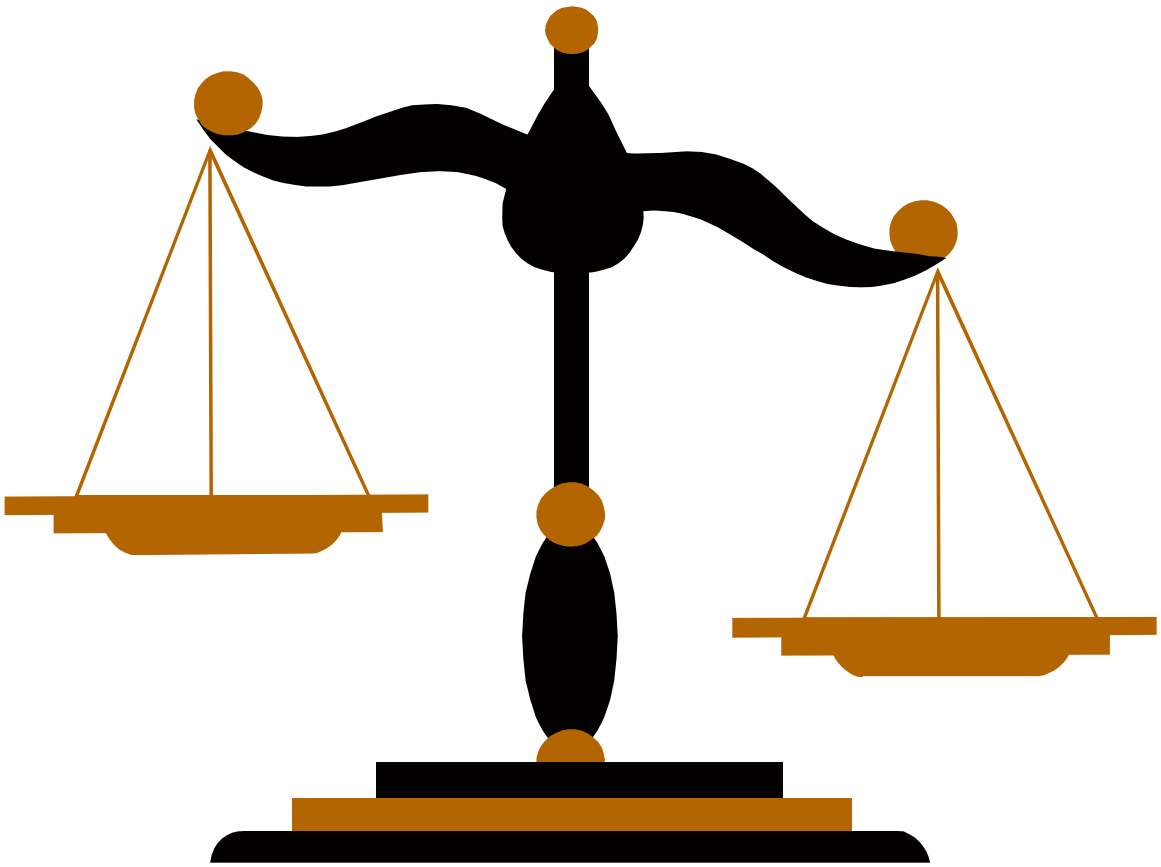


A GUIDE TO THE PLANNING PROCESS

NORTH YORKSHIRE PLANNING OFFICERS GROUP

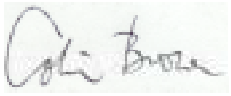
CONTENTS

Foreword

The purpose of the planning system is to ensure that as far as possible development takes place in ways that meet the economic, social and environmental needs of society, but still fulfilling the aspirations of individuals. It seeks to protect and enhance the character of the built and natural environment for both present and future generations.

The planning system can be complex and needs to weigh a number of competing factors. Across an area as broad and diverse as North Yorkshire there will be variations in approach. Inevitably, circumstances vary from area to area and from case to case, but through this guide we are seeking to give an explanation of the ways in which the system operates and give answers to some of the main questions that arise when considering a development proposal.

The Planning Officers in North Yorkshire hope that you will find it useful.



Colin Brown.
Chairman
North Yorkshire Planning Officers Group.
November 2000.

The North Yorkshire Planning Officers Group comprises representatives of North Yorkshire County Council, Craven District Council, Hambleton District Council; Harrogate Borough Council, the North York Moors National Park, Richmondshire District Council, Ryedale District Council, Scarborough Borough Council, Selby District Council, York City Council, and the Yorkshire Dales National Park.

The Planning System - An Overview

The basic feature of the planning system is the requirement that society, primarily through its elected representatives in central and local government, controls the use and development of land. Some agricultural development lies outside this control. The system is based on the preparation of Structure/Local Plans and the handling of planning applications. The framework for handling planning applications consists of the County Council, District Councils and National Park Authorities interpreting national law and policy, Regional Strategy and Structure/Local Plans while making provision for public consultation. A balance needs to be struck on a case by case basis and rarely are two cases the same.

For most individuals experience of the planning system is concentrated in the area of development control through the handling of planning applications. To get the best out of this involvement, it is necessary to have a general understanding of the other parts of the system.

Ultimate responsibility for the planning system lies with the Secretary of State for Environment, Transport and the Regions. Day-to-day operation is in the hands of the County and District Councils and National Park Authorities.

The principal planning measure is the Town and Country Planning Act 1990, as amended through subsequent legislation. Statutory Instruments, in the form of Orders and Regulations develop the detail. The Secretary of State supervises and co-ordinates the activities of local government in the day-to-day administration of the planning system and can intervene to direct a particular interpretation of planning law or a particular emphasis of land use policy.

Regional Strategy is emerging with greater weight but land use policy finds local expression mainly in development plans (Structure Plans and Local Plans). Local planning authorities are required to prepare such plans for their areas. They set out the policies for the control of development and identify those areas which will be subject to particular requirements.

The whole purpose of creating this framework of legislation, policy and plans is to regulate the use and development of land. The main feature of the development control process is the requirement that those wishing to undertake development should seek the prior consent of the local planning authority by means of making a planning application. The legislation requires the planning authority to decide upon an application in accordance with the provisions of the relevant development plans, unless there are material considerations to the contrary. This underlying principle is set out in Section 54A of the Town and Country Planning Act 1990 (as amended), which says that :

"Where, in making any determination under the Planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise."

