RYA Planning Handbook

Guidance on facilities development for recreational boating in the UK

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1 Introduction

This Handbook on Facilities Development is designed to help staff or members of a coastal or inland waterside facility (the club) to identify the development and environmental consents needed for a particular type of development and provides guidance on: how to identify the necessary consents; how to structure the various applications and supporting information to optimise prospects; the planning process to be followed with timescales and costs.

Developments on or close to coastal and inland water are likely to require a number of statutory consents which are administered by a variety of consenting authorities. Establishing the required consents can be complex but a general guide is that planning permission is likely to be required for most kinds of development including: the provision of car parks, boat storage, pounds, roads, jetties, slipways, moorings, pontoons, fences, security lights, CCTV cameras and flagpoles. The location of the club and nature of the development proposed may also give rise to additional development consent requirements where for instance the site is located within a conservation area, designated ecological area or impacts upon public rights of way. In addition to the need to obtain planning permission (and potentially other development consents), a need may exist also for environmental consents to be obtained where the development proposed affects inland or coastal waters.

Undertaking any works without first obtaining the necessary development and environmental consents is not advisable in any circumstances as severe financial penalties can apply.

In order to put yourself in the best possible position to achieve a successful outcome, thorough preparation, robust presentation of the development proposals and sufficient supporting information are required to enable the consenting authorities to make their decisions under the various planning and environmental legal and policy requirements and constraints that apply. The requirements for supporting information vary greatly according to the nature, size and location of the proposed development and the environmental sensitivities of the site and its surrounding area. For larger developments, it may be necessary to support applications with an Environmental Impact Assessment or to include sufficient design, technical and environmental information to enable an assessment to be undertaken by the relevant consenting authority.

Whilst this Handbook attempts to provide a step by step guide, there may be instances, depending on the scale and complexity of the development and its location where professional help is advisable. Generally the following steps are required: consultation with interested parties and the statutory authorities, understanding the legal and policy framework and establishing which statutory consents and nature of supporting information is required to enable application(s) to be approved.

Budgeting for the development should also include the costs of obtaining the consents which can be substantial depending on the location and scale of the project. Sufficient time should also be allowed for obtaining the relevant consents and each consenting authority will have its own time scale for the decisions on consents. Similarly there are different appeal processes between the different consenting authorities should consent be refused or the attached conditions be deemed unacceptable.

2 Identifying the Required Consents

Depending on the location and type of development, one or more consents from one or more consenting authorities are likely to be required.

Anything that constitutes a development (as defined in law) requires planning permission from the relevant Local Planning Authority (LPA). In England, the LPA is either the District, Borough Council or, in certain areas, the Unitary Authority. In Northern Ireland, the LPA is the Northern Ireland Office which operates through the Department of the Environment for Northern Ireland. In Scotland and in Wales, the LPA will be one of the Unitary Authorities.

The definition of 'development' is very wide and includes the carrying out of building, engineering, mining (e.g. digging and excavation) or other operations in, on, over or under land (which includes controlled waters), or the making of any material change in the use of any buildings or other land. As a general working rule, any 'works' on land that are likely to take two or more days to complete will constitute development and, will require planning permission.

Planning permission is not required in all cases. For instance, the following operations or uses of land shall not be taken to involve development and thus are exempted from the need to secure a grant of planning permission:

(a) The carrying out for the maintenance, improvement or other alteration of any building of works which:
(i) Affect only the interior of the building, or
(ii) Do not materially affect the external appearance of the building.

(b) The change of use of buildings or land to any other use of the same class, as may be specified by a Use Class Order.

Before a club can rely on the above described exemptions it is strongly advised to clarify the position in writing with the appropriate Local Planning Authority.

In addition to the above exemptions, certain works which satisfy the definition of 'development' may benefit from Permitted Development Rights (as prescribed by Development Order). Where the development proposed is Permitted Development it is not necessary to obtain from the LPA a grant of planning permission prior to commencement. However, and as advised in relation to 'exemptions', clubs are strongly advised to seek the views of the LPA prior to the commencement of any works which seek to rely upon Permitted Development Rights.

In addition to the requirements and need to obtain planning permission, developments on or close to coastal and inland waters are also likely to require a number of environmental consents. These environmental consents may be administered by Central Government, local Environment Agencies or the relevant Harbour Authority.

It is also important to note that about a third of the coast line of England and Wales is included in National Parks and designated Areas of Outstanding Natural Beauty where development is strictly controlled. Large areas of the coast are owned or protected by the National Trust. The Trust protects some 920 km of coastline in England and Wales and the National Trust for Northern Ireland and the

National Trust for Scotland also own large stretches of the coastline. The National Trust is a statutory consultee in respect of planning applications.

The Crown, as landowner, has marine holdings which include about half of the foreshore around the UK (between mean low and mean high water), 55% of the beds of tidal rivers and estuaries and almost all of the seabed out to the 12 mile territorial limit. Activities using the foreshore and seabed include marine aggregate extraction, pipelines, cables, outfalls, fish farms, ports, jetties and boating facilities as well as a large number of conservation leases.

Coastal protection is a complex area. In England there are over eighty Acts of Parliament which deal with the regulation of activities in a coastal zone and as many as 240 government departments and public agencies involved in some way.

Golden Rules:

1. If a club needs planning permission, development or environmental consent it should always apply for it after consulting with the relevant LPA and, where appropriate, by seeking professional advice before submitting an application.

2. If there is a possibility that you do not need a consent, investigate this fully first BUT ask the consenting authority (e.g. relevant LPA) to confirm the position in writing before starting the work.

3. Just because you do not need planning permission, does not mean you do not need other development or environmental consents.

Is Planning Permission Required?

The first step is to ascertain whether or not your proposals fall into the category of a development which would require approval by way of a specific grant of planning permission and whether the development is within the LPA boundary. LPA boundaries vary and often in the case of many estuaries, harbours and tidal rivers, their boundaries actually embrace such waters. In these situations even developments that are not attached to the land will require planning permission. Local Authority boundaries can be found on Ordnance Survey Maps (scale 1:10,000).

The regulatory and consenting requirements vary depending upon whether the development proposed is properly to be classified as a major development, minor development or 'everyday' operational development. The following general rules hold for both tidal and inland sites.

1. Typical types of 'major' development: marina, breakwaters, clubhouses, boat sheds, access roads, disposal of dredging on land: Planning permission will almost certainly be required either for 'operational development' (e.g. new buildings) and/or changes of use of buildings and land.

2. Typical types of 'minor' development: car parks, pounds, roads, jetties, slipways, moorings, and pontoons: Planning permission will be required in most cases.

3. Typical types of 'everyday' operational developments: fences, gates, security lights, CCTV cameras, flagpoles: Planning permission is likely to be required in most cases. The available Permitted Development Rights are limited and include small radio aerials and antennas and repair or minor improvements such as partial resurfacing. In all cases you should check with

the LPA first as attitudes towards what constitutes Permitted Development may vary between authorities, and evolves through case law.

Table 1 shows the various types of developments clubs may be undertaking and indicates whether or not planning permission may be required. Remember it is advisable to confirm in writing with the LPA whether or not you require planning permission.

Table 1: Club Facility Development and Planning Permission Requirements

Activity requiring planning permission	**UNDERTAKING BUILDINGS OR WORKS**				**Change of use of Land or Buildings**
	New	Replacement	Alteration	Maintenance	
BUILDING WORKS					
Building works – e.g., Clubhouses, Boathouses, Storage of Equipment, accommodation	✓	✓	Q	X	N/A
Internal building works (Except basements)	X	X	X	X	N/A
Basements	✓	N/A	Q	X	N/A
Roof and elevation alterations	✓	X	X	X	N/A
Extension of yards & pounds	✓	X	X	X	✓
Dry stack	✓	✓	✓	X	N/A
Demolition	Q	N/A	N/A	N/A	N/A
USES OF LAND AND BUILDINGS					
Use of boat park for cars and vice versa	N/A	N/A	N/A	N/A	✓
Extension of yards & pounds	N/A	N/A	N/A	N/A	✓
Siting of caravan	N/A	N/A	N/A	N/A	Q
Containers in car park or compound	N/A	N/A	N/A	N/A	Q
Use of existing building for accommodation	N/A	N/A	N/A	N/A	✓
SMALL OPERATIONAL DEVELOPMENTS					
Flagpoles	✓	Q	✓	X	N/A
Fences	Q	Q	Q	X	N/A
Telecommunications	Q	Q	Q	X	N/A
Security cameras	✓	Q	Q	X	N/A
Lighting	✓	Q	Q	X	N/A
GROUND WORKS					
Works below ground (Sewers, drains, soak aways)	✓	✓	✓	X	N/A
Land raising	✓	N/A	N/A	N/A	N/A
Land filling	✓	N/A	N/A	N/A	N/A
Flood defence	✓	✓	✓	X	N/A
Car Parks and hard standings	✓	Q	✓	x	✓
Surfacing	✓	X	✓	x	N/A
Digging out land to form marina	✓	N/A	✓	N/A	✓
LAND-WATER DEVELOPMENTS					
Access to Water (coastal extending beyond MLW)					
- Jetties	✓	✓	✓	X	N/A
- Pontoons	Q	Q	Q	X	N/A
- Slipways	✓	Q	✓	X	N/A
- Quay	✓	Q	✓	x	N/A
- Installations on pontoons (fuel pump out)	✓	Q	✓	x	N/A
Access to Water (inland waters)					
- Jetties	✓	✓	✓	X	N/A
- Pontoons	✓	✓	✓	X	N/A
- Slipways	✓	Q	✓	X	N/A
- Quay	✓	Q	✓	x	N/A
- Installations on pontoons (fuel pump out)	✓	Q	Q	x	N/A
Use of land between MHW and MLW	N/A	N/A	N/A	N/A	✓
ON WATER DEVELOPMENTS					
Development below MLW and outside LPA boundary not connected to land	X	X	X	X	X

Activity requiring planning permission	UNDERTAKING BUILDINGS OR WORKS				Change of use of Land or Buildings
	New	Replacement	Alteration	Maintenance	
Mooring of boats where navigation rights exist	X	X	X	X	X
Use of water with navigation rights	X	X	X	X	X
Use of other waters (ponds, gravel pits and reservoirs)	N/A	N/A	N/A	N/A	✓
Navigation Aids on water	X	N/A	X	X	N/A
Houseboats on navigations	Q	X	X	X	Q
Houseboats on other waters	Q	X	X	X	Q
Dredging within LPA boundary – tidal and sub-tidal - Maintenance - Capital (e.g. for mooring)	 Q ✓	 Q N/A	 Q N/A	 Q N/A	 N/A N/A
Dredging - inland	✓	N/A	N/A	N/A	N/A
Moorings not connected to Land – coastal/tidal waters: - Piles - Piles and Pontoons	 Q Q	 Q Q	 Q Q	 X X	 N/A N/A
Moorings not connected to Land – inland/non-tidal waters: - Piles - Piles and Pontoons	 Q ✓	 Q Q	 X Q	 X X	 N/A N/A

Exceptions

There are exceptions to the need for planning permission for example, where:

- Planning permission is not required (the works proposed do not constitute ‘development’).
- Lawful Use rights have been acquired by virtue of the lapse of time in respect of buildings or uses undertaken previously without the grant of planning permission.
- Permitted Development Rights (see www.planning-applications.co.uk/pdrights/htm).

For more information on this complex topic, professional help may be required.

ALWAYS check with the LPA before deciding **NOT** to apply for planning consent.

Are Additional Development Consents Required?

Once it has been established whether or not the development requires planning permission, it will also need to be established whether or not other development consents are required.

Additional development consents are likely to be required where the development site is in a designated conservation area or nature or ecological area, for example a Site of Special Scientific Interest (SSSI).

2.1.1 Developments in Conservation Areas or on Listed Buildings

Listed Buildings and Conservation Area issues are dealt with under different legislation from planning though they are often grouped together and in many instances development requiring Listed Building or Conservation Area Consent also requires planning permission. Needless to say, controls over such buildings are strict.

Table 2: Government Departments, Agencies and Advisory Bodies dealing with Heritage

	England	Northern Ireland	Scotland	Wales
Government Department	Department of Culture, Media and Sport	Northern Ireland Executive	Scottish Executive	Welsh Assembly
Executive Agencies	1. English Heritage 2. Royal Parks Agency	Environment and Heritage Service	Historic Scotland	Cadw (Welsh Historic Monuments)
Other Advisory Bodies	Commission for Architecture and the Built Environment	1. Historic Buildings Council for NI 2. Historic Monuments Council for NI	Historic Buildings Council for Scotland	Historic Buildings Council for Wales

Buildings are listed on the basis of architectural and/or historic interest. The LPA designates Conservation Areas. You can see local lists and obtain copies of individual entries at your local council's planning department, county council offices and most local reference libraries.

You will need Listed Building or Conservation Area Consent for:

- Total or substantial demolition of listed and conservation area buildings.

You will need Listed Building Consent for:

- Alterations (internally or externally), and
- Extensions.

Development that affects the setting of a Listed Building and / or developments in Conservation Areas will come under very close scrutiny for their impact upon either the setting of the Listed Building and or impact on the character of the Conservation Area.

Early discussions with the LPA and Heritage Bodies are strongly recommended for any proposal that involves Listed Buildings or Conservation Areas in each of the home countries.

Unauthorised work to Listed Buildings is a criminal offence.

In England Planning Policy Guidance Note (PPG) 15 Planning and the Historic Environment provides a lot of information on Listed Building and Conservation Area issues (www.communities.gov.uk/index.asp?id=1144040).

Similar guidance is issued in Wales (www.wales.gov.uk), Scotland (www.historic-scotland.gov.uk) and Northern Ireland (www.ni-environment.gov.uk) and is explained in more detail in Annex D.

Useful web pages and further resources can be found on English Heritage's Website (www.english-heritage.org.uk/server/show/nav.1374).

2.1.2 Developments Affecting Trees and Hedges

Individual or groups of trees can be protected in the UK through a Tree Preservation Order. Trees in Conservation Areas are protected by the designation of the Conservation Area. Where trees are protected in this way, prior to any works being undertaken, either separately or as part of a larger scheme, consent will be required from the LPA for felling, lopping, topping and thinning. Work is permitted if the trees are dead, dying or dangerous though specialist advice will be required to support this. Even where trees are not protected, the Forestry Commission regulates the felling of trees. Unauthorised works to protected trees is a criminal offence. It is therefore important to check firstly whether or not any trees on your site are protected and if so whether or not they will be compromised by the development proposal.

More information on managing trees on site can be found in RYA Environmental Handbook (www.rya.org.uk).

Guidance and advice on Tree Preservation Orders and trees in Conservation Areas in England is issued by Department of Communities and Local Government (www.communities.gov.uk/publications/planningandbuilding/tposguide).
Similar guidance is issued in Wales (www.wales.gov.uk?topics/planning/policy/guidance/TPOGuide?skip=1&lang=en), Scotland (www.scotland.gov.uk) and Northern Ireland (www.planningni.gov.uk/index/advice/advice_leaflets/leaflet04.htm)

Some, but not all, hedgerows are protected by the Hedgerow Regulations (www.opsi.gov.uk/si/si1997/19971160.htm).

Planning permission for development which affects protected trees or hedges dispenses with the need for separate development consent.

2.1.3 Developments Affecting Public Rights of Way

Public Rights of Way are a feature of waterside locations and are likely to be a constraint for many clubs if the proposed development interferes with them in any way. Rights of way exist on the coast, as well as inland, and include:

- Public launching sites with full access for all types of craft, vehicle and animal;
- foot access to steps, quays, jetties and ferries;
- coastal footpaths;
- riverside paths;
- canal towpaths, and
- points where the footpath network intersects with waterways.

Separate consent is needed to divert or stop up a public right of way. The Highways Authority administers rights of way in England and Wales, the Northern Ireland Roads Service in Northern Ireland and in Scotland, Transport Scotland. In some UK regions the function is delegated to the LPA.

It is an offence to interfere with the line of a public footpath or to cause any obstruction. If development proposals may have an impact then early discussions should take place with the relevant Highways Authority as well as the LPA in order to investigate whether or not a diversion will be necessary. If a public footpath diversion is necessary then a statutory process will have to be

followed which is quite lengthy. If public objections are made in connection with any proposed diversion then this is likely to lengthen the whole process and may mean that a public inquiry will have to take place so that all of the issues surrounding the footpath diversion can be properly considered.

A planning application can still be submitted and determined notwithstanding the fact that a footpath needs to be diverted. If planning permission is approved in such circumstances then the developer will be advised not to obstruct the path and to secure the necessary diversion order as soon as possible. The planning permission may contain a condition which states that no development will take place until the identified public footpath is properly diverted.

If only part of the development is affected by the existence of the path then it may be that the remainder of the development can be commenced before a formal diversion order is achieved. However appropriate professional advice should be sought in connection with this point.

2.1.4 Developments Affecting Building Structure, Services or Fittings

Building Regulations are separate from planning permission and other consents. They govern the energy efficiency of building and ensure the health and safety of those using the buildings. Even if you have planning permission you may still require Building Regulations.

Building Regulations are likely to be required if you want to:

- Put up a new building, or extend or alter an existing one (e.g. by converting a loft space into living space);
- Provide services and/or fittings in a building such as: washing and sanitary facilities (e.g. WCs, showers, washbasins, kitchen sinks, etc.),hot water cylinders, foul water and rainwater drainage, replacement windows, and fuel burning appliances of any type.

Certain changes of use of buildings may also require Building Regulations if the change of use may result in the building as a whole no longer complying with the requirements which will apply to its new type of use, and so having to be up-graded to meet additional requirements specified in the regulations.

Unlike planning permission you have a choice of using either a Local Authority Building Control Service or an approved inspector’s Building Control Service.

Within Northern Ireland, the building control function is entirely administered and enforced by the local authority district council. Unlike in England and Wales there is no system of Approved Inspectors or self-certification.

Within Scotland a system of Verifiers has been established who are appointed by Scottish Ministers to check applications for building warrants to carry out certain works to buildings. At present the only appointed verifiers are the 32 Scottish local authorities each covering their own geographical area.

For more information in England and Wales see:-
www.communities.gov.uk/publications/planningandbuilding/buildingregulationsexplanatory or www.planningportal.gov.uk.

For more information in Scotland and Northern Ireland see:-
www.labc.uk.com

In respect of Northern Ireland only:-
www.dfni.gov.uk

In respect of Scotland only:-
www.sbsa.gov.uk

Are Environmental Consents Required?

Environmental consents are likely to be required where the development site is close to or on tidal or non-tidal waters or, where special circumstances are relevant to the development. The environmental consents that are likely to be required are described in Tables 3 and 4 (below).

Annex B gives more detailed information on environmental consents.

2.1.5 Developments on Tidal Waters

Typical types of developments on tidal waters are jetties (including pontoons connected to land), slipways, piers, dredging above Mean Low Water Mark, reclaiming land, moorings, pontoons, piles, dredging and disposal of dredged material at sea.

As already indicated planning permission may be required below the Mean Low Water Mark (MLW) for development attached to the land or within the local authority boundary for moorings, pontoons and piles. Planning permission will not normally be required for dredging below MLW and disposal or dredging at sea.

A range of environmental consents are likely to be required depending on the location and scale of development:

- A Food and Environment Protection Act Licence (FEPA) is required to deposit articles at sea such as dredging spoil or for the placing of piles. Further information is available from the Marine and Fisheries Agency at the Department for the Environment, Food and Rural Affairs (DEFRA). www.mceu.gov.uk/MCEU_LOCAL/FEPA/Consents.htm

- A Coast Protection Act Consent is required for works on part of the shore below mean high water including construction, depositing or removal of material or works that will impact upon navigation. Further information available from the Marine and Fisheries Agency at the Department for the Environment, Food and Rural Affairs (DEFRA). www.mceu.gov.uk/MCEU_LOCAL/FEPA/Consents.htm

- Harbour Authority Consent (Works and Dredging Licence) is required for works in Harbour Authority areas. Local Harbour Authorities are empowered by a variety of local Acts and Orders to control construction and dredging though not all areas are covered by Harbour Authority controls. Contact the relevant Harbour Authority.

- Land Drainage Consent is required for works in, on, under or over a main river which can include harbours and estuaries. Contact the Environment Agency or find information at: www.mceu.gov.uk/MCEU_LOCAL/FEPA/OTHER-CONSENTS.HTM

- Pollution Prevention and Control permit and waste management permits may be applicable for depositing waste material on land for developments involving land claim. The devolved environmental regulators issue the permits. As of April 2008, in England and Wales the Pollution Prevention and Control permit is being combined with the waste management licence into an environmental permit. For more information see www.netregs.gov.uk/netregs

- Discharge consent - Discharges into waters, that contain possible pollutants, can only be allowed if the householder or industry holds (and is compliant with) a discharge consent, issued by EA. These may be a requirement of a planning application. For more information see pollution control section of the RYA Environmental Handbook (www.rya.org.uk). See: www.environmentagency.gov.uk/business

Table 3: Facilities Development below MHWS and their Marine Consent Requirements (adapted from Solent Forum Marine Consents Guide 2006)

Activities requiring consent	Food and Environment Protection Act Consent	Coast Protection Act Consent	Land Drainage Consent	Harbour Authority Consent[1]	PPC permit and waste management Permit[2]	Discharge Consent
Land claim (Reclaim from the sea)	✓	✓	✓	Q	✓	✓
Construction/alteration of slipways, jetties, marinas, pontoons	✓	✓	✓	✓	Q	Q
Other development e.g. buildings	✓	✓	✓	Q	Q	Q
Laying moorings	✓	✓	Q	✓	N/A	N/A
Coastal protection works	✓	✓	✓	✓	Q	Q
Flood defence	✓	✓	✓	✓	Q	N/A
Capital dredging	✓	✓	Q	✓	N/A	N/A
Maintenance dredging	✓	✓	Q	✓	N/A	N/A
Disposal of dredge spoil into sea	N/A	N/A	Q	✓	Q	✓
Foreshore recharge/ Beneficial use of dredging	✓	✓	Q	✓	Q	Q
Effluent Discharge (sewage)	Q	Q	Q	Q	Q	✓
Provision of fuel pumps, & pump out on jetties	X	Q	Q	Q	X	Q
Navigation marks and lights[4]	Q	Q	N/A	✓	X	N/A

. = Permission required Q = Permission may be required X = No permission required N/A = Not Applicable
1 Harbour Authority consent required where the activity takes place in a harbour or the method involves work within the harbour limits. The consent is likely to be in the form of a Works and Dredging Licence.
2 PPC permit is Pollution Prevention and Control Permit; different regulations apply in England and Wales, Scotland and Northern Ireland. Applies only to land above MLW.
3 The provision of moorings for houseboats requires consent; the houseboat can be changed without express planning permission
4 Consultation required with Trinity House

2.1.6 Developments on Non-Tidal Waters

As with developments below mean low water mark, developments that are adjacent to or on non tidal waters will also potentially require a number of additional consents.

These consents are:

- Land Drainage Consent is required for works in, on, under or over a main river which can include harbours and estuaries. Contact the Environment Agency or find information at: www.mceu.gov.uk/MCEU_LOCAL/FEPA/OTHER-CONSENTS.HTM

- Pollution Prevention and control permit and waste management permit – see above

- Discharge consent – see above

- Navigation Authority and Land Owner Consent: British Waterways (BW) are the owners of the majority of the canal system and their consent is required as owner for any works affecting their rights over the land structures and water which make up the system. In addition, BW consent is required on rivers which they do not own, but which are part of the system and which are navigable and where they are the Navigation Authority and have bylaw powers. In some situations a contract with BW is required for works and in other situations consent is issued. The process and requirements for each are similar and are set in their Code of Practice for works affecting British Waterways, August 2007 (See: www.britishwaterways.co.uk/images/Code_of_Practice_for_Works_Affecting_BW.pdf)

Similar controls will be exercised by other canal undertakings and navigation authorities.

There are about 38 Inland Navigation Authorities of which the Environment Agency with the Thames, the Severn and the River Great Ouse and British Waterways are the largest. Inland Navigation Authorities are listed in www.aina.org.uk and www.britishwaterways.co.uk.

Table 4: Facility Developments on Non-Tidal (inland) Waters and their Consent Requirements

Activities requiring consent	Land Drainage Consent	British Waterways or other canal undertakings	River/Navigation Authority Consent	PPC and waste management permit [1]	Discharge Consent
Land claim (Reclaim from the water	✓	✓	✓	✓	✓
Construction/alteration of slipways, jetties and pontoons	✓	✓	✓	Q	Q
Other development e.g. buildings over water	✓	✓	✓	Q	Q
New moorings	Q	✓	✓	N/A	N/A
Bank protection works	✓	✓	✓	Q	Q
Construction of Marinas	✓	✓	✓	Q	✓
Capital dredging (increasing the area or depth of water)	✓	✓	✓	N/A	N/A
Maintenance dredging	✓	✓	✓	N/A	N/A
Disposal of dredge spoil into the water	✓	✓	✓	✓	✓
Disposal of dredge spoil onto land	Q	Q	✓	✓	N/A
Flood defence	✓	Q	✓	✓	✓
Effluent Discharge	N/A	✓	✓	✓	✓
Houseboats	Q	Q	Q	✓	Q
Navigation marks and lights	N/A	N/A	✓	✓	N/A

✓ = Permission required
Q = Permission may be required
X = No permission required
N/A = Not applicable

1. PPC permit is Pollution Prevention and Control Permit, different regulations apply in England and Wales, Scotland and Northern Ireland

Marine and Coastal Access Bill

The Proposed Marine and Coastal Access Bill, which is expected to receive Royal Assent by Summer 2009, amongst other things consolidates and modernises the marine licensing system by replacing two existing acts – The Food and Environment Protection Act 1985 (FEPA) and the Coast Protection Act 1949 (CPA). In future a single Marine Licence will replace both the existing FEPA licence and the CPA consent.

It will apply to the whole of the UK marine area excluding the territorial waters adjacent to Northern Ireland and Scotland.

The Bill also proposes the creation of the Marine Management Organisation (MMO) who will as a first step towards a coordinated UK marine law, act as a "one stop shop" making it easier to process licences for projects ranging from the construction of small jetties to large scale dredging operations.

The Bill proposes to: provide greater certainty for marine developers and marine users; maximise the social, economic and environmental value of the marine resource; and ensure an overall sustainable development approach.

The Bill also proposes to reduce the burden on developers by streamlining and modernising marine licensing and consents system to deliver quicker and clearer decisions. The paper proposes integrating the planning and licensing system to allow developers a better understanding of what activities might be suited to certain sites. The overall approach is aimed at delivering a more streamlined approach, more tailored to the needs of prospective developers and reducing the regulatory burden.

For more information please see www.defra.gov.uk/marine/legislation/key-areas.htm

For Scotland please see www.scottish.parliament.uk/business/legConMem/LCM-2007-2008/marinecoastalacess.htm

For Northern Ireland please see www.northernireland.gov.uk/news/news-doe/news-doe-051208-uk-governments-marine.htm

3 Preparing to Obtain the Relevant Consents

Developments in the land/water interface are complicated by the need to obtain multiple consents. Situations could arise whereby some permissions or consents are granted and others refused because of the different criteria used in determining proposals. Planning, for example, will be concerned with environmental impacts as well as broader policy goals such as restricting new structures in undeveloped areas. Being able to minimise environmental impacts will not necessarily be enough to secure consent. Issues such as the impact on ease of navigation or amenity value have been taken into account by Local Authorities. This is particularly the case in designated areas such as Areas of Outstanding Natural Beauty, National Parks, etc.

Identifying and understanding various policies will be critical to successful consent applications (see Appendix C).

Identifying whether Supporting Information is required

Once you have a general idea of what consents you need, the next step is to establish whether you require supporting information to apply for these consents. The consenting authorities should be able to advise you on this. Supporting information may be required for the consenting authority to make an assessment of the environmental impact (an Environmental Impact Assessment - EIA) or whether a development has a significant effect on a European conservation site (an Appropriate Assessment). In each case the authorities may require slightly different information but this can be presented in a single report (an Environmental Statement). The likelihood of requiring supporting information for one of these assessments increases greatly where the development:

1. Affects SAC, SPA or SSSI (see Glossary)
2. Reclaims land (from the sea etc.)
3. Involves capital dredging (dredging out a basin for moorings)
4. Forms structures within inter-tidal zones (slipways, docks etc.)

Government regulations set out what types of assessments are required. It will almost always be prepared before and submitted with the application and generally involves a professional. If required it may well have a major effect on the cost of submission and timescale. For more information see Appendix A.

Is Professional Help required?

Whether or not you need professional help will depend on the type of proposal. Professionals who are club members may be willing to give their time free but may feel themselves at risk if things go wrong and they do not have professional indemnity insurance.

Applying for consents can be complex, even for minor applications, but advice is available. The support available may differ between planning authorities. Knowing how to frame a proposal, making an argument that draws upon the appropriate policy context and providing a range of supporting documents can be both daunting and time consuming.

Professional help may improve your chances of getting permission but can be expensive. Professional help can be obtained from specialist planning lawyers (who understand both the legal framework and policy requirements) or planning consultants (who will be able to guide you on planning policy matters) and architects (who will produce scheme drawings and will be familiar – but not expert – in navigation of the various consenting regimes).

For a 'straightforward' planning application – which require supporting drawings and a design and access statement only - you should budget for professional (architectural) fees of at least £1,000 plus VAT and disbursements.

For more detailed (but non-contentious) planning applications, you will need to budget for architectural and planning professional fees (either a planning lawyer or planning consultant) and should budget for costs of between £2,500 - £5,000 plus VAT and disbursements.

For major development proposals and or where a range of consents and detailed supporting information (including an EIA) are needed, professional fees will be significantly more. For example, a planning application supported by a detailed Planning Policy Statement (which will appraise the proposed development against local and national planning policy and, include a full description of other material considerations) the costs are likely to be around £2,500 - £5,000 and, added to these should be the costs of an EIA and those associated with applications for other consents which are likely to be in the range of between £10,000 – £15,000.

A list of planning lawyers can be found here: www.sra.planningsolicitors.co.uk

A list of planning consultants can be found here: www.rtpiconsultants.co.uk

Going it alone

Here are some hints and tips that might help in negotiating the maze of regulations:

- Initiate early discussions with the regulatory authorities. Advice and guidance at an early stage can often overcome problems and issues. At this stage the permissions, consents and supporting information should be identified as well as any consultation or publicity requirements. The response of the regulators to pre-application discussions will also assist you also in deciding what level of future professional support may be necessary.

- While LPA's and other regulatory bodies have timescale targets (imposed by law) for decision-making this runs from when you actually apply and the application has been validated as full and complete. Pre-application discussions, plan preparation and supporting documentation can add significantly to any timescales. However, experience demonstrates that taking the time to get the application 'right', prior to its submission, is more likely to allow the LPAs and other Regulators to determine your application(s) within the prescribed time scales.

- Get your neighbours on board. Consultations are a standard part of any application. Discussing what you want to do with your neighbours and others can avoid misunderstandings and possible objections. So far as the planning process is concerned LPA's acting by way of their planning committee tend to place great weight upon objections received from third parties and will closely scrutinize the proposal against such objections. It will often help your planning application if there is third party support.

- Be aware of the relevant plans and policy frameworks for your area. Local policies and strategies can provide a supportive framework for your proposals if you have been involved in the preparation. The greater the policy support for your proposal then the better chance you have of obtaining a planning, development and environmental consent. Planning policy can be an extremely complex area. In more complex planning applications you are advised to seek the help of a planning professional who can advise upon the relevant policies and the way in which your application can be structured so as to best meet those policies. (see Annex D)

- Establish which consents you need and the order you intend to apply for them. As a rough guide it is suggested that a club applies for consents in the following order:

  1. Ownership - for most consents it is not strictly necessary for you to own the land before an application may be made. However, if you do not own the land then the consent of the owner will be required before any development can take place. An owner of land will be formally notified as part of the planning application process.

  2. Environmental Consents – it should be noted that certain regulators (particularly the local Environment Agencies) may decline to determine applications for environmental consents for development proposals which require a grant of planning permission until such time as the club has obtained the necessary LPA approvals. This approach may vary depending upon the Agency concerned but in strict legal terms it is not usually necessary that one obtains a planning consent first because each regulatory regime will have powers of enforcement if all required consents are not actually in place before development commences.

