



## BLACKBURN WITH DARWEN BOROUGH COUNCIL

### PARISH COUNCILS & PLANNING APPLICATIONS



## 1. Background

Parish Councils are keen that notice is taken of their representations about planning applications in their area, and that they receive enough information about them.

This document:

- Sets out the role of Parish Councils in the planning application process
- Shows how the Council's practice compares with legislative requirements
- Considers procedures for good communication with Parish Councils on planning applications.

In this document the term "Parish Council" is also used to include Town Council for the sake of simplicity.

## 2. Role & Status of Parish Councils

Parish Councils are sometimes under the impression that local planning authority is obliged to consult with them in relation to planning applications. This is not true. Article 13 of the Town & Country Planning (General Development Procedure) Order 2015, which is the current law on the position, requires the local planning authority to **inform** the Parish Council of applications.

Briefly, the law is as follows:

*That if so requested by a Parish Council the local planning authority must notify the Parish Council of any relevant planning application or any alteration to an application accepted by the authority. A relevant application is an application relating to land in the parish. The Parish Council must notify the local planning authority in writing of the descriptions of applications of which they wish to be notified. The local planning authority must then notify the Parish Council either by sending a copy of the application or indicating the nature and extent of the development. That notification should be in writing. They must also notify the Parish Council of alterations, either by sending a copy or informing the Council in writing of its general effect, unless the local planning authority consider the alteration trivial. – Schedule 1, paragraph 8 to the Town & Country Planning Act 1990 as amended.*

The Parish Council must notify a local planning authority that has given them information on an application or alteration, that they propose to make representations about the manner in which it should be decided. They are obliged to make such representations to the local planning authority within 21 days of the notification to the Parish Council of the application.

The local planning authority must not determine any application in respect of which a Parish Council is required to be given information before the **first to occur** of:

- Notification that no representations are to be made
- Receipt of representations
- Or the 21 day period

The authority must take into account the representations received by the Parish Council.

The requirements in law therefore are for notification to the Parish Council and to take the representations into account. This is not quite the same as consultation which takes place with, for example, the highway authority, Environment Agency, Historic England, and others. The process is not the same because the responsibilities of the Parish Council are not of the same type.

A local planning authority must take into account the representations of the Parish Councils. However, that does not mean that the local planning authority will necessarily decide an application as the Parish Council have indicated they feel it should be decided. This is for several reasons:

- The local planning authority is **only** entitled to take into account planning related matters. The comments of Parish Councils are sometimes not on planning issues.
- The local planning authority will receive advice from their professional officers on how the application should be dealt with. A Parish Council does not usually receive such professional advice.
- The local planning authority must take into account the representations of others apart from the Parish Council, especially the observations of the consultees, both the statutory/non-statutory consultees, as well as the neighbours of the developments, and the applicant, etc. The Parish Council does not have information on the content of these other representations.

Whilst the representations of the Parish Councils are important and appreciated they are not necessarily entitled to any more weight than any other representations e.g neighbours, and indeed will be given less weight than the observations of the statutory consultees. For example, a consultation response from the highways officer on an application may not have any adverse comment on the proposed access for a particular development affecting a highway. The Parish Council may take the view that the access is dangerous. Members of the planning authority may question their officers about such a difference in opinion, but the highway authority's view should normally stand, because if there is an appeal to the Planning Inspectorate, the Council must be able to support the reasons for refusal in its decision.

This does not mean that the local planning authority do not take into account Parish Council representations, however they have to balance the comments with all the other representations received, and they have restrictions on the way in which they entitled by law to deal with applications because they must not take into account non-planning related matters.

### **3. Alterations to applications**

It is not possible to re-notify the Parish Council of every amendment. Each time a re-notification is carried out the decision is put back by 2 to 3 weeks, and the authority only has 8 weeks, in most cases, to determine an application, unless an extension of time is agreed by the applicant. Most amendments are made in response to representations from Parish Councils, neighbours, and consultees, and are minor in nature or represent a positive response to the comments made.

There is no precise definition in the Procedure Order of what is a “minor” amendment, and you cannot be specific as each proposal will be different taking into account the particular circumstances of each case.

For example, an amendment includes a re-siting or changes to windows to overcome objections raised by the Parish Council or a neighbour, even though this might otherwise be regarded as significant, provided it does not increase any adverse effect on the neighbours or introduce new impacts of a different kind which the public have not been able to comment upon.

All amendments are subject to a 14 day consultation.

### **4. The form of Parish Council representations**

If Parish Council’s representations are to carry weight they need firstly to be clearly expressed. Advice aimed at avoiding common problems is as follows:

Do not send the views of individual Parish Councillors, either as a list (possibly containing conflicting points), or as a clutch of separate letters. The Parish Council must form a corporate view.

