



Community Led Housing: How to Guides

6. Planning Permission and Building Control

6. Planning Permission and Building Control

Contents

1. Introduction	104
2. Planning policy	106
3. Planning policies relevant for CLH	108
4. The planning application process	110
5. Planning conditions	114
6. Planning obligations	115
7. How planning decisions are made	116
8. Timescales	117
9. What's contained in a planning application	118
10. Top tips and keys to success	119
11. Who is involved in the Planning Process?	120
12. Building Control Approval	121
13. SAB Approval (Currently Wales only)	121

1. Introduction

Gaining planning permission will be one of the major steps for almost all community-led housing projects. Whether this is permission for new houses, to adapt or alter an existing building or to simply change the use of a building to residential use.

A planning application in the simplest terms is an agreement between the applicant and the local planning authority to develop something of an agreed size that looks a certain way. Also, does it meet the requirements of any specific legislation, e.g. protection of bats.

What it is not is detail on how you would actually build something that comes later.

The key to success in planning is understanding the system at both a national and local level. Planning is different from the legal system in that it is more nuanced and flexible, and weighed up against policy based on the arguments for and against. It is often who can put forward the most convincing argument for or against a proposal.

It is widely understood that the planning system in both England and Wales is not functioning well, and has created an artificial scarcity of land which has driven up house prices to record levels. Successive governments have promised to reform the planning system but have met hurdles which have stopped their plans. The planning system is incredibly stretched, and planning departments

are almost all underfunded and understaffed. CLH groups regularly face suspicion from planners who are used to dealing with developers or housing associations. Be ready for this, you may have to win them over by selling the merits of the community-led approach.

Whilst in the past you may have had your hand held by the local planning authority, this is usually no longer the case, unless you can identify an individual in the authority who really supports your project. The planning process can be incredibly frustrating at times, with layer upon layer of bureaucracy, but it is worth remembering that the planning process is essential for protecting our countryside and the natural world. Therefore it's best to see the process as a temporary challenge to be overcome. One which at the end of, you will be well on your way to creating new beautiful community-led housing.

Assumptions and scope:

This resource assumes the creation of multiple new homes as opposed to occupying existing homes with residential planning permission. In relation to existing building, the resource assumes that changes are required to the fabric or use of the building. If you are purchasing an existing residential building and only need to make internal changes, you may not need planning permission, but in any other case you will need to consider planning policy in one way or another.

For those wanting to build individual homes, especially those connected with a rural business, there may be other relevant planning policies which are beyond the scope of this chapter. Likewise, this resource assumes for a CLH scheme, you will be applying for planning permission prospectively, i.e. before you start building. Whilst it is legally possible to

start or even complete development and then apply for planning permission afterwards (retrospectively), there is a high risk that planning will be refused, and the land will need to be returned to its previous state, at huge cost to yourself. Therefore it is certainly not recommended and not covered in this writing. For detailed planning information relevant to small scale low-impact development, see Simon Fairlie's Rural Planning Handbook.

Planning in England, Wales and Scotland

Housing including planning is devolved, so national planning guidance for Wales is written by the Senedd, by the Scottish parliament in Scotland and by the UK government in England. The planning system in Scotland functions quite differently to England and Wales, so is not covered in this chapter. Although the functioning of the planning system is broadly similar in England and Wales, the detail can differ, especially in niche areas like CLH, these differences can have a big impact on how local planning authorities see CLH proposals.

Therefore although it is useful to look across the borders at what is going on, this doesn't mean it can always be recreated exactly, and local authority planners are often reluctant to look at precedents in different devolved nations. You may have to adapt ideas to the policy which exists in your own area.

This document gives an idea of the similarities and differences between planning across the three nations.

[National Assembly for Wales \(2016\) - Research paper Comparison of the planning systems in the four UK countries](#)

Acronyms

LDP – Local development plan

PPW - Planning policy Wales

TAN - Technical advice note

NPPF - National planning policy framework

LPA - Local planning authority

LP - Local plans

NDO - Neighbourhood development order

CRtBO - Community Right to Build orders

AONB - Area of Outstanding Natural Beauty (now National Landscapes)

SSI - Sites of Special Scientific Interest

PAC - Pre-application consultation

How planning works

2. Planning policy

Wales

- **Planning Policy Wales (PPW)** – This document sets out planning policy in Wales and is updated from time to time. It provides a general framework which local authorities must use when making decisions on planning applications and when they prepare their development plans. The document looks at all aspects of development in Wales, from housing, to flood risk, to promoting Welsh culture and language through sustainable development. New editions are published irregularly every few years. At the time of writing (2024) the most current PPW is Edition 12.
- **Technical Advice Notes (TAN)** – These are further documents giving more detailed advice to local planning authorities regarding specific issues produced by the Welsh Senedd, which should be used when making decisions. Some examples which are often referenced in relation to CLH are TAN2: Planning and Affordable Housing, which details planning policy for promoting affordable housing and TAN6: Planning for Sustainable Rural Communities, which includes policies intended to promote thriving rural areas, including businesses and rural housing.
- **Circular letters** – Similar to TANs, they expand on topics in PPW and are issued by the Senedd from time to time.

- **Local Development Plans (LDP)** – These plans are created by local authorities on a regular basis, usually every 10-15 years, and contain policies and proposals which guide planning decisions at a local level. They are the most important consideration when the LPA decide a planning application. They can specify the conditions and agreements which need to be attached to planning applications, for example legal agreements protecting affordable housing (Section 106 Agreements) or including certain design features to reflect the local vernacular. In theory if a LDP allocates certain land for housing, it means the principle of building housing has already been decided, although a full planning application is still needed, the outcome is likely to be positive.