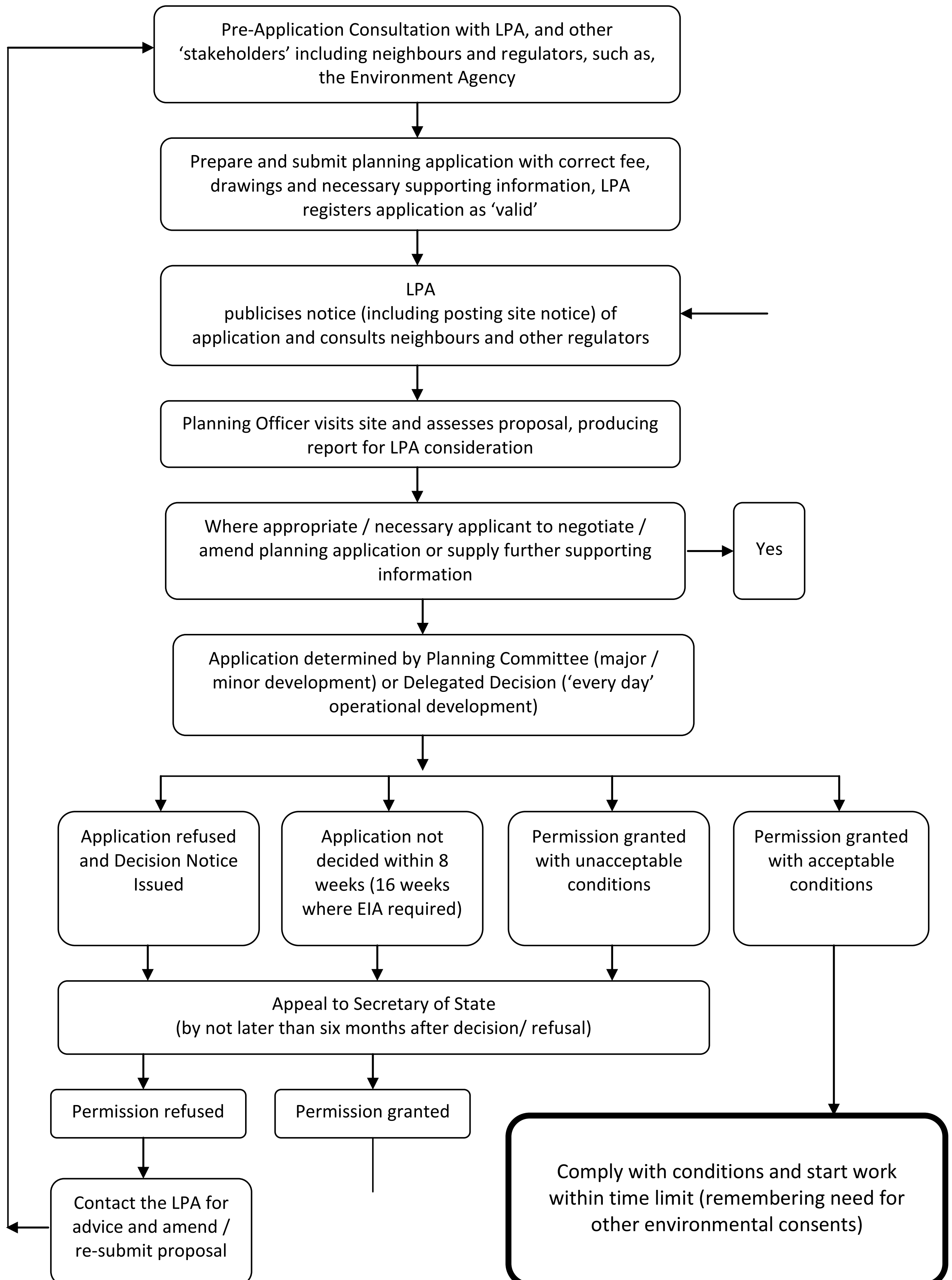
  3. Planning– where the proposal is likely to be contentious or major (in terms of size and or location) then it may be more appropriate (and in some instances necessary) to apply for a grant of planning permission prior to application for other consents – such an approach is likely to generate time and costs savings to the club since the planning process requirements for supporting information is likely to be extensive and, once prepared, the supporting information may be used to support applications for other consents.

An Overview of the Planning Process

Where planning permission is required then a planning application with an appropriate level of supporting information (see Annex D) must be submitted to the relevant LPA.
For many minor applications it is a relatively straightforward administrative process.

An overview of the ‘generic’ UK planning process is given overleaf:

PLANNING APPLICATION PROCESS
(Generic)



Legislation and policy gives considerable discretion to the LPA in granting planning permission although decisions must be made in accordance with the relevant Development Plan and other material considerations which may include National Planning Policy (see Annex D for description of regional policies) and local need for the proposed facilities. Great significance is given to the Development Plan in decision making, such that it is the first and primary point of reference by LPA's when determining applications for planning permission.

The Development Plan for an area will comprise the LPA's Local Development Framework (England and Wales) and Local Development Plan (Scotland and Northern Ireland). These documents, which may include more than one 'plan', comprise a written list of the development policies which are applicable to the area and against which development proposals will be assessed by the LPA.

LPA's can approve an application that does not *accord* with the provisions of the Development Plan where other material considerations weigh in favour of the development (such as local need or economic advantages). The discretion of decision makers at the time that the application is made for approval is the cornerstone of planning in the UK. Other material consideration includes also National Planning Policy Guidance / Statements (see Annexes D for a description of relevant policy statements for each UK region).

Planning decisions may be made subject to (or without) conditions or, refused and, in both cases, there is a right of appeal.

All LPA's provide guides on the planning application process. A useful place to start is the LPA's own web site.

Many applications will begin with pre-application consultation and it should be noted that LPAs may now charge for this service. On receipt of the completed application form, fee, ownership certificates and necessary supporting information, the LPA will acknowledge (register as valid) the application and begin publicity, neighbour notifications and consultation procedures with the development site's neighbours, the local Town or Parish Council and, subject to the type of development proposed and its location, with other statutory regulators such as the Highway Authority and the local Environment Agency. The purpose of the consultation procedure so far as the LPA is concerned is to seek as much information as possible to inform the eventual decision.

A site notice is usually displayed, and details of the application may be published in the press with a date by which representations are to be received by the LPA if they are to be taken into consideration as part of the decision making process. It is advisable to find out what consultation responses have been received because if there are objections deserving of merit then you may well be able to either amend your application in some way or counter such objections by providing further information.

On the basis of consultation responses and a review of the LPA's adopted (and emerging) Development Plan the Planning Officer will produce a report for the LPA's development control committee which will either recommend approval or refusal. Many LPAs will discuss the Planning Officer's report with the applicant prior to its submission to the Development Control Committee, affording the applicant an opportunity to review and respond to any perceived negative aspects of the report.
Applicants have a legal right to see the Planning Officer's report at least three days before the LPA's Development Control Committee convenes. Where the Planning Officer's report recommends refusal, the club must determine, usually guided by professional advice, whether to withdraw and amend the application or, to submit further supporting information to directly address the Planning

Officer's noted concerns. In some instances, and in particular where the development proposed relates to 'every day' operational matters, the Planning Officer may have delegated authority to determine (approve or refuse) the planning application. In 2004 planning authorities delegated 87% of applications on average.

Many planning committees allow public participation which means that you will be allowed to attend and speak to your application (usually for a defined period of time between 3 and 5 minutes) before the members of the committee who will also hear from any objectors as well as the Planning Officer before debating the issues and moving to vote on a recommendation to approve or refuse the application. If you do decide to speak it is good practice to write out the points you wish to make beforehand and time yourself. Remember keep the points short and if possible try and finish speaking under your allotted time.

An LPA can grant planning permission subject to conditions and in practice almost all permissions are conditional. Many planning conditions are simple, requiring for example that materials to be used are agreed with before development starts. The power to impose conditions is a very wide one, however the conditions must be reasonable, necessary, relate to planning and the development proposed.

How long will Consents take to obtain?

3.1.1 Planning Permission

Getting planning permission can often take longer than anticipated. The performance of LPA's has improved significantly over the past few years. On average 75% of minor planning applications are decided within eight weeks while the average for major applications is 70%. These figures do not include preparing an application, discussions and negotiations with the local planning authority prior to submission or meeting any legal requirements following the decision.

If an Environmental Impact Assessment (EIA) is required the time in preparing the application will be increased by at least three to six months (to allow the consultants to monitor and record the site and surrounding areas environmental baseline - against which the main and likely significant environmental effects of the proposed development are objectively assessed – the EIA process). One way to speed up decisions is to have pre-application discussions with the Local Planning Authority to ensure that you understand and any concerns take them into account in the application itself. Some local planning authorities do charge for providing this service and it is therefore wise to enquire about this beforehand.

3.1.2 FEPA Licence

The process will normally take around ten weeks and you may be required to supply additional information on the environmental impact of what you propose by producing an Environmental Statement. Details and forms are available from www.mceu.gov.uk/MCEU_LOCAL/FEPA/consents.htm

3.1.3 Harbour Works and Dredging Licence

Process times for Harbour Works and Dredging Licenses vary between the different Harbour Authorities and will depend on the meeting cycles of the Harbour Authority but could take up to 12 weeks.

3.1.4 Coast Protection Act Consent

The process will normally take around ten weeks. Joint FEPA and CPA Consent may be required. For more information see: www.mceu.gov.uk/MCEU_LOCAL/FEPA/cpa.htm

3.1.5 Land Drainage Consent, Discharge consent, Pollution Prevention and Control Permit and Waste Management Licence

These are dealt with by the Environment Agency local offices who have a commitment to make a decision within 2 months:
www.environmentagency.gov.uk/commondata/105385/customer_587209.pdf

Consultation

When applying for consents it is good practice to consult with interested parties in the pre application stage. Issues can then, hopefully, be resolved before objections are lodged in the application process. Interested parties are likely to include local residents and businesses, town or parish council's, local councillors, local archaeological trusts, fishing interests, wildlife groups and those with a recreational interest in the area.

Your LPA and Harbour Authority will be able to advise on who the local contacts may be. To avoid duplication in consultation, it is good practice when applying for consents to include supplementary information on who you have consulted and the other consents and licences which you may have applied for. If you are applying for multiple consents you could try liaising with the entire competent authorities in a 'scoping exercise' to identify how requests for information and consultation can be kept to a minimum. For an EIA, the consultation requirements are set out in the regulations.

The Local Planning Authority will explain how it proposes to carry out the consultation process in its "Statement of Community Involvement".

Applicants for large developments may be required to hold public meetings or publicise their proposals for discussion before the submission of the application.

It will always be helpful to consult with local councillors at an early stage. They tend to be aware of local issues and may be able to give you some idea as to how your development proposal is likely to be viewed in the locality. If the Councillor sits on the planning committee then they may well not discuss the matter with you in case they prejudice their involvement in the decision making process. However in such cases try and identify the nearest Councillor to your site who does not sit on the planning committee. An approach to ask for their assistance is often a good way to start and if your application does go to planning committee it may assist if they are prepared to attend and speak in favour of your proposal.

A Parish or Town Council will, as a statutory consultee, be informed about your application by the Local Planning Authority. They will be asked to comment and their views will usually be taken into consideration by members of the Local Planning Authority. It may be of assistance if you try and attend the Parish or Town Council meeting which discusses your development proposal in order to get an idea of the "local" view. This may assist in formulating any amendments to your planning application or help in expressing your views at the meeting of the planning committee itself.

Budgeting for Consents

It will be critical that you set a budget for the whole development that includes applying for the various consents required and any supporting documents and studies that may be required. Applying for consents can form a major part of the cost of the development, both financially and in time. The costs for obtaining different consents will vary enormously. Some of the costs are mandatory and other are at the discretion of the applicant, Table 5 identifies the different types of costs involved.

Table 5 Mandatory and Discretionary Costs incurred during the consent application process

Application process	Mandatory costs	Discretionary costs
Fees payable to consenting Authority	✓	
Preparation of plans including purchase of maps	✓	
Professional costs for - Handling consent process - Professional reports - Surveys		 ✓ ✓ ✓

The fees for planning applications are set nationally and are based on the application type, size of building and/or area of land. There are reductions for non-profit making sports clubs.

The following examples are given for illustrative purposes only and the fees involved in respect of a particular planning application may well be more.

At its very simplest, a planning application may be submitted for under £300.

- Planning Application Fee of £265 payable to the Council on submission of the planning application.
- Purchase of maps (ie OS Location Plan available from the Council) £25
- Photocopying Costs approximately £20

Where a planning application needs a Design and Access Statement and a professional is asked to prepare this and the application the costs for scheme with no complications would be around:

- Planning fee £265
- Drawing Costs at least £500 (plus VAT)
- Professional charge at least £1,000 (plus VAT)

Costs for FEPA consents are dependent on the type and size of the development and are available on the website: www.mceu.gov.uk/MCEU_LOCAL/fepa/FEPA-application-charges.HTM.

CPA consents are free.
For any application requiring extra reports (e.g., Environmental Statements) or other consultants, careful estimates and quotes should be obtained.

For more detail on the consents and fees see Appendix B.

4 Defining the Development

It may seem an obvious point but before applying for consents you must have something clearly defined to apply for. That ‘something’ needs to be well worked out into a plan that you should be able to communicate with clarity to all the relevant bodies.

The plan should have details of your proposed development, the existing site, information on the club and how the proposed development fits into the club’s objectives, other interests that may be affected and also any special aspects of the development such as designing for the disabled. LPA’s will be particularly interested in how your proposal caters for or improves access to facilities for the disabled. They are under a statutory duty to promote good design and to ensure that developments are accessible to the whole community.

Once you start to commit the plan to paper you are likely to come up against some uncertainties. Ensure that your knowledge of the site and constraints is accurate – both in legal and planning terms.

The Proposed Development

Both drawings and a description of the scheme will be required including:

1. Ordnance Survey (OS) plan and/or Admiralty chart for any works below MHW
2. Sketches to scale
3. Description of scheme
4. Objectives – how it fits into the club’s own plans

The Site

As much background and information as possible should be assembled at the outset and should include:

1. Layout with existing buildings – showing neighbouring property and uses
2. Previous consents with conditions
3. Planning type restrictions e.g.
    - Tree preservation orders
    - Conservation areas
    - Nature areas
    - Flood risks
    - Landscape designations
4. Ownership (Crown/Duchy/other/legal constraints)
5. Status of water used for navigation
6. Services (foul sewage, waste disposal, surface water run-off)

The Club

Information on the following should be included:

1. Members
2. Activities
3. Facilities
4. Role in sport and recreation
5. Work with schools and training
6. Any special activities and facilities e.g., Sailability

Designing for the Disabled

The requirements for disabled people need to be considered at the outset. Each Local Authority has a designated Disability Officer who will advise on the obligations. In addition, the RYA has published on its website the requirements for clubs under the Disability Discrimination Act (www.rya.org.uk).

Identify Other Interests and Who Represents Them

A review of all interests who may be affected or have an interest in the development should be identified as where possible consulted. Examples could be:

1. Neighbours
2. Other users of the water
3. Walkers
4. Bird watchers
5. Local amenity societies
6. Landlord
7. Parish Councils

It is important to be aware that following the submission and validation of your planning application the local planning authority may seek the views of one or more of the following organisations:-

- Natural England
- The Environment Agency
- English Heritage
- Highways Authority
- County Councils
- Parish Councils/Neighbourhood Council
- Relevant electronic communication companies
- Relevant electricity and gas companies
- Relevant Sewerage and Water undertakers

The precise identity of each organisation will obviously vary depending upon the relevant home country.

Design and Access Statements

It may well be that you will be required to produce a document known as a design and access statement to accompany your planning application. The purpose of this document is to explain the design principles and concepts that have informed the development and how access issues have been dealt with.

Although not always necessary, it is often helpful to seek the services of an architect to assist in the production of this document.

D&A Statements are in practice required for most types of planning applications.

Please see Annex D for more information.

5 Submitting the Planning Application

Don't be put off trying to get consents yourselves by the complexities of this guide. Officials are usually friendly and helpful. Small applications and those put in by voluntary bodies and clubs are usually treated sympathetically. This route will usually be cheapest and quickest. Most Local Authorities give detailed guidance on what you need to submit on their websites.

The Planning Portal is increasingly a source of information for planning procedures and practice in England. For the planning application checklist see www.planningapplication.co.uk/planningappchecklist.htm .

Applications may be made in OUTLINE (with matters such as access left to be decided at a later stage by way of what is called a Reserved Matters Application) or DETAIL where all of the information required including for example in relation to a building it location, size and design is provided to the LPA.

Most Club applications will be in detail and so will need better plans at the outset.

A guide to the required information is given below for both simple and more complex applications and Table 5 shows the steps that are taken in applying and securing a planning consent.

Simple Applications

For a simple application e.g. raising the height of a fence from 2m to 2.5m or extending a boat park you would need to submit:

- the planning applications forms;
- plans showing:

1) The site on an OS base with the proposal identified by a red line (1:1250 or 1:2500);
2) Any new structure in plan and elevation
3) A layout showing access and servicing etc.; other land owners or leased by the club.
4) A planning fee which is based on area and the type of development (see www.planningportal.gov.uk)
5) If the site is leased or rented, notification of the owners.

More Complex Schemes

When submitting a more complex planning application, a range of additional documents and supporting information is likely to be required. These may detail the impact the development has on the natural environment as well as the landscape value of the surroundings. The type of information will vary depending on the development and the status of the surrounding area such as whether or not the club is in or adjacent to a protected landscape or a nature conservation area. Details on the types of supporting information can be found in Appendix A. The LPA will advise you on what will be required.

It is the applicant's responsibility to show how a proposed development accords with the various policies at both a local and national level and how it takes into account other interests, for instance those of neighbours and other users of the water. It is also the responsibility of the applicant to carry out the other relevant assessments or studies that may be required.

These can carry a substantial cost and need to be budgeted into the project. Preparing a Planning Statement to accompany planning applications may be useful. This should include details of the development proposal, planning policy considerations any relevant material considerations and details of all consultations undertaken with the LPA and others. In cases involving a major development or a proposal which may have an impact beyond the site boundary in visual or other terms such as traffic generation the LPA may involve the club in public meetings before the application is submitted. If this does happen then you should ensure that an agenda is agreed before the meeting and that you are fully informed as to the type of issues which will be discussed. It may be that you will need to be accompanied by a relevant consultant ie an architect to field any detailed questions about design.

Step by Step Process

The process of applying for a planning application follows a standard step by step process as outlined in Table 6.

Table 6 Stepwise Guide to Applying for Planning Permission

STEP 1: Contact the planning department for advice	This will normally be your local council. To find out check: www.planningportal.gov.uk/england/genpub/en/
STEP 2: Request an application form or fill in on line. Complete and submit the relevant supporting information.	There are new standardised forms for all planning applications. You can get forms from your local council. Nearly all councils accept online applications. To apply online go to: www.planningportal.gov.uk/uploads/appguide/onappguide.html
STEP 3: The council registers and validates your application, consults the various neighbours and local, regional and national bodies relevant to the Plan	This provides an opportunity for local councils to gauge opinions and collate information. It also provides you with an opportunity to comment on the applications of others that may affect your activities. Plans and proposals can usually be viewed online.
STEP 4: Application decided by Planning Officer or Planning Committee	Depending upon the nature of the application the decision will either be made by the Planning Officer under 'delegated powers' or by a Planning Committee made up of elected Councillors. As a rule of thumb, the less controversial proposals or those likely to be approved are delegated to Officers.
STEP 5: The application is: 1. granted 2. granted with conditions 3. refused	Your decision letter will set out clearly the conditions attached to any permission such as the approval of the materials to be used or the reasons why your application was unacceptable.
STEP 6: Depending on decision: 1. If granted or granted with conditions, note time limit and comply with conditions 2. If refused or conditions are unacceptable, either appeal through the Planning Inspectorate or change proposal and negotiate acceptable scheme	You can appeal to the Planning Inspectorate against a refusal or a condition attached to an approval. There is a six month deadline. For further information and online appeals go to www.planning-inspectorate.gov.uk/ OR You can amend the application and resubmit. Again discus changes with the council which would change the decision. NB: both may be done at the same time.

6 How do LPAs make their Decisions?

It is important at the outset to understand the criteria that an application will be judged against.

Where planning applications are proposed or required, the appropriate LPA will in making their decision rely on a variety of different planning policies whether produced at the National, Regional or Local Level.

The planning policy hierarchy differs as between England, Wales, Scotland and Northern Ireland but all adhere to one main principal that planning decisions should be made and driven by a plan led system of planning policy which is as up to date as possible.

More detailed information about National, Regional and Local Planning Policy Guidance can be found in Annex D.

In dealing with your proposal the LPA will weigh up your proposal against a range of policies as well as the responses gathered from the consultation including neighbouring properties.

A range of issues can arise in any kind of development. As a general rule you should be aware of:

The Local Policy context

This can be found in the Development Plans, Adopted and emerging (for more information see: www.planningportal.gov.uk) and each LPA website. There may be a range of specific policies on your area or the type of development you are proposing.

Environmental and nature conservation Issues

These can usually be found in the Development Plan. Such designations may not preclude new development though the Local Planning Authority will usually require additional information with any application to ensure that what you are proposing does not detrimentally affect the designation.

Nature conservation issues may arise from:

- designations of particular sites, species and their habitats
- effects on designated areas from development outside them - consequently it is not possible to guarantee at the outset that there will be no nature or conservation issues.

Nature conservation designation can be checked through Natural England's online mapping system www.natureonthemap.org.uk and the MAGIC website www.magic.gov.uk .

Planning Authority records should also have access to this information. The RYA may also be able to help.

Highways/traffic

Schemes will be closely scrutinised for their transportation traffic impacts. The highway authority (usually the County or Unitary Council) will require information. They may object to proposals that have a significant impact upon highway capacity or safety through inadequate access or visibility at junctions or increase the need to travel. In terms of accessing any proposed development alternatives to the private car must be considered.

Aesthetic considerations

LPA's will require proposals to be sensitive to the local landscape and built environment. This may mean high standards of design or more expensive materials. The Government's advisors on design, the Commission on Architecture and the Built Environment (CABE) have some useful advice on design issues (www.cabe.org.uk).

Historic criteria

Many settlements in coastal areas will have Conservation Area status. There may also be Listed Buildings close by. Proposals will be required to respect any conservation designations through the scale and design of any development and the materials used. Conservation Areas will be identified in Development Plans. Discussions should be held with the Conservation Officer of the LPA prior to the submission of any proposal. The waterside is of high archaeological potential.

Flooding

Proposals will need to assess the risks from flooding and propose how the development will take account of them. Local Development Frameworks will identify areas at risk from flooding and advise on the type of development acceptable within them. See:
www.environment-agency.gov.uk/aboutus/512398/908812/1351053/571633/?lang=_e
and PPS25 and its companion guide
www.communities.gov.uk/planningandbuilding/planning/planningpolicyguidance/planningpolicystatements/planningpolicystatements/pps25/

Issues raised by the public

This may also influence the decision, particularly if their arguments are soundly based on planning policy and the objections are well organised.

WARNING 1: The Council can refuse to validate and consider applications which do not have sufficient information and can ask for extra information.

WARNING 2: The Council's planning duty is to take account of any consideration that relates to the use of land in coming to its decision. This range of issues is constantly widening; very few topics can be ruled out.

WARNING 3: The courts allow LPA's very wide discretion in coming to their decisions, as long as it follows due process, is not unreasonable and is rational in its conclusions. However don't expect them to see it your way!

7 What happens if consent is refused?

Undertaking any works without the necessary consents is not advisable in any circumstances.

All regulatory bodies have wide powers of investigation, enforcement, with potentially severe financial and other penalties.

- Undertaking works without planning consent will leave you open to enforcement proceedings. This will usually involve the service of a statutory notice requiring you to remedy the breach of planning control (i.e. Enforcement Notice). In most cases there is a right of appeal against the issue of an Enforcement Notice, the effect of which will be to hold the requirements of the notice in abeyance pending the determination of the appeal. If the notice is upheld on appeal, or no appeal is lodged then the LPA can make you demolish buildings and put the land back to its previous condition. Ignoring the terms of an enforcement notice is an offence, punishable by a prosecution in either the Magistrates Court or Crown Court. If found guilty then a fine of up to £20,000 for each offence can be imposed in the Magistrates Court and an unlimited fine in the Crown Court. The LPA do have a wide discretion in this area and can take other types of enforcement action including the service of Breach of Condition Notices and Stop Notices.

- Any unauthorised works to Trees or Listed Buildings are criminal offences punishable by a large fine and/or imprisonment.

- Undertaking works without a FEPA licence is an offence punishable by a large fine and/or imprisonment.

- Undertaking works without Coast Protection Act Consent will leave you open to action by DEFRA to remove any works and, if convicted, a fine.

- Undertaking works to water courses without consent or causing pollution through works can result in prosecution by the Environment Agency who have wide powers of enforcement.

If you find that work carried out does not have the necessary consent, it is possible in some cases to apply retrospectively and to regularise the situation without further complications. Appropriate advice should be sought from a planning professional as soon as possible to indicate the best way to proceed.

If enforcement or court action is taken or threatened by any of the consenting authorities, professional help should be obtained immediately.

Challenging a Refusal

Most of the consents listed in this guide allow for appeals to a higher power if they are refused.

An unsuccessful planning applicant may, within 6 months of the date of the refusal, appeal to the Secretary of State. As a rule of thumb appeals will not be considered by the Secretary of State if they are received out of time.

Upon receipt of a refusal it is important to review you position and consider whether or not to lodge an appeal at an early stage.

It is often appropriate to engage the services of a planning professional to advise on the likely prospects of success. It may be that a resubmission of an amended scheme is more likely to result in the grant of planning permission. If this is an option which can be pursued then it will produce a much quicker end result than following the appeal process which may take between 6 and 12 months or slightly longer in some cases to determine.

Appeals are allowed on the refusal of planning permission, against conditions attached to the permission and where a local planning authority has failed to give a decision within the prescribed period.

Although the appeal is made to the Secretary of State the vast majority are considered by Inspector's "*standing in the Secretary of State's shoes*". Wide powers are available to the Secretary of State and Inspector's including the reversal of the local authority's decision, or the addition deletion or modification of conditions.

Before reaching any decision the Inspector or Secretary of State needs to consider the evidence and this can be done in one of three ways.

Firstly by way of an Inquiry (know as local public inquiries), which usually involves presentation and cross examination of evidence. The process is adversarial in nature and while the proceedings are usually led by Inspectors, often advocates (barristers and solicitors) play a dominant role in the proceedings which leads to a courtroom atmosphere. Inquiries tend to be followed in relation to more complicated appeals or where there is a high degree of public interest in a proposal or factual or expert evidence which needs to be tested under cross examination.

It is widely acknowledged that inquiries are unnecessary for less complex appeals especially where one party is not professionally represented. The Hearing procedure is the second appeal route which can be followed. This proceeds in an inquisitorial way with the appointed Inspector playing an active role in structuring a round table discussion and asking questions but no formal cross examination is allowed.

The third and most widely used method of appeal is through Written Representations. In this case the appeal is conducted through the exchange of written statements which are sent by both parties to the Secretary of State. An Inspector will be appointed in the same way but will base the decision upon the representations received as well as a site visit which may or may not be accompanied.

Inspectors appointed to deal with all three forms of appeal will undertake a site visit which in the case of an Inquiry or Hearing will usually take place after the close of the proceedings. The Inspector will be accompanied by both sides and will review the appeal site and surrounding area.

In the case of an Inquiry no further evidence will be taken down or allowed by the Inspector and the site visit is simply an opportunity for both parties to draw the Inspectors attention to particular views or structures on the ground for example which were referred to in evidence. Hearings are different in that the Inspector will often not have closed the Hearing and will still take evidence and ask questions about matters which can be seen on site.

At the end of the Hearing or Inquiry the Inspector will usually give an indication of when a formal decision letter will be issued. The decision letter will either approve or refuse the appeal proposal and set out the reasons for doing so.

When making an appeal against a decision made by a LPA you will be able to indicate which method of appeal you would wish to follow. The LPA will also be able to make representations on this point but following recent changes it will ultimately be a matter for the Secretary of State to determine.

It is important to obtain advice from a qualified planning consultant before deciding on the type of appeal and this may well relate to the nature of the complexity of the development proposed.

One factor to bear in mind however is the question of costs. Costs do not follow the event which means that even if your appeal is successful you may still have to factor into the overall cost of the development, costs in respect of professional advisers who may be appointed to assist with any appeal.

Costs are only recoverable in respect of appeals decided by way of an Inquiry or Hearing. Costs cannot be claimed at the moment in relation to a Written Representation appeal although this is currently subject to review and you should check on the latest position with your appointed adviser.

Before an award of costs can be considered by the Secretary of State or an appointed Inspector an application has to be made at the relevant time which usually means before the Inspector formally closes the Inquiry or Hearing.

For a costs application to be successful it has to be demonstrated that one party has behaved unreasonably (i.e. the LPA have refused to grant planning permission in connection with a development proposal which is in accordance with local and national policy and there are no other material considerations supporting such a refusal) and that such unreasonable behaviour has caused the other party to incur unnecessary expense in having for example to pursue a matter to appeal and engage and pay for professional help and assistance.

In the majority of cases no costs award will be made. That said it is always worthwhile discussing the possibility of making an application with your appointed legal adviser and as a matter of course applications tend to be made more often than not on the simple premise that “if you don’t ask then you don’t get.”

So far as Wales is concerned, the majority of appeals are considered by Inspectors. However following the establishment of the Welsh Assembly rather than the Secretary of State, a cross party Planning Decision Committee has been formulated with four members sitting to make the final decision on important appeals and applications that have been called in for determination by the Welsh Assembly.

The process of development control including the making of planning applications operates in a similar way across the whole of the United Kingdom although it is established by separate law in Northern Ireland and Scotland.

Legislation is generally made for England and Wales together. Planning Policy is separately made for all four.

The most important difference is that in Northern Ireland development control is operated by the Planning Service, an executive agency of the Department of Environment for Northern Ireland,

which operates through six divisional planning offices. Local authorities in Northern Ireland only have a consultative role and planning applications are made to the Department. The Planning Service makes recommendations to the local district councils, which can request the Planning Service to reconsider. It may do so, but if there is no agreement the matter is referred to the Chief Executive's Office and a decision is made by the Management Board which is made up of senior civil servants.

Appeals in Northern Ireland are heard by the Planning Appeals Commission.

In Scotland if a local authority has refused consent or grants consent subject to conditions, the applicant has the right of appeal to the Scottish Ministers. The Scottish Ministers may uphold or dismiss the appeal, or reverse or vary any part of the decision of the planning authority. This can include amending a condition previously attached to the grant of consent.

On an appeal, the Court cannot impose its own decision over that of the Scottish Ministers. All it can do is quash the decision, which then refers the matter back to the Scottish Ministers for redetermination. There can be no guarantee, therefore, that a successful challenge to the Court will result in a different decision. The decision may ultimately be the same provided that the decision maker takes into account the findings of the court in referring the matter back.

A further right of appeal (by means of Judicial Review) does exist against a decision made by the Secretary of State or his appointed Inspector to the High Court but only on certain limited grounds and within a strict time limits. Legal advice should always be sought as soon as possible after the decision so that a proper assessment can be made as to whether or not a successful appeal to the High Court is possible.

Appeals are the responsibility of the Planning Inspectorate in England and Wales (www.planninginspectorate.gov.uk).

The Planning Appeals Commission in Northern Ireland (www.pacni.gov.uk)

In Scotland, the Scottish Ministers or a member ofthe Scottish Government's Directorate for Planning and Environmental Appeals. (www.scotland.gov.uk)

There are a range of options which are discussed on the Planning Portal (www.planningportal.gov.uk/england/genpub/en/1068129756664)

Marine and Fisheries Consent appeals: Appeals against refusal of FEPA Licences, Coastal Protection Act Consent and Land Drainage Consent are dealt with by a Representation Committee which makes a recommendation to the relevant Minister to decide.

Environment Agency appeals: Appeals against decisions of the Environment Agency are dealt with in the first instance by their complaint and commendation procedures (www.environmentagency.gov.uk). Appeals against discharge consent decisions can be made to the Planning Inspectorate but only as a last resort when negotiation has failed.

The costs of appealing refusals vary widely. For the simplest planning appeal (by means of a Written Representation), professional charges would be a minimum of £2,500. The costs of appealing by means of a Hearing or an Inquiry will be greater, as a general rule, you should budget for between £3,500 - £7,000 for each day of the appeal (Hearing - which usually last a single day - or Inquiry – which may last a week).

The costs associated with challenging (by means of a Judicial Review) a Secretary of State refusal are likely to be in the range of £15,000 - £20,000.

8 Objecting to proposals of others

Objecting to schemes put in by other people is a normal part of the process. Whenever a scheme affects a club's premises or other interests such as its sailing waters, the club will need to look at it closely to see what the effects will be. It cannot rely on the consenting authority to understand its concerns or to protect its interests if these have not been brought to its notice. Silence is normally taken by a consenting authority to indicate agreement.

Where a club sees that its interests are affected, whether for the better or worse, it is generally advisable to bring this to the notice of the consenting authority.

If the proposal is a benefit, then a letter of support is recommended since there may be objectors whose comments would otherwise have greater weight. An objection can either request that the proposal is refused or that it is amended.

Generally, amending the proposal is to be preferred if a change can be proposed, which removes the club's concerns. An example of this has been the RYA's objections to offshore wind farms, which proposed an amendment to the developments which secured sufficient clearance between the rotor arms and the masts of cruising yachts. Compromise of this sort may not be possible and the club may want to have consent refused. The means of objecting will differ depending on which consent is being applied for.

For planning permissions the processes of objection are very clearly worked out. Applications are advertised in various ways, including the posting of notices on the premises themselves, but often by notification of neighbouring premises by letter. These letters describe the proposals in summary, explain where more details can be seen, give an address and for correspondence and a deadline by which the objection must be received. If this is done, the local authority is bound to take account of the comments and weigh them in the balance when making any planning determinations provided such comments relate to material and relevant planning considerations.

