



How to Handle Planning Applications (including Planning Obligations)

A guide for parish
and town councils



October 2017

Welcome

“ Locally-elected people know the local issues; anything that parish councils can do to help Daventry District Council make the best possible planning decisions has to be a good thing for our communities. I hope this booklet provides informative and useful advice for parishes considering these issues in their local areas. ”

Councillor Steve Osborne
Planning Committee Chairman
Daventry District Council

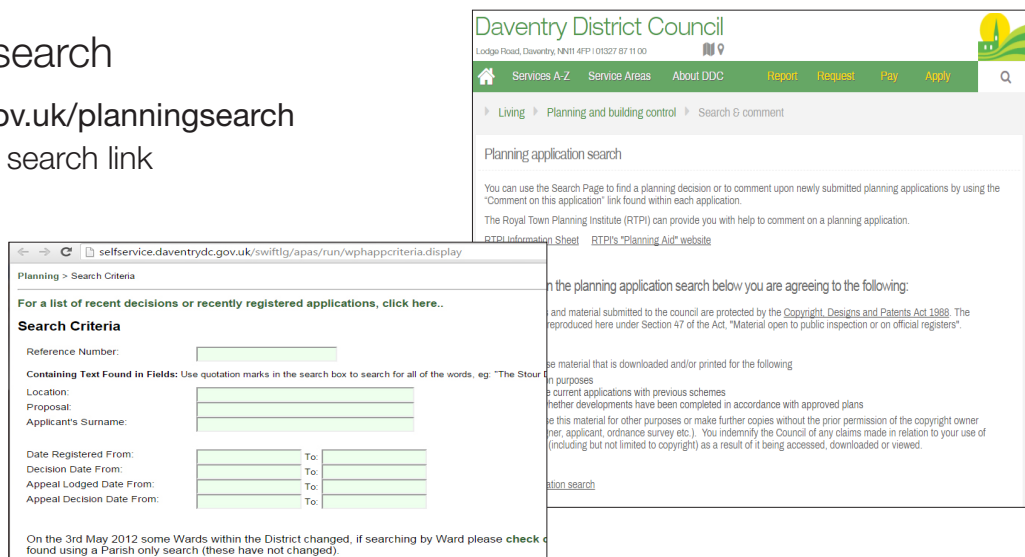
Getting started

All live planning applications are accessible via Daventry District Council's website www.daventrydc.gov.uk. If you know the application number, you can find it by typing it into the website search bar.

Using the planning search

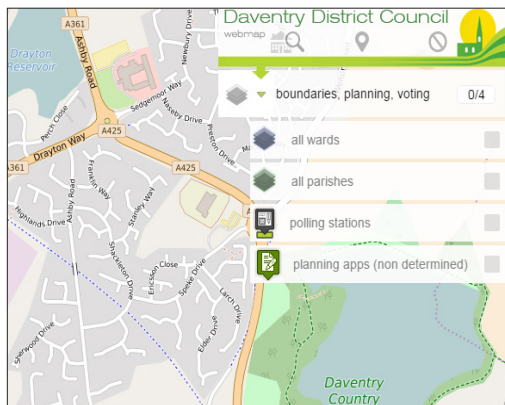
Go to www.daventrydc.gov.uk/planningsearch

Then click on the planning search link and search using the planning application's reference number or other information.



View applications on a web map

You can also easily view all undetermined planning applications in the area using our mapping tool:



- Visit: <http://mapping.daventrydc.gov.uk>
- Tick 'I agree'
- Select 'exit search'
- Select 'boundaries, planning, voting' from the drop down menu (6th of 7 options)
- Select 'planning apps non determined'
- Move around the map using your mouse, zoom in and out
- Click on any link to see the summary/description. Then click on the link to the planning portal if you want to see more information.



What is Planning trying to do?

Planning may be defined as the management of change.

In simple terms, planning seeks to balance the desire of individual property owners and developers to carry out development within the desire of the community at large for a good environment. As we know, these two desires are not always compatible.

Anyone can make a planning application on any land – you do not have to be the owner, but you do have to legally notify the owner. Their consent is not a pre-requisite, but any ownership rights override any planning permissions. Planning permissions granted normally go with the land, so can be sold on. Ownership of land is not usually a material planning consideration when determining a planning application – more of which later.

