PLANNING MEMBERS TRAINING

The Planning System

The planning system plays an important role in helping protect the environment in our towns and in the countryside. Planning is about how we plan for, and make decisions about, the future of our cities, towns and countryside. To do this, a formal way of making these decisions has been established.

In England and Wales, a **'**plan-led system**'** is at the heart of all decision making. This means that planning applications should normally be determined in accordance with the 'Development Plan'. The Development Plan is comprised of a series of policy documents, such as the West Northamptonshire Joint Core Strategy, Northampton Central Area Action Plan, Northampton Local Plan and Neighbourhood Plans.

National Government through the Department for Communities and Local Government (CLG) sets out national planning policy in the form of the National Planning Policy Framework, however, responsibility for setting out policies and for taking decisions at local and strategic level rests with Local Planning Authorities (LPA).

Northampton Borough Council (NBC) as the LPA deals with all planning applications for built development and changes of use. However, some LPA powers lie with the County Council (these primarily relate to waste disposal and minerals development, transport and education).

Each local authority sets out in its Local Development Scheme which Local Plans will be produced, in what order and when.

Planning Policy

The purpose of planning policy is to provide direction and guidance in assessing planning applications which are submitted to the LPA. The evidence provided by policy will allow Officers to assess whether proposed development is sustainable and supported in terms of achieving planning objectives. Planning Policy guidance is developed through Plans and guidance which can be adopted at both the national and local level.

At the national level Central Government produces legislation, ministerial statements and guidance all of which are intended to shape more detailed plans adopted at the local level by the LPA. Of prime importance here is the National Planning Policy Framework, which was published in 2012 (see above).

At the local level the LPA has the responsibility for implementing the objectives of national guidance and legislation through, for example, Local Plans, Supplementary Planning Documents and Development Briefs. The LPA also has the responsibility for making land use allocations to meet future needs, for example allocating future housing and employment sites.

This also incorporates Neighbourhood Planning. The Council actively supports community groups involved in Neighbourhood Planning and has been working with Duston, Spring Boroughs and Growing Together (Blackthorn, Goldings, Lings and Lumbertubs) to produce plans to help communities improve the future of the places where they live.

What does this mean for planning in Northampton?

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires a planning application to be determined in accordance with the Development Plan unless material planning considerations indicate otherwise.

The Development Plan for Northampton consists of the following policy documents:

- West Northamptonshire Joint Core Strategy (Local Plan Part 1) (adopted Dec 2014)
- Northampton Central Area Action Plan (adopted Jan 2013)
- Northampton Local Plan (adopted 1997) (saved policies from 2007)
- Minerals and Waste Local Plan (adopted Oct 2014)

In summary the role of the above documents can be described as follows:

West Northamptonshire Joint Core Strategy (JCS)

The JCS provides strategic planning policy for the West Northamptonshire area (which comprises the Councils of Northampton Borough, Daventry District and South Northamptonshire). This Plan sets out the overall strategic needs for the area up to 2029 for housing (including allocating sustainable urban extensions) and employment, and provides a long term strategic framework to guide the preparation of more detailed planning polices and site allocations for each Council area through the Part 2 Local Plans.

Northampton Central Area Action Plan (CAAP)

The CAAP provides detailed policy guidance and makes site allocations which aim to provide a framework for the improvement and extension of the town centre, whilst seeking to protect and enhance its historic character and green space.

Northampton Local Plan

This Plan was adopted in 1997 and its policies pre date the National Planning Policy Framework. In 2007 policies from older plans were to expire unless a request was made to the then Secretary of State to extend policies beyond that date. Therefore the Plan now consists of a series of saved polices, which are increasingly being replaced through the advancement of other Local Plans.

Neighbourhood Plans

The Localism Act 2011 introduced new rights and powers to allow local communities to shape new development in the area where they live, by coming together to prepare neighbourhood plans. Neighbourhood Plans can establish general planning policies for the development and use of land in a neighbourhood, but they must take account of wider policy considerations including local plans. Once made by the Council, Neighbourhood Plans will form part of the Development Plan for the area.

Northampton currently has two made Neighbourhood Plans, one for Duston and one for Spring Boroughs. Blackthorn's Growing Together Neighbourhood Forum is in the process of preparing a Submission Neighbourhood Plan.

Minerals and Waste Local Plan

This Plan is produced by Northamptonshire County Council and sets out the strategy, policies and locations for minerals and waste development in the county up to 2031.

Emerging Plans

The Northampton Local Plan will be fully replaced by the Local Plan Part 2. Work has commenced on this Plan which will provide detailed policy guidance for the remainder of the Borough outside the town centre. The Plan will contain detailed development management policies and make site allocations for the future needs of the area up to 2029 in line with the strategic direction provided by the JCS.