The exercise of development control functions is therefore mainly plan-led. Essentially, there is a presumption in favour of proposals which accord with the policies and proposals in the development plan. Local government is encouraged to keep plans up to date. However, where it can be argued that the development plan is out of date or out of step with prevailing circumstances, any more recent policy guidance from the Secretary of State would be given particular weight.

Development control is concerned with most uses of land and buildings and needs to assess:-

- the implications of "permitted development" i.e. uses of land and buildings which have been granted a degree of freedom from the full requirements of the planning process;
- developments requiring planning permission or other forms of consent; and
- enforcement action in cases where developments have been undertaken without planning permission or implemented without complying with the requirements of the planning conditions.

For the majority of those embarking on a development project, the main planning issues relate to:

- whether the project requires planning permission;
- the compatibility of the project with Structure and Local Plan policies; and
- any particular requirements which might need to be imposed in order to make the proposal acceptable.

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Planning Policy - A Framework for the System

Development Plans and Policy Guidance

The essence of the planning system is that development should normally be allowed to proceed unless it would cause demonstrable harm to an important interest. Planning decisions should not place unjustifiable obstacles in the way of development. However, it is equally the case that planning decisions have to reconcile individual development aspirations with wider social, economic and environmental objectives and concerns. The Development Plan provides the local policy framework for informing and directing this process. The Development Plan is in two parts, firstly the County-wide Structure Plan, and secondly the relevant Local Plan for your area.

The Secretary of State influences local authorities on the content of Development Plans and on their making of individual planning decisions through the issuing of policy guidance. This takes the form of Planning Policy Guidance Notes (PPG's), Circulars and Regional Planning Guidance (RPG). Circulars and policy guidance are not statements of the law, but the Courts have held that they are 'material considerations' in the context of individual planning decisions. Planning Authorities should, therefore, have substantial regard to such guidance, although they are not rigidly bound to adhere to it if the Development Plan or particular circumstances require a different approach.

A recognition and understanding of the relevance of the Development Plan and appropriate national policy guidance are central to the formulation and promotion of any significant development project. Smaller scale work would mainly be concerned with the policies of the Local Plan

There are currently 24 Planning Policy Guidance Notes. An additional note on Floodrisk (PPG25) is in draft. The current PPG's are :

1. General Policy and Principles
2. Green Belts
3. Housing
4. Industrial and Commercial Development and Small Firms
5. Simplified Planning Zones
6. Town Centres and Retail Developments
7. The Countryside: Environmental Quality and Economic and Social Development
8. Telecommunications
9. Nature Conservation
10. Waste Management
11. Regional Planning Guidance
12. Development Plans
13. Transport
14. Development on Unstable Land
15. Planning and the Historic Environment
16. Archaeology and Planning
17. Sport and Recreation

18. Enforcing Planning Control
19. Outdoor Advertisement Control
20. Coastal Planning
21. Tourism
22. Renewable Energy
23. Planning and Pollution Control
24. Planning and Noise

Designated Areas - National Parks, Areas of Outstanding Natural Beauty, Heritage Coasts, Green Belts, Sites of Special Scientific Interest, etc.

Several PPG's refer to the Government's concern that developments of all types should respect the special environmental qualities of particular areas of countryside. These so-called 'designated areas' have specific landscape, wildlife and planning attributes which require a more rigourous approach to the control of development. These areas cover about 40% of North Yorkshire. It is important, therefore, that prospective developers are aware of the location of the designated areas and the nature of the relevant national policy guidance:

National Parks have been designated under the National Parks and Access to the Countryside Act 1949 on the basis of their natural beauty. The 1995 Environment Act re-stated the purposes of National Parks as:

- to conserve and enhance the natural beauty, wildlife and cultural heritage;
- to promote opportunities for the understanding and enjoyment of the special qualities of the areas by the public.

In pursuing these objectives, the National Park Authorities are under a duty (1995 Act) to seek to foster the economic and social well-being of local communities. However, in circumstances of conflict between functions, conservation of the natural and cultural heritage has priority. As well as influencing planning decisions, certain permitted development rights are restricted in National Park areas.

Areas of Outstanding Natural Beauty are designated by the Countryside Agency (formerly the Countryside Commission) for the primary purpose of conserving and enhancing natural beauty. It is a national designation. Unlike National Parks, recreation is not an objective of designation, although demand may be met as long as it is consistent with the primary objective. In pursuing the primary purpose, regard must be had to the needs of agriculture, forestry and other rural industries, and to the economic and social needs of local communities.

Heritage Coasts are defined by the Countryside Agency (formerly the Countryside Commission) with the following objectives:

- to conserve, protect and enhance the natural beauty, wildlife and cultural heritage
- to facilitate and enhance enjoyment, understanding and appreciation by the public by improving and extending sporting and tourist activities
- to maintain and improve the environmental health of inshore waters and beaches
- to take account of the needs of agriculture, forestry and fishing, and of the social needs of small communities through the promotion of sustainable and sympathetic social and economic development

Green Belts are defined by local decision on the basis of national guidance They have five specific purposes:

- to check the unrestricted sprawl of large built-up areas
- to prevent neighbouring towns from merging with one another
- to assist in safeguarding the countryside from encroachment
- to preserve the setting and special character of historic towns
- to assist in urban regeneration

The main nature conservation designation is the Site of Special Scientific Interest (SSSI) which is the responsibility of English Nature. SSSIs are key areas which in aggregate contain examples of all major semi-natural and natural ecosystems. The primary objective of designation is to ensure that they are controlled and managed in a manner which maintains their environment, and their characteristic communities of plants and animals, in a satisfactory state. Such is their importance that provisions exist for operations outside the scope of planning control to be notified to English Nature.

All sites of national and international importance (National Nature Reserves, Nature Conservation Review and Geological Conservation Review Sites, Special Protection Areas, Special Areas of Conservation and Ramsar sites) are designated SSSI's.

Designated areas - Historic and Archaeological Interests

In addition to the control of development exercised through the Planning Acts, the protection of many historic buildings and areas is subject to further controls under parallel legislation, notably:

- The Planning (Listed Buildings and Conservation Areas) Act 1990
- The Ancient Monuments and Archaeological Areas Act 1979

Listed Buildings are recognised by the Secretary of State as having special architectural or historic interest. They are graded according to their relative importance:

Grade I : Buildings of exceptional interest
Grade II* : Particularly important buildings of more than special interest but not outstanding
Grade II : Buildings of special interest

In addition to normal planning control, additional consent is required from the planning authority for any demolition, alteration or extension works (including internal works) affecting the character of a listed building. Undertaking such work without 'Listed Building Consent' is an offence for which, on summary conviction, an offender may face a fine of up to £20,000.

