

No 1 - Introduction to the Mysteries of the Planning System

D.I.Y. Planning Briefings for Low Impact Developers

Published by Chapter 7, June 2001

1. Understanding the Mentality

If you want to stake out a low impact home and livelihood on a piece of land in the countryside, you will probably, unless you are lucky, have to confront the planners. The best way to deal with them is to try and understand them and the system they work within.

This is no easy matter. Development control planners are a very odd bunch. Within a year or two of graduating from college they get sucked into an institutional value system that is arcanelly masonic in the hold it has upon them. They are bound at every step by government guidance and development plan policies, their every action is liable to be vetted by their superiors and they are open to pressures from all sorts of vested interests. Being human, they have their likes and dislikes, but these sympathies can only be expressed through circuitous advice and perverse signals. Like a crab constricted by its carapace, they find it easier to walk sideways.

As for the system, that too is bizarre. The 1947 Town and Country Planning Act was designed to stop ribbon development and unscrupulous capitalist development of the countryside. It is still the only protection we have to stop large areas of Britain becoming like a California suburb, and we should never forget that. Yet at the same time it has created a scarcity of building land that has forced low income people out of the countryside and made rural England, in the words of a recent Cabinet Office report, “the near exclusive preserve of the more affluent sections of society.” (For a detailed discussion of this process, see *Low Impact Development*, Simon Fairlie, Jon Carpenter publishing, 1996).

It is perfectly OK to see planners as interfering bureaucrats suppressing individual initiative in the interests of the capitalist economy, because that is what they are. But they are also the voice of society saying “Oi, that land doesn’t belong just to you; it also belongs to the rest of us, to the local community, to the flora and fauna, and to the planet as an interconnected ecosystem, and before you use that bit of land to satisfy your every petty need and fancy, we want to know that you’re going to do this in a way that respects all of us who have an interest in that land.”

The planners and the planning system are there to make you think about the way you use your land. Do you really need to live on it or are you just indulging a whim to live in attractive surroundings that if it were pursued by everyone would result in the destruction of the countryside? Are you prepared to take on looking after 30 acres, wouldn’t you be better off living in a village close to the school and the shop and gardening an allotment that won’t be ransacked by deer and badgers? Is living on your land really going to minimize your car use, or are you in fact going to use more petrol going off to part-time jobs, nipping off to a decent pub three villages away, ferrying your kids to extra-curricular activities or inviting your mates round for supper?

The planning system isn’t particularly good at raising these issues (though its surprising how it can home in upon them in a well-conducted public inquiry). But no other social process raises them, and they are

matters that should be considered by anyone contemplating a move to the countryside. The real problem is that the rich commuters who buy up all the existing rural dwellings, barns and pony paddocks don't have to think about such matters at all.

2. Guide to Planning Procedure: Plans, Policies and Material Considerations

The planning system works differently from law. Planning applications and appeals are assessed, not against the precise wording of legal prohibitions, but by weighing up all the arguments for and against the proposed development. These pros and cons are called material considerations. Material considerations have to be relevant to planning, but any secure definition of what is or isn't relevant to planning remains entirely elusive. Matters such as affordability, personal circumstances of the applicant, whether the applicant is local, are not normally regarded as material considerations — but then sometimes they are. The most that one can say is that the planning system is much more flexible than the legal system.

Planning is not centred round laws but around policies. These policies are outlined in Government Planning Policy Guidances (PPGs), and contained in County Structure Plans and in Local District Development Plans. In the case of unitary authorities, in which the the functions of County Council and District council are combined (everywhere in Wales and in England mostly in areas around conurbations), the two are merged in a single Unitary Development Plan. Anything in these plans, but especially the policies are material considerations — very strong ones. Normally any development should conform to these policies. But a development may be permitted even if it doesn't conform to these policies, as long as there are sufficient material considerations in its favour.

This is confirmed in Section 54A of the Town and Country Planning Act 1990 (as amended) which states~:

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.