The Council also produces supporting policy documents which are designed to amplify and add clarity to plan policies. Examples of such documents would include the Affordable Housing Interim Statement, the Shop Front Design Guide and the Nene Meadows Supplementary Planning Document. Conservation Area Appraisals and Management Plans are also adopted policy documents.

Local Plans and all supporting policy documents are available to view online on the Council's website in the Planning for the Future section of Planning services.

Development Management

Development Management is the branch of planning that deals with planning applications (and other similar types of applications such as advertisement consent etc). Before going into greater detail it is important to clarify that obtaining planning permission is a separate matter from building regulations approval.

Building Regulations are concerned with the actual construction process of a development and aim to protect the health and safety of people who use the property. They lay down standards for the construction of all types of buildings such as foundations, fire protection and damp proofing. They also ensure that people with disabilities have adequate facilities within public and commercial buildings. The Council's **Building Control** Service aims to help you ensure that your new, extended or altered building is a safe, healthy, energy efficient and convenient place in which to live, work or relax. More information can be found via the Council's website and the Planning Portal website or by contacting the Council's Building Control Manager.

Planning permission is only required for ***development***. In summary planning law defines development as either:

- *Operational Development* – this is anything built on, over or under land, and would for example include a new house, road, sewers, embankments and some forms of demolition etc
- *Material Change of Use* - this is any change of use of a building or land and would include the change of use of a house to a dentist for example. As material change of use tends to be more problematic / complex than operational development and there is a short section devoted to this topic below.

Therefore, if it is not ***development*** it doesn't need planning permission!

There have been numerous alterations that allow development to go ahead without having to make a planning application. The most significant of these, and the ones that you are

most likely to encounter, are known as **Permitted Development Rights** or **PD** for short. These 'rights' principally stem from a Government Order (The Town and Country Planning (General Permitted Development) Order 2015) and, amongst other things, allow people to extend their homes within certain limits without having to apply for planning permission. These PD Rights tend to become more limited in sensitive locations such as at listed buildings and within Conservation Areas. The Government has produced several booklets on this subject. More information can be found via the Council's website or the Planning Portal website.

Part of the PD system requires the submission of details to the LPA to allow it to assess whether approval of siting and appearance for certain types of development such as telecommunications apparatus, agricultural buildings and works by Network Rail is required. As the Council has a very limited period to determine these (i.e. 28 days in the case of agricultural buildings) they are generally dealt with by officers and not reported to Planning Committee. If the Council does not determine these applications within the prescribed period in most instances they are deemed to have been approved.

The Council can, following consultation, designate an Article 4 Direction (A4D), which removes specified PD rights. From a heritage point of view, the purpose of the A4D is to offer a further layer of protection to an area where the character of the conservation area could be eroded if PD rights were enacted by owners/occupiers. A4Ds are not exclusive to conservation areas. A4Ds are legal documents and are revealed on a land charge search when properties change hands

Material Change of Use

Material change of use as a concept tends to create far more difficulty in interpretation than its *operational development* counterpart. This is largely due to the huge variety and subtlety of uses that may be made of land and buildings.

As a concept it has, over the years, given rise to an extraordinary number of court cases, and continues to do so. Section 55 of the Town and Country Planning Act states that **the following do not constitute a material change of use** (i.e. they are not development and hence do not require planning permission):

a) The use of buildings or other land within the curtilage (i.e. generally the garden) of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such.
b) The use of any land for the purposes of agricultural or forestry.
c) Uses falling within the same class as set out in the Use Classes Order 1987 (as amended). This statutory instrument gives a freedom from the need to obtain planning permission for a myriad of minor (and some not so minor) changes of use. This Order also states that subdivision within a Use Class does not constitute development. A summary of the current Use Classes Order and related permitted development is appended at Appendix B.

Section 55 of the 1990 Act also states that **the following do constitute development:**

a) Use of a previously single dwellinghouse as two or more dwellinghouses (i.e. not withstanding c) above subdivision of a house)
b) The deposit of refuse or waste materials on land.

Planning Applications

The Council receives roughly 1,500 applications per year.

An application must include enough detail to see what effect the development could have on the area. For household extensions this is likely to be a completed application form and a set of plans, but for more complex development it could include lengthy technical detail such as a Flood Risk Assessment. A fee is payable for most types of planning applications, although there are exceptions e.g. there is no fee for alterations or extensions to a house for the benefit of a registered disabled person. Parish Councils only pay 50% of normal fees. An application is only registered and the application process started once enough detail has been submitted.

Once registered, the application is processed and allocated to a case officer. The main first step in this process is consultation. The Council undertakes consultation on all applications and this will normally be in the form of a letter to neighbouring occupiers, the Parish Council and specialist / expert consultees such as the County Council as Highway Authority; and also yellow notices posted near the site and / or notices published in the local press (mainly the Herald and Post). Different applications require different types and levels of consultations. Ward Councillors will also be consulted of planning applications within their Wards. The Council's adopted policy on consultation on planning applications is contained in its Statement of Community Involvement, which can be found on NBC's website.

