive network of sites to enable effective waste management.</p>

<p><b>Article 28: Waste Management Plans</b></p> <p>The waste management plans shall contain, as appropriate and taking into account the geographical level and coverage of the planning area, at least the following:</p> <ul style="list-style-type: none"> <li>• existing major disposal and recovery installations</li> <li>• an assessment of the need for closure of existing waste installations, additional waste installation infrastructure in accordance with Article 16</li> <li>• sufficient information on the location criteria for site identification and on the capacity of future disposal or major recovery installations</li> </ul>	<p>Waste planning authorities should ensure that there is sufficient information in the Local Plan and/or annual monitoring reports to determine the location and capacity of existing major disposal and recovery installations.</p> <p>Waste planning authorities should undertake an assessment of the need for closure of existing waste installations and an assessment of the need for additional waste installation as part of the preparation of local authority Local Plans. Waste planning authorities should keep these assessments under review through the production of Annual Monitoring Reports.</p> <p>Waste planning authorities should ensure that there is sufficient information in the Local Plan and Annual Monitoring Reports to determine the location and capacity of future disposal or major recovery installations.</p>
<p><b>Article 34: Inspections</b></p> <p>Establishments or undertakings which carry out waste treatment operations which collect or transport waste on a professional basis, brokers and dealers which produce hazardous waste shall be subject to appropriate periodic inspections by the competent authorities.</p>	<p>Regulation 19 of the Waste (England and Wales) Regulations 2011 requires planning authorities with planning functions in respect of undertakings carrying on disposal or recovery of waste to ensure that periodic inspections are made.</p> <p>In practice such inspections are likely to occur either as part of a wider inspection of ensuring compliance with the terms of the planning permission or in investigating any allegation of a breach of planning conditions.</p>

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## 12. Annex 2: Annual capacity of waste management facilities

(<http://planningguidance.communities.gov.uk/blog/guidance/waste/annex-2-annual-capacity-of-waste-management-facilities/>)

### Annex 2: Annual capacity of waste management facilities

Type of waste site	Current Permitted capacity / throughput (tonnes per annum)	Planned capacity (with approx start date)	Remaining capacity (if appropriate)	End date (if appropriate)	Site address (or location on allocations map)
<b>Recycling</b>					
Composting					




Household Waste Recycling Sites					
Transfer stations (where recycling takes place)					
Materials Recycling Facilities					
Construction and Demolition waste recycling					
Tyre Recycling					
<b>Total</b>					
<b>Recovery</b>					
Energy from waste					
Metal Recycling and End of Life Vehicle Facilities					
<b>Total</b>					
<b>Treatment</b>					
Mechanical Biological Treatment (with Anaerobic Digestion)					
Anaerobic digestion					
Thermal Treatment (Energy recovery)					
Clinical Waste Transfer and Treatment					
Soil Treatment					
<b>Total</b>					
<b>Disposal</b>					

Incineration (without energy recovery)					
Land fill site					
<b>Total</b>					

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 Department for Communities & Local Government  
(<https://www.gov.uk/government/organisations/department-for-communities-and-local-government>)

## Planning Practice Guidance (<http://planningguidance.communities.gov.uk>)

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Guidance

### Water supply, wastewater and water quality

Print 




#### 1. Water supply, wastewater and water quality – introduction


(<http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality/water-supply-wastewater-and-water-quality-introduction/>)

#### Water supply, wastewater and water quality – introduction

##### Why should planning be concerned with water supply, wastewater and water quality?

Adequate water and wastewater infrastructure is needed to support sustainable development. A healthy water environment will also deliver multiple benefits, such as helping to enhance the natural environment generally and adapting to climate change.

The EU Water Framework Directive  (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0060:EN:NOT>) applies to surface waters (including some coastal waters) and groundwater (water in underground rock). It requires member states, among other things, to prevent deterioration of aquatic ecosystems and protect, enhance and restore water bodies to 'good' status. Local planning authorities must, in exercising their functions  (<http://www.legislation.gov.uk/ukxi/2003/3242/regulation/17/made>), have regard to the river basin management plans  (<http://www.environment-agency.gov.uk/research/planning/33240.aspx>) on the Environment Agency website that implement the Water Framework Directive. These plans contain the main issues for the water environment and the actions needed to tackle them.

The National Policy Statement for Waste Water  (<https://www.gov.uk/government/publications/national-policy-statement-for-waste-water>) forms part of the overall framework of national planning policy.

ID 34-001-20140306 Last updated 06 03 2014

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#### Related policy

##### National Planning Policy Framework

- Paragraph 94 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph\\_94http://](http://planningguidance.com/sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph_94http://))
- Paragraph 109 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph\\_109](http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph_109))
- Paragraph 120 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph\\_120](http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph_120))
- Paragraph 156 ([http://planningguidance.com/sustainable-development/plan-making/#paragraph\\_156](http://planningguidance.com/sustainable-development/plan-making/#paragraph_156))

## 2. Water Quality (<http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality/water-quality/>)

### Water Quality

Plan-making may need to consider:

- How to help protect and enhance local surface water and groundwater in ways that allow new development to proceed and avoids costly assessment at the planning application stage. For example, can the plan steer potentially polluting development away from the most sensitive areas, particularly those in the vicinity of potable water supplies (designated source protection zones or near surface water drinking water abstractions)?
- The type or location of new development where an assessment of the potential impacts on water bodies may be required.
- Where particular types of sustainable drainage systems may not be practicable ([http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/reducing-the-causes-and-impacts-of-flooding/why-are-sustainable-drainage-systems-important/#paragraph\\_080](http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/reducing-the-causes-and-impacts-of-flooding/why-are-sustainable-drainage-systems-important/#paragraph_080)).

ID 34-006-20150323 Last updated 23 03 2015

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### Related policy

#### National Planning Policy Framework

- Paragraph 109 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph\\_109](http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph_109))
- Paragraph 110 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph\\_110](http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph_110))
- Paragraph 120 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph\\_120](http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph_120))

## 3. Water supply, wastewater and water quality – considerations in plan making

(<http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality/water-supply-wastewater-and-water-quality-considerations-in-plan-making/>)

### Water supply, wastewater and water quality – considerations in plan making

#### What are the water supply, wastewater and water quality concerns that Local Plans need to address?

This will vary depending on the character of the local authority area, the type of issues the Local Plan (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>) will need to grapple with and the contribution that can be made to a 'catchment-based approach' ([http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality/water-supply-wastewater-and-water-quality-considerations-in-plan-making/#paragraph\\_003](http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality/water-supply-wastewater-and-water-quality-considerations-in-plan-making/#paragraph_003)) to water. Wastewater treatment plants are waste developments and handled by the waste planning authority so it is important in two-tier areas for district and county councils to work closely on these matters.

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### Related policy

#### National Planning Policy Framework

- Paragraph 94 (<http://planningguidance.com/sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change>)

Early discussions between local planning authorities and water and sewerage companies, so that proposed growth and environmental objectives are reflected in company business plans, will help ensure that the necessary infrastructure is funded through the water industry's price review [\[2\]](http://www.ofwat.gov.uk/pricereview/)

(<http://www.ofwat.gov.uk/pricereview/>). More information about funding wastewater infrastructure can be found here ([http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality/water-supply-wastewater-and-water-quality-considerations-in-plan-making/#paragraph\\_004](http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality/water-supply-wastewater-and-water-quality-considerations-in-plan-making/#paragraph_004)).

In plan-making, there are a number of broad considerations relevant to water supply and water quality:

- infrastructure (<http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality/water-supply-wastewater-and-water-quality-considerations-in-plan-making/infrastructure/>) (water supply and wastewater);
- water quality (<http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality/water-supply-wastewater-and-water-quality-considerations-in-plan-making/water-quality/>);
- wastewater (<http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality/water-supply-wastewater-and-water-quality-considerations-in-plan-making/wastewater/>);
- cross-boundary concerns (<http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality/water-supply-wastewater-and-water-quality-considerations-in-plan-making/cross-boundary-concerns/>);
- strategic environmental assessment and sustainability appraisal (<http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality/water-supply-wastewater-and-water-quality-considerations-in-plan-making/using-strategic-environmental-assessment-and-sustainability-appraisal/>).

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## What is a catchment-based approach?

Defra has published a policy framework to encourage the wider adoption of an integrated catchment-based approach [\[2\]](https://www.gov.uk/government/publications/catchment-based-approach-improving-the-quality-of-our-water-environment) (<https://www.gov.uk/government/publications/catchment-based-approach-improving-the-quality-of-our-water-environment>) to improving the quality of the water environment:

- to deliver positive and sustained outcomes for the water environment by promoting a better understanding of the environment at a local level; and
- to encourage local collaboration and more transparent decision-making when both planning and delivering activities to improve the water environment.

The framework explains that adopting the approach will promote the development of more appropriate river basin management plans (which underpin the delivery of the objectives of the Water Framework Directive [\[2\]](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0060:EN:NOT) (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0060:EN:NOT>)) but will also provide a platform for engagement, discussion and decisions of much wider benefits including tackling diffuse agricultural and urban pollution, and widespread, historical alterations to the natural form of channels.

A 'catchment' is a geographic area defined naturally by surface water hydrology. Catchments can exist at many scales but within this context it means management catchments that the Environment Agency uses for managing availability of water for abstraction as a starting point. More information is on the Environment Agency website [\[2\]](http://www.environment-agency.gov.uk/research/planning/131506.aspx) (<http://www.environment-agency.gov.uk/research/planning/131506.aspx>), including an up-to-date list of catchment partnerships.

flooding-and-coastal-change/#paragraph\_94http:/

- Paragraph 99 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph\\_99](http://planningguidance.com/sustainable-development/delivering-sustainable-development/10-meeting-the-challenge-of-climate-change-flooding-and-coastal-change/#paragraph_99))
- Paragraph 109 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph\\_10](http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph_10)!)
- Paragraph 156-157 ([http://planningguidance.com/sustainable-development/plan-making/#paragraph\\_156](http://planningguidance.com/sustainable-development/plan-making/#paragraph_156))

ID 34-003-20140306 Last updated 06 03 2014

## How is wastewater infrastructure funded?

Ofwat, the economic regulator for the water industry, sets a cap on the charges that water companies can levy. This is known as the price review and takes place every five years (the next review is 2014). These price limits are determined by working out how much revenue each company must collect from its customers to run their businesses efficiently and meet their statutory obligations. Companies are subject to a statutory duty to 'effectually drain' their area. This requires them to invest in infrastructure suitable to meet the demands of projected population growth. There is also statutory provision for developers to fund additional sewerage infrastructure required to accommodate flows from a proposed development (Ofwat has provided information for developers [\[2\]](http://www.ofwat.gov.uk/nonhousehold/developers/) (<http://www.ofwat.gov.uk/nonhousehold/developers/>) where a development would require a new water main or sewer).

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- **Infrastructure** (<http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality/water-supply-wastewater-and-water-quality-considerations-in-plan-making/infrastructure/>)

## Infrastructure

Plan-making may need to consider:

- Identifying suitable sites for new or enhanced infrastructure. In identifying sites it will be important to recognise that water and wastewater infrastructure sometimes has particular locational needs (and often consists of engineering works rather than new buildings) which mean otherwise protected areas may exceptionally have to be considered where consistent with their designation. Plan-making will also need to take into account existing and proposed development in the vicinity of a location under consideration for water and wastewater infrastructure. In two tier areas there will need to be close working between the district and county councils.
- Considering whether new development is appropriate near to sites used (or proposed) for water and wastewater infrastructure (for example, odour may be a concern).
- Phasing new development so that water and wastewater infrastructure will be in place when needed.

