

SOUTHWARK LAW CENTRE – PLANNING VOICE

LEGAL GUIDE TO RESPONDING TO PLANNING APPLICATIONS, COMMUNITY CONSULTATION AND EQUALITIES CONSIDERATIONS

Please note this document provides a very basic summary. It does not constitute formal legal advice and should be relied on as such. To discuss in further detail, or to seek assistance with a particular case, please email Jed Holloway at the following address: jed.holloway@southwarklawcentre.org.uk.

The Planning Voice team needs to prioritise work in Southwark and has very limited capacity, but we're keen to assist communities with planning advice as far as we can.

Responding to a planning application

- When a council makes a decision on a planning application, it must do so “in accordance with the [development] plan unless material considerations indicate otherwise” (section 38(6) of the Planning and Compulsory Purchase Act 2004).

The development plan

- In London, the “development plan” means the [London Plan 2021](#), and the local plan for the borough in question (for example, the local plan for Southwark is the Southwark Plan 2022).
- You should review these plans and look out for any relevant policies that support your arguments.
- Note that a development does not need to comply with every piece of policy, and often policies might point to contradictory outcomes. The council will need to carry out a balancing exercise of all the policy and broader material considerations to reach a conclusion on whether to grant permission.

- As an objector, you can explain why you think a certain policy is particularly important in the context. Where a policy says a developer “must” do something, you can more strongly argue that it is essential to comply with it.

Material considerations

- There is no set definition as to what amounts to a ‘material consideration’ in the context of a planning application. It includes any planning-related matters that are relevant in the specific circumstances.
- This will include the [National Planning Policy Framework \(NPPF\)](#).
- It may also include things like visual amenity, the design/appearance, layout and density of the building, traffic generation, loss of trees, nature conservation, and loss of light / overshadowing, etc.
- However, more private concerns will generally not be material considerations, such as potential loss of property value or the loss of a view from your building.
- [*Note that recent legislation (the Levelling-up and Regeneration Act 2023) sets out two important potential changes: (1) introducing national development management policies and (2) changing the test so that decisions must be made in accordance with the development plan and national development management policies unless material considerations *strongly* indicate otherwise. These change would allow central government to have more control of planning decisions by publishing national development management policies. They would also reduce the weight of material considerations, in an attempt to build more certainty into the decision-making process. This change has not yet come into effect, and it’s not yet clear when it will come into effect.]

Consultation

Statements of community involvement

- Each council must prepare a ‘statement of community involvement’ setting out its policy in relation to community consultation (section 18 of the Planning and Compulsory Purchase Act 2004).
- However, the legislation does not set out any substantive requirements for community consultation in relation to a planning application. Therefore, the statement of community involvement might only set a very low standard of consultation.
 - You should review your council’s statement of community involvement and see what it requires.
- Where a statement of community involvement sets out clear and unambiguous commitments to follow a certain process, this can create a legally binding ‘legitimate expectation’¹. If a decision is made without meeting this legitimate expectation, you can argue it was unlawful.
 - Note, to date cases have only statements of community involvement that commit *the council* to follow a certain process. It is unclear whether a commitment requiring the *developer* to do something will also create a legitimate expectation – but in our view, they should.

Broader consultation requirements

- Once a planning application has been submitted, the council is required to undertake consultation of the general public – this is the period when anyone

can comment on an application on the council’s planning portal. This consultation needs to be at least 21 days for standard applications, and at least 30 days for EIA applications (see more info on EIA below).

- But note – even if you have missed the consultation period, your comment will often still be considered by the council, so you should still comment.
- There is no general legal standard of consultation that the developer must adhere to. However, it is considered “*best practice*” for the developer to engage with the council, the local community and other stakeholders prior to submitting an application. Developers will generally do some consultation pre-application, especially on larger schemes (it may also be required under the council’s statement of community involvement – see above).
- Some developments (generally larger developments) will be required to prepare an environmental impact assessment (EIA), and the EIA process might involve the developer having to produce its own statement of community involvement about the scheme, which will involve community consultation (confusingly, the term ‘statement of community involvement’ is used to refer to both this EIA document and the more general council document mentioned above – be clear on the difference!).
- There are general principles for good consultation known as the *Gunning* principles. Strictly, these only apply to public bodies, but you can argue that developers should adhere to these principles. The *Gunning* principles require that consultation is carried out:
 1. when proposals are still at a formative stage;
 2. with sufficient information to give the community ‘intelligent consideration’ (i.e. the information is detailed and clear);

¹ See the cases of *R (Majed) v London Borough of Camden* [2009] EWCA Civ 1029, *R (Kelly) v London Borough of Hounslow* [2010] EWHC 1256, and *R (Vieira) London Borough of Camden* [2012] EWHC 287 (Admin)

3. with adequate time for consideration and response; and
4. with 'conscientious consideration' given to consultation responses before a decision is made.

Equalities impacts

Public sector equality duty

- Councils are bound by the public sector equality duty (section 149 of the Equality Act 2010).
- The public sector equality duty requires public authorities (like councils) to:
 - eliminate discrimination;
 - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- As per the wording above, the duty relates to “*protected characteristics*”, so any claim must relate to the impact on those with a protected characteristic - these are defined as the following:
 - age;
 - disability;
 - gender reassignment;
 - pregnancy and maternity;
 - race;
 - religion or belief;
 - sex; and

- sexual orientation.
- The Equality and Human Rights Commission has prepared [technical guidance on the public sector equality duty](#), which sets out the commission’s view on the standards required to meet the duty. While this document is not legally binding, the guidance is informative.

Equalities impact assessments

- The public sector equality duty is usually satisfied through the production of an equalities impact assessment. This document is not strictly required under the public sector equality duty, but will invariably be the method taken in relation to a planning application.
- Even though the underlying duty applies to the council, often the council will require the developer to carry out the equalities impact assessment. To meet its duty, the council must review the developer’s assessment and ensure it is sufficient.
 - In our experience, committee members are sometimes confused as to whose duty it is to ensure the equalities impact assessment sufficiently meets the public sector equality duty. You should make it clear that council should not grant planning permission unless it is satisfied that the duty is met.
- Some councils have produced guidance on the standards they expect from an equalities impact assessment. You should review this guidance and ensure it is being properly applied to each planning decision.