A consultation period of 3 weeks then follows to allow consultees time to consider the proposal and make any comments in writing to the case officer. The details submitted can be viewed in the Council Offices or via the Council's website. During the 3-week consultation period the application cannot be determined. It is during this period that the case officer will normally conduct a site visit and negotiate any changes to the proposal with the applicant / their agent. The Council also produces a list of new applications registered each week, known as the 'weekly list'.

The plan led system requires that planning applications are to be determined in accordance with the adopted Development Plan, unless there are other material considerations that may indicate otherwise. If the planning application is in line with the adopted Development Plan, the applicant can usually expect to receive planning permission within eight weeks for householders. Approval for larger developments often takes longer and tends to be reported to the Planning Committee for determination, whereas the majority of applications are determined by officers under the Council's Scheme of Delegation.

Speed of decision-making remains a major issue for LPAs due mainly to the requirements of national government and is briefly discussed below under the heading Performance.

Applicants can appeal against the Council's decisions, but neighbours and other parties cannot.

On householder appeals there are no longer any opportunities to comment after the planning application is determined. However, neighbours can still make comments on non-householder appeals to the Planning Inspectorate in the event that an applicant appeals. The appeal system and the role of members and officers are explained below. In addition to the appeal process a planning decision can be challenged through the

Courts if it is 'wrong in law' only via Judicial Review. Judicial Review can only be used, within 12 weeks of a planning decision, if there is a legal problem with the process or decision and not if the party challenging the decision simply feels the wrong planning decision has been made.

Before planning applications are submitted, there is often discussion and negotiation between the developer and officers. These are known as pre-apps (i.e. pre-applications discussions). Pre-apps can be a very useful process for both parties and can help identify issues before a formal application is submitted, thereby potentially avoiding the submission of very speculative applications and improving the quality of those applications that are submitted. A fee is payable for the pre-apps service.

Material Considerations & Making Representations on Applications

Interested parties (neighbours, statutory consultees such as the Highway Authority and Parishes Councils) are notified of planning applications at an early stage in the process, often in advance of an officer site visit taking place and sometimes before directly affected neighbours have been notified by Planning Registration. Consultees' representations are important to the Council and are taken into careful consideration when the application is assessed and determined. It is the quality of what is being said and the reasoning and evidence behind this, which often makes a difference to the outcome of a planning application, rather than simply the number of comments received or who has made them.

Consultees are not obliged to respond to all planning applications which they are notified of. If comments are not submitted this does not mean that the Borough Council will have any less regard to the planning issues involved, or be any less rigorous in their approach. Officers and Members of the Planning Committee are trained and experienced enough to identify and consider potential problems, effects on others, etc. without being prompted.

The comments submitted on applications will be properly considered by the Committee and Officers when determining planning applications. However, in order for them to be properly considered the comments must be based on material planning grounds. Material planning grounds will vary from one type of development to another. The most important material considerations will be Development Plan Policy (see the plan led system in the Policy and Planning Applications sections above), along with the facts of the case (i.e. the site, its context and the details of the proposed development in question). **Some of the general factors which can be taken into account** are:

- Visual Impact
- Privacy/overbearing
- Daylight/sunlight
- Noise, smell, air quality etc.
- Access/traffic
- Health & Safety (in some cases)
- Ecology
- Crime
- Economic Impact
- Planning History
- Related Decisions
- Cumulative Impact
- Personal factors (rarely!)

Other factors <u>cannot</u> be taken into account when determining a planning application, such as:

- The applicant
- Land ownership
- Private rights (e.g. access)
- Restrictive covenants (these, like private rights, are matters of civil law as such outside lie outside planning control – the Citizens' Advice Bureau and / or a solicitor may be able to advise on these matters)
- Property Value
- Competition
- Loss of View
- The existence of a 'better' site or a 'better' use or form of development
- Change from previous scheme

Further thoughts on *Material Considerations*

The Courts are the arbiters of what constitutes a material consideration. All the fundamental factors involved in land-use planning are included, such as the number, size, layout, siting, design and external appearance of buildings and the proposed means of access, together with landscaping, impact on the neighbourhood and the availability of infrastructure.

"In principle...any consideration which relates to the use and development of land is capable of being a planning consideration. Whether a particular consideration falling within that broad class is material in any given case will depend on the circumstances" (Stringer v MHLG 1971).

