The Approach to Decision Making

PCAC PEDW
Penderfyniadau Cynllunio ac Amgylchedd Cymru
Planning & Environment Decisions Wales

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Version 2 updated and edited for PEDW. Reference made to Future Wales and updated references to well-being objectives and other chapters. Version 2.1: Guidance added on writing reports to Ministers. Version 2.2: References to accepting amended plans deleted November 2023. Version 2.3: Additional guidance in para 14 of Annex 1 RE differences between the proposed plans and a complete or substantially complete scheme.	

Legislation	• Town and Country Planning Act 1990 • Well-Being of Future Generations (Wales) Act 2015 • The Planning (Wales) Act 2015 • The Town and Country Planning (Referred Applications and Appeals Procedure) (Wales) Regulations 2017 • The Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2017 • Environmental Impact Assessment (Wales) Regulations 2017 • Town and Country Planning (Development Management Procedure) (Wales) Order 2012
National policy and guidance	• Planning Policy Wales • Development Management Manual and Annexes
Judgments	• Refer to relevant section of chapter
Other guidance	• Refer to relevant section of chapter

Overview

1. This chapter focuses on the writing of planning appeal decisions, but the principles apply to all types of casework.

2. In summary, best practice in decision-writing is to:

   - Structure the decision so that the main issues and the reasoning take you to a logical conclusion.
   - Ensure that reasoning is based on the evidence and shows clearly why the decision has been reached.
   - Be concise – covering everything essential whilst avoiding repetition and unnecessary detail.
   - Be unambiguous and precise, using plain language rather than jargon, ensuring that words, phrases and acronyms can be understood.
   - Keep sentences and paragraphs short and easy to follow.
   - Proof-read the decision so that it is free from factual and typing errors.

3. Being concise helps to ensure that the decision is accessible and reduces the risk of error or misinterpretation. Be mindful that:

   - The decision is addressed to the parties, who will be aware of the relevant facts, arguments and the details of the proposals. They do not need you to recite these things back to them, and you may make an error in doing so.
   - Where it is essential to describe factual information or summarise the arguments, do so briefly and preferably by weaving into your reasoning.
   - Avoid over-using phrases such as ‘in my view’ and ‘I consider’; the parties will know that you have written and made the decision.
   - Avoid unnecessary references to legislation and case law.
   - Avoid setting out lengthy or detailed quotes, whilst also being careful not to summarise documents or policies in such a way as to alter their meaning.

4. Decisions should be similar in style and presentation to other Inspectors’ decisions. Typographical errors and inaccurate or ambiguous punctuation and syntax can undermine their meaning and credibility. Developing a thorough approach to proof-reading will help to ensure that decisions are consistent, clear, concise and error-free. Proof-read as you go along, even when writing the first draft. Don’t proof-read when you are tired or in a hurry. Put the final draft aside for a day if you have time. Print it out or use Word’s read aloud facility prior to sending the final version in for dispatch.

5. The guidance in this chapter is largely applicable when writing reports to Ministers. However, there are some important differences. **Annex 7** provides advice on writing reports.

6. A checklist for writing robust appeal decisions is provided at **Annex 8** and a proof-reading checklist is provided at **Annex 9.** Decisions should also follow the principles established in the **PEDW Style Guide**.

The Main Parts of a Decision

7. The main components of a decision, in order, are as follows:

- **BANNER HEADING**: Reference numbers and essential information about the appeal, application or order; see Annex 6 for advice on s78 cases.
- The **FORMAL DECISION** is normally set out directly underneath the banner heading. If the decision is to grant planning permission, conditions would be set out here unless they are numerous or lengthy, in which case they could be set out in an annexed schedule. In casework concerning notices or orders, the usual format should be followed unless corrections, variations or modifications would justify use of the 'long-form'.
- **PRELIMINARY MATTERS/PROCEDURAL MATTERS**: only needed if necessary (e.g. doubt about nature of the proposal, relevant plans etc.).
- The **MAIN ISSUE(S)** section sets out the matters on which the decision will turn in a planning appeal or case where merits are to be determined. The main issues will usually reflect the key areas of disagreement between the main parties, and in some cases with interested parties (see Annex 5). It is important the main issues are set out clearly before you move onto the reasoning section. Well defined main issues are the key to clear and focused reasoning. They should be set out in a simple, straightforward way, focussing on the practical consequences of the development.
- In enforcement and other specialist casework where the determination is on legal grounds, the 'Main Issues' section may be preceded or replaced by one that sets out the relevant statutory or legal framework or tests.
- The **REASONS** section will include your deliberations and conclusions on each main issue. In planning casework, the conclusion for each main issue should be on the development plan and relevant national planning policy.
- Then deal with any **OTHER MATTERS** which are relevant to the case.
- If you are allowing a planning appeal, you must give reasons for imposing and not imposing any suggested **CONDITIONS**, citing relevant development plan policies. You may also need to deal with any **PLANNING OBLIGATIONS**.
- The overall **CONCLUSION** may include any necessary balancing exercise (i.e. harms vs benefits) and must also refer to relevant well-being objectives of the Welsh Ministers (see **Annex 3**).

Headings

8. Structure your decision logically, with any 'preliminary matters' dispensed with upfront, and then the main issues and reasons leading clearly to the conclusion and decision. Getting the headings right helps the reader to follow the decision.

9. It is best practice to use the standard template headings, but these may be adapted. In simpler planning cases, perhaps with just one straightforward main issue, this could be set out under 'Reasons' to help the decision flow better.

10. Try to weave any policy or legal analysis into your reasoning so that it underpins your deliberations and avoids repetition. In complex cases, however,

it may be necessary to set out lengthy or contentious policy or legal requirements under a separate heading which precedes the 'Main Issues' or 'Reasons'. Complex cases may also call for sub-headings to break up longer sections, although you should ensure that these are consistent in style.

Footnotes

11. Avoid using footnotes, which are difficult to navigate for some readers (e.g., those relying on text-to-speech software). Only use them where they are essential to aid a readers' understanding, for example in long decisions/reports in reference to documents which have been submitted to an inquiry or examination.

Preliminary/Procedural Matters

12. In many cases, there will be no need to explain any procedural or background matters. When it is necessary to explain some part of the context, it is often best weaved into the main issues or reasoning. However, a 'preliminary matters' or 'procedural matters' section may be needed if the way you are considering the case is in dispute or unclear to the parties. You may need to explain:

- The nature or scope of what is before you; in a planning appeal, for example, the description of development may need to be clarified.
- The plans on which your decision is based; for example, if there is disagreement about relevant plans.
- Variation to the details given in the banner heading, perhaps because the relevant forms gave incorrect or out of date information.
- Matters arising at the hearing or inquiry.

13. Other procedural or preliminary matters can include:

- Costs applications – subject to a separate decision.
- Whether you are making a redetermination following a successful High Court Challenge and, if appropriate, the grounds of the challenge.
- Disputes over the validity of the application or appeal, and your approach.
- Disputes over the validity of the LPA's decision. A decision notice must include all elements required by statute. If it is missing vital elements, it will not be valid, but the LPA can issue another.
- Uncertainty over the LPA's decision, for example, whether the LPA granted or refused planning permission.
- Disputes over the validity of, errors in, or corrections or modifications required to notices or orders, such as in enforcement or rights of way.
- In cases relating to outline planning applications, the matters before you and the matters reserved for subsequent approval, plus whether the plans are indicative or for illustrative purposes only, and anything relating to the outline permission which is unclear or disputed.
- In planning appeals against conditions, the type of appeal and your remit; whether the appellant is seeking to remove and/or 'vary' the disputed condition[s].

- In appeals against non-determination, including from non-validation notices, the LPA's position, any objections that the LPA has and any information which the LPA considers ought to be provided[1].
- Arguments that development does not need planning permission.

14. **Annex 1** provides advice on dealing with procedural matters which commonly arise in planning casework.

Coverage

15. It is important to decide which matters and/or arguments to address and not address in order to achieve a sound, proportionate and concise decision. The House of Lords judgement in *South Buckinghamshire DC v Porter [2003] UKHL 33* states:

    The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal important controversial issues", disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications.

16. This approach applies in all types of casework. You have three choices when faced with an issue, argument or concern raised by any party:

    - Deal with it as a 'Main Issue'.
    - Deal with it as an 'Other Matter'.
    - Do not deal with it.

17. Ensure that:

    - You only deal with what is essential, with regard to natural justice.
    - Your decision is as short as it can be and no longer than it needs to be – proportionate to the nature of the case and main areas of disagreement.

Main Issues

[1] Non-validation appeals are determined by planning officers as 'appointed person'.

18. These are the main areas of disagreement between the parties, and the issues which are or could be determinative, i.e., the matters on which your decision will turn.

19. In planning casework, the main issues will normally be clear from and reflect the LPA's reasons for refusing to grant permission. In appeals against non-determination, the LPA should state whether and why it would have refused permission in its report or statement.

20. There may be cases where the main issues do not (wholly) follow reasons for refusal. For example:

- More than one reason for refusal relates to the same issue.
- The LPA or an interested party may, exceptionally, introduce a new concern, perhaps because of a change in circumstances since permission was refused. The principle remains that any substantive matter should be a main issue; otherwise, the new concern would be an 'other matter'.
- Concerns raised only by interested parties are normally 'other matters', and may not need to be addressed at all, but are occasionally dealt with as main issues. The appellant and the LPA should be aware of interested parties' concerns, but if dealing with those as main issues would come as a surprise, then the main parties should be given opportunity to comment.
- If the LPA withdraws or does not defend a reason for refusal, you should still briefly address it and reach a conclusion e.g. 'The LPA no longer objects on the grounds of highway and having considered the views of the Highway Authority, I am satisfied that….'
- If a reason for refusal is withdrawn but there are still objections on that ground from interested parties, consider whether the issue remains of such substance that it ought to be a main issue or other matter, having regard to whether you are allowing or dismissing the appeal.
- Sometimes considerations in favour of development can form a main issue in a planning case, particularly if they could carry critical weight.

21. Defining the main issues correctly and clearly is the key to focussed reasoning which leads logically to your conclusions; you are setting out for the reader the matters on which your decision will turn. Accordingly:

- The main issues should be identified in a simple, straightforward way. Other than when citing development plan policies, avoid vague expressions which are open to interpretation. For example, use *'character and appearance'* or *'living conditions'* rather than '*amenity*'[2].
- The main issues should be framed so as to introduce and help evaluation of the key arguments. The subsequent headings, sub-headings, reasoning and conclusions should correlate with the main issues.
- You should be clear and specific about each key question for consideration. Specifying the impact can also help focus the reasoning e.g. the main issue is the effect on highway safety having regard to the demand for parking.

[2] Except for HMO cases where the term 'amenity' may provide a useful catch-all.