## Application Procedures and Parish Councils

| Stage                  | Legal Requirement  | Blackburn With Darwen Council Practice  |
|------------------------|--|---|
| Receipt of application | Notify Parish Council of every application in its area. Allow 21 days for response | Notify Parish Council of every application in its area – via email with link to planning online explorer for application form, plans etc. Allow 21 days for response  |
| Amendments             | Notify Parish Council of alterations unless they are “trivial”                     | Comply with legal requirement   |
| Delegation of Decision |  | Under the Scheme of Delegation approved 1 <sup>st</sup> October 2015, if Parish Council has objected and the proposal has not been resolved by amendment or condition, application referred to Chair of Planning & Highways Committee to determine whether it needs to go to Committee. If Parish Council wish for application to be determined by Committee it must ask its Ward Councillor to request it under the Ward Member Referral Scheme within the 21 day consultation period. |
| Determination          | Take into account the Parish Council's representations.                            | Parish Council's representations are taken into account when decisions are made by the Head of Service, and are set out in the written delegated officer reports, or within the reports presented to Committee. No weight can be afforded to representations which are not related to material considerations.  |
|                        |  |   |

## 5. What are planning considerations?

Representations on a planning application can only be taken into account if they relate to material planning considerations.

These do **not** include:

- The fact that development has already begun (people can carry out development at their own risk before getting planning permission, and the Council has to judge the development on its own merits);
- The fact that an applicant has carried out unauthorised development in the past;
- “Trade objections” from potential competitors e.g. another newsagent objecting to another newsagents opening up, or an existing hot food takeaway objecting to a new one.
- Moral objections e.g. against betting shops, lottery kiosks or amusement arcades;
- The belief that an application is submitted by an owner with the intention of selling the property at an enhanced value;
- The loss of an attractive private view;
- The fear that an objector’s house or property might be devalued;
- The fact that the applicant does not own the land to which the application relates – this can be overcome by agreement with the landowner;
- The fact that an objector is a tenant of land where development is proposed – the owner of the land can terminate the tenancy whether or not he/she carries out the development, and any consequences are therefore unrelated to the application;
- Allegations that a proposal might affect private rights e.g. restrictive covenants, property maintenance, ownership and private rights of way disputes, boundary disputes – these considerations are legal matters on which objectors should consult their own solicitor or advisor, as Council officers will not be able to advise on such issues. A common example is party boundary issues which are covered under the Party Wall Act.
- Arguments of a personal kind relating to the circumstances of the applicant.

The National Planning Policy Framework (NPPF) advises that:

*“Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.”*

Planning considerations are:

- The NPPF
- Blackburn With Darwen Borough Council’s Core Strategy



- Blackburn With Darwen Borough Council's Local Plan Part 2, "Site Allocations & Development Management Policies"
- Government Planning Policy Guidance and Circulars
- The Council's Supplementary Planning documents and guidance
- The environmental qualities of the surrounding area or the visual character of a street – scale, design, and materials of buildings and the landscaping of a site.
- The amenity and privacy of dwellings
- The character of an area in other senses – noise, dust, air quality, and other forms of pollution
- Road safety – access, car parking and traffic generation
- Public services e.g. drainage

If a Parish Council is unsure whether their comment is a planning matter it is better to include it – provided you are aware that it may not be possible to take it into account.

Not all Parish Councillors fully appreciate the relationship between the local planning authority and the applicant. It is the applicant, not the Council, that decides what proposal to submit, the Council then has to determine that application on its own merits, whatever other form it would prefer the application to take.

The Council has in most cases 8 weeks from the date of submission to determine the application (unless an extension of time has been agreed) before the applicant gains a right of appeal.

The applicant has a right of appeal to the Secretary of State if his application is refused, or conditions are imposed which he/she does not agree with.

The Council cannot refuse an application unless it can put forward good reasons that could be supported at appeal. If it acts unreasonably, then it may have to pay costs.

If an objection can be overcome by imposing a condition, that is the appropriate course of action rather than refusal.

The Council can only take into account either opposition to, or support for, a proposal, however many people express that opposition or support, in so far as it is based on material planning considerations. It is the merits of the application in those terms, not the weight of public opinion, which leads to the decision.

**Main Contacts:**

Helen Holland, Head of Growth & Development

email: [helen.holland@blackburn.gov.uk](mailto:helen.holland@blackburn.gov.uk)

Gavin Prescott, Planning Manager (Development Management)

email: [gavin.prescott@blackburn.gov.uk](mailto:gavin.prescott@blackburn.gov.uk)

Darren Tweed, Strategy Growth & Planning Policy Manager

email: [darren.tweed@blackburn.gov.uk](mailto:darren.tweed@blackburn.gov.uk)

Consultation response, queries, and any complaints relating to unauthorised development should be sent to [planning@blackburn.gov.uk](mailto:planning@blackburn.gov.uk)