

Briefing

The English Planning System:

An overview

For more than 40 years we've seen that the wellbeing of people and planet go hand in hand – and it's been the inspiration for our campaigns. Together with thousands of people like you we've secured safer food and water, defended wildlife and natural habitats, championed the move to clean energy and acted to keep our climate stable. Be a Friend of the Earth – see things differently.

What is the planning system?

The most amazing thing about the planning system since 1947 is that it is about the public interest. It recognises that decisions on development affect people, their environment and the economy, and therefore that these decisions have to be taken by elected representatives rather than private individuals. This is a cornerstone of democracy. The planning system also gives you your most powerful right to participate and be heard in decisions that affect the environment.

How does the planning system work?

When someone wants to build something, permission has to be given. For most developments, the local council decides, but in exceptional circumstances the Secretary of State decides.

Health Warning!

The Government has proposed taking away decision-making power over large commercial and housing developments from local authorities and centralising these to the Secretary of State through the major projects planning process. Keep checking back to www.foe.co.uk for more information on developments.

There is a process an application needs to follow before a decision is reached, and it is this process along with the associated planning documents used which is known as development control. In general, the planning system favours the person applying for development (the applicant) and not the person who objects.

In some places, permitted development orders will be made. This allows development which is specified in the order to take place without the need for individual planning applications.

Planning reform

Radical reform to the planning system has occurred over the last few years. Most major infrastructure projects are now decided under the Planning Act 2008, and are examined by a unit in the Planning Inspectorate, with the final decision taken by the relevant Secretary of State. New neighbourhood plans and development orders have been introduced by the Localism Act 2011, and regional strategies are in the process of being removed. There has also been a total reform of national planning policy for England with separate planning policy statements replaced by the new National Planning Policy Framework in March 2012.

So what's the process?

After a planning application is made, along with all the additional information required to assess the impacts, planning officers (or examiners for major projects) have to weigh up the different arguments as to why a proposed development should or should not go ahead, based upon a swathe of documents and information. For example, the officer/examiner needs to decide whether the environmental damage is too great to allow the perceived economic gain to take place. If this is the case, then a recommendation that the application is refused will be made. After a report is written by the planning officer/examiner, the elected planning committee votes to allow or reject the application, or in the case of major projects, the Secretary of State makes the decision. Democracy in action!

However the developer can appeal a refusal and this is then dealt with by the Planning Inspectorate. As there have been changes to national policy, it is expected that there will be an increase in appeals over the next couple of years as people argue over what the policy means in practice. Communities and other individuals are not allowed to appeal, but you can bring a challenge if the process has not been followed, or complain to the Local Government Ombudsman.

