

taken place but there is no harm to the public interest, then it is not appropriate to take action.

It is therefore quite possible for the "untidy" situation to arise where development is neither authorised, nor the subject of enforcement.

The final point is that the large majority of breaches of control are successfully dealt with informally through the cooperation of the owner or developer. It is as well to avoid creating a situation where an alleged "offender" will "take his bat home" and refuse to cooperate. However, where there is significant harm to living conditions, or a heritage asset, the Council will move swiftly to serve an Enforcement Notice and/or prosecution.

For more information see 'A Guide to Planning Enforcement' on the Council's website at: www.harrogate.gov.uk/harrogate-970 or request a hard copy to be sent to you by calling Planning Enquiries on (01423) 556666.

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PARISH COUNCILS & Planning Applications

a Handbook



revised
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1. Background

Parish Councils are keen that notice is taken of their representations about planning applications in their area, and that they receive enough information about them.

This handbook:

- sets out the role of Parish Councils in the development control process;
- shows how the Council's practice compares with legislative requirements;
- considers procedures for good communication with Parish Councils on planning applications.

This is a revised version of a handbook first produced in 1995. Copies have been sent to each Parish Council, the Yorkshire Rural Community Council and it is published on the Council's website at www.harrogate.gov.uk/planning

In this document the term "Parish Council" is used to include Town and City Councils for the sake of simplicity.

2. Role & status of Parish Councils

Parish Councils are sometimes under the impression that the District Council is obliged to consult with them in relation to planning applications. This is not true. Article 13 of The Town and Country Planning (General Development Procedure) Order 1995, which is the current law on the position requires the local planning authority to **inform** the Parish Council of applications.

Briefly the law is as follows:

That if so requested by a Parish Council the local planning authority must notify the Parish Council of any relevant planning application or any alteration to an application accepted by the authority. A relevant application is an application relating to land in the parish. The Parish Council must notify the local planning authority in writing of the descriptions of applications of which they wish to be notified. The local planning authority must then notify the Parish Council either by sending a copy of the application or indicating the nature and extent of the development. That notification should be in writing. They must also notify the

7. Enforcement

Parish Councils are notified of all new enforcement complaints with an initial report back within 28 days of "the next steps" or "no further action".

Carrying out development without planning permission is not a criminal or civil offence. In each case a judgement has to be made as to whether the unauthorised activity causes such harm that it is expedient to take action to deal with it.

In relation to development not in accordance with a planning permission the same judgement has to be made; there may be several ways in which a development could be carried out without harm, but only one of these has permission.

There is a limited range of circumstances where rapid effective action is possible. These include unauthorised works to listed buildings, protected trees (even then, the health and amenity value of the particular tree need to be considered) the removal of hedgerows in the countryside and the display of some types of advertisements. Without prior written consent any person responsible has committed a criminal offence.

In many cases the appropriate formal action is the service of an Enforcement Notice. This will state the alleged breach of control and set a reasonable period within which the breach is to be remedied. There is a right of appeal to the Secretary of State, in the same way as on refusal of or imposition of conditions on a planning permission. The considerations which come into play are similar and the timescale is similar to that for an appeal on a planning application, i.e. several months. Assuming that the independent inspector upholds the Notice there is still the possibility that it will not be complied with. This may then result in the need for a prosecution and again the timescales for action in the courts can be protracted.

The Council does not monitor all development but depends upon members of the public to report apparent breaches of control. Parish councils have a role to play here. It must be borne in mind that the object of the planning system is to protect the public interest and that if a breach of control has



of development are acceptable in principle and for other categories the applicant has to demonstrate why he should receive permission;

- The Council has in most cases only 8 weeks from the date of submission to determine the application (unless an extension of time is agreed) before the applicant gains a right of appeal;
- The applicant has a right of appeal to the Secretary of State if his application is refused or Conditions are imposed which s/he does not agree with;
- The Council cannot refuse an application unless it can put forward good reasons that could be supported at appeal. If it acts unreasonably (e.g. cannot support its case at appeal) then it may have to pay costs;
- If an objection can be overcome by imposing a condition, that is the appropriate course of action rather than refusal.

Although the Area Development Control Committees are made up of elected councillors, when they are determining applications they are acting in a quasi-judicial capacity: their decisions must be objective and made within the rules of the planning system. They can only take into account either opposition to, or support for, a proposal - however many people express that opposition or support - in so far as it is based on material planning considerations. It is the merits of the application in those terms, not the weight of public opinion, which leads to the decision.

6. Decisions contrary to Parish Council representations

Records indicate that only about 5% of decisions are made contrary to the Parish Council view. The Council operate a comprehensive system giving feedback on all applications notified to Parish Councils irrespective of whether comments were received from the Parish Council or the nature of the comments or the decision of the Borough Council.