ID 34-005-20140306 Last updated 06 03 2014

- **Wastewater** (<http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality/water-supply-wastewater-and-water-quality-considerations-in-plan-making/wastewater/>)

## Wastewater

Plan-making may need to consider:

- The sufficiency and capacity of wastewater infrastructure.
- The circumstances where wastewater from new development would not be expected to drain to a public sewer ([http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality/water-supply-wastewater-and-water-quality-considerations-for-planning-applications/#paragraph\\_020](http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality/water-supply-wastewater-and-water-quality-considerations-for-planning-applications/#paragraph_020)).

ID 34-007-20140306 Last updated 06 03 2014

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## Related policy

### National Planning Policy Framework

- Paragraph 162 ([http://planningguidance.com/sustainable-development/plan-making/#paragraph\\_162](http://planningguidance.com/sustainable-development/plan-making/#paragraph_162))

- **Cross-boundary concerns** (<http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality/water-supply-wastewater-and-water-quality-considerations-in-plan-making/cross-boundary-concerns/>)

### Cross-boundary concerns

Plan-making may need to consider:

- Water supply and water quality concerns often cross local authority boundaries and can be best considered on a catchment basis. Liaison between local planning authorities, the Environment Agency, catchment partnerships ([http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality/water-supply-wastewater-and-water-quality-considerations-in-plan-making/#paragraph\\_003](http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality/water-supply-wastewater-and-water-quality-considerations-in-plan-making/#paragraph_003)) and water and sewerage companies from the outset (at the plan scoping and evidence gathering stages of plan-making) will help to identify water supply and quality issues, the need for new water and wastewater infrastructure to fully account for proposed growth and other relevant issues such as flood risk. The duty to cooperate (<http://planningguidance.communities.gov.uk/blog/guidance/duty-to-cooperate/>) across boundaries applies to water supply and quality issues.

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### Related policy

#### National Planning Policy Framework

- Paragraph 157 ([http://planningguidance.com/sustainable-development/plan-making/#paragraph\\_157](http://planningguidance.com/sustainable-development/plan-making/#paragraph_157))
- Paragraph 179 ([http://planningguidance.com/sustainable-development/plan-making/#paragraph\\_179](http://planningguidance.com/sustainable-development/plan-making/#paragraph_179))
- Paragraph 180 ([http://planningguidance.com/sustainable-development/plan-making/#paragraph\\_180](http://planningguidance.com/sustainable-development/plan-making/#paragraph_180))

- **Using strategic environmental assessment and sustainability appraisal** (<http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality/water-supply-wastewater-and-water-quality-considerations-in-plan-making/using-strategic-environmental-assessment-and-sustainability-appraisal/>)

### Using strategic environmental assessment and sustainability appraisal

Plan-making may need to consider:

- Water supply and quality are considerations in strategic environmental assessment and sustainability appraisal (<http://planningguidance.communities.gov.uk/blog/guidance/strategic-environmental-assessment-and-sustainability-appraisal/strategic-environmental-assessment-and-sustainability-appraisal-and-how-does-it-relate-to-strategic-environmental-assessment/>) which are used to shape an appropriate Local Plan, for example by establishing the 'baseline' and appropriate objectives for the assessment of impacts and proposed monitoring. Sustainability appraisal objectives could include preventing deterioration of current water body status, taking climate change into account and seeking opportunities to improve water bodies.

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## 4. Information about the water environment

(<http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality/information-about-the-water-environment/>)

### Information about the water environment

#### Where is there information about the water environment?

The river basin management plan prepared by the Environment Agency is the key over-arching source of information on the water environment including the condition of water bodies and measures to help meet Water Framework Directive [\[2\]](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0060:EN:NOT) (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0060:EN:NOT>) objectives.

Other sources of information on the water environment include:

- the National Environment Programme [\[2\]](http://webarchive.nationalarchives.gov.uk/20140328084622/http://www.environment-agency.gov.uk/business/sectors/33071.aspx) (<http://webarchive.nationalarchives.gov.uk/20140328084622/http://www.environment-agency.gov.uk/business/sectors/33071.aspx>) published by the Environment Agency outlines improvements required to meet European Directives;
- statutory water company water resource management plans;
- water and sewerage company business plans;
- information published by the Environment Agency [\[2\]](http://www.environment-agency.gov.uk/research/planning/33368.aspx) (<http://www.environment-agency.gov.uk/research/planning/33368.aspx>), including flood and coastal risk management plans and strategies, abstraction management, groundwater vulnerability maps and the location of source protection zones;
- water cycle studies ([http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality/information-about-the-water-environment/#paragraph\\_012](http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality/information-about-the-water-environment/#paragraph_012));
- water and sewerage company drainage strategies ([http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality/information-about-the-water-environment/#paragraph\\_013](http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality/information-about-the-water-environment/#paragraph_013));
- the Datashare Geostore website [\[2\]](http://www.geostore.com/environment-agency/) (<http://www.geostore.com/environment-agency/>) contains freely available information about the water environment;
- Local Record Centres, which may hold relevant information on the water environment;
- information from environmental statements.

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## What are river basin management plans?

River basin management plans describe the river basin district and the pressures that the water environment faces. For the purposes of river basin management, the water environment is divided into units called water bodies. These can be sections of rivers and canals, lakes and reservoirs, estuaries, coastal waters and groundwater. In the South East, for example, the plan identifies 441 water bodies. Plans show long term objectives, what these mean for the current state of the water environment and what actions will be taken to address the pressures. They set out what improvements are possible and how the actions will make a difference. There are ten river basin management plans covering England. They are produced by the Environment Agency [\[2\]](http://www.environment-agency.gov.uk/research/planning/33106.aspx) (<http://www.environment-agency.gov.uk/research/planning/33106.aspx>) and approved by the Secretary of State for Environment, Food and Rural Affairs.

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## What is a water cycle study?

A water cycle study is a voluntary study that helps organisations work together to plan for sustainable growth. It uses water and planning evidence and the expertise of partners to understand environmental and infrastructure capacity. It can identify joined up and cost effective solutions, that are resilient to climate change for the lifetime of the development.



The study provides evidence for Local Plans (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>) and sustainability appraisals and is ideally done at an early stage of plan-making. Local authorities (or groups of local authorities) usually lead water cycle studies, as a chief aim is to provide evidence for sound Local Plans but other partners often include the Environment Agency and water companies.

The Environment Agency has published advice on undertaking water cycle studies [\[2\]](http://a0768b4a8a31e106d8b0-50dc802554eb38a24458b98ff72d550b.r19.cf3.rackcdn.com/geho0109bpff-e-e.pdf) (<http://a0768b4a8a31e106d8b0-50dc802554eb38a24458b98ff72d550b.r19.cf3.rackcdn.com/geho0109bpff-e-e.pdf>).

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### What is a drainage strategy?

A drainage strategy can be prepared by water and sewerage companies and sets out how they intend to deliver statutory drainage functions and customer needs within a particular catchment. It will explain how the water company will do this in partnership with other organisations. Drainage strategies are expected to become an integral part of water and sewerage companies' business plans. The Environment Agency and Ofwat have published a Drainage Strategy Framework [\[2\]](http://www.environment-agency.gov.uk/research/library/publications/147922.aspx) (<http://www.environment-agency.gov.uk/research/library/publications/147922.aspx>) which sets out principles and best practice for water and sewerage companies to develop catchment based drainage strategies.

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### How can the Environment Agency help?

The Environment Agency can often provide help to local planning authorities and applicants by:

- identifying the circumstances in which water quality is likely to be a significant planning issue and, where it is, the scope and content of any assessments that may be needed;
- advising whether an environmental permit or other consent is likely to be required before the proposed development can start operating (they have published guidance for developments requiring planning permission and environmental permits [\[2\]](http://www.environment-agency.gov.uk/business/regulation/139378.aspx) (<http://www.environment-agency.gov.uk/business/regulation/139378.aspx>)). And, if so, whether there are any significant water issues that may arise at the permitting stage – so there are 'no surprises' and to help ensure that regulation is not duplicated by planning and permitting;
- clarifying any special permit requirements that might affect the likelihood of getting planning permission.

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5. Water and Neighbourhood Planning (<http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality/water-and-neighbourhood-planning/>)

## Water and Neighbourhood Planning

### Are water issues relevant to neighbourhood planning?

Protecting and improving water bodies may be relevant when drawing up a Neighbourhood Plan

(<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/what-is-neighbourhood-planning/>) or considering a neighbourhood development order. It is always useful to consult the local planning department about whether water could be a concern.

ID 34-015-20140306 Last updated 06 03 2014

6. Water supply, wastewater and water quality – considerations for planning applications (<http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality/water-supply-wastewater-and-water-quality-considerations-for-planning-applications/>)

## **Water supply, wastewater and water quality – considerations for planning applications**

### **When is water likely to be a consideration in making a planning application?**

This will depend on the proposed development, its location and whether there could be concerns about water supply, water quality or both.

#### *Water supply*

Planning for the necessary water supply would normally be addressed through the Local Plan. Water supply is therefore unlikely to be a consideration for most planning applications. Exceptions might include:

- large developments not identified in Local Plans (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>) that are likely to require a large amount of water; and/or
- where a Local Plan requires enhanced water efficiency in new developments as part of a strategy to manage water demand locally and help deliver new development.

#### *Water quality*

Early engagement with the local planning authority, the Environment Agency and relevant water and sewerage companies can help to establish if water quality is likely to be a significant planning concern and, if it is, to clarify what assessment will be needed to support the application. Water quality is only likely to be a significant planning concern when a proposal would:

- involve physical modifications to a water body such as flood storage areas, channel diversions and dredging, removing natural barriers, construction of new locks, new culverts, major bridges, new barrages/dams, new weirs (including for hydropower) and removal of existing weirs; and/or
- indirectly affect water bodies, for example,
  - as a result of new development such as the redevelopment of land that may be affected by contamination, mineral workings, water or wastewater treatment, waste management facilities and transport schemes including culverts and bridges;
  - through a lack of adequate infrastructure to deal with wastewater.

#### *Assessing impacts on water quality*

Where water quality has the potential to be a significant planning concern an applicant should be able to explain how the proposed development would affect a relevant water body in a river basin management plan and how they propose to mitigate the impacts. Applicants should provide sufficient information for the local planning authority to be able to identify the likely impacts on water quality. The information supplied should be proportionate to the nature and scale of development proposed and the level of concern about water quality.

Where it is likely a proposal would have a significant adverse impact on water quality then a more detailed assessment will be required. The assessment should form part of the environmental statement

([http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/preparing-an-environmental-statement/#paragraph\\_034](http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/preparing-an-environmental-statement/#paragraph_034)), if one is required because of a likely significant effect on water.

When a detailed assessment is needed, the components are likely to include:

- the likely impacts of the proposed development (including physical modifications) on water quantity and flow, river continuity and groundwater connectivity, and biological elements (flora and fauna).
- how the proposed development will affect measures in the river basin management plan to achieve good status ([http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality/water-supply-wastewater-and-water-quality-considerations-for-planning-applications/#paragraph\\_017](http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality/water-supply-wastewater-and-water-quality-considerations-for-planning-applications/#paragraph_017)) in water bodies.
- how it is intended the development will comply with other relevant regulatory requirements relating to the water environment (such as those relating to bathing waters, shellfish waters, freshwater fish and drinking water) bearing in mind compliance will be secured through the Environment Agency's permitting responsibilities.