England

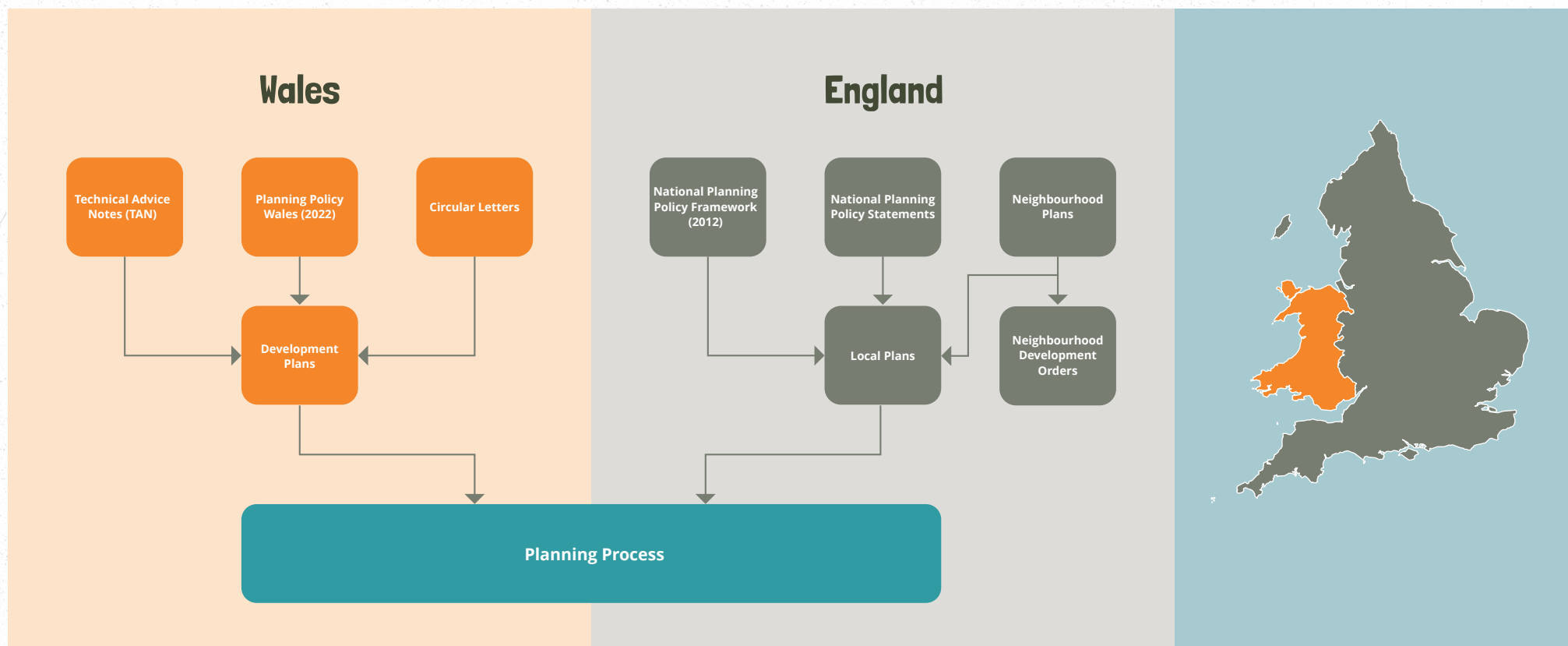
- **National Planning Policy Framework (NPPF)** – In the same way as PPW, this document sets out policies which must be taken into account when preparing local and neighbourhood plans, and are a 'material consideration' (see later for definition of material consideration) when deciding planning applications at a local level.

- **National Planning Policy Statements** – These relate only to nationally significant infrastructure such as new roads or power stations. This is unlikely to impact a CLH scheme unless you are proposing a large scale 'new-town' development.
- **Local Plans (LP)** – Local authorities must prepare local plans, which set out the strategy and vision for future development in a particular area, and provide a framework for guiding individual planning applications. It is intended that this is created in collaboration with local communities, developers, landowners and other stakeholders. It must be based on evidence, for example decisions on the amount of new housing to be allocated is directly influenced by the housing need of an area.
- **Neighbourhood Plans** – Introduced in 2011, these are additional plans prepared at a local level by members of the community which are intended to give local people more control of what gets built and where. The plans are optional, and created by either town or parish councils, or a neighbourhood planning forum, established for this purpose in areas where there is no town or parish council. They should be used by the LPA when preparing Local Plans and when deciding planning applications in that area. For a plan to be accepted or formally 'made' by the LPA, it must first be independently examined to make

sure it aligns with local and national policies, and then voted upon in a local referendum.

- **Neighbourhood Development Orders (NDO)** Policy on Neighbourhood Plans (the Localism Act 2011) also introduced the concept of NDOs, which allow either parish councils or neighbourhood forums to grant planning permission for development through a local referendum. Community Right to Build Orders (CRtBO) are a form of NDO, which can be proposed by any

community group, not just parish councils, and applies to small scale development for community benefit. Although NDO and CRtBO policies have great potential, there have been very few successful real-life examples due to the workability of the policies on the ground.



3. Planning policies relevant for CLH

Here we will look at some of the main planning policies which could apply to a CLH housing scheme. These can vary across different LPAs, so researching how these are applied in your own area by looking at the Local Development Plan (Wales) or Local Plan (England), and previous planning applications is essential.

National Planning Policies

Permitted development rights

Some small changes or alterations to a building or land do not require planning permission. The most relevant of these for CLH would be small rear extensions to an existing building, loft conversions, garage conversions or even in some cases adding extra storeys to a house. In all of these cases there are strict limitations which must not be exceeded, for example roof height and footprint. These are governed by parliament rather than local authorities, but vary across the devolved nations.

There are some exceptions to permitted development rights, for example they do not apply in designated areas such as National Parks or Areas of Outstanding Natural Beauty (now known as National Landscapes) or where rights have been removed by the LPA as a condition of planning approval (see below for detail on conditions).

Certificate of Lawful Development - Although it is not compulsory by law, you can apply to the LPA for a Lawful Development Certificate, which shows that the LPA agree that the development falls under permitted development rights. This may be required when selling a house or building, or when applying for insurance, where you may

need to prove building work meets building regulations. It could also avoid having to rectify work which the council later decides didn't fall within permitted development rights. It involves an application with plans but is usually cheaper, not as rigorous and quicker than a full planning application.

Change of use policies

All land in the UK is put into certain land type classifications. There are 4 main use classes (A-D), split into further sub-categories. Moving between these sub-categories of use classes, for example converting a commercial building to residential housing, usually requires a full planning application, even if not physically altering the site or building, unless falling under permitted development rights outlined below.

Permitted development for a material change of use

If you do not need to change the external appearance of the building and you are in England, you may be able to change the use of a building via permitted development rights. An application for prior approval to the local authority is necessary to prove permitted development rights apply, which looks at highways impact, flood risk and changes to the appearance of the dwelling, but is not as involved as a full planning application. The most commonly used permitted development conversions are:

- **Class Q conversion of agricultural buildings (England only)** – An agricultural building such as a barn can be converted into up to 3 large, or 5 smaller houses where it meets the right criteria. Broadly it must have been in agricultural use for 10 years, not located in a protected area (SSSI, AONB or National Park), not be over 450m²

and not require the external appearance of the building to be altered (which would require full planning permission).