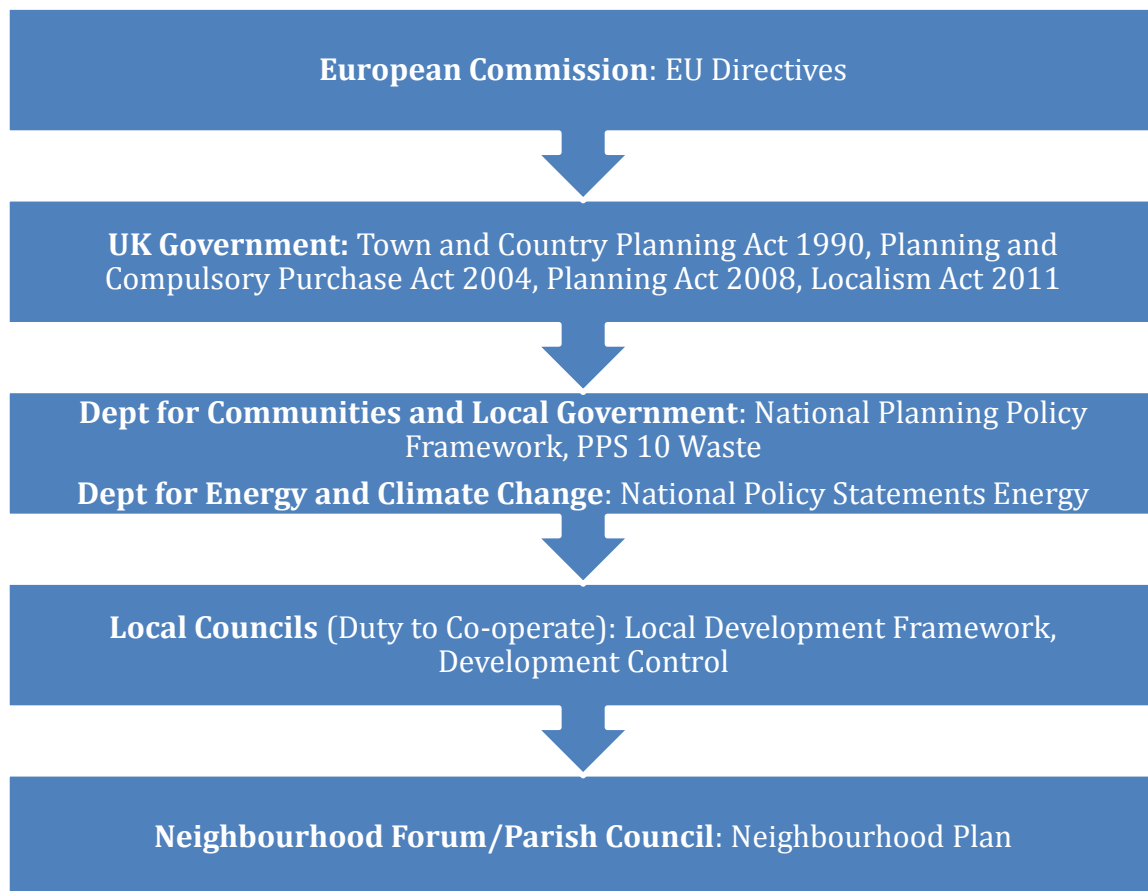
Health warning!

The Government has proposed increasing the number of appeals by bypassing local authorities on the basis of their performance on 'speed or quality' of decisions. This means that developers may apply straight to the Planning Inspectorate. Details have not yet been published about the proposals.

OK, let's hear more about this 'system' you mentioned

This is the current structure of the planning system in England:

- Neighbourhood planning introduced by the Localism Act 2011 is the lowest tier of planning and will be done by Neighbourhood Forums (unelected organisations designated by local authorities) or Parish Councils;
- Local planning, consisting of the Local Development Frameworks and development control, carried out by local planning authorities;
- Enterprise zones, where planning will be relaxed and take the form of development control orders;
- Major infrastructure projects, examined by a Unit within the Planning Inspectorate, and decided by the relevant Secretary of State.



Pretty diagram, but what does it mean?

Well, European directives and laws directly influence national planning legislation, as all member states need to interpret and implement them. There are also primary and secondary acts of Parliament, key primary ones being the 1990 Town & Country Planning Act, 2004 Planning & Compulsory Purchase Act, the 2008 Planning Act, and the 2011 Localism Act.

This in turn influences **national planning policy**. This changed in March 2012 from planning policy statements (PPS), minerals policy statements (MPSs) to the National Planning Policy Framework (NPPF). There is a list at the back of the NPPF which shows which guidance is out of date and which is still current. The PPS on waste is still valid for instance.

For major infrastructure there are also National Policy Statements (NPSs). These have legal status. Also, just to confuse the already muddied waters, government circulars, government white papers and ministerial statements also carry weight. Weight is a term describing how much importance is given to a policy or other factor when deciding planning matters.

The Regional Strategies are in the process of removal, and are replaced by the duty to co-operate in the Localism Act 2011. For the next few years however, the evidence in these strategies will probably continue to be used where required by local decision-making in the absence of more up to date policies and evidence. At the moment they also apply to decision-making as there have to be processes followed before they are completely abolished.

Minerals and waste remain the responsibility of unitary authorities and County Councils (the “top tier” councils).

Old style plans are being progressively replaced by local development frameworks, which are made up of statutory development plan documents and non-statutory supplementary planning documents. All plans in England are currently subject to ‘transitional arrangements’ which mean that plans in place have to go through a process to check that they are in line with the new National Planning Policy Framework, and plans in development have until February 2013 to get into place.