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### Good status in water bodies

Good status for surface water bodies depends on biological quality (such as fish), physico-chemical conditions (for example oxygen or ammonia) and hydromorphological conditions (physical characteristics, such as size, shape and structure of a channel, and hydrology – the flow and quantity of water). Good status for groundwater bodies takes account of quantity and chemical status.

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### Can planning permission be granted for developments that harm water bodies?

Changes to scheme design and mitigation will often avoid harm to water bodies. In the few cases where a detailed assessment indicates that development will have a significant adverse impact on water quality then the proposed development will only be acceptable in terms of the Water Framework Directive  (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0060:EN:NOT>) in the circumstances set out in the river basin management plan.

There is a general duty on all public bodies  (<http://www.legislation.gov.uk/ukxi/2003/3242/regulation/19/made>) to provide information and such assistance as the Environment Agency may reasonably seek in connection with exercising their responsibilities for implementing the Water Framework Directive. Where this has been requested by the Environment Agency, the local planning authority should notify the Environment Agency if planning permission is granted for a new development likely to lead to a deterioration of a water body.

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### What to think about if there are concerns about water supply/quality?

This will depend on the concern, location and character of the proposed development. But there are likely to be options for mitigating the impact that has caused the concern. Mitigation should be practicable and proportionate to the likely impact.

Multiple benefits for people and the environment can be achievable through good design and mitigation. For example, flood risk can be reduced and biodiversity and amenity improved by designing development that includes permeable surfaces and other sustainable drainage systems, removing artificial physical modifications and recreating natural features. Water quality can be improved by protecting and enhancing green infrastructure, further information can be found here ([http://planningguidance.communities.gov.uk/blog/guidance/natural-environment/biodiversity-ecosystems-and-green-infrastructure/#paragraph\\_015](http://planningguidance.communities.gov.uk/blog/guidance/natural-environment/biodiversity-ecosystems-and-green-infrastructure/#paragraph_015)).

Local planning authorities can use planning conditions

(<http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/>) and/or obligations

(<http://planningguidance.communities.gov.uk/blog/guidance/planning-obligations/>) to secure mitigation and compensatory measures where the relevant tests are met. They can, for example, be used to ensure that new development and infrastructure provision is aligned and to ensure new development is phased and not occupied until the necessary works relating to sewage treatment have been carried out.

Planning obligations can be used to set out requirements relating to monitoring water quality, habitat creation and maintenance and the transfer of assets where this mitigates an impact on water quality.

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## Are there particular considerations that apply in areas with inadequate wastewater infrastructure?

In the planning system, the preparation of Local Plans (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>) should be the focus for ensuring that investment plans of water and sewerage companies align with development needs. If there are concerns arising from a planning application about the capacity of wastewater infrastructure, applicants will be asked to provide information about how the proposed development will be drained and wastewater dealt with. Applications for developments relying on anything other than connection to a public sewage treatment plant should be supported by sufficient information to understand the potential implications for the water environment.

When drawing up wastewater treatment proposals for any development, the first presumption is to provide a system of foul drainage discharging into a public sewer to be treated at a public sewage treatment works (those provided and operated by the water and sewerage companies). This should be done in consultation with the sewerage company of the area.

The timescales for works to be carried out by the sewerage company do not always fit with development needs. In such cases, local planning authorities will want to consider how new development can be phased, for example so it is not occupied until any necessary improvements to public sewage treatment works have been carried out. Further information can be found here ([http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/what-approach-should-be-taken-to-imposing-conditions/#paragraph\\_008](http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/what-approach-should-be-taken-to-imposing-conditions/#paragraph_008)).


Where a connection to a public sewage treatment plant is not feasible (in terms of cost and/or practicality) a package sewage treatment ([http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality/water-supply-wastewater-and-water-quality-considerations-for-planning-applications/#paragraph\\_021](http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality/water-supply-wastewater-and-water-quality-considerations-for-planning-applications/#paragraph_021)) plant can be considered. This could either be adopted in due course by the sewerage company or owned and operated under a new appointment or variation

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## Related policy

### National Planning Policy Framework

- Paragraph 109 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph\\_109](http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph_109))
- Paragraph 120 ([http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph\\_120](http://planningguidance.com/sustainable-development/delivering-sustainable-development/11-conserving-and-enhancing-the-natural-environment/#paragraph_120))

([http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality/water-supply-wastewater-and-water-quality-considerations-for-planning-applications/#paragraph\\_022](http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality/water-supply-wastewater-and-water-quality-considerations-for-planning-applications/#paragraph_022)). The package sewage treatment plant should offer treatment so that the final discharge from it meets the standards set by the Environment Agency  (<https://www.gov.uk/permits-you-need-for-septic-tanks/overview>).

A proposal for a package sewage treatment plant and infrastructure should set out clearly the responsibility and means of operation and management to ensure that the permit is not likely to be infringed in the life of the plant. There may also be effects on amenity and traffic to be considered because of the need for sludge to be removed by tankers.

Septic tanks should only be considered if it can be clearly demonstrated by the applicant that discharging into a public sewer to be treated at a public sewage treatment works or a package sewage treatment plant is not feasible (taking into account cost and/or practicability).


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### **A package sewage treatment plant**

A package sewage treatment plant is like a mini-sewage works and produces much cleaner effluent than septic tanks. Package treatment plants are more sophisticated than septic tanks and require a source of power as well as regular maintenance. They also accumulate solid matter (sludge) that is settled out from the sewage, and require de-sludging.

ID 34-021-20140306 Last updated 06 03 2014


### **A new appointment or variation**

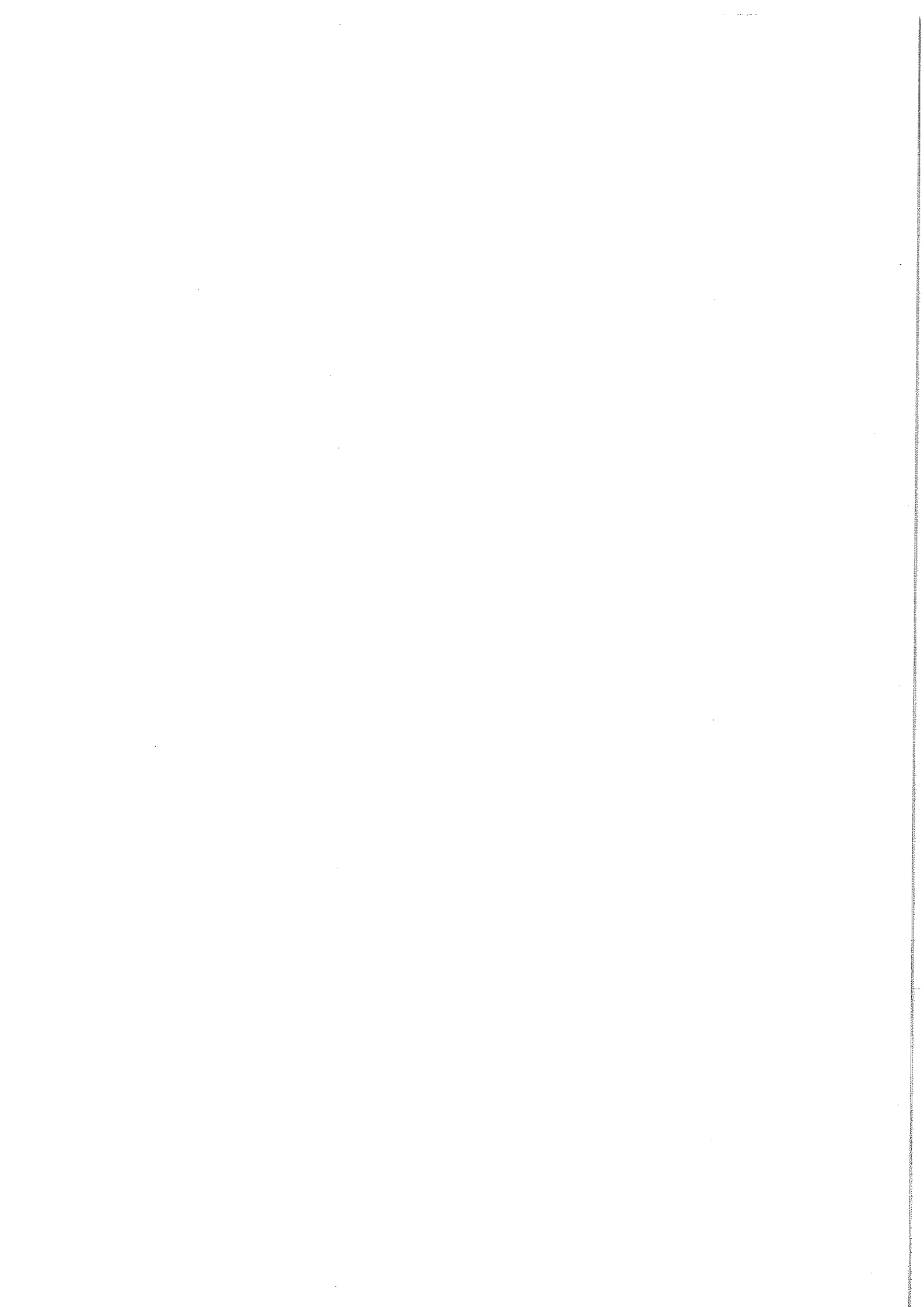
The new appointment and variation regime is set out in sections 6-8 of the Water Industry Act 1991 

(<http://www.legislation.gov.uk/ukpga/1991/56/part/II/chapter/I/crossheading/making-of-appointments>). It provides the opportunity for a limited company to provide water and/or sewerage services for a specific area in place of the former provider. Ofwat considers new appointments and variations applications.

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 Department for Communities & Local Government  
(<https://www.gov.uk/government/organisations/department-for-communities-and-local-government>)



## Planning Practice Guidance (<http://planningguidance.communities.gov.uk>)

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Guidance

### When is permission required?

Print 

1. What is development? (<http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-is-development/>)

#### What is development?

Planning permission is only needed if the work being carried out meets the statutory definition of 'development' which is set out in Section 55 of the Town and Country Planning Act 1990 

(<http://www.legislation.gov.uk/ukpga/1990/8/part/III/crossheading/meaning-of-development>).

'Development' includes:

- building operations (e.g. structural alterations, construction, rebuilding, most demolition);
- material changes of use of land and buildings;
- engineering operations (e.g. groundworks);
- mining operations;
- other operations normally undertaken by a person carrying on a business as a builder.
- subdivision of a building (including any part it) used as a dwellinghouse for use as two or more separate dwellinghouses

The categories of work that do not amount to 'development' are set out in Section 55(2) of the Town and Country Planning Act 1990. These include, but are not limited to the following:

- interior alterations (except mezzanine floors which increase the floorspace of retail premises by more than 200 square metres)
- building operations which do not materially affect the external appearance of a building. The term 'materially affect' has no statutory definition, but is linked to the significance of the change which is made to a building's external appearance.
- a change in the primary use of land or buildings, where the before and after use falls within the same use class.

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#### Does all development require planning permission?