Regulations for consultation of neighbours and stakeholders have recently been revised and are likely to lead to greater consultation and opportunities for comment than in the past. These are detailed in the Local Authorities' Statements of Community Involvement. Local planning permissions may be advertised locally and club members should be aware of notices. In addition, planning applications are also publicised on the Local Planning Authority's website.

The RYA is routinely consulted on Coast Protection Act consents which are then forwarded to the Regional Association or Committee for comment. Contact your Regional Secretary or Chairman is you are aware of an issue that will require CPA consent.

Comments on planning applications are read by planning officers who take most decisions under delegated powers. Where a decision is to be taken by the Councillors in Committee they can be lobbied and written to. In this way they will have the full knowledge of the objection rather than seeing it in summaries.

However they will usually declare that they have been lobbied in the committee meeting itself and if they are directly approached before the committee meeting they are unlikely to make any comment on the merits of the planning proposal. If they do so then this can lead to issues being raised in

relation to predetermination which can leave any decision made on a planning application open to challenge by an aggrieved party in the higher courts.

The press may also be used to supplement direct objection. Petitions indicate a level of public concern. Objections should focus upon the principal concerns of the decision maker. These will be set out in their own policy documents will relate to the public interest rather than to private concerns.

Protecting the club and its boating activity may well be a legitimate public interest, particularly where it relates to recreation, training and the young.

Example: A sailing club objected to extension of the pontoons of the adjoining marina on the grounds that it would extend into a secondary channel and make it more difficult for their young sailors to manoeuvre in safety. It based its objection on policies in the Local Plan, which sought to protect “ease of navigation”. The application was refused. A similar case went to appeal and was dismissed.

9 Supporting Information

Environmental Impact Assessments

Any works that require any of the consents listed in this guide may be subject to Environmental Impact Assessment Regulations. These may relate to the planning permission applied for or the marine consent applied for.

See: In England and Wales
www.communities.gov.uk/planningandbuilding/planning/sustainabilityenvironmental/environmentalimpactassessment/ or
www.mceu.gov.uk/MCEU_LOCAL/fepa/eia.htm

In Scotland
www.scotland.gov.uk/Publications/1999/10/pan58-root/pan58

In Northern Ireland
www.ni-environment.gov.uk/landscape/plan/eia.htm

If an Environmental Impact Assessment (EIA) is required by any of the consenting authorities, it will almost always lead to the appointment of one or more experts. EIAs are a systematic and structured way of assessing the impact of development upon the environment. The applicant will be required to put together an Environmental Statement that covers the information the consenting authority requires to make the Assessment. One Environmental Statement can be submitted covering all authorities concerns.

An EIA is likely to be required in two circumstances:

- For developments of a particular size and scale. Developments that include reclaiming land from the sea, flood relief works, harbours, ports and marinas will require an EIA. The relevant schedules in the Regulations specify what project requires an EIA

- For any significant development in a 'sensitive area' such as a national park, an Area of Outstanding Natural Beauty, Site of Special Scientific Interest, etc.

Additions and extensions to buildings may also require an EIA. Developments for boating are more likely to require EIA than many other types of projects because so many designations are concentrated on the water's edge, both inland and on the coast. There is no threshold for the size of works requiring an EIA under the Marine Works (EIA) Regulations 2007.

Normally, a 'screening opinion' from the relevant consenting authority can be obtained to check if an EIA will be required. The consenting authorities have considerable discretion whether to require an EIA. For any single development requiring several consents, one authority may require an EIA when the others do not. If the advice is that an EIA is required then a 'scoping opinion' can be requested. The consenting authority will let you know what issues they expect to see addressed.

Professional advice on EIA is strongly advised.

For more information on the Environmental Impact Assessment process and an indicative list of the type of projects that require an EIA go to:
www.communities.gov.uk/publications/planningandbuilding/circularenvironmentalimpact

Appropriate Assessments

Any application in respect of proposed works within or adjacent to a European Site (a Special Protected Area (SPA) or a proposed/candidate SPA, or a Special Area of Conservation (SAC) or a candidate SAC) is subject to the provisions of the Conservation (Natural Habitats &C) Regulations 1994. This may mean that more detailed information is required for the consenting authorities to carry out an Appropriate Assessment. An Appropriate Assessment is required where a plan or project is deemed likely to have a significant effect on the European site. The scope and content of what constitutes an Appropriate Assessment will depend upon the location, size and significance of the project. The aim is to allow the relevant authority (e.g., the Environment Agency, Harbour Board, or the local planning authority) to judge whether the proposal will have a significant effect on the integrity of the site. This will require the applicant providing a report documenting the impact of the development on the features of interest. It will then be up to the lead consenting authority carrying out the Appropriate Assessment to determine whether or not the development will have an adverse effect on the site features.

If it is deemed that the project will have a significant effect on the features of interest, consent can be granted if adequate mitigation is included as part of the project. To save time and money, it is wise to include this at the outset as part of the original project.

The Joint Nature Conservation Committee (JNCC) is the statutory adviser to the Government on UK Nature conservations. Its website illustrates the protected sites in each of the four home countries. (www.jncc.gov.uk)

Natural England's interactive maps of Special Protection Areas or Special Areas of Conservation can be found at: www.natureonthemap.org.uk/map.aspx

More information on Appropriate Assessment can be found in Planning Policy Statement 9 (Biodiversity and Geological Conservation) available here:
www.communities.gov.uk/publications/planningandbuilding/planningpolicystatement12
and from the Marine and Fisheries Agency:
www.mceu.gov.uk/MCEU_LOCAL/Ref-Docs/EN-HabsRegs-AA.pdf

Impact on Biodiversity

Under the Natural Environment and Rural Communities Act 2006, statutory bodies have a duty to protect biodiversity. Proposals will need to consider their impact on biodiversity and show how mitigating options have been built into the proposal.

A complete list of Biodiversity Action Plans relating to the UK can be found at
www.ukbap.org.uk

Many Local Authorities supply their own Planning advice relating to biodiversity, for example:
www.westberks.gov.uk/media/pdf/m/c/dev_cont_biodiversity_1_1.pdf

Other Supporting Information for Planning Applications

9.1.1 Design and Access Statement

For new non-residential buildings a Design and Access Statement is likely to be required by the Local Planning Authority. As its name indicates, its primary concerns are design - especially the context given by surrounding buildings/uses/landscape and access in the sense of reducing use of the private car and making best use of public transport, the thinking behind a proposal and how it meets access policies for the area.

This requirement was introduced only in August 2006, and practice is still evolving. For small schemes these can be simple explanations of how the proposal will impact on its surroundings but for larger schemes such as examples given in this guide, much more complex analysis and justification is needed. In many cases it will be advisable to employ the services of a planning professional to produce a Design and Access Statement which reflects what the LPA actually require in a particular case.

See www.cabe.org.uk/default.aspx?contentitemid=1334 for more on Design and Access Statements.

9.1.2 Assessment for the treatment of foul sewage

Normally required where the new development relies upon septic tanks. It should include a description of the type, quantities, and means of disposal of any trade waste.

9.1.3 Conservation area appraisal

These will be required for major planning applications within a (built) conservation area. Statements should comprise a written statement including an analysis of the special architectural or historic interest of the conservation area and the building/structure within this context, the principles of and justification for the proposed works and how they preserve or enhance the character or appearance of the conservation area. The scope and degree of detail necessary in the written justification will vary according to the particular circumstances of each application. Further advice is in Planning Policy Guidance Note (PPG) 15: Planning and the Historic Environment (see www.communities.gov.uk/planningandbuilding/planning/planningpolicyguidance/historicenvironment/planningpolicyguidance/)

9.1.4 Details of any lighting scheme including a light pollution assessment

This can be required for any sports/recreational development that propose floodlights within sensitive areas such as AONBs or National Parks as well as any other area where the lighting is likely to have an impact beyond the boundary of the development site as well as upon views into the site. It should include technical specification designed to ensure nuisance from lighting is minimized/prevented.

9.1.5 Details of Sustainable Urban Drainage Systems (SUDS)

In many cases, details of sustainable urban drainage systems will be required to be submitted as part of the application. These must be shown on plans detailing the soak away system to be used and the draining points and channels.

9.1.6 Flood risk assessment

Issues of flooding and the location of development have become a significant issue in recent years, particularly following major UK flooding events in the late 1990's. The Environment Agency (England and Wales) are now consulted on a Statutory basis over applications where flooding may be an issue. This is not just in coastal locations, but also low lying land in the vicinity of streams and rivers, and land where ground water levels are close to the surface and flooding occurs after heavy rain.

In Scotland the Scottish Environment Protection Agency (SEPA) is responsible for providing advice on flood risk for planning purposes. (www.sepa.org.uk)

In Northern Ireland, it is the Northern Ireland Environment Agency (www.ni-environment.gov.uk)

Maps of flood zones are available from the Environment Agency website www.environment-agency.gov.uk/ . Further information is available in PPS 25: Development and Flood Risk and from the Companion Guide PPS25 now available as a draft. www.communities.gov.uk/planningandbuilding/planning/planningpolicyguidance/planningpolicystatements/planningpolicystatements/pps25/

Where any development is proposed in an area at risk from flooding, a sequential test is required to show that there are no alternative sites which are at less risk from flooding; if this test is passed, an Exception Test must then be carried out to show that the public benefits of the development justify the risks. It should be noted that PPS25 recognizes recreational boating and its infrastructure as being acceptable in the high-risk flood zones.

9.1.7 Supporting Planning Statement

This document ensures that the application is fully explained to the Planning Authority to the public and to other interested bodies. It puts the proposal in the context of planning policies of Government and Local authorities and shows how community interests and environmental issues have been addressed. It shows how the proposal relates to neighbours and adjoining uses.

A planning statement is usually produced by a planning professional such as a planning solicitor or architect. The document is usually very detailed and should be designed to put across your development proposal in the most advantageous terms so as to give the Local Planning Authority every reason to approve. If your proposal is not successful then a well drafted and detailed planning statement will provide a good basis to launch an appeal.

In general terms a planning statement should briefly introduce the development proposal and explain the circumstances of the application and the applicant before providing specific and detailed information covering the following main points:-

1. Existing development site and surrounding area

2. Proposed development
3. Planning policy appraisal
4. Other material planning considerations
5. Planning history and pre-application consultation
6. Design and Access Statement
7. Conclusion

The special points that a club would make would include:

- contribution to recreation and sport strategy
- non-profit making
- local links and activities
- established club
- part of local scene

If an Environmental Impact Assessment is required then it is often the case that such a document forms part of the planning statement.

10 ANNEX B. DETAILS ON ADDITIONAL CONSENTS

Food and Environmental Protection Act (FEPA) Licence

<table>
<tr><td>Title of Consent:</td><td>Food and Environment Protection Act Licence (FEPA)</td><td>Consenting Organisation:</td><td>Marine and Fisheries Agency (MFA), DEFRA</td></tr>
<tr><td colspan="4">Consenting Activity:
A licence is required to deposit articles and substances at sea, for example, the disposal of dredged material, or the placing of piles into the sea for construction purposes. Or the placement of materials during construction and related activities.
The licensing authority normally exempts work which is to be undertaken on an existing structure or facility to refurbish or replace parts of it with materials or articles of a similar nature (essentially “like with like”) so as to extend the serviceability or continue the purpose of that structure.</td></tr>
<tr><td>Geographical Area of Jurisdiction:
A licence is required for all construction and deposits below MHWS.</td><td>Supporting Legislation:
Food and Environment Protection Act, 1985.</td><td colspan="2">Supplementary Information:
MFA Guidance Note available on website.</td></tr>
<tr><td colspan="4">Application Process:
1. Prospective applicant contacts the MFA for informal discussions and scoping
2. MFA liaises with its advisers concerning the possible impacts of the proposal. MCEU may convene a meeting with the applicant if deemed necessary
3. MFA will then advise applicant if licence is needed and whether a formal EIA is required
4. Application sent to MFA and sediment samples to CEFAS (where appropriate)
5. MFA sends copies of proposal to key consultees
6. MFA collates and evaluates comments of internal and external consultees
7. MFA assess and determines the application, applicant notified of decision and any licensing conditions
A dual application form may be used if the proposal requires both FEPA and Coast Protection Act consent. The standard disposal licences for dredged material are valid for 12 months.</td></tr>
<tr><td colspan="2">Consultation Process:
An advert needs to be placed in the local paper and a notice attached in a prominent position adjacent to the works. Details of the plans must be placed at the local library or at a location with public access.</td><td colspan="2">Procedure under Habitat Regulations:
All applications of any description will be subject to the requirements of the Habitats Regulations (hence appropriate assessment) if they have the potential to affect a European marine site. Any proposed sites are treated as if they are designated. DEFRA acts as the competent authority responsible for implementing the Regulations</td></tr>
<tr><td colspan="2">Appeals Procedure:
Appeals dealt with by Representation Committee which makes recommendation to relevant Minister to decide.</td><td colspan="2">Is the information contained on the consent application publicly available?
Yes √ No</td></tr>
<tr><td colspan="2">Cost:
Licence charges are reviewed annually; contact the MFA for latest charges.</td><td colspan="2">Timescales:
The application process takes a minimum of ten weeks, however, it may take significantly longer if the location is in or adjacent or could have a significant effect on a European Marine Site.</td></tr>
<tr><td colspan="2">Contact Details for further information:
MFA: www.mceu.gov.uk</td><td colspan="2">Other Comments:
See MFA website – www.mceu.gov.uk</td></tr>
</table>

Source: updated from the Solent Forum Marine Consents Guide

Harbour Works and Dredging Licence

<table>
<tr><td>Title of Consent:</td><td>Harbour Works and Dredging Licence</td><td>Consenting Organisation:</td><td>Harbour Authority</td></tr>
<tr><td colspan="4">Consenting Activity:
The harbour authority may upon such terms and conditions as they think fit grant to any person a licence to construct, alter, renew or extend any works in the harbour on, under or over tidal waters or land below the level of high water. Any works so constructed, altered, renewed, or extended should not interfere with public right of navigation or any other public right.</td></tr>
<tr><td>Geographical Area of Jurisdiction:
Proposals on, under or over the tidal waters of the harbour or on land below the level of high water.</td><td colspan="2">Supporting Legislation:
Relevant Harbour Act or Harbour Order (unique to each harbour authority).</td><td>Supplementary Information:</td></tr>
<tr><td colspan="4">Application Process:
1. Applicant to contact the harbour authority to determine if the works require a licence and the application procedure – a site visit may be arranged
2. Applicant returns appropriate information together with copies of any plans and the appropriate fee (where applicable)
3. The harbour authority consults internally and with other relevant bodies, e.g. English Nature
4. Subject to no specific concerns arising from the consultation process a licence will be issued
5. The harbour authority will monitor the progress of the works or dredging to assure compliance.</td></tr>
<tr><td colspan="2">Consultation Process:
The harbour authority will consult with Natural England and other interested parties to determine if the proposed works are likely to have an impact on the safety of navigation, a European Marine Site or other environmental impact. It will also consult its Advisory Committee (where appropriate).</td><td colspan="2">Procedure under Habitat Regulations:
All applications of any description will be subject to the requirements of the Habitats Regulation if they have the potential to affect a European marine site. Any proposed sites are treated as if they are designated. The harbour authority will act as the competent authority responsible for implementing the Regulations.</td></tr>
<tr><td colspan="2">Appeals Procedure:
Applicants have a right of appeal to the Secretary of State for DCMS against a refusal of a licence or the imposition of terms or conditions. This right must be exercised within 28 days of notification of refusal, copies of the appeal details must be sent to the harbour authority who have 28 days to respond.</td><td colspan="2">Is the information contained in the consent application publicly available

Yes √ No</td></tr>
<tr><td colspan="2">Cost:
On application from the harbour authority.</td><td colspan="2">Timescales:
This varies depending in the harbour authority and the nature of the proposal, please contact the appropriate local harbour authority for further information.</td></tr>
<tr><td colspan="2">Contact Details for further information:
Local harbour authority</td><td colspan="2">Other Comments:</td></tr>
</table>

Source: updated from the Solent Forum Marine Consents Guide

Coast Protection Act (CPA) Consent

<table>
<tr><td>Title of Consent:</td><td>Coast Protection Act 1949: Section 34</td><td>Consenting Organisation:</td><td>Marine and Fisheries Agency (MFA), DEFRA</td></tr>
<tr><td colspan="4">Consenting Activity:
The construction, alteration or improvement of any works on, under or over any part of the seashore lying below the level of mean high water springs;
The depositing of any object or any materials on any such part of the seashore;
The removal of any object or any materials from any part of the seashore lying below the level of mean low water springs;
If the operation whether while carried out or subsequently causes or is likely to result in obstruction or danger to navigation.
Under Section 35 of the CPA certain tidal operations are exempted from control under Section 34. These include operations already authorised under other legislation; approved coast protection works, works in enclosed docks and works covered by harbour orders.</td></tr>
<tr><td>Geographical Area of Jurisdiction:
England and Wales below MHWS up to 12 miles offshore.</td><td colspan="2">Supporting Legislation:
Coast Protection Act, 1949.</td><td>Supplementary Information:
Guidance issued by DEFRA Marine and Environmental Consents Unit (MFA): The Control of Marine Works, Dredging/Disposal at Sea and Approval of Oil Dispersants.</td></tr>
<tr><td colspan="4">Application Process:
1. Informal discussions will be considered.
2. Formal application submitted, preferably on application form issued by MFA.
3. Applicant advertises application in local newspaper allowing 28 days for representations to be made to Secretary of State, DEFRA.
4. At end of period Secretary of State will consider the representations. If objections remain he will ask the applicant to seek agreement with objectors. If agreement is not reached then Secretary of State will proceed to a decision based on the information available to him plus additional information he seeks.
5. Decision is then made and consent granted, granted with conditions, or refused.

A dual application form may be used if the proposal requires both FEPA and CPA consent.</td></tr>
<tr><td colspan="2">Consultation Process:
DEFRA will consult Trinity House, Maritime and Coastguard Agency, English Nature, Environment Agency, Local Harbour Authority, Local Authority, DEFRA/CEFAS.</td><td colspan="2">Procedure under Habitat Regulations:
DEFRA will seek advice on whether the works in the application represent a plan or project within the meaning of the Habitats Regulations. If it does then the Habitats Regulation procedures will apply and an appropriate assessment will be undertaken.</td></tr>
<tr><td colspan="2">Appeals Procedure:
Appeals dealt with by Representation Committee which makes recommendation to relevant Minister to decide.</td><td colspan="2">Is the information contained in the consent application publicly available?
Yes √ (on request) No</td></tr>
<tr><td colspan="2">Cost:
None for the application itself.</td><td colspan="2">Timescales:
A straightforward application which does not involve European Directives (e.g. Habitats Regulations) and which does not attract objections should take 12 weeks to process.</td></tr>
<tr><td colspan="2">Contact Details for further information:
MFA: www.mceu.gov.uk</td><td colspan="2">Other Comments:
Separate notes are included in this Guide on the application by DEFRA of the European Directives.
A CPA consent is normally valid for 3 years.</td></tr>
</table>

Source: updated from the Solent Forum Marine Consents Guide

Land Drainage Consent

Title of Consent:	Land Drainage Consent	**Consenting Organisation:**	Environment Agency
Consenting Activity: Any works in, on, under or over Main River (definition of main river can include harbours and estuaries) or within the byelaw width of 8 metres. Any works within 15 metres of a sea defence. Any works to fill, divert, obstruct or culvert an ordinary watercourse.			

Geographical Area of Jurisdiction:	**Supporting Legislation:**	**Supplementary Information Available:**
England and Wales	Land Drainage Act, 1991 Water Resources Act, 1991 Byelaws	Living on the Edge booklet Customer Charter

Application Process:

1. Applicant to contact the Agency and arrange a visit to the site to discuss proposed works.
2. Applicant to submit drawings and method statements to the Agency.
3. Subject to agreement of the information sent by the applicant the Agency will issue an application form.
4. Application form completed and submitted by the Applicant along with the appropriate fee and associated information.
5. The Agency consults internally and with English Nature (if required).
6. Consent issued by the Agency within specified time period.
7. The Agency will check compliance of the work undertaken.

Consultation Process:	**Procedure under Habitat Regulation:**
The Environment Agency consults with English Nature if the proposed works are likely to have any effect on a designated site.	All applications of any description will be subject to the requirements of the Habitats Regulations if they have the potential to affect a European marine site. Any proposed sites are treated as if they are designated. The Agency will act as the competent authority responsible for implementing the Regulations.
Appeals Procedure: Appeals are dealt with in the first instance by the Agency's appeals and complaints procedure.	**Once issued is the information contained in the consent application publicly available?** Yes No √
Cost: £50 per structure.	**Timescales:** The Agency has 2 months from receipt of a validated application to determine consent. Consented works must be carried out within 2 years of authorisation.
Contact Details for further information: The *Development Control Team* at the relevant local Environment Agency office.	**Other comments:**

Source: updated from the Solent Forum Marine Consents Guide

Pollution Prevention and Control Permit

<table>
<tr><td>Title of Consent:</td><td>Pollution Prevention and Control Permit (PPC)</td><td>Consenting Organisation:</td><td>Environment Agency</td></tr>
<tr><td colspan="4">Consenting Activity:
The deposit of waste into or on to land.
There are some circumstances where the regulations may not apply, but they should be considered on a case by case basis in conjunction with the legislation. Therefore all deposit of dredged material on land, or land reclaim activities should be discussed with the Regulatory Support Team (Waste).</td></tr>
<tr><td>Geographical Area of Jurisdiction:
Land above the low water mark.</td><td colspan="2">Supporting Legislation:
The Pollution Prevention and Control (England and Wales) Regulations 2000.
The Landfill (England and Wales) Regulations 2002.</td><td>Supplementary Information:
Landfill Directive regulatory guidance notes.
Landfill Directive technical guidance notes.
Summary notes for landfills.
IPPC: Cross Sector Technical Guidance
All available on our website
www.environment-agency.gov.uk</td></tr>
<tr><td colspan="4">Application Process:
Applicant should contact the Regulatory Support Team (Waste) to discuss their proposal and ascertain whether a PPC Permit is required.
1. The applicant is entitled to up to 15 hours pre-application advice from the Environment Agency where a PPC application is required for the activity. The applicant should review the supplementary information detailed above, and use the pre-application time to discuss the issues arising from the guidance.
2. The applicant will need to submit an application on the Pollution prevention and control: Part B application form for the landfill sector and carry out the procedure for identifying nuisance/health risks from landfill. The application should be supported by Risk assessments for hydrogeology, site stability, landfill gas and habitats. The applicant will also need to demonstrate that they are in occupation of the land, that they are a “fit & proper person” and that appropriate planning permission is held before the permit is granted.
3. Once the required information is received and the application is considered complete, the application will enter a consultation process both within and external to the Agency.
4. A permit will be drafted within the statutory period of 4 months, unless an extension is agreed with the applicant. Once issued the Permit will be placed on the public register.
5. An annual subsistence charge will be payable for the life of the permit. To surrender the Permit an application will need to be made to the Environment Agency which demonstrates that the land has stabilised and is unlikely to cause pollution of the environment or harm to human health.</td></tr>
<tr><td colspan="2">Consultation Process:
There are several statutory consultees identified in the legislation (Part 2, Schedule 4 of the Pollution Prevention and Control (England and Wales) Regulations 2000) who must be consulted.
The application may be rejected if the applicant does not demonstrate the use of that all appropriate measures are taken against pollution using “best available techniques”, and that no significant pollution is caused.</td><td colspan="2">Procedure under the Habitats Regulations:
All applications of any description will be subject to the requirements of the Habitats Regulations if they have the potential to affect a European marine site. Any proposed sites are treated as if they are designated. The Agency will act as the competent authority responsible for implementing the regulations.</td></tr>
<tr><td colspan="2">Appeals Procedure:
If the applicant is aggrieved by a decision made by the Environment Agency, then they may appeal under part IV of the regulations. This is initially dealt with through the EA’s internal complaints procedure</td><td colspan="2">Is the information contained in the consent application publicly available?
Yes, unless the applicant requests and the Agency agrees that the application is commercially confidential.</td></tr>
<tr><td colspan="2">Costs:
The application fee is calculated on the basis of the application under the PPC Charging Scheme. How to calculate the fee is explained on EA website.</td><td colspan="2">Timescales:
There is a statutory determination period of 4 months which commences when all information is provided.</td></tr>
<tr><td colspan="2">Contact Details for Information:
Regulatory Support (Waste) Team at the Environment Agency.</td><td colspan="2">Other Comments:
Visit our website for more information on PPC permits
www.environment-agency.gov.uk</td></tr>
</table>

Source: updated from the Solent Forum Marine Consents Guide

Discharge Consent

<table>
<tr><td>Title of Consent:</td><td>Discharge Consent</td><td>Consenting Organisation:</td><td>Environment Agency</td></tr>
<tr><td colspan="4">Consenting Activity:
Any discharges to controlled waters (rivers, streams, ditches, estuaries, coastal waters) or into or onto land which can be classified as one of the following:
• Sewage effluent
• Trade effluent
• Swimming pool effluent
• Discharges resulting from de-watering operations
• Site Drainage likely to be contaminated (Industrial sites, HGV parking and delivery areas, large car parks)</td></tr>
<tr><td colspan="2">Geographical Area of Jurisdiction:
England and Wales</td><td>Supporting Legislation:
Water Resources Act, 1991
Environment Act 1995
Groundwater Regulations, 1998
EU Directives</td><td>Supplementary Information Available:
Charging for Discharges leaflet
Pollution Prevention Guidelines
CIRIA leaflets (sewage effluent)
Sustainable Urban Drainage</td></tr>
<tr><td colspan="4">Application Process:
1. For larger developments (e.g. developments of > 10 houses, industrial/trade developments) we advise the applicant submits proposals as a ‘pre-application’.
2. Applicant to contact the Agency for an Application Form pack (including guidelines and charging details).
3. Applicant to submit completed form, application fee, 3 copies of a location and site plan, percolation tests results and calculations detailing drainage field area if the discharge is to ground (based on the guidelines leaflet supplied), plant specification details, and reasons for not connecting to a mains sewer.
4. The Agency consults internally and externally. Please contact the Agency for more details.
5. The proposal may be advertised in the local press and the London Gazette. Costs must be borne by the applicant. Please contact the Agency for more details.
6. Consent determined by the Agency within a statutory time period, unless an extension is agreed with the applicant. Determination may result in approval (with conditions) or refusal (with the right to Appeal).
7. Annual charging is applied when appropriate. Please contact the Agency for more details.</td></tr>
<tr><td colspan="2">Consultation Process:
Internal and External consultation gives people the opportunity to make a representation or objection on grounds of Water Quality, Resources, Groundwater Protection, Conservation and Environmental Health, Fisheries and Food interests. Application is advertised if deemed appropriate.</td><td colspan="2">Procedure under the Habitats Regulations:
All applications of any description will be subject to the requirements of the Habitats Regulations if they have the potential to affect a European marine site. Any proposed sites are treated as if they are designated. The Agency will act as the competent authority responsible for implementing the Regulations.</td></tr>
<tr><td colspan="2">Appeals Procedure:
Appeals are dealt with in the first instance by the Agency’s appeals and complaints procedure.</td><td colspan="2">Is the Information contained in the consent application publicly available?
Yes √ (unless requested confidentiality is justified).</td></tr>
<tr><td colspan="2">Cost:
Two-tier Application Fee: Standard and Reduced.
Annual charges may be applicable.
Ask for the ‘Charging for Discharges’ leaflet</td><td colspan="2">Timescales:
The Agency has a statutory period of up to 4 months to determine a validated application for consent to discharge. Extensions must be agreed with the applicant.</td></tr>
<tr><td colspan="2">Contact Details for further information:
The Water Quality Consenting Team at the relevant local Environment Agency office.</td><td colspan="2">Other Comments:
If in doubt as to whether an application is required, please contact the Water Quality Consenting Team.</td></tr>
</table>

Source: updated from the Solent Forum Marine Consents Guide

Listed Building Consent and Conservation Area Consent

<table>
<tr><td>Title of Consent:</td><td>Listed Building Consent and Conservation Area Consent</td><td>Consenting Organisation:</td><td>Local Planning Authority</td></tr>
<tr><td colspan="4">Consenting Activity:
• Proposals affecting a listed building or it's setting (section 10)
• Demolition of buildings within a conservation area (Section 74)</td></tr>
<tr><td colspan="4"><table><tr><td>Geographical Area of Jurisdiction:
Local planning authority
Boundary down to mean low water</td><td>Supporting Legislation:
Planning (Listed Building and Conservations Areas) Act, 1990</td><td>Supplementary Information:</td></tr></table></td></tr>
<tr><td colspan="4">Application Process:
1. Application with location maps, details of proposals submitted, registered and publicized
2. Consultations
3. Report to Committee with recommendations on Delegated Officer decision
4. Committee determination
5. Decision Notice issued</td></tr>
<tr><td colspan="2">Consultation Process:
English Heritage
National amenity Bodies</td><td colspan="2">Procedure under the Habitats Regulations:
Demolition may impact on European Sites and trigger Habitats Regulations.</td></tr>
<tr><td colspan="2">Appeals Procedure:
Appeal to Secretary of State under Section 20 of Planning (Listed Buildings and Conservation Areas) Act, 1990.</td><td colspan="2">Is the information contained in the consent application publicity available?

Yes ✓ No</td></tr>
<tr><td colspan="2">Cost:
Free</td><td colspan="2">Timescales:
Eight weeks target or as agreed with the applicant.</td></tr>
<tr><td colspan="2">Contact Details for further information:
Development control department of the local planning authority.</td><td colspan="2">Other Comments:</td></tr>
</table>

Source: updated from the Solent Forum Marine Consents Guide

Tree Preservation Orders

<table>
<tr><td>Title of Consent:</td><td>Consent to lop, top or fell</td><td>Consenting Organisation:</td><td>Local Planning Authority</td></tr>
<tr><td colspan="4">Consenting Activity:
Proposals to lop, top or fell trees subject to a tree Preservation Order or within a Conservation Area.</td></tr>
<tr><td colspan="2">Geographical Area of Jurisdiction:
Local Planning Authority boundary</td><td>Supporting Legislation:</td><td></td></tr>
<tr><td colspan="4">Application Process:
1. Application with location maps, details of proposals submitted, registered and published.
2. Consultations.
3. Delegated Officer decision OR
4. Report to Committee.
5. Committee consideration
6. Decision</td></tr>
<tr><td colspan="2">Consultation Process:
Parish Council, Neighbours,
Amenity Bodies</td><td colspan="2"></td></tr>
<tr><td colspan="2">Appeal Procedure:
Appeal to the Secretary of State</td><td colspan="2">Is the information contained in the consent process publicly available?

Yes ✓ No</td></tr>
<tr><td colspan="2">Cost:
Free</td><td colspan="2">Timescales:
Eight weeks target or as agreed with.</td></tr>
<tr><td colspan="2">Contact:
There is normally a Tree Officer in each Local Authority.</td><td colspan="2"></td></tr>
<tr><td colspan="4">WARNING: Any unauthorized work to a protected tree is a criminal offence. Fines may be very high.</td></tr>
</table>

Building Regulations Approval

<table>
<tr><td>Title of Consent:</td><td>Building Regulations Approval</td><td>Consenting Organisation:</td><td>Local Planning Authority</td></tr>
<tr><td colspan="4">Consenting Activity:
• Erection of extension of a building.
• Provision or extension of a controlled service in buildings (e.g. plumbing/drainage).
• Alterations to buildings (e.g. structural alterations/alterations affecting means of escape in case of fire).
• Material change of use of a building.</td></tr>
<tr><td colspan="4">Geographical Area of Jurisdiction:
Local Planning Authority boundary to mean low water.

Supporting Legislation:
Building Act, 1984,
Building Regulations, 2000.

Supplementary Information:
Building Control Handbook.</td></tr>
<tr><td colspan="4">Application Process:
1. Contact Building Control Section for preliminary advice.
2. Submit application, consisting of detailed plans, application form and fee.
3. Building Control request additional information/amendments to scheme if necessary.
4. Application approved when all works are shown to satisfy the requirements of the Building Regulations.
5. Inspections are carried out of work in progress at pre-requisite stages.
6. Certificate of compliance issued on satisfactory completion of the works.</td></tr>
<tr><td colspan="2">Consultation Process:
Consultation carried out with the Fires Authority if necessary.</td><td colspan="2">Procedure under the Habitats Regulations:
Not applicable.</td></tr>
<tr><td colspan="2">Appeal Procedure:
Appeal to the Secretary of State, DLLG</td><td colspan="2">Is the information contained in the consent process publicly available?