Material considerations must be genuine planning considerations, i.e. they must be related to the development and use of land in the public interest. The considerations must also fairly and reasonably relate to the application concerned *(R v Westminster CC ex-parte Monahan 1989).*

The Courts have also held that the Government's statements of planning policy are material considerations which must be taken into account, where relevant, in decisions on planning applications. These statements cannot make irrelevant any matter which is a material consideration in a particular case. But where such statements indicate the weight that should be given to relevant considerations, decision-makers must have proper regard to them. If they elect not to follow relevant statements of the Government's planning policy, they must give clear and convincing reasons *(E C Grandsen and Co Ltd v SSE and Gillingham BC 1985).*

As a general *rule of thumb* the following points are a useful guide to making comments which are both relevant in planning terms and represent material considerations to the proposed development in question.

- Stick to the planning issues surrounding the particular proposal and the application in question. If in doubt about what the planning issues are, a telephone conversation with the Council's case officer might help put things into sharper focus.

- Itemise Development Plan Policies which give backing to your comments.
- Respond to any Development Plan Policies which do not support your comments.

- Explain what other planning issues you believe should influence the decision.

Do not refer to issues which are dealt with under separate legislation such as building control or land drainage byelaws for example.

Performance

One of the key measures of performance for LPAs is speed of determination of planning applications. National performance indicators, known as NI 157i, NI 157ii and NI 157iii, divide these applications into three categories: Majors (e.g. the creation of 10 or more dwellings); Minors (e.g. the creation of 1 dwelling); and Others (e.g. domestic extensions). It also sets targets for a proportion of these applications to be determined within a prescribed timeframe as summarised in the table below. If an application is not determined within the prescribed timescale the applicant can appeal against non-determination of the application (see Appeals section).

NI No.	Category of Application	Timeframe	Target Percentage
157i	Major	13 weeks	60%
157ii	Minor	8 weeks	65%
157iii	Other	8 weeks	80%

The Government has set these performance standards to ensure the customer gets an efficient service, which the customer pays for with the application fee. Poor performance can also result in designation as a Standards Authority. This has happened to the Council in the past and can be harmful to the status and reputation of the Council at large. It could particularly undermine the Development Management service (e.g. harmful to recruitment / retention of staff, affect moral etc) to the detriment of quality and performance thereby harming the service's contribution to corporate objectives (e.g. delivery of affordable housing).

Planning Committee Procedures

The Council's Constitution sets out the functional responsibilities of the Planning Committee in full. The Constitution can be viewed via the Council's intranet site.

Only certain applications are reported for determination to Planning Committee, this is explained in the Scheme of Delegation section below.

Planning Committee generally meets every 4 weeks on a Tuesday evening normally at 6.00 pm in the Jeffery Room of the Guildhall. The agenda tends to be mainly comprised of reports on planning applications to be determined. The reports are prepared by officers and set out the key issues, facts, policies (e.g. NPPF and Development Plan Policies) and consultation responses, and will also have a recommendation (i.e. approval / refusal).

The agenda has to be published 5 working days before the Committee meeting. Consequently the reports are drafted well in advance of the meeting. Any matters arising after the reports are finalised but before the meeting are reported in a document known as the Addendum which is compiled on the afternoon of the Committee meeting and circulated shortly before the start of the meeting.

The Committee normally conducts site visits on the day before the Planning Committee starting from the Council Offices at The Guildhall (normally at 2.00 pm). The Planning Committee Chairman leads these.

At the Committee the Chairman will introduce each item. Officers will present each item with the aid of a PowerPoint presentation of plans, drawings and photographs. Members of the Committee and officers wishing to speak must do so on the invitation of the Chairman.

Planning Committee meetings are open to the public so local residents, applicants representatives of the Parish Council etc. can attend. Interested parties such as neighbours and the applicant / their representatives can address the Committee, but only in accordance with the Council's adopted policy on speaking. In summary, provided that they register to speak before midday on the day of the Committee meeting, neighbours, the applicant / their agent, Councillors and any other party may address the Committee and are allowed up to 3 minutes to speak. Full details of the public speaking regime is set out on the second page of each Planning Committee Agenda.

Once the Committee has seen / heard the officer's representation, heard the public speakers and sought clarification from officers on any matters of fact / detail it debates the application and then votes on how the application should be determined.

Applications can be approved, refused or deferred. Deferrals tend to be to allow further information to be gathered (often via a Members' site visit – see above). When determining an application (i.e. approving / refusing) the Council must give reasons which are based on sound land-use planning considerations and supported by relevant Development Plan Policy. Where the decision is in accordance with the officer recommendation, the reasons for the decision will be set out in the officer's report. If Members do not agree with the officer recommendation and wish to go against it, it is essential that clear reasons, based on sound land-use planning considerations, are recorded in the Minutes of the meeting. Where an application is refused contrary to officer recommendation to approve, the reasons cited will form the basis of the Council's defence of its decision in the event of an appeal (see Appeals section below).

