

WEST DORSET DISTRICT COUNCIL - DEVELOPMENT SERVICES DIVISION

MATERIAL PLANNING CONSIDERATIONS - GUIDANCE NOTE FOR MAKING REPRESENTATIONS ON PLANNING APPLICATIONS

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MATERIAL PLANNING CONSIDERATIONS - GUIDANCE NOTE FOR TOWN AND PARISH COUNCILS MAKING REPRESENTATIONS ON PLANNING APPLICATIONS

1.0 INTRODUCTION

- 1.1 This note is intended to provide guidance to those making representations on planning applications, on the question of what are "**material planning considerations**". Material planning considerations must be genuine planning considerations, ie they must be related to the purpose of planning legislation, which is to regulate the development and use of land in the public interest. The considerations must also fairly and reasonably relate to the application concerned. Much will depend on the nature of the application under consideration, the relevant planning policies and the surrounding circumstances. Relevant considerations will vary from circumstance to circumstance and from application to application. It will be for the decision taker to attach whatever weight it considers appropriate to the range of material planning considerations for a particular planning application. It is the attachment of varying degrees of weight which can lead to differences of opinion and arguments for and against a development proposal. This is one of the aspects of development management which practitioners can find fascinating but which members of the public can find confusing and frustrating !
- 1.2 It is important to appreciate that when the local planning authority makes decisions on planning applications, or considers representations submitted relating to planning applications, it must only take into account **material planning considerations**. In order to help provide some guidance on what such material considerations are, the following notes have been prepared. They include reference to matters that **are** material considerations, as well as those which **are not**, and include items that are often referred to in letters of representation received by Planning Officers.
- 1.3 It is also worth noting that the planning system does not exist to protect the private interests of one person from the activities of another, although private interests may coincide with the public interest in some cases. It can be difficult to distinguish between public and private interests, but this may be necessary on occasions. The basic question is not whether owners or occupiers of neighbouring properties would experience financial or other loss from a particular development, but whether the proposal would unacceptably affect amenities and the existing use of land and buildings that ought to be protected in the public interest. Good neighbourliness and fairness are among the yardsticks against which development proposals can be measured.

2.0 FACTORS THAT ARE MATERIAL PLANNING CONSIDERATIONS

2.1 Local and national planning policies

An essential requirement of planning legislation is that planning applications should be determined in accordance with the Development Plan, for West Dorset that means the Local Plan, unless other material considerations dictate otherwise. The relevant Local Plan policies therefore carry significant weight when planning applications are determined and these policies should not be overridden lightly.

In addition, the local planning authority has to consider national planning policies - currently the National Planning Policy Framework (NPPF) as well as having regard to the outcome of planning appeals which address similar issues to those under consideration, Planning Statements issued by government, other government Circulars and Case Law, i.e. legal decisions on planning which have been determined in the law courts.

2.2 Previous planning decisions, including appeal decisions

The planning history of a particular site is a material planning decision and consistency of decision taking is good practice. However, circumstances do change over time, as do planning policies and it does not automatically follow that a decision will remain relevant for ever. Planning applications should be considered on their particular planning merits taking into account the material planning considerations at the time.

2.3 Residential Amenity - Living Conditions/loss of daylight/overbearing/overlooking/loss of privacy

This is a very broad based factor which can encompass many issues, but essentially involves the consideration of the impact of a proposed development on the quality of life of existing residential properties and their occupants, for example the potential for overlooking, impacts of noise and disturbance, whether the development might be overbearing due to mass and scale etc, all of which could affect the quality of life of existing and new residents. It has to be appreciated however, that it is almost inevitable, particularly in respect of residential development and extensions to existing residential properties, that such development will nearly always have some impact on adjoining owners and occupiers, but the test the local planning authority has to apply is whether that impact is significant and so great as to warrant the refusal of planning permission. Effects can be mitigated on some occasions by the use of planning conditions. For example; conditions are often imposed in respect of windows requiring obscure glass so as to prevent or reduce the potential for overlooking from a new development into existing residential properties. The legitimate aspirations and desires of property owners to extend their property therefore have to be carefully balanced against the concerns that might be raised by adjoining owners or neighbours.

