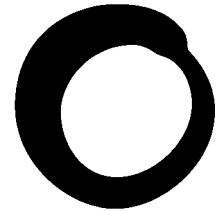


May 2008



**Friends of
the Earth**

Planning Applications: A campaigner's guide

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About this guide

This guide is designed to provide some basic information to help you respond to a planning application. It should be read alongside the Friends of the Earth's guides to the planning system (England or Wales) and Environmental Impact Assessment. This guide is divided into two parts, the first deals with the nuts and bolts of how development control works. The second part provides some general advice and how to fight an effective planning campaign.

Part 1

What is a planning application?

If you want to develop land for things like housing, shops or new industry, you need to get planning permission from your local council. This means submitting a planning application, which allows the council to decide whether or not the development should go ahead.

And why should I be interested?

Because if you want to be involved in the future of the community, to ensure the best kind of developments happen and not the worst ones, you have to be involved in the planning process. The planning system is also one of the key ways that we can implement our vision for sustainable development by ensuring, for example, that new growth helps reduce climate change emissions through renewable technology, energy efficiency and reducing the need to travel. Your voice and the voice of the community need to be heard just as loudly as the voice of the development industry.

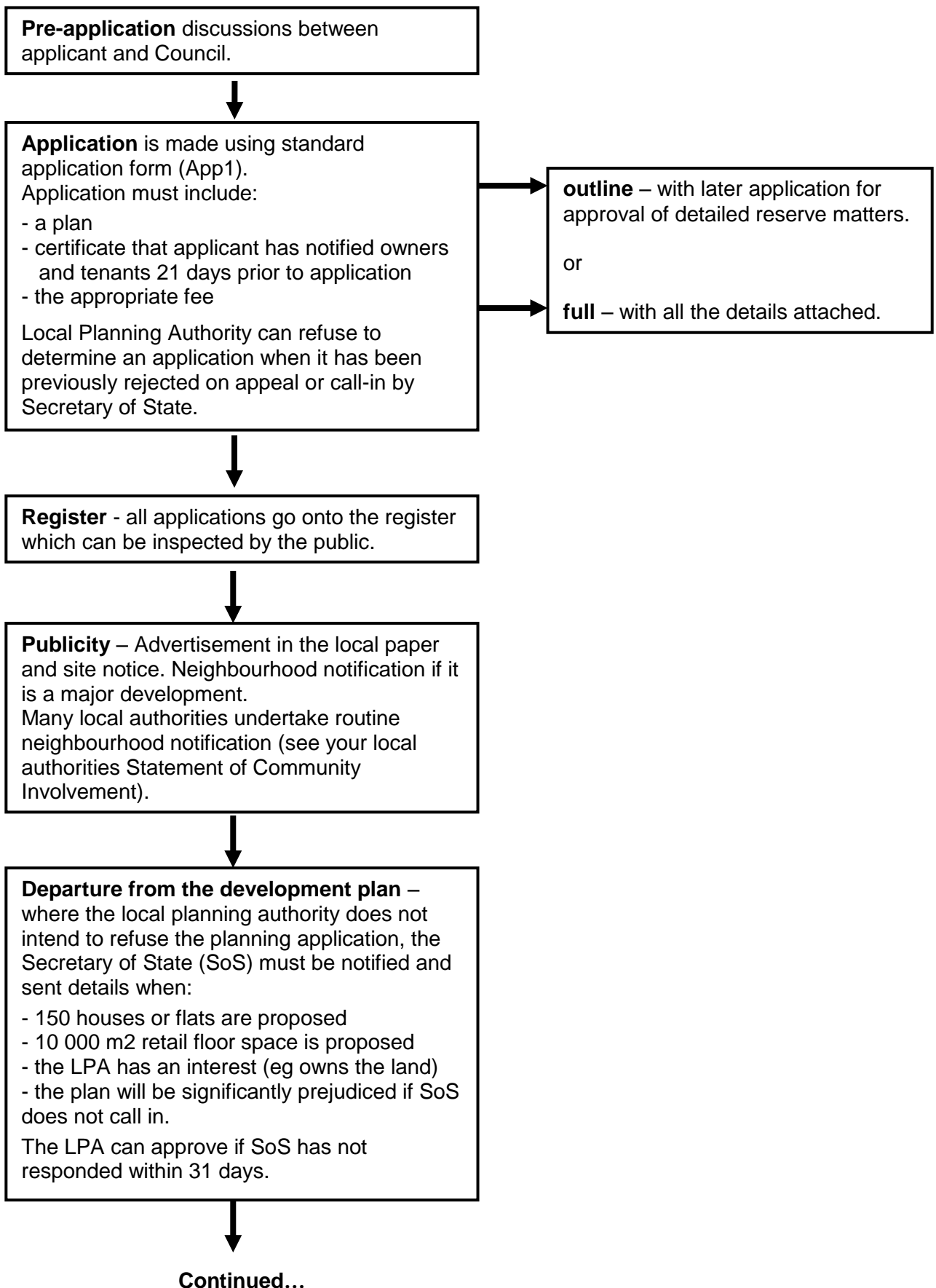
But is there any point getting involved?