Planning permission is normally subject to conditions and occasionally to obligations secured via a legal agreement. Such legal agreements are usually known as Section 106 Agreements. Case law has established that **planning conditions** must pass 6 tests (if they do not they are unlawful):

i. Necessary;
ii. Relevant to planning;
iii. Relevant to the development to be permitted;
iv. Enforceable;
v. Precise; and
vi. Reasonable in all other respects.

Similar tests apply to **Section 106 Agreements**:

Section 106 Agreements must be governed by the fundamental principle that planning permission may not be bought or sold. It is therefore not legitimate for unacceptable development to be permitted because of benefits or inducements offered by a developer which are not necessary to make the development acceptable in planning terms.

Similarly, they should never be used purely as a means of securing for the local community a share in the profits of development.

Conditions and refusals of planning permission can be appealed against by the applicant. As such it is very important that decisions to refuse or impose conditions are made for sound planning reasons and linked to Policy. If they are not it can result in appeals that can use a lot of resources to defend and can even lead to an award of costs against the Council if it is found that the Council has acted unreasonably. Appeals are discussed below. Applications can also be made to modify Section 106 Agreements and there is an associated appeal process.

In line with Government guidance, the Council uses 'standard conditions'.

Scheme of Delegation

Like all LPAs the NBC delegates the determination of certain planning applications to officers rather than the Planning Committee. In summary, under the Council's adopted scheme of delegation, all applications are delegated to officers with some key exceptions (e.g. where a Borough Councillor requests determination of an application by the Planning Committee). The scheme of delegation is currently under review. Full details are set out in the Constitution.

Under the scheme of delegation the case officer prepares a report in a similar way to a Committee report. The report sets out the key facts and considerations material to determining the application (including all representations) with a recommendation based on these considerations. The file is then passed to the Development Manager or Development Management Team Leader who will consider the report and determine the application.

Heritage and Trees

The National Planning Policy Framework identifies both designated and non-designated heritage assets. A designated heritage asset includes Listed Buildings, Conservation Areas, Registered Battlefields, Scheduled Monuments amongst others. A non-designated heritage asset includes a building, monument, site, place, area or landscape which has been identified as having a degree of significance meriting consideration in planning decisions.

The power to designate **Conservation Areas** was introduced in by the Civic Amenities Act 1967 and then the Planning (Listed Buildings and Conservation Areas) Act 1990. The Borough has 21 designated conservation areas. In defining conservation areas the Planning (Listed Buildings and Conservation Areas) Act 1990 states that they are areas of special architectural, or historic interest, the character and appearance of which it is desirable to preserve or enhance. In exercising their planning duties LPAs are required to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.

Article 4 Directions can be used to protect particular character or features which make a positive contribution to the character of a conservation area. Currently, six designated conservation areas are supported by an Article 4 Direction.

Most conservation areas have an up to date Conservation Area Appraisal and Management Plan which identifies the character or the area. These documents have been subject to public consultation, adopted by the Council and are a material consideration in decision making.

Listed Buildings must, in order to be listed, be structures (i.e. not necessarily buildings as such for example gates, railings, walls signs etc) that are of *special architectural or historic interest.* They enjoy statutory protection in that any demolition, alteration (including internal alterations) or extension, which would affect their character, requires listed building consent under the 1990 Act. Once listed, protection is also afforded to any object or structure fixed to the building or a structure which forms part of the land and has done so since before 1 July 1948 – referred to as curtilage e.g. detached barn, boundary wall. It is a criminal offence to undertake unauthorised alterations to a Listed Building without first obtaining consent. The Borough has some 500 listed buildings. The Borough Council cannot list a building; it is the role of Historic England to identify and protect historic places through the national designation system. Anyone can make an application to Historic England for an asset to be included on the national list.

Non-designated heritage assets (local List) – the Council has an adopted Local List of buildings for the central area and a list of candidates for the remainder of the Borough. These assets do not benefit from statutory protection but are a material consideration when determining applications. The Council is proposing to review the existing lists and bring forward a comprehensive list of buildings of historic importance.

Anyone proposing to cut down or carry out work on **trees in a conservation area** is required to give the LPA six weeks' prior notice (a 'section 211 notice'). The purpose of this requirement is to give the LPA an opportunity to consider whether a Tree Preservation Order (TPO) should be made in respect of the tree. There are some exemptions to this rule including for work carried out by, or on behalf of, the Borough Council and for work on a tree with a diameter not exceeding 75mm (or 100mm if cutting down trees to improve the growth of other trees, i.e. thinning operations). The LPA cannot refuse consent. Nor can it grant consent subject to conditions (such as a condition requiring the planting of a replacement tree). It must deal with a section 211 notice in one of three ways:

(1) Make a TPO if justified in the interests of amenity. The proposed works to the tree would then have to be the subject of a formal application under the TPO;
(2) Decide not to make a TPO and allow the six week period to expire, at which point the proposed work may go ahead as long as it is carried out within two years from the date of the notice, or
(3) Decide not to make a TPO and inform the applicant that the work can go ahead.