Section 57 of the Town and Country Planning Act 1990 directs that all operations or work falling within the statutory definition of 'development' require planning permission. However, there are different types of planning permission, such as:

- local authority grants of planning permission (<http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/>)
- national grants of permission by the General Permitted Development Order which allows certain building works and changes of use to be carried out without having to make a planning application ([http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/#paragraph\\_016](http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/#paragraph_016))
- local grants of planning permission through Local or Neighbourhood Development Orders

([http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-types-of-area-wide-local-planning-permission-are-there/#paragraph\\_075](http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-types-of-area-wide-local-planning-permission-are-there/#paragraph_075)).

- Development which is to be carried out by a local authority, national park authority or statutory undertaker that has been authorised by a relevant Government department.

ID 13-002-20140306 Last updated 06 03 2014

### **Does all development require a planning application to be made for permission to carry out the development?**

Development does not in all instances require a planning application to be made for permission to carry out the development. In some cases development will be permitted under national permitted development rights

([http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/#paragraph\\_014](http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/#paragraph_014)). To receive a formal confirmation of this, an application for a certificate of lawful development (<http://planningguidance.communities.gov.uk/blog/guidance/lawful-development-certificates/>) can be submitted to a local planning authority.

There may also be a locally granted planning permission (<http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-types-of-area-wide-local-planning-permission-are-there/>) in place that covers the type of development you wish to undertake, in the form of a Local Development Order, a Neighbourhood Development Order or a Community Right to Build Order ([http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-types-of-area-wide-local-planning-permission-are-there/#paragraph\\_075](http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-types-of-area-wide-local-planning-permission-are-there/#paragraph_075)).

In all other cases it will be necessary to make a planning application to a local planning authority.

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### **If it is not necessary to make a planning application, are there any other steps required before the development goes ahead?**

Even if a planning application is not needed, other consents may be required under other regimes. The following list is not exhaustive but illustrates some of the other permissions or consents that may need to be obtained before carrying out development:

- works to protected trees (<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/>)
- advertisement consent (<http://planningguidance.communities.gov.uk/blog/guidance/advertisements/>)
- listed building consent (<http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/>)
- hazardous substances consent (<http://planningguidance.communities.gov.uk/blog/guidance/hazardous-substances/>)
- environmental permits/licences  (<http://www.environment-agency.gov.uk/>)
- building regulations  (<http://www.planningportal.gov.uk/buildingregulations/>)

It is the developer's responsibility to ensure that any necessary permissions, consents and permits (including permits and licences outside of planning such as those granted under the Licensing Act 2003 and Gambling Act 2005) are in place when required.

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### **What if there are restrictions through deeds or covenants that prevent development?**



Land ownership, including any restrictions that may be associated with land, is not a planning matter. An appropriate legal professional will be able to provide further advice on this if necessary.

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### **What happens if development is carried out without the necessary planning permission?**

If development is carried out without the necessary planning permission, this may lead to enforcement action

(<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/>).

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### **Where can applicants find out more?**

A local planning authority delivers the planning service for a local area and should always be the first point of contact for any planning enquiries. A local planning authority will have professional planning officers working for them who can offer planning advice, particularly on the interpretation of planning law and planning policy (<http://planningguidance.communities.gov.uk/blog/guidance/lawful-development-certificates/>). Some local planning authorities charge for pre-application advice (<http://planningguidance.communities.gov.uk/blog/guidance/before-submitting-an-application/>). Further advice will also be available from a professional planning consultant.

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### **How can disagreements with a local planning authority's actions, or its interpretation of planning rules, be resolved?**

If an applicant disagrees with a planning decision because they believe that a proposal was in conformity with national and local planning policy, then the decision can be appealed to the Planning Inspectorate (<http://planningguidance.communities.gov.uk/blog/guidance/appeals/>).

If a person is unhappy with the approach that a local planning authority has taken to a proposed or existing development then they can consider going through the local government complaints procedure. If this does not resolve the issue, they could make a complaint to the Local Government Ombudsman  (<http://www.lgo.org.uk/>).

The Ombudsman is only able to consider the procedure followed and conduct of a local planning authority. The Ombudsman does not have the power to rescind a grant of planning permission. Further advice will also be available from an appropriate legal professional or professional planning consultant.

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### **What is the Use Classes Order?**

The Town and Country Planning (Use Classes) Order 1987, as amended, groups common uses of land and buildings into classes. The uses within each class are, for planning purposes, considered to be broadly similar to one another. The different use classes are:

- Part A
  - Class A1 – Shops
  - Class A2 – Financial and professional services
  - Class A3 – Restaurants and cafes
  - Class A4 – Drinking establishments
  - Class A5 – Hot food takeaways
- Part B
  - Class B1 – Business

- B1(a) offices excluding those in A2 use
- B1(b) Research and development of products or processes
- B1(c) Light industry
- Class B2 – General Industrial
- Class B8 – Storage and distribution
- Part C
  - Class C1 – Hotels
  - Class C2 – Residential institutions
  - Class C2A – Secure residential institutions
  - Class C3 – Dwellinghouses
  - Class C4 – Small Houses in multiple occupation
- Part D
  - Class D1 – Non-residential institutions
  - Class D2 – Assembly and leisure

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### **What is a *sui generis* use?**

Not all uses of land or buildings fit within the use classes order. When no use classes order category fits, the use of the land or buildings is described as *sui generis*, which means 'of its own kind'. Examples of *sui generis* uses include: scrap yards, petrol stations, taxi businesses, casinos (these examples are not exhaustive).

Where land or buildings are being used for different uses which fall into more than one class, then overall use of the land or buildings is regarded as a mixed use, which will normally be *sui generis*. The exception to this is where there is a primary overall use of the site, to which the other uses are ancillary. For example, in a factory with an office and a staff canteen, the office and staff canteen would normally be regarded as ancillary to the factory.

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### **When does a change of use require planning permission?**

A change of use of land or buildings requires planning permission if it constitutes a material change of use. There is no statutory definition of 'material change of use'; however, it is linked to the significance of a change and the resulting impact on the use of land and buildings. Whether a material change of use has taken place is a matter of fact and degree and this will be determined on the individual merits of a case.

If planning permission is required for change of use, there may be permitted development rights which allow change of use without having to make a planning application ([http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/#paragraph\\_014](http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/#paragraph_014)).

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### **Is movement between uses within the same use class development?**

Movement from one primary use to another within the same use class is not development, and does not require planning permission.

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### **Is planning permission required to sub-divide a building?**

Planning permission may not be required to sub-divide a building where:

- sub-division does not involve physical works that amount to development;

- the use of any newly formed units after a building has been sub-divided falls within the same use class as the building's existing primary use before it was sub-divided, or there is a permitted development right allowing the new use; and/or
- the sub-division does not involve converting a single dwelling house to contain more than one residential unit.

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### **Do I need planning permission to home work or run a business from home?**

Planning permission will not normally be required to home work or run a business from home, provided that a dwelling house remains a private residence first and business second (or in planning terms, provided that a business does not result in a material change of use of a property so that it is no longer a single dwelling house). A local planning authority is responsible for deciding whether planning permission is required and will determine this on the basis of individual facts. Issues which they may consider include whether home working or a business leads to notable increases in traffic, disturbance to neighbours, abnormal noise or smells or the need for any major structural changes or major renovations.

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### **Is planning permission required to rent out a parking space?**

The Government's view is that it should be possible to rent parking spaces without planning permission, provided there are no substantive planning concerns such as public nuisance to neighbours.

There is a public interest from such renting, by providing more cheap and flexible parking spaces for people to park their car and taking pressure away from on-street parking.

The decision on whether renting out a parking space requires planning permission will depend on two principal factors:

- The first is whether renting out a parking space results in a material change (<http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/>) in the use of the space. Determining whether there has been a material change of use will depend on whether a space is used in a significantly different way to how a parking space would normally be used (irrespective of the identity of the driver). For example, if by renting out spaces, it causes a notable public or neighbour nuisance. A local planning authority will make this decision based on relevant facts and on a case by case basis.
- The second is whether there are any other relevant planning considerations, such as planning conditions (<http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/>), which impose restrictions that prevent parking spaces being rented out.

If renting out parking spaces does not amount to a material change of use and if there are no other planning considerations that prevent parking spaces from being rented out then it would not require planning permission.

ID 13-015-20150319 Last updated 19 03 2015

## **2. What are permitted development rights?**

(<http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/>)

### **What are permitted development rights?**

Permitted development rights are a national grant of planning permission which allow certain building works and changes of use to be carried out without having to make a planning application. Permitted development rights are subject to conditions and limitations to control impact and to protect local amenity.

ID 13-016-20140306 Last updated 06 03 2014

### What types of permitted development rights exist?

Permitted development rights are set out in The Town and Country Planning (General Permitted Development) (England) Order 2015 [\[2\]](#)

(<http://www.legislation.gov.uk/ukxi/2015/596>). Permitted development for householders Technical Guidance [\[2\]](#)

([http://www.planningportal.gov.uk/uploads/100806\\_PDforhouseholders\\_TechnicalGuidance.pdf](http://www.planningportal.gov.uk/uploads/100806_PDforhouseholders_TechnicalGuidance.pdf)) has been issued by the Government.

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### Do all areas in England have the same permitted development rights?

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

- conservation areas
- Areas of Outstanding Natural Beauty
- National Parks
- the Broads
- World Heritage Sites

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

There is also article 2(5) land which is land excluded from permitted development rights allowing change of use of a property from class B1(a) office use to class C3 residential [\[2\]](#) (<https://www.gov.uk/government/publications/areas-exempt-from-office-to-residential-change-of-use-permitted-development-right-2013>). Each relevant part in Schedule 2 to the General Permitted Development Order will specify what restrictions and exclusions apply to development in these areas.

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### Are there limitations to permitted development rights?

Permitted development rights are subject to national conditions and limitations (for example limits on height, size or location etc). Some permitted development rights are also in place for a limited period of time; these are set out in the relevant parts in Schedule 2 to the General Permitted Development Order.

Special rules apply to permitted development rights where they relate to development specified in the Town and Country Planning (Environmental Impact Assessment) Regulations 2011

(<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/>). If the proposed development would fall into Schedule 1 or 2 of the Environmental Impact Assessment Regulations, it would only be permitted where a local planning authority has issued a screening opinion determining that the development is not environmental impact assessment development, or where the Secretary of State has directed that it is not environmental impact assessment development, or that the development is exempt from the Environmental Impact Assessment Regulations. There are some specific exceptions to this general rule. Article 3(10) to (12) of the General Permitted Development Order provides more detail on this.

Special rules also apply to permitted development rights where development will have a significant effect on a European site or a European Offshore Marine Site. These are sites of the sort described in regulation 8 of the Conservation of Habitats and Species Regulations 2010, which have been designated under processes set out in those Regulations. Under article 3(1) of the General Permitted Development Order and regulations 73 to 76 of the Conservation of

Habitats and Species Regulations 2010, a development must not be begun or continued before the developer has received written notice of the approval of the local planning authority.

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### **Can permitted development rights be removed?**

Permitted development rights can be removed by the local planning authority, either by means of a condition on a planning permission (<http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/>), or by means of an article 4 direction. The restrictions imposed will vary on a case by case basis and the specific wording of such conditions or directions.