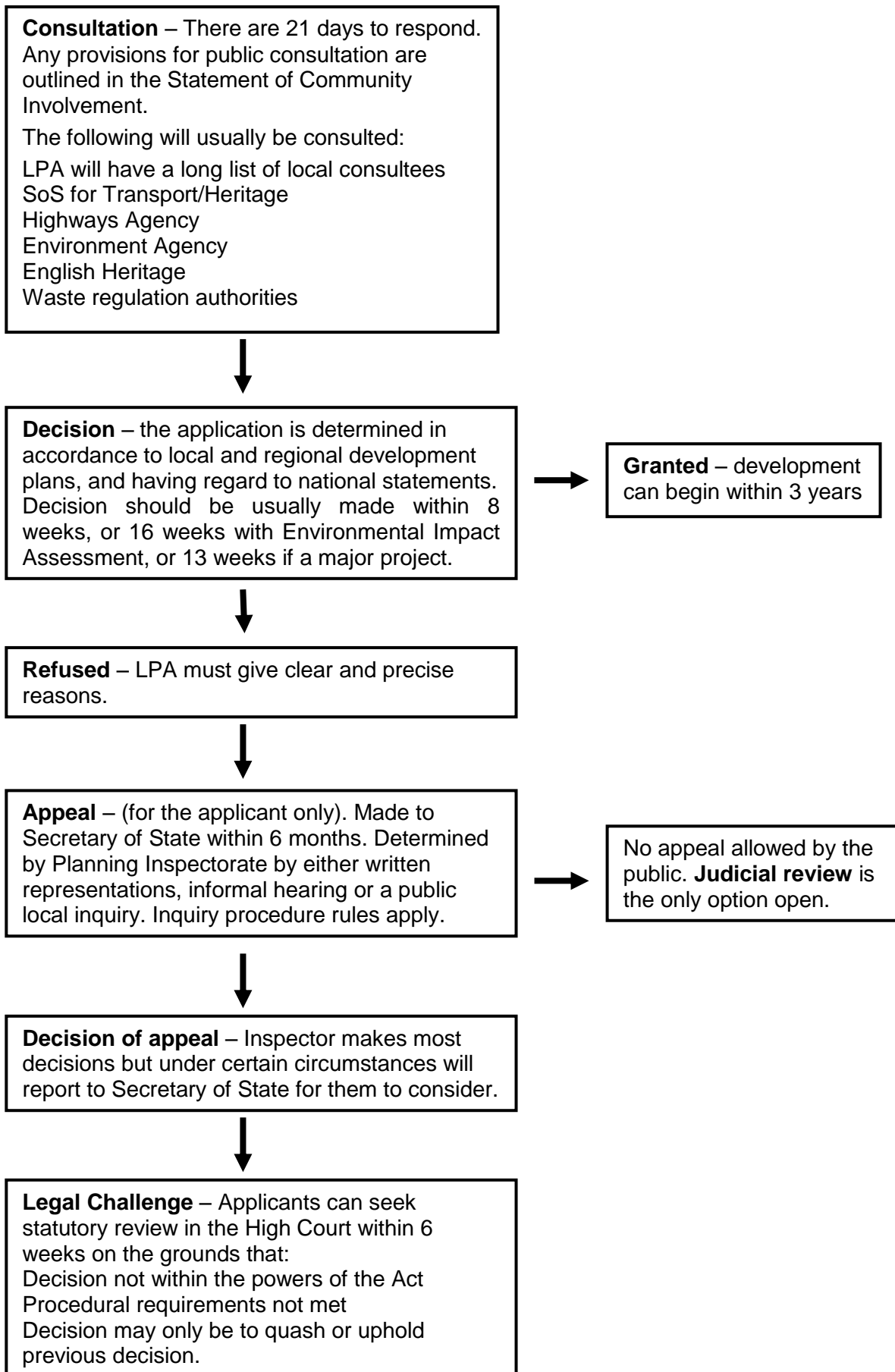
Yes! You have important rights to be involved in the way that local planning decisions are made. The Council must take note in your views. Local people are often accused by developers and government of being short-sighted and self-centred, but local people have a wealth of knowledge and experience to bring, which can make better decisions.