TPOs can also be made by the LPA in respect of trees or woodlands outside conservation area. The principal effect of a TPO is to prohibit the:

(1) Cutting down,
(2) Uprooting,
(3) Topping,
(4) Lopping,
(5) Wilful damage, or
(6) Wilful destruction of trees without the LPAs consent.

TPOs cannot be applied to bushes or shrubs, although in the Secretary of State's view a TPO may be made to protect trees in hedges or an old hedge which has become a line of trees of a reasonable height and is not subject to hedgerow management.

LPAs may make a TPO if it appears to them to be: *'expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area'.* The legislation does not define 'amenity', nor does it prescribe the circumstances in which it is in the interests of amenity to make a TPO. In the Secretary of State's view, TPOs should be used to protect selected trees and woodlands if their removal would have a significant impact on the local environment and its enjoyment by the public. LPAs should be able to show that a reasonable degree of public benefit would accrue before TPOs are made or confirmed. The trees, or at least part of them, should therefore normally be visible from a public place, such as a road or footpath, although, exceptionally, the inclusion of other trees may be justified. The benefit may be present or future; trees may be worthy of preservation for their intrinsic beauty or for their contribution to the landscape or because they serve to screen an eyesore or future development; the value of trees may be enhanced by their scarcity; and the value of a group of trees or woodland may be collective only. Other factors, such as importance as a wildlife habitat, may be taken into account which alone would not be sufficient to warrant a TPO. In the Secretary of State's view, it would be inappropriate to make a TPO in respect of a tree which is dead, dying or dangerous.

For more information on tree protection in planning you may wish to refer to the following documents:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/244528/2127793.pdf

http://planningguidance.planningportal.gov.uk/blog/guidance/tree-preservation-orders/

Appeals

If a planning application is refused permission the applicant can appeal against the decision. Appeals must be made within a prescribed period from the decision date:

- 12 weeks in the case of householder development (e.g. house extensions and buildings in domestic gardens); and
- 6 months in the case of all other appeals

As explained in the Planning Applications section above, third parties cannot appeal.

Similar appeals can be made by the applicant against conditions imposed on a permission and also against non-determination of an application if the Council fails to determine the application within the statutory period (i.e. 8 or 13 weeks as per the performance table above).

Appeals are generally dealt with by the Planning Inspectorate on behalf of the Secretary of State.

There are three appeal processes that the appellant can choose to follow:

- *Written representations* – where the parties submit a written statement to support their case

- *Hearing* – a public meeting led by a Planning Inspector to discuss the case followed by a site visit. Normally held over only 1 day.
- *Public Inquiry* – a court-like process chaired by the Inspector where witnesses are called to give evidence and to be cross-examined. Inquires can run for as little as 1 day and up to several weeks in length.

The Borough Council officers' role is to lead on all appeals and they will normally give evidence at Hearings and Inquires regardless of whether the decision was a Committee overturn of the Officer's recommendation. Hearings and Inquiries are held in the Borough and normally at the Council Offices.

Councillors are notified of all appeals within their Ward.

Enforcement

The planning enforcement service operates within the legislative framework of the Town and Country Planning Act 1990 (as amended) and all its subordinate and associated legislation. Any planning enforcement action taken by the Council must be led by the policies of the Development Plan (see above). In addition to the Development Plan and any other material considerations, enforcement action is also guided by the advice and procedures contained in the National Planning Policy Framework and the Human Rights Act 1998. The Council has an adopted Planning Enforcement Protocol document also known as a Local Enforcement Plan as they are encouraged to do by Central Government. This is intended to assist the Council in undertaking its planning enforcement work, and inform all parties of the processes and procedures involved. A copy of the Protocol can be supplied and provided on request to the Development Manager.

The primary objectives of the planning enforcement function are to remedy harm to public amenity resulting from unauthorised development, and to control it, making sure the integrity of the planning system is not undermined. In striving to achieve these objectives, the Borough Council will not take disproportionate action and will not seek to "punish" those responsible for breaches by taking action against breaches that cause no serious harm to public amenity. It is important to note that the Borough Council does not condone breaches of planning control; planning permission (including listed building, conservation area and advertisement consent as well as applications to carry out works to trees) should always be sought prior to undertaking any form of development that requires express consent (planning permission). When it is expedient and necessary to take formal and proportionate action against unauthorised development, the Council will do so. Nonetheless the process presents us with a number of challenges and these are discussed below.