Historic Parks and Gardens have been identified by English Heritage and placed on a Register and graded in a similar way to listed buildings. Unlike listed buildings they have no statutory protection and are, therefore, subject to normal development control processes.

Conservation Areas are areas designated by local decision in recognition of their special architectural or historic interest where it is important to preserve or enhance their character or appearance. In addition to normal planning control, special permission referred to as 'Conservation Area Consent' is often required for demolition works. Approval is also required from the District Council or National Park Authority to fell any tree in a Conservation Area.

Ancient Monuments are remains which the Secretary of State considers to be of public interest because of their historic, architectural, traditional, artistic or archaeological importance. The most important monuments are classified as 'Scheduled Monuments' and Scheduled Monument Consent must be sought from English Heritage for works which might alter or damage them. As with listed buildings it is a finable offence to carry out works without the necessary consent. Non-scheduled archaeological sites are protected through policies in the Development Plan and the exercise of normal development control processes.

Regional Policy

The principal objective of regional planning guidance is to guide the formulation of the policies and proposals required to be contained within the structure plans, local plans and transport plans for the region.

Sustainability

Following the Earth Summit in Rio in 1992, the concept of sustainable development has become embedded in the planning system. The UK's Sustainable Development Strategy (1999) has four main aims:

- social progress which recognises the needs of everyone
- effective protection of the environment
- prudent use of natural resources
- maintenance of high and stable levels of economic growth and employment

Two general policies arising from the strategy are relevant to planning. Firstly, there is encouragement to development taking place in locations which minimise the need to travel and maximise opportunities to use public transport. Secondly, there is a preference for development being concentrated in urban areas, particularly on previously developed land. Clearly, there can sometimes appear to be a conflict between these objectives and the stimulation of development in rural areas. However, a balance has to be struck between the overall objectives of the sustainable development strategy and the particular needs of rural communities, and it is the role of the local planning authorities to strike that balance.

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Key Questions When Considering a Development Proposal

The following pages provide a guide to the questions most likely to arise when considering a development proposal. Some of the questions deal with matters of planning law, for example whether or not planning permission is required; some with matters of procedure, for example how a planning decision is made; and others with matters of practice, for example how best to present a planning application.

The key questions are:

(i) Is planning permission needed for your project?

(ii) How do you find out if planning permission is needed?

(iii) How do you make a good planning application?

(iv) What happens to your planning application?

(v) What happens if your planning application is approved?

(vi) What can you do if your planning application is refused?

(vii) What happens if you try to avoid or ignore planning control?

The following sections deal with each of these points in turn.

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Is Planning Permission Needed for Your Project ?

Do all forms of development need planning permission? The simple answer is no, but the reality is more complicated. This question goes to the heart of development control and requires an examination of the definition of 'development' and of the limitations placed by planning law on its control.

This section includes:

(i) the definition of development;

(ii) the exceptions to control provided by the General Permitted Development Order and by the Use Classes Order;

(iii) how the definition is applied in practice.

What is Development ?

The definition of 'development' for the purposes of planning control is set out in Section 55 of the 1990 Act.

> *The carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.*

There is extensive case law from the Courts which determines the meaning of each of the key words in this definition. Consequently, it should not be assumed that your interpretation is necessarily that which is legally applicable.

Section 55 also specifically identifies some matters which do not constitute development. These include :

- maintenance, improvement or alteration works to a building which are either internal or do not materially effect its outside appearance;
- the use of buildings or land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of that dwellinghouse; and,
- the use of any land for the purpose of agriculture or forestry and the use of any building on that land.

In considering the principal definition of development, it is important to recognise that it contains two elements; operations and uses. The Courts have held “operations” to be acts which change the physical characteristics of the land (including what is beneath it and the air above it) and ‘uses’ to relate to the purposes to which a building or land is put. Building operations relate not only to buildings as normally envisaged, but also to the erection of related structures such as walls, fences and masts, and to demolition works. Engineering

operations have been less clearly defined but have been generally held to encompass works of a type usually undertaken by engineers. 'Development' can also be said to take place without any physical change to land or a building. This happens when a change in the use of land or a building occurs which is considered to be material. Whether or not this is the case is largely a matter of fact and degree and for the planning authority to determine.

There are, however, two important qualifications to this apparently wide ranging regulation relating to:

(i) development which is considered to be generally acceptable in principle without requiring planning permission (permitted development); and

(ii) changes between uses which are similar in character and deemed not to be material.

Permitted Development

The Secretary of State has the power to remove activities which constitute development from the general control of local planning authorities. By Order he has granted a general planning permission to certain types of development, so-called 'permitted development'. The range of this permitted development, and the qualifications and restrictions relating to it, are set out in the Town and Country Planning (General Permitted Development) Order 1995 (GPDO) and its subsequent amending Orders. There are 33 categories of permitted development included within the GPDO :-

1 : Development Within the Curtilage of a Dwellinghouse
2 : Minor Operations
3 : Changes of Use
4 : Temporary Buildings and Uses
5 : Caravan Sites
6 : Agricultural Buildings and Operations
7 : Forestry Buildings and Operations
8 : Industrial and Warehouse Development
9 : Repairs to Unadopted Streets and Private Ways
10 : Repairs to Services
11 : Development under Local or Private Acts or Orders
12 : Development by Local Authorities
13 : Development by Local Highway Authorities
14 : Development by Drainage Bodies
15 : Development by the National Rivers Authority
16 : Development by or on Behalf of Sewerage Undertakers
17 : Development by Statutory Undertakers
18 : Aviation Development
19 : Development Ancillary to Mining Operations
20 : Coal Mining Development by the Coal Authority and Licensed Operators
21 : Waste Tipping at a Mine
22 : Mineral Exploration
23 : Removal of Material from Mineral Working Deposits

24 : Development by Telecommunication Code System Operators
25 : Other Telecommunications Development
26 : Development by the Historic Buildings and Monuments Commission for England
27 : Use by Members of Certain Recreational Organisations
28 : Development at Amusement Parks
29 : Driver Information Systems
30 : Toll Road Facilities
31 : Demolition of Buildings
32 : Schools, Colleges, Universities and Hospitals
33 : Closed Circuit Television Cameras

Many of these have several sub-categories and are subject to numerous terms and conditions. It is always best to check with the planning authority whether any particular proposal is 'permitted development' or not.