- The main issues should be focused on the practical consequences of the case or the substance of the issues in dispute, rather than any technical or semantic points e.g. where the parties disagree about whether the scheme amounts to *'over-development'* or *'backland development'* it is better to define the issue in terms of the effect of the development on the character and appearance of the area. However, in cases where there is a clear policy conflict e.g. houses in the open countryside, it might be more logical to frame the issue in terms of compliance with development plan policy e.g. whether the proposal conflicts with national and local policy designed to protect the countryside/promote sustainable development.
- Your language should be neutral and give no impression that you have pre-determined the outcome e.g. *'The effect of the proposed development on the character and appearance of the area'*, not, *'Would the significant bulk of the building harm the character of the area?'.*
- Any topic which is determinative must be a main issue; it could not fairly or logically be regarded as a less important 'Other Matter'.

22. Examples of main issues in planning cases are set out in **Annex 5**.

Reasoning and Conclusions

23. The Courts have held that "*the duty to give reasons here derives either from the principles of procedural fairness applied in the statutory context of a written representations appeal or from the legitimate expectation generated by the Secretary of State's long-established practice of giving reasons in such cases, or both*"[3].

24. The Supreme Court held that where there is a legal requirement to give reasons, adequate explanation is needed of the ultimate decision. There should be no suggestion that the reasoning provided by the decision-maker leaves room for genuine doubt as to what has been decided and why[4].

25. Your reasoning should take you logically to your conclusions on each of the main issues, any 'other matters' and then to your overall conclusions. It should also be 'reasonable' in the '*Wednesbury*' sense (see 'Role of the Inspector).

26. You should deal with each main issue in turn and in a logical order, starting with any overarching question of principle, or the determinative issue. It is essential that you conclude on relevant policies of the development plan and, where required, national planning policy (see **Annex 2** for advice).

27. When writing your reasons:

- Demonstrate that you have understood the arguments put to you and ensure that your findings are based on reasoning rather than assertion. In

[3] *Martin v SSCLG & others* [2015] EWHC 3435 (Admin)
[4] *Dover DC v CPRE Kent; CPRE Kent v China Gateway International Limited* [2017] UKSC 79*; Verdin v SSCLG* [2017] EWHC 2079 also discusses the need for adequate and intelligible reasons.

other words, your findings should follow from your analysis of the evidence before you – and you can signpost this by using words and phrases like ‘because’, ‘due to’, ‘as a result of’ or ‘consequently’.

- Interrogate any conflicts, contradictions or inconsistencies in the evidence, and explain how you have resolved them i.e. is it clear from your decision that you have understood the arguments put to you? Any decisive point of fact must be cross-checked against all of the evidence.
- Address the key arguments raised by the losing party or parties in relation to the main issues – weaving in any policy or legal analysis.
- Also assess, in planning cases, whether any material considerations could lead to a different conclusion from that indicated by the development plan.
- Be aware, however, that simply because a party says that a consideration is material, it is not necessarily so. Taking account of an ‘immaterial’ consideration puts a decision at risk of being unlawful.
- Discuss whether a planning appeal can be allowed by imposing conditions; and what corrections, variations and modifications may be required in enforcement notice and rights of way or other order casework.
- Be mindful of how the decision will be received by those reading it and avoid any overt or even implied criticism of the parties. Be alert to relevant personal circumstances, and be tactful to losing parties, which can include local residents who will need to live alongside unwanted development.
- Also avoid criticism of local and national policies, the nature of the locality and any comparable cases that have been drawn to your attention.

28. Pitfalls to avoid in reasoning include:

- Raising issues or evidence that would come as a surprise to the parties.
- Wavering or backtracking: your reasoning should lead clearly in one direction to a rational conclusion.
- Re-opening an issue that you have already concluded on.
- Exaggerating harm or benefits, or artificially bringing all conclusions into line; acknowledge any tensions and reach a balanced conclusion.
- Making ‘helpful comments’, perhaps to the effect that a proposal might be acceptable if amended. Such comments would be beyond your remit and could fetter future decision-makers. Your reasoning should show why what is before you is not acceptable, and the parties can then decide whether or not this leaves scope for a different approach.
- Repeating insensitive, inaccurate or potentially defamatory comments from any party.
- Making vague findings, such as a particular matter *‘adds to my concerns’*. This is because it may be unclear to the parties whether, without that *‘additional concern’*, the appeal would have been allowed or dismissed. Make it clear that the overall conclusions are based on findings on the main issues.

29. Best practice for conclusions is:

- Conclude on each main issue in the same terms that you defined the issue.

- Ensure you have taken all relevant matters into account – and not relied on considerations which are not material.
- Identify the harm and/or benefits – and the level of each, using terms such as 'severe' or 'significant'. This will allow different impacts to be weighed and show the reader why any harm is or is not 'unacceptable'.
- Any weight that you need to ascribe should also be described in terms which enable comparison, such as 'limited', 'moderate' or 'substantial'[5].
- In most decisions, avoid setting out lengthy or detailed quotes from local or national policy. It will normally suffice to identify the applicable requirements of relevant policies in your conclusions on each main issue.
- In complex planning cases, address tensions between conflicting policies and make a finding on compliance with the development plan as a whole.
- Demonstrably and separately apply statutory presumptions such as those protecting heritage assets and/or designated sites or areas of landscape or nature conservation importance.
- Set out an overall conclusion on the case. For most appeals this will be: 'For the reasons given above, I conclude that the appeal should be dismissed/allowed'.

30. With the exception of non-validation appeals, enforcement on legal grounds and LDC cases, as part of your overall conclusion you will need to refer to the Welsh Ministers' well-being objectives in general or specific terms. **Annex 3** provides advice on this.

31. A 'catch-all' phrase in your overall conclusion such as 'I have had regard to all other matters raised' can help to wrap up the decision and reassure the parties. However, any such caveat will not protect the decision from a successful challenge or complaint if you have not dealt with a material consideration that could have changed the outcome.

Other Matters

32. It is common for matters to be raised in addition to those you identify as main issues. These should be addressed after your reasoning under 'Other Matters' taking the proportionate approach outlined in *Porter*[6].

33. If you identify something as an 'other matter', this indicates that it had little bearing on your decision. 'Other matters' should therefore relate to minor matters that are not material or relevant to your decision.

34. Consequently, other matters should be dealt with more briefly than the main issues. There is rarely any need to dwell on or even mention minor matters raised by winning parties because:

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[5] It was held in *Daventry DC v SSCLG & Another* [2015] EWHC 3459 (Admin) that the Inspector erred in law by using the term 'reduced weight', since that "begs the question reduced from what to what".
[6] *South Buckinghamshire DC v Porter [2003] UKHL 33*

- It should be plain from your conclusions on the main issues that any finding on these matters would make no difference to your decision.
- Findings on such matters might fetter future decision-makers.

35. However, you must address losing parties' submissions on matters that are material or relevant, or your decision may be flawed:

    - A losing appellant may be justifiably concerned if you have not addressed any potential benefits, submissions in support, personal circumstances, comparable cases or fallback position which could have tipped the balance.
    - Likewise, a losing authority or interested party might argue that your taking account of a particular objection might have changed the outcome.

36. It may also be necessary to address minor issues raised by any party if such evidence was presented on the matter that it cannot safely be ignored; you would then note the issue and indicate why it is not central to the decision.

37. If you are dismissing an appeal, you do not normally need to reach a finding on concerns raised by third parties which you have not defined as main issues and which are not shared by the LPA. This is because whatever you conclude on such concerns, it would not lead to a different decision and it would be difficult for a third party to argue that their interests had been prejudiced. In addition, the appellant may not have thought to address the concerns in any detail, especially if they were only raised in passing and you may not have much evidence before you.

38. **Annex 4** identifies common considerations raised in planning casework and sets out how you may respond to them.

Evidence and natural justice

39. It is the parties' responsibility to put relevant arguments and information before you. Your decision or recommendation must flow from that evidence and not any external source. However, you can bring your own expertise, experience and common sense to bear in interpreting and weighing the evidence. As you stand in the Welsh Ministers' shoes, you must also be aware of your responsibility to implement national planning policy; in particular Future Wales, which is part of the statutory development plan.

40. If one party has only raised an important matter briefly, but other parties have had a chance to comment, it may be unnecessary to seek their views. However, be alert to any risk of relying on evidence which has not been seen by the parties or which one party has not had the chance to comment on[7].

[7] In *R (oao Ashley) v SSCLG & others* [2012] EWCA Civ 559, the Inspector permitted residential development on the basis of an expert acoustic assessment provided by the appellant at a late stage in the appeal. Interested parties, who had objected on grounds of noise and disturbance, did not have any opportunity to comment. The CoA held that this was unfair and in breach of natural justice.

41. Consider how the parties would reasonably expect you to address an issue. If the main parties agree that a matter is not disputed, particularly in a Statement of Common Ground, or if the matter has not been raised by anyone at all, or it has only been mentioned in passing by an interested party, it would be likely to come as a surprise for you to rely on the matter.

42. There may be occasions where you may not have all of the evidence or information necessary to reach a sound decision, such as:

- You may lack copies of documents referred to or relied upon by the parties, such as development plan policies or other decisions.
- You are aware of policies or guidance which are of significance but not mentioned by the main parties.
- There has been a material change of circumstance.
- You may lack information to address potential impacts in accordance with the Human Rights Act 1998 (HRA98) and/or the Equality Act 2010.

43. In such instances, ask the case officer to write to the parties, setting out the information that you need and giving opportunity to comment. If possible, do so in the early stages of the process, and provide the case officer with the wording of the letter. Be clear as to what the parties may comment on, and the deadline for them to respond by.

44. Even if the parties do not do so, it is usually acceptable to refer to the Welsh Ministers' own guidance or policy where relevant, because you are standing in their shoes. However, you should avoid making an unexpected reference to a fundamental policy requirement that the parties may be unaware of, particularly unrepresented parties. This includes any policy of Future Wales which you consider to be relevant, but which has not been mentioned by the parties.

45. The 2017 Regs[8] prevent the introduction of new matters that were not before the LPA at the application stage. Evidence relating to new matters will not normally therefore be accepted except in the circumstances set out in the regs.

46. However, new evidence relating to existing matters will generally be accepted. Responsibility whether to accept 'late' evidence lies with the Inspector[9]. Case officers will advise you of any late representations; it is essential to consider the risk of a rejected document containing a relevant material consideration.

47. You may be asked by one of the parties to view similar developments in the local area that have not been referred to previously. If you are minded to view these, ensure that the main parties are given an opportunity to comment on any relevance of such developments.