2.4 Traffic, Transportation and Parking Issues

These are material considerations and are taken into account in many planning applications. The impact of traffic generated by the proposed development is a material factor, as well as the provision or otherwise of parking on site. Consultations are undertaken with Dorset County Council, as the Highway Authority, and they provide advice on all applications where highway safety, visibility and traffic or parking might be an issue. It should be noted that current government guidance is that there should be more of a relaxation on parking provision associated with new development than in the past, particularly in town centre or other urban locations, and/or where there are good bus services.

2.5 Noise, Odours, Vibration, Soundproofing, Contamination, Land Stability & Flood Risk

These are all factors that are material considerations, and where relevant, they should be taken into account when assessing development proposals.

Consultation is undertaken with the Council's Environmental Health Unit on all applications where noise and related issues may arise, and appropriate conditions can be imposed in order to ensure that restrictions are in place to minimise the impact of noise, vibration and to ensure the provision of soundproofing. These matters are also dealt with at Building Control stage, when detailed plans showing the particular construction of a development have to be submitted to and approved by the Council, although it should be noted that approval of Building Regulation plans is quite separate from those plans submitted for planning permission. Advice on Land Stability is provided by the Council Engineers who also advise on flood risk together with the Environment Agency. Specialist reports on all of these matters are required to be submitted with planning applications when the issue is a relevant factor.

2.6 Hours of Operation - Restrictions

This can be a legitimate consideration and a restriction is often imposed on developments which might be acceptable in principle, but where they could become unacceptable if the hours of operation extended beyond a reasonable period; for example late into the evening or at the weekend.

2.7 Layout, Design and Visual Appearance of Development

These are very much material considerations where new buildings are proposed, and are detailed factors that are given considerable attention when **Full/Detailed Planning Applications** are determined. The importance of good design is emphasised in both national and local planning policy documents.

It should be noted that **Outline Planning Applications** are submitted to establish whether or not development on a particular site might be acceptable in principle only. An outline planning permission does not, in itself, approve the development in detail; this has to be achieved through the submission of further **Reserved Matters Application(s)**, which deal with the layout, scale, appearance, access and landscaping of the development in question. This is an alternative procedure to submitting a full application at the outset, when these detailed matters would normally be included in the application.

The local planning authority applies conditions to very many planning applications which relate to design details, the use of particular materials; such as bricks, render, windows; all of which have to be agreed with the authority, before the new development proceeds.

2.8 Harm to the Environment

This would be particularly significant in cases where development might adversely affect a Site of Special Scientific Interest (SSSI), harm the appearance of the Area of Outstanding Natural Beauty (AONB), or be damaging to a Listed Building or the character of a Conservation Area.

3.0 FACTORS WHICH ARE NOT MATERIAL PLANNING CONSIDERATIONS

3.1 Property Values

Letters of representation received by the council often express the view that the letter writer objects to a particular development because it would affect the value of their property. This may or may not be the case, but is not a factor that the local planning authority should take into account when assessing whether or not a development is acceptable in land use planning terms.

3.2 Land Ownership

Land ownership itself is not a consideration that the local planning authority takes into account when determining applications. Planning applicants are required to indicate on their application form, whether or not they are the owner of the land, and if not, they have to submit a notice to the landowner indicating that they have applied for permission on land which is not in their ownership. This usually arises where a development may be being proposed on land but where the prospective developer does not wish to purchase the land until planning permission has been granted.

3.3 Boundary Disputes

Linked into the question of land ownership is the question of boundaries between sites. Again, this often arises in letters of representation on planning applications. It is not the role of the local planning authority to act as an arbiter between adjacent landowners on the question of boundary disputes. The Council, as local planning authority, does not undertake any checks of land ownership when planning applications are submitted, and relies upon the information submitted by the planning applicant as being correct and accurate.

When plans are submitted for planning permission the actual site where development is proposed is edged in red on the plan, whilst any adjoining land owned by the applicant should be shown in blue. In some cases neighbours and others dispute the accuracy of these red or blue lines, but these are matters that usually need to be taken up privately between the various parties, if necessary using legal or surveying representatives.

