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PLANNING RELATING TO LOCAL COUNCILS

Introduction

Local (parish and town) councils are statutory consultees in the planning process and must be informed of all planning applications and any amendments to those applications within the parish (The Town and Country Planning (Development Management Procedure) (England) Order 2015 (the 2015 Order)).

The Local Planning Authority (LPA) is the decision-making body for planning matters, not the local council.

Local councils can only comment on these planning applications in the same way as any other member of the public, and any comments, objections or recommendations must be agreed during a properly called public council meeting.

Notification of planning application

If a local council makes a written request to the LPA, it must be informed of planning applications relating to land in its area and be given either a copy of each application or information sufficient to identify the land and the nature of the development (paragraph 8 of Schedule 1 to the Town and Country Planning Act 1990 (the 1990 Act))

A local council is also entitled to be notified of any alteration to a planning application accepted by the LPA (other than a trivial alteration).

Where the local council is given information about an application, it shall, as soon as practicable, notify the LPA whether it proposes to make any representations about the manner in which the application should be determined and shall make any representations to that authority within 21 days of the notification to it of the application.

An LPA must not determine the application before:

- The local council informs them that it does not propose to make any representations;
- makes representations; or
- the period of 21 days for making representations has elapsed,

whichever occurs first;

and in determining the application the LPA shall take into account any representations received from the local council (Article 25 of the 2015 Order).

Notification of planning decisions

Under Article 25(3)(a) of the 2015 Order, a local council is entitled to be notified of the terms of the decision of the LPA or the Secretary of State in relation to planning applications of which it has been given details. The easiest way in which this can be done is for the district council to supply a copy of the decision letter. A decision by the Secretary of State has only to be supplied where the Secretary of State calls in a planning application. There is no statutory right for a local council to be supplied with a copy of every appeal decision made by the Secretary of State or, by delegation, an Inspector.

Appealing decisions as an applicant for planning permission

Section 78 of the 1990 Act provides that applicants for planning permission can appeal the decision of an LPA where the decision is:

- To refuse an application for planning permission or to grant it subject to conditions.
- Refuse an application for permission in principle
- To refuse an application for any consent, agreement or approval required by a condition imposed on a grant of planning permission or to grant it subject to conditions; or
- To refuse an application for any approval required under a development order, a local development order, or a neighbourhood development order, or to grant it subject to conditions.

In England, applicant appeals are made to the Secretary of State. In Wales, appeals are made to the Welsh Ministers.

Appealing decisions when a local council is an interested party

Local councils may request the LPA to notify them of planning applications in their area (paragraph 8 of Schedule 1 to the 1990 Act for England and paragraph 2 of Schedule 1A to the 1990 Act for Wales). The LPA must (i) send a copy of relevant planning applications to the local council (ii) give them an opportunity to make representations as to how the application should be determined, (iii) take into account the representations made by the local council and (iv) notify the local council of their decision. However, as stated

above, only an applicant for planning permission can appeal the decision of an LPA, and such an appeal can only be made in limited circumstances. The right of appeal does not extend to interested parties such as local councils or local residents. Any action they contemplate will need to be outside of legislation for planning appeals and would usually be by way of judicial review (JR).

Judicial Review

The decisions of LPAs can be challenged outside of planning legislation by way of judicial review. Parties who wish to bring a judicial review are advised to instruct independent solicitors to represent and assist them.

Neighbourhood planning

Neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and shape the development and growth of their local area. If an area has a local council, the 1990 Act provides for the local council to take the lead role in neighbourhood planning. Where a local council chooses to produce a neighbourhood plan or Order, it should work with other members of the community who are interested in, or affected by, the neighbourhood planning proposals to allow them to play an active role in preparing a neighbourhood plan or Order. On matters relating to Neighbourhood planning, how to establish a neighbourhood plan and updating an existing plan, councils should follow the government's online resource (<https://www.gov.uk/guidance/neighbourhood-planning--2#what-is-neighbourhood-planning>) for information and guidance and seek advice from their LPA.

Other sources of advice

Planning Aid give free and independent legal advice (<http://www.planningaid.rtpi.org.uk>)

The government's online resource for information and guidance on planning and building regulations (<https://www.gov.uk/planning-permission-england-wales>)