Material considerations not raised by the parties

[8] Town and Country Planning (Referred Applications and Appeals Procedure) (Wales) Regs 2017
[9] *Wainhomes (South West) Holdings Ltd v SSCLG* [2013] EWHC 597 (Admin)

48. Exceptionally, you may come across a material consideration (or development plan policy – see para 43) which was not raised by any party. Consider whether your concern raises an issue of such importance that it could change the outcome. If so, raise the matter with the parties and give them an opportunity to comment.

49. In cases proceeding by written representations, this may mean writing to the parties after the site visit. Note that it is not for you to make the parties' cases, and they ought to have submitted all of their evidence. There is also a risk, when raising new issues, that you 'turn over stones' and receive replies which raise more questions than answers. Only write to the parties if it is essential to do so, and in clear terms.

50. When raising any new matter orally or in writing, do so in neutral terms to avoid giving the impression that your mind is made up. Make a note of any correspondence or re-opened hearing or inquiry as a 'procedural matter' and deal with the matter as a main issue.

51. See also 'The Role of the Inspector' chapter for advice on natural justice and reasonableness in discharging your role.

Consistency

52. Consistency of decisions is vital to the integrity and credibility of the appeals system. If Inspectors reach different conclusions about clearly similar cases, this can undermine confidence in the decision-making process. Like cases should be decided in a like manner.

53. A previous decision will be a material consideration where the issues and/or circumstances are closely related. You are entitled to reach a different conclusion, even if the other case concerned the same site, but you must have regard to the earlier decision and give reasons for departing from it, describing dissimilarities in the context or evidence[10].

54. If you are presented with another decision which at least one party considers comparable, and you depart from it without identifying some point of distinction, saying that you decided your case on its merits, it would be unlikely to withstand a court challenge.

55. When dealing with a revised scheme after a previous planning appeal:

    - Identify the changes to the scheme, with a focus on any material changes or amendments designed to address previous objections.

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[10] *North Wiltshire DC v SSE* (1993) 65 P&CR 137; *Fox Strategic Land and Property Ltd v SSCLG & Another* [2012] EWHC 444 (Admin); *St Albans City and District Council v SSCLG* [2015] EWHC 655 (Admin)

- Explain whether and how such changes would or would not overcome the concerns identified by the previous Inspector.

56. Where possible, similar cases will be 'linked' or charted to 'travel together'. If this does not happen, but you become aware that a similar case relating to the site or area is being dealt with by another Inspector:

    - Ask the chart/case officer whether there is scope for both appeals to be dealt with by the same Inspector.
    - If not, ask the chart/case officer to copy whichever decision is made first to the parties in the second case, so that they have an opportunity to comment on whether the first decision would have a bearing on the second.
    - If you require further advice, contact your Inspector Manager.

57. Only refer to another decision if you consider it relevant and the parties are aware of it. If they are not, give them the chance to comment on the relevance of the other decision.

Defamatory comments

58. A defamatory or false statement is one that is made by one individual against another in an attempt to discredit that person's character, reputation or credit worthiness, communicated to at least one other person. The law recognises two kinds of privilege designed to protect freedom of speech (absolute and qualified) which provides a defence for defamatory statements made during the course of quasi-judicial proceedings, including those dealt with by PEDW[11]. Consequently, oral or written evidence submitted during appeal proceedings (or similar) may have immunity against defamation action[12]. The Courts have held that such immunity can be compatible with the Human Rights Act 1998.

59. However, such privilege would not apply to potentially defamatory statements made about individuals outside of proceedings. Inspectors must therefore ensure that they:

    - Never report what could be regarded, outside the proceedings, as a defamatory remark made by one of the parties.
    - Never make what could be regarded, outside the proceedings, as a defamatory remark in a decision, perhaps by writing something about a party which could discredit their character or reputation.

60. You should exercise caution in the way that you refer to submissions, and particularly if using closing submissions as a basis for case summaries in Welsh Ministerial casework. Be careful to edit such submissions carefully to avoid potential offence and any impression of lack of impartiality.

Seeking advice

[11] Trapp v Mackie [1979] 1 WLR
[12] White v Southampton University Hospitals NHS Trust [2011] EWHC 825 (QB)

61. When appointed to determine an appeal, you are solely responsible for what is decided. Pre-issue quality assurance reading is endorsed by the Courts, but your reasoning, judgment and conclusions must not be directed by or attributable to discussion with anyone else within PEDW.

62. Your starting point should be the Manual. If you need further advice, contact your Inspector Manager. If the parties raise complex questions on the interpretation of legislation and/or case law, you may need to seek legal advice via your Inspector Manager.

ANNEX 1: Common procedural matters in planning casework

Outline applications

1. The power to grant outline permission is provided in s92 of the Town and Country Planning Act 1990 (TCPA90) and Article 3 of the DMPWO. The outline permission is **the** planning permission for the development.

2. The TCPA90 and DMPWO allow for the grant of outline permission subject to a condition specifying those matters reserved for later approval. The five 'reserved matters' are defined as access, appearance, landscaping, layout and scale. (For information about the scope of conditions see the 'Conditions' chapter.)

3. Where layout, scale and access are reserved matters, Article 3 of the DMPWO requires information on the parameters to be given i.e. the approximate location of buildings, routes, open spaces; the upper and lower limits for height, width and length of buildings; and where the access points will be situated. If this information is not provided the appeal will be sent back as invalid.

4. When dealing with outline applications:

    - Explain that the application is made in outline; which matter(s), if any, is or are before you; and which matters are reserved for future consideration. You must deal with any matters for which approval is sought at the outline stage, assuming you have the necessary detailed plans but you must not expressly deal with any of the reserved matter.
    - Check that the matters reserved for future consideration did not change during the LPA's consideration of the application; this should be clear from the parties' statements and any correspondence between them.
    - Clarify how you are dealing with any submitted plans, particularly any labelled as illustrative or indicative. These terms tend to be used interchangeably, although 'indicative' may mean something firmer than 'illustrative'. If the plans are not labelled as illustrative or indicative, you may need to state that you are treating them as such insofar as they show details of matters which are clearly reserved for future consideration. It might be necessary to refer to the specified parameters of the development where this is relevant to the main issues to show that you have understood the application.
    - Do not treat illustrative/indicative plans as you would plans accompanying a full application. They are usually provided in an attempt to demonstrate that an acceptable detailed scheme could be proposed at the reserved matters stage – but the appellant could not be tied to such plans by condition and there may be alternative ways of developing the site.
    - However, you should take clear account of illustrative/indicative plans in your reasoning, especially where they detail the parameters of the development as required by Article 3 of the DMPWO – or if they take account of site constraints such as protected trees. You do not need to spell out what weight you attach to the plans, simply explain how they have informed your decision.

Reserved matters applications

5. These follow a refusal to approve details of reserved matters which have been submitted following an outline application. When determining such appeals:

- The template is: appeal against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
- Remember that planning permission has already been granted. Whatever may be argued by the parties, you can only consider the acceptability of the reserved matters which are before you. There is no scope to reconsider matters which were or should have been dealt with at the outline stage.
- Check that the application is consistent with the terms of the outline permission; a reserved matters application for the layout of 4 dwellings would not be consistent with an outline planning permission for 3 dwellings.
- If the reserved matters application is inconsistent, you may need to dismiss the appeal on the basis that the submitted details are not authorised by the outline planning permission. It is unlikely that you could deal with the appeal as though it relates to a full planning application, because it would have been advertised as a reserved matters application and treating it otherwise would be liable to prejudice interested parties who are unaware that they could comment on matters beyond those reserved.
- The only conditions which can be imposed when the reserved matters are approved are conditions which directly relate to those matters and do not materially derogate from the outline planning permission[13].

Failure cases

6. S78 of the TCPA90 gives a right of appeal if the LPA has not given notice of its decision on the application within the statutory period or such extended period agreed in writing. These 'failure cases' are distinguished by the lack of a decision notice from the LPA.

7. However, S78A of the TCPA90 allows for a period of dual jurisdiction from the day the appeal is lodged effectively giving the LPA 4 weeks to determine the application before jurisdiction transfers to PEDW. If the application remains undetermined the LPA will normally set out any objections to the proposal in its report or statement, and you should use these as the basis for your main issues. The LPA may also approve the application within the 28-day period whereupon the appellant is given the opportunity to proceed with the appeal under s78(i) against a grant subject to conditions, to revise the grounds of appeal or change options relating to the procedure.

8. If the LPA fail to determine the application within the period of dual jurisdiction and your decision is to dismiss the appeal, it must also be to refuse planning permission, because there has been no previous refusal.

Uncertainty as to the LPA's decision

[13] R v Newbury DC ex parte Stevens & Partridge (1992) JPL 1057

9. Occasionally there may be doubt as to whether the LPA decided to grant or refuse permission. For example, the decision might state that 'planning permission is granted' with a reason for refusal. You must exercise judgment; the test is what a reasonable person would conclude on reading the notice[14].

10. The principle is that the meaning of the permission should be apparent from its face, because that is the public document available. If the decision refers to a plan or application, that document may be used as an aid to construction – and further extrinsic evidence might be needed to resolve any ambiguity.

11. If you find that the LPA has granted planning permission, there is no right of appeal under s78(1). Any resolution by the LPA to refuse permission would be immaterial and the appeal should be turned away.

Where development has already taken place

12. S73A of the TCPA90 allows for the grant of planning permission for development already carried out ('retrospective' applications). In these cases, the parties will frequently describe the proposal as 'retention' of the building or 'continuation' of the use, but you should avoid using these terms in any formal decision to grant permission. This is because planning permission is only required for 'development' as defined by s55 of the TCPA90: the 'carrying out' of building or other operations, or the 'making of a material change in the use'.

13. Applications may be made, and then determined by the LPA, under s73 when the development has taken place. In such cases, you may need to treat the appeal as though it was made under s73A in order to 'regularise' the development. Say so under 'Procedural Matters' – having written to the parties if necessary, to ensure natural justice[15].

14. In s73A cases:

- Explain to what extent the development has been carried out.
- Explain whether the development carried out is the same as that applied for. If plans are before you, and there are material differences between what is on the ground and the plans, consider the development as shown on the plans, since that is what permission is expressly sought for[16].
- Where there are minor differences between the proposed plans and a complete or substantially complete scheme, you should only grant planning permission for a development as built if it is clear the appellant is seeking retrospective planning permission to regularise the development, and it is clear the Council has considered and consulted on the development as built. It may be necessary to go back to the parties to seek clarification. In

[14] *Newark & Sherwood DC v SSCLG* [2013] EWHC 2162 (Admin) following *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] 1 EGLR 57
[15] *Lawson Builders Ltd & others v SSCLG & Wakefield MDC* [2015] EWCA Civ 122
[16] Under Article 5(1)(c) of the DMWPO in Wales, no plans are necessary to determine such appeals. If plans are submitted, however, they should be taken into account.

all cases, the question should be whether there would be prejudice to any party in deciding on the 'as built' scheme rather than the plans. If you are dismissing, the basis of your decision should be clear, having regard to the above advice.