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### **Can local planning authorities tailor permitted development rights to their own circumstances?**

Permitted development rights can be expanded via a Local Development Order ([http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-types-of-area-wide-local-planning-permission-are-there/#paragraph\\_076](http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-types-of-area-wide-local-planning-permission-are-there/#paragraph_076)) or Neighbourhood Development Order ([http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-types-of-area-wide-local-planning-permission-are-there/#paragraph\\_086](http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-types-of-area-wide-local-planning-permission-are-there/#paragraph_086)), or, they can be withdrawn via an article 4 direction ([http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/#paragraph\\_034](http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/#paragraph_034)).

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### **Is it necessary to apply for planning permission where there are permitted development rights?**

Where a relevant permitted development right is in place, there is no need to apply to the local planning authority for permission to carry out the work. In a small number of cases, however, it may be necessary to obtain prior approval from a local planning authority before carrying out permitted development. Permitted development rights do not override the requirement to comply with other permission, regulation or consent regimes.

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### **Is it necessary to contact the local planning authority before carrying out work under permitted development rights?**

For the purposes of planning, contact with the local planning authority is generally only necessary before carrying out permitted development where:

- prior approval from the local planning authority is required in advance of development
- the neighbour consultation scheme applies
- the local planning authority has a Community Infrastructure Levy in place which requires developers to contact the local planning authority before carrying out permitted development ([http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/#paragraph\\_025](http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/#paragraph_025)) ([http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/#paragraph\\_025](http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/#paragraph_025)). Failure to do this may result in the local planning authority imposing a surcharge on a developer.
- the permitted development rights require the developer to notify the local planning authority of a change of use

The relevant parts in Schedule 2 to the General Permitted Development Order set out the procedures which must be followed when advance notification is required. ([http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/#paragraph\\_068](http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/#paragraph_068))

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### **What if it's not clear whether development is covered by permitted development rights?**

If it is not clear whether works are covered by permitted development rights, it is possible to apply for a lawful development certificate for a legally binding decision (<http://planningguidance.communities.gov.uk/blog/guidance/lawful-development-certificates/>) from the local planning authority.

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### **Is development carried out under the General Permitted Development Order liable to a Community Infrastructure Levy charge?**

Development carried out using permitted development rights can be liable to pay a Community Infrastructure Levy charge. This depends on when development commences and whether there is a community levy charge in place. A developer would not be required to pay a charge where permitted development was commenced before 6 April 2013 or otherwise before a charging schedule was in effect. Where development is commenced after 6 April 2013 and a charging schedule is in place, they would be liable to pay a charge.

ID 13-025-20140306 Last updated 06 03 2014

### **What is prior approval?**

Prior approval means that a developer has to seek approval from the local planning authority that specified elements of the development are acceptable before work can proceed. The matters for prior approval vary depending on the type of development and these are set out in full in the relevant parts in Schedule 2 to the General Permitted Development Order. A local planning authority cannot consider any other matters when determining a prior approval application.

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### **What types of development require prior approval?**

Prior approval is required for some change of use permitted development rights. Certain other types of permitted development including the erection of new agricultural buildings, demolition and the installation of telecommunications equipment also require prior approval. The matters which must be considered by the local planning authority in each type of development are set out in the relevant parts of Schedule 2 to the General Permitted Development Order.

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### **Is a prior approval application like a planning application?**

The statutory requirements relating to prior approval are much less prescriptive than those relating to planning applications. This is deliberate, as prior approval is a light-touch process which applies where the principle of the development has already been established. Where no specific procedure is provided in the General Permitted Development Order, local planning authorities have discretion on what processes they put in place. It is important that a local planning authority does not impose unnecessarily onerous requirements on developers, and does not seek to replicate the planning application system.

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### **What kind of information will the developer have to supply in**

### connection with a prior approval application?

This will vary on the particular circumstances of the case, and developers may wish to discuss this with the local planning authority before submitting their application. Local planning authorities may wish to consider issuing guidance, taking into account local circumstances and advice provided by the relevant statutory consultees. For example, this could set out whether a Flood Risk Assessment [\[2\]](https://www.gov.uk/flood-risk-assessment-local-planning-authorities) (<https://www.gov.uk/flood-risk-assessment-local-planning-authorities>) is likely to be required (<http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/>).

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### What happens if a prior approval application is not determined by a local planning authority?

For some permitted development rights, including prior approval for certain changes of use, if the local planning authority does not notify the developer of their decision within the specified time period, the development can proceed. The relevant Parts in Schedule 2 to the General Permitted Development Order set out where this applies. Where this is not the case, non-determination can be appealed under section 78(2)(a) of the Town and Country Planning Act 1990.

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### What is the neighbour consultation scheme?

The neighbour consultation scheme is a form of prior approval which only applies to larger extensions built under the increased permitted development rights that are in place between 30 May 2013 and 30 May 2019 for householder single storey rear extensions. A householder wishing to build a larger extension will notify the local authority, who will then consult the adjoining neighbours in relation to the potential impact on amenity. If they raise any objections, the local planning authority will make a decision on whether the impact on the amenity of adjoining properties is acceptable and hence whether the work can proceed.

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### Can a refusal of prior approval be appealed?

If an application for prior approval is refused, the applicant has a right to appeal the decision under section 78(1)(c) of the Town and Country Planning Act 1990. More information on this is available in guidance on planning appeals (<http://planningguidance.communities.gov.uk/blog/guidance/appeals/>).

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### What permitted development rights are time-limited?

There is a range of time-limited permitted development rights. Where these apply there are different types of time limits. Some allow development to be retained permanently but require that it is completed by a specified date. Others allow change of use development, but only for temporary periods of time.

The following rights allow development to be retained permanently provided that development is completed by the dates specified in the relevant Parts in Schedule 2 to the General Permitted Development Order [\[2\]](http://www.legislation.gov.uk/ukSI/2015/596) (<http://www.legislation.gov.uk/ukSI/2015/596>):

- the size limits for householder single-storey rear extensions are increased from 4m to 8m for detached houses, and from 3m to 6m for all other types of houses. The new larger extensions are subject to a neighbour consultation scheme
- change of use from offices to residential
- change of use from storage or distribution to residential

A further time-limited right which allows development to be retained permanently applies to telecommunications equipment. This right allows for new or replacement telegraph poles, cabinets or lines for fixed-line broadband services to be located in article 2(3) land without having to make an application for prior approval. This right applies for a period of 5 years beginning 30 May 2013 and ending 30 May 2018

([http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/#paragraph\\_070](http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/#paragraph_070)). The following change of use permitted development rights apply for temporary time periods:

- change in use of a building in any use class to a state-funded school for a single academic year provided this has been approved by the minister with policy responsibility for schools;
- change in use of a building from a use falling in class A1 (shops), A2 (financial and professional services), A3 (restaurants and cafes), A4 (drinking establishments), Class A5 (hot food takeaways), B1 (business), D1 (non-residential institutions), D2 (assembly and leisure) a betting office or a pay day loan shop to a flexible use falling within Classes A1 (shops), A2 (financial and professional services), A3 (restaurants and cafes) or Class B1 (business) for a single continuous period of up to two years.

Full details on all of the above can be found in the relevant Parts of Schedule 2 to the General Permitted Development Order. Ministers will review time-limited permitted development rights in due course to determine whether they should be extended.

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### **What happens if physical building work or change of use is not completed by the date specified in the General Permitted Development Order?**

If the physical development or the change of use is not completed by the date specified then enforcement action

(<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/>) could be taken, or it may be necessary to make a planning application.

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### **Is it necessary to contact the local planning authority after completing work under permitted development?**

Where the permitted development rights are time-limited (which means that the General Permitted Development Order specifies a date when the permitted development rights will expire), there is a requirement to notify the local planning authority when work has been completed. The relevant Parts in Schedule 2 to the General Permitted Development Order will specify when after development is completed the local planning authority should be notified.

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### **What is an article 4 direction?**

An article 4 direction is a direction under article 4 of the General Permitted Development Order which enables the Secretary of State or the local planning authority to withdraw specified permitted development rights across a defined area.

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### **What can an article 4 direction do?**

Provided that there is justification for both its purpose and extent, an article 4 direction can:



- cover an area of any geographic size, from a specific site to a local authority-wide area
- remove specified permitted development rights related to operational development or change of use
- remove permitted development rights with temporary or permanent effect

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### **When is it appropriate to use article 4 directions?**

The use of Article 4 directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area. The potential harm that the direction is intended to address should be clearly identified. There should be a particularly strong justification for the withdrawal of permitted development rights relating to:

- a wide area (eg those covering the entire area of a local planning authority, National Park or Area of Outstanding National Beauty)
- agriculture and forestry development. Article 4 directions related to agriculture and forestry will need to demonstrate that permitted development rights pose a serious threat to areas or landscapes of exceptional beauty
- cases where prior approval powers are available to control permitted development
- leisure plots and uses
- the installation of microgeneration equipment

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### **Can all permitted development rights be withdrawn by an article 4 direction?**

Some permitted development rights cannot be removed via article 4 directions. These are set out in article 4(1) to (3) of the General Permitted Development Order. These exemptions are to ensure permitted development rights related to national concerns, safety, or maintenance work for existing facilities cannot be withdrawn.

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### **Does an article 4 direction mean that development is not allowed?**

An article 4 direction only means that a particular development cannot be carried out under permitted development and therefore needs a planning application. This gives a local planning authority the opportunity to consider a proposal in more detail.

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### **If permitted development rights have been withdrawn by an article 4 direction, is it necessary to pay a fee when making a planning application?**

If a planning application is required solely because permitted development rights have been removed by an article 4 direction, no planning application fee is payable.

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### **Is compensation payable where permitted development rights have been withdrawn?**

If a local planning authority makes an article 4 direction, it can be liable to pay compensation to those whose permitted development rights have been withdrawn, but only if it then subsequently:

- refuses planning permission for development which would otherwise have been permitted development; or
- grants planning permission subject to more limiting conditions than the General Permitted Development Order

The grounds on which compensation can be claimed are limited to abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights.

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### **Where is there more information on compensation?**

Compensation provisions are set out in sections 107 and 108 of the Town and Country Planning Act 1990 [\[2\]](#)

(<http://www.legislation.gov.uk/ukpga/1990/8/part/IV/crossheading/compensation-for-revocation-of-planning-permission-etc>) and The Town and Country Planning (Compensation) (England) Regulations 2015 [\[2\]](#)

(<http://www.legislation.gov.uk/uksi/2015/598/contents/made>) set out when time limits apply.

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### **Can an article 4 direction provide immediate protection?**

Yes. There are two types of directions under the General Permitted Development Order: non-immediate directions and directions with immediate effect. An immediate direction can withdraw permitted development rights straight away; however they must be confirmed by the local planning authority within 6 months of coming into effect to remain in force. Confirmation occurs after the local planning authority has carried out a local consultation.

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### **When can an immediate direction be used?**

The circumstances in which an immediate direction can restrict development are limited. Immediate directions can be made in relation to development permitted by Parts 1 to 4 and 11 of Schedule 2 to the General Permitted Development Order, where the development presents an immediate threat to local amenity or prejudices the proper planning of an area. Immediate directions can also be made in relation to certain types of development in conservation areas. In all cases the local planning authorities must have already begun the consultation processes towards the making a non-immediate article 4 direction.

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### **Can article 4 direction be made where work has already started?**

Article 4 directions cannot prevent development which has been commenced, or which has already been carried out.

ID 13-046-20140306 Last updated 06 03 2014

### **What are the procedures for making an article 4 direction?**

The procedures for making an article 4 direction are set out in Schedule 3 of the General Permitted Development Order.