- **Class MA conversion of commercial building to residential (England only)** – As above this can be done through permitted development rights and an application for prior approval. The building must meet requirements for example: it has been used for commercial purposes for two years prior and living spaces have natural light.
- If you are in Wales where planning rules are currently stricter around change of use, or require altering the building externally, you will need to apply for full planning permission to move between use types in every case.

What use class is a site in?

Although this sounds straight forward, and you would imagine a nice handy register being kept in the local authority offices, it is often more complicated to determine a site's land use class. Your local authority will be able to tell you the land use class they believe it be in, but this can be challenged based on evidence by the applicant or objectors, for example documentation of the history of the site and its use. Engaging with your LPA and an independent planning consultant is essential before starting work which could be seen as changing the use of a site or building.

One Planet Development

One Planet Development TAN 6. (Wales only) – A policy intended to promote small scale land based businesses in the countryside, and allows for the building of homes in the open countryside where residential planning would be refused, contingent on whether they meet certain criteria e.g. the buildings must be low-carbon, and the

land-based business must meet the essential needs of the residents based on a binding management plan submitted with the planning application. Some groups have bought land collectively and submitted a proposal collectively, notably Rhiw Las in Carmarthenshire was a pioneer of this approach. There is a hope that a similar policy may be adopted in England, but as of 2024, there have been no similar policies. There are excellent resources on the One Planet Council website [here](#).

Local Planning Policies

Conventional development

Settlement boundaries are drawn around most settlements, which define the area that development is theoretically allowable. If your site is within the settlement boundary you may be able to apply for planning for conventional market value housing. There may be requirements for a percentage of affordable housing, as mentioned below, or there may be no restrictions. On sites where there has previously been housing, this is even more likely to be looked upon positively by the LPA. When looking at these sites you most likely will be competing with developers looking to maximise their profits, so sites will often be prohibitively expensive, especially in desirable areas.

Affordable housing policies

Given the recognised need for more affordable housing, national and local policy include policies to promote increases in the supply of affordable housing.

Rural or affordable exception sites

Sites which are viewed as exceptions to planning policy for the provision of 100% affordable housing within or on the edge (adjacent) of settlement boundaries. These are usually small in scale, with restrictions in place to make sure the homes remain affordable in perpetuity (into the future), and usually need to be available for people with a 'local connection'. Although exception sites are outlined in national policy, the specifics of the policy differ across local authority planning departments. Many rural CLTs have chosen this planning route, as there is often a lack of suitable sites within settlement boundaries. It also means they are able to purchase land more cheaply than a site with planning for full development, and therefore keep housing 'affordable'.

Affordable housing requirements (Section 106 sites)

Most LPAs specify that new private market housing developments must provide a percentage of 'affordable' housing, usually between 15-35% although for certain areas this may be as high as 50%. Usually this housing is delivered by housing associations working with the main developer, but it may be possible as a CLH organisation to work with the developer to deliver their affordable housing requirement. In certain circumstances, the affordable housing can be created in a separate location to the market value housing and still count towards the developer's quota. Building 'affordable' housing is often not seen to be profitable by developers, so they can be keen for this to be provided by someone else.

Self and custom build policies

Some LPAs have aimed to support self-build or custom-build housing through requirements for larger sites to have a percentage of houses offered as self-build plots. CLH is a form of group self-build, and therefore groups have been able to make use of this percentage requirement by working with a developer on a larger market sale site. The developer provides CLH groups with serviced plots, which are then built and managed by the organisation, with or without a housing association partner. A notable example of this is Yorspace in York.

Local Development Plan (Wales) / Local Plan (England) allocations

As mentioned above, each local authority will produce a plan to guide development over a set period (usually 10-15 years), and amongst many other things, will allocate land for new housing. Sites are submitted during the 'call for sites' where they will be assessed by the LPA for suitability and housing need. If accepted, the land will be allocated for housing in the LDP/LP, which means the principle of development has been agreed. A full planning application is still necessary but there is more certainty that it will be accepted.

4. The planning application process

This section will follow the full planning application process. You may not need to go through every step depending on the scale of your proposal, but having an idea of each step is important in any case.

Informal discussion (optional)

Some LPAs may be willing to engage at a very early stage to discuss your project and the concept of a community-led housing development, even before you have identified a site. It could help when choosing sites and to identify what the LPAs priorities are and how they can be incorporated into your plans early on. For example what type and tenure of housing is most in need. It can also start to raise their awareness around CLH, which could be a new concept for many planning departments who are used to dealing with

developers and housing associations. This discussion is however at the discretion of the individual LPA, some may not have the capacity or willingness to provide this, whilst others may even have a community-led housing enabler within the department who will work closely with you. Either way, it is a sensible idea to try to reach out to your LPA asking for a meeting.

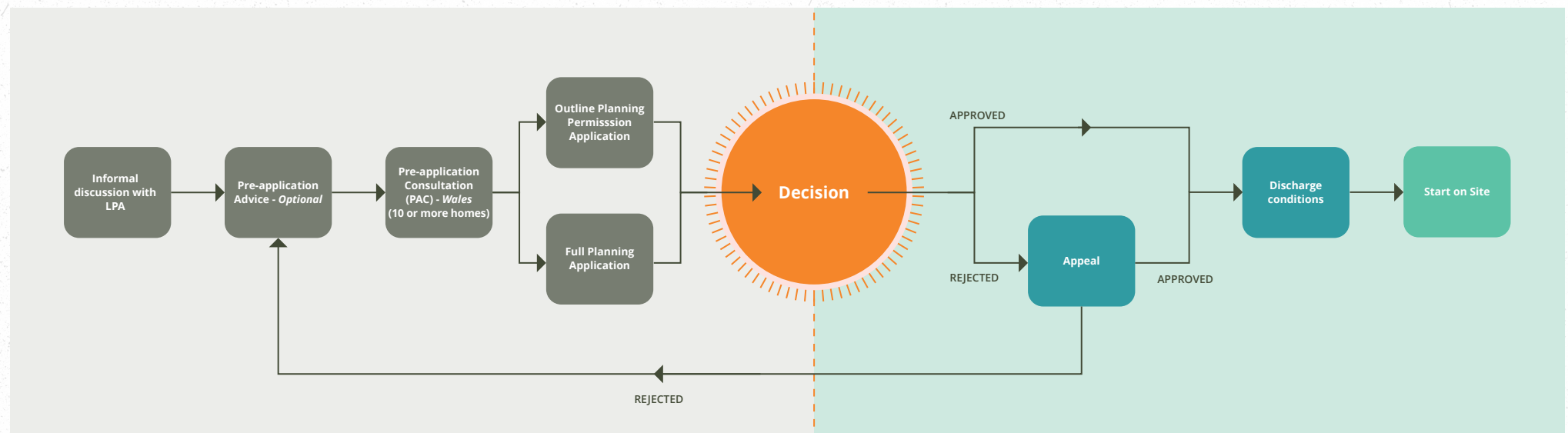
Pre-application advice (optional)

This is a more formal process which you will need to pay for. It involves at a minimum submitting a location plan showing where the site is, a plan of the site, a project brief or description, sketches of the proposal and photographs of the site and surrounding area. The more information is submitted, the more detailed and useful the response will be. In response you will be provided with a written response and offered a meeting, which is either online, in

the LPA offices or on-site.