This means, for example, that although the local plan may state "There will be no residential development in the open countryside apart from that necessary for agriculture or forestry", if you can give good enough reasons why you should be allowed to build a house in the countryside, you might be allowed to do so. The sort of material considerations that might allow you to build a house in the countryside include:

That it has no harmful impact upon the environment;

That it doesn't generate any traffic;

That you need to live there because you. . . (teach courses in a barn? are conducting a nocturnal entomological research project? collect road tolls on a bridge?????)

That there is nowhere else you could afford to live;

That Article 8 of the Human Rights Act entitles you to respect for your home.

Most of the time, however, decisions are made in accordance with the development plans.

Planning Applications

Planning permission is needed for all forms of development other than those listed as exempt in the General Permitted Development Order (GPDO). Development includes both operational development (the construction of buildings), and change of use of the land. If a piece of land is subject to an Article 4 direction, (under Article 4 of the GPDO) then some of the exemptions listed in the GPDO will be withdrawn. Agriculture and forestry are not regarded as development, even in an urban situation, but the construction of agricultural buildings is.

A conventional application for planning permission is made to the local planning authority (LPA), who are employed officers of the district or metropolitan council. An application is likely to cost £190, but some are cheaper. You will be dealing with one planning officer who is assigned to your case, but other planning officers, particularly more senior ones may get involved. The planning officers will consider the application and make a recommendation as to whether planning consent should be given or not. If the application is a trivial one, (such as a kitchen extension) the planning authority will make the decision itself, in which case it is said to be a delegated decision.

More important or controversial decisions are referred to the planning committee of the local council which is made up of elected councillors. Local authorities have rules as to when a decision can be delegated: frequently a decision has to be considered by the committee if there is an objection from the parish council concerned, or if a member of the planning committee raises an objection to delegation.

In many cases the committee will rubber-stamp the recommendation of the council's officers, but they can vote against it.

If a planning authority has reservations about a development, but is not fundamentally opposed to it, it may impose certain conditions upon the applicant; or it may suggest that the applicant enters into a Section 106 planning obligation (also known as a planning agreement) with the council, whereby he or she agrees to abide by certain restraints or provide certain community benefits. An applicant may propose a Section 106 agreement.

Planning Appeals

An applicant for planning permission who is dissatisfied with the local authority's decision can make a Section 78 Appeal to the Secretary of State for the Environment. Normally this appeal will be judged by one of the Secretary of State's Inspectors, but in matters of great importance, the decision may be called in and made by the Secretary of State after considering the Inspector's recommendation. The Appeal can be held as a Written Appeal (all done in writing), an Informal Hearing (all parties around a table) or a Public Inquiry (courtroom style, with witnesses and cross-examination).

An appeal against a successful application cannot be lodged by a third party objector to the scheme.

If an appeal is unsuccessful, then the applicant may apply for a statutory review of the Secretary of State's decision in the High Court. This is a legal process similar to judicial review, and the decision can only be annulled if it is found to be unlawful, for example because it is "unreasonable", "perverse" or has failed to take into account all the evidence; it is not sufficient to argue that the Secretary of State or an Inspector in weighing up all the material considerations, came to an unsatisfactory decision. If an applicant is successful in the High Court, this does not mean that planning permission is granted; the matter is sent back to the Secretary of State to make a second decision.

An applicant who is unsuccessful in the High Court, may be able to take the matter further, to the Court of Appeal, the House of Lords or the European Court, but this depends upon the strength of the case. Court cases are very expensive unless you can get legal aid or free representation.

Enforcement Proceedings

Where development has taken place without planning permission, or where conditions have been broken, there is said to be a breach of planning control. A planning authority may first serve a planning contravention notice to establish whether the activity is one that requires permission. Once a breach is established, the local authority may initiate enforcement proceedings to put a stop to the activity, while the person committing the breach may put in a retrospective planning application. This is treated the same as an ordinary planning application. It is not an offence to undertake development that requires planning permission, without applying for it, and the applicant will not be penalized.

