

What is a Material Planning Consideration?

The primacy of the development plan has been with us for some time. This is currently expounded through S38 of The Planning and Compulsory Purchase Act 2004, which states

'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 is to be made in accordance with the plan unless material considerations indicate otherwise.'

Policy documents within the plan change from time to time. Current advice is that if a policy in the development plan conflicts with any other policy in the development plan the conflict must be resolved in favour of the document most recently adopted, approved, or published.

So what is a material planning consideration that has the ability to overturn the development plan? In short, it is relevant elements of policy (national, regional and local), the views of consultees and factors on the ground.

In terms of consultees, there are statutory and non-statutory consultees. The council is a non-statutory consultee but its views and those of local residents are always considered, but local opposition or support on its own is not a reason for refusing or granting planning permission. Opposition or support must be backed up by valid planning reasons.

Whether or not a factor is capable of being a material planning consideration is a matter of law. Beyond that, it is a matter of fact whether a factor *capable* of being a material consideration *is* a material consideration in any particular case. Once the existence of the material consideration is established, the "weight" given to it in the eventual decision is a matter of judgement for the local planning authority.

In responding to planning applications submitted in the council's area, it is important to differentiate between material and non-material considerations. In short, the former can legitimately be considered and the latter cannot.

Examples of issues the local planning authority can normally consider as a material planning consideration:

- Overshadowing;
- Overlooking and loss of privacy;
- Adequate parking and servicing;
- Overbearing nature of proposal;
- Loss of trees;
- Loss of ecological habitats;
- Design and appearance;
- Layout and density of buildings;
- Effect on listed building(s) and conservation areas;
- Access and highways safety;
- Traffic generation;
- Noise and disturbance from the scheme;
- Disturbance from smells;
- Public visual amenity (not loss of private individual's view);
- Flood risk.

Examples of issues the local planning authority cannot normally consider as a material planning consideration:

- Loss of value to private individual property;
- Loss of view;
- Boundary disputes including encroachment of foundations or gutters;
- Private covenants or agreements;
- The applicant's personal conduct or history;
- The applicant's motives;
- Potential profit for the applicant or from the application;
- Private rights to light;
- Private rights of way;
- Damage to property;
- Disruption during any construction phase;
- Loss of trade and competitors;
- Age, health, status, background and work patterns of objector;
- Time taken to do the work;
- Capacity of private drains;
- Building and structural techniques;
- Alcohol or gaming licences.