The written response will usually contain:

- An informal non-binding opinion on the likelihood of planning being approved
- Feedback from other bodies, where relevant, on specific impacts including Highways, Drainage, Public Rights of Way departments
- Summary of relevant national and local planning policies
- What they would expect to be included in a full application, for example which surveys and reports
- A planning history of the site
- Details of similar relevant planning decisions



The fee can be significant and depends on the scale of the proposal and varies across LPAs, and can range from £700 to £10,000+ for very large developments in certain LPA areas. However this cost is almost always worth it in the long run, as it can minimise expensive delays or issues when submitting a full application. Usually you can request that pre-application advice is confidential.

PAC – Pre-Application Consultation (Wales only)

In 2015 Welsh government made it compulsory for developers to consult with local communities before submitting a full planning application, for major developments e.g. those of over 10 houses. This is intended to promote involvement of local communities in shaping applications before they are submitted, with the hope that this makes it easier for people's feedback to be incorporated into the design.

The consultation period must be a minimum of 28 days, and usually involves preparing and publicising all of the documents associated with a planning application. These can be made available online, or in physical form at a public building, for example a library. This is then written up into the PAC report showing how the consultation was carried out and what issues were identified, and how these have been considered when finalising the application, and is a requirement for submitting a planning application. Although it is possible to completely redesign a development based on the PAC feedback, due to the high cost of preparing the necessary documents, it is unusual for plans to change significantly as a result of the PAC process as developers do not wish to have to redesign their scheme, at great cost. However small changes to the design to mitigate issues may be made before submitting the application.

Outline Planning (optional)

Instead of applying for a full planning application, it is possible to test whether the principle of development would be acceptable on a particular site, before submitting full designs. Although the planning fees are usually similar to that of a full planning application, you will save on the cost of paying architects and other consultants to prepare a full application and full designs. If the principle of development is accepted, the applicant would then submit specific details known as reserved matters.

- **Reserved matters** – These are the details of the development, for example the vehicle and road access, the appearance of the buildings, the layout and landscaping, which will be decided and approved after the outline application is approved.
- **Permission in principle** – This is similar to outline planning but only applies to minor developments (nine or less homes) and is slightly simpler and marginally cheaper.

Outline planning is not always the right route, especially if there are concerns around the impact of the development, where the detail, such as landscaping, access and design, is essential to deciding whether the principle of development is acceptable.

Full Planning Application

A full planning application is essential for any building work or material change of use which does not fall under permitted development rights. For the creation of new buildings this application will be a significant piece of work, with many different documents, reports and surveys (discussed below) prepared by a multitude of consultants

and architects, alongside detailed layouts and plans of the site. The cost of preparing this, as well as the planning fees paid to the LPA, will be a large sum, so getting the application right is essential. If there are things missing, this can lead to delays or even the application being refused unnecessarily. We will look at what's contained in a planning application later in this chapter. Below is the process which planning applications will go through:

- **Validation Period** – Once the planning application is submitted by the applicant, and the fee paid, the application will go through a validation period, where the LPA check everything is present and correct. Legally they should not accept an application which does not include the essential elements. This period can range from one day to up to a few weeks. Once validated, the application will be viewable online through the LPAs planning portal usually on the local authorities main website.
- **Notifying the public** – Once the application has been validated, the local authority will contact close neighbours to the site to let them know about the application. It also involves putting up public notices about the application around the site with information on where to view the application. It may be necessary for larger developments to place an advert in a local newspaper.
- **Statutory Consultation** – A number of specialist bodies will be contacted for input, for example the parish or community council, the highways agency and the public rights of way officer. The LPA will also consult with other departments within the council, for example the housing or education departments. Members of the public are then able to review the application, either online or in person at the LPA office, and comment and make a

written objection, which again will be published online. This consultation period must last at least 21 days, before the LPA can start determining the application.

- **Conditions and obligations** - Most planning decisions will come with conditions. These are often discussed prior to a decision being made. Planning obligations, known as Section 106 agreements are private agreements made between the local authority and the developer. Usually a draft Section 106 agreement will be agreed during the application period, and signed after approval is given. Where a Section 106 agreement is required, a planning approval will not be 'released' or made official until the Section 106 agreement is signed (See [Planning Obligations](#) for detailed description).
- **Determination of the application** – Deciding whether to approve a planning application or not is either made by a 'delegated decision' or made by a planning committee. LPAs vary in which route is chosen but usually the decision is made by committee when the local ward councillor requests this (raises an interest), where a certain number of objections are received, or where the parish or community council object. Major developments, i.e. those over 10 houses, may also automatically go to committee.
 - **Delegated decision** – For minor, less controversial developments, the decision is delegated to a Planning Officer, who assesses the application and responses and makes the decision without the involvement of the planning committee.
 - **Decided by committee** – The Planning Officer assigned the application will review submitted documents, feedback, and conduct a site visit, and will make a recommendation as to whether to approve

the application or not, and whether to suggest extra planning conditions. The committee meet and review the application alongside the officer's recommendation, and make a decision. They can choose to accept the officer's recommendation, accept some of it, or go against the recommendation.

Determinations on planning applications should be made within a statutory time (exact amount depends on type of applications). However, it is worth noting that almost without exception planning departments are chronically understaffed and overworked, as are many of the statutory consultees, therefore, when planning and waiting to hear on a decision expect delays and that the statutory time for a decision will be extended. A request for an extension is made in writing and to refuse is to automatically have your application refused (see [Appeal](#) process).

