



OBJECTING TO PLANNING APPLICATIONS & APPEALS

HOW TO OBJECT EFFECTIVELY

This note is designed to help a person make representations to a council about a proposed development of which they disapprove. It provides a general overview of how to approach objecting to a planning application rather than the specific reasons in each case.

Finding out about the proposed development

When your local Council receives a planning application, they are supposed to notify those neighbours who they think may be affected by it, but this depends on the judgement of planning officers and not everyone who thinks they ought to have been informed gets a letter. Nonetheless, you can object to any planning application, whether or not you have personally received a letter informing you of it.

One way of finding out about local planning applications is to look on the Council's website. Not only can you see what planning applications have been received, but you can also view and download the details of those applications and can sometimes see what other people have already said about them. Copies of applications should be available for inspection in the Council's Planning Department.

Making an objection

The way to object to the Council about a planning application is to write to the Planning Department, either by post or by e-mail. You should quote the planning application number (shown on the Council's letter to you or on the Council's website) and send the letter to the address shown in the consultation letter or on the website.

Your objection will have more effect if several people write in to object, but do not be tempted to organise a petition; it will not carry any weight and is a waste of time. Also avoid using a 'standard' letter. Objectors should use their own words and write their letters themselves. Objections will not carry the same weight if they are seen to have been written or produced in a standardised form.

Councils always request comments within a time limit (usually within 21 days of notification), but in practice they will take into account any representations received before the application is determined. So, it is not too late to comment provided a planning permission has not actually been issued. On the other hand, it is obviously best to make your views known as early as possible.

There are no restrictions on what you can say about a planning application, but your Council will not publish or take account of any material which they think is libellous, racist, or offensive. There is no point in putting objections in your letter which are not relevant to planning, because by law the Council can only take into account the planning issues and must not allow

Web

info@athena-planning.com
www.athena-planning.com



OBJECTING TO PLANNING APPLICATIONS & APPEALS

HOW TO OBJECT EFFECTIVELY

themselves to be influenced by other considerations unless they really are relevant to planning.

What to object to?

By law planning decisions are determined by assessing whether the proposed development accords with “the Development Plan,” if it does this means there is a presumption in favour of development unless material considerations indicate otherwise. It is up to the planning officer to make a recommendation to Councillors whether or not an application should be approved. Often many of these applications are decided by the Council’s officers directly under powers which have been “delegated” to them by the Council.

It makes sense when objecting to a planning application to concentrate on those aspects of a development which are likely to be unacceptable to you and are relevant to the planning process.

Generally, the main reasons for objecting to a proposal include the visual impact, effect on the character of a neighbourhood, possible noise and disturbance, overlooking and loss of privacy. The likely effect of the development on the residential amenity of neighbours is clearly an important consideration.

If the proposed development is in a designated Conservation Area or would affect the setting of a Listed Building, there may be further grounds of objection relating to the effect of the development on the character and appearance of the Conservation Area or on the setting of a Listed Building, for example.

As a general rule, new development is usually only acceptable within existing settlements or if it is already allocated (zoned) for the particular development type proposed. The Development Plan (see “Planning Policies” below) defines the precise boundaries of settlements. New development is also discouraged in the Green Belt.

The following points **will not** be taken into account in deciding on the acceptability of the development in planning terms:

1. Any possible adverse impact on property values;
2. The precise identity of the applicant;
3. The racial or ethnic origin of the applicant, their sexual orientation, religious beliefs, political views or affiliations or any other personal attributes;
4. The reasons or motives of the applicant in applying for planning permission (for example if the development is thought to be purely speculative);
5. Any profit likely to be made by the applicant;
6. The behaviour of the applicant;
7. Nuisance or annoyance previously caused by the applicant [unless this relates to an existing development for which retrospective permission is being sought];

Web

info@athena-planning.com
www.athena-planning.com



OBJECTING TO PLANNING APPLICATIONS & APPEALS

HOW TO OBJECT EFFECTIVELY

8. Concerns about possible future development of the site (as distinct from the actual development which is currently being proposed); and
9. Any effect on the value of neighbouring properties

There is no point in mentioning in your objection matters which are not relevant to the planning process.

Planning Policies

At a local level, the Development Plan in each local planning authority's area is called the Local Plan (in Scotland it is called the Local Development Plan). Precisely what constitutes the Local Plan has changed over the years. They are generally made up of a Proposals Map setting out land allocations and restrictive policies, a policy documents details what the council's planning policies are and usually some of supplementary guidance. Most planning authorities also publish supplemental planning guidance, giving detailed advice on particular planning issues. Most local plans (and some supplemental planning guidance notes) are now published on the internet, and will be found on the Council's website.