Where there are no plans in place, the Government has introduced a “presumption in favour of sustainable development” in England which will allow developers to put in speculative applications that the local authority can only refuse if they can prove significant harm, or that the presumption is limited by other policies within the NPPF.

Government planning policy

Local planning authorities need to take into account national planning policies when drawing up development plans and other documents and when making decisions on planning applications. Government policy is set out in the new NPPF, and waste is still set out in Planning Policy Statement 10. This is produced by the Department for Communities and Local Government (CLG). The NPPF focusses on stating Government policy. Guidance is being developed by many organisations and interest groups in an attempt push for ‘best’ practice. CLG is also reviewing all the other government guidance and circulars which have not been replaced by the NPPF so far.

Regions replaced by ‘duty to co-operate’

The Regional Strategies (RSs) are gone to all intents and purposes (although still valid in decision-making until certain processes have been completed) apart from London which retains a weaker plan responsibility. The duty to co-operate is a new requirement under the Localism Act 2011 which means that in preparing local plans local authorities need to consult and talk to each other about strategic approaches. There must evidence of this co-operation within the local plan. This duty to co-operate will however be difficult to enforce and will be another layer of complexity on top of the local enterprise partnerships. Funding may be channelled through LEPs, but these are voluntary and not democratically accountable and therefore should not be engaging in planning.

Local Development Frameworks

In place of the old local plans, the 2004 Planning and Compulsory Purchase Act introduced Local Development Frameworks. These are folders of documents that get produced at different times and added to the framework once they are adopted by the local authority. The Local Development Framework is meant to be based on the objectives of the Sustainable Community Strategy that sets out the long-term vision for your local area. Please refer to Friends of Earth’s guide to Local Development Frameworks for more detailed information.

Local Development Schemes

This is a public statement setting out details of which local development documents will be produced, in what order and when. The Local Development Scheme (LDS) is the starting

point for local communities to find out what local planning policies relate to your area. Please refer to Friends of the Earth's guide to Local Development Schemes.

Local Development Documents

These are all the documents included in the framework. There are three types of local development document:

1. Statement of community involvement

This explains how the local authority will engage with the public in preparing its documents.

2. Development plan documents

Development plan documents are statutory documents and form part of the development plan. These include:

- Core strategy
- Proposals map
- Area action plans (e.g. shopping centres, airports)
- Development control policies
- Site allocation policies

3. Supplementary planning documents

These elaborate on policies and proposals in the development plan documents, such as:

- Design guides
- Development briefs
- Practice advice notes

Minerals and waste development framework

Minerals and waste local development documents are contained within a minerals and waste development framework (similar to a local development framework). They are produced by the minerals and waste planning authority (county council or unitary authority). Existing planning policy statement X on waste remains as the policy is being reviewed as part of the national waste action plan.

The waste documents contain:

- An assessment of existing waste generation within the area and future trends.
- The authority's overall strategy for managing waste, including detailed policies on how this will be achieved.
- A demonstration of how the overall strategy is based on the 'best practicable environmental option' (technical criteria are contained in Government guidance).
- Policies on waste minimisation.

- Identification of a list of existing waste management sites with capacity to increase.
- Detail of new or existing sites which could be extended for waste management and disposal facilities (if required). These should be specific locations within which specific proposals might be acceptable or criteria which will be used to assess planning applications.
- Policies on how to avoid and reduce the environmental impact of new or existing waste management facilities – such as recycling facilities, composting sites, incinerators, landfill or land-raising sites and waste separation and transfer stations.

Community Strategies

Community Strategies and Local Strategic Partnerships are likely to have a significant effect on your area, shaping its future development and setting priorities over the services, strategies and spending of bodies such as the council, police, health service and other organisations. Local Enterprise Partnerships and Enterprise Zones have also been added to the mix and are central to the Government's regional funding initiatives. However these partnerships are not accountable or transparent bodies and it can be very difficult to get information on what's happening locally.