Yes No ✓</td></tr>
<tr><td colspan="2">Cost:
Contact Building Control Section for current fee scales.</td><td colspan="2">Timescales:
Application will be determined within two months of deposit.</td></tr>
<tr><td colspan="2">Contact Details for further information:
Building Control section of the local Planning Authority.</td><td colspan="2">Other Comments:</td></tr>
</table>

Source: updated from the Solent Forum Marine Consents Guide

Public Rights of Way

<table>
<tr><td>Title of Consent:</td><td>Public path Order</td><td>Consenting Organisation:</td><td>Highway Authority</td></tr>
<tr><td colspan="4">Consenting Activity:
Any works to block or divert a public right of way</td></tr>
<tr><td colspan="4">Geographical Area of Jurisdiction:
England</td></tr>
<tr><td colspan="4">Supporting Legislation:
Town & Country Planning Act 1980
Highways Act 1980
Wildlife and Countryside Act 1981</td></tr>
<tr><td colspan="4">Supplementary Information:</td></tr>
<tr><td colspan="4">Application Process:
1. Application to Authority (County or Unitary).
2. Considered by Committee.
3. Local authority cannot approve if there are outstanding objections.</td></tr>
<tr><td colspan="2">Consultation Process:
Council consults interested organisations and then publishes agreed scheme for objection</td><td colspan="2">Procedure under the Habitats Regulations:
As other consents</td></tr>
<tr><td colspan="2">Appeal Procedure:
The appeal is to Secretary of State (DEFRA) and public hearing is usual; the Inspector reports to the SOS who makes the decision</td><td colspan="2">Is the information contained in the consent application publicly available?</td></tr>
<tr><td colspan="2">Cost:
These are set by each Local Authority</td><td colspan="2">Timscale:
Protracted</td></tr>
<tr><td colspan="2">Contact Details for further information:
Local Authorities</td><td colspan="2">Other Comments:
Councils may be reluctant to process applications. The key consideration is the benefit to the public of any diversion/stopping up</td></tr>
</table>

British Waterways Consent

<table>
<tr><td>Title of Consent:</td><td>Works Contract</td><td>Consenting Organisation:</td><td>British Waterways</td></tr>
<tr><td colspan="4">Consenting Activity:
The consent of British Waterways is required to any works which affect British Waterways property, which includes most of the Canal System; this is secured by a contract between the two parties. British Waterways is the Navigation Authority on a number of River Navigations and has by-law powers to control works.</td></tr>
<tr><td colspan="2">Geographical Area of Jurisdiction:
Most of Canal System and connecting River Navigations</td><td>Supporting Legislation:
Canal Acts
Transport Acts
British Waterways Acts</td><td>Supplementary Information Available:</td></tr>
<tr><td colspan="4">Application Process
The process Is set out in detail in “Code of Practice for Works Affecting British Waterways” August 2007
1. Early discussion with British Waterways
2. Costs undertaking required.
3. Notification Form submitted with Supplementary Information.
4. British Waterways carries out preliminary appraisal.
5. Detailed discussions if acceptable in principle.
6. Acceptance of works
7. Contract executed.</td></tr>
<tr><td colspan="2">Consultation Process:
The procedures are primarily retained but may require</td><td colspan="2">Procedure under the Habitats Regulations:
British Waterways is not an authority for the purposes of the Habitat Regulations.</td></tr>
<tr><td colspan="2">Appeals Procedure:
None.</td><td colspan="2">Is the Information contained in the consent application publicly available?
Yes No</td></tr>
<tr><td colspan="2">Cost:
On application to British Waterways</td><td colspan="2">Timescales:</td></tr>
<tr><td colspan="2">Contact Details for further information:
British Waterways website
www.britishwaterways.co.uk/images/code_of_practice_for_works_affecting_bw.pdf and “Code of Practice for Works Affecting British Waterways August 2007”</td><td colspan="2">Other Comments:
If in doubt as to whether an application is required, please contact the Water Quality Consenting Team.</td></tr>
</table>

11 ANNEX C. INFORMATION BANK

The Consents

Building Regulations:
http://www.planningportal.gov.uk/england/government/en/4000000000001.html

Coast Protection Act Consent: www.mceu.gov.uk/MCEU_LOCAL/fepa/CPA.htm

Discharge Consent: www.environmentagency.
gov.uk/business/1745440/1745496/1754268/?version=1&lang=_e

FEPA Licence: www.mceu.gov.uk/MCEU_LOCAL/FEPA/Consents.htm

Land Drainage Consent:
www.environment-agency.gov.uk/contactus/1017039/?version=1&lang=_e

Listed Building and Conservation Area Consents:
http://www.planningportal.gov.uk/england/genpub/en/1018892036333.html

Planning Permission:
http://www.planningportal.gov.uk/england/genpub/en/1011888236124.html

Pollution Prevention and Control permit and waste management licences:
www.environmentagency.
gov.uk/contactus/1017039/?version=1&lang=_e

Tree Preservation Orders and trees in conservation areas:
http://www.planningportal.gov.uk/england/genpub/en/1115315236841.html

Works and Dredging Licence: The relevant Harbour Authority.

The Consenting Authorities

Marine and Fisheries Agency: www.mfa.gov.uk

Environment Agency: www.environment-agency.gov.uk

Local Planning Authority:
www.planningportal.gov.uk/wps/portal/genpub_LocalInformation?docRef=1103046453478&scope=202&langid=0

Harbour Authority: local website

Authorities who provide advice and guidance:

County Councils. The local authority that is responsible for waste and minerals planning functions in non-unitary, and Non-national Park, local authority areas. A county council may provide advice and proposals on strategic planning issues to the Regional Planning Body and Local Planning Authorities www.direct.gov.uk/en/Dl1/Directories/Localcouncils/index.htm

Department of Communities and Local Government. Government Department with responsibility for housing, urban regeneration, planning and local government. www.communities.gov.uk

English Heritage. Government advisors with responsibility for all aspects of protecting and promoting the historic environment including the listing of historic buildings. www.english-heritage.org.uk/

Highways Agency. An executive agency of the Department of Transport. The Highways Agency is responsible for operating, maintaining and improving the strategic road network of England. www.highways.gov.uk/

Natural England. The organisation responsible for advising government and taking action on issues affecting the social, economic and environmental well being of the English countryside. www.naturalengland.org.uk/

Planning Aid. Planning Aid provides free and independent advice and support to community groups and individuals unable to employ a planning consultant. www.planningaid.rtpi.org.uk

Planning Inspectorate. The Planning Inspectorate is the government body responsible for the processing of planning and enforcement appeals and holding inquiries into local development plans. www.planning-inspectorate.gov.uk.

12 ANNEX D. UNDERSTANDING PLANNING & POLICY

The need to obtain planning permission for a range of developments gives you little indication of whether permission is likely to be granted or not.

The generic legal requirement within the UK's planning systems is for planning applications to be determined in accordance with the local planning policies (the Development Plan) and other material considerations, such as national planning policy.

In practice, LPAs apply significant weight to local planning polices, and less to national policies, when determining planning applications. This highlights two important needs;

- First, the need for the clubs to have identified and assessed the development proposed against the adopted local planning policies, and
- Second, a need for the clubs to identify national planning polices which are supportive of their developments in order to highlight wider policy support.

This Annex is comprised with an overview and description of the planning process (legal and planning policy frameworks) which are likely to apply to coastal and inland water development across:

Annex D1: England & Wales;
Annex D2: Northern Ireland, and
Annex D3: Scotland.

The devolution and creation of regional governments with devolved responsibility for planning matters has given rise to:

- the adoption of differently named local planning policy documents which form the Development Plan;
- revised appeal provisions relating to approving body / Minister, and
- the emergence of new and region specific planning policies in Scotland and Wales.

The Scottish Government has introduced substantive legislative changes to the planning system and is producing several new policy documents and initiatives. In Wales, the legislative framework is broadly identical to that in England; however policy changes are emerging with the Welsh Assembly recently producing new policies specifically aimed at conservation and economic regeneration within Wales.

Annex D1 addresses the English and Welsh legal and policy frameworks which, since the early 1950s, have developed together as a single legal framework. The text highlights where the planning process or the policy framework differs from one region to another (post devolution).

13 Annex D1: The Planning System in England and Wales

Introduction

This Annex describes in further detail the legal and policy framework applicable to England and Wales in relation to the submission and determination of a planning application. It seeks to guide clubs with the identification of relevant local and national planning policies.

Legal Framework

The Town and Country Planning Act 1947 Act heralded the start of modern town and country planning when it for the first time required all proposals, apart from a small number of specific exclusions, to secure planning permission from their local authority.

The 1947 Act - the essential nature of which is unchanged - required local authorities to develop Local Plans or Unitary Development Plans to outline what kind of development would be permitted where and to mark special areas on Local Plan Maps. Counties were expected to develop Structure Plans which set broad targets for the wider area. Structure Plans were always problematic and were often in the process of being replaced by the time they were formally adopted. This state of affairs was reflected in both England and Wales.

Current planning legislation for England and Wales is consolidated in the Town and Country Planning Act 1990 (TCPA 1990). Associated with this principal Act are three further Acts related to planning. Parts of these Acts have been replaced or amended by the provisions of the Planning and Compulsory Purchase Act 2004, which received Royal Assent on 13 May 2004.

The Planning and Compulsory Purchase Act 2004 resulted in a number of substantial changes to the English Development Plan system. It did away with both Structure Plans and Local Plans in favour of Local Development Frameworks (LDFs), which are made up a number of Local Development Documents (LDDs) and Supplementary Planning Documents (SPDs).

The Regional Spatial Strategy (RSS), which is produced by Regional Assemblies in England, replaces the Structure Plan as the strategic planning document (i.e. it is the RSS which will set targets for housing and employment development within each district in a Region in the future). A variation on this approach exists in Wales.

In Wales, the Planning and Compulsory Purchase Act 2004 retains a unitary structure of development plans (for each unitary authority) but the two part structure (as between structure and local plans) is abandoned and replaced by the local development plan (LDP).

The detailed arrangements for Wales are neater and much simpler than in England with a single LDP document making up the local development plan rather than the myriad of different documents which are provided for in England.

Policy Framework in England

National	Planning Policy Statements and Guidance Notes	Minerals and Marine Policy Statements and Guidance Notes
Regional	Regional Spatial Strategy, Regional Transport Strategy and Sub-Regional Strategies	The London Plan
County Council	Mineral and Waste Plans	
District Councils, Unitary Authorities and London Boroughs	Local Development Framework including Development Plan Documents (Core Strategy, site specific allocations and proposals map) and Supplementary Planning Documents	
Community or Parish Council's	Village Appraisals and Plans	

In England, National Planning Policy is issued by the Secretary of State in the form of planning circulars and planning policy statements (formerly known as planning policy guidance notes or PPG's.) A local authority is required to have regard to national guidance as a material planning consideration when making determinations in respect of planning applications.

13.1.1 Local Development Frameworks

In England, the Government has introduced a new suite of local planning policy documents to manage how development takes place in towns and the countryside. The Planning and Compulsory Purchase Act 2004 introduced a new 'two tiered' Development Plan system, comprised of:

- Regional Spatial Strategies (RSS) - prepared by the regional planning bodies (or in London the spatial development strategy prepared by the Mayor of London). These set out a broad spatial planning strategy for how a region should look in 15 to 20 years time and possibly longer.

- Local Development Frameworks (LDF) - a folder of local development documents prepared by district councils, unitary authorities or national park authorities that outline the spatial planning strategy for the local area.

The Local Development Framework, together with the Regional Spatial Strategy, will determine how the planning system will help to shape your community. A guide in the Planning Portal explains the purpose of the different kinds of documents in a Local Development Framework. It also explains the crucial role of community involvement in the plan-making process - one of the most important elements of the new system.

Local Development Framework (LDF) components are:

1. Development plan documents
2. Local development scheme
3. Statement of community interest
4. Annual monitoring report
5. Supplementary planning documents
6. Local development orders and simplified planning zones

Development plan documents will contain the specific policies adopted by the local planning authority in respect of certain defined areas such as environment, housing, leisure, employment etc. The majority of authorities are still going through the required statutory process which will lead to the eventual adoption of their new policy framework. Many of them are at different stages in the process. As a result you will often find that certain policies contained in their existing development plans have been saved for development control purposes. Clearly it will be important to identify which policies have been saved and decide whether or not your development proposal should have regard to them. All policies, whether saved or proposed policies under the new local development framework can usually be found on the particular web site of the local authority. If you encounter any problems or are unsure which policies apply very often the best way forward is simply to telephone or arrange to call into the authorities planning department to view the Development Plan. Officers should be able to highlight those policies which are likely to be taken into consideration in respect of certain development proposals. Alternatively if you would prefer to gain a full understanding of the policy position before approaching the authority then a specialist planning advisor will be able to help.

For general information on LDF's see the Planning Portal:
www.planningportal.gov.uk/england/government/en/1115313323170.html

For information on the LDF's in your area and see the website of your Local Planning Authority.

Policy Framework in Wales

National Assembly for Wales	Spatial Plan for Wales 2005	Planning Policy for Wales	Technical Advice Notes
Unitary Council's and National Park's	Local Development Plans which from 2004 replace Unitary Development Plans where adopted and Structure and Local Plans everywhere else.	Technical Advice Notes	

In Wales, national policy is set out in "Planning Policy Wales" (PPW) which was published in March 2002 and sets out the land use planning policies of the Welsh Assembly Government.

It is supplemented by a series of Technical Advice Notes (TANs). Of particular relevance to marine and waterway development are:-

- TAN 16: Sport, Recreation, Open Space
- TAN 14: Coastal Planning
- TAN 13: Tourism
- TAN 12: Design

The current series of TAN's as well as other National Planning Policy Statements and Circulars can be found at www.new.wales.gov.uk/topics/planning/policy/tans

Procedural advice is given in the National Assembly for Wales/Welsh Office Circulars.

In Wales there is a requirement for each authority to prepare a community involvement scheme (CIS) and the programme of LDD preparation must be agreed with the Welsh Assembly.

PPW, the TANs and circulars together comprise national planning policy which should be taken into account by local planning authorities in Wales in the preparation of unitary development plans (UDPs). They may be material to decisions on individual planning applications, including any that are called in, and to appeals dealt with by Planning Inspectors.

Detailed advice on the preparation of UDPs is contained in Unitary Development Plans Wales, 2001.

Each Welsh Local Authority will have an adopted Unitary Development Plan or be in the course of preparing a new plan. It is these plans where specific local policies will be contained which will essentially form an important part in relation to all decisions made in respect of planning applications. Policies are likely to relate to the environment, sport and recreation and leisure. You should be able to find the policies on each authorities web site. However if you are having difficulties a call or visit to the planning department should enable you to find out which Development Plan policies are likely to be relied upon by the authority.

Land use planning is an important delivery mechanism for the Assembly's Sustainable Development Scheme and sustainable development principles form the basis for all the policies contained in PPW.

In particular, the document:

- contains strategic messages on sustainability, human rights, equal opportunities and community involvement in the planning process;
- provides new guidance on other strategic issues with new sections on Europe and spatial planning;
- addresses sustainable settlements, the location of new development, the commitment to the re-use of land and promoting sustainability through good design;
- provides significant new guidance on biodiversity, particularly on community involvement in the Local Biodiversity Action Plan process and how these link into the planning process;
- contains clearer policies on the rural economy, particularly to encourage farm and rural diversification, with a new policy allowing new economic development within farm complexes even those in the open countryside;
- contains new guidance on accessibility to reduce the need to travel;
- emphasises good design, encourages mixed use, and the need for development plan policies to reflect the hierarchy of designated sites; and
- also retains many long established planning policies including the strict policy against new housing in the open countryside, with re-use of rural building for residential use limited to affordable housing.

Policy Advice for Coastal Areas

13.1.2 England – PPG 20

While the division into coastal land above mean high water mark, etc. above is concerned with what consents you will need, Government and local planning authorities use different and much broader

definitions in designating what they consider to be coast and, significantly, what kind of coast. This does not affect what consent you need as much as how your proposal will be judged.

The critical document for coastal areas is Planning Policy Guidance (PPG) Note 20 (Coastal Planning). (www.communities.gov.uk/index.asp?id=1144093).

PPG 20 was published in 1992 and provides Local Planning Authorities with the Government's views on how they should go about planning for coasts. As we explain in Part 5, such central guidance is very important for local planning authorities when preparing their Local Plans and Local Development Frameworks.

PPG 20 identifies four types of coast:

- the undeveloped coast, conserved both for its landscape value and for its nature conservation interest;
- other areas of undeveloped or partly developed coast;
- the developed coast, usually urbanized but also containing other major developments (e.g. ports, power stations, etc); and
- the despoiled coast, damaged by dereliction caused by mining, waste tipping and former industrial uses.

The Government require coastal local planning authorities to identify which parts of their area correspond to the categories above in their development plans. Therefore, the attitude of the local planning authority towards your proposal will be determined in part by nature of the proposal but also by the type of coast. Broadly, there is a strong presumption against developments on areas of undeveloped coast, particularly in areas identified as being important for nature and landscape protection. Nevertheless, for activities that require a coastal location such as boating there can be exceptions. Local Planning Authorities should assess demand and supply for such activities in preparing their plans (see the RYA's Planning Guide for Boating Facilities for more on this: www.rya.org.uk/KnowledgeBase/environment/planningboatingfacilities.htm)

The rebuild of the Hayling Island Sailing Club clubhouse is a good example of a club in a coastal location, adjacent to the Area of Outstanding Natural Beauty (AONB), the Site of Special Scientific Interest and the Solent Maritime European Site that was granted all the relevant consents and allowed to go ahead. Weymouth and Portland National Sailing Academy, now also the venue of the London 2012 Olympic Sailing Event, had complexities to go through being adjacent to a number of conservation sites. This has also included land claim and a construction of jetties into the tidal water. Early consultation with the Planners and the Conservation Agencies has enabled this development to go ahead with the required conditions in place.

13.1.3 Wales – TAN 14

TAN 14, Coastal Planning, describes the coastal zone as a complex and dynamic area of mutually interdependent land and adjacent sea defined by the local authority in consultation with neighbouring authorities. It describes the role of local planning authorities and the range of sectoral and regulatory controls over marine and coastal development. The guidance details a number of issues which must be taken into account because of their potential effects on physical processes and ground conditions, as well as the overall balance, sensitivity and conservation of the area.

These include visual impact from both land and sea, and the potential need for remedial and defence works. It covers planning considerations and issues to be included in development plans and

in the determination of planning applications. Consideration is given to the need for conservation and protection of designated marine and coastal sites. Specific guidance covers recreational development, heritage coast, shoreline management plans and coastal defence survey works.

TAN 16 - Sport and Recreation

This TAN outlines the responsibilities of the Sports Council for Wales, the Countryside Council for Wales and the Environment Agency in relation to sport and recreation planning, and notes in particular the need for planning authorities to consider the relationship between the recreational use of land and the interests of conservation.

The advice points out that the government does not prescribe national standards for recreational provision. It draws attention to the value of open space for the purpose, whether in local authority ownership or not.

It also discusses the provision of sites and facilities and the particular issues of noise from sport and of floodlit facilities.

Policy Advice for Rural Areas and Areas outside Major Settlements

13.1.4 England

Outside urban areas, the main Government guidance on development and planning is to be found in Planning Policy Statement (PPS) 7 (Sustainable Development in Rural Areas) and PPG 20 (The Coast) www.communities.gov.uk/publications/planningandbuilding/planningpolicystatement2

To protect the countryside and reduce the need to travel PPS 7 reiterates the long held policy objective of focusing new developments in existing Settlements. It also sets out the need to protect valued landscapes and environmental resources.

Another policy objective is the need to provide appropriate leisure opportunities to enable urban and rural dwellers to enjoy the wider countryside. PPG 17 (Planning for Open Space, Sport and Recreation)
www.communities.gov.uk/publications/planningandbuilding/planningpolicyguidance17
and PPG 2 (Green Belts)
www.communities.gov.uk/planningandbuilding/planning/planningpolicyguidance/planningpolicystatements/planningpolicyguidance/planningpolicyguidancegreenbelts/ reiterate these broad policies.

There is a significant distinction between 'open countryside' and existing settlements, buildings and uses. New development not associated with existing buildings or uses is unlikely to be permitted without very strong justification. Additions or changes for recreational or sporting uses are more likely to be looked at sympathetically.

Paragraph 34 of PPS 7 states that local planning documents should:

"support, through planning policies, sustainable rural tourism and leisure developments that benefit rural businesses, communities and visitors and which utilise and enrich, but do not harm, the character of the countryside, its towns, villages, buildings and other features".

13.1.5 Wales

Planning Policy Wales sets out a number of priorities for rural areas which are designed to secure:-

- sustainable rural communities with access to high quality public services;
- a thriving and diverse local economy where agriculture-related activities are complemented by sustainable tourism and other forms of employment in a working countryside; and
- an attractive, ecologically rich and accessible countryside in which the environment and biodiversity are conserved and enhanced.

It also recognises that sport and recreation makes an important contribution to the quality of life and is concerned that Unitary Development Plans should st out a strategic approach to the provision of well designed tourist, sport, recreation and leisure facilities in an area.

TAN 6 in particular gives advice on development in rural areas.

Policy Advice in Flood Plains

13.1.6 England

If your development site is located in a flood plain or is on land which is susceptible to flooding then in determining your application for planning permission authorities will have regard to Planning Policy Statement 25: Development and Flood Risk.

This document sets out Government policy on development and flood risk. Its aims are to ensure that flood risk is considered at all stages in the planning process to avoid inappropriate development in areas at risk of flooding. Where development has to take place in such areas then the emphasis is placed is upon making it safe, without increasing flood risk elsewhere and where possible, reducing flood risk overall.

Essentially if the Environment Agency object to a proposed development on flood risk grounds then all parties will need to try and agree a course of action (redesigning works etc) which will enable this objection to be withdrawn. If its not withdrawn then you are unlikely to get your planning permission.

13.1.7 Wales

TAN 15: Development and Food Risk 2004 provides similar advice.

Policy Advice for Heritage

In England and Wales the main legal requirements affecting the conservation of historic buildings are set out in the Planning (Listed Buildings and Conservation Areas) Act 1990.

This act is supplemented by Welsh Office Circulars 61/96 and 1/98 Planning and the Historic Environment. These documents guide local planning authorities in their decision-making, and are used to interpret planning law.

Where a building is listed strict controls exist in relation to the type of work that can be carried out to such a building.

Section 7, Planning (Listed Buildings and Conservation Areas) Act 1990 states, "*no person shall execute or cause to be executed any works for the demolition or alteration of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest unless the works are authorised*."

Applicants are also required to take into account the policies set down by the local planning authority for conservation and more general planning issues. Many produce extremely useful guidance on their conservation areas and the features which must be preserved. They may include requirements for common developments, such as roof extensions, sometimes specific to individual buildings or terraces.

In addition to specific protection regimes, all historic buildings are also subject to ordinary planning controls and the requirements for planning permission under The Town and Country Planning Act. They are also affected by Building Regulations.

In 2008 draft legislation was published which seeks to unify heritage protection regimes, allow greater public involvement in decisions and place heritage at the heart of the planning system.

The draft Heritage Protection Bill is making its way through the UK Parliament and is the first such Bill dealing with the historic environment for a generation. The aim of the Bill is to put in place a unified heritage protection system for England and Wales that is easier to understand than the current separate systems of listing buildings, scheduling ancient monuments, designating wrecks and registering historic parks, gardens and landscapes. It also aims to be more efficient, accountable and transparent, with improved opportunities for public inclusion and involvement.

Central to these proposals is a new unified Register of Heritage Assets for Wales, which will be available on line and, for the first time, will have information available in one place on all land and marine heritage assets of special interest in Wales.

As well as the unified Register of Heritage Assets, the draft Bill includes plans to:

- devolve responsibility for the designation system in England from the Secretary of State to English Heritage; in Wales designations will remain the responsibility of the Welsh Ministers
- introduce a system for provisional registration to give 'interim protection' for historic assets, including marine historic assets, while they are being considered for designation, and create new appeals or review procedures against designation
- introduce a new system of certificates of no intention to register - to last for a period of five years
- put the historic environment at the heart of the planning system by merging listed building consent and scheduled monument consent into a new Heritage Asset Consent, and merge conservation area consent with planning permission
- place local authorities under a duty to maintain or have access to an Historic Environment Record (HER), and

- reform the marine heritage protection regime in England and Wales, by broadening the range of marine historic assets that can be protected.

In Wales, the draft Bill seek to give Welsh Ministers equivalent functions to those which are being given to the Secretary of State and/or English Heritage for England (apart from where there is provision for the Secretary of State to interact with English Heritage).

A key difference in Wales is the unique network of four Welsh Archaeological Trusts which provide advice to local authorities and others on archaeological matters. Very few local authorities in Wales have specific archaeological expertise. Accordingly, the draft Bill provides a framework to allow Welsh Ministers to continue to deal with applications for consent affecting former scheduled monuments. It is also intended that the Bill will enable the Welsh Ministers, in lieu of the local authority, to initiate a Heritage Partnership Agreement with owners of heritage assets.

Policy Advice for Conservation Areas

13.1.8 England

Local authorities have the power to designate as conservation areas in any area of 'special architectural or historic interest' whose character or appearance is worth protecting or enhancing. This 'specialness' is judged against local and regional criteria, rather than national importance as is the case with listing.

English Heritage can designate conservation areas in London, but have to consult the relevant London Borough Council and obtain the consent of the Secretary of State for National Heritage. The Secretary of State can also designate in exceptional circumstances - usually where the area is of more than local interest.

Statutory planning control is effected by three different sources of requirements. Primary legislation is provided in England by the Town & Country Planning Act 1990 and the Planning (Listed Buildings and Conservation Areas) Act 1990. These Acts set out the legal requirements for the control of development and alterations which affect buildings, including those which are listed or in conservation areas, and the framework by which control is maintained.

Secondly, 'guidance' on Government policy on the application of the Acts of Parliament to specific issues is provided by the relevant Government departments. In England the guidance is Planning Policy Guidance 15: Planning and the Historic Environment (or PPG15 as it is more usually known) which was issued in September 1994 and slightly amended by Environment Circular 14/97.

Thirdly and finally, at a more local level, developers and historic building owners need to take account of the policy of the local authority. These reflect local development requirements and pressures, the character of the area, public opinion, and other local issues of relevance. Policies contained in their development plans are introduced following extensive public consultation and carry most weight. Conservation area proposal statements and appraisals, 'Supplementary Planning Guidance' and other policy documents are also very important, particularly when they have been through a public consultation process.

Within a conservation area the local authority has extra controls over:

- demolition
- minor developments

- the protection of trees

Demolition

Applications for consent to totally or substantially demolish any building within a conservation area must be made to the local planning authority, or, on appeal or call-in, to the Secretary of State for the Environment. Procedures are basically the same as for listed building consent applications. Generally there is a presumption in favour of retaining buildings which make a positive contribution to the character or appearance of the conservation area.

Minor developments

If you are located in a conservation area, you have to obtain permission before making changes which would normally be permitted elsewhere, to ensure that any alterations do not detract from the area's appearance. These changes in respect of buildings include certain types of cladding, inserting dormer windows, and putting up satellite dishes which are visible from the street.

Under legislation introduced in 1995, local authorities can make further restrictions on the kind of alterations allowed, depending on how these might affect the key elements of buildings in the conservation area. Examples might be putting up porches, painting a building a different colour, or changing distinctive doors, windows or other architectural details. The local authority has to have good reason for making these restrictions, and must take account of public views before doing so.

Trees

Anyone proposing to cut down, top or lop a tree in a conservation area, whether or not it is covered by a tree preservation order, has to give notice to the local authority. The authority can then consider the contribution the tree makes to the character of the area and if necessary make a tree preservation order to protect it.

13.1.9 Wales

Statutory planning control is effected by three different sources of requirements. Primary legislation is provided in Wales by the Town & Country Planning Act 1990 and the Planning (Listed Buildings and Conservation Areas) Act 1990. These Acts set out the legal requirements for the control of development and alterations which affect buildings, including those which are listed or in conservation areas, and the framework by which control is maintained.

Secondly, 'guidance' on Government policy on the application of the Acts of Parliament to specific issues is provided by the relevant Government departments. In Wales in two 'circulars' are relevant; Welsh Office Circular 61/96, Planning and the Historic Environment: Historic Buildings and Conservation Areas; and the Welsh Office Circular 1/98 Planning and the Historic Environment: Directions by the Secretary of State for Wales.

As in England, at a more local level in Wales, developers and historic building owners need to take account of the policy of the particular local authority. These reflect local development requirements and pressures, the character of the area, public opinion, and other local issues of relevance. Policies contained in their development plans are introduced following extensive public consultation and carry most weight. Conservation area proposal statements and appraisals, 'Supplementary Planning Guidance' and other policy documents are also very important, particularly when they have been through a public consultation process.

Environment

The Environment Agency works with other government departments and agencies to make sure that planning systems in England and Wales fulfil statutory duties and developments protect and enhance the environment.

The Planning and Compulsory Purchase Act 2004, introduced changes to the planning system in England and Wales. In particular emphasis was placed upon the principles of sustainable development, and moves towards spatial planning and increased community involvement.

The new spatial planning system, guidance and policy from the Department for Communities and Local Government (DCLG) and the Welsh Assembly Government (WAG) seek to deliver policies and proposals for sustainable development.

The Environment Agency are a 'specific consultation body' and comment on all plans and strategies for Regional Spatial Strategies (RSSs) and Local Development Frameworks (LDFs) in England and Local Development Plans in Wales. It is also one of the 'Environmental Consultation Bodies' for Strategic Environmental Assessment (SEA) and Sustainability Appraisal (SA).

The role of the Environment Agency in England and Wales is to protect and enhance the environment in relation to the following areas:

- flood risk management
- water quality and water resources, including as a 'competent authority', the implementation of the Water Framework Directive
- waste management
- industry regulation
- biodiversity, including responsibility for 39 species and 5 habitats within the UK Biodiversity Action Plan
- land contamination and soil.

The Agency has powers to engage in the town and country planning process as a planning consultee, providing information and advice in circumstances where the decisions of local planning authorities are seen as capable of facilitating, or being conducive to the carrying out of the Agency’s functions.

Its main functions can be summarised as follows:-

- Regulate industrial processes
- Regulate disposal of radioactive waste
- Regulate the treatment, keeping movement and disposal of controlled wastes
- Preserve or improve the quality of rivers, estuaries and coastal waters
- Protect water resources
- Supervise all matters relating to flood defence
- Maintain, improve and develop fisheries
- Promote the conservation and enhancement of inland and coastal waters and their use for recreation
- Maintain or improve non-marine navigation
- Regulate remediation of contaminated land

Applications for certain categories of development should be accompanied by an Environmental Impact Assessment in accordance with the Town and Country Planning (Environmental Impact

Assessment) (England and Wales) Regulations 1999 SI 293. Where the EIA procedure is invoked as part of a planning application the Agency, under regulation 2(1), is a statutory consultee as part of the process to ensure that its requirements have been (or will be) adequately considered and addressed within any Environmental Impact Assessment.

Government advice, contained in numerous planning policy guidance notes (In Wales, Planning Policy Wales and accompanying TAN's) recommends that planning authorities should also consult the Agency in respect of other categories of development which are likely to impact on its functional concerns, for example, in relation to development in areas at risk from flooding.

If an Environmental Impact Assessment is required in respect of a particular development proposal then specialist professional help should be sought as soon as possible in order to advise and assist with the process.

Environment and Trees

13.1.10 England

In England a tree preservation order ('TPO') is an order made by a local planning authority ('LPA') in respect of trees or woodlands. 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 LPA's consent.

The cutting of roots, although not expressly covered in (1)(4) above, is potentially damaging and so, in the Secretary of State's view, requires the LPA's consent.

The legislation provides no right of appeal to the Secretary of State against a TPO, either when made or confirmed. An appeal to the Secretary of State can be made, however, following an application to cut down or carry out work on trees protected by the TPO.

If any works of development are proposed on a site then it is always advisable to check first of all whether or not there are in existence any protected trees. This can be done quite simply by contacting the relevant LPA and speaking to the Trees or Woodlands Officer.

Any cutting down or carrying out of work on protected trees which is required to implement a full planning permission does not require the consent of the LPA under the TPO. When granting full planning permission the LPA should consider informing the applicant, by reference to the approved drawings, which trees they believe may be cut down or have work carried out on them without consent.

There are a number of exemptions from the normal requirement to obtain the LPA's consent for cutting down or carrying out work on protected trees. In particular the LPA's consent is not required for cutting down or carrying out work on trees which are dead or dying or have become dangerous. This exemption allows the removal of dead wood from a tree or the removal of dangerous branches from an otherwise sound tree.

An application for consent under the TPO to fell or to carry out other work must be made to the LPA. The applicant should consider seeking the advice of an arboriculturist or discussing the proposal informally with the LPA before making the application. The LPA will wish to visit the site at some stage before issuing a decision; giving them an opportunity to do so before an application is made may save time later on.

Trees in conservation areas which are already protected by a TPO are subject to the normal TPO controls. But the Town and Country Planning Act 1990 also makes special provision for trees in conservation areas which are not the subject of a TPO. Under section 211 anyone proposing to cut down or carry out work on a tree 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 TPO should be made in respect of the tree.

Offences

Anyone who, in contravention of a TPO:

(1) cuts down, uproots or wilfully destroys a tree, or
(2) tops, lops or wilfully damages a tree in a way that is likely to destroy it is guilty of an offence.

Anyone found guilty of this offence is liable, if convicted in the Magistrates' Court, to a fine of up to £20,000. In serious cases a person may be committed for trial in the Crown Court and, if convicted, is liable to an unlimited fine.

If the contravention of a TPO is committed by a company section 331 of the Act provides that a director, manager or secretary of the company is guilty of the offence if it can be proved it was committed with their consent, or connivance, or was attributable to their neglect.