Subject to prescribed controls and qualifications the purpose of the GPDO is to exempt defined developments from the need to seek formal planning permission. There are, however, circumstances in which such "permitted development rights" may be overruled:

(i) if the development is located within a National Park, AONB or conservation area;

(ii) if the development is subject to provisions in the Conservation (Natural Habitats etc.) Regulations 1994;

(iii) if the development falls within the requirements of the Town and Country Planning (Assessment of Environmental Effects) Regulations 1999;

(iv) if the Secretary of State makes and/or confirms a Direction under Article 4 requiring the submission of a planning application; and,

(v) if there is a particular condition on an earlier permission for the site.

Material Changes of Use

Making a material change in the use of buildings or land can require planning permission. It is difficult to produce a set of criteria which can be applied in every circumstance to define what is meant by the word 'material'. The distinction as to whether a material change of use would occur relates to the facts and the nature of individual circumstances, and there is, therefore, a large body of case law on the subject.

In very general terms, to be 'material' a change of use would involve a new use which is substantially different from the existing one, or a change in the scale of the existing use, such that there is a significant change in the character of that use.

Since this is a very complex area of planning law, and one which can potentially give rise to widespread uncertainty on the part of both developers and local planning authorities, an

effort has been made to reduce the area of potential uncertainty and dispute by defining changes of use which are not material. These are set out in the Town and Country Planning (Use Classes) Order 1987 (as amended).

The Order specifies 11 classes of use where permission is not required to change from one use within a class to another within the same class. These are :-

A1 Shops
Shops, post offices, travel agents, hairdressers, funeral directors, dry cleaners.

A2 Financial and Professional Services
Banks, building societies, betting offices, and other financial and professional services.

A3 Food and Drink
Pubs, restaurants, cafes and hot food take-aways.

B1 Business
Offices, research and development, light industry appropriate to a residential area.

B2 General Industry

B8 Storage and Distribution
Including open air storage.

C1 Hotels
Hotels, boarding and guest houses where no significant amount of care is provided.

C2 Residential Institutions
Residential care homes, hospitals, nursing homes, boarding schools, residential colleges and training centres.

C3 Dwellinghouses
Family houses, or houses occupied by up to six residents living together as a single household, including a household where care is provided for residents.

D1 Non-Residential Institutions
Surgeries, nurseries, day centres, schools, art galleries, museums, libraries, halls and churches.

D2 Assembly and Leisure
Cinemas, concert halls, bingo and dance halls, casinos, swimming baths, skating rinks, gymnasiums or sports arenas (except for motor sports or where firearms are used).

In general terms development which keeps within the same Use Class (e.g. change from light industrial premises to offices) does not need a specific planning permission.

Changes of use outside the scope of the Order are likely to require planning permission, as will any new building or other operations, but this is not definitively so and can depend on the facts and scale of the individual circumstances.

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How Do You Find Out if Planning Permission is Needed ?

Unless you are confident that you fully understand the planning status of your proposal, it is prudent to check whether or not it needs planning permission before commencing any works or investment. This can be done either simply and informally through an enquiry to the local planning authority or a reputable professional adviser, or by an application to the planning authority for a formal determination.

A formal application for a determination of the planning status of your proposal can be made under the provisions of the 1990 Act, and is called a Certificate of Lawfulness.

In making the application you must identify the site of the proposed project and provide details of what it entails. If adequate information is provided and the planning authority is satisfied that the proposed development would be lawful, they must issue a certificate confirming this, or alternatively refuse the application.

In dealing with this type of application, the planning authority is making a determination of law. If you disagree with the determination, you have the right to appeal to the Secretary of State.

If you are in doubt as to whether or not your proposal requires planning permission, but decide to proceed without clearly establishing the position, there are two disadvantages:

- you cannot subsequently apply for a Certificate of Lawfulness;
- you risk facing enforcement action by the planning authority if there has been a breach of planning control.

For further information see the Government leaflet : "Lawful Development Certificates - A User's Guide". Available free from your planning authority offices.

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How Do You Make a Good Planning Application ?

A good planning application is one which has regard to the 4Cs:

CARE : Careful preparation and incorporation of the requirements of the planning process into the formulation of the diversification project.

CONSULTATION : Pre-application discussion with the planning authority, neighbours and other relevant interests to identify concerns and solutions to any difficulties and to avoid misunderstandings and subsequent objections.

CLARITY : Presentation of a clear, well supported description of the project, its acceptability, and benefits to the economy and local environment.

COMPLETENESS : Provision of all the forms, plans and certificates required as part of a planning application.

The 4Cs form a sequence of actions of which the most important is the first.

Preparation

Once you have identified your project, the more care you put into its formulation and presentation, the better will be your prospects of successfully navigating the planning process, or the quicker you will appreciate that, for justifiable reasons, it has little or no prospect of success. Time spent in early preparatory work is always time well spent.

There are two key issues to consider at the early preparative stage:

- Do I need help?
- How does my project fit in with planning policy?

D.I.Y. v Professional Support

Whether or not you require professional planning advice will depend on the complexity of your project and on your personal experience and knowledge of the planning process.

It is hoped that this guide will assist you to deal with many planning matters yourself. However, the complexity of the planning process and the time needed to engage with it to best effect should not be under-estimated. Equally, you should not simply hand your project over to a professional adviser without giving careful consideration to what you wish him/her to undertake on your behalf, giving clear instructions and monitoring progress. It is your project, stay in control.

There is a wide range of sources of advice on putting together a planning package and related application for planning permission. Most reputable advisers are members of, and/or have qualifications from, recognised professional bodies:

Planning Consultants	▸	Royal Town Planning Institute
Agricultural Consultants	▸	British Institute of Agricultural Consultants
Surveyors/ Land Agents	▸	Royal Institute of Chartered Surveyors
Architects	▸	Royal Institute British Architects
Solicitors	▸	Law Society

Select the adviser most appropriate to your needs. If you are unsure of where to go for assistance you could contact the R.T.P.I.'s Yorkshire Planning Aid Service for free advice (01423 529778).

