

BRIEF LECTURE NOTES ON PLANNING PROCEDURES

R C SHRIMPLIN MA(Cantab) DipArch RIBA FRTPI FCI Arb MCIL ArqCol

REFERENCES

KEY LEGISLATION AND POLICY PRINCIPLES

KEY ELEMENTS OF THE PLANNING LEGISLATION

CIRCULARS AND OTHER PLANNING GUIDANCE PUBLICATIONS

PLANNING POLICY STATEMENTS & GUIDANCE NOTES

Useful websites:

**www.planningportal.gov.uk;
www.planning-inspectorate.gov.uk
www.communities.gov.uk
www.legislation.gov.uk**

KEY LEGISLATION AND POLICY PRINCIPLES

1 THE SIGNIFICANCE OF THE DEVELOPMENT PLAN (& “MATERIAL CONSIDERATIONS”)

Planning and Compulsory Purchase Act 2004, section 38(6):

"38(6) If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise".

Town and Country Planning Act 1990, s54A (inserted by Planning and Compensation Act 1991)

(cf St Albans District Council v Secretary of State for the Environment [1992] EGS147)

Repealed and replaced by Section 38(6)

National Planning Policy Framework (27 March 2012)

“1. The National Planning Policy Framework sets out the Government’s planning policies for England and how these are expected to be applied.”

National Planning Policy Framework: Local Plans

“150. Local Plans are the key to delivering sustainable development that reflects the vision and aspirations of local communities. Planning decisions must be taken in accordance with the development plan unless material considerations indicate otherwise.”

“153. Each local planning authority should produce a Local Plan for its area. This can be reviewed in whole or in part to respond flexibly to changing circumstances. Any additional development plan documents should only be used where clearly justified. Supplementary planning documents should be used where they can help applicants make successful applications or aid infrastructure delivery, and should not be used to add unnecessarily to the financial burdens on development.”

"The Planning System: General Principles" (paragraph 12):

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

Town and Country Planning Act 1990, s70(1) and (2):

- "70.- (1) Where an application is made to a local planning authority for planning permission
- (a) subject to sections 91 and 92, they may grant planning permission, either unconditionally or subject to such conditions as they think fit; or
 - (b) they may refuse planning permission.
- (2) In dealing with such an application the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material consideration."

Planning and Compulsory Purchase Act 2004, section 39 (as amended by Planning Act 2008, section 183)

"Sustainable development

- 39.- (1) This section applies to any person who or body which exercises any function -
- (a) under Part 1 in relation to a spatial strategy
 - (b) under Part 2 in relation to local development documents
 - (c) under Part 6 in relation to the Wales Spatial Plan or a local development plan.
- (2) The person or body must exercise the function with the objective of contributing to the achievement of sustainable development."
- (2A) For the purposes of subsection (2) the person or body must (in particular) have regard to the desirability of achieving good design."

National Planning Policy Framework: *The “presumption in favour of sustainable development”*.

“14. At the heart of the National Planning Policy Framework is a **presumption in favour of sustainable development**, which should be seen as a golden thread running through both plan-making and decision-taking.

For **plan-making** this means that:

- local planning authorities should positively seek opportunities to meet the development needs of their area;
- Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless:
- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
 - specific policies in this Framework indicate development should be restricted.

For **decision-taking** this means:

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
 - specific policies in this Framework indicate development should be restricted.”

2 THE LOCAL DEVELOPMENT FRAMEWORK (LDF)

Local Development Framework

The Development Plan: Core Strategy, Site Specific Allocations, Adopted Proposals Map, Action Area Plans, Other Development Plan Documents;

Other LDF Documents: Local Development Scheme (Project Plan), Statement of Community Involvement, Annual Monitoring Report, Supplementary Planning Documents, Local Development Orders, Simplified Planning Zones

Local Development Framework [PPS12 page 6, now superseded]:

- "2.1 The local development framework should contain within its documents, an integrated set of policies which are based on a clear understanding of the economic, social and environmental needs of the area and any constraints on meeting those needs.
- "2.2 The format of local development documents should be clear, succinct and easily understood by all, with the strategy and associated policies expressed in terms which emphasise the means and timescale by which the objectives derived from the spatial vision will be met. A comprehensive and credible evidence base should underpin the policies in local development documents"

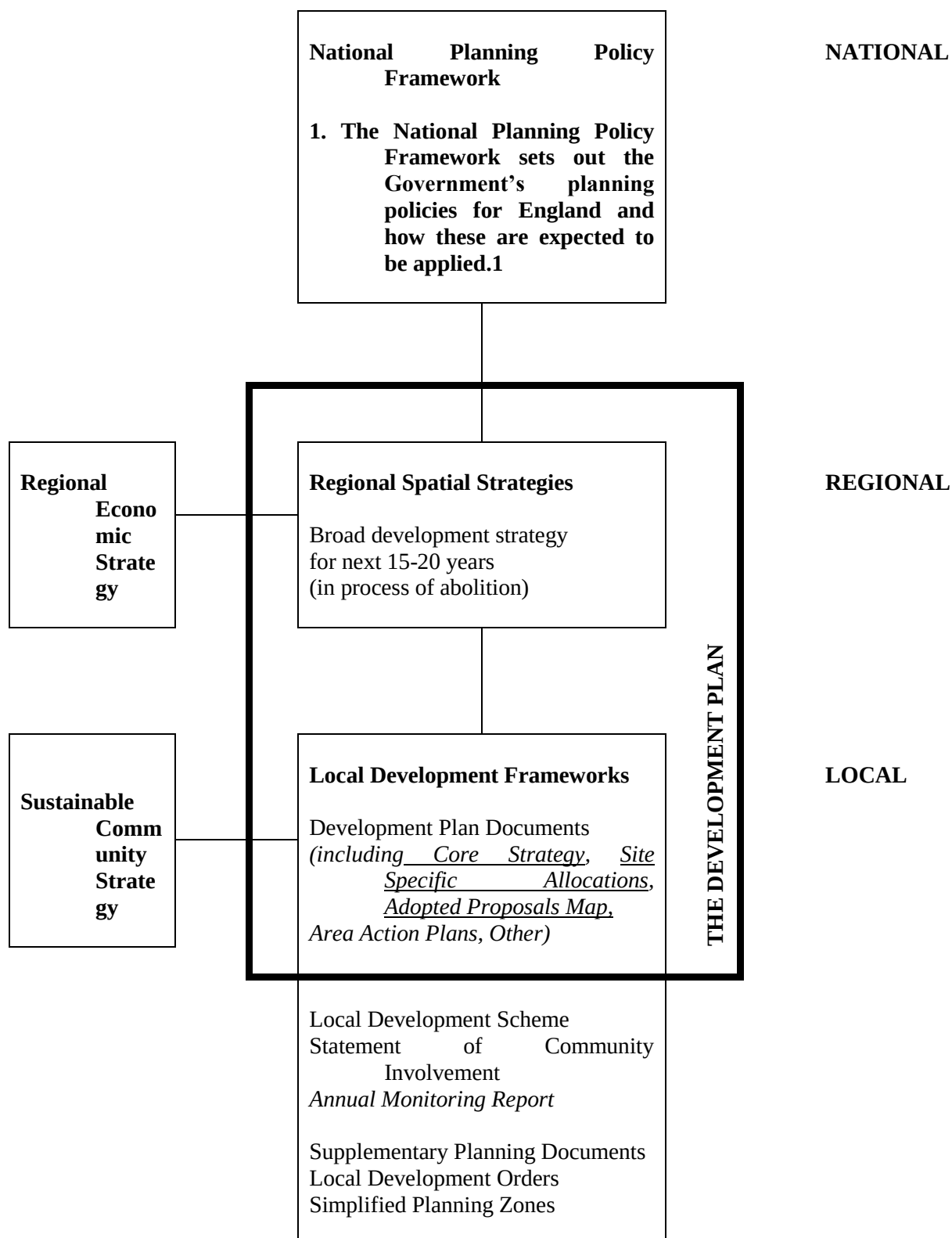
Local Development Scheme [PPS12 page 26, now superseded]:

- "3.1 The local development scheme is a public statement of the local Planning authority's programme for the production of local development documents"

Community Involvement [PPS12 page 16, now superseded]:

- "3.19 The statement of community involvement should set out the local planning authority's policy for involving the community in the preparation and revision of local development documents and planning applications".

