

Mendip District Council

Development Management Planning Guidance – July 2020

Material Planning Considerations

In principle any consideration which relates to the use and development of land is capable of being a material planning consideration. The courts have held that whether a particular consideration falling within that broad class is material in any given case will depend on the circumstances. **Material considerations must be genuine planning considerations, i.e. they must be related to the development and use of land in the public interest.** The considerations must also fairly and reasonably relate to the application concerned.

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.

When Officers and Members of the Local Planning Authority are determining planning applications their decisions must be objective and made within the rules of the planning system. The planning merits of the application rather than the weight of public opinion, lead to the decision.

The Council will also have in mind that the Local Government Ombudsman can find maladministration if proper administrative procedures are not followed.

What are Material Planning Considerations?

Comments on a planning application can only be taken into account if they relate to material planning considerations. (See section on Determining Planning Applications) It is common for neighbours to object to applications for a variety of reasons. Parish Councils are encouraged to consider only relevant planning matters, and in this respect can also help their local residents understand the limits of development management.

There are limits to the range of issues that can be taken into account when considering planning applications. Although not an exhaustive list, material planning considerations **DO** include the following:

- Mendip District Local Plan Part I: Strategy and Policies (December 2014)
- Mendip District Local Plan Part II: Sites and Policies
- Somerset Waste Core Strategy (February 2013)
- Somerset Minerals Plan (February 2015)
- Frome Neighbourhood Plan
- Rode Neighbourhood Plan
- Local Supplementary Planning Documents produced by the Local Planning Authority (SPD)
- The Government's National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG).
- Effects on Listed Buildings, Conservation Areas and archaeology
- Effects on the Mendip AONB and the Cranborne Chase and West Wiltshire Downs (also statutory requirements).
- The economy, including job creation/retention.
- The environmental qualities of the surrounding area, the visual character of a street and the amenity.

- Design, size, layout and appearance of the development
- Highway safety, access, car parking and traffic generation
- Drainage and flood risk in identified areas at risk
- Living conditions such as Loss of light, overshadowing, privacy, noise and odour.
- Impact and loss of trees and landscape
- Biodiversity
- Noise, disturbance, smells – but not from construction.
- Disabled access
- Case law and previous planning decisions.
- Consideration of what could, otherwise, be undertaken as permitted development without the need for a specific permission.

Issues that are not usually relevant will vary with each application. Although not exhaustive the courts have established that the following matters **DO NOT** constitute material planning considerations:

- Retrospective Applications. Development carried out without the necessary planning permission is generally not an offence and planning legislation makes provision for planning applications to be made retrospectively. If the development is acceptable on its merits, the Council cannot withhold permission simply to punish a pre-emptive development. However, if the development is unacceptable, the Local Planning Authority will need to consider commencing enforcement proceedings against the developer.
- Trade Objections. It is not the role of planning to interfere in matters of competition between businesses other than at strategic level, e.g. when the retail vitality of a town as a whole is threatened by an out of town retail park.
- Need. An applicant's motivations or future intentions are not for the planning system to consider. In principle the need for a development is not a material consideration with the exception of Agricultural Worker Dwellings where justification of need is material. The history or character of an application is also not material.
- Moral Objections. The planning system is not the place for moral judgements, for instance against betting shops, lottery kiosks or amusement arcades; although there may be genuine planning reasons for refusal such as noise and disturbance to adjoining residents resulting from the potential attraction of these establishments.
- Impact on Private Views. The loss of an attractive private view, e.g. when development is proposed on the opposite side of a road or to the rear of an objector's house. There is no right to a private view, however the loss of residential amenity more generally and matters such as overlooking or privacy at close quarters, or the impact wider public views, will be important considerations.
- Property values. The fear that an objector's house or property might be devalued.
- Land Ownership. The fact that an applicant does not own the land to which his application relates (as this could be overcome by agreement), or that an objector is a tenant of land where development is proposed.
- Covenants. Allegations that a proposal might affect private rights, e.g. restrictive covenants, property maintenance, party wall issues, private rights of way or boundary disputes. An example might be when an extension on a boundary is acceptable in planning terms but might be difficult to maintain. Such considerations are legal or contractual matters on which objectors, neighbours or applicants should consult their own solicitor or adviser.
- Land ownership. Including restrictive covenants or other private property rights including boundary and access disputes or maintenance. Whilst details of land ownership needs to be provided as part of an application for procedural reason, no other landownership rights are relevant in the consideration of application.

- Personal. Arguments of a personal kind relating to the associations, financial circumstances or ethnic origin of the applicant. The personal circumstances of applicants can only be taken into account in exceptional circumstances, for example where the applicant's proposed use of a building would be acceptable but the planning permission, if not made personal, would unacceptably allow more intensive uses in the same Use Class. The planning system does not exist to protect the private interests of one person against the activities of another. The material question is not whether owners and occupiers of neighbouring properties would experience financial or other loss from a particular development, but whether the proposal would unacceptably affect amenities and the existing use of land and buildings which ought to be protected in the public interest.
- Construction. Problems associated with the construction period of any works e.g. hours of work, noise, dust, construction vehicles – although this can be controlled by condition.
- Other legislation. Where there is separate legislation imposing controls e.g. Building Regulations, Fire Regulations or Health and Safety, etc., then these should not be duplicated by the Local Planning Authority.

Further considerations that are not material include:

- Opposition to the principle of development when this has been settled by an outline planning permission or appeal
- Previously made objections/representations regarding another site or application
- Factual misrepresentation of the proposal
- The extent of public support or opposition for a proposal alone;