13.1.11 Wales

In Wales, the procedures governing the making of TPO's are almost identical to those which apply in England. There is a specific guidance note, Planning Guidance (Wales) and Technical Advice Note 10 – (Tree Preservation Orders) a copy of which is available through The Stationery Office or on the websites at www.hmso.gov.uk and www.wales.gov.uk.

Remember if your land has trees located upon it then before carrying out any new development work (whether or not a planning permission would be required) first check with the LPA whether or not any of the trees are protected. Always seek advice from a professional consultant (planning solicitor for example) if you are in any doubt about your position.)

Environment and High Hedges

13.1.12 England

Part 8 of the Anti-social Behaviour Act 2003 gave local authorities powers to deal with complaints about high hedges. It came into operation in England on 1 June 2005. Provided they have tried and exhausted all other avenues for resolving their hedge dispute, people can take their complaint about a neighbour's evergreen hedge to the local authority – ie unitary, district or borough Council.

The role of the local authority is not to mediate or negotiate between the complainant and the hedge owner but to adjudicate on whether - in the words of the Act – "*the hedge is adversely*

affecting the complainant's reasonable enjoyment of their property." In doing so, the authority must take account of all relevant factors and must strike a balance between the competing interests of the complainant and hedge owner, as well as the interests of the wider community.

If they consider the circumstances justify it, the local authority will issue a formal notice to the hedge owner which will set out what they must do to the hedge to remedy the problem, and when by. Failure to carry out the works required by the authority is an offence which, on prosecution, could lead to a fine of up to £1,000. The particular LPA will usually have details of their High Hedges policy set out on their web site. Alternatively you could contact Communities and Local Government about high hedge matters at hedges@communities.gsi.gov.uk

Specific Points to Note

- The legislation does not require all hedges to be cut down to a height of 2 metres
- You do not have to get permission to grow a hedge above 2 metres
- When a hedge grows over 2 metres the local authority does not automatically take action, unless a justifiable complaint is made
- If you complain to your local authority, it does not follow automatically that they will order your neighbour to reduce the height of their hedge. They have to weigh up all the issues and consider each case on its merits
- The legislation does not cover single or deciduous trees
- The local authority cannot require the hedge to be removed
- The legislation does not guarantee access to uninterrupted light
- There is no provision to serve an Anti-social Behaviour Order (ASBO) in respect of high hedge complaints

13.1.13 Wales

The relevant regulations for Wales are The High Hedges (Appeals) (Wales) Regulations 2004 (SI 2004 No 3240 (W.282)). They came into force on 31 December 2004 . They provide the same protection as in England but there are a few minor differences. The main one is that all appeals in England are dealt with by accompanied site visits, whereas in Wales appellants can also ask to be heard.

Environmental and Flood Management

13.1.14 England

Flooding can occur when watercourses overflow, as a result of tidal surges in estuaries, by the impact of sea directly on low lying coastal land or by a combination of these. The risk from flooding can never be eliminated.

The planning system seeks to ensure that new development is safe, is not unnecessarily exposed to flooding and does not increase flood risk. Government advice and policy seeks to ensure that greater consideration is given to the location and design of new development, ensuring that it is in the safest location possible, that its design does not increase the risk of flooding to others.

Responsibility for flood management varies by the source of the flood water.

For riparian waters:

- Surface water runoff – land owner
- Surcharging or incapacity of a sewer – sewerage utility company
- Non-main rivers – local authority (409 district, county or unitary authorities)
- Designated areas – Internal Drainage Boards (235) covering some 1.2 million hectares out of the estimated 10,000 km2 at risk of flooding
- Main river (of which there are 34,000 kms, with 16,835 kms of fixed defences) – Environment Agency.

The local authority (LA) and Environment Agency (EA) have permissive powers to undertake flood defence works and provide flood warnings.

For coastal flooding and coastal erosion, the designated coastal defence authority has permissive powers to undertake works. The designated coastal defence authority may be the Environment Agency, the local authority, the port authority, or another body, including the land owner.

Development in flood-risk areas reduces the space available to store and transport floodwaters.

Section 4 of the Environment Act 1995, Planning Policy Statement 1 (PPS 1) and PPS 25 seek to attain sustainable development. In particular PPS25 advises that:-

- Policies in development plans should outline the consideration which will be given to flood issues
- The susceptibility of land to flooding is a material consideration
- Planning decisions should apply a precautionary principle to the issue of flood risk
- Planning decisions should recognise the importance of functional flood plains, where water flows or is held at times of flood and avoid inappropriate development on undeveloped and undefended flood plains.
- Developers should fund flood defences and warning measures required because of the development
- Planning policies and decisions should recognise that the consideration of flood risk and its management needs to be applied on a whole catchment basis and not restricted to flood plains.

13.1.15 Wales

The system for flood management in Wales is progressively diverging from that in England. But, at present, there remains a common core to the systems in England and Wales.

For further detailed information please see TAN 15 as well as the particular local authority adopted development documents which should be available on their web sites.

In Wales national guidance is provided by TAN 15 - Development and Flood Risk - 2004

Services Pollution/Drainage/Sewerage

13.1.16 England and Wales

Any development proposal is likely to have implications so far as surface water run-off and drainage is concerned. If a new building or improved facilities are proposed then these may well result in a need for a foul sewerage connection. Drainage in all its forms will be an important planning consideration and although it may well be capable of being covered by a planning condition which

requires details to be provided at a later stage it is a good idea as part of any development proposal to give some consideration to the issue of drainage early on in the process.

Drainage in England and Wales can involve a number of different bodies, including private landowners, local authorities, sewerage undertakers and the Environment Agency. Environmental and conservation duties are set out in national and international legislation. There is, however, no specific legislation to ensure that issues of sustainability are considered with regard to drainage. Current drainage law was drawn up before the widespread use of Sustainable Urban Drainage Systems (SUDS). While this poses no legal difficulty, the responsibility for provision, operation and maintenance of SUDS is not clearly set out. Just as successful designs require a partnership between different members of the development team, adoption and maintenance will need a similar joint approach.

In England PPS25 contains national planning advice in respect of development and flood risk. This Planning Policy Statement seeks to ensure that flood risk is considered on a catchment scale. It directly identifies the potential for SUDS to reduce flooding downstream of developments and promotes the development of teamwork to encourage the incorporation of sustainable drainage in developments. It suggests that local authorities should work closely with the Environment Agency, sewerage undertakers, navigation authorities and prospective developers to enable surface water run-off to be controlled as near to the source as possible through SUDS.

When implemented in development plans and the determination of individual planning applications, PPS25 should encourage the wider use of SUDS and provide the associated sustainability benefits.

Responsibilities

Public drainage responsibilities are divided between four main bodies:

- Local authorities
- The highways authorities
- Sewerage undertakers
- The Environment Agency.

Local authorities act as planning authorities, and also have responsibility for local roads, public landscaping and local land drainage. The Highways Agency controls trunk road drainage, while the sewerage undertakers have responsibility for the sewers carrying surface water from private impermeable areas such as roof and drives. New development is controlled by local authority planning departments, with allowable discharges and consents negotiated with the Environment Agency or the appropriate sewerage undertaker. The Environment Agency has general flood defence and land drainage powers, including a supervisory duty over all flooding, but these are primarily in respect of main rivers.

Local authorities have a role in developing strategies to secure sustainability at a local level. This general principle applies to drainage, and consideration of sustainable drainage is increasingly being included in Development Plans and regional planning guidance.

Ownership and maintenance

The ownership and maintenance of conventional piped drainage systems is clearly defined in Sewers for Adoption (Water Services Association, 1994). However, by their nature, many SUDS can be

considered either drainage or landscape features, and there is no clear guidance on who is responsible for the operation and maintenance of such facilities.

Due to the different legal duties, a country-wide agreement of this kind will take time to evolve in England and Wales. However there is scope for individual maintenance agreements to be negotiated on a site-by-site basis.

Approvals

Formal approval for a drainage system is needed from:

- The planning authority (planning permission)
- Building control authority (approval of design and implementation of the Building Regulations)
- The sewerage undertaker (connection to the adopted sewers and possible adoption of drainage systems)
- The highway authority (road construction consent and highway drainage consent)
- Local authority (possible agreement to maintain public open space).
- The Environment Agency (discharge consents may be needed in some cases).

The planning system is used to co-ordinate consultation between the approving authorities but the licence and consents have to be applied for separately – they are not granted automatically when a planning application is approved.

Planning Authority

The planning authority by way of its statutory plans identifies areas for development and the standards of that development in terms of land use and building density. These are based on judgements rather than strict regulations. The statutory plan should allow developers to make decisions about how a site may be developed. The specification of SUDS in a plan will enable the developer to work out the impact of the drainage system at an early stage. This may be important in terms of land take required by some drainage devices

Planning authorities can set criteria for the design of the drainage system that will fulfil some of their amenity objectives, such as provision of public open space. In appropriate circumstances, a planning authority may seek agreements to ensure continued maintenance commitments are met. The drainage criteria should fit into an overall strategy.

Building Control

Before construction can proceed, Building Control bodies have to be satisfied that adequate provision has been made for drainage, that the proposed system will not affect the integrity of buildings and meets the requirements Building Regulations 2002. Building Control departments will therefore be interested in the location of drainage systems and their proximity to structures. Thus the proximity of infiltration devices may be important on unstable soils. Interpretation of The Building Regulations might vary between authorities.

Highway Authority

If a development includes road drainage, a consent should be obtained from the highway authority (usually a local authority department). Trunk roads are the responsibility of the Highways Agency.

Each authority sets down standards which developers must follow throughout the construction process to ensure that adoptable roads are of satisfactory construction, safe for the public to use and easily maintained. Effective road drainage is fundamentally important to road safety and to the integrity and structural stability of the road including its footways, verges and margins. When considering construction consent applications, local authorities will want to be satisfied that SUDS employed in particular locations meet their road drainage requirements and will not require onerous maintenance.

Local Authority

The Local Authorities have roles in flood defence, land drainage and maintenance of public open space.

Sewerage Undertaker

The sewerage undertaker (usually the water service company) approves plans showing those parts of the drainage system which will be adopted under section 104 of the Water Industry Act and negotiates connection to or adoption of sewers that are covered by the document, Sewers for adoption (Water Services Association, 1994) .

Environment Agency

The Environment Agency is the body responsible for the protection of controlled waters in England and Wales and will be a consultee to the Planning Authority on drainage issues. The Agency can give general advice on the potential for pollution within a catchment and on good practice to prevent water pollution. Some drainage discharges may require a Water Resources Act 1991 consent or a Groundwater regulations 1998 authorisation from the Agency. Moreover, the Agency has powers to serve notices requiring works to be carried out to protect water courses and groundwater quality.

Other statutory environmental organisations

Natural England and the Countryside Council for Wales / Cyngor Cefn Gwlad Cymru are the governments' statutory advisers on sustaining natural beauty, wildlife and the opportunity for outdoor enjoyment. They can offer advice on the amenity value of the proposed developments.

Runoff from industrial areas may be subject to a prohibition notice if the water is still contaminated to a degree, especially if there is a likelihood of groundwater pollution. Flood defence consent may also be required to regulate the flow of runoff to some watercourses. Any consent will probably be of a descriptive rather than numeric nature. The Environment Agency should be consulted regarding all discharges to marine waters, watercourses and aquifers and in some cases, where surface water is likely to be contaminated an authorisation may be required.

Highways

County Council and Unitary Authorities in England and Unitary Authorities in Wales are responsible for ensuring that any planning applications which affect the existing Public Highway, or involve construction of any new Highway are carried out in accordance with statutory standards and specifications. This includes the Construction of any new vehicle access onto the Public Highway, even though this will not always require planning consent.

Any developer either constructing new roads as part of any new development, or undertaking works within the existing Public Highway will usually be required to enter into a legal agreement with the appropriate highway authority to ensure that all works are designed and completed to an adoptable standard.

Any new roads, footways or verges must be designed and constructed in accordance with the relevant Highway Authority Design Guide. All developers will need to enter into a legal agreement in accordance with The Highways Act 1980, Section 38 (for new construction) or Section 278 (for works within an existing Public Highway). In addition a bond may be required to be in place prior to commencement of the works, of sufficient value to ensure funding is available in the event of the developer going into liquidation.

Additionally planning consent is required for any new access onto a classified road, which includes A, B and C class roads. All vehicle crossings which cross over the footway or the highway verge, whether onto classified or unclassified roads must always be constructed to the relevant Highway Authority specification.

Unitary Authority's, act as both Local Planning Authority and Highway Authority.

The Highway Authority is a statutory consultee for all Planning Applications received by the Council. Officers in the Highways Development Control Team carry out this function.

When considering any application and/or development proposals, the Highways Authority will be concerned to ensure that all new developments carried out within the Borough are assessed in terms of highway safety and any appropriate measures put in place.

The main safety issues are usually related to visibility, turning traffic, design, increased capacity and parking.

Visibility

Vehicles using a new or intensified access, need adequate unobstructed visibility of traffic, pedestrians and cyclists. The recommended distance depends on the speed of the traffic on that road.

Turning traffic

Where a new or intensified access is proposed particularly on a fast and/or busy section of road, turning traffic can be detrimental to highway safety. Each application is assessed on it's own merits.

Design

New development will be required to be designed in accordance with the RBWM Design Guide. This guide reflects the government's aspirations set out in Design Bulletin 32 and its companion guide. "Places, Streets and Movement".

Increased capacity

Where existing roads and in particular junctions are at capacity, further development will be resisted. Developers considering development in urban areas will often be required to provide a Transport Assessment as part of their application.

Parking

Where a development has insufficient or too much parking for the traffic that it will generate, consideration will be given as to the effect on the adjoining highways. Transport Assessments if requested or provided should normally cover this point.

As part of the planning process, the planning authority consults the Highway Officers. These officers have 21 days in which to make a formal response to normal applications and 35 days for more complex applications. In some cases further information is required in order that a full and balanced response from the Highways Officer is provided. Where necessary, and where guided by national planning policy guidance in relation to developer contributions, such contributions are likely to be sought to facilitate the provision of a safe access to the development and for improvements to the highway infrastructure. This is done via an agreement with the developer and/or landowner following a planning condition or legal agreement where permission is granted and can be on the form of funds provided to the Highway Authority or physical construction of works by the developer usually in close proximity to the development.

These works include such things as:

- roundabouts
- traffic signals
- right turn lanes
- passing bays etc

For traffic signals and other major structures, as well as items of street furniture, commuted maintenance sums will also be charged to the developer so that the council can properly maintain them in the future at no cost to the council.

Developers are advised to discuss these issues with the highway officers at an early stage to avoid delays at the formal planning stage.

The Highway Officers have 3 options in relation to a planning application:

- Offer no objections to the proposal - where the application is considered to have no detrimental affect on highway safety.
- Request planning conditions - where the application will be acceptable subject to certain conditions, which must be reasonable, legal and enforceable.
- Request that the application be refused on the grounds of highway safety - such requests are made on the understanding that the reasons given could be challenged on planning appeal.

The Local Planning Authority makes the final decision and they can take other factors concerning applications into account.

Rights of Way

13.1.17 England and Wales

In England and Wales a public footpath is a path on which the public have a legally protected right to travel on foot.

If your site is crossed by a public footpath then you are under a duty not to obstruct that path. If development works are proposed which may in themselves cause an obstruction then advice in the first instance should be sought form the relevant local authority Rights of Way Officer. It may be necessary to seek to have the footpath diverted if the line of it would be interfered with by the development itself.

It should be noted that one of the objectives of the Marine and Coastal Access Bill is to secure a long distance route around the coast including beaches, cliffs, rocks and dunes with public access for coastal walking and recreational activities.

Local Authorities (usually County or Unitary Authorities) are required to maintain the definitive map of all public rights of way in their areas and these can be inspected at Council Offices. If a path is shown on the Definitive Map and no subsequent order (e.g. a stopping up) exists then the right of way is conclusive in law. The Countryside and Rights of Way Act 2000 provides that paths that are not recorded on the definitive map by 2026 and that were in use prior to 1949 will automatically be stopped up on 1 January 2026. There is therefore obviously a need to seek out and record these paths.

It is a civil wrong to ride a bicycle or a horse on a public footpath, and action could be taken by the landowner for trespass or nuisance by the user.

13.1.18 Bridleways

A public bridleway is a way over which the public have the following, but no other, rights:

- to travel on foot and
- to travel on horseback or leading a horse, with or without a right to drive animals of any description along the way.

Note:- although Section 30 of the Countryside Act 1968 permits the riding of bicycles on public bridleways, the act says that it "shall not create any obligation to facilitate the use of the bridleway by cyclists".

13.1.19 Byways open to all traffic

A byway open to all traffic, is a highway over which the public have a right to travel for vehicular and all other kinds of traffic but which is used by the public mainly for the purpose for which footpaths and bridleways are used. (United Kingdom Road Traffic Regulation Act 1984, section 15(9)(c), as amended by Road Traffic (Temporary Restrictions) Act 1991, Schedule 1).

13.1.20 Roads used as public paths

A road used as public path (RUPP) was one of the three types of public right of way (along with footpaths and bridleways) introduced by the National Parks and Access to the Countryside Act 1949. The Countryside Act 1968 required all highway authorities to reclassify RUPPs in their area – occasionally as public footpaths but in practice generally as public bridleways unless public vehicular rights were demonstrated to exist in which case it would become a Byway Open to All Traffic.

This process was slow as it involved research into historic usage and often public enquiries, and so was not completed by the time the Countryside and Rights of Way Act 2000 was passed. This reclassified all remaining RUPPs as Restricted Byways on 2 May 2006.

13.1.21 Restricted byways

On 2 May 2006 the Countryside and Rights of Way Act 2000 reclassified all remaining Roads Used as Public Paths as restricted byways. The public's rights along a restricted byway are to travel:

- on foot
- on horseback or leading a horse
- by any vehicle (e.g. bicycles, horse-drawn carriages) other than mechanically propelled vehicles (e.g. motorbikes or cars)

13.1.22 Permissive path

A permissive path, or permitted path, is a path (which could be for walkers, riders, cyclists, or any combination) whose use by the public is allowed by the landowner, but over which there is no right of access. A permissive path is often closed on a specified calendar day each year, and is usually clearly signed as a permissive path. These are precautions to prevent any possible future claim of continuous public access along the path, which could result in it becoming designated as a statutory right of way.

13.1.23 Right to roam

Under the Countryside and Rights of Way Act 2000 the public also has a right to walk away from rights of way on designated "access land". This right is in addition to rights of way, and does not extend to horse-riders or cyclists. Access land may be closed for up to 28 days per year, whereas rights of way must remain open at all times, except in exceptional circumstances with special permission of the local authority.

13.1.24 Creation of new public rights of way

Creation by Dedication

In England and Wales, a footpath, bridleway or restricted byway may be expressly dedicated by the owner as a public right of way. Furthermore, unchallenged use by the public, as of right, for at least 20 years, may give rise to a presumption of dedication under Section 31 of the Highways Act 1980. A presumption of dedication may arise under common law after any appropriate period of time. Paths created by express dedication since 1949 are not automatically maintainable at the public expense as a result of s.49 National Parks and Access to the Countryside Act 1949.

A footpath, bridleway or restricted byway can also be created by one of the following means:

Public Path Creation Agreement

Section 25 of the Highways Act 1980 allows a local authority (that is, a district or county council, or a unitary authority) to enter into an agreement (known as a 'Public Path Creation Agreement') with a relevant landowner to create a footpath or bridleway over land in their area. The local authority have to consult any other local authority in whose area the path will be, but do not have to consult

wider. There is no provision for any one else to be consulted or to object. The agreement must be advertised in the local paper, and the route is automatically maintainable at the public expense.

Creation by agreement between a parish council and landowner

Section 30 of the Highways Act 1980 allows a parish council (community council in Wales) to enter into an agreement with a relevant landowner to create a footpath, bridleway or restricted byway over land in their area or in an adjacent parish. The parish council is under no obligation to consult anyone. All they have to do is reach an agreement with the landowner. There is no provision for anyone else to be consulted or to object. The path is not automatically maintainable at the public expense.

Public Path Creation Order

Section 26 of the Highways Act 1980 allows a local authority (that is, a district or county council, or a unitary authority) to make an order to create a footpath or bridleway over land in their area. If there are no objections, the local authority can confirm the Order themselves, so bringing the path into effect. However, where objections have been made, the Order will need to be considered by an Inspector from the Planning Inspectorate. Depending on the number and nature of the objections, he may consider the Order after an exchange of written representations between the authority and the objectors, after holding a hearing, or after a public local inquiry. People who would like to use the path should submit letters saying why they need the path.

13.1.25 Diversion of Public Footpaths

Powers are granted to LPA's (in respect of footpaths, bridleways and restricted byways) and the Secretary of State (in respect of all highways) to make Orders under the Town and Country Planning Act 1990 (Section 247 and 257) to stop up or divert highways affected by development for which planning permission has been granted or is not needed. For the power to be exercisable the Order making authority must be satisfied that it is necessary to stop up or divert the way in order to enable development to be carried out.

Rights of Way Improvement Plan

Each highway authority in England and Wales was required to produce a Rights of Way Improvement Plan under sections 60 to 62 of the Countryside and Rights of Way Act 2002 within five years of the date on which Section 60 of the Countryside and Rights of Way Act came into force; this deadline was 30 November 2007. Each highway authority is required to review their Rights of Way Improvement Plan at least every ten years.

Statutory Designations

A large proportion of the land area in Great Britain is under the protection of conservation designations.

Statutory designations broadly fall into three categories: nature conservation, landscape conservation and natural heritage conservation, which protects wildlife, landscape and cultural aspects of the countryside. The Development Plan of each local planning authority should contain details of any landscape designations which apply and from this you will be able to ascertain whether or not your site falls within such an area. If it does then it is likely that planning policy will

seek to place some restraints o the type or amount of development that would normally be permitted.

The organisations which look after nature and landscape conservation were, until recently, separate. They have now been combined into the Countryside Council for Wales (CCW). In England Natural England is now the relevant organisation.

Principle designations include:

National Nature Reserves (NNR)
Local Nature Reserves (LNR)
Sites of Special Scientific Interest (SSSI)
Special Protection Areas (SPA)
Special Areas of Conservation (SAC)
Areas of Outstanding Natural Beauty (AONB)
Heritage Coasts
Natural heritage conservation
National Parks
Environmentally Sensitive Areas (ESA)
Listed Wrecks (Marine)

Proposals within or close-by to such designations may be expected to include additional information such as Environmental Impact Assessments (see Annex A) or be required to meet higher design standards as in the case of conservation areas and/or Listed Buildings. The key is to know any designations. These can normally be found in the Local Development Framework.

National policy is interpreted locally in the Local Development Framework by specific land use policies.

Nature Conservation Designations

Nature conservation designations do not include the visual landscape as part of their remit; it is the flora and fauna within that landscape which is protected through these designations. However, this may still impact on development proposals, if the development is within a National Nature Reserve and may mean either that no development can take place or that if it does certain mitigation measures have to be agreed.

NNRs are areas of national or international importance for nature conservation and include some of the most important natural and semi-natural habitats in Great Britain. Nature reserves were declared under the National Parks and Access to the Countryside Act 1949, which was the first legislation to enable habitat protection and encourage public access to the countryside. The Wildlife and Countryside Act 1981 amended the statutory protection of nature reserves and thus introduced National Nature Reserves. All NNRs are also SSSIs and are either owned by the respective conservation organisation (CCW or English Nature) or managed under agreement between the conservation organisation and the owner to ensure that the nature conservation interest is maintained. NNR is the only national designation whose statutory intention is entirely proactive.

13.1.26 Local Nature Reserves

LNRs are declared by local authorities (Unitary, borough, county, district and regional councils, and special planning boards). These reserves are declared in conjunction with the conservation

organisations to reflect areas of locally important nature conservation or amenity value and to give access to the public. Management agreements are usually required.

13.1.27 Sites of Special Scientific Interest

SSSIs are areas of nature conservation and wildlife importance which are not of national importance but are of "special nature by reason of its flora, fauna, or geological or physiographical features". SSSIs also contribute to the overall maintenance of biodiversity of species and habitats; their special interest is protected in accordance with specific guidelines. SSSI status does not change the use of the land, but local authorities, owners and occupiers must consult their conservation organisation on any developments or activities which may affect the site. SSSIs were formed under the National Parks and Access to the Countryside Act 1949, but management agreements were only considered in the Countryside Acts of 1967 and 1968.

Management plans and a list of potentially damaging operations (PDO) are used to prevent damage to sites in order to protect the conservation interest. Any operations carried out have to be sympathetic to the conservation interest but are not prohibited

PDOs must be notified to the conservation organisation four months prior to the start or the development. The conservation organisation may then negotiate with the owner to alter or stop the development, offer compensation to the owner for profits lost or refuse permission. In the latter case, a management agreement would have to be offered to the owner by the conservation organisation.

The conservation organisation has further options: nature conservation orders and compulsory purchase orders may be used if the site is of national importance.

13.1.28 Special Protection Areas

SPAs are required to comply with the 'EC Directive on the Conservation of Wild Birds'. Within these areas special measures are required to protect wild birds and their habitats, particularly rare or vulnerable species listed in the Directive, and regularly occurring migratory species. All terrestrial SPAs are SSSIs. Measures to protect the birds will be strictly applied in all SPAs.

13.1.29 Special Areas of Conservation

SACs require to be designated to safeguard rare and threatened species and habitats in accordance with the 'EC Directive on the Conservation of Natural Habitats and of Wild Fauna and Flora'. As with SPAs, all terrestrial SACs will be SSSIs. Some globally threatened habitats and species are given priority status and strict measures to protect those will be applied. The aim of the network is to maintain rare or endangered species and habitats at a "favourable conservation status" throughout Europe.

Landscape Designations

Landscape designation is an important consideration in any development proposal. These areas are afforded some degree of protection by their designation and when making any planning application due regard should be given to the particular landscape designation whether statutory or non statutory. The designation will be regarded as a material consideration by the LPA and depending upon the type of designation involved may well impact upon the type or extent of development

which may be approved. In some cases development may well be refused because of a particular landscape designation. If your site falls within an area with such a designation it is suggested that appropriate advice is obtained either from the particular LPA or a planning professional before a planning application is submitted.

13.1.30 Areas of Outstanding Natural Beauty

The National Parks and Access to the Countryside Act 1949 also provided for the designation of AONB; their purpose is to conserve the natural beauty of the landscape rather than to provide means for public access and enjoyment. Development plans and development control are required to have regard to conservation aims and permitted development rights are withdrawn on the same basis as in National Parks.

AONBs remain the responsibility of local authorities and have no special organisational provisions. Grants are available for the maintenance and enhancement of AONBs, activities which are undertaken by the local authorities under specific powers.

13.1.31 Heritage Coasts

In coastal areas the designation of Heritage Coast is designed to protect the landscape and provide for managed recreation.

13.1.32 National Parks

National Parks were the principle designation created by the National Parks and Access to the Countryside Act 1949. They have independent planning boards ie The Lake District, The Peak District who are responsible for the determination of planning applications within their area.

The statutory purpose of National Parks are the conservation of the natural beauty of the countryside and promotion of its public enjoyment.

13.1.33 Non-statutory Landscape Designation

There are a plethora of non-statutory landscape designations, mostly designated by local authorities. These designations are not created on a national, or even regional level, but differ between the local authorities. There is an inconsistency in the recognition of what value it is necessary to place on a specific area; few authorities attempt to explain or evaluate their proposals for designations.

A short list of non-statutory landscape designations includes: Special Landscape; Special Landscape Area; Area of Landscape Value/Merit/Significance; Great/Particular Landscape Value; Outstanding Landscape Area/Quality; Local Landscape Area; High Landscape Value; Historic Landscape; Landscape Conservation Area; Landscape Protection/Merit/Feature/Significance.

13.1.34 Green Belts

In United Kingdom town planning, the green belt is a policy for controlling urban growth. The idea is for a ring of countryside where urbanisation will be resisted for the foreseeable future, maintaining an area where agriculture, forestry and outdoor leisure can be expected to prevail. The fundamental aim of green belt policy is to prevent urban sprawl by keeping land permanently open, and consequently the most important attribute of green belts is their openness.

The Government sets out its policies and principles towards the green belts defined by local authorities in England and Wales in Planning Policy Guidance Note 2: Green Belts. Local Councils are strongly urged to follow PPG2's detailed advice when considering whether to permit additional development in the green belt, or to assent to new uses being made of existing premises. In the green belt there is a general presumption against inappropriate development, unless very special circumstances can be demonstrated to show that the benefits of the development will outweigh the harm caused to the green belt. PPG2 also sets out a number of examples of what would constitute appropriate or inappropriate development in the green belt.

13% of land in England is part of one of 14 green belt areas, including the Metropolitan green belt around London, Merseyside and Greater Manchester, Yorkshire, the West Midlands and Tyne and Wear. Wales has one green belt, between Cardiff and Newport.

If your site falls within a green belt you should be aware that "sport and recreation" is regarded as an appropriate use but because of the nature of protection afforded to such land you are advised to seek expert help and assistance before carrying out any development work.

Disabled Rights

Development proposals need to consider the ability of all sections of society to be able to access land and buildings whatever mobility and disability requirements they may have. It will be important when designing new buildings or facilities to demonstrate have universal access will be achieved. Development proposals which fail to do this are likely to be viewed less favourably and may well be refused.

In the past new developments, building and highways works and programmes have been designed and carried through with no real consideration for the needs of the disabled. This has begun to change in recent years in many places, and the Disability Equality Duty (DED) now requires all public authorities to use their influence over the environment to promote equality for disabled people.

New Disability Equality Duties have been introduced by the Disability Discrimination Act 2005 (DDA 05), which amended the Disability Discrimination Act 1995 (DDA). The new rights and duties apply equally in England and Wales.

The DED applies to all public authorities. The specific Disability Equality Duties, at the heart of which lies the requirement to develop a Disability Equality Scheme (DES), apply to most public authorities, with limited exceptions (eg parish, town or community councils).

A Statutory Code of Practice supports the implementation of the DED :- "*The 'Duty to Promote Disability Equality: Statutory Code of Practice for England and Wales*"

DDA 2005: Key Requirements for Planners, Building Control/Standards and Highways/Road Officers

There are two elements of the DDA 05 in force from 4 December 2006 which are of particular interest and relevance:

- non-discriminatory requirements in relation to public authority functions
- the duty to promote disability equality.

These two areas are not mutually exclusive. Public authorities will find that complying with the Disability Equality Duty will help avoid discrimination. The DDA will prohibit discrimination by public authorities in carrying out their functions.

Discrimination will occur where there is:

- less favourable treatment, for a reason relating to a person's disability, without justification
- a failure to make reasonable adjustments in specified circumstances, without justification.

Broadly speaking, public authorities, which include Planning, Building Control/Standards and Highways/Roads Authorities, must make adjustments to the way in which they carry out their functions. The purpose of this is to ensure that disabled people are not disadvantaged by the way in which those functions are carried out.

13.1.35 The duty to promote disability equality

This new legal duty will mean that all public bodies will need to actively look at ways of ensuring that disabled people are treated equally. This new law requires organisations across the public sector (including local authorities) to be proactive in ensuring that disabled people are treated fairly.

Many Local Authorities employ specific individuals as advisors/facilitators in relation to access issues for disabled people. They act as a point of contact for council departments/service areas and provide support to access 'champions'. They are also a point of contact for voluntary groups, such as the local access group/panel. They must have sufficient seniority to be influential within the authority and be appropriately resourced.

Some authorities employ only one designated access officer located in a particular department and adopt the approach that access issues will be mainstreamed into the responsibilities of all relevant staff in other areas. Others employ dedicated access officers in each of the relevant departments.

Disability equality must be addressed within all decision making

This applies to all decisions in this area – for example in relation to planning applications for a new building, or an extension to an existing building or development involving a material change of use. Planning applications should be accompanied by a Design and Access Statement which should be assessed by the LPA in terms of achieving disability equality.

The duty requires public authorities, when carrying out their functions including planning, to have due regard to disability equality in the following elements:

- the need to promote equality of opportunity between disabled people and other people
- the need to eliminate discrimination that is unlawful under the DDA
- the need to eliminate disability related harassment
- the need to promote positive attitudes towards disabled people
- the need to encourage participation by disabled people in public life
- the need to take steps to meet disabled peoples needs, even if this requires more favourable treatment.

Disability and Design and Access Statements

13.1.36 England

The Planning and Compulsory Purchase Act 2004[1] has introduced a requirement for design and access statements to accompany certain categories of applications for planning permission, giving effect to a new section 62 of the Town and Country Planning Act 1990[2], and listed building consent under section 10 (4) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

One statement should cover both design and access, allowing applicants to demonstrate an integrated approach that will deliver inclusive design while addressing a full range of access requirements throughout the design process.

An access and design statement is required for outline or detailed applications and will be a material consideration. Local authorities may specify parts of the statement through conditions, which must follow (DoE) Circular 11/95 and be necessary, relevant to planning and to the development, enforceable, precise and reasonable.

13.1.37 Wales

In Wales from 30th June 2007 it became a statutory requirement for Access Statements to accompany applications for planning permission and listed buildings consent (with some exclusions).