3.4 Party Wall & Joining on

Where there are concerns about development which might affect adjoining neighbour's property in some way, for example where there may be some impact on a neighbour's foundations etc, these are matters dealt with under the Party Wall Act and not through planning legislation. Leaflets referring to this are available from the council. Other issues such as the need for a developer to access a neighbour's property in order to construct the proposed building are covered by the Access to Neighbouring Land Act 1992.

It is also perfectly acceptable for a planning applicant to apply to "join on" to an existing property; for example to add an additional house to the end of an existing terrace or an extension to a neighbouring dwelling. The local planning authority considers this application in the context of land use planning matters, planning policy and other material considerations referred to in this note. Whether or not the applicant has the agreement of the existing

property owner they wish to join onto, is a private matter between the 2 parties. If no agreement can be reached, then the development cannot be implemented. This does not mean that in principle, planning consent should not be granted if planning policies and other material considerations do not preclude it.

3.5 Private Views

The impact of a new development on private views from say a neighbour's property is a common issue in representations on planning applications. It is important to appreciate that the effect of a development on such a private view is not a material planning consideration. This applies to whether the view is obtained for residential or commercial properties.

3.6 'There are Too Many Already'

This comment is often received when applications are submitted for uses/development such as additional pubs, cafes or takeaways in town centres. Potential competition between individual businesses and the financial impact on existing businesses is not a material consideration. The fact that the area may already be served by the proposed service or use is not, in itself, a reason for refusing planning permission. In some cases the impact of new development on the viability and vitality of a town centre as a whole can be a material planning consideration. Other factors, such as the cumulative impact of noise, disturbance etc, can also be material planning considerations, but the fact that there is another operation or retail outlet of a similar nature nearby is not, in itself, a material factor.

3.7 Moral objections

Some developments, for example amusement arcades and betting shops can prompt objections on 'moral' grounds. The planning system is not the guardian of the nation's morals and so such objections are not material to the consideration of planning applications.

4.0 FACTORS WHICH ARE USUALLY NOT MATERIAL CONSIDERATIONS BUT WHERE THERE MAY (ON OCCASIONS) BE EXCEPTIONS

These notes are intended for guidance, and cannot be absolutely prescriptive. There are some issues which are usually not material planning considerations, but where there can be some exceptions and guidance on some of these is set out below.

4.1 Loss of a View

Although the impact of development on private views is not a material planning consideration, the impact of development on public views can be. If, for example, an office block or a block of flats were proposed to be built in a prominent location, which directly affected the public vista and view of an important building; say a cathedral or other prominent public building, this would be a material planning consideration as it would affect the public realm rather than private/personal views.

4.2 Preferred Alternative Land Uses

The consideration of some alternative land use or development which might be considered preferable on a site where there is a planning application is not normally a material

consideration. The local planning authority has a duty to consider the planning merits of the application that has been submitted and not some other form of development which might be considered preferable. The same consideration should apply to those making representations on applications. However, taking account of the importance of the Development Plan, an exception to this principle is the situation where a site is specifically allocated, or covered by a specific policy in the Local Plan for a particular use - housing, employment etc. In such cases if an application were to be submitted which conflicts with that allocation or policy, then that would be a material planning consideration which would be taken into account when determining the application. The weight to be attached to that consideration would depend upon the circumstances of that particular case.

4.3 Personal Circumstances

Again this is a factor that is often highlighted by applicants when submitting some applications, when they make reference to personal domestic circumstances which, in their view justifies why a particular development or form of development should be approved. This is not normally a material planning consideration, because although the applicant might apply for permission in person, any permission granted usually applies to the land and property itself, and passes with the property, should it be sold. The local planning authority therefore has to have regard to this wider and long term consideration, rather than any personal factors or characteristics that might apply to the particular applicant at any one point in time.

There may, however, be some exceptions to this general rule; for example where an application might involve a particular form of development to specifically accommodate the needs of a person with disabilities.