**THE PLANNING SYSTEM AT LOCAL REGIONAL AND NATIONAL LEVEL
(BASED ON "PLANNING FOR A SUSTAINABLE FUTURE: WHITE PAPER" (2007))**



3 THE NEED FOR PLANNING PERMISSION AND THE DEFINITION OF "DEVELOPMENT"

Town and Country Planning Act 1990

Section 55: Meaning of development

"55(1) Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development", means the carrying out of building, engineering, mining or other operations, in, on, over or under land, or the making of any material change in the use of any buildings or other land.

[(1A) For the purposes of this Act "building operations" includes:

- (a) demolition of buildings;
 - (b) rebuilding;
 - (c) structural alterations of or additions to buildings; and
 - (d) other operations normally undertaken by a person carrying on business as a builder.].
- (2) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land -
- (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.”

etc

Section 56: Time when development begun

"56(1) Subject to the following provisions of this section, for the purposes of this Act development of land shall be taken to be initiated -

- (a) if the development consists of the carrying out of operations, at the time those operations are begun;
 - (b) if the development consists of a change of use, at the time when the new use is initiated;
 - (c) if the development consists both of the carrying out of operations and of a change of use, at the earlier of the times mentioned in paragraphs (a) and (b)
- (2) ...development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out.
- (4) In subsection (2) "material operation" means -
- (a) any work of construction in the course of the erection of a building;
 - (aa) any work of demolition of a building;
 - (b) the digging of a trench which is to contain the foundations, or part of the foundations of a building;
 - (c) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (b);
 - (d) any operation in the course of laying out or constructing a road or part of a road;
 - (e) any change in the use of any land which constitutes material development.

note that intentions may not be relevant (Hughes v. Doncaster Metropolitan Borough Council) and that "conditions precedent" may have to be complied with (Whitley and Sons v Secretary of State for Wales and Clwyd)

Section 57: Planning permission required for development

"57(1) Subject to the following provisions of this section, planning permission is required for the carrying out of any development of land."

4 PLANNING APPLICATIONS

Reserved Matters for Outline Applications (Circular 01/2006, paragraph 51)

"**Layout** – the way in which buildings, route and open spaces are provided within the development and their relationship to buildings and spaces outside the development.

"**Scale** – the height, width and length of each building proposed in relation to its surroundings.

"**Appearance** – the aspects of a building or place which determine the visual impression it makes, *including* the external built form of the development.

"**Access** – this covers accessibility to and within the site for vehicles, cycles and pedestrians in terms of the positioning and treatment of access and circulation routes and how these fit into the surrounding access network.

"**Landscaping** – this is the treatment of private and public space to enhance or protect the site's amenity through hard and soft measures, for example, through planting of trees or hedges or screening by fences or walls."

Previous minimum requirements for Outline Applications (Circular 01/2006, paragraph 52)

"**Use** – the use or uses proposed for the development and any distinct development zones within the site identified.

"**Amount of development** – the amount of development proposed for each use.

"**Indicative layout** – an indicative layout with separate development zones proposed within the site boundary, where appropriate.

"**Scale parameters** – an indication of the upper and lower limits for height, width and length of each building within the site boundary.

"**Indicative access points** – an area or areas in which the access point or points to the site will be situated."