More Information

The legislation can be viewed at http://www.opsi.gov.uk/. The relevant primary legislation is section 42 of the Planning and Compulsory Purchase Act 2004 which is commenced by SI 2007/1369 C.58. A new Article 4D to the Town and Country Planning (General Development Procedure) Order 1995, and a new Regulation 3B to the Planning (Listed Buildings and Conservation Areas) Regulations 1990 are made by amending legislation SI 2006/3390 W.310 & SI 2006/3316 W.30.

Regional Spatial Strategies and Disability

13.1.38 England

Regional Planning Bodies (RPBs) are required under the Regulations to consult with bodies that represent the interests of disabled persons in the region, before submitting their draft RSS revision to the Secretary of State (to the extent they consider it appropriate to do so). There is also a new requirement to hold an Examination-in-Public for the draft revision of the RSS, once it has been submitted by the regional planning. The venue or venues should have good access for disabled people.

PPS1 - Paragraph 16 “Delivering Sustainable Development”:

‘Development Plans should promote development that creates socially inclusive communities… Plan policies should …seek to reduce social inequalities and take into account the needs of all the community, including particular requirements relating to age, sex, ethnic background, religion, disability or income’.

Planning Policies (SPP) and Planning Policy Wales (PPW)

Within many of the Government's policy documents on nationally important land use and other planning matters, there are numerous references to accessible and inclusive environments. All authorities must make best use of these when developing their regional and local development frameworks.

13.1.39 Wales

Planning Policy Wales states that one of its key policy objectives is that 'planning policies and proposals should foster social inclusion by ensuring that full advantage is taken of the opportunities to secure a more accessible environment for everyone which the development of land and buildings provides (2.3.2).' It also affirms that 'local planning authorities and developers should consider the issue of accessibility for all, including the needs of those with visual and hearing impairments and those with limited mobility such as wheelchair users, elderly people and people with young children, at an early stage in the design process (2.9.5).'

National Assembly of Wales Advice Note TAN 12:- Design

This TAN provides more detailed advice on how good design can be facilitated within proposed developments to cater for the needs of all.

DCLG Planning and Access for Disabled People

A key publication for planning officers is the good practice guide, DCLG (2003) Planning and Access for Disabled People, www.communities.gov.uk/index.asp?id=1144647. This document provides 19 good practice points that local authorities and developers should adopt.

Some of the recommendations in the good practice guide advise planning authorities to:

- include appropriate inclusive access policies at all levels of the development plan supported by a specific strategic policy;
- develop and implement supplementary planning guidance encourage pre-application discussions with applicants;
- encourage applicants to submit Access Statements with their applications;
- make sure planning officers receive appropriate training on all aspects of an inclusive environment;
- appoint an Access Officer and use a suitable access consultant, and
- encourage regular liaison with local access groups.

14 Annex D2: The Planning System in Northern Ireland

Introduction

This Annex describes in further detail the legal and policy framework applicable to Northern Ireland in relation to the submission and determination of a planning application. It seeks to guide clubs with the identification of relevant local and national planning policies.

It is open to anyone to make a planning application and there is no requirement for the applicant to have an interest in the site. However, Article 22 of the Planning (Northern Ireland) Order 1991 requires that owners of land should be formally notified before a planning application can be considered.

It is advisable for applicants to discuss proposals informally at an early stage with any affected neighbours.

Decisions on planning applications are made by the Department of The Environment through a body called the Planning Service, following statutory consultation with the local district or borough Council. The Department gives careful consideration to the views of elected councillors, but the decision to grant or refuse planning permission is the responsibility of the Department.

When the Planning Service receives an application it is placed on a register for public inspection. The application is publicised and processing begins taking due account of all comments received.

The Department consults widely with organisations that have special expertise, such as the Northern Ireland Environment Agency and Roads Service.

The range of factors that Planning Service take into account in determining any individual application is, in practice, very wide and can vary from application to application.

Although, not definitive, the following list identifies those policy documents and other matters which the Department may take into account:

- The Regional Development Strategy for Northern Ireland 2025
- Policies and Guidance
- Development Plans
- Consultation responses
- Third party correspondence
- Site visits
- Material considerations
- Other Government Strategies and Policy Documents

The main areas of responsibility and relevant policy documents are set out in the table below.

Department of Environment Northern Ireland	Regional Development Strategy for Northern Ireland 2005	Planning Policy Statements	Development Control Policy Advice Notes	
The Planning Service of the Department of Environment for Northern Ireland	Area Plan – covering the whole or most parts of a district council and containing strategic policies	Local Plan – provides detailed guidance.	Subject Plan which is Discretionary to address a particular planning theme or project	Supplementary Planning Guidance.

When a planning approval has been issued the applicant is responsible for implementing the project in accordance with the planning permission and any conditions attached to it by the Planning Service. Applicants also decide, with the help of any advisors they have, whether to appeal against a refusal of planning permission or conditions attached to a planning approval.

The Planning Service

The Planning Service operates from Headquarters in Belfast and 6 divisional planning offices across Northern Ireland.

Planning Service Headquarters, based in Millennium House, 17-25 Great Victoria Street, Belfast deals with strategic planning issues. Planning Service Headquarters also have a number of specialised teams which deal with complex operational issues such as minerals planning, major retail applications and applications that have been declared as major applications under Article 31 of the Planning (Northern Ireland) Order 1991.

Divisional Planning Offices are responsible for operational issues, within particular local government districts, such as development control and enforcement and for preparing development plans.Enquiries about specific planning applications and local planning issues should be addressed to the relevant Divisional Planning Office. It is always advisable to make an appointment before visiting a divisional planning office. This will help to ensure that you are seen promptly. Remember an appointment must always be made should you wish to see a planning application file.

General enquiries about planning policy, procedures or progress on initiatives should be addressed to:

Planning Service Headquarters,
Millennium House,
17-25 Great Victoria Street,
Belfast, BT2 7BN.
Tel: (028) 9041 6700
Fax: (028) 9041 6802

email: planning.service.hq@doeni.gov.uk

Planning Policy Considerations

The Regional Development Strategy (RDS), 'Shaping Our Future', is a strategy for the development of Northern Ireland up to 2025. The Regional Development Strategy has a statutory basis and under the Strategic Planning (NI) Order 1999, the Planning Service must take it into account both when preparing Development Plans and when deciding on individual planning applications. This document is available to download from the Department of Regional Development's website at: http://www.drdni.gov.uk/PolicyZone.htm

Planning Policy Statements (PPS), contain policies on land-use and other planning matters, for example telecommunications or the built heritage, and apply to the whole of Northern Ireland. They set out the main planning considerations that the Department takes into account in assessing proposals for the various forms of development and are relevant to the preparation of development plans. They are also material to decisions on individual planning appeals.

Currently the following PPS's are in force and taken into consideration, where relevant during the determination of planning applications:-

- PPS 1: General Principles
- PPS 2: Planning and Nature Conservation
- PPS 3: Access, Movement and Parking
- PPS 3 (Clarification): Access, Movement and Parking
- PPS 4: Industrial Development
- PPS 5: Retailing and Town Centres
- PPS 6: Planning, Archaeology and The Built Heritage
- PPS 6 (Addendum): Areas of Townscape Character
- PPS 7: Quality Residential Environments
- PPS 7 (Addendum): Residential Extensions and Alterations
- PPS 8: Open Space, Sport and Outdoor Recreation
- PPS 9: The Enforcement of Planning Control
- PPS 10: Telecommunications
- PPS 11: Planning and Waste Management
- PPS 12: Housing in Settlements
- PPS 13: Transportation and Land Use
- PPS 15: Planning and Flood Risk
- PPS 17: Control of Outdoor Advertisements

The guiding principle that the Department observes in making decisions on planning applications is set out in PPS 1: General Principles. This states that development should be permitted, having regard to the development plan and all other material considerations, unless it would cause demonstrable harm to interests of acknowledged importance.

Material considerations must be genuine planning considerations, i.e. they must be related to the purpose of planning legislation, which is to regulate the development and use of land in the public interest.

The considerations must also fairly and reasonably relate to the application concerned. Much will depend on the nature of the application under consideration, the relevant planning policies and the surrounding circumstances. All the fundamental factors involved in land-use planning constitute a material consideration. This includes the number, size, layout, design and external appearance of

buildings and the proposed means of access, together with landscaping, impact on the neighbourhood and the availability of infrastructure.

The following are material considerations although this list is not exhaustive.

- The Planning Policy Context
- Need
- Power to impose conditions
- Natural Justice
- Public Opinion
- Consultations responses
- Existing site uses and features
- Layout, Design and Amenity Matters
- Resources and Economic Factors
- Social and Economic Matters
- Precedent
- Alternative Sites
- Issues affecting Human Rights
- Planning gain
- The Planning History

While initially it is for the Department to consider whether a consideration is material, it is ultimately a matter for the courts to decide. As regards the weight to be given to the various considerations, the courts have held that this is a matter for planning judgement.

The Department of Environment assumed responsibility for the following Planning Policy Statements (PPS) from the Department for Regional Development on 15 January 2008:

- PPS 5 (Revised): Draft Retailing, Town Centres and Commercial Leisure Developments;
- PPS 12: Housing in Settlements;
- PPS 13: Transportation and Land Use; and
- PPS 20: The Coast.

The Planning Strategy for Rural Northern Ireland (issues by the Planning Service in September 1993) covers all of the towns, villages and countryside of Northern Ireland outside Belfast (and adjoining built up areas) and Londonderry. The Strategy establishes the objectives and the policies for land use and development appropriate to the particular circumstances of Northern Ireland and which need to be considered on a scale wider than the individual District Council Area.

Planning Policy Statements (PPSs) are gradually replacing the policy provisions of the Planning Strategy for Rural Northern Ireland and each PPS indicates those policies of the Strategy that it is superseding. In the meantime, the Planning Strategy remains in force for those topics not covered by a PPS or other policy publication and where still applicable, remain a material consideration until it is completely superseded.

Other policy publications include:

- Ministerial Statements
- Airport Public Safety Zones
- Conserving Peatland

The Development Plan policies of each local, district or borough Council, where relevant to a particular planning application proposal will also be taken into account by the Planning Service when determining planning applications.

The following Development Plans are currently in force:-

Development Plan	**Status**	**Date**
Antrim Area Plan 1984-2001	Adopted	Jun 1989
Antrim, Ballymena & Larne Area Plan 2016	Issues Paper	May 2002
Ards & Down Area Plan 2015	Independent Examination	Dec 2002
Armagh Area Plan 2004	Adopted	Jan 1995
Armagh Area Plan 2018	Issues Paper	Mar 2004
Ballymacross Local Plan	Adopted	Jan 1988
Ballymena Area Plan 1986-2001	Adopted	Nov 1989
Ballymoney Town Centre Local Plan 1991-2002	Adopted	Oct 1993
Banbridge Area Plan 1983-1998	Adopted	Jun 1986
Banbridge Rural Area Subject Plan 1986-1998	Adopted	Aug 1990
Banbridge, Newry & Mourne Area Plan 2015	Draft	Aug 2006
Bangor Town Centre Local Plan	Adopted	Feb 1995
Belfast Harbour Local Plan 1990-2005	Adopted	Nov 1991
Belfast Metropolitan Area Plan 2015	Draft	Nov 2004
Belfast Urban Area Plan 2001	Adopted	Dec 1989
Carrickfergus Area Plan 2001	Adopted	Mar 2000
Carryduff Local Plan 1988-1993	Adopted	Aug 1990
Coleraine Borough Houses in Multiple Occupation Subject Plan 2016	Issues Paper	Apr 2006
Cookstown Area Plan 2010	Adopted	Jun 2004
Craigavon Area Plan 2010	Adopted	Aug 2004
Craigavon Town Centre Boundaries & Retail Designation Plan 2010	Adopted	Jun 2008
Derry Area Plan 2011	Adopted	May 2000
Down Area Plan 1982-1997	Adopted	May 1986
Downpatrick Town Centre Local Plan	Adopted	May 1992
Dungannon & South Tyrone Area Plan 2010	Adopted	Mar 2005
Fermanagh Area Plan 2007	Adopted	Mar 1997
Houses in Multiple Occupation (HMO's) Subject Plan for Belfast City Council Area - 2015	Adopted	Dec 2008
Lagan Valley Regional Park Local Plan 2005	Adopted	Mar 1995
Larne Area Plan 2010	Adopted	Mar 1998
Limavady Area Plan 1984-1999	Adopted	Dec 1988
Limavady District Hamlet Subject Plan 1989-1999	Adopted	Sep 1990
Limavady Local Plan (South East Lands) 1989-1999	Adopted	Feb 1990
Lisburn Area Plan 2001	Adopted	Jul 2001
Lisburn Town Centre Local Plan	Adopted	Sep 1990
Magherafelt Area Plan 1976-1996	Adopted	Jan 1981
Magherafelt Area Plan 2015	Draft	Apr 2004

Newry & Mourne Area Plan 1984-1999	Adopted	Feb 1988
Newry & Mourne Rural Area Subject Plan 1986-1999	Adopted	Sep 1990
Newtownabbey Area Plan 2005	Adopted	Mar 1993
North Down & Ards Area Plan 1984-1995	Adopted	Jul 1989
North East Area Plan 1987-2002	Adopted	Oct 1990
Northern Area Plan 2016	Draft	May 2005
Omagh Area Plan 1987-2002	Adopted	Sep 1992
Strabane Area Plan 1986-2001	Adopted	Apr 1991
West Tyrone Area Plan 2018	Issues Paper	Oct 2005

Copies of these Development Plans should be available from the particular Council's web site or by contacting the Council direct.

The Department prepares non-statutory planning guidance to supplement explain and amplify its policy documents and development plans.
Current Supplementary Planning Guidance includes:-

- Development Control Advice Notes (DCANs)
- Conservation Areas
- Development Guidance Notes (DGNs) offering guidance on particular aspects of land use planning in certain areas located within the Belfast, Castlereagh and Newtownabbey council areas.
- Design Guides including, **Housing Layouts**, **Creating Places**, **Design Guide for Rural NI**, **Bus Stop Design Guide**
- **Trees and Development**
- **Wind Energy Development in Northern Ireland's Landscapes**

Where relevant to a particular development proposal supplementary guidance will be taken into account as a material consideration in making decisions. The weight accorded to it will increase where it has been prepared following public consultation.

Types of Planning Application

14.1.1 Outline Permission

An application for outline planning permission establishes the principle of development and as such detailed plans will not normally be required although this is largely dependent on the nature of the application. Once outline permission has been granted, you will need to apply for approval of the details (reserved matters) before work can start. Outline planning applications can only be made when the proposal involves the erection of buildings. Please note outline applications cannot be accepted for change of use developments.

14.1.2 Reserved Matters

Once your development proposal has received outline planning permission, a reserved matters application should be submitted to receive permission for the details of the proposal or 'reserved matters.' The reserved matters application should fully comply with all the conditions attached to the outline permission and should be submitted within 3 years of outline permission being granted. A reserved matters application will require the submission of detailed plans and drawings to include

details such as the siting, design and external appearance of the development, the means of access to the development and landscaping of the proposal.

14.1.3 Full Permission

Full applications must be made for the following types of development:

- Applications for retrospective planning permission;
- For a change of use of land or buildings;
- The carrying out of mining, engineering or operations other than building operations.

Full applications are also appropriate when the principle of the proposed development is acceptable in planning terms.

How long does it take?

The Planning Service should determine your application within eight weeks. Large or complex applications may take longer. The Planning Service should be able to give you an idea about the likely timetable.

If your application is not determined within eight weeks, you can appeal to the Planning Appeals Commission.

Is Planning Permission Required

Planning permission for development proposals is not always required. If you are in any doubt about whether you need to apply for planning permission you should contact your local divisional planning office or Planning Service Headquarters.

The Planning (General Development Order) (NI) 1993 ("the GDO") sets out the types of development that are given planning permission through 'permitted development' rights.

The GDO performs two main functions. Firstly, it provides for procedures and other matters relating to the processing of applications for planning permission and for Certificates of Lawful Use or Development. Secondly, it grants permission for classes of development, described as permitted development in Schedule 1 to the GDO, without the need to apply for planning permission under the Planning (Northern Ireland) Order ("the 1991 Order"). In most cases, permitted development is subject to qualifications, restrictions and conditions.

The GDO (Article 3 and Schedule 1) grants planning permission for classes of development described as permitted development (often referred to as 'permitted development rights') subject to exceptions, limitations and conditions specified in the Schedule.

Generally, permitted development rights are applied to relatively minor non-contentious development where it is considered that, subject to the specified exceptions, limitations and conditions, do not need to be subject to the planning application process.

Permitted development rights are a long-standing part of the development control system and reduce the regulatory burden of the planning system. They:

- reduce the need for developers/operators to seek planning permission for minor development which would clog up the planning system;
- reduce the number of planning applications made to the Planning Service, so allowing it to concentrate on larger or more contentious development proposals which are subject to public scrutiny;
- generally help improve efficiency in the planning system.

The types of development now benefiting from permitted development rights in Northern Ireland can be broadly summarised as:

- those relating to certain types of building, including dwelling houses, industrial and warehouse buildings, agricultural buildings and those within amusements parks; these rights mostly relate to fairly minor development incidental to existing uses of the land and with any adverse effects controlled by various conditions;
- those given to certain types of organisations which carry out development, including district councils, various statutory undertakers, for example railways, electricity, ports, water authorities, and airports; these rights may have been given on the basis of the public services provided by these bodies and the statutory controls and accountability that apply to them;
- rights that tie in with and provide limited expansion of development rights provided by other legislation, such as repairs to services and unadopted roads and development required by the Roads Service for road safety

While the basic aim of permitted development rights is to exclude relatively minor development proposals from planning controls, the need to control any significant impact of even minor development in protected or sensitive environments means that the GDO provides for some permitted development rights to be withdrawn or limited in certain circumstances:

- in conservation areas, and certain other specified or designated areas such as National Parks, AONBs and sites of archaeological interest;
- by conditions, exclusions and limitations applying to specific rights within each Part of Schedule 1 of the GDO;
- through Articles in the GDO, including Article 4 and Article 6, which give the Department powers to remove permitted development rights, and Article 3 which removes permitted development rights for development where an Environmental Impact Assessment is required;
- in a few Parts of Schedule 1 of the GDO, by requiring prior approval or notification of some of the details of permitted development proposals to be provided and determined by the Planning Service.

Exceptionally, permitted development rights can be removed outside the GDO through conditions attached to a planning permission.

If you want to confirm whether any development that you have already carried out or that you propose to carry out is lawful for planning purposes you may apply for a Certificate of Lawful Use or Development.

Making a Planning Application

The nature of development proposals varies greatly and depending on the nature of your proposal, you will be asked to provide detailed information in support. The more complex the proposal, the more detailed the information required.

The first step in making any planning application is to Contact your local Divisional Planning Office and tell the planning staff what you want to do and ask for their advice. If a planning officer thinks you need to apply for planning permission, ask him/her for an application pack. They will tell you how many copies of the form you will need to send back and how much the application fee will be.

Decide what type of application you need to make. In many cases this will be a full application but there are circumstances when you may want to make an outline application - for example, to test the principle of development on the site. It may be advisable to seek professional help in order to assist with the production and submission of an application.

Send the completed application forms to your Divisional Planning Office, together with the correct fee. Each form must be accompanied by plans of the site and drawings showing the work you propose to carry out (a planning officer will advise you on what drawings are needed).

Applications deemed as invalid will be returned.

There are a number of things which it may be advisable for you to check prior to submitting a formal planning application such as:

- Legal Position
- Planning History
- Traffic Safety
- Listed buildings
- Tree Preservation Orders
- Conservation Areas
- Areas of Townscape Character
- Historic Monuments

14.1.4 Legal Position

If you are in any doubt, check your legal position and if necessary consult a solicitor to ensure that there are no restrictions on the land or the type of work you wish to do (e.g., legal title, restrictive covenants, rights-of-way, etc.).

14.1.5 Planning History

The original planning permission granted for your site may have a condition attached restricting or prohibiting the kind of work you wish to carry out. If in doubt, check with your local planning office.

14.1.6 Traffic Safety

The work you are carrying out must not cause danger by obstructing the view of people using a public road.

14.1.7 Listed buildings

Listed building consent may be needed for the work you want to do if the building is a listed building. Your Local Planning Office will be able to advise.

14.1.8 Tree Preservation Orders

A TPO provides protection for those trees specified in the order and makes it an offence to cut down, top, lop, uproot or wilfully damage or destroy a tree, or permit these actions, without first seeking the Department's consent to do so. An application for consent must be made in writing to your local Planning Office, specifying the trees, the work you want to carry out and why.

14.1.9 Conservation Areas

If your site is in a Conservation Area and wish to carry out any external alterations it is advisable to discuss these with your local planning office. The criteria set out for assessing proposals in a Conservation Area are included within Planning Policy Statement 6 – Archaeology and the Built Heritage. Supplementary planning guidance will be found in the relevant Conservation Area Design Guide. If you are hoping to obtain a Conservation Area Grant or Historic Buildings Grant you should contact the Built Heritage of the Environment and Heritage Service. Trees in a conservation area are automatically protected as if a TPO was in place. However, in a conservation area, anyone proposing to carry out works on the trees, must serve on the Department six weeks notice of the intended works. The notice should contain sufficient information to identify the trees, details of the proposed works and reasons.

14.1.10 Areas of Townscape/Village Character

If your site is situated in an Area of Townscape Character again it may be in your interests to seek advice prior to submission of an application. In processing planning applications within ATCs/AVCs, the key consideration for the Department will be to ensure that development proposals respect the appearance and qualities of each townscape area and maintain or enhance their distinctive character. Planning permission is required for the demolition of an unlisted building in ATCs/AVCs as a consequence of a Departmental Direction issued under Article 11 (2) (f) of the Planning (NI) Order 1991. Further information and policy is available on PPS6 Addendum: Areas of Townscape Character.

14.1.11 Historic Monuments

Work proposed in or near any archaeological site or historic monument may need special permission, or certain precautions may be advisable. For advice contact the Archaeological Survey of the Built Heritage of the Northern Ireland Environment Agency

14.1.12 Environmental Impact

Before making a decision on applications for certain types of developments, which have a significant effect on the environment because of their nature, size or location, the Planning Service must take into consideration environmental information. The environmental information includes the Environmental Statement prepared by the applicant, and any further information requested by the Department, and any representations made about the likely environmental effects of the proposed development.

The Planning (Environmental Impact Assessment) Regulations (NI) 1999 specify in Schedule 1 those projects for which the submission of an Environmental Statement is mandatory and in Schedule 2 those projects for which an Environmental Statement is required if the proposal is likely to have significant environmental effects.

If in doubt you may ask the Planning Service for a determination as to the need for an Environmental Statement. The Planning Service will give you a determination within 4 weeks. You may also ask the Planning Service to give an opinion as to the information to be provided in the Environmental Statement i.e. to scope the Environmental Statement. Scoping will take place in 6 weeks.

For more information please refer to Development Control Advice Note 10 or seek independent professional help.

14.1.13 Public Footpaths

Where a public right of way exists within or adjoining the site of the proposed development this must be clearly identified in **green** on all location or site plans. A public right of way is a highway which any member of the public may use but which is not a highway maintained by a government department.

It is usual to retain a public right of way and where appropriate, incorporate the path as an integral part of the proposed development.

Where however, it is proposed to divert or extinguish a public right of way, you should discuss this at an early stage with your District Council. Depending on the circumstances they may consider making an Order to divert or extinguish the right of way.

You should be aware that the Department also has powers to make Orders diverting or extinguishing rights of way to enable development to be carried out.

Using a Planning Expert

You are under no obligation to use as an agent a planning solicitor or planning consultant. However if you are unfamiliar with the planning process in Northern Ireland, you may wish to consider appointing an expert to act on your behalf.

Information on planning consultants in Northern Ireland can be obtained by using the online directory of planning consultants, produced by Croner.CCH in association with the RTPI. The Directory allows you to search and identify the most appropriate planning consultant.

A leaflet with details of consultants in your area is also available from the RTPI's Planning Consultants Referral Service. Contact them at info@rtpiconsultants.co.uk

Planning Advice for Communities and Individuals

Community Places provides free, impartial advice and information on planning issues for community groups and individuals who cannot afford to go to engage a private consultant.

Typical issues the advice covers include:

- how to get information about planning proposals;
- understanding planning proposals;
- making objections to proposals;
- how decisions are made;
- the complaints and appeals procedures.

Community Places also publishes guides to the planning system and to objecting to planning proposals. For advice and information telephone (028)90239444 (groups), (028)90235545 (individuals) or email: info@communityplaces.info

Web site:- www.communityplaces.info

Approval From Other Bodies

As well as planning permission and Listed Building Consent there are other approvals and consents which may be needed such as the following:

- Building regulations
- Development affecting roads
- Water regulations
- Effluent disposal
- Watercourses
- Archaeological Monuments, Listed Buildings & Designated Areas of Nature Conservation
- Protected species
- Other Services

14.1.14 Building regulations

You will probably have to submit plans to your District Council to ensure that your proposals comply with the Building Regulations.

14.1.15 Development affecting roads

When you apply for planning permission your application will automatically be considered by the Roads Service, an Agency within the Department for Regional Development. Even if you do not need planning permission but wish to make or alter an access to a road or do any work to a road or a footpath you will probably need the permission of the Roads Service.

14.1.16 Water regulations

The consent of the Northern Ireland Water may be needed for your plumbing and drainage proposals. If you wish to build an extension or building over an existing sewer or drain, you will need the consent of the Northern Ireland Water

14.1.17 Effluent disposal

You will need the consent of the Water Management Unit of the Northern Ireland Environment Agency if you propose to install a septic tank or to discharge effluent to a waterway or tidal waters.

14.1.18 Watercourses

It is an offence to alter or obstruct any watercourse including the piping of a watercourse without the approval of the Department of Agriculture

14.1.19 Archaeological Monuments, Listed Buildings & Designated Areas of Nature Conservation

If your proposal would have an impact on any of these, you should contact the Northern Ireland Environment Agency to discuss your ideas.

14.1.20 Protected species

Certain species are protected by law and it is illegal to interfere with their habitat without special permission. If you believe there may be protected species on the site you should contact the Northern Ireland Environment Agency.

14.1.21 Other services

If your proposal will need the provision of gas, electricity or telephone services, you should notify the appropriate service as soon as possible

Appeals

Appeals may only be made by or on behalf of the person who made the application. There is no "third party" right of appeal and this means that objectors or other parties who may have an interest in the proposal cannot make an appeal if they are unhappy about the decision.

The time limits within which appeals may be made are set out in legislation but those relating to the bulk of PAC appeal casework are as follows:

- Planning, Listed Building and Advertisement Appeals – six months from the date of notification of the Department of the Environment's decision. The Commission is unable to extend this period. Appeals may also be made after a minimum period of two months (or such extended period as may be agreed in writing between the Appellant and Department) from the date of the receipt of a valid application if no decision has been issued by the Department.
- Enforcement Notice Appeals – at any time before the date on which the notice is to take effect (specified in the notice). The Commission has no power to extend the period for making an appeal.

How to Appeal

By completing and lodging an appeal form with the Planning Appeals Commission (PAC). All appeals, under the Planning (Northern Ireland) Order 1991 must be accompanied by a fee which presently stands at £126. (Cheques should be made payable to the Planning Appeals Commission.) Appeals should be sent to: Planning Appeals Commission, Park House, 87-91 Great Victoria Street, Belfast, BT2 7AG.

Tel:02890244710
Fax:02890312536
E-mail:info@pacni.gov.uk

Web site address:- www.pacni.gov.uk

The following appeal forms can be obtained from the PAC website.

- planning/listed building appeals
- PAC3 Certificate C (for service on individuals)
- PAC3 Certificate D
- Submission Notice Appeal Form
- Roads Appeal Form
- Advertising Appeal Form
- Water Appeal Form
- Certificate of Alternative Development Appeal Form
- Lawful Development Certificate Appeal Form
- Listed Building Enforcement Notice Appeal Form
- Enforcement Notice Appeal Form
- Environmental Appeal Form

Appeal Procedures

Appeals may be determined either on the basis of a hearing or by written representations. However, if either the Department or the appellant request a hearing, this procedure must be followed and will take the form of either a Formal or Informal Hearing.

The Written Representations method is appropriate for a wide range of cases and commends wider use of the procedure. It has time and cost advantages for all of the parties, particularly the appellant.

To find out more about procedures on planning and enforcement notice appeals refer to "Procedures for Planning Appeals" and "Procedures for Enforcement Notice, Listed Building Enforcement Notice and Submission Notice Appeals" the PAC website.

Public Inquiries

14.1.22 What are public inquiries and hearings?

Public Inquiries and hearings are not appeals but are conducted by the Commission at the request of the relevant Assembly Department. The Department makes the final decision and the Commission's role is to hear the views of the Department and all other parties who may include applicants, objectors or supporters (depending on the nature of the public inquiry/hearing) and then to present its report and recommendation to the Department. The Department is in most instances required to consider the Commission's report before making the final decision.

The distinction between a public inquiry and hearing is broadly as follows:--

Public Inquiries are held when the Department considers that parties making objections or representations on a particular matter should have the opportunity of having their views considered in public before a decision is made.

Hearings are held when the Department forms an initial view on a particular matter and the affected party requests the opportunity of appearing before and being heard by the PAC before the final decision is made.

14.1.23 What are the main types of public inquiries and hearings?

Most public inquiries and hearings arise as a result of objections to development plans/development schemes and representations made in respect of major planning applications. The latter are often referred to as Article 31 cases.

14.1.24 Public Inquiry and Hearing Procedure

Once the Commission receives a request for a public inquiry or a hearing the following procedures are followed:

Pre-Inquiry/Pre-Hearing Stage – normally pre-inquiry or pre-hearing meetings are heard to:-

- facilitate submission and exchange of evidence;
- explain procedures to be followed to the inquiry/hearing;
- establish a programme for hearing evidence;
- encourage parties sharing a common cause to pool resources.

Inquiry/Hearing Stage – the inquiry/hearing will be conducted by a Commissioner appointed by the Chief Commissioner. He/she may be accompanied by an assessor if this is necessary or another Commissioner. The inquiry/hearing is a public forum and the procedures are broadly similar to those for a planning appeal although the order in which parties present their cases may be different.

Post-Inquiry/Hearing Stage – the following steps occur after the inquiry/hearing closes:-

- the appointed Member prepares a report, visits the site(s) and makes recommendations to the Commission;
- the Commission considers the appointed Member's report and makes its recommendations to the Department;
- the Department on considering the Commission's report issues its decision.

To find out more about procedures on major planning applications and public inquiries and hearings relating to development plan/development scheme, refer to "Procedures for Public Local Inquiries and Hearings into Major Planning Applications", "Procedures for Public Local Inquiries into Development Plans" and "Procedures for Public Local Inquiries into Development Schemes" on the PAC website.

14.1.25 Commission and Commissioners' Reports

Reports on public inquiries and hearings are not normally available to the public until after the Department has issued its decision. Requests for such reports should be made to the relevant Assembly Department, not the Commission.

Advertising and Appeals

All planning, listed building, enforcement notice and listed building enforcement notice appeals are advertised. Parties who make representations on appeals are invited to participate in appeal proceedings and have the same opportunity as the Department and appellant to make their views known to the Commission.

15 Annex D3: The Planning System in Scotland

Introduction

The planning system in Scotland is based on statute and policy.

The principal statutes are:

- Planning etc (Scotland) Act 2006;
- Town and Country Planning (Scotland) Act 1997;
- Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997;
- Planning (Hazardous Substances)(Scotland) Act 1997, and
- National Parks (Scotland) Act 2000.

The policy framework comprises National and Local planning policies. National planning policy is made by the Scottish Government through various means, but principally, through the following series of documents:

- the National Planning Framework (NPF);
- Scottish Planning Policy (SPP),
- Planning Advice Notes (PAN), and
- National Planning Policy Guidelines (NPPG).

National	National Planning Framework for Scotland 2004	Scottish Planning Policy – a series of policy statements on specific themes	Planning Advice Notes – a series of more detailed guidance notes on specific topics
Unitary Council's	Structure Plan (moving to Local Development Plans)	Local Plan (moving to Local Development Plans)	Supplementary Planning Guidance
Community Council's	Community Planning Documents		

Statements of Scottish Government policy carry significant weight and are regarded as material considerations which must, where relevant, be taken into account by Local Planning Authorities (LPA) when producing Local policy and, when determining planning applications.

Local policy may be comprised within several policy documents, which collectively are known as the Development Plan. Recent legislative changes require LPAs to review the development needs within their area of control and to move towards the adoption of Local Development Plans as the new Development Plan, replacing the former Structure and Local Plan suite of planning policy documents.

Planning Act 2006

The Planning Act 2006 has brought and is due to bring many changes to The Town & Country Planning Act (Scotland) 1997 and the current planning system it governs. The most significant of

these relate to the planning policy documents to be prepared by the Scottish Government and LPAs and, to the procedure relating to the handling of planning applications and appeals.

The act contains many parts however the first three only will be addressed in this handbook in order to give an overview of the new provisions and their effects.

Part 1 - National Planning Framework

This sets out arrangements for the preparation and publication of the National Planning Framework, a spatial plan for Scotland. It also describes the procedure for Parliamentary consideration of the Framework and its laying before Parliament.