- Use the correct tense in your writing, using 'has' rather than 'would', to the extent that the development and the impacts of it are present.
- Avoid criticising the appellant for carrying out development without first getting permission. S73A expressly provides for the grant of the permission sought, and your role is to assess the proposal impartially on its merits.
- Consider whether minor changes to what is proposed could make the development acceptable and be secured by condition. Take care with the framing of conditions; do not use the phrase 'no development shall take place until…'.
- If the appeal is dismissed, or allowed in respect of plans but not what is on the ground, the development as is may be at risk of enforcement action. In housing cases, you may need to assess whether the human rights of the appellant and/or occupiers are engaged. However, you should avoid speculating as to whether there will be enforcement action and the prospect of that succeeding.

Linked cases

15. If two or more appeals are submitted at the same time and on the same site, they will usually be linked. Each appeal must be considered as a separate entity:

    - Decide whether to deal with the appeals in one or more decision documents. Usually they can be dealt with in one, but significantly different proposals are sometimes best dealt with separately.
    - Where you deal with both appeals in one document, amend the template and edit the whole document to reflect that there is more than one appeal. For example, both appeal reference numbers should appear in the header at the top of each page, and there will be two decisions.

16. You may need to explain your approach under 'Procedural Matters':

    - **One decision document**: *As set out above there are two appeals on this site. They differ only in [e.g. the detail of the design of the proposed extensions]. I have considered each proposal on its merits, but I have dealt with the two schemes together, except where otherwise indicated, to avoid duplication*.
    - **Two or more decision documents**: *I have determined another appeal [Ref:] which is cited by the parties/relevant because [location or development]. This appeal is the subject of a separate decision.*

Conjoined cases

17. Conjoined or 'travelling' cases involve adjacent or nearby sites and/or common or overlapping issues. The appeals remain separate entities, subject to separate decisions, but to secure consistency and efficiency in decision making

they will 'travel together' and be dealt with by the same Inspector, ideally at a joint hearing or inquiry[17].

18. Decide whether to deal with the appeals in one or more decision documents. They would normally be dealt with in separate documents, but there may be common text concerning policy and other matters:
    - **Two or more decision or report documents:** This is the preferred approach and should always be used where the sites and appellants are different, and the reasoning on some matters is common but on others not.
    - **One decision or report document:** Use this approach only where the sites adjoin, and the issues are clear and not complex. The key question is whether, on a fair reading of the decision letter, the Inspector has had regard to the considerations material to each site, has reached separate conclusions for each site, and has not allowed the fact that the appeals were conjoined to obscure the need to reach different decisions on each if the merits of either case so warranted; and has given legally adequate reasons for his decisions on each site[18].

19. If, exceptionally, you deal with conjoined appeals in one decision or report document, amend the template to reflect that there is more than one appeal; both appeal numbers should appear in the header at the top of each page. Explain your approach under 'Procedural Matters'.

20. Joint hearings and inquiries are held where issues, evidence and/or policies are relevant to both or all of the cases. If there are two or more decision documents, each should include a 'Procedural Matters' section where you refer to the other appeal(s) and describe what is in common. The appearances and document lists should be drafted accordingly.

Redeterminations

21. Planning appeal and lawful development certificate decisions may be challenged by application for judicial review under s288 of the TCPA90. Enforcement appeal decisions may be challenged by appeal under s289.

22. The effect of a successful challenge under section 288 is that the decision is quashed and the whole appeal will be re-determined. The quashed decision is treated as if it has not been made and is incapable of ever having had any legal effect. The role of the new Inspector is to re-determine the case, not review the previous decision[19].

23. If the procedure is a hearing or inquiry in s288 cases, make it clear at the event that you are re-opening the event held earlier, and that the case is to be re-

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[17] See paragraphs 2, 4 and 104 in *South Oxfordshire DC v SSCLG & Cemex Ltd* on the consistency implications of holding consecutive as opposed to joint inquiries.
[18] *Hope & others v SSCLG & North Warwickshire BC* [2012] EWHC 684 (Admin), paragraphs 32 and 33
[19] *Hoffman La Roche & Co AG v SSTI* [1975] AC 295, affirmed in *Arun DC v SSCLG* [2013] EWHC 190

determined because the previous decision was quashed by the High Court. The procedures are set out in the relevant Rules[20].

24. You should also add a final bullet point to the banner heading in s288 decisions: *This decision supersedes that issued on []. That decision on the appeal was quashed by order of the High Court.*
25. It is possible that the main parties may agree with some conclusions reached by the first Inspector. You should acknowledge this in the re-determined decision, but it is up to you how you deal with the matters themselves, because the previous decision is quashed and all matters are before you. You would need to explain your conclusions on these matters, giving reasons as to why you agree or do not agree with the previous Inspector, while avoiding surprises in the usual way.

26. In recovered appeals, the Inspector's report remains extant; it is the Welsh Minister's decision that is quashed and for redetermination.

27. In s289 appeals, the decision is not quashed upon successful challenge. If the court holds that the decision was erroneous on a point of law, it does not set aside or vary that decision, but remit the matter to the Welsh Ministers for re-hearing and determination in accordance with the opinion of the court.

28. The CoA has held, in the matter of s289 remittals, that there should be a rehearing sufficient to enable the Welsh Minister to remedy the error identified by the Court[21]. It may then be necessary to scrutinise the judgment – or the consent order, if the Welsh Minister submits to judgment – particularly if the parties are not agreed as to the scope or method of redetermination.

29. Once the parties have made representations in accordance with the Procedure Rules, the Welsh Minister decides how to make the redetermination and what matters should be considered.

Terminology

30. Be aware that even professional agents and LPA officers make mistakes in terminology. Common errors relate to:

    - The meaning of development; as noted above, planning permission is required for development as described under s55 of the TCPA90.
    - Permitted development rights (PDR) exist where planning permission is granted by the GPDO, not where permission is not required.
    - Curtilage is an area of land related to that building; it is not a use of land. A proposed change of use to 'residential curtilage' should be considered as a change of use to 'residential use'.

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[20] The Town & Country Planning (Hearings Procedure) (Wales) Rules 2003 and T&CP (Inquiries Procedure) (Wales) Rules 2003
[21] *R (oao Perrett) v SSCLG* [2009] EWCA Civ 1365, [2010] JPL 999

The person making the appeal is not the applicant

31. Ordinarily, only the applicant can make an appeal; they can instruct another person to represent them or to conduct the appeal, but they cannot transfer the appeal to another person. Any question over who the appellant is should be resolved before the site visit, hearing or inquiry. If not, continue with the event and take the following action:

    - Written representations – ask the case officer to write to the appellant to secure authorisation from them.
    - Hearing or Inquiry – ask the person appearing to promote the appeal to secure authorisation from the applicant, ideally before the event is closed.

32. See **Annex 6** for advice for how to proceed if the appellant has died.

Amended plans and proposals

33. The appeal process cannot be used to evolve a scheme[22]. Once a notice of appeal has been served, appellants seeking to vary an application from that considered by the LPA will be advised the variation is not permitted. Amendments cannot therefore be accepted. The only circumstances in which an amendment may be accepted are the correction of drawing or drafting errors which do not affect the substance of the application, or where it is necessary to ensure consistency in the information contained in the application and the accompanying documents. The decision made on an appeal must always be made in respect of the proposal and plans considered by the LPA. Should appellants wish to amend or revise a proposal, this should be done by making a new planning application to the LPA.

34. Where revised plans were submitted to the LPA before it made its decision, it is not necessary to explain that these plans are before you unless there is some disagreement or uncertainty to resolve.

35. Where revisions to a proposal are submitted as evidence to demonstrate that the reasons for refusal can be overcome, consider whether planning permission could be granted subject to conditions which resolve the matter in dispute. It would not be appropriate to do this where this would involve a change to the description of the development, because permission should not be granted for a different development to the one proposed in the original application.

36. When carrying out an accompanied site visit in written representation casework, clarify with the parties which plans were before the LPA when it

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[22] Sections 78 (4BA)-(4BB) and 195(1DA)-(1DB) of the TCPA and Article 26C of The Town and Country Planning (Development Management Procedure) (Wales) Order 2012; Section 21(4A)-(4B) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and Regulation 12B of the Planning (Listed Buildings and Conservation Areas) Regulations 2012; and Section 21(3E)-(3F) of the Planning (Hazardous Substances) Act 1990 and Regulation 13A of the Planning (Hazardous Substances) Regulations 2016.

made its decision and which were provided with the appeal. If any uncertainty remains after the site visit, seek clarification in writing.

Design and Access Statements

37. Article 7 of the DMPWO as amended requires that some planning applications, including those relating to major developments and certain types of developments in Conservation Areas or WHS for one or more dwellings, must be accompanied by a design and access statement or DAS. DAS are intended to improve the quality of design and are material considerations. Refer to the DMM for further information.

Measurements

38. References to measurements are not normally essential. The Courts would rarely criticise any lack of a reference to a specific dimension, given that you visited the site and assessed the development in the light of the evidence.

39. Any measurements specified in your decision should be qualified by terms such as ‘about’ or ‘approximately’. Exceptions are where a specific measurement has been agreed to by the parties, or for GDPO cases where a development may or may not infringe a specified dimension.

40. Avoid scaling measurements off a plan since they may be inaccurate. Make your own calculations only if absolutely essential, and double check your figures. Use metric units, ensuring that any imperial conversion is correct.

Late representations and evidence

41. The 2017 Regs[23] set out the deadlines for submitting evidence, and documents received after the deadlines will not normally be seen by the Inspector. Exceptionally, late representation can be accepted if it is in the interests of natural justice to do so and is relevant to the topic under discussion. All parties should be given the opportunity to comment on new material.

42. A conscious and informed decision must be made as to whether or not a late representation should be accepted; ascertain what it is and why it is said to be relevant. Rejecting evidence simply because it was late, or because you felt that no more evidence was required will be unlikely to stand legal scrutiny.

43. If you require essential information that has not been provided by the parties, request it in writing via the case officer.

44. If you are aware that written statements were sent back as out of time, consider whether you have sufficient evidence to reach a decision that is adequately

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[23] The Town and Country Planning (Referred Applications and Appeals Procedure) (Wales) Regulations 2017 &

The Town and Country Planning (Enforcement Notices and Appeals) (Wales) regulations 2017

reasoned and robust on natural justice grounds. Take particular care where the LPA's decision was against officer recommendation. If the statement is turned away, there may be little or no evidence to justify the reasons for refusal. If you have insufficient evidence, inform the case officer what could be accepted.

45. You must consider whether the parties should be given the chance to comment on any late representations or evidence accepted. Do not base your decision on evidence which a party has not seen, and check for any relevant correspondence on the file.

