

WHAT DOES THE PLANNING SYSTEM DO?

The planning system exists to regulate the development and use of land in the public interest. The public interest requires that all development is carried out in a way that would not cause demonstrable harm to interests of acknowledged importance. The central concerns of the planning system are to determine what kind of development is appropriate, how much is acceptable, where it should best be located and what it looks like. I also at this juncture want to refer briefly to development plans and policy making and their influence on the development management process.

Development plans apply regional planning policies at a local level – ie the Regional Development Strategy and Planning Policy Statements.

Development plans inform the general public, developers and others of the policy framework and landuse proposals that will be used to guide development decisions within their area. They provide a basis for rational and consistent decisions on planning applications and provide certainty about which types of development will and will not be permitted. Development plans are the primary means of evaluating and reconciling any potential conflict between the need for development and the need to protect the environment.

DEVELOPMENT MANAGEMENT AND ENFORCEMENT

Turning then to Development Management, this is essentially the process which is concerned with the processing of planning applications and deciding whether to approve or refuse planning permission. It is perhaps worth mentioning at this juncture that Planning decisions do have associated with them an element of permanence, in that, developments which are built as a result of planning approval may stand for many decades.

Development management was formerly known as development control and in the past was viewed very much as a regulatory activity focussed on the processing of planning applications. However, that has now changed and nowadays under the title of development management, it is regarded in a much more positive light with greater emphasis given to promoting and facilitating development instead of just controlling it. In contrast to the past, Planners now become involved in the planning process at a much earlier stage through pre-application discussions, the objective being to achieve better quality schemes which can deliver benefits to councils and communities alike.

There will be occasions when development takes place without the benefit of planning permission ie unauthorised development but Anthony will focus on this later in the session.

Moving now to material considerations and what they are. Material 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 relate to the application concerned. All the fundamental factors involved in land-use planning constitute a material consideration. This includes such things as the size, layout, design and external appearance of buildings and the proposed means of access.

Under the current planning system, planning applications must be determined having regard to the development plan as well as other material considerations including Planning Policy Statements. Under planning reform, we will move to a plan led system which you will have learned about in one of our previous sessions.

WHAT IS DEVELOPMENT?

The Planning (N. Ireland) Order defines development as 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 buildings or land. Building operations include demolition, rebuilding and structural alterations to buildings. Mining operations include quarrying and gravel extraction, while engineering operations include activities which alter the profile of the land for example excavation or tipping. However, Engineering operations may also include the formation and laying out of a means of access to a highway.

Planning Legislation also provides for a range of development activities which do not require planning permission. These are known as permitted development. For example, a householder may extend the size of their home up to a certain limit without any need for planning permission.

The concept of material change in the use of buildings or land is not always clear cut. The Planning Use Classes order which is a piece of subordinate legislation provides some guidance on the matter. The Use Classes Order groups together uses which are similar in nature and therefore to change from one to another does not involve development.

SOME KEY FACTS

- **77% of all planning applications are currently full applications**
- **65% of all applications currently fall within the streamline scheme**
- **95% of all current decisions are approvals**
- **3,400 applications were received in the first quarter of 2014/15**

There are several types of planning application which can be made depending on what kind of development is proposed. Outline planning applications provide a means for an applicant to establish whether a development proposal is acceptable in principle before embarking on the preparation of detailed plans.

A reserved matters application is submitted following the granting of outline permission. The reserved matters can include all or some of the following:

Siting;

Design;

External Appearance;

Landscaping; and

Means of Access.

An application for full planning permission should include all the details required to describe the development that is to be implemented. In other words this should include details of siting, design, means of access, etc.

Every grant of planning permission will have a condition imposing a time limit within which the development must be commenced – normally that limit is 5 years for full permission.

Depending on the type of development proposal, other planning conditions may also be attached, for example, conditions relating to landscaping or hours of operation.

Where planning permission is refused, clear reasons need to be given to justify the decision and these are normally linked to planning policy.

Where planning permission is refused, the applicant can appeal that decision to an independent body called the Planning Appeals Commission. The PAC decides appeals based on the evidence presented to it.

Before moving on I'd just like to touch on Judicial Reviews and Ombudsman complaints.

A Judicial Review is a process by which the courts review the lawfulness of a decision made by a public body including a planning authority. It is a mechanism by which a judge considers whether a public body has acted in accordance with its legal obligations and if it hasn't, declare a decision invalid.

The increasing complexity of the planning system in terms of process and legislative requirements (for example EU Environmental Directives) makes it fertile ground for legal challenge. In the new planning system unsound planning decisions could be hugely expensive for a council with costs ranging from a few thousand pounds to hundreds of thousands of pounds.

With regard to Ombudsman complaints, the Ombudsman can investigate complaints from those who claim to have suffered injustice as a result of maladministration. Maladministration is not defined in law but is generally taken to include decisions made following improper consideration. The Ombudsman, unlike the courts does not have the authority to overturn a planning decision but where maladministration has been found to cause injustice they can recommend that a payment be made by the planning authority.

KEY DECISION MAKING STAGES

There are a number of Key Stages in the processing of a planning application. Pre-application discussion may be the first of these stages, if they are warranted. This will often depend on the complexity of the development proposal. Such discussions provide an opportunity for the applicant, the planning authority and key consultees to identify and address the main issues associated with the application before it is formally submitted.

In theory this will enable the application, to pass more speedily through the planning process.

Once the application is submitted, the neighbour notification process is undertaken. This is a non-statutory process but is designed to notify those who are most likely to be affected by a development proposal (over and above the normal press advert which is a statutory requirement).

Under the current planning system, there are only two statutory consultees – the District Council and the Health & Safety Executive. However, consultation may be undertaken with other authorities or bodies likely to have an interest in the proposal, for example, Transport NI.

Having had regard to the development plan and all other material considerations, the planning officer prepares a report and recommendation to be discussed at a group meeting. Following this, the application is placed on a schedule which is sent to the Council. That is unless of course it's a streamlined application.

STREAMLINED PROCESSING AND COUNCIL CONSULTATION

The streamlined scheme as most members will be aware has been introduced to remove generally non-contentious applications from the Council

schedule. This scheme has been a success in terms of improving processing times and enhancing service delivery. This scheme is seen as a precursor to delegated decisions by council officers.

Members, I'm sure are very familiar with the deferrals process that exists under the current planning system so other than mentioning it I don't propose to say anything else about it.

SPECIAL PROCEDURES

Instead it may be of more use to look at some of the other types of application or special procedures which currently exist. These include Article 31 applications which take their name from Article 31 of the Planning Order.

Article 31 enables the Department to deal with major applications under

special procedures. These major applications include those which are of significance to the whole of Northern Ireland. The special procedures take such applications out of the normal processing route and require them to be considered by the Environment Minister.

Other applications worth bringing to your attention include those for listed building and conservation area consent. Consent is needed to alter or demolish a listed building and to demolish a building which is in a conservation area.

Then there is the matter of Environmental Impact Assessments which is the process for identifying the environmental effects of a proposal such as their impact on flora and fauna. The EIA Regulations prohibit the granting of planning permission for EIA development unless environmental information has been taken into account in making that decision. Failure to do so can result in legal challenge.

While I don't wish to finish on a negative point, ie legal challenges you will be delighted to hear that this concludes my presentation. I genuinely hope you have found it useful and I thank you for your time.