Guidance on information requirements and validation (DCLG March 2010)

26. After the introduction of the standard application form, some LPAs developed validation processes that resulted in very high initial levels of invalidity. Some of this may have been due to poor quality applications. However, some LPAs may also have been too rigid in their validation requirements. A 'tick-box' approach to validation offers clarity for applicants in setting out which information items are required, but in some cases LPAs have applied this too mechanistically without taking individual scheme characteristics into account. LPAs are encouraged to ensure that validating officers have been sufficiently trained to identify what information is necessary for the purposes of validation.

27. LPAs should make proportionate requests for information, and should not use invalidation to prevent the start of the determination period where an applicant has taken reasonable steps to fulfil the information requirements set out on the local list.

28. For major development and other schemes which are likely to have significant impacts on the surrounding area (or further away), applicants should engage in pre-application discussions so that they are clear about the information that the LPA will need in order to understand the anticipated impacts of the application. The Government's policy on pre-application discussion is currently out for consultation and can be found in Part 3 of the draft Planning Policy Statement on Development Management.

National Planning Policy Framework: Planning conditions and obligations

203. Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.

204. Planning obligations should only be sought where they meet all of the following tests:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

205. Where obligations are being sought or revised, local planning authorities should take account of changes in market conditions over time and, wherever appropriate, be sufficiently flexible to prevent planned development being stalled.

206. Planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

Design Considerations

National Planning Policy Framework 2012 (NPPF)

- “59. Local planning authorities should consider using design codes where they could help deliver high quality outcomes. However, design policies should avoid unnecessary prescription or detail and should concentrate on guiding the overall scale, density, massing, height, landscape, layout, materials and access of new development in relation to neighbouring buildings and the local area more generally.
- “60. Planning policies and decisions should not attempt to impose architectural styles or particular tastes and they should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles. It is, however, proper to seek to promote or reinforce local distinctiveness.
- “61. Although visual appearance and the architecture of individual buildings are very important factors, securing high quality and inclusive design goes beyond aesthetic considerations. Therefore, planning policies and decisions should address the connections between people and places and the integration of new development into the natural, built and historic environment.
- “62. Local planning authorities should have local design review arrangements in place to provide assessment and support to ensure high standards of design. They should also when appropriate refer major projects for a national design review. In general, early engagement on design produces the greatest benefits. In assessing applications, local planning authorities should have regard to the recommendations from the design review panel.
- “63. In determining applications, great weight should be given to outstanding or innovative designs which help raise the standard of design more generally in the area.
- “64. Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.”