Decision letter

Once an application has been approved or refused a letter detailing this alongside any conditions is sent to the applicant, and made public. If the application is refused, it will have to be because it conflicts with planning policies, and the letter will need to detail which policies these are and how the proposal conflicts with them. Even after the committee have approved the application, it is not official until this letter is issued and dated, which can be up to six weeks from the committee meeting.

Sometimes instead of refusing an application, planners will ask you to withdraw your application. This can be for many reasons and you should consider carefully whether you do this. We would advise that you seek professional planning advice from a consultant before you agree to withdraw. Declining to withdraw your application forces the LPA to list all of the reasons for their objection and these can be used

to make your representation at appeal.

Appeal

If you are refused planning permission by the LPA, or if the LPA fails to respond to a planning application within the statutory period, you can appeal directly to the secretary of state (the Cabinet Minister in England or the Senedd in Wales). This must be done within 6 months of the planning decision. Usually the decision will then be taken by the planning inspectorate reporting to the minister in England, or the Planning and Environment Decisions Wales service (PEDW) in Wales, but for large applications or those of national significance, ministers can request that they make the decision themselves, known as 'calling-in' or a 'recovered appeal'.

Non-determination appeals – If the planning authority fails to determine an application within a set time, which is 8 weeks for non-major applications, 13 weeks for major applications or 16 weeks for applications subject to an Environmental Impact Assessment, you have the right to appeal. Usually before this happens the LPA will ask you to agree to extending the decision making period in writing, which if you sign, you will waive your right to appeal against non-determination (you can still appeal the decision once it is made). Given the very long timelines associated with appeals, many applicants choose to accept an extension but it is within your power to refuse and go to appeal. We would advise that you seek professional planning advice from a consultant before you refuse an extension.

There is no fee to appeal a planning decision (unless it is felt you have abused the process), although professional costs can soon add up, for example planning consultants or planning lawyers' fees. If the appeal is successful, the judge can order the LPA to pay the costs you incurred in the

planning application.

Appealing a planning decision is relatively common, especially with more controversial or innovative schemes. Notable trailblazing housing schemes have been refused by the LPA and then had the decision overturned, and therefore planning permission granted at appeal.

Examples

- Lammas, Pembrokeshire
- Cornwall CLT, 100% affordable scheme at Newlyn

Appeals can be heard in the following ways:

- **A written procedure** – The quickest method, where the planning inspectorate appoints an inspector to hear the appeal, visit the site and make a decision based entirely on paper submissions.
- **A public hearing** – An open discussion led by the inspector, where all parties are around a table to discuss. This is usually for uncomplicated or uncontroversial schemes.
- **A public enquiry** – If either party (applicant or LPA) does not think a written procedure is appropriate, and the inspector believes a hearing is unsuitable, a full enquiry will take place. This is a court room style setting, with legal representation, witnesses and cross examination. Both sides are able to make a closing statement. The LPA will usually reassert their case for rejecting the application along with witnesses, who will then be cross examined by the applicant. Then the applicant will present their case, with the LPA and inspector questioning them. Other parties can also express their opinions, for example local objectors or supporters.

Decision – whichever of the above routes is used, the final decision is made by the inspector, the only exception being where the minister intervenes directly.

Judicial Review

There is one further step if you believe the inspector's decision to uphold the refusal of your application, and that is to take the case to the High Court. This is a long and expensive process and therefore rarely used. This can only be used to establish if the letter of the law was followed, rather than that the wrong decision was made. If the High Court decides to quash the decision, the case would go back to the inspectorate, who would then review the appeal again. There is no guarantee they wouldn't come to the same conclusion second time around.



↑ Springhill Cohousing, Stroud

Six week Judicial Review period

After a planning application is approved, there is a six week window within which third parties such as disgruntled neighbours or campaign groups are able to challenge the approval through a judicial review. This is rare due to the high cost of doing so, but it is highly recommended that work does not start on site until after this period.

Planning Approved

Celebration Time! – You have now passed one of biggest challenges for any CLH project! It has taken determination, self-belief and an incredible amount of time, but it is worth it. Every time an application is approved, it helps pave the way for other community-led housing projects and shows what groups of committed people can do when they get together and organise.

Gaining planning permission is a monumental task and should be celebrated. However, before you can actually start on site you will need to do the following:

- If you haven't already you will need to instruct your design team to complete the technical design for the scheme, this is the detail of actually how the buildings will go together.
- The planning decision will more likely than not come with conditions. This will need to be discharged, see next section.

5. Planning conditions

Very simply, planning conditions are things which you must do, or must not do when carrying out a development which has received planning permission. Conditions are technically designed to allow planning permission to be granted where otherwise it would not. These planning conditions will be stated on the decision letter saying something like: "Subject to the following conditions...". At their most basic they are that you must start work within a set time e.g. 3 years, and that you must fulfil everything stated in your application. However for large developments, there are likely to be a large number of additional conditions attached to the approval.

Planning conditions can apply at different points after planning is approved.

- **Pre-commencement** – Before you can start work on site (including ground works, and laying foundations). These pre-commencement conditions can include confirming construction logistics, agreeing details on creating road access to site, putting in drainage or parking.
- **During construction** – This could relate to the practical construction process minimising the impact on the local community.
- **Before occupation** – These conditions must be discharged before the building can be occupied. They can relate to the final finish of the building or the production of reports on for example the energy efficiency of the building.
- **Long term** – These are conditions about how the

building can be used or changed in the future. Examples include restricting certain uses of the building, for example as a holiday home, signing a Section 106 agreement or removing permitted development rights especially in National Parks or AONBs.

Discharge of planning conditions

Discharging planning conditions is essentially gaining the approval from the LPA that you have satisfactorily met their conditions. This is done through an application for 'approval of details reserved by condition' through the local authority's website, alongside evidence in the form of photos, reports or samples. The evidence needed should be specified by the local planning authority.

- **Deemed discharge** - If the LPA takes more than 6 weeks to respond, you can serve a notice of 'deemed discharge' of planning conditions, where you are stating that you have obeyed the conditions and are going to proceed as if you have had approval. Make sure however you have actually complied with the conditions, as you could land yourself in hot water later on if not. You cannot use this route for certain conditions where the consequences could be high impact, for example: flooding risk or contaminated land.
- **Cost** – The cost of discharging planning conditions is between £34 - £116 per application. Given the cost is per application not per condition, it makes sense to lump as many conditions as possible into one application.

What if you think planning conditions are unfair

There is sure to be an opportunity to review the conditions prior to the decision. This is the earliest time to negotiate a condition that seems unfair. However if this has not been possible and an 'unfair' condition has been included there are two routes to take to request planning conditions are altered or removed.