ID 13-047-20140306 Last updated 06 03 2014

### **Can an article 4 direction be modified or cancelled?**

A local planning authority can cancel an article 4 direction by making a subsequent direction. A direction can be modified by cancelling the existing direction and replacing it with a new one. In both cases the normal procedures for making an article 4 direction apply.

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### **Can an article 4 direction remain in place permanently once it has been confirmed?**

An article 4 direction can remain in place permanently once it has been confirmed. However, local planning authorities should regularly monitor any article 4 directions to make certain that the original reasons the direction was made remain valid. Where an article 4 direction is no longer necessary it should be cancelled.

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### **Does an article 4 direction have to be submitted to the Secretary of State?**

A local planning authority must, as soon as practicable after confirming an article 4 direction, inform the Secretary of State via the National Planning Casework Unit [✉](mailto:npcu@communities.gsi.gov.uk) (mailto:npcu@communities.gsi.gov.uk). The Secretary of State does not have to approve article 4 directions, and will only intervene when there are clear reasons for doing so.

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### **What powers does the Secretary of State have?**

The Secretary of State has the power to modify or cancel article 4 directions at any time before or after they are made, with the following exceptions:

- directions with immediate effect removing permitted development rights under Parts 1, 2, 3, 4 and 11 of Schedule 2 to the General Permitted Development Order may not be modified;
- directions relating to listed buildings may not be modified;
- directions relating to buildings notified as of architectural or historic interest may not be modified; and
- directions relating to certain development in conservation areas may not be cancelled or modified

The Secretary of State will not use their powers unless there are clear reasons why intervention at this level is necessary.

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### **Can an article 4 direction be used to withdraw permitted development rights for statutory undertakers?**

In exceptional circumstances when an authority considers that normal planning controls should apply, article 4 directions can be used to withdraw permitted development rights for statutory undertakers, except if it is development which falls into article 4(2) or 4(3) of the General Permitted Development Order.

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### **Can an article 4 direction be used to withdraw permitted development rights for Crown development?**

In exceptional circumstances when an authority considers that normal planning controls should apply, article 4 directions can be used to withdraw permitted development rights for Crown Development, with the exception of the Crown development specified in article 4(2) of the General Permitted Development Order (<http://planningguidance.communities.gov.uk/blog/guidance/crown-development/>).

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### **Are there permitted development rights for change of use?**

Yes. The General Permitted Development Order gives a national grant of planning permission to some changes of use ([http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/#paragraph\\_016](http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/#paragraph_016)).

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### **Do permitted development rights for change of use also allow for physical development?**

Where associated physical development is required to implement the change of use, developers should consider whether it constitutes development ([http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-is-development/#paragraph\\_001](http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-is-development/#paragraph_001)) and should ensure they have planning permission if necessary. Some permitted development rights for change of use allow for limited physical works to carry out the change. Full details can be found in Part 3 of Schedule 2 to the General Permitted Development Order.

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### **After change of use has taken place, do buildings have the permitted development rights associated with the new use?**

It varies as to whether, after change of use has taken place, buildings have the permitted development rights associated with the new use. Details are set out in the General Permitted Development Order [\[2\]](http://www.legislation.gov.uk/ukSI/2015/596/made) (<http://www.legislation.gov.uk/ukSI/2015/596/made>). In most cases the associated permitted development rights cannot be exercised until the change of use has taken place.

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### **Do any permitted development rights for change of use require prior approval?**

Prior approval is required for some permitted development rights for change of use including the following:

- for change of use of agricultural buildings between thresholds of 150m<sup>2</sup> and 500m<sup>2</sup>, prior approval is required for transport and highways impacts, flooding, contamination and noise
- for permanent change of use to a state-funded school, prior approval is required for transport and highways impacts, contamination and noise
- for change of use from B1(a) offices to C3 residential use, prior approval is required for transport and highways issues, contamination and flooding.

Full details can be found in Part 3 of Schedule 2 to the General Permitted Development Order.

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### **Are there permitted development rights for reusing an agricultural building?**

There is a range of permitted development rights to support the re-use of agricultural buildings and land within their curtilage. These permitted development rights are set out in Classes Q, R and S, of Part 3 of Schedule 2 (changes of use) to the Town and Country Planning (General Permitted Development) (England) Order 2015 [\[2\]](http://www.legislation.gov.uk/ukSI/2015/596/made) (<http://www.legislation.gov.uk/ukSI/2015/596/made>).

View further details of the permitted development rights for the change of use of agricultural buildings

(<http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/permited-development-rights-for-the-change-of-use-of-agricultural-buildings/>).

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### **Where can I find out if a particular office building is in an exempted area not subject to B1(a) offices to C3 residential permitted development rights?**

Maps of exempted areas are published at gov.uk publications – Areas exempt from office to residential change of use permitted development right 2013 [\[2\]](https://www.gov.uk/government/publications/areas-exempt-from-office-to-residential-change-of-use-permitted-development-right-2013) (<https://www.gov.uk/government/publications/areas-exempt-from-office-to-residential-change-of-use-permitted-development-right-2013>). Queries about the maps should be directed to the relevant local planning authority within which the building is situated.

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### **Are there any permitted development rights which allow movement between sui generis uses?**

There are permitted development right allowing movement between some sui generis uses and other uses. Details can be found in Part 3 of Schedule 2 to the General Permitted Development Order.

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### **Do I need to apply for planning permission to demolish a building or structure?**

Planning permission may be required to demolish a building. If planning permission is not required, you may still be required to seek prior approval from the local planning authority before demolishing a building. There are a number of factors that determine what permission or prior approval you will need before demolishing a building which are explained below.

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#### **(a) Is demolition required as part of the redevelopment of the site?**

Where the demolition of one or more buildings is required as part of a redevelopment, details of the demolition can be included in the planning application. This will enable the local planning authority the opportunity to consider demolition alongside other aspects of the development. Where appropriate, the local planning authority may impose conditions on demolition if planning permission is granted (<http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/>).

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#### **(b) Is the scale of demolition proposed such that an Environmental Impact Assessment is required?**

In some instances the scale of demolition alone may trigger the requirement for an environmental impact assessment [\[2\]](http://www.legislation.gov.uk/uksi/2011/1824/contents/made) (<http://www.legislation.gov.uk/uksi/2011/1824/contents/made>). Guidance on this can be found in the Environmental Impact Assessment (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/>) category. If demolition does trigger the need to carry out an Environmental Impact Assessment then you will need to apply for planning permission.

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### **Are the buildings or structures to be demolished in a conservation area?**

Buildings or structures which are in a conservation area are subject to stricter controls over demolition than when buildings are outside of a conservation area. Under section 196D of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/2013/24/schedule/17) (<http://www.legislation.gov.uk/ukpga/2013/24/schedule/17>) it is an offence to undertake "relevant demolition" of an unlisted building in a conservation area without the necessary planning permission.

- (c1) What permissions/approvals are required for demolition in a conservation area?

- (c2) What permissions/approvals are required for demolition outside conservation areas?

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### **(c1) What permissions/prior approvals are required for demolition in a conservation area?**

All demolition in conservation areas requires an application for planning permission to be made to the local planning authority, except that:

a) buildings with a volume not exceeding 50 cubic metres can be demolished without planning permission because this does not amount to development having regard to the provisions of the Town and Country Planning (Demolition – Description of Buildings) Direction 2014 [\[2\]](https://www.gov.uk/government/publications/the-town-and-country-planning-demolition-description-of-buildings-direction-2014)

(<https://www.gov.uk/government/publications/the-town-and-country-planning-demolition-description-of-buildings-direction-2014>).

b) demolition of buildings and structures listed in the Conservation Areas (application of section 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990) Direction 2015 [\[2\]](https://www.gov.uk/government/publications/the-conservation-areas-direction-2015) (<https://www.gov.uk/government/publications/the-conservation-areas-direction-2015>), the conservation areas, including:

- any building with a volume of under 115 cubic metres (not included in (a) above); and
- any gate, fence, wall or other means of enclosure less than 1 metre high where abutting on a highway (including a public footpath or bridleway) waterway or open space; or less than 2 metres high in any other case;

is permitted development under Part 11 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 [\[2\]](http://www.legislation.gov.uk/ukSI/2015/596/made) (<http://www.legislation.gov.uk/ukSI/2015/596/made>). No planning application is required because planning permission for the demolition is granted by the Order, subject to conditions set out in Part 11. For example, the prior approval of the local planning authority may be required as to the method of demolition and the proposed restoration of the site.

**Note** – Demolition is not permitted by Part 11 where the building has been rendered unsafe or uninhabitable by the action or inaction of anyone having an interest in the land on which the building stands, and can be made secure through repair or temporary support.

No planning permission or prior approval is required for the demolition of listed buildings or scheduled ancient monuments.

It is an offence under section 196D of the Town and Country Planning Act 1990 [\[2\]](http://www.legislation.gov.uk/ukpga/2013/24/schedule/17) (<http://www.legislation.gov.uk/ukpga/2013/24/schedule/17>) to undertake “relevant demolition” of an unlisted building in a conservation area without the necessary planning permission.

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### **(c2) What permissions/prior approvals are required for demolition outside conservation areas?**

Demolition outside conservation areas is permitted development under Part 11 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015

([http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/#paragraph\\_024](http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/#paragraph_024)). No planning application is required because planning permission for the demolition is granted by the Order, subject to conditions set out in Part 11. For example, the prior approval of the local planning authority may be required as to the method of demolition and the proposed restoration of the site.

**Note** – Demolition is not permitted by Part 11 where the building has been rendered unsafe or uninhabitable by the action or inaction of anyone having an interest in the land on which the building stands, and can be made secure through repair or temporary support.

But no application for planning permission or prior approval is required to demolish:

- any building with a volume of under 50 cubic metres; and
- the whole or any part of any gate, fence, wall or other means of enclosure;

because these changes are not development having regard to the provisions of the Town and Country Planning (Demolition – Description of Buildings) Direction 2014 [\[2\]](https://www.gov.uk/government/publications/the-town-and-country-planning-demolition-description-of-buildings-direction-2014) (<https://www.gov.uk/government/publications/the-town-and-country-planning-demolition-description-of-buildings-direction-2014>).

No application for planning permission or prior approval is required for the demolition of listed buildings or scheduled ancient monuments ([http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/#paragraph\\_066](http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/#paragraph_066)).

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#### **(d) Why doesn't the demolition of listed buildings and scheduled ancient monuments require planning permission or prior approval?**

An application for planning permission or prior approval is not required for the demolition of a listed building or scheduled ancient monument. This is because demolition of these types of building/structures is controlled by separate consent regimes (<http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/>). It is important to speak to your local planning authority before undertaking any demolition in relation to these types of building or structures to be clear on what consent processes apply.

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#### **How do I get prior approval for demolition?**

Before undertaking demolition which is permitted development under Part 11 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 [\[2\]](http://www.legislation.gov.uk/uksi/2015/596/made) (<http://www.legislation.gov.uk/uksi/2015/596/made>) you must apply to the local planning authority, providing a written description of the proposed demolition. At the same time you must put up a site notice about the proposed demolition. The local planning authority will then determine whether prior approval is required for the method of demolition and any proposed restoration of the site. The local planning authority may then grant or refuse the prior approval. If, within 28 days of your application, the local planning authority has given no indication of whether prior approval is required or not, the demolition may begin without prior approval.