Planning Policy

At the planning application stage, your project will be judged in the light of the policies in the Development Plan for your area and any material policy guidance from central government. It is, therefore, in your best interest if your project accords with the Plan, or you have very well researched planning reasons to justify a departure from established policies.

During the formulation of your project you should, therefore, consult the Development Plan and identify the policies relevant to your proposals as well as any national policy guidance.

The Development Plan is available to purchase from the planning authority or can be consulted at its offices. Copies are also often held in public libraries and by clerks to Parish Councils. National planning guidance, as well as statutory documents relating to the planning process, is available from the Stationery Office (PO Box 276, London, SW8 5DT), accredited agents who can be identified in Yellow Pages and through good booksellers. Professional advisers should be expected to have copies of all the relevant documents.

Consideration of the policy framework will enable you to establish whether:

i) there are any constraints upon, or particular support for, your project;

ii) there are particular interests, for example landscape, highway safety or local amenity, on which your proposal has, or could have, an adverse effect.

Very few projects, even the most simple, are devoid of any adverse environmental or amenity effects. It is, therefore, important to identify potential problems at this early stage and to tackle them constructively.

Consultation

An effective means of identifying and dealing with potential planning difficulties is to discuss your proposals with:

- an appropriate planning officer in the local authority;

- bodies and agencies who may have a role in the planning decision, for example, the Highway Authority and the Environment Agency;

- interests who may be directly affected, such as neighbours and the Parish Council.

Such consultation is recommended and may enable you to submit a planning application with greater confidence and perhaps even support.

The planning authorities in North Yorkshire are committed to helping customers. Once you are in a position to clearly describe your proposal, and possibly show some initial plans where appropriate, planning officers will be pleased to meet you either on-site or at their offices to discuss your ideas in a sympathetic and constructive manner.

It is important at this stage to remain flexible in your approach. An important part of discussions with a planning officer will be the confirmation of any policy or technical problems and the possible means of overcoming them. The latter might mean altering the project or your approach to it, considering conditions which might be attached to any permission restricting aspects of the proposal or requiring you to deliver particular improvements. It is, of course, still possible at this stage that a planning officer may indicate that the project has little prospect of progressing in the face of an irreconcilable conflict with policy or an important environmental consideration.

At any meeting with a planning officer, particularly if you are adopting a DIY approach, it will be useful to ensure that you are fully aware of, and understand:

- ✔ the planning authority's requirements for submitting a planning application;
- ✔ how the application will be handled and the likely timetable; and
- ✔ what requirements there may be for site notices and publicity.

It is important to recognise that, in these discussions, planning officers can only give advice. They cannot pre-judge the final planning decision. Neither can the authority be held to any comment an officer might make to you.

When your planning application is submitted the authority will consult a number of bodies and agencies with interests in either technical or policy aspects of land use planning (for example, the Highway Authority and the Environment Agency), specialists within the authority itself (for example, landscape architects and environmental health officers), and the relevant Town/Parish Council/Meeting. These consultees will comment on your application and may raise technical concerns which could lead to a refusal of permission for your project. It is sensible, therefore, and particularly if you know that your project will have identifiable environmental effects, to have discussions or correspondence with these interests prior to finalising your proposals and submitting a planning application. This dialogue can remove unnecessary concerns and identify ways in which your proposals and subsequent planning application can be improved.

You should also talk to your neighbours and the local community, who may be affected by your project. This has the threefold advantage of involving them and keeping them informed, hopefully gaining their support, and identifying ways of dealing with any objections they may have.

The Application

If you have prepared your project carefully, taking into account the relevant planning policies and addressing issues raised by those you have consulted, it should be possible for you to clearly express the nature and purpose of your project and support it, where necessary, with technical drawings and plans. Your application should, therefore, be full enough for it to move steadily through the process of determination without the need for any significant additional input.

If, on the other hand, you have taken the view that you know what you want and submit an application without any prior consultation, there is an increased likelihood that the planning authority, consultees and your neighbours will raise concerns and objections which you will have to address during the decision making process. Frequently this requires late adjustments to projects and revisions to plans and documents. Not only does this incur extra expenses, it introduces delay and often confusion as to exactly what your project is.

Do not rely solely on the planning application form to describe your project, particularly if it is of a more complex character. Produce a supporting statement which clearly expresses what your project is and how it has been carefully formulated. Such a statement for a typical project should:

- describe the proposals and illustrate them with plans;
- indicate how the proposals will fit in with and benefit your business, and possibly the wider environment and community;
- indicate how the proposals accord with the Development Plan and other planning policies;
- refer to the consultations you have undertaken and how you have taken account of any suggestions made; and
- attach any information or correspondence from bodies or agencies involved with the formulation or financing of your project, and which are supportive of it.

Outline or Full Planning Permission

There are two types of application - outline and full.

If you wish to establish whether your project is acceptable in principle, without going to the expense of preparing a comprehensive proposal and application, you can apply for outline planning permission. If permission is granted, you will subsequently have to apply for the

approval of the detail of the proposals; so-called 'reserved matters'. This approach has the disadvantage of extending the period of the planning decision.

The opportunity to submit an outline application is only available, however, if the proposed development involves the erection of a building(s). Outline applications are not available for changes of use or developments not involving buildings. Some authorities do not accept applications for outline planning permission in sensitive areas (e.g. Conservation Areas).

The alternative approach is to apply for full planning permission which requires your project to be fully developed and all the necessary details made available at the outset.

Making the Application

When making a planning application, you will need to use application forms provided by the local planning authority. These are supplied with notes setting out how to complete the form and advice on the information needed. If you do not follow this advice, and present an incomplete or illegible form, the application may not be accepted.

The application form alone does not give the total picture. There are a number of elements to the application which need to be complied with:

- the application form;
- location plan;
- site plan;
- building plans (where appropriate);
- certificates relating to land ownership and occupancy;
- calculation of planning fees and payment.

Plans

Plans should be to the scales requested and include the information required. Failure to comply with this is likely to delay the determination of your application. Copies of Ordnance Survey base plans can normally be purchased from the local planning authority.

Location plans will normally be on a 1:1250 or 1:2500 OS base and show outlined in red the application site and in blue any other nearby land in the applicant's ownership.