Parish Council of alterations, either by sending a copy or informing the Council in writing of its general effect, unless the local planning authority consider the alteration trivial. (This is set out in Schedule 1 paragraph 8 to the Town and Country Planning Act 1990 as amended).

The Parish Council must notify a local planning authority that has given them information on an application or alteration, that they propose to make representations about the manner in which it should be decided. They are obliged to make such representations to the local planning authority within 14 days of the notification to the Parish Council of the application.

The local planning authority must not determine any application in respect of which a Parish Council is required to be given information before the **first to occur** of:

- notification that no representations are to be made;
- receipt of representations;
- or the 14 day period.

The authority must take into account the representations received from the Parish Council.

The requirements in law therefore are for notification to the Parish Council and to take the representations into account. This is not quite the same as consultation which takes place with, for example, the county planning authority, the highway authority, Environment Agency, Secretary of State for the Environment, English Heritage and others. The process is not the same because the responsibilities of the Parish Council are not of the same type.

A local planning authority must take into account the representations of the Parish Councils. However, that does not mean that the local planning authority will necessarily decide an application as the Parish Council have indicated they feel it should be decided. This is for several reasons:

- i) the local planning authority is **only** entitled to take into account planning matters. The comments of Parish Councils are sometimes not on planning issues.



- ii) the local planning authority will receive advice from their professional officers on how the application should be dealt with. A Parish Council does not usually receive such professional advice.
- iii) the local planning authority must take into account the representations of others apart from the Parish Council, especially the observations of the consultees, both the statutory consultees and other officers of the district council as well as neighbours of the developments, the applicant, etc. The Parish Council does not have information on the content of these other representations.

Whilst the representations of the Parish Councils are important and appreciated they are not necessarily entitled to any more weight than any other representation and indeed will be given less weight than the observations of the statutory consultees. For example, a consultation response from the highways department of North Yorkshire County Council on an application may not have any adverse comment on the access proposed for a particular development onto a highway. The Parish Council may take the view that the access is dangerous. Members of the planning authority may question their officers about such a divergence of view, but the highway authority's view should normally prevail, because if there is an appeal the Council must be able to support the reasons for its decision.

This does not mean that the local planning authority do not take into account Parish Councils representations, but they have a more rounded picture **and** restrictions on the way in which they are entitled by law to deal with applications because they must not take into account other than planning matters.

3. Alterations to applications

It is not possible to re-notify the Parish Council of every amendment. Each time a re-notification is carried out the decision is put back by 2 to 3 weeks, and the authority only has 8 weeks, in most cases, to determine an application unless an extension of time is agreed by the applicant. Most amendments are made in response to representations from Parish Councils, neighbours and technical consultees and are minor in nature or represent a positive response to the comments made.

- Draft plans (the weight to be attached depends on how far they have progressed through the statutory stages)
- Government Planning Policy Guidance (PPG's)
- Government Circulars
- The Council's Supplementary Planning Guidance/Policy
- North Yorkshire County Council Parking Standards
- The environmental qualities of the surrounding area or the visual character of a street (this includes the scale, design and materials of buildings and the landscaping of a site);
- The amenity and privacy of dwellings
- The character of an area in other senses (in terms of noise or other forms of pollution);
- Road safety (both directly as in the case of a dangerous access or indirectly in terms of car parking and traffic generation);
- Public services, such as drainage;
- Public Proposals for using the same land.

If a Parish Council is unsure whether their comment is a planning matter it is better to include it - provided you are aware that it may not be possible to take it into account.

Not all Parish Councillors fully appreciate the relationship between the local planning authority and the applicant.

- It is the **applicant**, not the Council, that decides what proposal to submit; the Council then has to determine that application on its merits, whatever other form it would prefer the application to take;
- The applicant has a right to approval unless his application is contrary to the statutory plan or unless the Council can show that the proposal would cause demonstrable harm to interests of acknowledged importance. The exception is in areas designated as Green Belt (not to be confused with "green fields") where only very limited categories



- the fear that an objector's house or property might be devalued;
- the fact that the applicant does not own the land to which his application relates (this can be overcome by agreement with the owner);
- the fact that an objector is a tenant of land where development is proposed (the owner of the land can terminate the tenancy whether or not he carries out the development, and any consequences are therefore unrelated to the application);
- allegations that a proposal might affect private rights, e.g. restrictive covenants; property maintenance; ownership and private rights of way disputes; boundary disputes; (such considerations are legal matters on which objectors should consult their own solicitor or advisor since it will not be possible for officers of the Council to advise as to such rights)
- arguments of a personal kind relating to the circumstances of the applicant.