The Borough Council can take enforcement action when development has taken place either without planning permission or in breach of a condition attached to a planning permission. Enforcement action can only be taken in the first 4 years after a breach of control in the case of building/engineering operations or conversions to a dwelling. The time period is 10 years in the case of a change of use (other than to a dwelling) or not complying with a planning condition. In practice, it can often be very difficult to determine the true start date of a breach of control. The 4 and 10 years rules do not apply to alterations to Listed Buildings.

The main types of planning enforcement controls / tools are:
- **Enforcement Notice** – slow to take effect, and with long delays for appeals;

- **Breach of Condition Notice** – no right of appeal but the fines are very low (£1,000 max);
- **Stop Notice** – quick and effective, but only usable in limited circumstances. Heavy compensation to pay if the Council gets the details wrong;
- **Temporary Stop Notice** - a quick, effective but only temporary version of the Stop Notice;
- **Section 215 Notice** - an effective means of resolving untidy land;
- **Planning Contravention Notice** - a means of securing information and evidence in the investigation of an enforcement case; and
- **Injunctions** – a possible solution where all else fails. An expensive solution and only granted by the Court if all other avenues have been explored.

None is ideal and Northampton, like most authorities, tries to negotiate compromises wherever possible.

There are also other planning enforcement powers existing under related legislation involving Listed Buildings, Advertisements, and Tree Protection for example.

The enforcement process is extremely complex, both in terms of the law and in terms of procedures. There are many opportunities for making mistakes, which take time to rectify. In addition, there are greater controls over surveillance and investigation following the Human Rights Act, PACE (Police and Criminal Evidence Act) and RIPA (Regulation of Investigation Powers Act).

After an Enforcement Notice is served, it generally takes 28 days for it to take effect and then a further prescribed period for compliance. These periods combined tend to be at least 2 months in total. The Notice is suspended if a retrospective planning application is made (perhaps another 2 or 3 months). The applicant then has a right of appeal (perhaps another 6 months). If the appeal is dismissed, only then does the Enforcement Notice come back into play – roughly a year after it was first served. In addition to this there is likely to have been several months of investigation and negotiation before the Enforcement Notice was served.

In the event that the Enforcement Notice is not complied with, the matter goes to the Magistrates Court where the judicial process adds further time. From start to finish, and with matters going well, 12 months would the very minimum time span that could be reasonably expected. Due to the lengthy time spans associated with formal enforcement action, there is generally a great incentive for Enforcement Officers to try to negotiate appropriate remedial action.

A LPA is not bound to take any enforcement action at all. It is a discretionary power not a duty. However, failure to investigate an enforcement complaint could lead to an Ombudsman complaint about maladministration and risk potential compensation. Where it appears that planning permission might be granted for some unauthorised activity (perhaps with conditions), then the proper course of action is to ask for a retrospective application in order to regularise matters. A retrospective application is often the successful outcome of enforcement action. Occasionally when it is not expedient to do so, the Council may decide not to take any formal action even though there has been a breach of planning control and no retrospective application submitted (e.g. it is something that would have been granted planning permission and there are no controls the Council would have put in place via condition, such as a fence).

Parliament has decided that in law, the carrying out of unauthorised works or changes of use should not initially constitute a criminal offence. It only becomes an offence if the person fails to comply with a valid Enforcement Notice. The unauthorised activity can continue until the Enforcement Notice is validated, after retrospective planning applications and / or appeals have been heard. This does not apply to the unlawful display of advertisements, works to protected trees or works to listed buildings.

Enforcement action must be based on evidence that is clear and unambiguous to the LPA because it is likely to be tested at appeal and potentially in the Magistrates Courts. It is not possible to rely on complainant's unsubstantiated allegations or assertions. However, complainants can be extremely helpful by providing background information, diaries of activity, photographs and so on.

It is possible to 'under-enforce' (i.e. not require a full return to the original situation). Government advises that 100% compliance should not be sought if it would be unduly oppressive on the perpetrator to do so. It is necessary to consider whether the environmental gain for a complainant would warrant the additional pain to the perpetrator. This means that the test when considering an enforcement matter or a retrospective application is not the same as when considering a normal planning application made before works start. For instance, a normal application for a domestic extension might be refused if it extended too far into the back garden. However, in the case of a retrospective application, the LPA would have to consider whether the benefits of demolishing part of the extension would outweigh the potentially huge financial costs to the perpetrator.

Magistrates Courts do not see many planning cases and are often not experienced in dealing with them. There is a tendency for them not to see planning breaches as serious compared with the normal criminal matters they deal with. Sometimes, there can also be sympathy with the alleged perpetrator. Although fines of £20,000 can be imposed, in practice they are often very low and do not reflect what in some instances may be a profitable breach of control.