Site plans will normally be a 1:200 or 1:500 scale and contain information on the boundaries of the application site, the position of your development within the site, the proposed use of

land and buildings, proposed access and parking arrangements, and proposed pipes, drains and sewage disposal.

Building plans will normally be at 1:100 scale and provide detail of the building (both as existing and proposed) in the form of plans, elevations and cross-sections, and evidence of the external materials and features to be used.

Certificates.
Section 66 of the 1990 Act requires appropriate certificates to be completed before your application can be registered by the planning authority. These certificates establish your status in respect of ownership of the land or buildings to which the application relates and whether any agricultural tenants, where they are present, have been informed about the application. Failure to complete the relevant certificates, or incorrect completion, will delay acceptance of your application.

Fees.
The determination of a planning application is subject to the payment of a fee. This is payable at the time of making the application. Different fees are payable for different categories of development and may change from year to year. A schedule of current fees normally forms part of the application form package. The application fee is non-refundable and an application will not be registered until the appropriate fee is paid. Fees are not required for Listed Building Consent, Conservation Area Consent, works to trees, proposals on which permitted development rights have been removed, or where an application has been withdrawn or refused and a repeat application is made for the same site by the same applicant within 12 months.

Multiple copies (usually 4 - 6) of the application, and especially the plans, are normally required. This is to assist the planning authority in undertaking speedy and effective consultations.

Further information
DETR leaflets Planning Permission - A Guide for Business
Planning Permission - A Guide for Householders
Available free from your local authority offices.

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What Happens to Your Planning Application ?

It is useful to understand what happens to your application once you have submitted it to the local planning authority. You should not just forget about it and trust to good fortune that you will secure a permission. Your application will progress through a number of stages of consultation and consideration before a decision is made. Either formally or informally, you can make inputs to this process and further the prospects of a successful outcome. The diagram overleaf summarises the main stages in the process.

Assuming that your application is complete and submitted with the correct fee, you will receive a written acknowledgement. Your application will be placed on the planning register and the public will have access to examine it.

At this early stage, you should be informed which planning officer is responsible for handling your application. Ideally this will be the same officer with whom you might have had contact at the pre-application stage. Make sure that the relevant officer understands your proposal and is aware of your willingness to discuss any issues which may arise as the consideration of the application progresses.

If you have engaged a professional adviser, who is named as your agent on the planning application form, then he/she will be the planning authority's first point of contact on matters relating to the application. Do not confuse the communication between the planning authority and yourself by duplicating actions that should be undertaken by your agent.

The time allowed by the regulations for the determination of a planning application is 8 weeks. As you will appreciate from the diagram above, this is a very tight timetable for anything other than the simplest or most unexceptional proposals. You have a right to appeal to the Secretary of State if you have not received a decision within 8 weeks, but it would be unreasonable not to agree to a request to extend the period if there is justifiable cause. You should not assume that a decision will be made in 8 weeks. Consequently, if timing of a planning consent is important in terms of securing financial support for your project or some contractual obligation to another party, then you should think ahead and submit your application well in advance of any such deadlines.

Once your application is in the system, it will be publicised. The Planning Authority will consult with relevant interests. Information about your application will be publicised by either a site notice and/or direct notification of neighbours and, in certain circumstances, by a notice in a local newspaper. The relevant Town/Parish Council/Meeting will be notified and technical interests within the local authority and in other agencies will be consulted. Anyone contacted directly or indirectly by this process can make comments on your proposal, of either a positive or negative nature.

Planning application submitted

Registration and acknowledgement of receipt

Consultation with interested parties, e.g. adjoining owners, amenity societies
Local press advertisement as necessary
Formal internal and statutory consultations

Consideration of comments, consultation responses, site visit

Assessment of application in the context of the policies of the development plan and other material considerations

Possible further information requested or modifications agreed with applicant as necessary

Officer's report and recommendation

Committee decision or Officer's decision under delegated responsibilities
Possible ratification by Full Council

Permission granted subject to conditions
or
Refusal of permission

Aggrieved applicant may appeal to Secretary of State

The planning case officer will pull together all the comments received and probably make a site visit to put the proposed development and the comments received in context. The application will then be assessed in relation to the policies of the Development Plan and any other relevant policy guidance. This process of assessment may lead the case officer to request further information from you or to suggest modifications to your proposals. You should not assume, however, that you will automatically get feedback of this nature from the consultation and assessment stage. The onus is on you to monitor the progress of your application and to be pro-active in providing additional information and assistance in the light of comments made by others to the planning authority.

As your application passes through these early stages, and indeed later in the decision making process, you may wish to discuss your proposal with your local Councillor. Any contact you make in this respect should be restricted to ensuring that the Councillor has the relevant facts relating to your proposal. The Councillor cannot take sides or express an opinion on the merits of your proposal. To do so might prejudice the ability of that Councillor from participating in the decision making process.

Once the case officer has all the information necessary, a report will be prepared and a recommendation to approve or refuse planning permission made. At this stage, the actual decision may be made either by a Committee of elected Councillors with responsibility for planning matters, or by the senior planning officer of the local authority under powers delegated to him/her.

Schemes for the delegation of planning decisions vary between authorities, and you should enquire of the planning officer dealing with your application if such a scheme applies in your case and how it is exercised. Delegated powers normally relate to minor and non-contentious planning matters. In some authorities the senior planning officer's recommendation is notified to the Chairman of the Planning Committee and the Councillors representing the area in which your project is located, who then have an opportunity to refer it to the full Committee if they disagree with the proposed decision, but this is not the case everywhere.

Where a planning application is determined by the Planning Committee, the officer's report and recommendation will be included in the Committee's agenda papers for the relevant meeting, and will be in the public domain 3 full days prior to the meeting. You should be aware of the recommendation proposed by the planning officer either by prior contact or by consulting the Committee papers. This provides a final opportunity to make representations to the planning authority if you consider that particular aspects of your proposal have been misunderstood or misrepresented, or that particular consultation responses need further comment. Some authorities allow applicants, parish councils and objectors to make short presentations to the Committee before it reaches its conclusions. You can enquire from your authority whether this opportunity is available and the nature of the procedures involved. At the Committee. The Councillors are not usually professional planners but often have considerable experience and training in dealing with applications. Theirs is a very important role in the process.

Whether the decision is made by the planning officer or the Planning Committee, your application will eventually be considered for approval or refusal, and the outcome will be sent to you in the shape of a formal decision letter. This will set out the references to the proposal and establish the reasons why it has been approved or refused.