If the retrospective planning application is refused, or if no application is made, an enforcement notice may be issued requiring the breach to be remedied. An enforcement notice takes effect 28 days after it has been served, though the local authority is not at any time obliged to carry out enforcement. The local authority is at liberty to negotiate a compromise with anyone subject to an enforcement notice, or to grant planning permission for the development in question, in which case the enforcement notice is withdrawn.

If the local authority fears that irreparable damage may be caused in the period between the serving of an enforcement notice and its taking effect, it may serve a stop notice, which prevents any further operations on site (including change of use) from being carried out. A stop notice cannot be used to evict people from their main dwelling house, though it can be used to evict people living in caravans.

An enforcement notice may only be served within four years from the date of completion of breaches connected with operational development or change of use of a building to a single dwelling house, and within ten years in other cases of change of use. If the enforcement proceedings are started after this period, the occupant or person committing the breach may apply for a Certificate of Lawful Use.

Enforcement Appeal

A person subject to an enforcement notice may lodge a Section 174 Appeal against it, using the same process as an appeal against planning decision. The enforcement notice is then suspended pending the final determination or the withdrawal of the appeal. By going through this appeal process someone allegedly in breach of planning control is deemed to have applied for planning permission (provided they pay the requisite fee). Section 78 Appeals (against refusal of planning permission) and Section 174 Appeals (against enforcement) are heard together, and in practice there is very often a happy path of difference between the two.

If an enforcement notice is not complied with, the person responsible is committing a criminal offence. The local authority can prosecute the person through the courts, where he or she may be fined, and it can also demolish or otherwise rectify the offending development and charge the costs to the owner or occupier of the land. If the authority fears that the offence may be committed again, it can apply to the High Court for an injunction against the offender.

3. Some Ground Rules for an Easy Life: Read Up

You are well advised, before you move onto land or lodge a planning application, to read a little about the planning system. Probably the best way to get a feel for planner's concerns is to read appeal decision letters, both favourable and unfavourable, for developments that are similar to your own. In these letters the Inspector will mull over the pros and cons of various issues and weigh them up, often in some detail. Decision letters on a number of low impact proposals can be obtained, on enquiry, from Chapter 7.

Other important reading matter includes:

Planning Policy Guidance 7: the Countryside — Environmental Quality and Economic and Social Development, Annex I. This explains when an agricultural or forestry dwelling is acceptable (available from Chapter 7).

The Town and Country Planning (General Permitted Development Order 1995, known as the GPDO, which explains what you are allowed to do without applying for planning permission. (normally available through public libraries or at your local planning department)

Your local plan, mainly the policies on housing, agriculture, rural development etc. (available at public libraries and council offices.) The new emerging local plan will often be more relevant than the existing adopted version.

Ask the Planners for Help

Don't be afraid to ask the planners for help. If you don't understand what they mean, or you want to know why they object to something, or you want to know by what authority something is or isn't allowed, ask them — they are supposed to tell you. They should also let you see all relevant policy and plans, and the planning files of any nearby or similar applications in the district.

What they aren't obliged to do is suggest to you ways in which your application could be improved, or loopholes that you could use. This is because such advice could be construed as favouritism or even corruption. They do sometimes informally offer such advice (and of course some are corrupt) but it is basically up to you to approach the planners and ask "Would my application be more acceptable if I applied for a temporary structure rather than a permanent one?" (or whatever)

Get Everything Down in Writing

If a planning officer says anything important to you, particularly if it is helpful or encouraging. you should ask that this be sent to you in writing. It is very important to keep all the letters that you send the planners and all the letters that they send you. They may well prove useful at appeal, especially if the planners can be shown to have misled you.