- **Appealing direct to the council** – Through a Section-73 application. You will however be arguing the case with the same planning officers who put the conditions in place, so you will need new evidence or a very convincing argument. The benefit of this route is that you are only arguing about the conditions, and the actual planning approval cannot be changed. This process usually takes the same amount of time as a full application.
- **Appealing to planning inspectorate** – You can appeal conditions in the same way as a full planning refusal. Given that this is a fresh pair of eyes, the chance of a positive outcome can be better than a Section-73, however the entire application will be re-examined, so there is a risk you will lose the planning permission all together. This process can take up to six months, during which no building work can be carried out.

What if you do not comply with planning conditions

Whilst planning conditions can seem unfair or over restrictive, the consequences of not complying are just as serious as carrying out a development without planning permission at all, and can lead to the planning approval being void, an enforcement notice being issued, and eventually criminal charges against the developer.

Political context - There is currently a tension between Central Government and local authorities, with national governments believing that some local authorities are using conditions to slow down or stop development they don't want, without having to refuse it, and therefore shift responsibility for halted projects onto developers. Extensive use of conditions which require approval from local authorities are certainly very common, and can mean long delays between planning approval and being able to start on site. Therefore there is increasing pressure to make sure conditions really are necessary, a situation which could be in your favour if you are intending on appealing to the planning inspectorate against an unfair condition. Discussing this with an experienced planning consultant is essential.

6. Planning obligations

Planning obligations are legal agreements entered into by the applicant as a condition of planning approval.

Section 106 (S106) agreements

This is usually the most crucial planning obligation to get right for the success of a development, and particularly those which are providing 'affordable' housing. Section 106 agreements are legal agreements between a developer and the local authority which essentially force the developer to make certain contributions or agreements which mitigate the negative effects on the local community which exist around a new development. After being agreed the Section 106 becomes a land charge, and remains on the land permanently. The two main uses of Section 106 agreements are:

- **Affordable housing** – Section 106 can contain details which bind the developer and every subsequent owner of 'affordable' homes, to keep the houses affordable and keep them from being sold on the open market. They also often stipulate who can live in homes, for example people with a local connection, or people over a certain age.
- **Education and health care** – The Section 106 will often require developers to make a financial contribution towards education and healthcare provision, on which the development is seen to have a negative impact. It is possible to argue against these contributions on the basis that it will make the development unviable, but this will be part of the negotiation with the LPA.
- Other uses for Section 106 agreements are:
 - Providing a certain amount of public access open space
 - Creating, making improvements to and maintaining public rights of way
 - To restrict certain uses of the land, for example restrict the land ever being used for commercial use.

Unilateral Undertaking (UU)

A UU is a simplified version of a Section 106 agreement which is offered by the developer, rather than an agreement between LPA and applicant. It is up to the LPA as to which they will accept.

Community Infrastructure Levy (CIL)

CIL payments are essentially an additional tax on new developments, to pay for infrastructure improvements in the local area such as roads, schools and affordable housing. It is based on the size and type of houses, as well

as the floor space, rather than negotiated on a case by case basis as Section 106 contributions are. The Welsh and UK governments' intention is that CIL is used instead of Section 106 contributions as it is designed to be more transparent and fair, although some LPAs are still favouring Section 106 contributions.

Planning Performance Agreement (PPA)

This agreement is entered into by an applicant and the LPA and is intended to set a timeline for particular actions or decisions by the applicant and council. It is intended for use on large or complex applications, where a closer relationship and more detailed negotiations are needed between the applicant and LPA. These agreements are non-binding, and there is no course of action available if the deadlines are missed. Obviously there is a significant fee for this service, which should be used to allow the LPA to invest more time in the application than a standard application. Increasingly however, some cash strapped LPAs have started to use PPAs as a way to raise extra money, whilst only providing the basic service and meeting their statutory timelines, which should already be covered in the standard fee. It is therefore a choice to make whether you think this is worth the extra fee, and being very clear about what is being provided for it.

7. How planning decisions are made

Planning decisions are made by weighing up the different pieces of evidence for and against a development. These factors are referred to as 'material considerations', and what counts as a material consideration, and how much weight is given to each, is influenced by national policy, local plans and the opinion of individual LPAs and planning officers. Material considerations are supposed to be in the public interest.

Planning in the UK is much more subjective than in other countries, and officers and committees have a great deal of sway over whether an application is approved or not. Understanding national and local policy is important, but also trying to identify how to convince the particular individuals within your LPA is crucial. This will need to be based on previous planning decisions, discussions with the LPA and advice from a planning consultant who has worked in the particular local authority area.

Material considerations:

Examples of material considerations include:

- **Designated areas** – Whether a site is in a national park, AONB or protected landscape will carry significant weight as a material consideration.
- **Access** – Whether the site is safe to access and whether it will cause safety issues on neighbouring roads is seen as a top priority. How accessible the site is for pedestrians, disabled people and emergency vehicles.
- **Previous planning applications and appeal decisions in the area** – Especially where an inspector has upheld a planning decision at appeal.

- **The visual appearance** – The visual impact on the surrounding area or 'street scene' and how well it fits in with the design, density and layout of surrounding buildings. In areas where the scenery is highly valued, the visual impact of the development can be assessed from many miles away.
- **Compatibility with other surrounding uses** – Whether residential housing is appropriate for the area, for example in an area of exclusively shops or an industrial area.
- **Economic benefits** – Creating jobs or supporting businesses.
- **The need for housing** – Especially affordable housing, is given much weight especially in rural areas where the options for providing affordable housing are limited.
- **Ecology** – The impact on biodiversity, whether it represents an improvement or negative impact. This includes impact on animals, plants, bats and reptiles.
- **Land quality** – The quality of the land being built on, it is high value agricultural land for example
- **Creating a precedent** – Making it more difficult to resist similar proposals elsewhere.
- **Parking** – Whether the right amount of parking is provided and if the development will cause additional parking on public streets.
- **Sustainability** – The practical sustainability of housing being in a certain place, often in relation to housing which requires a car to get to is seen as unsustainable.
- **Loss of public space** – If the building will negatively impact people's access to open space
- **The impact on trees** – Especially where there is a Tree Preservation Order (TPO) in place.

- **Flooding** – Is the area liable to flood, worsen the effect of flooding on other sites, either adjacent or further 'down-stream'.

