

Material Considerations

Matters to be taken into account in determining planning applications

Section 25 of the 1997 Town and Country Planning (Scotland) Act states that a Planning Authority's decision on a planning application must be made in accordance with the Development Plan – unless **material considerations** indicate otherwise.

When commenting on a planning application you should, therefore, first look at what the Development Plan has to say. This should tell you whether the 'principle' of development is likely to be acceptable to the Planning Authority.

Having checked the proposal against the Development Plan, you may then wish to consider whether there are any other material considerations which might mean that the Planning Authority could determine the application **not** in accordance with the Development Plan.

So what are material considerations?

The first point to make is that there is no defined list of what is, and what isn't, a material consideration. Planners, planning lawyers and the courts spend huge amounts of time debating whether particular issues are material considerations or not.

That said, it is possible to give general guidance on the kinds of issues which are generally accepted as being material considerations – and also some types of issues which are definitely not. It is the middle ground where it becomes difficult to decide whether something is "material". That is where lawyers get involved, as ultimately the decision on whether or not a particular consideration is material is up to the courts to decide.

(NB: please note that material considerations are also relevant when making Local Plan representations)

Types of issue which **are** material considerations, in no particular order:

- Policies in the emerging Development Plan, even if still draft and not yet "adopted" (Local Plan) or "approved" (Structure Plan).
- National Planning Policy Guidance (NPPG) and Scottish Planning Policy (SPP)
- Suitability of the site for the proposed development (e.g. contamination/flooding issues).
- Visual appearance of the proposed development and its relationship to its surroundings. This is a complicated area but can include:

- Building materials.
- Height, scale, massing, design, density and layout of development, particularly in comparison with other buildings in the locality.
- Landscaping proposals.
- Privacy, over-shadowing, over-development (overcrowding), and lack of natural light.
- Nuisances caused by the development such as noise, smell, fumes, glare from floodlights or headlights of vehicles.
- Adverse safety impact. For example, the siting of a hazardous installation such as a firework factory next to houses.
- Impact on setting of listed buildings or conservation area.
- Compatibility with existing uses. For example, the mix of uses found in town centres - such as shops, offices and cafes – can be mutually beneficial.
- Economic benefits, e.g. creation of jobs.
- The needs of an area (employment, commercial, social or leisure facilities, affordable housing).
- Provision of suitable access and transportation (including road safety, parking issues, effect on pedestrians and cyclists, and amount of traffic generated).
- Adequacy of infrastructure (e.g. sewerage, drainage and water).
- Pollution and contamination.
- Impact on archaeology.
- Impact on nature conservation.
- Creation of an undesirable precedent, making it difficult to resist similar proposals elsewhere. But this should not be over-emphasised.
- Planning history of the site (including decisions on previous planning applications on the same site, particularly appeal or court decisions).

Please remember that this list is not exhaustive, and is only meant to provide an indication of what might, or might not, be a material consideration.

If you are in any doubt whether an issue is a material consideration, Planning Aid for Scotland strongly

recommends that you discuss it with a planning officer in your Council in the first instance. If you are still unclear, you may wish to contact Planning Aid for Scotland for further advice.

Items which are **not** material considerations – and are therefore not relevant to planning - include:

- Personal circumstances of the applicant - e.g. devaluation of property, private property rights including boundary and access disputes.
- Private interests – e.g. loss of a view, competition between businesses.
- Moral considerations – e.g. sex shops, religious objections to Sunday working.
- Political considerations or ideological dislikes -e.g. private hospitals.
- Cost of the development.
- Title restrictions.
- Applicant's lack of ownership of the site.
- Issues covered by other legislation - e.g. health and safety regulations, licensing, building control.
- Any factor indicating that there is a lack of any reasonable prospect of the development proceeding.