46. What happens if there is new legislation or new or emerging national or local policies? You should give the parties opportunity to comment on any material change in policy or circumstances, especially if it would affect the outcome of the appeal. Where a development plan has been adopted since the planning application was decided by the LPA, you should ask the case officer to write to the LPA to obtain the relevant policies and give the appellant an opportunity to comment, giving a deadline for submission of comments.

Arguments on the need for planning permission

47. It may be argued that the development before you does not require planning permission; you may even reach this view yourself. However, you have no power to determine this question through a s78 appeal, and this does not affect the validity of the appeal. Unless the appellant withdraws the appeal, you should decide it on its merits.

48. To ascertain whether an existing development is lawful, or proposed development would be lawful, the appellant should apply for a lawful development certificate (LDC) under s191 or s192 of the TCPA90. There is a right of appeal against refusals to issue an LDC.

49. Address any argument that express planning permission is not required as a procedural matter at the start of your decision. For example:

    The appellant has questioned whether the proposed development requires express planning permission. This matter is outside of my remit in determining an appeal made under section 78 of the Town and Country Planning Act 1990. It is open to the appellant to seek a determination under section [191/192]; any such application would be unaffected by my determination of this appeal.

50. If it argued that a specific part of the scheme does not require express permission, the same approach applies, and you should also note that you are required to consider the development before you as a whole.

Split decisions: made by the LPA

51. In such cases, the whole proposal is before you; you are not restricted to dealing only with the element(s) refused. This is because s79(1)(b) allows the decision maker, on appeal under s78, to deal with the application as if it had been made to them in the first instance. You will need to make this clear in your

decision, particularly if it is argued that the appeal relates only to the part which was refused.

52. However, you must exercise with caution the power to dismiss the appeal as a whole:

- If you conclude that the element permitted by the LPA or indeed the whole scheme is unacceptable, you must seek the comments of the parties in the interests of natural justice before a decision is issued. This will give the appellant an opportunity to withdraw the appeal and retain the planning permission which is granted.
- Be clear with the parties that if the permission granted for part of the development has been implemented, but the appeal is not withdrawn and the permission is lost, the development will be rendered unlawful and the LPA can decide whether it is expedient to take enforcement action.
- If the appeal is not withdrawn, you can proceed to make your decision.

Split decisions: at appeal

53. You have the power under s79(1)(b) of the TCPA90 to make a split decision on a s78 planning appeal, so that you permit part but not the whole of the development before you. Similar powers apply in enforcement and listed building consent appeals. The powers are discretionary; there is never any obligation to make a split decision.

54. If one of the parties asks you to consider a split decision but you decide to grant full permission or dismiss the appeal, state that you considered the option and why you decided not to allow the development in part.[24]

55. However, a split decision may be the logical outcome, even if neither of the parties requests that you consider doing so. If you are considering making a split decision:

- The development proposed must be physically and functionally severable, such that the part allowed could clearly be built and used for its intended purpose without the other part.
- Consider whether a split decision could result in any injustice to one of the parties. This would be unlikely if the merits of both parts have been considered through the appeal process and/or there are no objections to the part being allowed.
- You would need to give adequate reasoning in respect of both parts of the proposed development and reached a clear conclusion on each.
- You would need to give formal decisions for both parts of the proposed development; the template provides example wording for split decisions.
- You would need to ensure that any conditions meet the five tests strictly in relation to the part of the development you have allowed.

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[24] *Coronation Power v SSCLG* [2011] EWHC 2216 (Admin)

56. It may be necessary to consider whether a split decision will have any implication in relation to Environmental Impact Assessment (EIA) procedures.

Temporary permissions

57. S72(1)(b) of the TCPA1990 gives power to impose conditions requiring that a use be discontinued or that buildings or works be removed at the end of a specified period. It has been held that, where harm caused by a permanent development would justify refusal, the balance between reasons to grant and reasons to refuse may be altered if the development is temporary.[25] The effect of a development on its surroundings, for example, will be less if the development will have a life of [x] years instead of being permanent.

58. It will rarely be necessary to grant temporary permission for development which conforms with the development plan. It is also undesirable to impose a temporary permission for a building that is clearly meant to be permanent, and the reason for granting a temporary permission should never be that a time limit is necessary because of the effect on the amenity of the area[26]. This means that a temporary permission will normally only be appropriate where either the appellant proposes temporary development, or when a trial run is needed in order to assess the effect of the development. However, objections to a development should, if necessary, be met by planning conditions and if it is not possible to devise such conditions and the effects are unacceptable, then the only course open is to dismiss the appeal. Where permission is sought on any kind of temporary basis, or you consider that the option must be addressed, it will be necessary to:

- Carefully weigh the harm caused by the development against the benefits.
- Show that the harm would be reduced to an acceptable level and/or the benefits of the scheme should prevail because the development would be temporary rather than permanent.
- Also, in cases where a time-limited condition is suggested, carefully consider the evidence on what the duration of the permission should be.
- Impose the relevant condition(s) limiting the duration of the permission and double check the time limit and/or details of the occupiers.

Sensitive information and confidential evidence

59. If sensitive personal data or information is submitted, the publication of it in a decision or report could contravene data protection legislation. Even where this information concerns a crucial or determining matter, you must not refer to it in detail. It would suffice to say, for example, that you have had regard to the letters submitted by the appellant concerning personal circumstances, and then set out, with reasons, what weight you give to the evidence.

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[25] *McCarthy & Others v SSCLG & South Cambridgeshire DC* [2006] EWHC 3287
[26] WG Circular 016/2014 The Use of Planning Conditions for Development Management,

60. More information on data protection is provided in the all-staff PEDW guidance. If you are in doubt as to what comprises sensitive personal data, or consider it essential to refer to such information, seek advice from your Inspector Manager.

61. Sometimes parties will submit evidence that is marked confidential with the planning application or appeal. In such cases, you should explain to the parties, via the case officer or at the hearing or inquiry, that:

- There is no provision in the appeal regulations for representations to be treated as confidential. The procedural rules require evidence that is sent to the Inspector to also be sent to certain persons – generally the appellant, the LPA and any other statutory party.
- If the parties want evidence to be taken into account in hearing and inquiry cases, it must be made available for public inspection by the LPA. The rules require the LPA to allow any person to visit their offices to inspect all of the appeal evidence they produce and receive. The LPA can also determine whether it is necessary and reasonable to publish appeal documentation on their website in the circumstances.
- The LPA may make appeal documents available for inspection in written representation cases, although the rules do not require this.
- PEDW cannot control what happens to information after it is received by the LPA or other party. If the parties wish evidence to remain confidential, you cannot take it into account and it will be removed from the file[27].

Environmental Impact Assessment

62. The EIA process is governed by the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017 (EIA Regulations). The DMM Section 6.2 and Welsh Office Circular 11/99 sets out the purpose of EIA, what development is covered and the relevant stages, processes and considerations.

63. The Environmental Statement (ES) sets out the appellant's assessment of the likely significant environmental effects associated with the proposed development. Where an appellant is notified by PINS Wales of the need to prepare an ES, but does not do so, you must dismiss the appeal and refuse permission.

64. The office will allocate an Inspector to check any ES for adequacy.

65. There is a statutory obligation on the decision-maker to have express regard to the environmental information before them – particularly, but not only, that contained within the ES. It is also necessary to examine and reach a reasoned conclusion on the environmental information.

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[27] Exceptions may be made in the interests of national security and where a confidential annex to an EIA includes the location of protected species

66. In dealing with EIA development, however, you should generally avoid use of EIA terminology such as ‘significant’, ‘major’ or ‘moderate’; that is used in relation to particular methodologies and can be misconstrued in other contexts. In reporting impacts or effects, make it clear how you have determined likely harm and the judgments you have made.

67. If the findings of the EIA are the basis on which a planning judgment is made, direct reference to the relevant sections or paragraphs in the ES should be provided for the avoidance of doubt. If you disagree with the findings of the ES, provide clear reasons to support your judgment with reference to any pertinent supporting information.

68. You should ensure that any mitigation relied upon within the ES is secured, because it is designed into the development before you as ‘inbuilt’, ‘embedded’ or ‘inherent’ mitigation; or because it can be secured by other suitably robust means, including the imposition of planning conditions as necessary.

69. In April 2018, the Court of Justice of the European Union (CJEU) issued a judgement[28] that Article 6(3) of the Habitats Directive must be referred to as meaning that mitigation measures should be assessed within the framework of an appropriate assessment (AA) and that it is not permissible to take account of measures intended to avoid or reduce the harmful effects of the plan or project on a European site at the screening stage. Prior to this judgement case law[29] had established that if the risk of a significant effect could be excluded on the basis of objective information, there was no need to undertake an AA.

References to court judgments

70. You will need to address relevant court judgments where raised. However, if you consider case law to be relevant but it is **not** raised by any party:

- It will not normally be necessary to refer to case law that supports your approach. It will suffice to write your reasons so as to apply the law; there is no requirement that your decision should be didactic.
- If it is necessary to refer to case law, you would normally need to give the parties the chance to comment on its relevance.

71. Ensure that court judgments are cited as advised in the PEDW Style Guide.

References to litigation permission hearing judgments

72. A party may provide legal submissions citing a litigation permission hearing judgment. If this was delivered after the date of the Practice Direction (Citation of Authorities), you must not rely on that judgment unless satisfied that it contains an express statement that it purports to establish a new principle or to extend the present law.

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[28] Case C-323/17
[29] *Hart DC v SSCLG, Luckmore Limited & Barratt Homes Limited* [2008] EWHC 1204 (Admin)

73. If the permission hearing judgment was delivered before the above Direction, an indication that it establishes a new principle or extends the law must be present in or clearly deducible from the language used.

74. A permission hearing judgment is not authoritative and does not create a legal precedent. You should proceed with caution before citing any such a judgment in your decision or report, especially your decision or recommendation might turn on that judgment. If in doubt, seek legal advice via your Inspector Manager before determining your case.

ANNEX 2: Development Plan, National Planning Policy and SPG

1. Inspectors need to determine planning and listed building consent appeals on the basis of the development plan and policies which were in place at the time of the decision – not at the time of the event or any earlier stage.

The Development Plan

2. S38(6) of the Planning and Compulsory Purchase Act 2004 (PCPA) states: "*If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."* Inspectors determining planning appeals and applications must therefore have regard to the development plan in the first instance.

3. The development plan comprises **Future Wales** (statutorily the 'National Development Framework'), and the adopted **Local Development Plan** (LDP) (or Unitary Development Plan in a limited number of LPAs).

National Planning Policy and other WG guidance

4. Planning Policy Wales (PPW) confirms that it, as well as Technical Advice Notes (TANs), Minerals TANS and policy clarification letters, **comprise national planning policy**. PPW indicates that these, alongside other nationally produced documents such as Circulars (and similar), collectively provide the national planning policy framework for Wales.