5 ENVIRONMENTAL IMPACT ASSESSMENT (under review)

Circular 02/99, paragraph 12

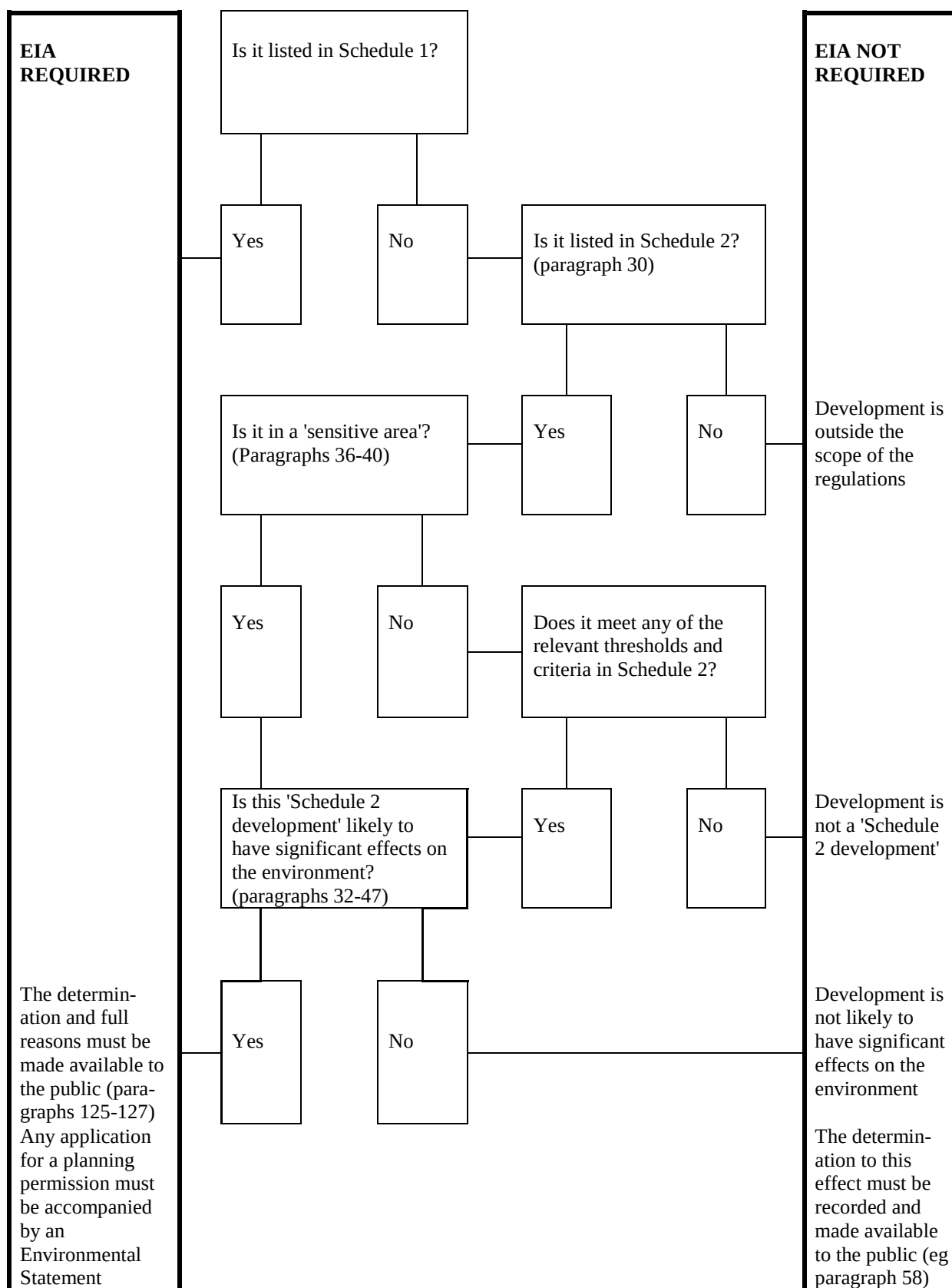
"Local planning authorities already have a well established general responsibility to consider the environmental implications of developments which are subject to planning control. The Regulations integrate the EIA procedures into this existing framework of local authority control. These procedures provide a more systematic method of assessing the environmental implications of developments that are likely to have significant effects. While only a very small proportion of development will require EIA, it is stressed that EIA is *not* discretionary. If significant effects on the environment are likely, EIA is required."

Circular 02/99, extracts from Annex C (Schedule 4 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999

"Information to be included in an Environmental Statement ...

- "1. Description of the development ...
- "2. An outline of the main alternatives ...
- "3. A description of the aspects of the environment likely to be significantly affected by the development, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors."
- "4. A description of the likely significant effects of the development ...
- "5. A description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects"

Circular 02/99, Figure 1: Establishing whether a development requires EIA



LISTED BUILDINGS: (GRADES I, II* or II) : THE GENERAL DUTY

Planning (Listed Buildings and Conservation Areas) Act 1990, s7:

"7. Subject to the following provisions of this Act, no person shall execute or cause to be executed any works for the demolition 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."

Planning (Listed Buildings and Conservation Areas) Act 1990, s16(2):

"16(2) In considering whether to grant listed building consent for any works the local planning authority or the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any feature of special architectural or historic interest which it possesses." (*editor's emphasis*)

Planning (Listed Buildings and Conservation Areas) Act 1990, s66(1):

"66(1) In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses." (*editor's emphasis*)

CONSERVATION AREAS: THE GENERAL DUTY

Planning (Listed Building and Conservation Areas) Act 1990, s72-(1):

"72(1) In the exercise, with respect to any buildings or other land in a Conservation Area, of any powers under any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area." (*editor's emphasis*)

CONSERVING AND ENHANCING THE HISTORIC ENVIRONMENT (NPPF SECTION 12)

"133. Where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:

- the nature of the heritage asset prevents all reasonable uses of the site; and
- no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and
- conservation by grant-funding or some form of charitable or public ownership is demonstrably not possible; and
- the harm or loss is outweighed by the benefit of bringing the site back into use.

134. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use."

KEY ELEMENTS OF THE PLANNING LEGISLATION

Note: the legislation changes frequently but is regularly brought up to date in the "Encyclopaedia of Planning Law and Practice" (loose-leaf – nine volumes plus index).

PRIMARY LEGISLATION

Town and Country Planning Act 1990 (the basic planning legislation)

(the primary legislation was amended by the Planning and Compensation Act 1991, the Planning and Compulsory Purchase Act 2004 and the Planning Act 2008)

Town and Country (Listed Buildings and Conservation Areas) Act 1990 (the basic listed building and conservation areas legislation)

SUBORDINATE LEGISLATION

*Town and Country Planning (Use Classes) Order 1987 (*categorises different classes of use*)

Amended 2005, primarily to disaggregate the former Class A3 uses into three separate classes, namely A3: Restaurants and Cafes, A4 Drinking Establishments and A5: Hot Food Takeaways (Nightclubs being sui generis).

Town and Country Planning (Applications) Regulations 1988 (*includes formal requirements for any planning application*)

Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989 as updated – *sets out fees payable to councils for planning applications – rates are regularly increased*)

Planning (Listed Buildings and Conservation Areas) Regulations 1990

Town and Country Planning General Regulations 1992 (*deals with local planning authorities' own development*)

*Town and Country Planning (General Permitted Development) Order 1995 (SI 1995 no418) (*sets out permitted development rules*)

amended 2005, to reflect changes to the Use Classes Order 1987.

amended 2008, mainly to introduce changes for dwellinghouses.

amended 2010, introduces permitted development rights for non-residential property.

Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (*The main Regulations transposing European Council Directive 85/337/EEC, as amended by 97/11/EC, dealing with development requiring planning permission*)

Town and Country Planning (Inquiries Procedure) (England) Rules 2000 (*sets out procedure in Secretary of State Inquiry cases*)

Town and Country Planning (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000 (*sets out procedure in Inspector Inquiry cases*)

*Town and Country Planning (Hearings Procedure) (England) Rules 2000 (*sets out procedure in Hearing cases*)

*Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000 (*sets out procedure in Written Representations cases*)

Town and Country Planning (General Development Procedure) (England) (Amendment) Order 2000 (*sets out requirement for councils to specify relevant Development Plan Policies in decision notices*)

Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (*details rules for advertisements*)

Town and Country Planning (Mayor of London) Order 2008 (*sets out powers of direction and "take over" of applications*)

*Town and Country Planning (Development Management Procedure) Order 2010 (*sets out procedural rules, consolidating and amending the Town and Country Planning (General Development Procedure) Order 1995*)

Community Infrastructure Levy Regulations 2010 (*provides that section 106 requirements are to be necessary in relation to the scheme, directly related to the proposal and fairly and reasonably related to the development*)

PLANNING POLICY, CIRCULARS AND PLANNING GUIDANCE PUBLICATIONS

Note: policy documents change frequently but are regularly brought up to date in the "Encyclopaedia of Planning Law and Practice" (loose-leaf – nine volumes plus index).

National Planning Policy Framework (March 2012)

The national Planning Policy Statements and Planning Policy Guidance Notes were replaced by the new National Planning Policy Framework, published on 27 March 2012 (except that some technical guidance and PPG7 Annex E were retained).

"1. The National Planning Policy Framework sets out the Government's planning policies for England and how these are expected to be applied. It sets out the Government's requirements for the planning system only to the extent that it is relevant, proportionate and necessary to do so. It provides a framework within which local people and their accountable councils can produce their own distinctive local and neighbourhood plans, which reflect the needs and priorities of their communities."