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#### **Does a statutory undertaker have to notify a local planning authority before carrying out work under permitted development?**

Not unless it is a condition in a relevant class in Schedule 2 to the General Permitted Development Order that a statutory undertaker should give notice to a local planning authority before carrying out permitted development. However, if development is likely to have a significant local effect then, to provide fair warning to persons likely to be affected (including other statutory undertakers), these should be discussed with a local planning authority.

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#### **When notified by a statutory undertaker of an intention to carry out permitted development are local planning authorities required to publicise the development?**

Statutory undertakers carrying out development under permitted development rights are not subject to the same publicity requirements as a full planning application. However, public consultation may be beneficial if development is

expected to have a particularly significant impact. In such instances consultation could be initiated by either the local planning authority or the statutory undertaker. Any consultation should allow adequate time to consider representations and, if necessary, amend proposals.

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### **What permitted development rights are there for fixed and mobile telecommunications?**

Part 16 of Schedule 2 to the General Permitted Development Order specifies what permitted development rights there are for fixed and mobile telecommunications. This part also sets out what exceptions, limitations, and conditions apply to these permitted development rights.

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### **Is there any guidance for the siting and design of fixed and mobile electronic telecommunications equipment?**

To ensure the siting and design of fixed and mobile electronic telecommunications equipment is acceptable, sector led codes of best practice have been published.

The code of best practice for *fixed* electronic telecommunications equipment [\[2\]](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/205744/Final_Cabinet_and_Pole_Siting_COP_Issue_published_on_7_June_2013_(Cabinet_Siting_and_Pole_Siting_Code_of_Practice,_Issue_1_-_2013,_Fixed_Line_Code_Operators)) ([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/205744/Final\\_Cabinet\\_and\\_Pole\\_Siting\\_COP\\_Issue\\_published\\_on\\_7\\_June\\_2013\\_\(Cabinet\\_Siting\\_and\\_Pole\\_Siting\\_Code\\_of\\_Practice,\\_Issue\\_1\\_-\\_2013,\\_Fixed\\_Line\\_Code\\_Operators\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/205744/Final_Cabinet_and_Pole_Siting_COP_Issue_published_on_7_June_2013_(Cabinet_Siting_and_Pole_Siting_Code_of_Practice,_Issue_1_-_2013,_Fixed_Line_Code_Operators))) has been prepared by operators, agents, contractors, planning and highway authorities and other relevant organisations.

The code of best practice for *mobile* electronic telecommunications equipments [\[2\]](http://www.mobilemastinfo.com/images/stories/2013_Code_of_best_practice/Code_of_Best_Practice_on_Mobile_Network_Development_07-2013.pdf)

([http://www.mobilemastinfo.com/images/stories/2013\\_Code\\_of\\_best\\_practice/Code\\_of\\_Best\\_Practice\\_on\\_Mobile\\_Network\\_Development\\_07-2013.pdf](http://www.mobilemastinfo.com/images/stories/2013_Code_of_best_practice/Code_of_Best_Practice_on_Mobile_Network_Development_07-2013.pdf)), published on 24 July 2013 (Mobile Operators Association, Code of Best Practice on Mobile Network Development in England, 2013), has been prepared by operators, agents, planning, national parks, Historic England and other interested parties.

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### **What is the status of the Government's 2002 code of best practice for mobile phone network development?**

The 2002 code of best practice has been superseded and replaced by a new code of best practice [\[2\]](https://www.gov.uk/government/publications/code-of-best-practice-on-mobile-phone-network-development) (<https://www.gov.uk/government/publications/code-of-best-practice-on-mobile-phone-network-development>) (Mobile Operators Association, Code of Best Practice on Mobile Network Development in England, 2013) issued in July 2013.

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### **Are there any other regulations that fixed and mobile operators have to adhere to?**

In addition to the permitted development rights for both fixed and mobile electronic telecommunications, operators are required by Regulation 5 of the Electronic Communications Code (Conditions and Restrictions) Regulations 2003 [\[2\]](http://www.legislation.gov.uk/uksi/2003/2553/regulation/5/made) (<http://www.legislation.gov.uk/uksi/2003/2553/regulation/5/made>) to notify local planning authorities of their intention to install equipment.

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### **What permitted development rights are there for the installation of domestic and non-domestic microgeneration equipment?**



Part 14 of Schedule 2 to the General Permitted Development Order specifies what permitted development rights there are for domestic and non-domestic microgeneration equipment. This part also sets out what exceptions, limitations, and conditions apply to these permitted development rights.

Part 14 defines the term 'microgeneration' by reference to section 82(6) of the Energy Act 2004.

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- Permitted development rights for the change of use of agricultural buildings (<http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/permited-development-rights-for-the-change-of-use-of-agricultural-buildings/>)

## Permitted development rights for the change of use of agricultural buildings

### What new uses can an agricultural building change to?

There are 3 main uses to which an agricultural building can change under permitted development rights. They are to:

- a flexible use
- an educational use
- a residential use

There are size thresholds, limitations and conditions associated with the rights.

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### What are the flexible uses?

Subject to a number of conditions and restrictions, agricultural buildings and land in their curtilage may convert to a "flexible use" under Class R. Flexible use means any use falling within Class A1 (shops), Class A2 (financial and professional services), Class A3 (restaurants and cafes), Class B1 (business), Class B8 (storage or distribution), Class C1 (hotels) or Class D2 (assembly and leisure) of the Schedule to the Town and Country Planning (Use Classes) Order 1987.

The size thresholds, limitations and conditions are set out at Class R of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 [\[2\]](#)

(<http://www.legislation.gov.uk/ukSI/2015/596/schedule/2/part/3/crossheading/class-r-agricultural-buildings-to-a-flexible-commercial-use/made>).

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### What are the educational uses?

Subject to a number of conditions and restrictions, agricultural buildings and land may convert to a "state-funded school" or "a registered nursery".

A state-funded school is a school funded wholly or mainly from public funds, including:

- an Academy school, an alternative provision Academy or a 16 to 19 Academy established under the Academies Act 2010(d) [\[2\]](#)  
(<http://www.legislation.gov.uk/ukpga/2010/32/contents>)
- a school maintained by a local authority, as defined in section 142(1) of the School Standards and Framework Act 1998(e) [\[2\]](#)  
(<http://www.legislation.gov.uk/ukpga/1998/31/contents>)

A registered nursery means non-domestic premises in respect of which a person is registered under Part 3 of the Childcare Act 2006(a) [\[2\]](#)

(<http://www.legislation.gov.uk/ukpga/2006/21/contents>) to provide early years provision.

The size thresholds, limitations and conditions are set out at Class S of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 [\[a\]](http://www.legislation.gov.uk/uksi/2015/596/schedule/2/part/3/crossheading/class-s-agricultural-buildings-to-statefunded-school-or-registered-nursery/made)

(<http://www.legislation.gov.uk/uksi/2015/596/schedule/2/part/3/crossheading/class-s-agricultural-buildings-to-statefunded-school-or-registered-nursery/made>).

In addition, subject to a number of conditions and restrictions, there is a right to change use of a building and any land within its curtilage as a state-funded school for a single academic year. The rights are set out in Class C of Part 4 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 [\[a\]](http://www.legislation.gov.uk/uksi/2015/596/schedule/2/part/4/crossheading/class-c-use-as-a-statefunded-school-for-a-single-academic-year/made)

(<http://www.legislation.gov.uk/uksi/2015/596/schedule/2/part/4/crossheading/class-c-use-as-a-statefunded-school-for-a-single-academic-year/made>).

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### **What are the residential uses?**

Subject to a number of conditions and restrictions, agricultural buildings and land within their curtilage may convert to a use falling within Class C3 of the Schedule to the Use Classes Order 1987 (dwelling houses). These conditions and restrictions are set out in Class Q of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 [\[a\]](http://www.legislation.gov.uk/uksi/2015/596/schedule/2/part/3/crossheading/class-q-agricultural-buildings-to-dwellinghouses/made)

(<http://www.legislation.gov.uk/uksi/2015/596/schedule/2/part/3/crossheading/class-q-agricultural-buildings-to-dwellinghouses/made>). The maximum floor space that may be converted under this permitted development right is 450 m<sup>2</sup> of floor space of a building or buildings within a single established agricultural unit. The total number of new homes which may be developed under the right is 3. The right is extinguished once any of the conditions ie the 3 dwellings or 450m<sup>2</sup> threshold, is reached. The total number of new homes (3 dwelling houses) does not include existing residential properties within the established agricultural unit, unless they were created by the use of the permitted development right on a previous occasion, in which case they would be counted.

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### **Are any building works allowed when changing to residential use?**

Building works are allowed under the change to residential use. The permitted development right under Class Q [\[a\]](http://www.legislation.gov.uk/uksi/2015/596/schedule/2/part/3/crossheading/class-q-agricultural-buildings-to-dwellinghouses/made)

(<http://www.legislation.gov.uk/uksi/2015/596/schedule/2/part/3/crossheading/class-q-agricultural-buildings-to-dwellinghouses/made>) assumes that the agricultural building is capable of functioning as a dwelling. However, it recognises that for the building to function as a dwelling some building operations which would affect the external appearance of the building, which would otherwise require planning permission, should be permitted. The right allows for the installation or replacement of windows, doors, roofs, exterior walls, water, drainage, electricity, gas or other services to the extent reasonably necessary for the building to function as a dwelling house; and partial demolition to the extent reasonably necessary to carry out these building operations. It is not the intention of the permitted development right to include the construction of new structural elements for the building. Therefore it is only where the existing building is structurally strong enough to take the loading which comes with the external works to provide for residential use that the building would be considered to have the permitted development right.

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### **Are there any limitations to the change to residential use?**

There are some limitations to the change to residential use. The Class Q [\[a\]](http://www.legislation.gov.uk/uksi/2015/596/schedule/2/part/3/crossheading/class-q-agricultural-buildings-to-dwellinghouses/made)

(<http://www.legislation.gov.uk/uksi/2015/596/schedule/2/part/3/crossheading/class-q-agricultural-buildings-to-dwellinghouses/made>) rights cannot be exercised where works for the building, extending or altering of a building, or the installation of additional or replacement plant or machinery for the purposes of agriculture under the existing agricultural permitted development, have been carried out on

the established agricultural unit since 20 March 2013, or within 10 years before exercising the change to residential use, whichever is the lesser. The agricultural permitted development rights are set out in Class A (a) or Class B (a) of Part 6 of Schedule 2 to the General Permitted Development Order [\[2\]](http://www.legislation.gov.uk/ukSI/2015/596/schedule/2/part/6/made) (<http://www.legislation.gov.uk/ukSI/2015/596/schedule/2/part/6/made>) (agricultural buildings and operations).

In addition, the site must have been used solely for an agricultural use, as part of an established agricultural unit, on 20 March 2013, or if it was not in use on that date, when it was last in use. If the site was brought into use after 20 March 2013, then it must have been used solely for an agricultural use, as part of an established agricultural unit, for 10 years before the date the development begins. If there is an agricultural tenancy in place, there are separate arrangements set out in Class Q [\[3\]](http://www.legislation.gov.uk/ukSI/2015/596/schedule/2/part/3/crossheading/class-q-agricultural-buildings-to-dwellinghouses/made) (<http://www.legislation.gov.uk/ukSI/2015/596/schedule/2/part/3/crossheading/class-q-agricultural-buildings-to-dwellinghouses/made>).