5. All such documents may be material considerations; however, those which comprise national planning policy may be ascribed greater weight than others. Draft or emerging national policy may also be a material consideration, but any weight attached to this should take account of the extent to which it seeks to change existing policy, and the possibility of it changing upon publication.

6. The Development Management Manual sets out WG policy on how statutory procedures should be carried out. It can be updated by WG with no notice.

Supplementary Planning Guidance (SPG)

7. LPAs produce SPGs to guide the application of LDP policies. Whilst not part of the development plan, substantial weight may be given to SPG that accords with the development plan and has been formally consulted on and adopted.

Casework considerations: the development plan

8. In dealing with the development plan:

- Ensure that you have copies of all potentially relevant policies and supporting text. If not on file, ask the case officer to obtain them early on.
- Base your decision on the most relevant policies of the adopted development plan.

- Be mindful of any potentially relevant policies of Future Wales, even if these have not been cited by the parties.

9. Demonstrate in your reasoning that you have understood and applied relevant policies. Where policies pull in different directions, you will need to decide which is the most relevant and applicable[30].

10. The leading case on the application of development plan policy is Tesco Stores Ltd v Dundee City Council [2012] UKSC 13:

    '…policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context…'

    'As has often been observed, development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment. Such matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be challenged on the ground that it is irrational or perverse. Nevertheless, planning authorities do not live in the world of Humpty Dumpty: they cannot make the development plan mean whatever they would like it to mean'[31].

11. When concluding on the development plan:

    - Assess the development against the policies relevant to the main issues, not to other policies to which you may have been referred[32].
    - Clearly state how the development complies or fails to comply with the relevant policies. Address compliance or conflict against the wording of the policies, not the objectives of the policies.
    - Where appropriate, focus on specific criteria of the policies which directly pertain to the case. Use the same terminology as the policy where possible, because this helps to show that you have correctly assessed the proposal.
    - Keep your references to policy as brief as they can be; go into more detail only if the case is particularly complex, or the interpretation, application or relevance of the policy is disputed.
    - Ensure that any quote from a policy is as brief as possible and error-free, and that any précis of a policy does not alter its meaning.
    - Where policies have been relied upon which do not appear to be relevant, it is good practice to briefly explain why they are not relevant, particularly if they are in the reasons for refusal or raised by the losing party.

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[30] *R (oao Cummins) v Camden LBC* [2001] EWHC (Admin) 1116; see also *R v Rochdale BC ex parte Milne* [2000] EWHC 650 paragraph 49

[31] The origin of the Humpty Dumpty quote is *Cranage Parish Council & Others v FSS & Others* [2004] EWHC 2949 (Admin) (9 December 2004)

[32] *Tiviot Way Investments v SSCLG* [2015] EWHC 2489 (Admin)

12. If there is a breach of a particular policy, there may still be overall compliance with the development plan. Address any tension between the policies in the planning balance, before concluding against the development plan as a whole.

13. The approach is not mechanistic; you would rarely need to explicitly refer to your statutory duty under s38(6)[33]. It should be clear to any reader that you have discharged that duty in your consideration of relevant policies. You do not need to state that the development plan has been adopted unless there is a dispute about its status[34].

Casework considerations: Emerging development plans

14. Policies included in emerging or draft development plans do not have statutory force. When dealing with these in casework:

- Be clear in your decision that you know that the policies are not adopted.
- Consider whether the emerging policies significantly change the approach from those in the adopted plan. If not, they are unlikely to have any significant bearing on your decision.
- If the emerging policies propose a significant change from the adopted ones, consider what weight you should give to them.
- Seek clarification if you are unsure about the status of an emerging policy; if you remain unsure, do not ascribe weight to the emerging policy.
- An emerging LDP policy could be amended or deleted during the LDP's examination. Or, the plan could be withdrawn or found unsound. The stage of preparation of the LDP is therefore an important factor. The weight attached to an emerging policy will significantly increase if an Inspector has issued a report which finds that the plan or policy is sound.
- Double check the status of an emerging plan before sending your decision for issue or reading.

15. It may be argued that it would be premature to grant permission for development prior to adoption of an emerging plan, and doing so would undermine the plan-making process. The stage of an emerging LDP's preparation is likely to be a factor in determining whether any harm would arise from an issue of 'prematurity'; as is the extent to which a proposal would be consistent with the spatial strategy included in the emerging plan.

Casework considerations: SPG

16. Where SPG has been relied upon, matters to consider include:

- Whether the SPG adds anything relevant beyond that set out in LDP policy; if not, it may suffice to conclude against development plan policy.

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[33] *Gill v SSCLG* [2015] EWHC 2660 (Admin)
[34] *Lark Energy Limited v SSCLG & Waveney DC* [2014] EWHC 2006 (Admin); *Tiviot Way Investments v SSCLG* [2015] EWHC 2489 (Admin)

- Where the SPG adds to policy requirements, and this is relevant to your decision, have appropriate regard to it in your reasoning.
- SPG are often used to set out detailed ‘requirements’, such as minimum distances between buildings or the number of off-street parking spaces. If a proposal fails to comply, this may be an indication of harm, but that is not necessarily an inevitable conclusion. Apply your own judgment bearing in mind that the SPG does not have development plan status.
- If the SPG provides guidance on financial contributions, consider whether they would comply with Regulation 122 of the CIL Regulations 2010 where applicable. Check whether the SPG provides up to date evidence to help you assess compliance.

ANNEX 3: Welsh Ministers' well-being objectives

1. Section 3(1) of the Well-being of Future Generations (Wales) Act 2015 (WFG Act) requires public bodies to carry out sustainable development. Section 3(2)(a) states that public bodies must publish well-being objectives that are designed to maximise its contribution to achieving each of the well-being goals.

2. Inspectors are bound by the **Welsh Ministers' well-being objectives**. These are published or reconfirmed after each Senedd election[35]. With the exception of non-validation appeals, enforcement on legal grounds and LDC cases, the Welsh Ministers' well-being objectives must be referred to in your decision. There is, however, no requirement to refer to 'well-being goals', as the Welsh Ministers' published well-being objectives are designed to accord with these.

3. If a specific well-being objective has been raised by any party, you should address it directly and weave it into your reasoning. Otherwise, it is acceptable to refer to one of more of the objectives in a generic paragraph as part of your conclusion, as follows:

   In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards [one or more of the Welsh Ministers' well-being objectives] [the Welsh Ministers' well-being objective to [e.g. make our cities, towns and villages even better places in which to live and work]].

If a development complies with one objective but conflicts with another

4. It is sufficient to conclude that a development accords with an objective or objectives and there is no need to balance that against any conflict with any other objective. However, where this occurs Inspectors should carry out the weighing exercise as normal.

5. The WFG Act does not place any one goal or objective above another and there is no need to approach a balancing exercise any differently. For example, in a wind turbine case you may conclude that the proposed development complies with the objective to support the transition to a low carbon and climate resilient society, but that this is outweighed by conflict with the objective to manage Wales' natural resources to support long-term wellbeing because of an adverse impact on a protected species.

6. The WFG Act only requires public bodies to act in a manner which contributes towards the well-being objectives. Where a proposed development clearly does not contribute towards a particular objective, you may remain silent in relation to that objective.

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[35] The current well-being objectives are set out in the 2021 to 2026 Programme for Government.

ANNEX 4: Other considerations in planning casework

1. The courts have stated that "*In principle…any consideration which relates to the use and development of land is capable of being a planning consideration. Whether a particular consideration…is material in any given case will depend on the circumstances*"[36].

2. Some material considerations, including national planning policy, may carry great weight and may lead you to determine an appeal other than in accordance with the development plan. Other considerations may not be so central to your decision but will still be material and need to be dealt with. Considerations which carry little weight can be dealt with very briefly. Any which could not bear on your decision might not need to be mentioned at all.

3. **Avoid pronouncing which considerations are and are not material to the decision: that is a matter for the courts**. However, the weight, if any, which should be given to a particular consideration is for the decision-maker's discretion[37]. Indicate clearly why a particular matter has not been sufficient to outweigh your other findings or to be determinative, if that is your conclusion.

Precedent: existing developments and previous decisions

4. Parties often refer to other developments, commonly seeking to demonstrate that a precedent has been set, that there is enough of the type of development locally, or that the kind of development is harmful. Points to consider include:

   - Whether you can see the development on your visit; allow time to do so if you are given the address and it is reasonably close to the appeal site.
   - The weight you would give to the other development; this may depend on factors including its proximity to the appeal site, whether it is part of the local context, similarity to the appeal development, and whether it was permitted in similar circumstances.
   - On its own, however, the approval of comparable development would rarely be sufficient reason to permit something unacceptably harmful.
   - Unless you have the evidence, do not assume that nearby development has planning permission or is lawful. If the authority says that the development is unauthorised, you can assume that to be true, but do not speculate as to whether enforcement action will follow or succeed.

Precedent: impact of the proposed development

5. It may be argued that allowing an appeal and granting planning permission would set an undesirable precedent and make it difficult for the LPA to resist similar development elsewhere.

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[36] *Stringer v MHLG* [1970] 1 WLR 1281
[37] *Tesco Stores Ltd v SSE & Others* [1995] UKHL 22

6. Your starting point should always be that each planning application and appeal is determined on the basis of current planning policy and the merits of the case – and you should state that this is the approach that you have taken.

7. If you are allowing an appeal as an 'exception' to policy, it is essential that you give clear and case-specific reasons as to why, so that your decision is not seen as setting a generalised precedent.

Fallback

8. The potential exercise of PDR or an extant planning permission may be claimed as a 'fallback' position which justifies or helps to justify a development. In such cases it is likely to be argued that the alleged 'fallback' would have similar or worse effects than the appeal scheme.

9. In such cases, you will firstly need to determine whether there is a greater than a theoretical possibility that the fallback development might take place.[38] You will need to consider:

    - Information on the nature of the alternative uses or operations, and how this compares with the appeal development; and
    - Evidence as to the likelihood of the alternative use or operations being carried out or completed.

10. If the fallback position represents a realistic prospect, address the weight that it carries, on the basis of:

    - Whether it could or would cause more, less or similar harm than the proposed development, with regard to any conditions you could impose on the appeal scheme.
    - Whether the effect of the fallback position is sufficient – on its own or with other considerations – to justify allowing development which you have found unacceptably harmful.

11. If it appears that the fallback position is realistic and would be worse than the development before you, this might lend support to a decision to allow the appeal – unless the following circumstances apply:

    - It is physically possible that the appeal and fallback developments could both be carried out.
    - The appeal development would cause such harm that it cannot be justified.
    - If the fallback position arises from an extant planning permission, there is an impediment to that being implemented.
    - If the fallback position arises from PD rights, there is an impediment to their being exercised – including that prior approval is required but not applied for.