So tell me how it works?

The process of dealing with a planning application is a bit like a horse race. Each application has to jump over a number of hurdles before it reaches the finish line and gets either approved or refuse. The road map below provides an outline of the key stages a planning application has to pass through. Don't be put off by the complexity! In fact you only have to worry about a small number of key stages where you can make a real difference to the outcome.

Development control procedure





The step by step guide

Step 1: the Pre application discussion

The Government encourages local councils and developers to have informal discussions about a future development before the planning application is made. In theory this is to sort out the completely mad proposals from the ones with a reasonable chance of success. These meetings are often viewed with suspicion but it is important to remember that planners cannot give an indication to the developer as to whether or not their proposal would be acceptable or not at this stage. It is often difficult to find out whether these meetings have taken place. But if you know a site is up for grabs and you think the planning department is just not telling you, one way to find out if discussions have taken place is to make a Freedom of Information request. Refer to Friend's of the Earth's Right to Know briefings or visit www.RightToKnowOnline.co.uk.

Step 2: the application is made

The planning application is a standard form that you can fill-in in hard copy or online and has to be submitted to the local planning authority. The applicant has to pay a fee and submit a number of legal documents to ensure that anyone whose land that is affected has been properly informed. The local council will ensure that the application is complete and then validate it. It is then recorded on the Planning Register, which is a public document that you have a right see, and it is at this moment that the clock starts running on the determination process. The register is located in the planning department at your local council.

What kind of application is it?

Just to confuse everyone, there are two main kinds of planning application. The most common form is the full application in which all the details of the design and location of the development are included. There is now a standard application form (an example is in the Annex to this briefing). Once you get approval you can move directly onto site.

The second kind of application is outline. For this you only have to submit a redline boundary around land you wish to develop. You do not have to submit details of design and location at this stage. The purpose of outline applications is to test whether the principal development on a particular site is acceptable. Even if the application is approved in outline, there will then need to be a second full application which contains all the details of design and location. It is worth bearing in mind that, once an outline application has been approved, it is usually quite rare for the full application to be refused on detailed issues.

How long do we get?

Local authorities must approve planning applications within set time limits, unless the applicant agrees to a longer determination. Local councils are under a lot of pressure from Government to approve applications in these timescales. There are two important differences in timescale depending on the size and complexity of the application. For most normal medium and small-scale planning applications for things like individual or small groups of houses or medium small-scale commercial and retail premises, the period is eight weeks.

For those applications which have major environmental impact and require environmental impact assessment, the period for determination is 16 weeks.

STOP! If the case you're working on involves environmental impact assessment you need to read Friends of the Earth's guide to environmental impact assessment (EIA).

In a small number of cases there are significant planning applications which do not require EIA but are none the less regarded as 'major' which will be determined in 13 weeks. The most important thing is to ask your local council how long the determination period will be. It is important to remember that the determination period is the time allowed for the local authority to make the decision and not the time available for local people to comment on the application. This is normally 21 days.

How will I find out if a planning application has been made?

A local authority is under a duty to advertise planning applications. The precise requirements for different kinds of application are laid out in the General Development and Planning Order 2005, and there is now a standard planning application form which means that all local authorities should be using the same set of requirements.

In general, local authorities are required to publicise planning applications by a site notice and an advert in a newspaper which is in local circulation. In addition many local authorities will notify individual neighbours of the proposed development by letter and place the information on their web site. Although it is not a legal requirement, some local authorities will facilitate public meetings on major new development proposals. The Government is encouraging private sector developers to organise more lengthy public participation on specific proposals. Many campaigners feel that this compromises the objectivity of the participation exercise and it is important to keep a close eye on any attempt by the private sector to manipulate the process in an unfair way.