The Planning System: General Principles (January 2005)

Briefly describes the Plan-led planning system and sets out some general planning principles.

DoE Circular 36/78: Trees and Forestry

Consolidates advice on trees and forestry from earlier circulars, including advice to local authorities on their treatment in development and other plans; the application of Tree Preservation Orders; and authorities' duty in relation to trees when considering development proposals.

DoE Circular 15/88: Environmental Assessment

Explains the provisions of the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988 and gives advice on their implementation.

***DoE Circular 11/95: The Use of Conditions in Planning Permissions**

Explains the importance of conditions and the principles to be applied in framing them.

DoE Circular 02/98: Prevention of Dereliction through the Planning System

DoE Circular 06/98: Planning and Affordable Housing (supersedes 13/96)

DETR Circular 02/99: Environmental Impact Assessment

ODPM Circular 03/2005: Changes of Use of Buildings and Land: The Town and Country (Use Classes) Order 1987

Provides guidance on the Use Classes Order, as amended, and clarifies which uses fall within particular classes and which are 'sui generis' ('of its own kind'). Read with:

ODPM Circular 02/2006: Changes to Planning Regulations for Casinos

ODPM Circular 08/2005: Guidance on Changes to the Development Control System

Covers the power to decline to determine applications, the duration of permissions and consents, the duty to respond to consultation, Regional Planning Bodies as statutory consultees.

DCLG Circular 01/2006: Guidance on Changes to the Development Control System

Covers the power for local planning authorities to make local development orders, changes to the outline planning permission process (superseded), the requirement for design and access statements, powers controlling certain internal floorspace additions (such as mezzanines), changes to the decision period for major applications.

DCLG Circular 01/2007: Revisions to Principles of Selection for Listed Buildings

Provides a summary of listing criteria, refers to more detailed English Heritage advice and sets out the procedure for listing applications and removing a building from the statutory list.

CLG Circular 03/2009: Costs Awards in Appeals and Other Planning Proceedings

Updates and consolidates policy guidance on award of costs to and against parties in certain planning proceedings.

CLG Guidance: Greater flexibility for planning permissions (DCLG November 2009)

Explains procedures for dealing with Extensions to the time limits for implementing planning permissions, Non-material amendments and Minor material amendments.

CLG Guidance: Guidance on information requirements and validation (DCLG March 2010)

CLG Guidance: Permitted Development for Householders – Technical guidance (DCLG August 2010)

Explains interpretation of current Regulations, with diagrams.

CLG Guidance: Technical Guidance to the National Planning Policy Framework (DCLG March 2012)

Technical guidance on Flood Risk and Minerals Policy.

CLG CHIEF PLANNING OFFICER LETTERS (may be superseded)

23 Feb 2009 The Planning Bill: delivering well designed homes and high quality places

22 Sept 2009 Extensions to time limits for implementing existing planning permissions
Non-material amendments

31 March 2011 Planning for Growth

Annex A: Statement by Greg Clark, Minister for Decentralisation (23 March 2011)

Annex B: Planning Obligation

27 March 2012 National Planning Policy Framework

PLANNING INSPECTORATE PROCEDURAL GUIDANCE

PINS 01/2009: Planning appeals and called in planning applications

Guidance on appeal procedures

OTHER PUBLICATIONS

Good Practice Guide on Planning for Tourism (May 2006)

Supersedes PPG21: Tourism (November 1992)

Outlines the economic, social and environmental significance of tourism and the need to promote tourism in a sustainable way.

Manual for Streets (CLG, DfT, Welsh Assembly – 2007)

Distinguishes between “roads” and “streets”; aims to improve the quality of streets in general design terms but also sets out parameters for road junctions, parking and so on.

By Design : Urban Design in the Planning System, Towards better practice (DETR / CABE May 2000)

By Design: Better Places to Live (DETR / CABE September 2001)

Design Review – Principles and Practice (CABE RIBA RTPI Landscape Institute 2013)