The Department of the Environment's Planning Policy Guidance Note No. 1 includes the following advice:

"The planning system does not exist to protect the private interests of one person against the activities of another...the material question is not whether owners and 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 which ought to be protected in the public interest".

"Applications for development should be allowed, having regard to the development plan, and all material considerations, unless the proposed development would cause demonstrable harm to interests of acknowledged importance".

Planning considerations are:

- The Development Plans -
North Yorkshire County Council Structure Plan
Harrogate District Local Plan
Other statutory plans

There is no authoritative definition of what is a "trivial" amendment and indeed it is not possible to be specific bearing in mind the different circumstances of each case. However, the Borough Council's guidelines for re-notification include two categories of "trivial" amendments:

a) Amendments which are of a minor nature and which are trivial in their effect on the nature of the development proposed and its effect on any third parties, except where minor details have been expressly requested by the Parish Council to remain unaltered.

These would include minor alterations in siting, design, fenestration, landscaping and materials.

b) Amendments which may be more substantial but which are regarded as "trivial" because they are put forward to overcome points raised in representations, and do not have any greater or different effect on third parties, and the case officer believes are highly unlikely to alter the view taken or opinion expressed by those notified of the original application.

Examples would include a re-siting or changes to windows to overcome objections raised by the Parish Council or a representor, even though this might otherwise be regarded as significant, provided it does not increase any adverse effect on neighbours or introduce new impacts of a different kind which the public have not been able to comment upon.

4. The form of Parish Council representations

If Parish Councils' representations are to carry weight they need firstly to be clearly expressed. Advice aimed at avoiding common difficulties is as follows:

- Do not send the views of individual Parish Councillors, either as a list of (possibly conflicting) points or as a clutch of separate letters. The Parish Council must form a corporate view.

Application procedures & Parish Councils

STAGE	LEGAL REQUIREMENT	HARROGATE BOROUGH COUNCIL PRACTICE
1. Receipt of application	Notify Parish Council of every planning application in its area [Article 13 of The Town and Country Planning (General Development Procedure) Order 1995]. Allow 14 days for response	Notify Parish Council of every application in its area by copying each application, (plans, forms, accompanying letters) to them. Allow 21 days for response.
2. Pre-decision alterations	Notify Parish Council of alterations unless they are "trivial"	Comply with legal requirement. (see p3 & 4).
3. Delegation of decision		Under the Council's Constitution, certain categories of applications are determined by officers. If there has been an objection from a Parish Council or a member of the public, and that objection has not been resolved by amend-ment of the application or by imposing a condition, the Chairman of the Area Development Control Committee must be consulted. If a Parish Council wishes an application to be determined not by an officer but by the Area Development Control Committee, it should ask its Borough Council representative to make representations on its behalf.
4. Determination	Take into account the Parish Council's representations. [Article 13 of The Town and Country Planning (General Development Procedure) Order 1995]	Parish Council's representations are taken into account when decisions are made by the Head of Planning Services and are set out in full in written reports to the Committee or reported verbally when received before the Committee meeting but not in time to be included in the written report. No weight can be afforded to representations which are not related to material considerations (see p6 & 7)
5. Post-determination	Send copy of Decision Notice to parish council. [Article 13 of The Town and Country Planning (General Development Procedure) Order 1995]	Send copy of Decision Notice to parish council. A coding system is used to inform the Parish Council of the reasons for the decision.
6. Post-determination amendments	Material change requires a fresh application. Parish Council to be notified on new application as item 1.	



- The response form now has four sections:
 - 1) Parish Council have no objections
 - 2) Parish Council object on the following planning grounds (space below for reasons)
 - 3) Parish Council do not object but wish to make the following comments or seek the following safeguards. (Planning officers will take the view that failure to provide the requested safeguards will mean that the Parish Council objects - provided it is a planning matter and is in the opinion of the case officer a safeguard which is reasonably related to the development.)
 - 4) Parish Council supports the submission.

5. What are planning considerations?

Representations on a planning application can only be taken into account if they relate to material planning considerations.

These do **not** include:

- the fact that development has already begun (people can carry out development at their own risk before getting permission and the Council has to judge the development on its own merits);
- the fact that an applicant has carried out unauthorised development in the past;
- "trade objections" from potential competitors;
- moral objections, for instance against betting shops, lottery kiosks or amusement arcades;
- the belief that an application is submitted by an owner with the intention of selling the property at an enhanced value;
- the loss of an attractive private view (for instance when development is proposed on the opposite side of the road to or at the rear of an objectors' house);