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[38] *Gambone v SSCLG & Wolverhampton CC* [2014] EWHC 952 (Admin)

12. A lapsed planning permission could not be lawfully implemented, and would only represent a fallback position if it would likely be renewed. Questions to consider are:

- Whether the appellant has submitted a fresh planning application.
- Whether circumstances have changed since the permission was granted.
- Whether permission would likely be granted in the same terms now.

13. Another fallback argument may be that an existing or proposed use or development is or would be lawful – because it is immune from enforcement, or it already has or does not need planning permission.

14. If a LDC has been granted for existing or proposed development, you should take this on its face, bearing in mind that 'lawfulness is conclusively presumed' under s191(6) or s192(4) of the Act. The LDC ought to specify the existing or proposed development that is found to be lawful.

15. If there is no LDC, there is no scope under s78 for an Inspector to determine whether any use or development is lawful. You could not ignore arguments over lawfulness in this situation but would normally ascribe little weight to this.

Common considerations in planning casework

16. Arguments and concerns which commonly arise in casework, and examples of questions you may wish to consider in relation to them, are summarised below.

17. **Property values:** the courts have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighboring property or loss of private rights to light could not be material.

18. **Right to a view:** as observed in *R (oao Cummins) v Camden LBC & SSETR* [2001] EWHC Admin 1116:

'The private view from a window is not of itself regarded as a planning matter. There may well be a public interest in the protection of the character of an area which may be affected by a development and the impact on a view from a window may also be reflected in a wider loss of residential amenity; indeed in certain circumstances the change of view for an individual may have an impact to such an extent on the residential amenities enjoyed by the property that it does constitute a planning consideration. But normally a change of view from for example, a view over green fields to a view over a new housing estate, is not regarded as a planning consideration even though it may have a financial impact on the value of the houses which lose the view over hitherto open land. The operation of the planning system would have to change if such an impact is regarded as determining a civil right by reference to the value of the property, and yet cannot of itself be considered relevant.'

19. **Damage to property:** even if there is substantive evidence that the proposed operations or use would be likely to damage another property, this would normally be covered under separate legal rights.

20. **Disturbance during construction:** consider how long this would last and how severe any effects would be. Where there would be significant but temporary harm, this can normally be mitigated by imposing conditions to limit construction hours and/or require a construction method statement.

21. **Inadequate drainage:** address whether there is firm evidence that the proposed development could not be adequately drained. Drainage is capable of being a main issue, where inadequate drainage could result in flood risk or environmental damage, but this is often not the case.

22. **The planning officer recommended approval, or pre-application discussions were favourable:** this would not normally affect your consideration of the planning merits of the case. LPAs are not bound to accept the recommendations of their officers and your assessment should be based on an impartial assessment of the planning merits. If the appellant considers that it was unreasonable for the LPA to refuse permission and this caused them to incur the wasted expense of an unnecessary appeal, they may apply for costs.

23. **Inadequate capacity in local services such as GP surgeries or schools:** Consider whether there is firm evidence of local problems that might be materially exacerbated by the appeal development, and any proposed mitigation measures, e.g., via a s106 planning obligation.

24. **Fear of some potential adverse effect:** The courts have long held that fear of crime or adverse effects on health can be material considerations, but there must be a reasonable evidential basis for that fear. Unjustified fear motivated by prejudice cannot be ascribed weight. Where there is evidence to support such fears, you should ascribe weight according to the quality of the evidence as to whether it is reasonable to fear that development would have the adverse effects[39].

25. **Land ownership:** an appellant does not need to own a site in order to apply for permission to develop the land, and some alleged problems may properly fall to be considered as relating to private legal rights.

26. **The issue is not relevant because it is covered by other legislation**: only agree if you are sure, and ideally this is agreed by the main parties. Check the scope of other legislation and whether the considerations are the same as under the planning regime. For example, it may be clear that development would create unacceptable noise in planning terms, even if it would not or might not be a statutory nuisance.

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[39] In *West Midlands Probation Committee v SSE* (1997) and *Newport CC v SSW* (1997), fear of crime and harmful effects on health respectively were material considerations. In *Smith v FSS* (2005), fear of crime was not justified.

27. **Welsh Language:** Considerations relating to the use of the Welsh language may be material. However, no additional weight should be given to the Welsh language above any other material consideration and decisions must be based on planning grounds only and be reasonable.

28. **Personal circumstances:** It will sometimes be claimed that the personal circumstances of the appellant and their family; personal hardship; or the difficulties facing a particular business would justify or help to justify a proposal. If so address whether such arguments outweigh – on their own or with other considerations – any harm that you have found, with regard to whether permission is sought or could be granted for a temporary development.

29. **Human Rights:** The Human Rights Act 1998 has implications for the planning system. The specific Articles of the ECHR relevant to planning include Article 6 (Right to a fair and public trial within a reasonable time), Article 8 (Right to respect for private and family life, home and correspondence), Article 14 (Prohibition of discrimination) and Article 1 of Protocol 1 (Right to peaceful enjoyment of possessions and protection of property). It will usually only be necessary to address human rights where it has been specifically raised by the appellant or a third party. For more guidance see the 'Human Rights and the PSED' chapter.

30. **Community Benefit Funds:** it was held in *R (oao Wright) v Forest of Dean DC* [2016] EWHC 1349 (Admin) that financial contributions which relate to such funds would **not** usually be material considerations unless a relevant policy gives weight to them. Contributions should not be sought where they are not considered necessary to make the development acceptable in planning terms. A community benefit fund may help to increase community support for a development, but this is an indirect effect rather than consideration in its own right.

ANNEX 5: Examples of main issues in planning casework

These are examples only. Tailor the main issues to fit the case, with regard to relevant considerations.

Character and appearance

- The effect of the proposal on the character and appearance of [Ty Mawr and its surroundings] [the surrounding residential area].
- The effect of the proposed garage on the street scene within Buckley Road. (NB use character and appearance OR street scene – NOT both.)
- The effect of the proposal on the character and appearance of the surrounding area, having particular regard to its location in the [National Park] [AONB] [SLA] [Heritage Coast].

Trees

- The effect of the proposed removal of the protected beech tree on the character and appearance of the surrounding area.
- The effect of the proposed development on the character and appearance of the surrounding area, including the effect on [protected trees/ the adjacent oak tree].

Historic assets

- Whether the proposed development would preserve or enhance the character or appearance of the Mold Conservation Area.
- The effect of the proposal on the character and appearance of the surrounding area, including the setting of the adjacent Conservation Area.
- Whether the proposal would preserve the listed building [or its setting] [or any features of special architectural or historic interest which it possesses].

Living conditions

- The effect of the proposed [development/building/extension/use] on the living conditions of nearby occupiers.
- The effect of the proposed [development/building/extension/use] on the living conditions of the occupiers of [specified property] with regard to [privacy/outlook/sunlight/daylight/noise/odour].
- Whether the proposed development would provide acceptable living conditions for future occupants with regard to [privacy/outlook/sunlight/ daylight/noise/odour/the size/design of the accommodation].
- The effect of any increased use of the access on the living conditions of nearby residents, with particular reference to noise and disturbance.

Highway safety

- The effect of the proposed development on highway safety along Gwernmynydd Road.
- The effect of the proposed access on highway safety, with particular reference to visibility at the junction with the public highway/Hafod Lane.
- The effect of the proposed development on highway safety, having regard to the demand for car parking.

Flood risk

- Whether the proposed development would be safe from flooding for its lifetime without unacceptably increasing risk of flooding elsewhere.
- Whether the proposal represents an acceptable form of development having regard to its flood zone location and the provisions of PPW and TAN 15.
- Whether the site is or could be suitable for the proposed development, with regard to national planning policy which seeks to direct new development away from areas at the highest risk of flooding.

Retail

- The effect of the proposed [development/use] on the vitality and viability of the [] centre.

Sustainability of location (e.g. outside settlement boundaries)

- Whether the proposal would result in a sustainable pattern of development, having regard to its accessibility to local services and facilities.
- Whether or not the proposal would provide a suitable site for housing, having regard to the principles of sustainable development.
- Whether future occupiers of the development proposed would be provided with adequate opportunities to travel by means other than the private car, so contributing to sustainable patterns of development.

Infrastructure/Financial contributions

- The effect of the proposed development on the provision of [education/ community facilities/open space etc] in the area.
- Whether the proposed development would make adequate provision for any additional need for [education/community facilities/open space etc] which would arise from the development.
- Whether the proposal makes adequate provision for affordable housing.
- Whether a financial contribution is necessary to provide [education/public transport/community facilities/waste management facilities] in the area.

HMOs/Housing

- The effect of the HMO on the character and amenity[40] of the area.
- Whether there is an essential need for a dwelling to accommodate a rural worker.
- Whether the proposal makes adequate provision for affordable housing.

Conditions

- The effect of varying or removing the [disputed condition[s]] [planning obligation] on [the character and appearance of the area] [heritage assets] [living conditions] [highway safety] [flood risk] [trees] [protected species].

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[40] Although discouraged elsewhere, in relation to HMOs the use of the term 'amenity' can provide a useful catch-all to cover such things as waste management, litter, bin storage, etc. whilst keeping the framing of the main issue succinct. If taking that approach, the specific issues under consideration in the case must be made clear in the reasoning.

ANNEX 6: Guidance on the banner heading, case details and description of development

General points

1. Ensure that the correct template is used, the right Act or Statutory Instrument is referred to, and that the case details are accurate in both the banner heading and any formal decision.
2. It is up to you which qualifications and professional memberships to record. Non-practising solicitors should use the term 'Solicitor (non-practising)'.
3. Do not add the 'Decision date' – the case officer will do this at the point of issue.
4. The LPA's name and decision date should be taken from the decision notice.

Address

5. In planning appeals, the site address should be taken from the planning application form ('site address'). Do not use the applicant's name and address on the application form, or from the appeal form.
6. However, if the site address on the application form is misleading or incorrect, use a more accurate address, taken from the LPA's decision notice, or the appeal form, but explain briefly why you have done so in a procedural paragraph.
7. It is helpful to add the postcode even if it is missing from the application form. If you need to check the postcode accuracy, use the Royal Mail on-line checker.

Name of appellant(s)

8. In planning appeals, the name of the appellant(s) should usually be taken from the planning application form. Use the company name if one is given.
9. If there were two applicants but only one is named on the appeal form, the appeal proceeds only in that one person's name. They are the 'appellant' singular.
10. If the applicant is not the appellant, this should have been picked up by the case officer and the appellant's name confirmed in correspondence. If not, ask the case officer to seek clarification/agreement from the parties.
11. If the applicant has died, the role of the appellant can only be taken on by someone who has specific legal authority to do so (often the executor). In such circumstances you should ask the case officer to determine how to proceed.