Non-material considerations

If material planning considerations are those which concern the public interest, considerations which concern people's private interests are not usually able to be considered when making a decision.

Examples of non-material considerations include:

- **Loss of property value for neighbours** – This is a common complaint from neighbours but does not carry weight when making planning decisions.
- **Loss of view** – Again although a common complaint, this does not impact a decision unless the new building overlooks other houses in an unacceptable manner, or means a loss of privacy.
- **Personal opinions of neighbours** – Not considered
- **Public opinion** – Even if there is a strong local opposition to a development, unless their objections are material considerations, this shouldn't impact a planning decision
- **The impact of construction work** – As long as the work can be carried out safely, noise and disturbance are not considered a planning issue
- **Ownership disputes** – This is seen to be outside of the planning system
- **The applicant** – Who the applicant is and their background is not a material consideration

Objections and support

Anyone can comment on a planning application within the 21 day period after the application is publicised by the council. People can support the application, object to it, or merely pass comment. Comments along with the commenter’s address will be published on the councils website.

Only objections relevant to material considerations are considered. If it is seen that the application addresses the issue the objection raises, the LPA will also disregard it. The number of objections is not a material consideration in itself, and if multiple objections raise the same issue, this does not give extra weight to it. Most planning applications receive some objections, whilst more controversial new build schemes routinely get a large number of objections.



8. Timescales

Decision periods

As discussed local planning departments are incredibly stretched and therefore it has become normalised that planning applications are not decided within the statutory timelines (i.e. the timeframe they are legally obligated to make a decision on a planning application). To give an idea of timescales below are the statutory decision times, as well as the current averages, as of 2024.

How long does a planning approval last?

Full planning permission - Planning permission is usually valid for three to five years (the exact number of years will be included in the planning conditions) from the time the

LPA officially award planning, meaning you have to start on site within that time. However you only have to ‘start’ the work, once it is started, there is no timescale for finishing the building. Even digging trenches for foundations counts as a practical ‘start’, as long as it is in the right place and on the planning application. You do however need to discharge all pre-commencement planning conditions, before a start can happen, and therefore well ahead of the end of the stated period.

Outline planning permission – You have three years to submit your reserved matters application. After this is approved a further three year period will start.

	Statutory	Average	Notes
Pre-application advice (England and Wales)	21 days (target)	Not available	Technically no statutory timeline, but the national target is 8 weeks. LPAs often prioritise full applications for this reason.
Full Planning Application	Minor - 8 weeks Major – 12 weeks	21 weeks (Wales) 18 weeks (England)	This is for all residential applications, so likely to be more for new build housing.
Appeal: Written reps		29 weeks (Wales) 28 weeks (England)	
Appeal: Hearing		31 weeks (Wales) 26 weeks (England)	
Appeal: Enquiry		31 weeks (Wales)	

Who's who in a planning department

Planning Officers are civil service officers, employed by the LPA in three main areas:

- **Development Management Officers** – These officers assess applications and either make decisions or make recommendations. You will usually be assigned a 'single case officer', who will be fed information from other officers or bodies. These officers will be most directly involved in your application.
- **Planning Policy Officers** – These officers put together and update Local Development Plans and have a wider-view outlook, rather than being involved in day-to-day decisions.
- **Enforcement** – These officers check that people are abiding by planning policy and investigate when they believe this isn't the case.

Planning Committee Member – The committee is made of elected local councillors from within the local authority, who represent different political parties and wards. It is usually made up of around 12 members who meet every month. They should assess applications in an unbiased and open-minded way, but will obviously come at it with their own political and personal mindsets. Committee members usually have no formal training or experience in construction nor development, just an 'interest'. This can work both for and against your application if it goes to a committee hearing.

9. What's contained in a planning application

There is no comprehensive list of items which must be contained in every planning application, this will be relevant to the site, building type and scale of the proposal, but there are some documents which are essential, and some which are required in certain circumstances. Below is a list of documents which could be required for an application for a community-led housing scheme.

Essential

- **Completed application forms** – Specifically the ones from your LPA.
- **The correct planning fee** – Based on the number of homes and size of site.
- **Location plan** – The general location of the site and surrounding area at a scale of 1:1250 or 1:2500, which is clearly identifiable.
- **The redline** – This is a red line on the location plan around the land which you are to develop, and which is included in the application. This can be different to the parcel of land which you own, which can be shown on the plan with a blue line.
- **Plans and drawings** – Current and proposed site layouts, elevations (e.g. 2D views from each angle), technical drawings making clear what is being proposed.
- **Land Ownership Certificate (Notice 1)** – Showing who owns the site, and if it is not the applicant, whether the landowner has been notified. This is normally included in the form.

- **Design and access statement** – Required for developments over 1 hectare, although recommended for most new developments. This document shows off the design credentials of the proposal based on policy, and show how the site and building functions in a logical and well thought out way. It should detail how the site is accessed, how the visual impact has been reduced and landscape features have been incorporated. It needs to justify things like; where the building is situated, the layout of the site and the material choices for the building. This will usually be prepared by an architect with input from other consultants as well as the client.

Recommended

- **Planning statement** – This document ties together the whole application and makes the case for the proposal and is the chance to really sell the scheme to decision makers. It should make reference to relevant policy and the material benefits of the proposal, as well as describing how any negative effects have been mitigated or avoided. The most successful planning statements create a coherent narrative around the proposal, and show that the choices made have been deliberate and based on evidence.

Commonly included

The LPA should have told you which surveys or reports they will need to be included in the pre-application response. The list below covers the most common reports requested, though the list isn't exhaustive.

- Preliminary ecological assessment (PEA)
- Visual impact assessment
- Biodiversity survey/Protected species report

- Topographical survey
- Aboricultural report
- Flood risk assessment
- Acoustic survey
- Foul sewage assessment
- Structural survey
- Archaeological report
- Heritage impact assessment
- Lighting assessment
- Open space assessment
- Landscape assessment
- Transport assessment
- Land value assessment
- Water quality/water framework directive assessment
- Crime impact study
- Other assessments related to specific features within or close to the site (e.g. power or railway lines).

10. Top tips and keys to success

Here are some key learning points from some successful community-led housing projects around the UK:

→ **Try to identify someone in the LPA or other local authority departments to champion your project -**

Having someone who can help you to navigate the planning system, can be invaluable to starting a good relationship and working in a more collaborative way. This doesn't necessarily need to be a development management officer i.e. one who makes decisions, but could be a planning policy officer, or even someone from another department in the local authority who could make introductions. If you are lucky enough to have a housing enabler, or even a CLH enabler in the local authority, then make contact with them very early on. A close working relationship is not always possible but certainly those groups who have, have had a much easier time.