Part 2 - Development plans

The S006 Act replaces Part 2 of the Town & Country Planning (Scotland) Act 1997. It sets out provisions for the preparation, examination and publication of strategic development plans and local development plans, which have replaced the existing structure plans and local plans. It also defines a new duty on planning authorities to exercise their development planning functions with the objective of contributing to sustainable development.

Part 3 - Development management

Selectively amends Part 3 of the 1997 Act to bring about a range of improvements to the handling of applications for planning permission. It also revises the provisions relating to appeals and planning agreements, now known as planning obligations.

National Planning Framework

Scottish Ministers are responsible for the NPF for Scotland which sits at the top of the policy hierarchy and is the long term strategy for the development of Scotland over the next 25 years. It is not a prescriptive blueprint, but is a material consideration in framing planning policy and making decisions on planning applications and appeals.

The first NPF was published in 2004, setting out a strategy for Scotland's development to 2025. Scotland's second National Planning Framework is currently under preparation and The Planning etc. (Scotland) Act 2006 puts it on a statutory footing. This should be finalised by Spring 2009; Scottish Ministers are committed to reviewing the NPF every four years.

The National Planning Framework sets out in broad terms how the Scottish Ministers consider that the development and use of land could and should occur.

The National Planning Framework contains:

(a) a strategy for Scotland's spatial development, and
(b) a statement of what the Scottish Ministers consider to be priorities for that development.

The framework may:

(a) contain an account of such matters as the Scottish Ministers consider affect, or may come to affect, the development and use of land,
(b) describe:

(i) a development and designate it, or
(ii) a class of development and designate each development within that class, a "national development", and
(c) contain any other matter which the Scottish Ministers consider it appropriate to include.

Development Plans

At local government level, development plans lie at the heart of the planning system. They are the core documents against which planning applications are assessed for determination.

The development plan comprises a local development plan supported by supplementary planning guidance, and in the 4 largest city regions, strategic development plans will additionally address land use issues that cross local authority boundaries and strategic infrastructure.

A local development plan is a plan which sets out, for land in the part of the district to which it relates:

(a) a spatial strategy, being a detailed statement of the planning authority's policies and proposals as to the development and use of the land,
(b) such other matters as may be prescribed, and
(c) any other matter which the planning authority consider it appropriate to include.

The local authority must also prepare a **vision statement**, that is to say a broad statement of the planning authority's views as to how the development of the land could and should occur having regard to:

(a) the principal physical, economic, social and environmental characteristics of the district,
(b) the principal purposes for which the land is used,
(c) the size, composition and distribution of the population of the district,
(d) the infrastructure of the district (including communications, transport and drainage systems and systems for the supply of water and energy),
(e) how that infrastructure is used, and
(f) any change which the planning authority think may occur in relation to any of the matters mentioned in paragraphs (a) to (e) which might be expected to affect that development.

A local development plan may include:

(a) such maps, diagrams, illustrations and descriptive matter as may be prescribed, and
(b) such other diagrams, illustrations and descriptive matter (if any) as the planning authority think appropriate.

15.1.1 Preparation and monitoring of local development plans

The District Council, at intervals of no more than five years, must prepare local development plans for all parts of their district, and to keep them under review. Where clubs are considering future development proposals which are likely to raise more than local issues, then it is recommended that representations are made to the LPA during the plan review process. Successful representations will allow the LPA to adopt planning policy provision for the proposed development within its Development Plan, an achievement which will greatly improve the club's prospects of obtaining a grant of planning permission and reduce development risk.

In preparing a local development plan, The District Council:

(a) are to take into account the National Planning Framework,
(b) are to have regard to such information and considerations as may be prescribed, and
(c) may have regard to such other information and considerations as appear to them to be relevant.

15.1.2 Main issues report for preparation of local development plan

With a view to facilitating and informing their work in preparing a local development plan, an LPA are to compile a report (a “main issues report”).

A main issues report compiled under this section is a report which sets out—

(a) general proposals by the authority for development in their district and in particular proposals as regards where the development should be carried out (and where it should not), and
(b) general proposals which constitute a reasonable alternative (or reasonable alternatives) to those mentioned in paragraph (a).

The report is to include information sufficient to secure that what is proposed can readily be understood by those persons who may be expected to desire an opportunity of making representations to the authority with respect to the report.

In compiling the report the planning authority are to seek the views of, and have regard to any views expressed by:

(a) the key agencies, and
(b) such persons as may be prescribed.

15.1.3 Supplementary Planning Guidance

The Act states that a planning authority may, under this subsection, adopt and issue guidance in connection with a local development plan (such guidance being, in either case, referred to in this Part as “supplementary guidance”). This is again similar to the use of Supplementary Planning Guidance/Documents under the English planning system. Where a club is proposing a major development (perhaps with a mix of leisure and other uses e.g. retail/residential) then it is recommended that in tandem with representations to the LPA’s local development plan making process, that efforts are made to produce with the LPA a detailed policy statement to guide future development with the aim of having the policy adopted by the LPA as supplementary planning guidance, forming part of the Development Plan.

New Regulations are expected in this regard to make provision as to procedures for, and as to consultation which must precede, the adoption of, and the matters which may be dealt with in, supplementary planning guidance.

Supplementary provisions

"Key agencies" referred to above will be consulted when the local authority prepare its main issues report. Key agencies are likely to include Historic Scotland, Scottish Natural Heritage, the Scottish Environment Protection Agency and Local Enterprise Companies.

New section 25 explains the status of the development plan where any determination is made under the planning Acts and states that determination is to be made in accordance with the development plan, and, where applicable, with certain statements in the National Planning Framework, unless material considerations indicate otherwise.

Development Management

15.1.4 Hierarchy of developments

A new section has been added to the Town & Country Planning Act 1997 which sets categories of development:

(a) the first to be known as "national developments",
(b) the second, to be known as "major developments", and
(c) the third, to be known as "local developments".

The Scottish Ministers are by regulations to describe classes of development (other than national developments) and assign each class to one or other of the categories mentioned in paragraphs (b) and (c) above.

The regulations are the Town and Country Planning (Hierarchy of Development)(Scotland) Regulations 2009. These describe major developments as per the table below:

Description of development	**Threshold or criterion**
1. Schedule 1 development	
Development of a description mentioned in Schedule 1 to the Environmental Impact Assessment (Scotland) Regulations 1999(3) (other than exempt development within the meaning of those Regulations).	All development
2. Housing	
Construction of buildings, structures or erections for use as residential accommodation.	a) The development comprises 50 or more dwellings; or (b) The area of the site is or exceeds 2 hectares.
3. Business & General Industry, Storage and Distribution	
Construction of a building, structure or other erection for use for any of the following purposes: (a) as an office; (b) for research and development of products or processes; (c) for any industrial process; or (d) for use for storage or as a distribution centre.	(a) The gross floor space of the building, structure or other erection is or exceeds 10,000 square metres; or (b) The area of the site is or exceeds 2 hectares.
4. Electricity Generation	
Construction of an electricity generating station.	The capacity of the generating station is or exceeds 20 megawatts.
5. Waste Management Facilities	
Construction of facilities for use for the purpose of waste management or disposal.	The capacity of the facility is or exceeds 25,000 tonnes per annum. In relation to facilities for use for the purpose of sludge treatment, a capacity to treat more than 50 tonnes (wet weight) per day of residual sludge.
6. Transport and infrastructure projects	
Construction of new or replacement roads, railways, tramways, waterways, aqueducts or pipelines.	The length of the road, railway, tramway, waterway, aqueduct or pipeline exceeds 8 kilometres.

7. **Fish Farming**	
The placing or assembly of equipment for the purpose of fish farming within the meaning of section 26(6) of the Act.	The surface area of water covered is or exceeds 2 hectares.
8. Minerals	
Extraction of minerals.	The area of the site is or exceeds 2 hectares.
9. Other Development	
Any development not falling wholly within any single class of development described in paragraphs 1 to 8 above.	(a) The gross floor space of any building, structure or erection constructed as a result of such development is or exceeds 5,000 square metres; or (b) The area of the site is or exceeds 2 hectares.

Importantly, and potentially significantly for RYA members, the Scottish Ministers may, as respects a particular local development, direct that the development is to be dealt with as if (instead of being a local development) it were a major development.

Pre-application consultation

A requirement now exists for pre application consultation for national and major developments.

The prospective applicant must give notice (to be known as a "proposal of application notice") to the planning authority that an application for planning permission for the development is to be submitted.

A period of at least 12 weeks must elapse between giving the notice and submitting any such application.

A proposal of application notice must contain:

(a) a description in general terms of the development to be carried out,
(b) if the site at which the development is to be carried out has a postal address, that address,
(c) a plan showing the outline of the site at which the development is to be carried out and sufficient to identify that site, and
(d) details as to how the prospective applicant may be contacted and corresponded with.

The planning authority may, provided that they do so within the period of 21 days after receiving the proposal of application notice, notify the prospective applicant that they require them to give other persons a copy of the application notice and to require additional consultation.

As a matter of good practice, clubs are recommended to undertake pre-application consultation with the LPA and SEPA even where the development proposed is only local in nature. This approach will allow the club early notice of any potential issues and provide an opportunity to address the issues (perhaps by scheme amendment or further supporting information) before submission of the application.

Applications for planning permission

Regulations make provision as to applications for planning permission including:

(a) the form and manner in which an application must be made,
(b) particulars of such matters as are to be included in the application,
(c) any documents or other materials which are to accompany the application,
(d) evidence to be provided in support of anything in, or relating to, the application.

Whilst most of the above relate primarily to a (UK) drive to adopt a 'standard' planning application form, substantive changes will require an application for planning permission of such description (to be specified) to be accompanied by a (Design and Access) statement, providing information:

(i) about the design principles and concepts applied to the development,
(ii) about how issues relating to access for the disabled to the development have been dealt,

And

(iii) where prescribed by the class of development, a pre-application consultation report.

Permitted Development

Certain types of development and temporary land uses are permitted without the need to obtain a grant of planning permission. The Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (GPDSO1992) sets out the different types of development and land use and includes some forms of coastal/marine development relating to statutory undertakers.

The permitted development rights are subject to conditions. Where a club proposes to utilise permitted development rights it is recommended that prior to commencement of the works it consults the LPA. Such an approach will ensure the LPA is able to agree the proposed works are permitted development and will assist the LPA in responding to any questions which may be raised by members of the public / site neighbours in relation to the works.

Pre-determination hearings

Regulations or a development order may provide that, before determining an application for planning permission for a development of a class prescribed in the regulations or order, a planning authority are to give the applicant and any person so prescribed an opportunity of appearing before and being heard by a committee of the authority.

Any right of attendance at the hearing (other than for the purpose of appearing before and being heard by the committee) is to be such as the authority consider appropriate.

This is a useful tool for RYA members where the proposed development is controversial or contrary to policy and provides an opportunity for promotion of the application prior to it being determined by the local authority.

Planning permission In Principle

Applications for 'in principle' (or 'outline') planning permission are permitted by the Act, and allow clubs to seek an 'in principle' grant of planning g permission (reserving for later approval siting, means of access, design, access and other matters)of the development proposed. This approach is useful to a club and offers the advantages of: reducing upfront costs (by reducing design work) whilst minimizing risk (leaving detailed matters for consultation with and the approval of the LPA.

This achievement of an in principle approval may also assist a club in securing third part finance for the development proposed.

Meaning of "development"

The legal meaning of 'development' has been extended to include works which have the effect of increasing the internal gross floor space of a building. Previously, 'internal' works were not considered to fall within the meaning of "development" and therefore did not require planning permission. An example of operations that may have the effect of increasing the internal gross floor space is the installation of a mezzanine floor in a club building (including storage buildings).

Initiation and completion of development

New sections require "Notification of initiation of development" and "Notification of completion of development" to be given to the LPA. It is assumed that these provisions will be addressed by way of condition attached to planning permission. Where the development is to be carried out in phases, the developer must inform the local planning authority when development of each phase has been completed.

Variation of planning applications

New sections set out the circumstances under which a planning application may be varied with the agreement of the LPA after it has been made. An LPA may not agree to vary an application if they consider that the variation would result in a substantial change in the description of the development.

Grounds for declining to determine application for planning permission

A planning authority may decline to determine an application for planning permission, as follows-

- where the Scottish Ministers have refused a similar application in the previous two years and there has been no significant change to the development plan or any other material considerations.

- where the planning authority has refused more than one similar application in the previous two years and there has been neither an appeal to Ministers nor any significant change to the development plan or other material considerations since the more recent of these refusals.

- where the planning authority has refused more than one similar application in the previous two years, there has been an appeal to Ministers but no such appeal has yet been determined, and there has been no significant change to the development plan or other material considerations since the more recent of these refusals.

- where there has been no refusal by the planning authority but an appeal following non-determination of an application has been made in the previous two years in respect of two or more similar applications, and those appeals remain undetermined and no significant change to the development plan or other material considerations have occurred since the more recent of the appeals was made.

- where two similar applications have been received in the previous two years. Where the planning authority has refused one application and an appeal that has been made on another

> similar application has still to be determined, the planning authority may decline to determine a further application if there has been no significant change to the development plan or other material considerations since the more recent of the refusal or the appeal.

The presence of such powers to decline determination could adversely affect a club's plans to develop a site, depending on its application history and the position vis the development plan for the area. Where multiple applications are being considered, the above provisions should be borne in mind when formulating application strategy.

Planning obligations

When determining planning applications LPA's may ask the applicant to enter into a binding legal agreement to make the provision of either a financial contribution or other matter (known as planning obligations) to address a perceived impact the proposed development is likely to give rise to. Under the old system, planning obligations could be addressed by means of a section 75 agreement. The 2006 Act provides that an applicant may now enter into a Section 75 agreement to make the provision of a planning obligation, either by agreement with a LPA or, unilaterally.

Good neighbour agreements

These are unique to the Scottish planning system, and allow a person to enter into a good neighbour agreement with a community body for the purposes of addressing any issues / impacts of the proposed development on its neighbours. These agreements are intended to be legally binding against the developer/landowner, and have modification and appeal rights similar to those given in respect of planning obligations.

Appeals

In Scotland, the appeal system is run on behalf of the Scottish Ministers by the Scottish Executive Inquiry Reporters Unit.

The address of the Unit is:

Scottish Executive Inquiry Reporters Unit
2 Greenside Lane
Edinburgh
EH1 3AF

An appeal against a decision notice must be lodged within 6 months. There are three kinds of appeal processes:

15.1.5 Written Representations

This method is usually easiest and quickest provided the Council agrees to this method of appeal (it usually does); it avoids an expensive Public Inquiry. There is a simple procedure to follow. The completed appeal form and relevant grounds of appeal are submitted to the Inquiry Reporters Unit and contemporaneously the appellant must submit a copy of this to the Council. Once the Reporter's Unit is satisfied that the appeal is in order, the Council will be notified. The Council has 14 days in which to complete and return a questionnaire and provide the appellant with a copy. At that time the Council may enclose its response to the grounds of appeal; it may, however wish to provide a more detailed response to the grounds of appeal and it has 28 days to do this from the date the

appeal was received by the Inquiry Reporters Unit. The Reporter will then make a site inspection. The purpose of the site inspection is solely to acquaint the Reporter with all the physical aspects of the site and its surroundings. No discussion on the merits of the case is allowed at the site meeting. The Reporter will then issue his decision letter which will clearly indicate whether the appeal has been dismissed or sustained.

15.1.6 Hearing

In some cases when an applicant has requested a Public Inquiry, the Inquiry Reporter's Unit may suggest a Hearing if the proposal is relatively simple. It also may be suggested where a written representation case involves particularly complex evidence. The Hearing procedure is similar to a Public Inquiry in that it is chaired by a Reporter from the Scottish Executive. However, the procedure is simpler and quicker than that for a Public Inquiry and may be appropriate where the issues to be considered are relatively straightforward.

15.1.7 Public Inquiry

Applicants are entitled to request that a Public Inquiry be held. If there are any particular points or statements from supporters which the appellant feels would be explored more comprehensively at an Inquiry, then this is the preferred method to use. The complexity of the case will often dictate that an applicant should employ a lawyer or planning consultant to conduct an Inquiry. The Public Inquiry is 'chaired' by a Reporter from the Scottish Executive Inquiry Reporters Unit and in most cases he will make a decision on the appeal. In some cases the decision will be made by the Scottish Ministers, such as where an application is 'called-in' under section 46 Town & Country Planning (Scotland) Act 1997.

15.1.8 Challenges in Court

The decision letter will clearly indicate whether an appeal has been successful or not. An applicant can only challenge the decision on a point of law i.e. if the requirements of the planning acts or rules of procedure have not been met.

On an appeal, the Court cannot impose its own decision over that of the Scottish Executive. All it can do is quash the decision, which then refers the matter back to the Scottish Executive for redetermination. There is no guarantee that a successful challenge to the Court will result in a different decision.

National Policy

The National Planning Framework is supported by Scottish Planning Policy (SPP), Planning Advice Notes (PAN) and National Planning Policy Guidance (NPPG). At present, the SPP and NPPG series are being consolidated into one document. The subject policies, currently set out in SPPs and NPPGs, will remain in force until replaced by the consolidated SPP in 2009. PANs will remain.

The new Scottish Planning Policy is intended to rationalise national planning policy, expressing it in more concise terms, providing clarity and greater certainty of intended outcomes. Some NPPGs and SPPs have recently been reviewed or were under review. All of the work undertaken during these review processes will inform the policy set out in the consolidated SPP.

At present and until the above consolidation work is completed, the subject policies as explained below will remain in force.

The NPPG and PAN at present applicable to coastal development are explained below:

15.1.9 NPPG 13 – Coastal Planning

For statutory planning purposes the limit of the coastal zone in the seaward direction is the Mean Low Water Mark of Ordinary Spring Tides2. The landward limit of the coast is more difficult to define but can be determined by the geographical effects of coastal processes and coastal-related human activity; it is therefore a zone of variable width.

There is a variety of coastal types in Scotland but, for planning purposes, the coast can be viewed as developed, undeveloped or isolated.

It is for planning authorities, in their local development plans, to identify which stretches of coast should be regarded as developed, undeveloped or isolated and set out the policies which should apply in these areas.

15.1.10 The Developed Coast

The developed coast should be the focus for developments requiring a coastal location or which contribute to the economic regeneration or well-being of settlements whose livelihood is dependent on coastal or marine activities and features or which meet the social needs of these communities. Where development on the coast is contemplated, opportunities for the development or reuse of vacant land and buildings (brownfield land) should be considered in the first instance.

15.1.11 The Undeveloped Coast

Along the Scottish coastline are smaller towns and villages, including dispersed settlements which are characteristic of many parts of the Highlands and Islands. Development opportunities, for example related to tourism, leisure and recreation, can make an important contribution to the economy of rural areas. Development to be considered favourably is likely to be on a modest scale.

15.1.12 The Isolated Coast

These are areas of the coast which can be easily damaged and are difficult to recreate. Such areas are likely to be limited in number and extent. A presumption against development may apply in these areas.

Use under NPPG 13

NPPG 13 makes reference to NPPG 11 which sets out national policy and contains general information on planning for sport and recreation, including water-based activities and recognises that the coast provides important opportunities for sport and leisure which also helps support the tourism industry and sustain the economy of coastal communities.

The growth of marinas, and their associated facilities, has been a particular feature of the past 20 years in Scotland, and demand is expected to continue. New marina development should generally be located within existing urban areas, particularly if it can reuse former port/harbour/jetty facilities and surrounding land/buildings. Moreover providing facilities close to centres of population can, by reducing the demands for travel, contribute to the aims of sustainable development. Even on the developed coast it will be important to assess the effect of new or expanded marina development

on the aquatic environment in general and on nature conservation and archaeological interests, in particular.

PAN

PANs provide advice on good practice and relevant information.

PAN 53 – Coastal Development

PAN 53 expands on NPPG 13 by providing primary and secondary indicators which guide a local authority's definition of developed, undeveloped or isolated coastline in its area. These indicators can help RYA members in identifying suitable locations for development:

Figure 1: Classifying the Coast for Planning Purposes

PRIMARY INDICATORS	**DEVELOPED**	**UNDEVELOPED**	**ISOLATED**
Settlement Size	Settlements 1000 / 2000 (See Para 11)	Settlements 1000/2000 (See Para 11)	No settlements (including individual farms)
SECONDARY INDICATORS	**DEVELOPED**	**UNDEVELOPED**	**ISOLATED**
Infrastructure	Major roads/rail/power	Minor roads/rail/power	No road/rail/power
Industrial/Commercial/Power Port/Military	Major centre of activity e.g. Grangemouth	Minor centre of activity e.g. Jetty	No presence
Tourism, Leisure and Recreation	Major centre of activity e.g. Inverkip	Minor/low intensity development e.g. coastal path	No presence
Offshore Activity	Significant presence e.g. oil rigs	Noticeable presence e.g. fish farms	No presence
Character	Predominantly urban	Predominantly rural	Extended views lacking obvious signs of human activity (on/off- shore) and generally wild or natural

Other National Policy Considerations

Other policies which may affect a member's development proposal may come under the following categories:

- Heritage – historic and natural
- Environment
- Conservation areas
- Trees/Hedges
- Rights of way
- Flood
- Landscape designations
- Services (foul drainage etc)
- Disabled use
- Highways

Heritage – historic and natural

15.1.13 Historic Heritage

Scottish national policy in relation to heritage sites (either of national and/or world importance) is covered by SPPs 23 and 14, PANs 42, 52 and 71 and the current version of the Scottish Historic Environment Policy (SHEP) which can be accessed on the Historic Scotland website: http://www.historic-scotland.gov.uk/index/heritage/policy/shep.htm

Historic Scotland is a statutory consultee and is partnered by The Royal Commission on the Ancient and Historical Monuments of Scotland (RCAHMS)

To assist members, RCAHMS, Historic Scotland and a growing number of local authorities maintain an electronic database, accessible on-line on their own websites or through the PASTMAP portal, giving access to summary details of information held of c.250,000 archaeological sites, monuments, buildings and marine sites in Scotland, The PASTMAP site indicates the location of listed buildings and the extent of scheduled monuments and gardens and designed landscapes, and provides a useful starting point. Website link: http://jura.rcahms.gov.uk/PASTMAP/start.jsp

SPP23 – Planning and the Historic Environment

This overarching policy concerns itself with the protection and preservation of sites, buildings monuments and other items of historic interest. It also consolidates older policies (namely NPPG5 and NPPG18).

It provides guidance on the requirements of statutory (and non-statutory) designations in relation to the planning process. A site with a non-statutory designation will not require a formal consent but will be a material consideration for the LPA when determining a planning application.

The statutory designations are:

- Listed buildings
- Conservation areas (addressed separately below)
- Scheduled monuments
- Designated wreck sites

Non-statutory designations:

- World Heritage sites
- Garden and designed landscapes
- Other historic environment interests

15.1.14 Listed Buildings

Town & Country Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997.

Under the Act, the term ***building*** includes structures such as walls and bridges. Listing covers the whole of a building including its interior and any ancillary structures within its proximity provided these were constructed before 1 July 1948.

Once a building is listed, any demolition works, or any works which alter or extend the building in a way which affect its character or its setting as a building of special architectural or historic interest, require listed building consent. It is for the planning authority to:

- consider whether the proposed works will require listed building consent
- notify Scottish Ministers where the planning authority is minded to grant listed building consent in the case of Category A, B and the demolition of C(S) buildings
- determine the application, except where cases are called in by Scottish Ministers for their own determination or where the local authority is the applicant.

Scottish Ministers' policies on listed building consent and the considerations to be taken account of by planning authorities in determining listed building consent applications for alteration, adaptation or demolition of a listed building are set out in the current SHEP. The Listed Building consent process is separate from the statutory planning process and the SHEP provides further detail on how Listed Building applications are dealt with.

While the Listed Building consent process is separate from the statutory planning process, where works requiring planning permission affect a listed building, the protection of the building and its setting are material considerations in the planning process.

15.1.15 Scheduled Monuments

Scheduled monuments are archaeological sites, buildings or structures of national importance and are designated by Historic Scotland on behalf of Scottish Ministers under the terms of the Ancient Monuments and Archaeological Areas Act 1979. Scottish Ministers policy on scheduling and the criteria for determining national importance are set out in the current SHEP. Scottish Ministers include a monument in the schedule to secure the long term legal protection of the monument in the national interest, in situ and as far as possible in its existing state. The Scheduled Monument Consent process is separate from the statutory planning process and the SHEP provides further detail on how scheduled monument consent applications are dealt with.

While the scheduled monument consent process is separate from the statutory planning process, where works requiring planning permission affect a scheduled monument, the protection of the monument and its setting are material considerations in the planning process.

15.1.16 Scottish Historic Environment Policy (SHEP)

SHEP compliments and has the same authority as Scottish Planning Policy and other ministerial policy documents. Where applicable, it is a material consideration in the planning process.

SHEP provides guidance on the criteria for scheduling monuments under the Ancient Monuments and Archaeological Areas Act 1979, listing buildings and designating conservation areas under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. Also covered in SHEP are designed garden and landscape areas. Although not afforded statutory protection, they are a material consideration under national and local policy. An inventory of sites (designed garden and landscape areas) is maintained by Scottish Heritage which currently refers to 386 sites in Scotland. When included in the inventory, a site will be afforded a degree of protection under planning policy.

15.1.17 Designated Wreck Sites

Scottish Ministers, under the Protection of Wrecks Act 1973, can declare wrecks of historic, archaeological or artistic importance and the sites of these wrecks in Scotland's territorial waters (out to 12 nautical miles) as protected areas. Scottish Ministers, through Historic Scotland, control certain activities on Designated Wreck Sites by a licensing regime. There is a further licensing

system, administered by the Ministry of Defence, for sites on land or sea, designated under the Protection of Military Remains Act 1986.

- Protection of Wrecks Act 1973

The Act provides protection for designated wrecks. Section 1 of the act provides for wrecks to be designated because of historical, archaeological or artistic value but must have a known location in order to be designated.

The Secretary of State may designate a vessel or an area around a vessel a restricted area if he is satisfied that:

(a) it is, or may prove to be, the site of a vessel lying wrecked on or in the sea bed; and
(b) on account of the historical, archaeological or artistic importance of the vessel, or of any objects contained or formerly contained in it which may be lying on the sea bed in or near the wreck, the site ought to be protected from unauthorised interference,

Designated wrecks will be marked on admiralty charts and their physical location is sometimes marked by means of a buoy. Such sites are a material consideration on any application in the vicinity or forming part of a designated site.

- Military Remains Act 1986

The Act provides protection for the wreckage of military aircraft and designated military vessels under two forms of protection: protected places and controlled sites. Military aircraft are automatically protected but vessels have to be specifically designated.

Wrecks are designated by name and can be designated as protected places even if the location of the site is not known. Thus, the wreckage of a UK military aircraft is automatically a protected place even if the physical remains have not been previously discovered or identified. Shipwrecks need to be specifically designated, and designation as a protected place applies only to vessels that sank after 14 August 1914. The Act makes it an offence to interfere with a protected place, to disturb the site or to remove anything from the site. Divers may visit the site but the rule is look, don't touch and don't penetrate.

Controlled sites must be specifically designated by location, where the site contains the remains of an aircraft or a vessel that crashed, sank or was stranded within the last two hundred years. The Act makes it illegal to conduct any operations (including any diving or excavation) within the controlled site that might disturb the remains unless licensed to do so by the Ministry of Defence.

15.1.18 World Heritage Sites

World Heritage Sites are inscribed by UNESCO on the basis that they are cultural and/or natural heritage sites which have "outstanding universal value", and have "authenticity" and "integrity". The UK Government has overall responsibility for policy on World Heritage Sites, but for sites in Scotland, responsibility for identifying and nominating individual sites, and ensuring they are properly protected, lies with the Scottish Government. No additional statutory controls result from designation, but specific policies within local development frameworks will usually afford protection to them and will be a material consideration on any application affected.

15.1.19 Garden and Designed Landscapes

An Inventory of Gardens and Designed Landscapes in Scotland is compiled and maintained by Historic Scotland. Scottish Ministers policy for Gardens and Designed Landscapes is set out in the current SHEP which also sets out the role of planning authorities in protecting and enhancing gardens and designed landscapes.

15.1.20 Other Historic Environment Interests

There are a range of other non-designated archaeological sites, monuments and areas of historical interest, including battlefields, historic landscapes, other gardens and designed landscapes, woodlands and routes such as drove roads which do not have statutory protection. These, however, are seen as an important part of Scotland's heritage and Government policy is to protect and preserve these wherever feasible. They can be protected under the planning system, for example, through conservation area or landscape designations and included in development plans to inform planning decisions. In terms of battlefields, Scottish Ministers have recently consulted on a proposed new policy for the protection of historic battlefields of national importance. It is expected that this will be published during the lifetime of SPP23 and planning authorities will be expected to implement its provisions.

NPPG 14 – Natural Heritage

15.1.21 Natural Heritage/Environment/ Landscape Designations

NPPG14 provides policy in relation to Scotland's national heritage which it defines as including its plants and animals, its landforms and geology, and its natural beauty and amenity.

Scottish Natural Heritage (SNH) is the agency responsible for advising central and local government on all aspects of Scotland's natural heritage. The general aims and purposes of SNH, specified in the Natural Heritage (Scotland) Act 1991, are to:

- secure the conservation and enhancement of the natural heritage, including its flora and fauna, geological and physiographical features, and its natural beauty and amenity;
- foster the understanding and appreciation of the natural heritage; and
- facilitate the enjoyment of natural heritage through the development of appropriate access arrangements, recreation provision and interpretative facilities.

The agency has a statutory role in development plan preparation and development control and can advise planning authorities and others on a wide range of natural heritage issues.

Statutory framework

Successive Governments since 1949 have developed a framework of statutory measures designed to safeguard the natural heritage, using both conservation and planning legislation. The main elements of that framework are as follows:

- **The National Parks and Access to the Countryside Act 1949** introduced the concept of National Nature Reserves (NNRs) and Sites of Special Scientific Interest (SSSIs) - important for their flora, fauna, geology or landform features - and conferred powers on local authorities to establish Local Nature Reserves (LNRs);

- **The Countryside (Scotland) Act 1967** strengthened the powers conferred under the 1949 Act and imposed on every public body a duty to have regard to the desirability of conserving the natural heritage of Scotland in the exercise of their functions relating to land;
- **The Wildlife and Countryside Act 1981** strengthened the protection afforded to SSSIs, provided additional safeguarding for particular types of area, and restricted the killing, taking from the wild and disturbance of various species;
- **The Natural Heritage (Scotland) Act 1991** established Scottish Natural Heritage and charged it with responsibility for protecting, enhancing and facilitating the enjoyment of Scotland's natural heritage.
- **The Town and Country Planning (Scotland) Act 1997** consolidated the statutory framework for the control of development. It requires that development plans include measures for the conservation of natural beauty and amenity and the improvement of the physical environment.

Natural heritage designations of national importance include all National Scenic Areas (NSA), Sites of Special Scientific Interest (SSSI), National Nature Reserves (NNR), National Parks (NP) and Natural Heritage Areas (NHA). Such designations are a material planning consideration.

Development which would affect a designated area of national importance may only be permitted where:

- the objectives of designation and the overall integrity of the area will not be compromised; or
- any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by social or economic benefits of national importance.

15.1.22 National Scenic Areas

NSAs are areas which are nationally important for their scenic quality. They were established by Order of the Secretary of State in 1981 under planning legislation. There are 40 NSAs identified by the Countryside Commission for Scotland and are defined in its publication, ***Scotland's Scenic Heritage***, as areas of "national scenic significance... of unsurpassed attractiveness which must be conserved as part of our national heritage". SNH requires to be consulted on certain categories of development within NSAs and permitted development rights are more limited than elsewhere.

15.1.23 Sites of Special Scientific Interest

SSSIs are defined in the Wildlife and Countryside Act 1981 as areas of land or water which, in the opinion of SNH, are of special interest by reason of their flora, fauna or geological or physiographical features. SNH has a statutory duty to notify and seek appropriate protection for such sites which are identified in accordance with guidelines developed and applied UK wide. Again, SNH requires to be consulted on any development which may affect a SSSI.

