



An introduction to planning

Northampton Borough Council

3 June 2015



The Trainer

David Elworthy

Objectives for this session



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

What is planning?



- What makes a good planning decision?
- What do you think the public expects from you?

The job of the planning decision



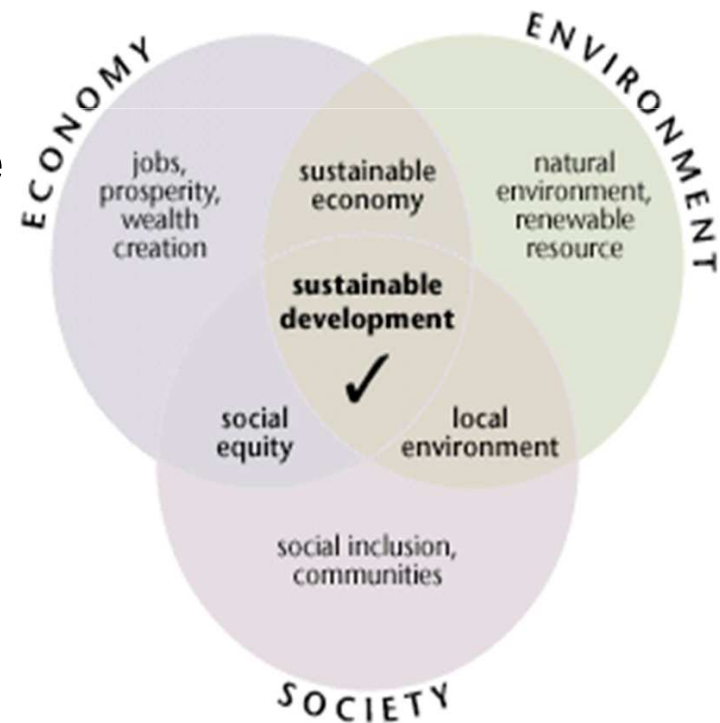
- Planning isn't just about stopping bad stuff from happening
- It's proactive, encouraging development that delivers the right stuff for your community and accords with your plan and strategic objectives



Planning in England is policy-led



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



Presumption in favour of sustainable development



For decision-taking this means:

- Approving development proposals that accord with the development plan without delay; and
- Where the development plan is absent, silent or relevant policies are out of date, granting permission unless:
 - Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
 - Specific policies in this Framework indicate development should be restricted

Local Plan



- West Northamptonshire Joint Core Strategy
- Northampton Central Area Action Plan
- Northampton Local Plan and Local Plan Part 2
- Minerals and Waste Plan
- Supplementary Planning Documents
 - Nene Meadows
 - Design Guide
- Neighbourhood Plans
 - Durston
 - Blackthorn, Goldings, Lings and Lumbertubs
 - Spring Boroughs
 - Wootton and East Hunsbury

National Planning Policy |



Paragraph 49:

Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.

National Planning Policy Framework



Paragraph 14

Presumption in favour of sustainable

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

- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
- specific policies in this Framework indicate development should be restricted

The role of the elected member



- As a member of planning committee
- As a ward member
- As a member of a political group
- As a member of the Cabinet
- As a member of the Council as a whole

Duty of an elected member



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

Pre-determination



- Predetermination occurs where someone has a closed mind, with the effect that they are unable to apply their judgement fully and properly to an issue requiring a decision
- If a councillor has given a view on an issue, this does not show that the councillor has a closed mind on that issue, so that if a councillor has campaigned on an issue or made public statements about their approach to an item of council business, he or she will be able to participate in discussion of that issue in the council and to vote on it if it arises in an item of council business requiring a decision

Basic principle: start with the plan



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

Town and Country Planning Act 1990, section 70



“Can we *ignore* the Development Plan?”



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

Exercise



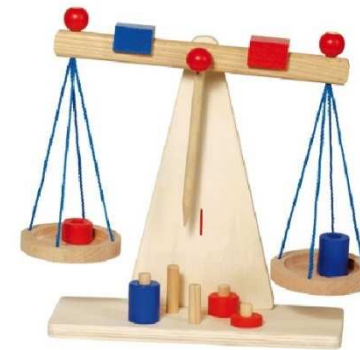
- What is a material consideration?



Material Considerations



- what they are and are not - decided by statements of national policy or by decisions of the courts
- the weight that should be attached to each consideration in any particular case is for the decision maker



Material Considerations



...‘It is a long established planning principle that local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission. When these local objections are weighed in the overall planning balance they do not justify withholding permission and consent for a scheme that accords with national and local planning policies’...

(Inspector’s decision letter)

Committee determination



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

Avoiding unreasonableness



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

The Committee Decision



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

Overturns/different decisions



- Councillors can come to a decision that differs from the recommendation
- But it must be justified on planning grounds (based on the plan and material considerations)
- Committee must give justified planning reasons for decision (it cannot be left to officers)
- May be subject to appeal (or other challenge), so reasons must be defensible

The decision can be challenged



- Appeal - SoS is a higher authority and PINS stand in his stead – more forensic examination of issues from national policy position
- Costs for unreasonable behaviour (even when not sought) – decisions based on evidence?
- Judicial Review and Ombudsman

Danger of special measures



- Criteria for designation are:
- Speed of decision making
 - Less than 40% of major decisions within 13 weeks
- Quality of decision making
 - 20% or more decisions overturned at appeal

Reasons for refusal



- Must be:
 - ✓ Accurate
 - ✓ Directly related to the development proposal
 - ✓ Have regard to the development plan
 - ✓ Relate to material considerations

You can always ask officers for advice

Ask yourself.....



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

Managing meetings



- It is important for members to be able to take advice on precedents and reasonableness of reasons/conditions if moving a proposal contrary to officer recommendations
- Some authorities decide they are minded to reach a decision with the broad reasons for the officers to report back working up those putative reasons/conditions or explaining any risks of costs when full consideration given
- Better if trust to seek advice before the meeting

Managing meetings



During the debate, where the committee has reached a different balance of material considerations (to the officer recommendation) officers could be asked to explain to the committee before a motion is made:

- Which issues raised by the members/public can be given weight and why others cannot
- What conditions/reasons are likely to be found reasonable if challenged
- However as public sessions and appeal rights officers inhibited and advice before the event is better

Summary : reasonableness and balancing material considerations

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

Making a planning decisions : key points



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

Take away tips



- Follow codes of conduct
- Start with the development plan
- Take everything **relevant** into account
- Seek advice from officers (planning and legal)
- Carefully consider the evidence that might be needed to defend a decision at appeal

Take away tips



- Reach a decision that a reasonable decision maker, properly directed, could have reached
- If you refuse, make sure you have sound planning reasons which are reasonable
- Visit the results of your decisions - to improve quality and consistency of decision making

Any questions?