→ **Try to map who is who within the local authority -**

Councils are huge organisations with many individuals and hierarchies, and trying to map how these work, can help making connections with the right individuals who can help your project.

→ **Look at other applications** - Access the council's free 'comment on local planning applications' mapping service and look at previous/current planning applications close to your site to see what has been approved and refused. This will give you a list of what to address in your proposal and how to address it. It will also show what reports and survey were required for similar applications and how long each application took.

→ **Understand what is seen as a material consideration and what is not** - This can vary between planning authorities, so have a look at previous planning decisions nearby or within the area and look at which policies are mentioned which could also apply to your proposal. If possible start discussions with the LPA early on, and get to grips with the policies in the local plan relevant to your project.

11. Who is involved in the Planning Process?

This is a detailed list of people who can be involved in a planning application. Not all of these will be needed for every application and there may be more specialists not included here. Some companies may offer more than one of the services below as part of their package. However this is a good overview.

- **Client** – Yourself, the person or organisation who is submitting the application.
- **Planning Consultant** – Advises you about relevant policy, writes the planning statement and can project manage the planning process.
- **Architect** – Prepares plans and drawings, as well as the Design and Access Statement. They can also sometimes project manage the whole process of pulling together the application.
- **Consultants:**
 - **Highways and Drainage Engineers** (commonly referred to as Civils)
 - **Structural Engineers or Surveyors**
 - **Landscape Consultant / Architects** – Necessary where the green landscaping is crucial to the scheme
 - **Environmental Consultants** – Prepare Landscape and Visual Impact Assessment (LVIA) and Environmental Impact Assessment (where necessary)
 - **Geotechnical Surveyors** – Testing ground conditions, stability and drainage
- **Ecologist** – Conducts a Preliminary Ecological Assessment (PEA), conducts detailed surveys and creates a report of inclusion in the application
- **Tree Surveyor** – Surveys and produces the Arboricultural report
- **Transport Consultant** – Carries out traffic surveys and creates a traffic statement to highlight how the site is accessed safely and sustainably
- **Agricultural Land Surveyor** – Determines the value of land from an agricultural perspective
- **Heritage Building Consultant**
- **Local Authority:**
 - **Planning Department**
 - **Case Officer** – Assigned your application and works on it throughout the process. Makes a decision or recommendation.
 - **Planning Committee** – Make the decision on whether to approve
 - **Planning Lawyer** – Will be involved in drawing up legal documents, such as Section 106 agreements
 - **Housing Department** – May be consulted with regards housing need and other related issues
 - **Highways Department** – Will be consulted on the suitability and safety of the changes to highways or creation of access
 - **Public Rights of Way Officer** – Will be consulted on plans which effect PROWs
 - **Education and Schools Department** – Will be consulted on availability of school places, and Community Infrastructure Levy requirements

- **Authority Ecologist**
- **Drainage**
- **Recycling/Waste**
- **Government**
 - **Secretary of State** – Hears appeals against planning decisions in England
 - **Planning Inspectorate** – Can be asked to make a decision of the behalf of the Secretary of State
 - **Minister for Housing** – Hears appeals in Wales
 - **Planning and Environment Decisions Wales** – Makes the decision on the Ministers behalf on appeals in Wales

12. Building Control Approval

Building control is a separate and additional process to planning permission, designed to ensure buildings meet building regulations, and protect people's safety, health and welfare when using the building or surrounding environment. Most new-build and external alterations will require both planning and building control approval, whereas internal alterations will only require building control (unless subdividing into multiple living units).

Building regulations cover all aspects of a building, setting standards which must be met based on best practice over many years including: structural integrity, fire safety, accessibility, energy performance, acoustic performance, drainage, ventilation, protection against falls, water ingress etc.

Building control checks can be done by either the local authority themselves, or you can choose to use an approved private building control body. If a building does not meet building regulations you will be fined, and the local authority can make you or the contractor pay for faulty work to be altered or removed. There are two types of building regulation approval:

- **Full Plans Application** – Full plans of the building or buildings are submitted along with details of the work being done, which is approved by the inspector. This is usually used for new-build or larger building alterations.
- **Building Notice** – This is for smaller projects and does not require that plans are drawn up.

Inspections

Once plans have been approved, you can start work on site, but the inspector will require regular visits to site throughout the construction process to check work is of a good quality, and is being built in accordance with the plans. This is usually at set stages, which will be agreed in advance, for example:

- Commencement of work on site
- Before concreting foundations
- Before covering the drainage
- Before damp proof course is covered
- Once work is completed
- Prior to occupation

You will need to pay for this service.

13. SAB Approval (Currently Wales only)

SuDS (Sustainable Drainage Systems) Approval Body (together make SAB) is responsible for approving drainage systems for new development. The purpose is to encourage well thought out drainage solutions, reducing pressure on existing sewage network and lowering flooding risk and contamination of water ways. The use of natural management techniques is encouraged to promote biodiversity and green spaces. Examples of drainage solutions being integrated into the natural landscape include:

- Wetlands
- Ponds
- Swales
- Green roofs

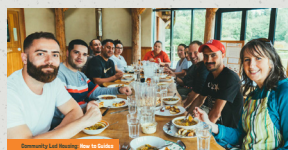
SAB is the approval body for SuDS. It has been enforced in Wales since 2019 and was set to be implemented in England in 2024 but has not yet been put in place. Again SAB approval is separate to the planning process and involves a different team within the council, but no less essential. Approval is needed for any new development with an area of more than 100m². A good architect will start incorporating SuDS early in the design process and for larger or more difficult sites may require input from a drainage engineer. Like building regulations, work must not be started unless drainage systems have been approved by the SAB.

Community Led Housing:

How to Guides



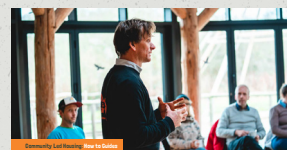
Introduction



1. Organisation



2. Site



3. Funding



4. Business Plan



5. Tenure Model



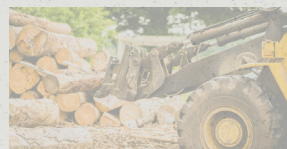
6. Planning Permission and Building Control



7. Self-build



8. Design



9. Procurement Routes



10. Construction



Tel: 01792 232 439

Email: info@downtoearthproject.org.uk

downtoearthproject.org.uk