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What Happens if Your Planning Application is Approved ?

The granting of planning permission normally confers a benefit on the land related to the proposed development, rather than on the individual or interest who makes the application. You would, therefore, only benefit from a permission if you owned or controlled the relevant land. In exceptional circumstances, this linkage may be reversed by the conditioning of a permission in favour of a particular individual or type of individual. The agricultural occupancy condition applied to most new farm dwellings is an example of this.

Planning permission also relates solely to the development for which you have sought consent, and nothing different. It is, therefore, important that your planning application fully describes the development for which permission is sought.

Time-limits

If no action is taken to implement a planning permission, it will normally lapse after three years in the case of an outline consent, and after five years in the case of a full permission. The planning authority may, however, vary these statutory time limits, if it considers it appropriate to do so.

Commencement

Your planning permission is activated if you undertake any of the following operations in relation to your development :

- any work of demolition of a building
- any work of construction in the course of the erection of a building
- the digging of a trench to contain the foundations of a building
- the laying of any underground mains or pipe to the foundation of a building
- any operation in the course of laying out or constructing a road
- any material change of use of the land.

There may be pre-conditions attached to your permission requiring certain steps to be undertaken before the development can be commenced. You must ensure that all these requirements are fulfilled before you start work. If you do not, then the work you carry out is effectively unauthorised.

Outline Planning Permissions

Where outline planning permission is granted for a building, the planning authority has accepted the principle of the development. However, before the permission can be activated it is necessary for you to submit to the planning authority, for its approval, details relating to so-called 'reserved matters'. These are:

- siting
- design
- means of access
- external appearance
- site landscaping

Often these matters have in part been considered as part of the initial planning decision as illustrative material may have been provided by yourself and/or requested by the planning authority, in order that the form of the proposed development was understood at the outset.

Development cannot commence until the reserved matters have been approved. Normally the application for approval of reserved matters is required within 3 years of the granting of the outline planning permission. Similarly, commencement would normally be within 2 years of the approval of reserved matters, and in any event within 5 years of the initial permission.

Full Planning Permissions

Planning permission is rarely granted without 'conditions' being attached to the approval, although some permissions are subject only to statutory time limit conditions.

Quite often the planning authority, when considering a planning application, is as much concerned with the detail of proposed development as with the principle. By attaching conditions to a permission, the authority can control the quality of the development and impacts it may have on the surrounding environment.

Planning authorities have wide powers to impose conditions to consents in the context of what they consider appropriate in particular circumstances. There are, however, principles to which planning authorities must have regard. These are set out as tests in the advice in Circular 11/95 'The Use of Conditions in Planning Permissions'. Condition have to be :

1. necessary in relation to the development proposed
2. relevant to planning
3. relevant to the development proposed
4. enforceable
5. precise
6. reasonable

The Circular also contains an appendix setting out model conditions on common matters for the guidance of planning authorities, for example noise, access, parking, landscaping works, storage, limitations on occupancy, restrictions on use and hours of use etc.

The issue of planning conditions and the application of the six tests has given rise to a large body of case law. You should not view conditions lightly, and if you have any concerns

regarding the meaning or purpose of a condition, or your ability to respond to it you should seek professional advice.

If you consider that any condition attached to a permission is inappropriate and you have a sound and reasoned argument for thinking so, you may lodge an appeal against that condition to the Planning Inspectorate seeking an independent decision on the matter. It is important, however, to realise that the Inspectorate may in these circumstances review the whole planning application, and can both refuse consent outright or impose even more onerous conditions.

Planning Obligations

Another mechanism whereby development granted planning permission can be controlled and improved is the 'planning obligation'. Section 106 of the 1990 Act allows a person, either by agreement with the planning authority or by a Unilateral Undertaking, to enter into an obligation which may:

- restrict the development or use of land in a particular way
- require specific operations or activities to be carried out on land
- require land to be used in a specific manner
- require sums of money to be paid to the local authority

This opportunity allows developers and planning authorities to negotiate on matters which are relevant to a proposed development, but not capable of being dealt with by conditions. In the past this area of negotiation of so-called 'planning gain' led to considerable criticism on the grounds that developers were seeking to use the mechanism to buy planning permissions. Circular 1/97 'Planning Obligations' sets out tests of reasonableness to address these concerns, and ensure that benefits unrelated to a development are not allowed to render an unacceptable development approval or that applicants are not penalised for not offering such benefits.

Planning obligations are legally binding arrangements executed as a deed on the property. It would be very unwise to seek to negotiate such an obligation or to agree to one suggested to you without having first taken legal advice.

A similar mechanism exists in the Highways Act 1980; section 278. The development of land sometimes needs the development site to be linked to an adjoining highway or off-site improvements to be made to the local road network. The highway authority may consider that the developer should cover the whole or part of the costs of carrying out the works. Section 278 enables an agreement to entered into making provision for such payment.

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What Can You Do if Your Planning Application is Refused ?

If the local authority refuses your planning application, it will set out in the decision notice the reasons for that decision.

Negotiation and Re-application

Your first consideration on receiving notice of refusal is to assess the reasons for refusal and to determine whether they are reasonable and/or surmountable. If you feel that, by making amendments to your project without losing your overall objective, you can overcome the reasons for refusal, you should contact the planning authority with a view to negotiating an acceptable compromise. The submission of a similar planning application within twelve months of the initial refusal of consent by the same applicant for the same land does not incur payment of a further planning fee. If your initial application was on a DIY basis, it might be appropriate to seek professional assistance in preparing a second application which might be more acceptable.

Appeal

If, after consideration, you believe the reasons for refusal are unreasonable then you have the right to challenge the decision by appeal to the Planning Inspectorate. Your grounds for appeal should relate solely to planning matters. If your concerns relate to the way your application was handled by the planning authority, this is an administrative not a planning matter and your grievance should be pursued through the Local Government Ombudsman.

Your right of appeal exists both in the case of a refusal of planning permission and where you wish to object to a condition which has been imposed on a permission. You can also appeal where, without your agreement, the authority has failed to determine your application within an eight week period.

You have 6 months from the date of a decision in which to lodge an appeal. There is nothing to prevent you from commencing an appeal while also seeking to negotiate a compromise with the planning authority. If the latter is successful, then the appeal can be withdrawn, while if it is unsuccessful, delay in the appeal process is avoided.