Among the material considerations which a Council must also take into account is ministerial policy and guidance, set out at national level within the National Planning Policy Framework (the NPPF) in England and Scottish Planning Policy (SPP) in Scotland.

Design and Layout

Design (including bulk and massing, detailing and materials, if these form part of the application) is recognised as an important factor in the acceptability of a development proposal. If you think the development looks ugly, then you should say so, especially if it is over-bearing, out-of-scale or out of character in terms of its appearance compared with existing development in the vicinity. As mentioned above, a higher standard of design is expected in a Conservation Area, or where it affects the setting of a Listed Building.

Councils are under a legal duty to have particular regard to the desirability of preserving or enhancing the character and appearance of a Conservation Area. Similarly, a development which would adversely affect the setting of a Listed Building is unlikely to be acceptable.

Concerns about highway safety may also be raised, but it should be noted that such issues are subject to careful technical examination by qualified engineers employed by the relevant highway authority, and so objections based on road safety fears are unlikely to carry much weight unless it is also the independent view of the Council's own highway engineers that the development would adversely affect highway safety or the convenience of road users.

Web

info@athena-planning.com
www.athena-planning.com



OBJECTING TO PLANNING APPLICATIONS & APPEALS

HOW TO OBJECT EFFECTIVELY

One point which is controversial is the relevance in planning terms of the loss of a view. It is often said that “there is no right to a view.” Whilst this is correct in strictly legal terms, it does not mean that the loss of a view is necessarily irrelevant to planning. The enjoyment of a view from a public viewpoint could be an important part of the residential amenity of a neighbourhood. However, the loss of a single view from a private residential property is likely to have limited weight as part of the decision-making process.

Over-development

The effect of the development on the character of the neighbourhood has always been, and remains, a factor which may lead to the refusal of planning permission, so you should not hesitate to raise issues of density and possible over-development of the site as well as the adverse impact which the proposed development might have on the character of the neighbourhood or on the residential amenity of neighbours.

Other actions - Delegated decisions

In the past most planning applications would be determined by a committee or sub-committee of the elected councillors. Now, however, many of these applications are decided by the Council’s officers under powers which have been delegated to them by the Council.

However, most Councils now have a mechanism which enables planning applications which might otherwise have been dealt with by delegated powers to be referred to a committee or sub-committee of the authority’s elected members instead.

The precise way in which these rules work varies from one Council to another, but it usually involves at least one member of the Council (such as a Councillor for the ward in which the application site lies) requesting that the application be referred to committee for determination. In some cases, this will happen automatically if a Councillor has requested it; in other cases it may depend on the decision of the Chairman of the committee as to whether or not it will be referred to committee.

If you believe there is a risk that a planning application to which you object may be approved by a planning officer under delegated powers, you should contact your local Councillor and ask them to get the application referred to committee, so that it can be properly debated. This does not guarantee that the application will be dealt with in that way, but there is a good chance that it may be referred to committee in these circumstances.

Web

info@athena-planning.com
www.athena-planning.com



OBJECTING TO PLANNING APPLICATIONS & APPEALS HOW TO OBJECT EFFECTIVELY

Other actions - Lobbying councillors

It used to be a lot easier than it is now to approach councillors about pending planning applications. Revised local government legislation and the Code of Conduct which councillors must now follow have made them much more cautious about being lobbied. For that reason, attempts to persuade individual councillors to support your cause in relation to a particular planning application are likely to be rebuffed, and in some cases a councillor who has been lobbied may even feel that they have to refrain from taking part in the decision solely for that reason. There has been some relaxation of the code of conduct, but you should continue to be cautious about lobbying councillors.

As a general rule, the only safe way of 'lobbying' councillors is to write an identical letter to all members of the planning committee (or the sub-committee which is going to determine the application), and make it clear in the text of the letter that this is a letter which is being written to all the members. You cannot be sure that the councillors will actually read the letter or take any notice of it, but you will at least have communicated your views direct to councillors, rather than having them 'filtered' or summarised by officers in their committee report.

Other actions - Attending the Planning Committee

Where a planning application is determined by a Committee (or Sub-Committee) of the Council's elected members, this meeting will be held in public, and you may attend the meeting. Most Councils give members of the public the opportunity to speak briefly at the meeting (usually for no more than 3 minutes each). It will nearly always be necessary to give advance notice to the Committee Clerk of your wish to speak. Notice must usually be given in writing or by e-mail at least a day ahead of the meeting. Check the Council's rules about this on their website, or ask the Committee Clerk about it. You can also appoint a representative to speak on your behalf.