Planning application reference number and date

12. The planning application reference should be taken from the LPA's decision notice, or their report in failure cases.
13. This date of the planning application should be taken from the 'declaration' part of the planning application form. Do not use the date on the decision notice or appeal form, which often reflects the date that the application was validated, and not when the application was made.
14. Cross-check the 'declaration' date with the 'received/validated' date on the decision notice. If the 'declaration' date is obviously incorrect, or omitted, use the 'received/validated' date instead, but you must change the wording in the banner heading (and formal decision) to reflect this.

15. If you cannot identify a suitable date, state ‘undated application’.

The development proposed

16. The description of development in the banner heading should come from the planning application form and generally be a direct quote.
17. Do not be tempted to ‘tidy up’ descriptions of development. Minor corrections to punctuation or spelling may be made, or missing ‘the’s or ‘a’s inserted, but only if the meaning would otherwise be unclear.
18. You should assume that permission is sought for that stated on the application form. If you allow the appeal having altered that description without the parties’ agreement, the development permitted might not be what was applied for.
19. If you wish to distance yourself from quirky wording, adjust the banner heading to state: ‘*the development proposed is described as…’*
20. If the descriptions don’t match, check whether the appeal form confirms that the appellant has assented to an amended description used by the LPA. If the change is minor, use the *original* description in both the banner heading and the formal decision. However, if the change is significant and you are allowing the appeal, use the *original* description in the banner heading and the *revised* description in the formal decision.
21. If the original description of development omits some important feature or there is disagreement over the scope of the application, explain this as a procedural matter: E.g.: ‘*Notwithstanding the description of development set out above, which is taken from the application form, it is clear from the plans and accompanying details that the development comprises […]. The LPA dealt with the proposal on this basis and so shall I*.’
22. If the description of development is unclear on the application form, leave it as it is but clarify its meaning as a procedural matter. Give reasons for your interpretation and state that you have considered the appeal on this basis. The only circumstances where a different approach would be justified is where:
    - The description is inaccurate or wholly vague – in which case, you can adopt the LPA’s decision instead, so long as this is correct and clear.
    - A revised description was agreed by the LPA and the appellant, and the application was determined on that basis; this is usually where the proposed development was changed during the application process.
    - The description does not, in fact, describe ‘development’ – or it includes superfluous information, such as the site address, which can be deleted.
23. Uncertainties regarding the description of development should be clarified at any hearing/inquiry or, in written cases, by referring back to the parties.
24. If you adopt a different description of development, this should be used in any formal decision to grant permission. Even if you have secured the main parties’ agreement, you will need to explain in a procedural paragraph why the decision relates to a different description of development from that on the application form and banner heading.

ANNEX 7: Reports to Ministers

1. Always keep in mind that you are making a recommendation and not a decision. Ensure that the key parts of your report are framed in these terms.

2. Write your report using the structure set out in the Dotdocs templates.

3. As the final decision is the Minister's you should take care to include and address any points a party considers important to their case. However, you should also aim for as succinct a report as possible. Writing the appraisal, recommendations and conclusions before the background information may help to ensure that the focus of the report is only on those key matters that need to be fully explained. Below is some advice on the level of detail to go into in individual sections.

Policies

4. The main relevant policies should be listed and where there is a particular need to do so, perhaps because of complexity of interpretation, a summary of certain policies may be added. The Ministers know their own national policy/legislation and will not need a detailed summary, but pertinent points can be summarised or referenced in your appraisal.

Summary of the main parties' cases

5. It is not necessary to cover every issue raised. A covering sentence to state that the summaries represent an overview or gist of the cases would show the reader that not all matters are summarised. Conclusions on technical matters need be no more than the final conclusions reached. Summaries of methodologies or data used are not necessary. Notwithstanding this approach, where you will be relying on a particular point, conclusion or methodology in your appraisal of the case, this should be covered in the summary.

Representations

6. There is no need to reference every individual third party. Instead, a summary of the approximate numbers of representations received with a bullet point approach similar to an LPA officer report setting out the matters raised would suffice. Individual responses from statutory consultees should be summarised individually but again could be bullet points.

7. Where multiple consultations/representations have been sought (for example on amendments/additional information etc) there is no need to reference earlier responses but just report the final position. A sentence to explain this approach should be included.

Matters agreed at events

8. Reports should reference any issues which were agreed at events.

ANNEX 8: Checklist for writing a good decision

Preparation and style

- Ensure that you **fully** understand the proposal; the reasons for refusal and LPA's case; and the appellant's case.
- Read all letters from interested parties and understand issues raised.
- Seek any missing or further information if necessary, including in relation to relevant Human Rights and/or PSED matters.
- Short, concise decisions are less likely to have errors.
- Use plain English and simple, unambiguous words.
- Avoid using double negatives – too easy to omit an important "not".
- Be diplomatic.
- Avoid making helpful comments.

Factual matters

- Correct template and details in the banner heading.
- Allowed/dismissed – are they the same in both decision and conclusion?
- Check that the following are correct:
  - References, names, addresses, dates.
  - LPA and parties' names.
  - Policy numbers/references.
  - Page and paragraph numbering (check also for missing text).
  - Compass points (check that plans referred to are correctly oriented).
  - Plan references (if amended, clarify which revision you are dealing with).
- Cover any necessary matters in a procedural/preliminary section.

Reasoning and conclusions

- Clearly define the main issues in a specific and neutral manner.
- Set out reasoning on each main issue, covering the relevant arguments made by the main parties.
- Make clear and justified findings.
- Reach a firm conclusion on each of your main issues, against the relevant development plan policies (and other policy or guidance where relevant).
- If necessary, balance any findings that would weigh for and against the proposal and reach an overall conclusion, including whether the proposal is or is not in accordance with the development plan when read as a whole.
- Ensure policies are accurately and concisely summarised.
- Show that you have had regard to any statutory requirements (but not necessary to state exact sections of Acts, etc).
- Where necessary, state whether or not LDP policies are consistent with or in conflict with Future Wales and PPW.
- Where necessary, ascribe weight to emerging plans, policy or guidance.
- Address compliance of any SPG with regulatory requirements if contested, and clarify the weight given, if it adds anything.
- Deal with all of the principal points raised by the losing party/parties.

- Cover any relevant Human Rights and/or PSED matters.
- Where character/appearance is a main issue, briefly establish the existing character/appearance first before assessing proposal against it, particularly in Conservation Areas (but avoid too much unnecessary detail).
- It is not enough simply to express a view on any matter: you must say why.
- Deal with any relevant previous appeal decisions referred to. If reaching a contrary conclusion, you must say why.
- Where important, differentiate between matters of fact and those of personal judgement/opinion.
- Do not theorise or make unsubstantiated assumptions.
- Don't neglect interested parties' views, particularly if relevant or well-researched, but these should be material considerations[41].
- Do not be afraid of making third party views a main issue, if appropriate. However, consider going back to the parties if the LPA did not refuse on that ground.
- Dismissing a failure case? You must refuse planning permission as well.
- Beware missing "not"s and inadvertent double negatives.

Other areas

- Proposals in outline: Clarify what matters are reserved and status of indicative details/parameters.
- Planning obligations: Check whether these are necessary, are related to the proposed development, and related in scale and kind, and therefore meet the tests set out in Section 122(2) of the Community Infrastructure Levy Regulations 2010 and Circular 13/97. Don't dismiss appeal simply through lack of one; consider whether necessary and, if so, identify the harm that would arise without one. If allowing, state that you have taken the S106 into account and the weight given to it in coming to your decision.
- Do not include matters likely to come as a surprise to parties without first canvassing their views.

Conditions

- Check that conditions comply with the tests in Circular 016/2014.
- Include reasons why you have/have not imposed any conditions suggested by the LPA and other parties, citing relevant development plan policies.
- Check for conditions suggested by statutory consultees and interested parties; avoid imposing conditions that would be a surprise.
- Check that you have imposed all the conditions that you said you would, including any described in reasoning.
- Do not add your own without canvassing the parties' views first.
- Check that opening/closing times make sense, using 24-hour clock.
- Refer to precise days of the week and avoid the terms weekday/weekend.
- Don't forget implementation clauses. Where approval of details needed, ensure condition stipulates approval in writing by LPA.

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[41] The Courts have ruled that there is no need to cover all issues raised.

ANNEX 9: Proof-reading checklist

Check whether all and any factual details are correct including:

- Appeal – whether ‘decision’ or ‘decisions’ (for linked cases)
- The date of the site visit, hearing or inquiry.
- site address / appellants name – should be from application form
- Appeal type – s78 etc.
- Outline application – applicable or not
- The case reference number(s) in the headers.
- The website reference in the footers.
- Plans, policies and other documents – including status of an emerging plan.
- Compass points, measurements, dimensions and distances, if used (question if these are really necessary).
- Place names and property numbers.
- Direct quotations (question if these are really necessary).
- The LPA’s name – Council or Authority?

Double check:

- Abbreviations were explained the first time and are used consistently.
- There are no missing words, especially missing ‘not’, or other link words such as ‘it, to, and’.
- The format is consistent in terms of paragraph numbers, gaps between paragraphs, font styles/sizes, with no ‘orphaned’ headings.
- You have covered the main arguments – read statements for a final time.
- You have not included anything you don’t need to or would be a surprise.
- Your reasoning has a logical flow and a coherent structure.
- Relevant Human Rights and/or PSED matters are sufficiently covered.
- The decision does not contain any sensitive personal data or other information that is sensitive in nature.
- You have imposed and reasoned the correct conditions.

Check grammar, spelling, syntax and readability:

- Put your decision to one side and come back to it fresh at a later time or on another day – subject to target dates.
- Check for correct and consistent use of tense(s).
- Check for apostrophes in the right place.
- Check for correct use of commas and semi-colons; the misuse or abuse of either can materially affect the meaning of what you write.
- Use but don’t rely upon the spell-checker.
- Consider how your decision reads and consider having it read out loud by Word. Check that your sentences and paragraphs are unambiguous and easy to follow. Try to avoid repetitious wording.
- Check that your wording is tactful.

- When the decision is read as a whole, check that the reader will be able to understand why the matter was decided as it was and what conclusions were reached on the main issues.
- Check that every sentence and paragraph serves a purpose and the decision is as short as it can be.

Structural points

- Have you concluded on each of your identified main issues in matching wording?
- Are the key policies referred to at least once in the body of your reasoning?
- Are all arguments of the losing parties (including third parties) covered?
- If the appeal is being allowed:
    - is the wording of the development in the formal decision correct? (This is especially important when the description of development has been amended.)
    - have you put in all the conditions that you said you were going to put in?
    - have any necessary implementation / timing / retention clauses been included in the relevant conditions?
    - are the plans referenced correctly in the conditions?
    - are document titles referenced correctly in the conditions?