Be Honest

While there is a lot to be said for remaining discreet, we do not advocate that you should be dishonest or exaggerate. Any attempt to dissemble what you are doing is likely to lead to more difficulties and prevent constructive dialogue with the planners. Moreover, if you go to appeal, you may have to stand

up to some intensive cross-examination by the council's lawyer, and it is much much easier to do this if all you have to do is stand there and tell the truth.

Don't Get Angry

However honest you are, you may find that your planning officer appears to be less than honest. Probably the majority of people approaching Chapter 7 for advice complain that planning officers are unhelpful, and we are frequently told that they are devious, corrupt or just plain liars. It is not just low impact applicants who experience this; the same complaint is voiced in *How to Get Planning Permission* a Dent Home Builder book describing how to make a conventional planning application.

It is not likely that the planning system specializes in recruiting the nastiest, most two-faced individuals it can find, so it is safer to assume that there is something in the culture of the planning system that leads planning officers to behave like this. One factor is that your planning officer is probably fairly junior and after having been initially encouraging towards you, he or she may well be leaned on by superiors; and these superiors may well be influenced by councillors or other local political interests. One former planning officer states: "There is a hierarchy of planning officers that the application has to filter through and there can be a lot of conflict of view and pressurized disagreement. Certainly, if one officer is considered too sympathetic to certain applicants or developments ('gone native'), then a more hostile ('objective') senior takes over."

It is also worth remembering that most experienced planners have had to deal with countless scam-merchants pretending to be mushroom farmers or some such, so as to obtain permission for a house in the countryside that they can then sell on at considerable profit. They have no guarantee that you are not playing the same game.

When you are dealing with an unhelpful planning officer it does not pay to get angry. A little ongoing war between the officer and you may satisfy any neurotic need you might have to feel oppressed by bureaucracy, but it will not help you get planning permission. There are not that many cases of people physically being fined or injuncted off their land, and in most cases where it has happened (in our experience) initial stropiness seems to have led to a feud between the planning officers and the applicants.

The best reaction is to take everything calmly and politely; to ask the planning officer to spell out his or her objections as clearly as possible ("Can you please list clearly all the ways in which my proposed development causes harm so that I can address them?"); and most important of all, ask him or her to confirm anything important in writing.

Minimize Tat

It is noticeable how many low impact proposals prejudice their chances by allowing vast quantities of tat to accumulate on their land: broken down vehicles, rotting machinery, unerected greenhouses, dead bicycles, plastic sacks full of unidentifiable material etc.

This tat, when it is not the result of sheer laziness, is usually justified on the grounds that it is "recycled" material and will one day come in useful. To an extent this is true; but it has to be balanced against the view that a considerable number of the people who have rejected consumerism have never got beyond the subsequent stage of sublimating their repressed consumerist urges through the obsessive accumulation of what ultimately proves to be worthless crap. It is also noteworthy that most of these crap-accumulators are male (or is it just that males go for larger-scale crap?)

Unfortunately, rural locations are not good places for recycling yards for three reasons. Firstly, storage of reusable materials requires hard standing — otherwise within a year they get covered in brambles and stingers and then rot. Secondly their redistribution requires transport and a rural location is likely to generate more traffic than an urban one. And thirdly, the majority of the public do not want to see the countryside littered with the detritus of civilization. This may be a dishonest viewpoint, since it is they who buy and discard this detritus in the first place. But this is hardly a good argument for strewing it around the countryside, least of all in the name of sustainable or low impact development.

A messy site is the best possible ammunition you could give to your enemies and it will alienate potential supporters. If you must keep excessive quantities of tat, then spend an hour a week stacking it neatly. Tat strewn all over the place looks like rubbish; tat stacked in an orderly fashion looks as though it is there for a purpose.

The advice contained in this briefing is given in good faith and every care has been taken to ensure that it is as accurate as possible. However, Chapter 7 cannot be held liable for any claims arising and it is recommended that professional planning advice is obtained in matters of doubt.