The system is plan-led whereby there is a Development Plan that sets out generally what is going to happen and where – this currently comprises the West Northamptonshire Joint Core Strategy and saved policies of the Daventry District Local Plan 1997 and, more recently, other documents such as Neighbourhood Plans. In due course it will include the Settlement and Countryside Local Plan and the Gypsies, Travellers and Travelling Showpeople Local Plan. When considering planning applications, legislation requires us to make decisions in accordance with the Development Plan where relevant, unless other material planning considerations indicate otherwise.

By their nature, development plans take some years to prepare, adopt and review; sometimes they can be out of step with the latest issues or Government thinking. This can lead to difficulties when applications are received that are outside the parameters set out in the Development Plan. These tend to be controversial as many are out of the blue and not necessarily in accordance with the wishes of local people. This has been a national phenomenon and has had an impact on Daventry District.

Neighbourhood Development Plans

One of the ways for local people to influence what happens in their area is through a Neighbourhood Plan, which once adopted has to be given weight. It also means the parish council's portion of Community Infrastructure Levy (CIL) increases from 15% to 25%. Your CIL can be spent on any projects in the parish. Recent Government changes mean that the Neighbourhood Plan development and approval process is to be speeded up. As a Neighbourhood Plan progresses towards adoption, the further it is in the process, the more weight it can be afforded.

What does the District Council as Local Planning Authority have to do?

When planning applications are received, the Council has to carry out various notifications and consultations.

Parish and town councils are statutory consultees and adjoining land owners must also be notified. Views from the people who respond must be taken into account before a decision is made, but that does not necessarily mean the decision will be in accordance with their wishes as that is only one consideration – as will be shown.





Applications must be determined within a period of time set out in legislation or other timescale as may be agreed with the applicant. It is essential that your responses are made within the time given in the notification letter. The Council is performance managed on how it complies with these criteria and there are penalties for poor performance. This means that extensions of time for responses are rarely given.

So what are Material Considerations?

There is no specific definition of material considerations, but they need to be relevant to planning and there are some things which cannot be taken into account. These are examples of the main things that should be taken into account:

- Government advice and policy, e.g. the National Planning Policy Framework (NPPF) actually states (para 2) that the NPPF must be taken into account in the preparation of local and neighbourhood plans, and is a material consideration in planning decisions.
- Ministerial statements – e.g. on the minimum number of houses where an affordable housing requirement can be applied.
- Emerging Local Development Plan – e.g. Neighbourhood Plan.
- Previous decisions history. Is there a fall-back position? Has planning permission been granted before? Has anything changed since?
- National Planning Policy Guidance – this is online only, so kept up to date, and can change daily to reflect latest Government policy and advice. Also gives a good general guide to planning that can be understood by the layman. Also has links to the relevant sections of the NPPF. Planning obligations - often referred to as Section 106 - see separate section below.
- Supplementary Planning Documents – can be area or topic based, eg Village Design Statements.
- Housing documents, eg housing needs surveys, Five Year Housing Land Supply.
- Agricultural Buildings Guidelines
- Designing House Extensions Guidelines - 45 and 60 degree lines guideline distances between buildings/windows.

All of the above documents are available online. Other planning issues including, very occasionally, personal issues may also be material considerations. All these matters must be weighed in the planning balance and it is for the decision-maker to decide what weight to give them.



Remember – decisions should be made in accordance with the Development Plan unless material considerations indicate otherwise. Parish councils are advised to consider their responses to planning applications using the same basic approach, supplemented with local evidence and information.

What is sustainable development?

The NPPF has a presumption in favour of sustainable development as the golden thread running through it and that has to be considered.

The NPPF says it is based on a mix of these three elements:

- An economic role
- A social role
- An environmental role .



Development Plans have a long preparation time. In this dynamic world the policies in them may be absent, silent or out of date on a pressing issue. In such cases the NPPF (para14) says planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits assessed against the policies as a whole in the NPPF itself.

An often controversial example of where the Government consider local policy to be out of date is where a Council does not have a 5 year housing land supply. The Government is intent on increasing the supply of homes, and the courts have decided this is a fundamental issue in deciding whether our policies can be considered up to date, and therefore how much weight they can be given in dealing with planning applications. Where there is a 5-year housing land supply, policies should be afforded full weight.

For Daventry rural area the main policies to be looked at are WNJCS SA, S1, S2, S3, R1, H1, H2, H3 plus the saved 1997 Local Plan Policies. Other policies may apply to particular circumstances and you are advised to refer to the various policy documents as a whole.

So what can you expect to see in an application?

