

## Material Consideration

**“Material Considerations”** are not limited to matters relating to amenity and can cover a range of considerations, in regard to public or private interests, provided that there is some relationship to the use and development of land.

Where it is decided that a consideration is material to the determination of a planning application the courts have held that the assessment of weight is a matter for planning judgement by the planning authority, rather than the court. Materiality is a matter of law for the Court, weight is for the decision maker. Accordingly it is for the Committee to assess the weight to be attached to each material consideration, but if a Council does not take account of a material consideration or takes account of an immaterial consideration then the decision is vulnerable to challenge in the courts.

By section 38(6) of the Planning & Compensation Act 2004 Act every planning decision must be taken in accordance with the development plan (taken as a whole) **unless material considerations indicate otherwise**. The policies and guidance contained in the hierarchy of planning documents are important material considerations and the starting point for the Committee in its assessment of development proposals and most decisions are usually taken in line with them.

However, the Committee is legally obliged to consider all material matters in determining a planning application and this means that some decisions will not follow published policy or guidance. In other words, the Committee may occasionally depart from published policy when it considers this is outweighed by other factors and can be justified in the circumstances of the particular case. Similarly, in making a decision where there are competing priorities and policies the Committee must exercise its judgement in determining the balance of considerations

The following provides a broad guide of what may and may not be material, though as with any broad guidance there will on occasions be exceptions

| <b><u>MATERIAL:</u></b>                       | <b><u>NOT MATERIAL:</u></b>   |
|---|---|
| Policy (national, regional & local)           | The identity of the applicant                                       |
| development plans in course of preparation    | Superceded development plans and withdrawn guidance                 |
| Views of consultees                           | Land ownership  |
| Design  | Private Rights (e.g. access)  |
| Visual impact                                 | Restrictive covenants   |
| Privacy/overbearing/amenity impacts           | Property value  |
| Daylight/sunlight                             | Competition (save where it promotes a vital and viable town centre) |
| Noise, smell, pollution                       | Loss of a private view  |
| Access/traffic/accessibility                  | “moral issues”  |
| Health and safety                             | “Better” site or use”   |
| Ecology, landscape                            | Change from previous scheme   |
| Fear of Crime                                 | Enforcement issues  |
| Economic impact & general economic conditions | The need for the development (in most circumstances)                |
| Planning history/related decisions            |   |

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| Cumulative impact  |  |
| Need (in some circumstances – e.g. green belt)                               |  |
| Impacts upon and provision of open/amenity space                             |  |
| existing use/permitted development rights/fall back                          |  |
| retention of existing use/heritage issues                                    |  |
| fear of setting a precedent  |  |
| composite or related developments  |  |
| Off-site benefits which are related to or are connected with the development |  |
| In exceptional circumstances the availability of alternative sites           |  |
| Human Rights Act 1998 & Equality   |  |

Before deciding a planning application members need to carefully consider an application against the provisions of the Human Rights Act 1998.

Protocol 1 of Article 1, and Article 8 confer(s) a right of respect for a person's private and family life, their possessions, home, other land; and business assets.

Article 6, the applicants (and those third parties, including local residents, who have made representations) have the right to a fair hearing and to this end the Committee must give full consideration to their representation, and comments,

In taking account of all material considerations, including Council policy as set out in the Core Strategy and saved policies of the Unitary Development Plan, the Head of Planning and Transport has concluded that some rights conferred by these Articles on the applicant(s)/objector(s)/resident(s) and other occupiers and owners of nearby land that might be affected may be interfered with but that interference is proportionate, in accordance with the law and justified by being in the public interest and on the basis of the planning merits of the development proposal. Furthermore he believes that any restriction on these rights posed by the approval of an application is proportionate to the wider benefits of approval and that such a decision falls within the margin of discretion afforded to the Council under the Town and Country Planning Acts.

Other duties have to be taken into account in determining planning applications for example the promotion of measures to reduce crime, the obligation not to act in a discriminatory manner and promote equality etc.

**NB: Members should also be aware that each proposal is treated on its own merits!**

#### Reasons for Decision

If members decide to go against officer recommendations then it is their responsibility to clearly set out their reasons for doing so, otherwise members should ask for the application to be deferred in order that a further report is presented setting out the background to the report, clarifying the reasons put forward in the debate for overriding the officer recommendation; the implications of the decision and the effect on policy; what conditions or agreements may be needed; or just to seek further information.

If Members move a motion contrary to the recommendations then members must give reasons before voting upon the motion. Alternatively members may seek to defer the application for a further report. However, if Members move a motion to follow the recommendation but the motion is lost. In these circumstances then members should be asked to state clearly their reasons for not following the recommendations or ask that a further report be presented to the next meeting