Each local authority has the flexibility to set their own standards of participation in the development control process. The standard should be written down in a document known as the statement of community involvement (see Friends of the Earth briefing on this). It is useful to get a copy of this statement to make sure the council is doing what they say they do.

In general the public have 21 days to comment on the planning application from the date of the site notice. In practice this is a short period of time to digest a complex application and make representations. You can submit representations after the deadline and the local authorities are still obliged to consider these. If you need more time, ring your local council and agree a longer period. Just remember that the earlier your concerns are fed into the process, the more likely they are to be taken seriously.

Step 3: The officer's report

All the representations by the public along with all the other issues material to the case will be summarised in the Planning Officer's report. This can be a lengthy document which tries to lay out all the key impacts of the new development and how they relate to local and national policy. The report will finish with a recommendation to refuse or approve the planning application. Planning officers are obliged to fairly summarise the case for and against and must reach a reasoned judgment based on the facts of the case.

Step 4: The decision

What is the planning committee and what part do elected councillors play in the decision?

The final decision on whether a planning application is refused or approved is not made by the planning officers but by a group of politicians who sit on the planning committee. These local councillors are meant to take an overview of the application. Many local councillors tell their electors that they are not allowed to discuss planning applications. **This is not the case.**

Local councillors have an absolute duty to listen to the views of their electors. However, many codes of conduct in local government require councillors to withdraw from planning decisions if they have already expressed their view one way or another on the outcome. As a result good local councillors should listen to your views and then be able to take them into account in the final decision. They will not always give you a yes or no answer about their position.

How do councillors actually reach a decision?

The planning committee must consider all relevant information. This is often known as information 'material' to a planning application. Despite what some planning officers say, anything which relates to the use and development of land is relevant and material to a planning decision. However, while a whole range of issues might be relevant, from the loss of important dog-walking space to the effect on global climate change, some things are clearly going to be of vital significance.

The most important thing in reaching a decision on application is what the local development plan says. Please see our briefing on Local Development Frameworks. In a nutshell the plans set out what should go where. Each plan has been through a public examination and in theory you should have been involved in that process as a member of the local community. There is a legal presumption in favour of what is in the development plan. So if an application for housing is proposed on a piece of land already identified for housing, it is likely to be approved.

On the other hand, any application that is made which contravenes local plan policy, is likely to be refused. These applications are known as departure cases and have to be notified to the Secretary of State. The applicant will need to provide an extremely persuasive case as to why such development should take place in contravention of the plan.

There are some cases where the development plan will not be the most important issue. There might be, for example, other material considerations which were not explored at the development plan stage. There might, for example, be a particular rare species on a site which has legal protection and this might outweigh the provisions of the development plan. It is worth remembering, that the older the plan the less 'weight' it carries. Developers will often say that a plan that was adopted five years ago is out of date and that their development should take place because of changes in patterns of demand. It is also important to bear in mind that the draft plan could have relevance to your case. The basic guidance is, the further the plan has gone down the adoption process, the more relevant it is.

The final decision of the planning committee is a mixture of factual technical information on local and national policy imperatives and of local political views.

Using Planning Policy

In practice you should always have a good look at your local development plan to see if the application fits with the policy that is written there. You will find that development plans contain a whole range of policy which is sometimes contradictory. It is always possible to use development plan policy to support your case, particularly perhaps the sections on biodiversity and climate change. Relating your objections to local policy and national policy gives much more force in the decision-making process. A full list of the national policy can be found on the Department for Communities and Local Government web site:

www.communities.gov.uk

The final decision

The planning committee has a number of options when it makes its decision. It can:

- Approve the application with a certain number of conditions. These conditions can relate to start date, working hours, planning gain deals etc. The conditions, known as Section 106 agreements, are legally enforceable.
- Defer the application to a future committee date if the committee feels the need for more information.
- Refuse the application.

In approving or refusing a planning application, a local authority must provide a reasoned justification for their decision to the applicant and the public.