15.1.24 National Nature Reserves

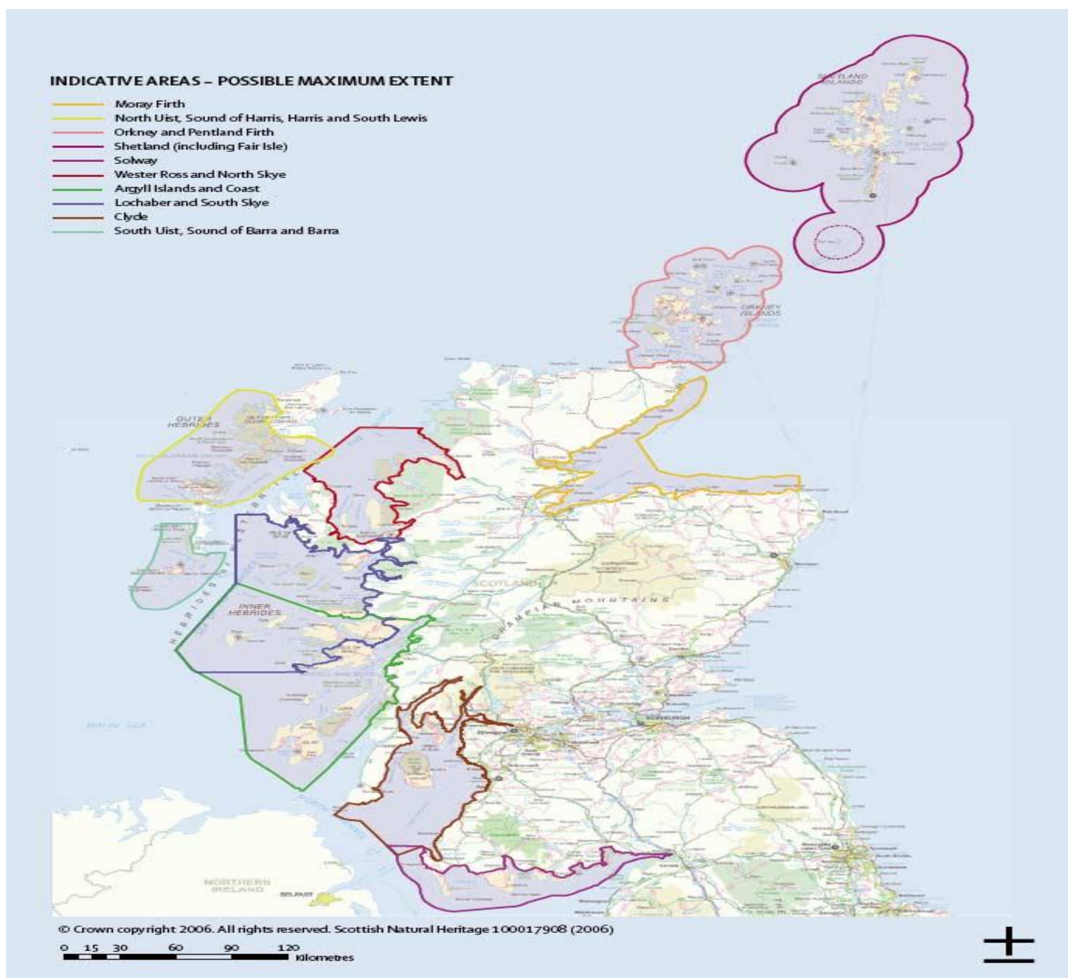
NNRs are areas considered to be of national importance for their nature conservation interest which are managed as nature reserves. They are declared under the National Parks and Access to the Countryside Act 1949 and may either be owned or leased by SNH or managed by the owners and occupiers under a Nature Reserve Agreement. As a consequence of their national importance, all NNRs are also SSSIs. Consultation with SNH on any development affecting a NNR will be required.

15.1.25 National Parks

There are currently two national parks of Scotland: Loch Lomond and the Trossachs National Park, created in 2002, and the Cairngorms National Park, created in 2003. These national parks were designated under the National Parks (Scotland) Act 2000. Under the Act, national parks in Scotland have four aims:

- To conserve and enhance the natural and cultural heritage of the area
- To promote sustainable use of the natural resources of the area
- To promote understanding and enjoyment (including enjoyment in the form of recreation) of the special qualities of the area by the public
- To promote sustainable economic and social development of the area's communities

The general purpose of the National Park Authority, is to ensure that these aims are "collectively achieved ...in a coordinated way". More specifically for members, the Act introduced a process for finalising proposals for a Marine National Park. Ten areas were identified and have been consulted on. A designation was expected in late 2008 although this has yet to be announced by the Scottish Government. Ten areas were identified are shown below:



15.1.26 Conservation Areas

Conservation areas are defined as 'areas of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance' under the Town & Country Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997. All planning authorities are required

from time to time to determine which areas meet this definition and to designate them as conservation areas.

SHEP in conjunction with SPP23 provides the legal and policy requirements for obtaining Conservation Area consent. Consent is required where the demolition, re-development or alteration/extension of an unlisted building within a Conservation Area is proposed.

If the building is considered to be of any value, either in itself or as part of a group, the planning authority will seek to achieve its retention, restoration and sympathetic conversion to some other compatible use before proposals to demolish are seriously investigated. In some cases, demolition may be thought appropriate, for example, if the building is of little townscape value, if its structural condition rules out its retention at reasonable cost, or if its form or location makes its re-use extremely difficult.

15.1.27 Trees/Hedges

Some trees may have legal protection under a Tree Preservation Order (TPO) – currently under s160 of the Town & Country Planning (Scotland) Act 1997.

S 160(3) states:

A tree preservation order may, in particular, make provision:

(a) for prohibiting (subject to any exemptions for which provision may be made by the order) the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of trees except with the consent of the planning authority, and for enabling that authority to give their consent subject to conditions;

(b) for securing the replanting, in such manner as may be prescribed by or under the order, of any part of a woodland area which is felled in the course of forestry operations permitted by or under the order;

(c) for applying, in relation to any consent under the order, and to applications for such consent, any of the provisions of this Act mentioned in subsection (4), subject to such adaptations and modifications as may be specified in the order.

The local authority's consent must usually be obtained before carrying out work on such trees. S160(6) however does allow the uprooting, felling or lopping of trees if—

(a) it is urgently necessary in the interests of safety,
(b) it is necessary for the prevention or abatement of a nuisance, or
(c) it is in compliance with any obligation imposed by or under an Act of Parliament,

so long as, where paragraph (a) or (b) applies, notice in writing of the proposed operations is given to the planning authority as soon as practicable after the operations become necessary.

Wherever possible, it is recommended that the local authority is consulted before such works are begun.

15.1.28 Rights of Way

A right of way is a route along which the public have a right of passage. In Scotland, to be a right of way at common law, a route must meet certain conditions. The main ones are that the route must have been used by the public for at least twenty years, it must connect two public places, and it must follow a more or less defined route.

The introduction of the Land Reform (Scotland) Act 2003 has given statutory rights of access to the general public to the following places:

- hills, mountains and moorland;
- woods and forests;
- most urban parks, country parks and other managed open spaces;
- rivers, lochs, canals and reservoirs;
- riverbanks, loch shores, beaches and the coastline;
- land in which crops have not been sown;
- on the margins of fields where crops are growing or have been sown;
- grassland, including grass being grown for hay or silage (except when it is at such a late stage of growth that it is likely to be damaged);
- fields where there are horses, cattle and other farm animals;
- on all core paths agreed by the local authority;
- on all other paths and tracks where these cross land on which access rights can be exercised;
- on grass sports or playing fields, when not in use, and on land or inland water developed or set out for a recreational purpose, unless the exercise of access rights would interfere with the carrying on of that recreational use;
- golf courses, but only for crossing them and providing that you do not take access across greens or interfere with any games of golf;
- on, through or over bridges, tunnels, causeways, launching sites, groynes, weirs, boulder weirs, embankments of canals and similar waterways, fences, walls or anything designed to facilitate access (such as gates or stiles).

The statutory provisions do not affect common law rights of way that satisfy the conditions and so both will be a material consideration for planning authorities where a development affects or utilises a right of way.

Flood

SPP7 – Planning and Flooding

SPP7 provides national policy on development at risk of flooding or which may itself contribute or lead to flooding elsewhere.

The policy in this SPP is based on the following principles:

- Developers and planning authorities must give consideration to the possibility of flooding from all sources.
- New development should be free from significant flood risk from any source
- In areas characterised as 'medium to high' flood risk for watercourse and coastal flooding new development should be focussed on built up areas and all development must be safeguarded from the risk of flooding.

- New development should not:
  - materially increase the probability of flooding elsewhere;
  - add to the area of land which requires protection by flood prevention measures;
  - affect the ability of the functional flood plain to attenuate the effects of flooding by storing flood water;
  - interfere detrimentally with the flow of water in the flood plain;
  - compromise major options for future shoreline or river management.
- Flooding from sources other than watercourses and on the coast must be addressed where new development is proposed, if necessary through a drainage assessment. Any drainage measures proposed should have a neutral or better effect on the risk of flooding both on and off the site.
- Alterations and small scale extensions to buildings are generally outwith the scope of SPP7 provided they would not have a significant effect on the storage capacity of the functional flood plain or affect local flooding problems.

For coastal and watercourse flooding a **Risk Framework** characterises areas for planning purposes by their annual probability of flooding and gives the planning response:

- Little or no risk area (less than 0.1% *(1:1000)*) - no general constraints.
- Low to medium risk area (0.1% to 0.5% *(1:1000 - 1:200)*) - suitable for most development but not essential civil infrastructure.
- Medium to high risk area (0.5% *(1:200)*) or greater - in built up areas with flood prevention measures most brownfield development should be acceptable except for essential civil infrastructure; undeveloped and sparsely developed areas are generally not suited for most development.

(These probabilities include an allowance for climate change. An allowance for 'freeboard' will be additional).

The Risk Framework will be relevant when planning authorities prepare their development plans and will be a material consideration in determining planning applications and appeals.

Flood plains, other land alongside watercourses, land with drainage constraints or otherwise poorly drained, and low lying coastal land may be assumed to be at risk. The consideration should take into account any areas identified in the Local Development Plan, SEPA's indicative flood risk maps, records of previous floods, other sources and advice from consultees.

SPP7 makes specific reference to water resistant materials. It recommends that proposals in 'medium to high' flood risk areas, and where flooding from other sources is an issue, should use water resistant materials and forms of construction as appropriate. In consultation with building standards officers, planning authorities may decide that water resistant materials and forms of construction are material planning considerations.

Pre-application discussions with the LPA should identify if a proposed development is within a flood plain or area at risk of flooding.

Services

SPP7

PAN61 – SUDS (Sustainable Urban Drainage Systems)

Drainage is a material planning consideration. Drainage measures proposed as part of a planning application should have a neutral or better effect on the risk of flooding both on and off the site. Planning authorities have a duty to consult Scottish Water and Scottish Environment Protection Agency (SEPA) on appropriate planning applications. Applicants may however show as part of the information in support of a planning application that the drainage is acceptable to Scottish Water and SEPA.

Local authorities in Scotland are under a duty to maintain watercourses (and associated apparatus) and to prevent flooding under the Flood Prevention (Scotland) Act 1961 as amended by the Flood Prevention and Land Drainage (Scotland) Act 1997. This duty is excepted where the watercourse (and/or apparatus) and land affected by flooding are owned by the same person in which case it is their responsibility. Needless to say, drainage is an important material consideration for local authorities.

PAN 61 provides more particular guidance on the SUDS requirements of local authorities by identifying the problems which may occur as a result of development and appropriate measures for mitigating or removing the same. PAN 61 also encourages pre-application meetings, where appropriate depending on the type and scale of the development, in order to identify site specific problems and solutions. The local planning authority, informally, can be asked if a meeting would be necessary.

SUDS are aimed more at large scale developments but wherever possible they are to be considered.

Other legislation

15.1.29 The Building (Scotland) Act 2003

The Act provides the basis for the Scottish Building Standards system. In particular, the Act states:

The Scottish Ministers may, for any of the purposes of:

(a) securing the health, safety, welfare and convenience of persons in or about buildings and of others who may be affected by buildings or matters connected with buildings,
(b) furthering the conservation of fuel and power, and
(c) furthering the achievement of sustainable development, make regulations ("building regulations") with respect to the design, construction, demolition and conversion of buildings and the provision of services, fittings and equipment in or in connection with buildings.

The regulations in force at present are the Building (Scotland) Regulations 2004, weblink:
http://www.hmso.gov.uk/legislation/scotland/ssi2004/20040406.htm

There is a duty to comply with the building regulations which lies with the owner, or, in some cases the client for the work. Before work begins a building warrant must be obtained. The owner or client again has the duty to comply. When a development has been completed, the owner or client must submit a 'completion certificate' to the Verifier (who may be the LPA or authorised agent) which, depending on compliance with the regulations, will be accepted or not.

Some works (referred to in Schedule 1) are exempted in part or entirely from the requirements but specific reference should be made to the regulations before a decision is made that compliance is not necessary. For some simpler works a warrant is not required but the regulations still apply (see regulation 5 and schedule 3 of the regulations).

The role of issuing warrants and accepting completion certificates rests with Verifiers, enforcement is by Local Authorities, and the system is overseen and updated by the Scottish Building Standards Agency advised by the Building Standards Advisory Committee. This agency is an executive agency of the Scottish Executive Development Department; that is to say it is an integral part of the Scottish Executive and answering directly to the responsible Scottish Minister. The regulations are extensive, implementing the requirements of the Building Act by reference to the various types of work that may be undertaken on a site or building.

In line with European Commission requirements under the Construction Products Directive, the regulations cover the following six areas:

- Structure
- Fire
- Environment
- Safety
- Noise, and
- Energy

Although compliance is a requirement of the Act, the application of building regulations does not affect planning permission. Planning permission and building regulations are two distinct issues which will affect a member's proposal.

It is not proposed to provide detail on the regulations in this handbook. Where RYA members are contemplating development, they should consult the regulations and guidance issued by the Scottish Ministers. The regulations are mandatory, but the choice of how to comply lies with the building owner. Where guidance is followed, this will generally be accepted by the Verifier (responsible for issuing warrants and accepting completion certificates) as indicating that the regulations have been complied with however, other methods of compliance outside that suggested in guidance are also acceptable.

15.1.30 Planning Act 2008

The Planning Act 2008 has application, primarily, to applications for Nationally Significant Infrastructure Projects (NSIP) in England and Wales although some of its provisions extend to Scotland. It is not envisaged by this handbook that a RYA member's development would come within the ambit of the Act, however, its application should be considered where a pipeline for transporting gas or oil is involved and where one end of the pipeline is in England or Wales, and the other end of which is in Scotland.

15.1.31 Forthcoming Legislation

Marine Bill

The Marine Bill proposes to reduce the burden on developers by streamlining and modernising marine licensing and consents system to deliver quicker and clearer decisions. It proposes integrating the planning and licensing system to allow developers a better understanding of what activities might be suited to certain sites. The overall approach is aimed at delivering a more streamlined approach, more tailored to the needs of prospective developers and reducing the regulatory burden.

Marine planning

National

The Marine Bill is designed to provide greater certainty for marine developers and marine users; maximise the social, economic and environmental value of the coast/marine resource; and ensure an overall sustainable development approach. Lead responsibility for securing the sustainable growth in Scotland's seas will lie with the Scottish Ministers and Parliament through the introduction of a new statutory system of marine planning with distinct national and regional structures and priorities. At the Scotland level, a national marine plan will be prepared, setting out the national strategic objectives and priorities for the marine environment. This could include improved measures to protect and restore the natural marine environment. The delivery of sustainable growth in Scotland's seas will require co-operation with Scotland's partners within the UK and beyond. The proposed management body, Marine Scotland, will develop cooperation.

Marine Scotland would have the following functions:

- collection and co-ordination of marine data, and marine science strategy;
- lead responsibility for marine planning, integrated marine consents (streamlining the many licensing systems now applicable), marine management, compliance monitoring and nature conservation;
- a co-ordination role for aquaculture, marine renewable consents and management of marine and coastal areas, working closely with IFGs, local partnerships and wider stakeholders.

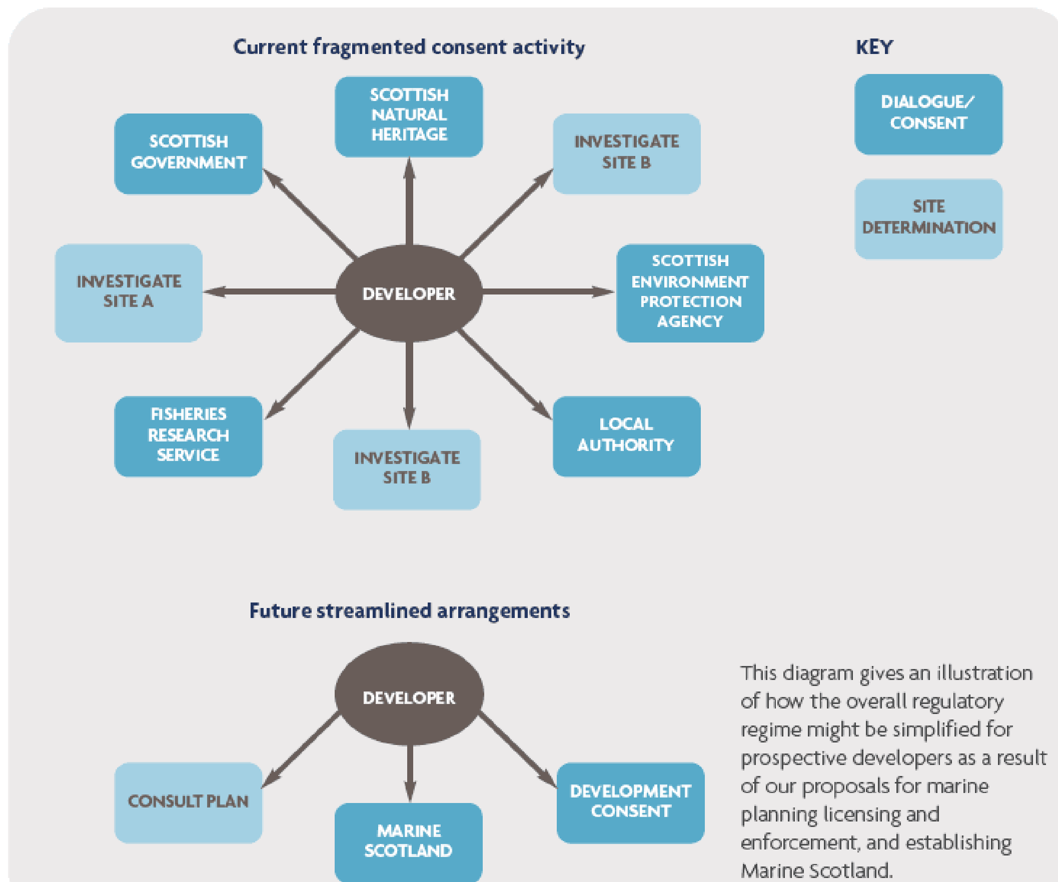
Marine Scotland can either be a Directorate of the Scottish Government or a separate body such as an agency.

A key duty on Marine Scotland will be to deliver increased economic growth for the marine area and would take the lead responsibility for achieving the sustainable use of all waters around Scotland.

The proposed bill will create a 'one stop shop' for coastal development saving the applicant time, expense and uncertainty by reducing the number of consents required to one.

Figure 1.2 below gives an illustration of how the overall regulatory regime might be simplified for prospective developers as a result of the proposals for marine planning, licensing and enforcement, and Marine Scotland under the bill.

Figure 1.2 Schematic representation of how the marine bill would change regulatory regime



Regional/Local

At the regional or local level, the bill proposes the creation of Scottish Marine Regions (SMRs). These will be led by local stakeholders and interested individuals who will set out local objectives and develop local plans for the marine area. These structures will deliver local accountability in decision making and it is envisaged that local authorities will have a lead role. As far as possible these will use existing structures and partnerships and will be compatible with existing fishery management (i.e. Inshore Fisheries Groups).

Licensing and enforcement

The Marine Bill proposes integrating the planning and licensing system to give developers a better understanding of what activities might be suited to certain sites. The overall approach is aimed at delivering a more streamlined approach, more tailored to the needs of prospective developers and reducing the regulatory burden.

16 ANNEX E. GLOSSARY

Amenity	A positive element or elements that contribute to the overall character or enjoyment of an area. For example, open land, trees, historic buildings and the inter-relationship between them, or less tangible factors such as tranquillity.
Appeal (Planning)	The process whereby a planning applicant can challenge an adverse decision, including a refusal of permission. Appeals can also be made against the failure of the planning authority to issue a decision within a given time, against conditions attached to permission, against the issue of an enforcement notice and against refusals of listed building and conservation area consent. In England and Wales, appeals are processed by the Planning Inspectorate.
Area of Outstanding Natural Beauty	An area with statutory national landscape designation, the primary purpose of which is toconserve and enhance natural beauty. Together with National Parks, AONB represent the nation's finest landscapes. AONB are designated by the Countryside Agency.
Breach of Condition Notice	A notice served by a local planning authority where they suspect that a planning condition linked to a planning permission has been breached.
Change of Use	A change in the way that land or buildings are used (see Use Classes Order). Planning permission is usually necessary in order to change from one 'use class' to another.
Character	A term relating to Conservation Areas or Listed Buildings, but also to the appearance of any rural or urban location in terms of its landscape or the layout of streets and open spaces, often giving places their own distinct identity.
Community Strategy	A strategy prepared by a local authority to improve local quality of life and aspirations, under the Local Government Act 2000.
Conditions	Requirements attached to a planning permission to limit, control or direct the manner in which a development is carried out.
Conservation Area	Areas of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance.
Conservation Area Appraisal	A published document defining the special architectural or historic interest that warranted the area being designated.
Core Strategy	A Development Plan Document setting out the spatial vision and strategic objectives of the planning framework for an area, having regard to the Community Strategy (see also DPDs).
Curtilage	The area normally within the boundaries of a property surrounding the main building and used in connection with it.
Delegated Powers	A power conferred to designated planning officers by locally elected councillors so that the officers may take decisions on specified planning matters behalf of the council.
Development	Development is defined under the 1990 Town and Country Planning Act as "the carrying out of building, engineering,

	mining or other operation in, on, over or under land, or the making of any material change in the use of any building or other land." Most forms of development require planning permission (see also "permitted development").
Development Plan	A document setting out the local planning authority's policies and proposals for the development and use of land and buildings in the authority's area. It includes Unitary, Structure, and Local Plans prepared under transitional arrangements. It also includes the new-look Regional Spatial Strategies and Development Plan Documents prepared under the Planning & Compulsory Purchase Act of 2004.
Development Plan Documents	Development Plan Documents are prepared by local planning authorities and outline the key development goals of the local development framework. Development Plan Documents include the core strategy, site-specific allocations of land and, where needed, area action plans. There will also be an adopted proposals map which illustrates the spatial extent of policies that must be prepared and maintained to accompany all DPDs.
Enforcement Notice	A notice served by a local planning authority setting out the remedial action necessary to put right work or correct an activity that appears to have been undertaken without planning permission.
Environmental Impact Assessment	Applicants for certain types of development, usually more significant schemes, are required to submit an "environmental statement" accompanying a planning application. This evaluates the likely environmental impacts of the development, together with an assessment of how the severity of the impacts could be reduced.
Flood Plain	Generally low-lying areas adjacent to a watercourse, tidal lengths of a river or the sea, where water flows in times of flood or would flow but for the presence of flood defences.
Flood Risk Assessment	An assessment of the likelihood of flooding in a particular area so that development needs and mitigation measures can be carefully considered.
General Permitted Development Order	A set of regulations made by the government which grants planning permission for specified limited or minor forms of development.
Heritage Coast	An area, naturally designated, of largely undeveloped, unspoilt coast, when attention is focused on managing the sometimes competing needs of conservation, recreation, tourism and commercial activity such as shipping and fishing in a co-ordinated way.
Inquiry	A hearing by a planning inspector into a planning matter such as a local plan or appeal. The "pre-submission" consultation stages on Development Plan Documents with the objective of gaining public consensus over proposals ahead of submission to government for independent examination.
Landscape character	It reflects particular combinations of geology, landform, soils, vegetation, land use and human settlement.
Listed Building	A building of special architectural or historic interest. Listed

	buildings are graded I, II* or II with grade I being the highest. Listing includes the interior as well as the exterior of the building, and any buildings or permanent structures (e.g. wells within its curtilage). English Heritage is responsible for designating buildings for listing in England.
Local Development Documents	These include Development Plan Documents (which form part of the statutory development plan) and Supplementary Planning Documents (which do not form part of the statutory development plan). LDDs collectively deliver the spatial planning strategy for the local planning authority's area.
Local Development Framework	The Local Development Framework (LDF) is a non-statutory term used to describe a folder of Framework documents, which includes all the local planning authority's local development documents.
Local Plan	An old-style development plan prepared by district and other local planning authorities. These plans will continue to operate for a time after the commencement of the new development plan system, by virtue of specific transitional provisions.
Marine Dredged Aggregate	Sand and gravel dredged from deposits on the seabed and landed at shipping wharves for use as aggregate.
Marine Nature Reserves	Sites designated under the Wildlife and Countryside Act to conserve marine flora and fauna or geological or physiographical features.
Permitted Development	Permission to carry out certain limited forms of development without the need to make an application to a local planning authority, as granted under the terms of the Town and Country Planning (General Permitted Development) Order. There are slight variations in Scotland and Northern Ireland.
Planning Obligations and Agreements	Legal agreements entered into as a deed between a planning authority and a developer, or undertakings offered unilaterally by a developer, that require for example that certain extra works or payments of money related to a development are undertaken. For example, the provision of a highway contribution to be used by the Local Highway Authority to upgrade or improve the local highway network. These agreements are sometimes called "Section 106" agreements. A planning permission will not be issued by the LPA until a Section 106 agreement has been entered into or a Unilateral Undertaking provided. Very often you will be notified at a very early stage in the planning application process by the LPA that such an agreement or undertaking is required. Very often you will be presented with a standard 106 document and asked to enter into it. Legal advice should always be sought as a matter of course not least because the 106 agreement will bind the land and all future owners and occupiers.
Planning Policy Statements (also Planning Policy Guidance)	Issued by central government to replace the existing Planning Policy Guidance notes in order to provide greater clarity and to remove from national policy advice on practical implementation, which is better expressed as guidance rather than policy.

RAMSAR Sites	Sites designated under the European Ramsar Convention to protect wetlands that are of international importance, particularly as waterfowl habitats.
Regional Spatial Strategy	A strategy for how a region should look in 15 to 20 years time and possibly longer. The Regional Spatial Strategy identifies the scale and distribution of new housing in the region, indicates areas for regeneration, expansion or sub-regional planning and specifies priorities for the environment, transport, infrastructure, economic development, agriculture, minerals and waste treatment and disposal.
Site of Special Scientific Interest	A site identified under the Wildlife and Countryside Act 1981 (as amended by the Countryside and Rights of Way Act 2000) as an area of special interest by reason of any of its flora, fauna, geological or physiographical features (basically, plants, animals, and natural features relating to the Earth's structure).
Source Protection Zone	The Environment Agency identifies Source Protection Zones to protect groundwater (especially public water supply) from developments that may damage its quality.
Special Area of Conservation	A site designated under the European Community Habitats Directive, to protect internationally important natural habitats and species.
Special Protection Areas	Sites classified under the European Community Directive on Wild Birds to protect internationally important bird species.
Tree Preservation	A mechanism for securing the preservation of single or groups of trees of acknowledged amenity value. A tree subject to a tree preservation order may not normally be topped, lopped or felled without the consent of the local planning authority.
Use Classes Order	The Town and Country Planning (Use Classes) Order 1987 puts uses of land and buildings into various categories. Planning permission is not needed for changes of use within the same use class.

17 Case Studies of Clubs Planning Experience

Erith Yacht Club, Kent: New clubhouse

About the Club

Erith Yacht Club was formed in 1900. The Royal Corinthian Yacht Club originally had its headquarters at Erith and when it moved to Port Victoria a number of members who were local residents formed the Erith Yacht Club. The Club is situated on the south bank of the River Thames about half a mile east of Erith Town and about fifteen miles from London Bridge. The Club stands on the last remaining section of salt marsh in the London area. The "Clubhouse" is currently the club ship "Folgefonn" which was once a Norwegian car ferry.

The last few years have seen a revival of hopes and plans for a Clubhouse ashore. This reflects a desire going back many years for the relative permanence and low-maintenance of such a facility. Recently the present Committee have been successful in gaining both the permissions and main funding for this long desired shore based facility

Planning Permission

Planning permission for the erection of a new land based Clubhouse was eventually obtained from the Local Authority. The Club is fortunate in owning the land on which the new premises will be built.

The process, which included negotiations with the Environment Agency, took 3 years to complete and involved many meetings and correspondence.

Other consents and interested parties

Environment Agency – needed reassurances that the new Clubhouse and adjoining pontoon would not adversely affect invertebrate life within the salt flats. Conditions relating to the structural support for the pontoon where discussed and agreed.

River Works licence obtained from the Port of London Authority to refit slipway.

Local Wildlife Trust was involved with discussions on the effect the shore based works would have on local bird life.

The Club are now members of the Managing Marshes Scheme. Participation in this scheme has helped them more fully understand the importance of preserving the character and nature of the Salt Marshes.

Project funding

A project funding award was recently granted by the Olympic Legacy Fund. As the Club premise is located near to the main site of the 2012 Olympics it qualified for consideration under this scheme.

The funding granted will provide most of the cost of the Clubhouse construction. Additional funding was previously obtained from the “Award for all” Lottery funding to construct a new toilet block.

Advice to those considering this type of development

Getting the full backing of the Local Authority before permissions are applied for is a vital first step.

Find out what permissions you need before starting and building good personal relationship with interested parties should be attempted before submitting permissions. Try to “find out what they want”.

Don’t apply for funding until permissions are substantially granted. In this case the business plan had to be re drawn as it had been written 3 years before permissions were eventually all in place
Contact the Club – www.erithyachtclub.org.uk or secretary@erithyachtclub.org.uk.

Royal Harwich Yacht Club: Expansion of Members’ Marina

About the club

The Club offers comprehensive facilities for yachtsmen and dinghy sailors, including both racing and cruising, and owns a well appointed Clubhouse located in a beautiful situation on the South-West bank of the River Orwell, between Ipswich and Harwich on the North Sea coast of England. The Club has its own expanded Marina facilities in front of the Clubhouse.

Planning permission

In 1998 full permission was granted to the Club for the construction of a 36 berth members marina in front of the Clubhouse.

In 2004 permission granted for the expansion of the marina to 40 berths.

In 2006 permission granted and work completed on a further extension to 54 berths.

Other permissions and interested parties

English nature – Consent given for the final expansion of the marina providing the work was carried out between bird migratory and nesting seasons. In practice this meant that that work could only be carried out in October or February.

DEFRA – Dredging and construction licences given “without undue delay or excessive bureaucracy”.

The RSPB were consulted over the effect on the adjoining mudflats.

Trinity House – Provided specifications for the Marina’s navigational lighting.

Coast Protection Act consent was needed.

Environmental Impact assessment was needed – carried out by Geotechnical engineers.

Associated British Ports (ABP) – Kept informed throughout the permissions and construction processes.

Nearby Woolverstone Marina also kept informed throughout the process.
Project Funding

80% of the initial funding for the marina was raised by 15 year debentures on a reducing time value, the balance was from members' loans.

Debenture funding proved successful as it separated Club funds from all marina costs. In addition, when the debentures expire after 15 years the Club will derive the full benefit and income from the marina.

Advice to those considering this type of development

At the start of the project, ensure Club members appreciate the long term benefits of the scheme and that concerns about liability for development costs are understood.

Find out the full extent of permissions needed and work closely with interested parties from the start.

Fund raising through the use of reducing time value debentures and members' loans has proved successful here.

The running costs of a Club marina need to be understood. The principle cost is likely to be dredging. Having a planned for annual dredging programme can be more cost effective than dredging only "when needed".

Employing a full time Berth Master ensures continuity of good day to day management and the ability to deal with on the spot issues throughout the week.

Keep costs down by organising Club volunteers where possible for appropriate routine jobs.

Consider the provision of visiting berth facilities. Visiting boats and their crew can provide good income and activity for the Club.

Contact the Club - www.rhyc.demon.co.uk or secretary@rhyc.demon.co.uk

Greenwich Yacht Club: Completion of Award Winning Club House

About the Club

"The Club is situated halfway between the Millennium Dome and the Thames Barrier. A programme of yacht and dinghy races is run all year round. All classes of yacht and dinghy are welcome, but the emphasis is on enjoyment and arguing over a pint in the clubhouse afterwards. Our site and facilities are first class, having been newly built in 1999. We have both drying and deep water moorings, a boat yard and workshops. We also have probably the best yacht club bar in England, built on an island site out in the river with stunning views to the city and down to the Thames Barrier."

The site of the previous clubhouse was required by English Partnerships, as part of the preparation for construction of the Millennium Dome and as a result they provided the Club with its new facilities on its present location at Peartree Wharf.

Planning permission

Planning permission gained by English Partnerships when providing the Club with a new Thames side location.

Other permissions and interested parties

Land acquired by English Partnerships for the Club premises was passed to the London Borough of Greenwich who then entered into discussions with the Club over the issuing of a suitable lease, its conditions and annual fee.

The Port of London Authority issued licences for the work needed to construct the clubhouse on its platform.

Coast Protection Act consent was required Project funding.

Construction of platform and clubhouse funded by English Partnerships.

Peripheral development and running costs funded by the Club Advice to those considering this type of development.

The funding of a new Club premises is an unusual occurrence which most Clubs would welcome providing that the conditions of re location are acceptable to members.

Although fully appreciative of their new premises, its running costs are higher than those of their previous location. As a result, the Club had to become more “commercial” and has now engaged a full time steward to promote clubhouse catering and functions for members and outside organisations.

When accepting funding for Club development, the cautionary advice from this Club is to ensure that any new lease conditions don’t “change the character of the Club” to the extent that Club members are over committed in time to non sailing activities. “After all, we only want to go sailing!!”

Contact the Club – www.greenwichyachtclub.co.uk or brian.harrison@ntlworld.com