Suspected breaches of planning control can be reported to the Council's Enforcement Team. Planning Enforcement Officers can also provide general advice on any aspect of planning enforcement activities.

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APPENDIX A – USEFUL WEBSITES AND PUBLICATIONS

On the planning system generally:

www.planningportal.co.uk

http://www.rtpi.org.uk/planning-aid/

On getting planning permission:

www.northampton.gov.uk

follow the link to planning online. Applications can also be submitted online via the NBC website or the planning portal.

www.planningportal.co.uk

Viewing the Development Plan

www.northampton.gov.uk

General source of resources

www.planningportal.co.uk

On appealing against a planning decision:

The Planning Inspectorate has various publications available. The status of a planning appeal and copies of appeal decisions can also be searched at the Inspectorate's website:

www.gov.uk/appeal-planning-inspectorate

On commenting on planning applications

www.northampton.gov.uk

People can view and comment on planning applications via the Council's website

www.northampton.gov.uk

On Member engagement in Planning Matters

The Local Government Association

www.local.gov.uk

Planning and Advisory Service

www.pas.gov.uk

On other matters

All Government Publications (eg Circulars) www.opsi.gov.uk

APPENDIX B – SUMMARY OF USE CLASSES & RELATED PERMITTED DEVELOPMENT RIGHTS

Use Classes	Description	General Permitted Development Order
A1 Shops	Shops, retail warehouses, sandwich bars, hairdressers, undertakers, travel and ticket agencies, post offices, dry cleaners, showrooms, domestic hire shops, funeral directors, internet cafés etc.	**A2**, or up to 150m2 **A3** subject to Prior Approval, or up to 200m2 **D2** subject to Prior Approval and only if the premises was in A1 use on 5th December 2013. A **mixed use** comprising an A1 or A2 use and up to 2 flats may also be permitted subject to meeting certain conditions. **C3** if the cumulative floorspace of the building is under 150m2 and subject to Prior Approval.
A2 Financial and Professional Services	Banks, building societies, estate and employment agencies, professional and financial Services	**A1**, or up to 150m2 **A3** subject to Prior Approval, or up to 200m2 **D2** subject to Prior Approval and only if the premises was in A2 use on 5th December 2013. A **mixed use** comprising an A1 or A2 use and up to 2 flats may also be permitted subject to meeting certain conditions. **C3** if the cumulative floorspace of the building is under 150m2 and subject to Prior Approval.
A3 Restaurants and cafés	Restaurants, snack bars, cafés	Permitted change to A1 or A2
A4 Drinking Establishments	Public house, wine-bar or other drinking establishment	Permitted change to A1, A2 or A3
A5 Hot Food Takeaways	The sale of hot food for consumption off the premises	Permitted change to A1, A2 or A3
Sui Generis	Shops selling and/or displaying motor vehicles, retail warehouse clubs, launderettes, taxi or vehicle hire businesses, petrol filling stations	
Sui Generis	Betting offices and pay day loan shops	**A1** or **A2. C3** if the cumulative floorspace of the building is under 150m2 and subject to Prior Approval. A **mixed use** comprising a betting office or a pay day loan shop, or an A1 or A2 use and up to 2 flats may also be permitted subject to meeting certain conditions.

Sui Generis	Casinos and amusement arcades/centres	**D2**, or only if existing building is under 150m2 **A3** or subject to Prior Approval. **C3** if the cumulative floorspace of the building is under 150m2 and subject to Prior Approval.
B1 Business	B1(a) Offices, not within A2 B1(b) Research and development, studios, laboratories, high technology B1(c) Light Industry	Permitted change to B8 where no more than 500m²
B2 General Industry	General Industry	Permitted change to B1 or B8. B8 limited to no more than 500m²
B8 Storage or Distribution	Wholesale warehouses and distribution centres	Permitted change to B1 where no more than 500m²
C1 Hotels	Hotels, boarding and guest houses	
C2 Residential Institutions	Residential schools and colleges Hospitals and convalescent/nursing homes, communal housing of elderly and handicapped people.	
C3 Dwelling Houses	Dwellings, small businesses at home. (Does not include households consisting of more than six residents not in a family or households where care is provided for the residents).	Permitted change to C4 (not in Article 4 area)
C4 House in Multiple Occupation	Shared occupation houses where the owner is not an occupant and with 3 to 6 occupants including shared student houses and bed-sits	Permitted change to C3
Sui Generis	Hostel	
D1 Non-residential Institutions	Places of worship, Church Halls Clinics, health centres, crèches, day nurseries, consulting rooms Museums, public halls, libraries, art galleries, exhibition halls Non - residential education and training centres	
D2 Assembly and Leisure	Cinemas, music and concert halls Dance, Sports halls, Swimming baths, skating rinks, gymnasiums Other indoor and outdoor sports and leisure uses, bingo halls	