Step: 5

The appeal

The applicant has up to six months to lodge an appeal against a decision to refuse their planning application. This right of appeal is heard by the Planning Inspectorate either through a public inquiry or through written representations. The local authority has a duty to publicise planning appeals, and those members of the public with an interest (often known as third parties) have a right to either appear at planning inquiries or submit written representations. The decision about whether to hear a case in public or through written form is made between the applicant and the local authority. Third parties themselves have no right to appeal on the approval of a planning application. Friends of the Earth has been part of a long-running campaign to achieve such a right which would be a vital part in making the planning system fair to all participants.

Health warning!

There are Government proposals to allow small groups of councillors to hear some appeals rather than the Planning Inspectorate. Check our web site for updates.

The legal challenge

In some limited cases third parties can use the courts to challenge planning decisions. This is through the process of judicial review where the courts can examine if a procedural error has taken place in the process of making a decision. Some individuals and communities have used judicial review to overturn unfair decisions but this route is potentially costly and

complex. For a complete briefing on judicial review see Friends of the Earth briefing on Judicial Review. The Rights & Justice Centre can also provide more advice on specific challenges to planning cases. See contacts at the end of the briefing.

The local government ombudsman

Third parties can complain about the process of a planning decision to the local government ombudsman. This body has the power to investigate decisions and to deliver judgments of maladministration against local authorities who have not done their job properly. However the ombudsman cannot overturn a planning decision.

Some other weird planning stuff explained

Section 106 agreements or planning gain deals

Planning gain is where a developer offers significant benefits to the local community if a planning application is approved. This might mean basic highway improvements, the provision of affordable housing or more controversial off site benefits, including contributions to transport schemes or the provision of new educational and recreational facilities. These deals are secured through legal agreements known as Section 106 agreements. In theory such deals can lead to real benefits to the local community but they are often perceived to be a form of bribery by which cash-strapped local authorities would agree to approve development which they otherwise might have refused because of the financial benefits it would bring. Many local councils now write policy into their local plans which requires contributions from developers. This improves the transparency of the process but the bottom line is that the overall sustainable development of the community should not be compromised by the promise of planning gain.

New ways of getting money from new development for local infrastructure (roads, schools, waste facilities) are being discussed at the moment in the form of a Community Infrastructure Levy. More information on this as and when it is finalised will be on our web site.

Call in by the Secretary of State

The Secretary of State has reserve powers to take any decision out of the hands of a local council and decide it for himself/herself. Note that in London, the Mayor has new powers to call in certain applications on certain criteria. For more information see the references.

This process is known as calling in a planning application. All major planning applications which are a departure from the development plan, or large-scale housing development over a certain size, has to be notified to the Secretary of State and a decision made about whether to call it in.

Getting a controversial application called in can be an important campaign objective, because such applications are usually then heard by a local inquiry run by the Planning Inspectorate. This provides the opportunity to give oral evidence and cross-examine witnesses. The Secretary of State bases the decision on whether to call in an application on the advice of the relevant government office, using guidance laid down which indicates that only those applications where the application:

- Raises significant architectural and urban design issues
- Has wide effects beyond the immediate locality
- Gives rise to substantial national or regional controversy
- Conflicts with national policy on important matters
- Involves the interests of foreign governments

In practice the Government office for the region writes to the Council, the applicant and any statutory agencies concerned (e.g. Environment Agency) telling them of the Secretary of State's decision on whether to call-in or not.

Enforcement

Enforcement is a way that local council can make sure that developers do what they are told. The planning permission and the conditions will set out precisely what the developer is allowed to do. If a breach of these conditions happens, or where a developer starts to build without planning permission, then the council can issue a number of legal notices. These include:

- a planning contravention notice which allows them to gain access to land and find out what is going on;
- a temporary stop notice which forces the developer to stop work for up to 28 days;
- an enforcement notice which can require the demolition of the structure which has been built without planning permission.

Local authority has discretion whether to use these orders and the developer can submit a retrospective planning application to gain permission for something they have already done. This might sound unfair but it is perfectly lawful.

Part 2

Five top tips for an effective planning campaign!

An individual application for a big new development such as a supermarket can be a complex process and it is easy to feel overwhelmed when it lands on your doorstep.

Fighting the planning case and running a campaign can be a challenge but there are 5 big principles to keep in mind:

1 Intelligence

In order to mount the best planning case, you need to make sure you know about an application early. You can find out about applications by:

- Checking the council web site
- Looking out for site notices
- Checking the local press
- Talking to local councillors

- Getting a circulation list of new applications (some councils will charge for this).