Appeals are made to the Planning Inspectorate, acting on behalf of the Secretary of State. The necessary forms and associated advisory material are available from the Inspectorate - Tollgate House, Houlton Street, Bristol, BS2 9DJ Tel: 0117 9878927.

There are three methods of pursuing an appeal:

1) Written representations

Subject to the local authority agreeing to this method, this is the easiest, quickest and cheapest means of appeal. This is the method preferred by the Inspectorate and over three-quarters of all appeals are pursued in this way.

The approach involves yourself and the local authority making full written statements of your respective cases with both parties being able to comment on the other's statement. This information is considered by an impartial Inspector appointed by the Inspectorate, who visits the site of the proposed development and then comes to a decision.

2) Public Inquiry

This is the most complex and expensive means of appeal and involves a formal process of the presentation of evidence and cross-examination of witnesses, not dissimilar to a court of law.

Public inquiries are subject to clear procedural rules governing the presentation and exchange of written material amongst the parties in advance of the inquiry, and the conduct of the inquiry itself. While not prevented, it is rare for an applicant to present his own case. Most participants would normally be represented by professional advocates, skilled in the questioning of expert witnesses.

At the end of the inquiry, the Inspector will make a site visit before determining the appeal. The Secretary of State delegates his decision making responsibilities to the Inspector, but retains the right to take over any appeal decisions. He would normally only do so in a case which was particularly important or controversial.

3) Hearing

Intermediate between the previous two methods of appeal is the Hearing. This is a less formal procedure than the public inquiry and involves a round table discussion between the Inspector and the parties. Written material will still be provided in advance and the Inspector will indicate what he/she believes to be the key issues at the beginning of the hearing. He/she will then lead a discussion of these issues. Again a site visit will take place and a decision will subsequently be reached by the Inspector.

It will be appreciated from the above that the appeal process, by whatever means it is pursued, involves the careful marshalling of arguments and evidence, and the ability to present these orally in the case of inquiries and hearings. It is, therefore, usually wise to seek professional help in this aspect of your involvement with the planning process.

Challenges

Whatever method of appeal is used, the decision of the Inspector or Secretary of State is final. You can only challenge the decision on a point of law, namely that the requirements of the planning acts or rules of procedure have not been met. Such a challenge is made through the High Court.

Costs

The costs of appeals are borne by the individual parties involved. If, however, either yourself or the planning authority consider that the other party has acted unreasonably and

caused unnecessary costs to be incurred, then an application for an award of those costs against the offending party can be made at hearings and public inquiries. The application is made orally to the Inspector who makes a determination separate from his decision on the main case.

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What Happens if You Try to Ignore Planning Control ?

The carrying out of development without planning permission is not a criminal offence, although unauthorised alterations to a Listed Building or the display of advertisements without consent are subject to prosecution through the Court. Since, however, the whole purpose of the planning system is to regulate development in the public interest, there has to be a sanction to enable the prevention of unauthorised development. The main sanction in the planning legislation is the Enforcement Notice. Powers are also available to the planning authority to serve Planning Contravention Notices or Breach of Condition Notices to deal with particular aspects of compliance with the development control process.

Planning Contravention Notice

Where the planning authority believes that development has been carried out without planning permission or there has been a failure to comply with a condition attached to a planning permission, it can find out whether its understanding of the circumstances is correct and provide a warning to the developer to deter a continuation of the breach of planning control by serving a Planning Contravention Notice.

The notice requires the recipient to provide, within 21 days, information on the planning circumstances which have caused concern to the planning authority. Failure to comply with the notice or to make false or misleading statements are finable offences.

The planning authority will often invite the recipient of a notice to attend a meeting to agree an acceptable course of action. This might include the possibility of applying for a retrospective planning consent.

Breach of Condition Notice

It is an unfortunate feature of planning permissions that those benefiting from them are often lax in complying with conditions imposed on them. This is particularly serious in the case of conditions requiring actions to be taken prior to implementing the permission. In these circumstances, the planning authority can serve a Breach of Condition Notice on a person who has implemented a development without complying with a condition(s). The notice will specify the steps which the planning authority requires to be taken to fulfil the condition(s). The period given for compliance is 28 days, unless there is agreement to an extended period. Failure to comply with the notice is a finable offence. There is no right of appeal against this type of notice.

Enforcement Notice

If a planning authority is satisfied that there has been a breach of planning control and that it is significant in the context of the provisions of the Development Plan and other material considerations it may issue an Enforcement Notice against the owners and occupiers of the relevant land. The notice will state what the planning contravention is, what steps are required to remedy the breach of control, the date on which the notice takes effect, the period for compliance and will also give reasons for taking action.

There is a right to appeal against an Enforcement Notice within the period specified for compliance, which is often within 28 days of it being served. An appeal has the effect of

extending the period of compliance until such time as the Secretary of State has determined the appeal.

Unlike an appeal against refusal of planning permission, an appeal against enforcement action is restricted to one or more specified grounds set out in the legislation. The available grounds are that:

a) planning permission should be granted for the actions regarded as a breach of control, or any condition allegedly breached should be discharged;

b) the matters stated in the notice have not occurred;

c) there has been no breach of planning control;

d) the actions concerned are immune from enforcement;

e) the notice was not served correctly;

f) the measures required for compliance are unreasonable;

g) the period of compliance is too short.

As with other appeals, these are made to the Inspectorate. Appeals can be pursued by a written approach or by public inquiry, and the procedures are similar to those described earlier.

If no appeal is made, the notice becomes 'live' after that point. Once an Enforcement Notice is 'live', the unauthorised development to which it relates must stop or be removed. Failure to comply with the notice at that stage is a criminal offence and the person(s) involved is guilty of an offence for which, on summary conviction, a fine of up to £20,000 may be levied. Also the authority may enter onto the land and carry out the steps needed to comply with the notice and recover any reasonable expenses incurred from the landowner or occupier. Leaflets on Enforcement Notice Appeals are available free from the planning authority and the Inspectorate.

Immunity

There are time limits beyond which a breach of planning control becomes immune from enforcement action, in the form of either an enforcement notice or breach of condition notice. Enforcement of control relating to 'operations' must be taken within 4 years of the substantial completion of the operations. Similarly, the change of use to a single dwelling house is restricted to 4 years. In all other cases (including conditions), there is a limitation of 10 years from the date of breach of control.

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