

# Planning Committee Report Part 1:

Standard Information for  
Members - Applicable to All  
Applications on the Agenda



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# Part 1: Statutory Planning and Human Rights Considerations

## **1.1 Development Plan**

1.1.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990, require that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.

1.1.2 The development plan for the London Borough of Hillingdon consists of the following documents:

- [Hillingdon Local Plan Part 1: Strategic Policies \(2012\)](#)
- [Hillingdon Local Plan Part 2: Development Management Policies \(2020\)](#)
- [Hillingdon Local Plan Part 2: Site Allocations and Designations \(2020\)](#)
- [The West London Waste Plan \(2015\)](#)
- [The London Plan \(2021\)](#)

## **1.2 Equality Act**

1.2.1 Section 149 of the Equalities Act 2010, requires the Council, in considering planning applications to have due regard to the need to eliminate discrimination, advance equality of opportunities and foster good relations between people who have different protected characteristics. The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

1.2.2 The requirement to have due regard to the above goals means that Members should consider whether persons with protected characteristics would be affected by a proposal when compared to persons who do not share that protected characteristic. Where equalities issues arise, Members should weigh up the equalities impact of the proposals against the other material considerations relating to the planning application. Equalities impacts are not necessarily decisive, but the objective of advancing equalities must be considered in weighing up the merits of an application. The weight to be given to any equalities issues is a matter for the decision maker to determine in all the circumstances.

## **1.3 Human Rights**

1.3.1 The Human Rights Act 1998 incorporates the key articles of the European Convention on Human Rights into domestic law. These include:

- Article 8: Right to respect for private and family life.

Everyone has the right to respect for his private and family life, his home and his correspondence. This right embodies the right to a name, the right to change one's civil status and to acquire a new identity, and protection against telephone tapping, collection of private information by a State's security services and publications infringing privacy. This right also enables Members of a national minority to have a traditional lifestyle.

- Article 1 of the First Protocol: Protection of property.

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

- Article 14: Prohibition of discrimination.

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status.

1.3.2 Members must be aware of the rights contained in the Convention (particularly those set out above) when making any planning decisions. However, most Convention rights are not absolute and set out circumstances when an interference with a person's rights is permitted. Any interference with any of the rights contained in the Convention must be sanctioned by law and be aimed at pursuing a legitimate aim and must go no further than is necessary and be proportionate. Members must, therefore, carefully consider the balance to be struck between individual rights and the wider public interest.

## **1.4 Development in Conservation Areas**

1.4.1 Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the local planning authority, in determining applications affecting conservation areas, to pay special attention to the desirability of preserving or enhancing the character or appearance of that area. This statutory duty needs to be considered alongside relevant heritage policies contained in the National Planning Policy Framework and local plan.

## **1.5 Development Affecting Listed Buildings**

- 1.5.1 Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the local planning authority, in determining applications affecting a listed building or its setting, to “have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses”. This statutory duty needs to be considered alongside relevant heritage policies contained in the National Planning Policy Framework and local plan.

# **Part 1: Other Relevant Information for Members**

## **2.1 Five Year Housing Land Supply**

- 2.1.1 Land supply is a key part of planning and links plan policies and sites with actual delivery. The need to demonstrate a 5yr rolling supply of sites, known as 5yr housing land supply (5YHLS), is an embedded part of the planning system.
- 2.1.2 When councils are unable to demonstrate a 5YHLS the National Planning Policy Framework 2023 (NPPF) presumption in favour of sustainable development - the so-called ‘tilted balance’ - is engaged. NPPF paragraph 11 (d) ii states that in these circumstances the development plan policies most important for determining the application are to be treated as out-of-date. Therefore, where the presumption applies, planning permission should be granted unless:
1. The application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
  2. Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
- 2.1.3 Hillingdon Council is currently able to demonstrate a 5yr supply of deliverable housing sites. Therefore, the ‘tilted balance’ is not engaged.

## **2.2 Planning Appeals / Risk of Costs Award Against the Council**

- 2.2.1 Members should be aware that in the event of an appeal, local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. For example, by

unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals.

- 2.2.2 A further example includes imposing a condition that is not necessary, relevant to planning and to the development, enforceable, nor precise or reasonable in all other respects (and thus does not comply with NPPF guidance on planning conditions and obligations). It should be noted that planning conditions can be appealed.
- 2.23 Another example includes failing to substantiate each reason for refusal on appeal. Therefore, should members determine to refuse an application (contrary to officer recommendation for approval) planning reasons for refusal should be provided.