Outline Applications

- Usually just a red line on a plan literally 'outlining' the site
- Basic information – use, amount of development, indicative layout, scale, design and access
- No details, just establishing the principle. BUT once approved, the principle cannot be revisited later. Planning obligations are usually considered at this stage.



Reserved Matters

- Relate to an outline planning permission
- Details of layout, scale, appearance, access and landscaping.

Full Applications

- Full details of exactly what is proposed – siting, scale, design and appearance, design, plans, elevations, parking details, etc.

So what should you consider?

Having regard to the provisions of the Development Plan and other material considerations:

Proposed development in a village or the town:

- What is the impact on the surroundings?
- Would infill in a street frontage destroy a visually important open space?
- Is the site large enough?
- Would important trees be affected?
- Would it affect the amenity of neighbours?
- Is there overlooking, loss of privacy?
- Overbearing appearance?
- Excessive noise, increased activities?
- Is access an issue?
- Adequate parking or not?
- Is the proposed design in scale with nearby development?
- Is it in keeping with the local style of building or is it justifiably different?
- Are the materials characteristic of the local area?
- Are proposed extensions in scale with the original building?
- If it is a Listed Building or Conservation Area, are the proposals in keeping with the original character?

Development in open countryside

- Is the development for a use related to the open countryside?
- If it is for a new farm dwelling, is it actually needed?
- If it is needed, is this the best site?
- What impact will it have on the landscape?
- Would it be better located in or next to the village?

Please be aware that our open countryside is not the same as Green Belt, which is usually designated around large cities and conurbations and afforded additional protection from development. There is no Green Belt in Daventry District.



So what should you consider? (continued)

Affordable housing

- Is there a local need for the proposed housing?
- Do you support the application in principle?
- Are they the right type and number of houses to meet the need?
- Is the site suitable in any event?

Fincancial Considerations and Planning Obligations

In all cases you can also have regard to what is being offered by way of a planning obligation - does what is being offered mitigate the impact of the proposed development - if it does it is unlikely to be a reason to object to a proposal on certain grounds

Generally...

- Are your objections PLANNING objections?
- Are objections sufficient to justify refusal?
- Could conditions be put on a permission to overcome your concerns?
- Could the proposal be amended to overcome your objections?
- Is your support based on proper planning matters?
- Be objective.

Importantly, the following are NOT normally planning considerations:

- Devaluation of property
- Loss of a view
- Breach of a restrictive covenant
- Loss of business (from competition etc)
- Disturbance caused by construction (unless exceptional)
- Moral reasons

We would like clear, written responses:

- “No observations”
- “Support” – giving reasons
- “Object” – giving reasons
- “Observations” – detailed comments

Finally...

In case your views don't win the day ultimately, please indicate what conditions/reasons should be attached to any permission/refusal. This is acknowledged as being 'without prejudice' to your basic position. You can also indicate what might have been reasonably included in a S106 agreement to mitigate the impact of the proposed development.





Speaking at committee

Most applications will be dealt with under delegated powers, but some will go to a meeting of the planning committee for consideration. Where this happens, parish and town councils are guaranteed a speaking slot at the committee meeting (by registering to speak). All full and outline applications requiring a S106 agreement are considered by planning committee.

Rules and tips:

- Time limit three minutes
- Stick to salient points and planning issues
- Use visual aids if it helps
- Don't rely on anecdote more than local knowledge and evidence.

Site visits

Officers always visit each site and take photos for Committee. With these photos and the availability of Google Earth aerial photos and satellite images, it is not very often that Members will consider it necessary to make a site visit. Where they do, only Members and Officers attend and there is no opportunity for representations to be made on site. All representations should be in writing and, if desired, by way of the three-minute speaking slot at the Committee meeting on the night.

Decisions

Applications are approved subject to conditions, and possibly planning obligations, or refused. Conditions and/or planning obligations can be used to make an otherwise unacceptable development acceptable. For conditions to be properly imposed, they must pass six tests set nationally:

- Necessary
- Relevant to planning
- Related to the development to be permitted
- Precise
- Enforceable
- Reasonable in all other respects.

Conditions cannot deal with a situation where a financial contribution is required for something that is needed to mitigate the impact of the development.



Planning Obligations - often known as Section 106

National Planning Practice Guidance sets out that planning obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms. The National Planning Policy Framework requires local planning authorities to consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations.

Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. Planning obligations are also used where a financial contribution is required towards infrastructure to offset the impact of the development.