5.0 PLANNING CONDITIONS AND LEGAL AGREEMENTS

5.1 Planning Conditions

In addition to the importance of planning decisions being based on material planning considerations, it is important to appreciate that Planning Conditions which are attached to planning consents also have to be rigorously assessed before being imposed. Government Planning circular 11/95; '*The Use of Planning Conditions in Planning Permission*' provides guidance on this matter and emphasises that Planning Conditions should be:

1. Necessary
2. Relevant to Planning
3. Relevant to the Development to be Permitted
4. Enforceable
5. Precise &
6. Reasonable in all other aspects

Further information on these issues can be obtained from the Government website - currently the Department of Communities and Local Government (DCLG). All planning conditions also have to be cross referenced to relevant Local Plan Policies which support the reasons for the conditions.

5.2 Legal Agreements

Section 106 of the Town and Country Planning Act 1990 enables local planning authorities to enter into legal agreements, or to accept unilateral obligations from planning applicants which set out in a legally binding manner, the requirements of a local planning authority to address any issues associated with a planning application which cannot be dealt with by way of planning conditions.

Although many requirements relating to proposed development are dealt with by planning conditions - design materials, access etc, in situations where for example, affordable housing is required, or financial contributions towards off-site infrastructure are required, these have to be dealt with by way of a legal agreement. Section 106 is the section in the Planning Act under which such agreements are permitted to be entered into. Section 106 also allows for developers to submit '*Unilateral Obligations*' which are essentially a one sided commitment, but submitted to the planning authority together with a planning application, again setting out obligations that will be undertaken by the developer/applicant.

5.3 Reasons for Refusal

Like Planning Conditions, Reasons for Refusal of a Planning Application also have to be based on sound and material planning considerations, which can be supported by Local or National Planning Policies which have to be specifically referred to in the Reasons for Refusal.

5.4 Planning Appeals, Costs and the High Court

It is important to appreciate that refusals of planning applications can be subject to Planning Appeals which are heard on behalf of the Secretary of State by an appointed, independent Planning Inspector. Appeals can be considered by way of either:

- An exchange of Written Representations,
- A Local Hearing
- A Public Inquiry.

At a planning appeal, both sides can be required to pay the costs of the other party if the Inspector considers they have acted unreasonably. When an appeal proceeds to a Public Inquiry both side's positions are tested through the cross examination of witnesses representing interested parties, most usually the council and the appellant but also sometimes involving third parties such as Town and Parish councils and objectors to planning applications. It is important therefore that when applications are refused, Planning Officers and Committee Members are satisfied that there is sufficient evidence available to substantiate the decision.

Planning applicants or any other third parties can also apply to the High Court on a point of law, with a view to the decision being quashed, if they consider that an application has not been considered properly on the basis of planning considerations, that proper procedures have not been followed or if they consider that the Local Planning Authority has not acted reasonably. If such an application were to be successful, the Local Planning Authority would probably have to pay all the legal and other costs of the applicant associated with the application to the High Court. Decisions made by the High Court on Planning matters provide '*Case Law*' which helps guide future decisions by Planning Authorities and by Planning Inspectors at Planning Appeals.

Such case Law is also a Material Planning Consideration which councils should have regard to when making decisions. There is currently in the UK, no '*Third Party Right of Appeal*'. This means that no-one, other than the applicant, can submit an appeal in relation to a planning decision.

These factors therefore help emphasise the importance of all planning decisions being based on '**material planning considerations**' only.

6.0 CONCLUDING COMMENTS

The list of issues and factors highlighted above in this guidance note is not intended to be exhaustive, but does hopefully provide some additional assistance to those interested in the way planning decisions should be made and the limitations and restrictions within which local planning authorities have to operate.

Copies of this information note are being made readily available to members of the public via the council's website and to Town and Parish Councils and other organisations in the local area.

7.0 FURTHER INFORMATION

General advice on the planning system is available from the '*Planning Portal*', which is a national web based information system which the Council is part of. This can be accessed direct on www.planningportal.gov.uk or via the planning pages on the Council's website www.dorsetforyou.com. Copies of government planning guidance are also available from the Communities and Local Government website; search for DCLG.

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