## **2.3 Use of Planning Conditions**

- 2.3.1 Members may decide to grant planning consent subject to conditions. Planning consent should not be refused where planning conditions can overcome a reason for refusal.
- 2.3.2 Planning conditions should only be imposed where members are satisfied that imposing the conditions are necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects. Where conditions are imposed, the Council is required to provide full reasons for imposing those conditions.

## **2.4 Planning Obligations**

- 2.4.1 Policy DMCI 7 of the Hillingdon Local Plan: Part 2 (2020) states that whilst infrastructure requirements will be predominantly addressed through the Council's Community Infrastructure Levy (CIL), planning obligations will be sought on a scheme-by-scheme basis. Applications that fail to secure an appropriate Planning Obligation to make the proposal acceptable will be refused.
- 2.4.2 The Community Infrastructure Levy Regulation 2010 (Regulations issued Pursuant to the 2008 Act) and the NPPF have put three tests on the use of planning obligations into law. It is unlawful to request planning obligations that do not meet the following tests:
- i. necessary to make the development acceptable in planning terms,
  - ii. directly related to the development, and
  - iii. fairly and reasonable related in scale and kind to the development.
- 2.4.3 The effect of the Regulations is that the Council must apply the tests much more strictly and is only to ask for planning obligations that are genuinely

necessary and directly related to a development. Should planning obligations be requested that do not meet the policy tests, the Council would have acted unlawfully and could be subject to a High Court challenge.

- 2.4.4 Members must be satisfied that any planning obligations to be secured by way of an agreement or undertaking pursuant to Section 106 of the Town and Country Planning Act 1990 are necessary to make the development acceptable in planning terms. The obligations must be directly related to the development and fairly and reasonably related to the scale and kind to the development (Regulation 122 of Community Infrastructure Levy 2010).

## **2.5 Community Infrastructure Levy (CIL)**

- 2.5.1 The Community Infrastructure Levy (CIL) allows local authorities to raise funds from developers undertaking new building projects in their area. The Community Infrastructure Levy (CIL) is a charge collected from new developments.
- 2.5.2 The CIL applies to all proposals that add 100 square metres of new floorspace or an extra dwelling. This includes bringing a vacant building back into use. The amount to pay is the increase in floorspace (m<sup>2</sup>) multiplied by the rate in the CIL charging schedule plus indexation.
- 2.5.3 The money raised from the Community Infrastructure Levy pays for the infrastructure required to support development. This includes transport schemes, flood defences, schools, health and social care facilities, parks, open spaces and leisure centres.
- 2.5.4 The London Borough of Hillingdon adopted its [CIL Charging Schedule](#) on 10 July 2014 and it is applied to new developments in the borough since 1 August 2014. The use types that are charged borough CIL is large format retail development (greater than 1,000sqm) outside of designated town centres; offices; hotels; residential dwellinghouses; and industrial storage and distribution.
- 2.5.5 The Mayor's CIL (MCIL)
- The Mayor's CIL applies to all qualifying developments approved on or after 1 April 2012. Hillingdon Council is a CIL collecting authority for the Mayor of London.
- 2.5.6 The Mayoral CIL 1 (MCIL 1) rate was £35 per sqm plus indexation and is used by the Mayor of London to fund the delivery of Crossrail.
- 2.5.7 For planning permissions granted from 1 April 2019, the Mayoral CIL 2 (MCIL 2) rate of £60 per square metre plus indexation applies. This rate may also apply to some phased planning permissions granted before then.

## **2.6 Environmental Impact Assessment**

- 2.6.1 The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (as amended) requires that an Environmental Impact Assessment (EIA) is undertaken, and an Environmental Statement (ES) produced for certain developments.
- 2.6.2 EIA is a procedure which serves to provide information about the likely significant effects of a proposed project to inform the decision-making process and whether the project should be allowed to proceed, and if so on what terms.
- 2.6.3 An overview of the EIA process is provided as part of government's [Planning Practice Guidance](#). An EIA is normally only necessary for a small proportion of projects.
- 2.6.4 An EIA Screening Opinion can be obtained from the council to determine whether a proposed development needs an EIA. Once it has been determined that an EIA is required, an EIA Scoping Opinion can be obtained from the Local Planning Authority to provide advice on the scope and content of the Environmental Statement (ES).