Daventry is now a Community Infrastructure Levy (CIL) Authority, which means that a levy is placed on each relevant proposal to raise money towards community infrastructure projects, which can be District-wide. This levy has replaced some of the infrastructure funding that was done through S106 agreements. The Council's CIL Regulation 123 list and budget information, available on the website, set out the infrastructure to be funded from CIL. Parish Councils are entitled to 15% of the CIL to be spent on projects in their parish. This proportion rises to 25% when an adopted neighbourhood plan is in place at the time that the application is first determined.

Some local requirements can still be met through S106 agreements. S106 agreements are legally binding on the landowner. They can require them to provide money for infrastructure needed as a result of their proposed development. They cannot be used to deal with problems that existed before and are not as a result of the development. The agreements are put on the land as a charge and can be enforced through the courts. Planning obligations are briefly described in committee reports. Planning decisions are not issued until after S106 agreements are in place.

What can you ask for?

Under the Community Infrastructure Levy Regulations 2010, a planning obligation that can be taken into account in planning decisions must be:

- Necessary to make the development acceptable in planning terms
- Directly related to the development; and
- Fairly and reasonably related in scale and kind to the development.

You need to bear this in mind when making responses to us.

Planning obligations will typically be used rather than conditions where:

- The complexity of the matter requires it
- Financial contributions are needed rather than direct works (particularly where more than one development needs to contribute towards infrastructure)
- The developer requires certainty by binding the local planning authority to undertake a particular course of action.



What can be included in a planning obligation?

Examples:

- Affordable Housing
- Financial contributions towards infrastructure like schools
- Public open Space (ownership and maintenance).

Planning obligations are usually used in connection with the grant of planning permission, although can be entered into independently of a planning application. They can be a material consideration in the determination of planning applications.

Please also see the DDC Infrastructure and Developer Contributions Supplementary Planning Document 2013 on the website (see Page 11 for details) where the Council's preference for local democratic control of local open spaces is set out.

The process and the role of town and parish councils

You are asked as parish councils to make comments on Planning Applications.

There are times that you do not support or indeed oppose such applications, but nevertheless they may be approved. This can be the decision of the District Council or be allowed on appeal without any benefit to the Parish.

Remember, parishes are able to make, without prejudice, comments on Planning Applications that they do or do not support, so that if approved their Parish benefits from conditions or developer obligations to mitigate the impact of the development. This would normally apply to the larger applications but there's no reason why parishes shouldn't comment on mitigation measures for any application. The same applies if the proposal is refused and the applicant appeals, because at appeal hearings and inquiries inspectors lead discussions on both conditions and S106 proposals. When you know your parish is going to have to deal with the impact of forthcoming major development, the parish council may wish to consider precepting and contingencies.

Appeals

Appeals can be against refusal of planning permission or conditions or refusal to vary or remove certain conditions. Only applicants can appeal. Aggrieved third parties cannot appeal. Appeals are made to the Planning Inspectorate, a national agency.

There are three methods:

- Written representations
- Hearing (informal)
- Public Inquiry (formal)

The Council will always submit parishes' original comments, but you do have the opportunity to make further representations in writing or at a hearing or inquiry. Occasionally, a Parish Council may seek what is called Rule 6 status – which gives them equal standing with the Council and the Appellant in terms of the right to be heard, but they might wish to arrange legal representation and professional witnesses to put their points.





Tell us about your concerns

Did you know that you can assist in ensuring that development is carried out in accordance with the planning permission?

It is not practical or cost-effective to inspect every development, nor is it possible to do so, because we are not always made aware that work has started or that a change of use has taken place. If you think planning permission is not being complied with please contact Development Control as soon as possible:

Email us at plancare@daventrydc.gov.uk

Telephone us on 01327 871100.

Useful links and information

Lots of planning application information is available via the website. In future, as our systems are updated and improved, full records will be available via the website. If you can't find what you need online, more detailed information is available on request.

- Planning portal - www.planningportal.co.uk
- NPPF - <https://www.gov.uk/government/collections/planning-practice-guidance>
- NPPG - <https://www.gov.uk/government/collections/planning-practice-guidance>
- Planning Inspectorate PINS - www.gov.uk/government/organisations/planning-inspectorate
- DDC CIL Guide for parishes - www.daventrydc.gov.uk/planning-policy





This guidance has been produced by The Development Control Service, Daventry District Council, Lodge Road, Daventry, NN11 4FP. Tel: 01327 871100 email plancare@daventrydc.gov.uk