Normally applicants have had pre-negotiations with the council before they make a planning application and you can ask the planning officer if this has taken place.

2 Making Good Relationships

It pays to be on good terms with your local planners. Always try to meet planning officers face to face to make them aware of your concerns. They will also be able to explain local policies to you. It is also worth building links with other organisations in your community who might be concerned. Don't assume that the community will automatically support your campaign.

3 Good communications

Make sure you have got a clear message for the media and public about the negative impacts the new development will have. People may love supermarkets but surveys have shown people do not want to lose their local shops.

4 Get them on their weakest points

It is important to concentrate your fire in complex planning cases. Rather than trying to say something about everything, you need to work out the key areas of objection and make them into killer arguments. In most retail applications these will be traffic impact and the impact on the vitality and viability of existing town centres.

5 Danger points

Look out for the applicant's killer response. They may employ a public relations (PR) firm and will sell the messages of new jobs and other benefits. Watch out for enticing offers to the local council for anything from new roads to football stadiums which can be delivered through planning gain. Prepare your counter attack, get information about jobs that may be lost in local shops, make the case that the 'improvements' will not justify the negative impacts.

Annex 1

The Secretary of State can also 'call-in' planning applications, and recover appeals, for his determination. In general the Secretary of State will use these intervention powers selectively and will not interfere with the jurisdiction of local planning authorities unless it is necessary to do so. Criteria for calling-in planning applications were set out by the then Minister for Planning in June 1999.

Criteria for calling in planning applications for determination by the Secretary of State

"(The) policy is to be very selective about calling-in planning applications. (The Secretary of State) will, in general, only take this step if planning issues of more than local importance are involved. Such cases may include, for example, those which, in his opinion:

- may conflict with national policies on important matters;
- could have significant effects beyond their immediate locality;
- give rise to substantial regional or national controversy;
- raise significant architectural or urban design issues; or
- may involve the interests of national security, or of foreign Governments.

However, each case will continue to be considered on its individual merits."

(Hansard, Written Answer, 16 June 1999, col.138)

Further information and guidance:

Friends of the Earth Tel: 020 7490 1555
26 – 28 Underwood Street
London N1 7JQ
Website: www.foe.co.uk

Planning

Email: planning@foe.co.uk
Website: www.YourPlanningRights.co.uk

Right to Know

Email: right2know@foe.co.uk
Website: www.RightToKnowOnline.org

Rights and Justice Centre

Email: legal@foe.co.uk

Useful web sites

Government

Audit Commission
www.audit-commission.gov.uk

Department for Communities and Local Government
<http://www.communities.gov.uk/>

The Planning Inspectorate
<http://www.planning-inspectorate.gov.uk/>

Environment Agency
www.environment-agency.gov.uk/

Environment Agency Public Registers
<http://www2.environment-agency.gov.uk/epr/>

Information Commissioners Office
www.ico.gov.uk

Neighbourhood Statistics
www.neighbourhood.statistics.gov.uk

Planning Portal
www.planningportal.gov.uk

Non Governmental Organisations (NGO)

Air Quality – UK National Air Quality site
www.airquality.co.uk

Campaign to Protect Rural England planning site
www.planninghelp.org.uk

Environmental Law Foundation
www.elflaw.org/

Liberty

www.liberty-human-rights.org.uk/

Neighbourhood Initiatives Foundation

www.nif.co.uk/

Planning Aid

www.planningaid.rtpi.org.uk

Wildlife and Countryside Link.

www.wcl.org.uk

Specific reading

Community Rights Resource Pack:

<http://www.foe.co.uk/resource/local/planning/resource/index.html>

Planning Policy Statement 1: Delivering sustainable development & General Principles

<http://www.communities.gov.uk/index.asp?id=1143805>

The Planning and Compulsory Purchase Act 2004

www.legislation.hmso.gov.uk/acts/acts2004/20040005.htm

Government planning information and guidance

<http://www.communities.gov.uk/index.asp?id=1143104>

Greater London Authority – powers of the Mayor of London

<http://www.london.gov.uk/mayor/index.jsp>

New planning application form (Birmingham City Council example):

<http://www.planningportal.gov.uk/uploads/appPDF/P4605Form004.pdf>

Generic forms for your council are available through Planning Portal:

www.planningportal.gov.uk