Other parties will also have the opportunity to address the committee, but you will have no right of reply, nor will you be able to ask questions. No interruptions are allowed during the Councillors' discussion of the item in question. You cannot correct or query anything that anyone else says, no matter how mistaken or untruthful you may think it is. After you have made your own brief statement, you must just sit and listen, and hope that the Councillors come to the 'right' decision.

Other actions - Challenging a consented development

If planning permission is granted, objectors have no right of appeal against that decision. There is only one exception to this. If there is a serious legal error in the Council's decision, or

Web

info@athena-planning.com
www.athena-planning.com



OBJECTING TO PLANNING APPLICATIONS & APPEALS

HOW TO OBJECT EFFECTIVELY

in the way in which it was reached, a legal challenge can be brought before the High Court (Court of Session in Scotland) by way of an application for judicial review, seeking the quashing of the decision. However, the Court's jurisdiction is strictly confined to dealing with an error of law; they will not 'second guess' the decision maker and substitute their own view as to the planning merits. If the decision to grant planning permission was lawful, the Court will not intervene, no matter how 'bad' the decision might appear to be in purely planning terms.

An application for judicial review is not to be embarked upon lightly. The costs can be counted in many thousands of pounds, and the chances of success for the objectors are very slim. If an application is to be made to the High Court, it must be made promptly and in any event within 6 weeks after the date on which the planning permission is actually issued. It gives you very little time to get organised, and so if judicial review is a realistic possibility, you need to be ready to go ahead with it almost immediately upon the planning permission being issued.

Before an application for judicial review can proceed, the Court must first give its permission to the claimant to do so. The Court must be satisfied on the papers that there is at least an arguable case that there was an error of law which would justify a quashing order being made. If an application for permission to proceed with judicial review is initially rejected on the papers, it can be renewed for oral hearing by a single judge, but this is when the costs begin to mount up.

In those cases that get to a full hearing (after permission to proceed has been given), the Court still has a discretion as to whether or not to quash the planning permission, even if they are satisfied that there was a legal error in the decision to grant it. If the Court feels that in the end the same decision would be reached on the planning application, they may very well refuse to make a quashing order. It is important in this connection to bear in mind that a quashing order will not necessarily lead to a refusal of planning permission. It merely puts the matter back in the hands of the Council for re-determination. They could quite properly decide to grant planning permission after all, so long as they avoid the legal error which led to the original decision being quashed.

In summary, the chances of successfully challenging a planning permission in the High Court are really very small. It is not a realistic option except in a tiny minority of cases.

Other actions: Making representations at planning appeals

If planning permission is refused, the applicant will have a right of appeal. You will usually be notified of an appeal if you have objected to a planning application. All letters received by the Council on the application will already be considered as part of the appeal, however, there is usually an opportunity to make further written representations in addition to anything you may have written at the application stage.

Web

info@athena-planning.com
www.athena-planning.com



Athena Planning

OBJECTING TO PLANNING APPLICATIONS & APPEALS

HOW TO OBJECT EFFECTIVELY

Most appeals are dealt by way of written representations where your comments can be made in writing. Public inquiries are only held in the more important cases and some others are sometimes dealt with either at an informal hearing, in person. If you are considering taking an active role in a planning appeal and wish to be represented, please contact Athena Planning so that you can be appropriately advised*.

Further advice

The amount of work involved in our acting for objectors in making representations in response to planning applications necessitates our charging fees at a level which is not always cost effective from our clients' point of view, bearing in mind the need to research the relevant planning policies and to ensure that all material points are covered when writing a detailed letter of objection that may carry some weight with the planners; hence the reason for this note being written.

However, if you are opposing a major development, and you and your neighbours acting jointly really do want professional help in objecting to a planning application or appeal, and are prepared to incur fees to help stop the development, please contact Athena Planning by email at: object@athena-planning.com or by telephoning our offices in Edinburgh on 0131 561 8309 or in London on 0207 101 4309.

Athena Planning

Edinburgh Office

64a Cumberland Street,

Edinburgh

EH3 6RE

0131 510 8309

edinburgh@athena-planning.com

London Office

85 Great Portland Street,

London

W1W 7LT

0207 101 4309

london@athena-planning.com

Disclaimer: This information in this briefing is designed to provide helpful information on the subjects discussed above. Whilst every effort has been made to provide accuracy, this briefing is in no way legally binding. Athena Planning & Development Ltd provide no guarantees and accepts no liability to its accuracy whatsoever. Professional advice should always be sought having regard to the constant changes to planning regulations, legislation, and guidance.

*Much of this article has been replicated from MARTIN H GOODALL's brief from KEYSTONE LAW (<https://keystonelaw.co.uk/lawyers/martin-goodall>) and has been updated to include changes in legislation and provide some context to procedures within Scotland as well as England.

Web

info@athena-planning.com

www.athena-planning.com