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### **Are there any conditions attached to the change to residential use?**

There are some conditions attached to the change to residential use. Before beginning the development, an individual will need to apply to the local planning authority for a determination as to whether the prior approval of the local planning authority is necessary for the change of use. This prior approval will be in respect of transport, highways and noise impacts of the development, and also as to the flooding and contamination risks on the site, and whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to dwelling house. In addition, applicants will need to check whether the prior approval of the authority will be required as to the design or external appearance of the building.

The procedure for prior approval is set out in the Town and Country Planning (General Permitted Development) (England) Order 2015 [\[4\]](http://www.legislation.gov.uk/ukSI/2015/596/contents/made) (<http://www.legislation.gov.uk/ukSI/2015/596/contents/made>). This procedure was amended in April 2014 to make clear that the local planning authority must only consider the National Planning Policy Framework to the extent that it is relevant to the matter on which prior approval is sought, for example, transport, highways, noise etc.

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### **Is there a sustainability prior approval for the change to residential use?**

The permitted development right does not apply a test in relation to sustainability of location. This is deliberate as the right recognises that many agricultural buildings will not be in village settlements and may not be able to rely on public transport for their daily needs. Instead, the local planning authority can consider whether the location and siting of the building would make it impractical or undesirable to change use to a house.

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### **What is meant by impractical or undesirable for the change to residential use?**

Impractical or undesirable are not defined in the regulations, and the local planning authority should apply a reasonable ordinary dictionary meaning in making any judgment. Impractical reflects that the location and siting would "not be sensible or realistic", and undesirable reflects that it would be "harmful or objectionable".

When considering whether it is appropriate for the change of use to take place in a particular location, a local planning authority should start from the premise that the permitted development right grants planning permission, subject to the

prior approval requirements. That an agricultural building is in a location where the local planning authority would not normally grant planning permission for a new dwelling is not a sufficient reason for refusing prior approval.

There may, however, be circumstances where the impact cannot be mitigated. Therefore, when looking at location, local planning authorities may, for example, consider that because an agricultural building on the top of a hill with no road access, power source or other services its conversion is impractical. Additionally the location of the building whose use would change may be undesirable if it is adjacent to other uses such as intensive poultry farming buildings, silage storage or buildings with dangerous machines or chemicals.

When a local authority considers location and siting it should not therefore be applying tests from the National Planning Policy Framework except to the extent these are relevant to the subject matter of the prior approval. So, for example, factors such as whether the property is for a rural worker, or whether the design is of exceptional quality or innovative, are unlikely to be relevant.

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### 3. What types of area-wide local planning permission are there?

(<http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-types-of-area-wide-local-planning-permission-are-there/>)

#### **What types of area-wide local planning permission are there?**

Permitted development rights are set nationally, and apply across the whole of England. However there are other locally focused tools which can be used by a local planning authority to grant planning permission for development in their geographic area. These tools are:

- Local Development Orders
- Neighbourhood Development Orders  
(<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/>)
- Community Right to Build Orders  
(<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/>)

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#### **What is a Local Development Order?**

Local Development Orders are made by local planning authorities and give a grant of planning permission to specific types of development within a defined area. They streamline the planning process by removing the need for developers to make a planning application to a local planning authority. They create certainty and save time and money for those involved in the planning process.

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#### **What land area can a Local Development Order cover?**

A Local Development Order can cover a geographical area of any size; however, Local Development Orders cannot cross local authority boundaries. Two or more local planning authorities may wish to co-implement or co-consult on cross-boundary Local Development Orders, but each individual authority must adopt their own Local Development Order.

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#### **Are Local Development Orders permanent or time-limited?**

Local Development Orders are very flexible tools, and it may be appropriate for them to be either permanent or time-limited, depending on their aim and local circumstances. For example, Local Development Orders in fast-developing areas may be time-limited so that they can be easily revised and updated in the future, while Local Development Orders which extend permitted development rights in established areas may be permanent.

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### **What is the interaction between Local Development Orders and other planning permissions or consent regimes?**

Local Development Orders do not remove or supersede any local authority planning permission (or permission granted on appeal) or permitted development rights which are already in place. Equally, they do not prevent a planning application being submitted to a local planning authority for development which is not specified in the Order.

Local Development Orders only grant planning permission, and do not remove the need to comply with other relevant legislation and regulations ([http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-is-development/#paragraph\\_004](http://planningguidance.communities.gov.uk/blog/guidance/when-is-permission-required/what-is-development/#paragraph_004)).

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### **What restrictions are there on the use of Local Development Orders?**

A Local Development Order cannot grant planning permission for development which is likely to have a significant effect on a European Site or European Offshore Marine Site (either alone or in combination with other plans and projects), and is not directly connected with or necessary to the management of the site.

Regulation 78 of the Conservation of Habitats and Species Regulations 2010 gives more information. European Sites and European Offshore Marine Sites are sites of the sort described in regulation 8 of those Regulations and designated under processes set out in the Regulations.

Regulation 29 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 provides special rules for Local Development Orders relating to development that would fall within Schedule 2 to these Regulations. The local planning authority or the Secretary of State must first screen the proposed development to identify its likely environmental effects.

If screening identifies that development is not likely to give rise to any significant environmental effects then no further work is required and the development can be permitted by means of a Local Development Order. Where screening identifies that the proposed development is likely to have a significant environmental effect, the development can still be permitted by means of a Local Development Order.

However, the local planning authority must first produce an Environmental Statement and then take this environmental information into consideration in their decision on the Local Development Order [\[2\]](#)

(<http://www.legislation.gov.uk/uksi/2011/1824/regulation/29/made>).

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### **What are the procedures for making a Local Development Order?**

The procedures for making a Local Development Order are set out in sections 61A to 61D and Schedule 4A of the Town and Country Planning Act 1990, as amended, and articles 38 and 41 of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

The Growth and Infrastructure Act 2013 simplified the Local Development Order process by removing the requirement for the local planning authority to submit the order to the Secretary of State before adoption for consideration of whether to intervene.

This was replaced by a requirement to notify the Secretary of State, via the National Planning Casework Unit at [npcu@communities.gsi.gov.uk](mailto:npcu@communities.gsi.gov.uk), as soon as practicable after adoption.

The Act also removed the requirement for Local Development Orders to be

reported on as part of Authorities' Monitoring Reports.

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### **Can Local Development Orders be revoked and modified?**

A local planning authority can revoke a Local Development Order at any time. If a local planning authority wishes to modify a Local Development Order, re-consultation may be required. The Secretary of State can also require the revision of a Local Development Order by the local planning authority at any point before or after its adoption.

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### **Can conditions be attached to Local Development Orders?**

A local planning authority is able to impose planning conditions on a Local Development Order in much the same way as the Secretary of State can impose conditions on permitted development rights in the General Permitted Development Order. Some of the conditions imposed in a Local Development Order may be similar to conditions that may be imposed on a normal grant of planning permission (<http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/>). A local planning authority should try to avoid imposing excessive numbers of conditions on Local Development Orders. The purpose of Local Development Orders is to simplify and speed up local planning, and this is likely to be undermined by placing overly onerous burdens on developers.

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### **Can section 106 planning obligations be required under a local development order?**

Section 106 planning obligations cannot be required under a Local Development Order; however, this does not prevent section 106 agreements being offered by a developer. For example, if a condition attached to a Local Development Order requires mitigation of an impact from development then a section 106 agreement could be used to secure this (<http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/>).

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### **Is development carried out under a Local Development Order subject to a Community Infrastructure Levy charge?**

Development carried out under a local development order may be liable to pay a Community Infrastructure Levy charge where one applies.

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### **What is a Neighbourhood Development Order?**

A Neighbourhood Development Order can be used in designated neighbourhood areas to grant planning permission for development specified in an Order. They allow communities the opportunity to bring forward the type of development they wish to see in their neighbourhood areas (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/>).

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### **Who can make a Neighbourhood Development Order?**

Neighbourhood Development Orders are proposed by 'qualifying bodies' which are town or parish councils or a designated neighbourhood forum (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/>) and made by the local planning authority.

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### **What size area can a Neighbourhood Development Order**

**cover?**

Neighbourhood Development Orders are not limited as to the size of land they can cover. However, they can only apply to land which falls within the specific designated neighbourhood area to which the community proposing the Order is the qualifying body.

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**What type of permission can a Neighbourhood Development Order grant?**

Neighbourhood Development Orders can grant either unconditional or conditional planning permission for development (<http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/>).

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**Is development carried out under a Neighbourhood Development Order subject to a Community Infrastructure Levy charge?**

Development carried out under a Neighbourhood Development Order may be liable to pay a Community Infrastructure Levy charge where one applies. (link to be added (<http://planningguidance.communities.gov.uk/beta/>))

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**What is the procedure for making a Neighbourhood Development Order?**

The legal procedures for making a Neighbourhood Development Order are set in section 61E and Schedule 4B of the Town and Country Planning Act 1990, as amended, the Neighbourhood Planning (General) Regulations 2012 and article 42 of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

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**Is it possible to modify a Neighbourhood Development Order?**

A local planning authority can modify an Order to correct errors so long as the qualifying body that initiated the Order agrees with the changes, and is still authorised to act as the qualifying body. The procedures for modifying are orders set out in the Neighbourhood Planning (General) Regulations 2012 [☐](http://www.legislation.gov.uk/ukSI/2012/637/contents/made) (<http://www.legislation.gov.uk/ukSI/2012/637/contents/made>)

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**Does the Secretary of State have powers in relation to neighbourhood development orders?**

The Secretary of State has the power to revoke any Neighbourhood Development Order which is made. A local planning authority, with the permission from the Secretary of State, may also revoke a Neighbourhood Development Order.

If a local planning authority wishes to revoke an Order, it is important that they first engage with the neighbourhood planning body so that the reason for the revocation can be understood and considered by the community that supported the Order.

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**What is a Community Right to Build Order?**

A Community Right to Build Order is a type of development order which grants planning permission to development specified in the Order. It differs from Neighbourhood Development Orders because it can be prepared by community organisations, not just a town or parish Council or neighbourhood forum (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/>) (where a neighbourhood forum is a constituted community organisation).

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### **What is a community organisation?**

For the purposes of The Localism Act 2011, a community organisation must be a legally constituted organisation, for example a company limited by guarantee with charitable status or a registered charity and meet other legal tests (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/>).

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### **What is the procedure for making a Community Right to Build Order?**

The legal procedures for Community Right to Build are found in the Neighbourhood Planning (General) Regulations 2012. Schedule 11 of the Localism Act 2011 provides the primary legislative provisions for Community Right to Build Orders.

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### **Does a Community Right to Build Order have to comply with national planning policy and local strategic planning policy?**

A Community Right to Build Order must meet a number of basic conditions and other legal tests. More information on these conditions and tests can be found in neighbourhood planning guidance (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/>).

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### **Does a Community Right to Build Order give a community organisation rights over land?**

A Community Right to Build Order does not give a community organisation ownership rights to any land to which it relates; land will still need to be purchased from the land owner or their permission given to build on the land in question.

Where a community organisation wishes to undertake development permitted by the Order, it will be responsible for funding the costs of the process and overseeing all stages of development to completion (<http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/>).


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### **Is development carried out under a Community Right to Build Order subject to a Community Infrastructure Levy charge?**

Development carried out under a Community Right to Build Order may be liable to pay a Community Infrastructure Levy charge where one applies.

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(<https://www.gov.uk/government/organisations/department-for-communities-and-local-government>)