The Department for Communities and Local Government is in charge of Local Strategic Partnerships. The Local Government Act 2000 placed a duty on local authorities (county and district councils and unitary authorities) to prepare a Community Strategy in partnership with the community. Community Strategies are usually prepared by a body called a Local Strategic Partnership, made up of representatives from local bodies and interest groups. Please refer to Friends of the Earth's guide to *Sustainable Community Strategies; Local Strategic Partnerships*. Enterprise partnerships are voluntary but it is really worthwhile reporting any issues with lack of access, transparency, information or accountability to the Department for Communities and Local Government.

Neighbourhood Planning and Development Orders

The Localism Act 2011 introduced Neighbourhood planning. This can be undertaken by Parish Councils where they exist or in other places by new Neighbourhood Forums. These forums must consist of a minimum of 21 people, and should be established for the following purpose as outlined in the Act:

“5(a) it is established for the express purpose of promoting or improving the social, economic and environmental wellbeing of an area that consists of or includes the neighbourhood area concerned (whether or not it is also established for the express purpose of promoting the carrying on of trades, professions or other businesses in such an area)”

People living in, working in, and wanting to live in the area can become a member of the Neighbourhood Forum. The Neighbourhood Forum or Parish Council can create a Neighbourhood Plan which sets out the policies for the development of the neighbourhood (which cannot cross a local authority boundary).

Communities and businesses will also be able to use neighbourhood development orders to give permission for the development they want to see - in full or in outline – without the need for planning applications.

The Neighbourhood plans and development orders must be in line with Local Development Frameworks where they exist, and the National Planning Policy Framework 2012. They are voted on in a referendum to be adopted or refused.

Some Neighbourhood plans might end up as Supplementary Planning Documents, and will therefore need to follow the process for the adoption of SPDs as set out in regulation.

Conclusion

The planning system may appear complicated but there are steps you can take to ensure your involvement is as effective as possible.

- Make sure you talk to the planning officer at your local authority and ask them your questions if you want something explained.
- Read the various briefings we have prepared to guide you.
- Keep copies of any letters you write and receive.
- Local authorities are duty bound to engage and consult with local communities – don't let them off the hook!
- Get others involved – together you can make a difference. Don't let apathy rule the day, and never take 'no' for an answer.

Further information and guidance:

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

Rights and Justice Centre

If you need legal advice you can contact our advice line free on 0808 801 0405 or by email at legal@foe.co.uk. You can speak to an adviser from 6.30pm - 8.30pm on the first and third Wednesday of every month. Or you can leave a message at any time.

Planning Hub

Sign up here to exchanged news and views with other local group members on planning issues.

www.foe.co.uk/hubs

Specific reading

Community Rights Resource Pack - This pack contains the individual guides referred to. http://www.foe.co.uk/campaigns/fair_future/resource/rights_resource_pack.html

Local Development Frameworks

Search for your local development framework here:

<http://www.planningportal.gov.uk/wps/portal/ldf?docRef=LDFSearch&scope=203&langid=0>

Planning Policy

National Planning Policy Framework

<http://www.communities.gov.uk/planningandbuilding/planningsystem/planningpolicy/planningpolicyframework/>

Planning Policy Statement 10: Planning for Sustainable Waste Management

<http://www.communities.gov.uk/publications/planningandbuilding/planningpolicystatement10>

Useful web sites

Government

Department for Communities and Local Government

<http://www.communities.gov.uk/>

Department for Energy and Climate Change

www.decc.gov.uk

Department for Environment, Food and Rural Affairs

www.defra.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

The Planning and Compulsory Purchase Act 2004
www.legislation.hmso.gov.uk/acts/acts2004/20040005.htm

Planning Portal
www.planningportal.gov.uk

Non Governmental Organisations (NGO)

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

Environmental Law Foundation
www.elflaw.org/

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

Wildlife and Countryside Link.
www.wcl.org.uk

There are four organisations funded by Government to provide advice:

Campaign to Protect Rural England planning site (working with Locality and the National Association of Local Councils)
www.planninghelp.org.uk

The Royal Town Planning Institute – Planning Aid
<http://www.rtpi.org.uk/planning-aid/>

The Prince's Foundation for Building Community
<http://www.princes-foundation.org/>