

A photograph of a tall building under construction, completely covered in blue safety netting and a complex network of metal scaffolding. A construction crane is visible in the background against a clear sky. The image is used as a background for the title text.

Planning and Building Control Information Online

Guidance notes for practitioners

2nd edition. Version 1.2 August 2006

Foreword

Welcome to the revised edition of the Guidance Note. The first edition, which was published in May 2005, has been revised and updated in the light of comments and feedback received from local authorities as a result of using the Guidance Note in their day to day work in planning.

As local authorities embrace the e-Planning agenda and momentum to deliver more accessible, informative and accountable services grows, the typical questions faced key decision makers within local authorities in relation to publishing of information are:

- What is the legal position in terms of providing information on Planning Applications and Enforcement and Building Control Application Data available on the Internet?
- What about Planning Application and Appeals Registers?
- What about Enforcement Registers and Investigations of Alleged Breaches of Planning Control?
- What about databases of Building Control Applications?
- What about Privacy Statements?
- What about Copyright?

The revised guidance in this paper will assist local authorities in publishing information in a consistent manner and help ensure that their actions are likely to conform to the statutory requirements of the Data Protection Act 1998 and Copyright Designs and Patents Act 1988.

This guidance note has been produced in collaboration with the Information Commissioner's Office.

Advisory Note

This document aims to provide guidance only and is not intended to be prescriptive.

E-enabling Planning (Applications and Enforcements) and Building Control Registers and Databases will increase transparency of the planning process and further meet the needs of customers. However, local authorities choosing to make the information referred to in this document available online should be aware that there are risks associated in doing so. The desire to be progressive, open and accountable should be balanced against any potential risks of action or litigation.

The experiences of local authorities which have been displaying planning application registers and planning and building control applications databases suggests that the benefits from doing are significant and lead to increased engagement with the planning process, and that the risks of litigation are relatively low. The decision to publish is however a local decision and authorities have the option of seeking legal advice in relation to compliance with the Data Protection Act and other relevant legislation before commencing publication.

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1. Introduction

- 1.1 As part of the move to e-enable services, local authorities are being asked to make information from their planning and building control registers and databases available on their websites (as allowed for in the section 8 order¹ of the Electronic Communications Act 2000). Given that in doing so some personal information about individuals will be disclosed it is important to comply with the requirements of the Data Protection Act 1998². As placing information on the Internet makes the information more widely available, allows for browsing and searching, and facilitates copying and re-use of information, it is particularly important to consider the Data Protection implications.
- 1.2 This Guidance Note provides advice to local authorities on making such information available from PARSOL (the Planning and Regulatory Services Online local e-Gov National Project). The guidance also applies to the Planning Inspectorate's publishing of appeals information.
- 1.3 This guidance has been produced in collaboration with the Information Commissioner's Office and the Director of the e-Planning at the Department for Communities and Local Government. In respect of the processing of personal data, whilst following this guidance may not guarantee compliance with the Data Protection Act, the fact that it has been followed will be taken into account in any assessment by the Information Commissioner as to whether or not the Act had been breached.
- 1.4 Further information on implementing systems to make this information available online can be found in the PARSOL Guidance Notes (SP25 Planning Register online and SP21 Electronic capture of planning related information, see www.planningportal.gov.uk/parsol).
- 1.5 The Information Commissioner's Office provides general advice on how to comply with the Data Protection Act and has contributed to the revision of this Guidance Note. By following the advice contained in this document local authorities should have an increased level of assurance that they are making every effort to comply with the requirements of the Data Protection Act in making information from planning (Application and Enforcement) and Building Control Registers and Databases via a website.
- 1.6 Further information can be found on the Information Commissioner's website at www.informationcommissioner.gov.uk.

¹ SI 956 (2003) TOWN AND COUNTRY PLANNING, ENGLAND TRIBUNALS AND INQUIRIES, ENGLAND
The Town and Country Planning (Electronic Communications) (England) Order
www.opsi.gov.uk/si/si2003/20030956.htm

² Data Protection Act 1998 www.opsi.gov.uk/acts/acts1998/19980029.htm

2. Legitimacy of making planning application and enforcement and building control application information available on the Internet

- 2.1 Local authorities have a legal duty to make available certain details relating to planning applications (as a public register), and regulations also allow this information to be made available, on the Internet.³ Local authorities are therefore acting lawfully in making planning applications available on the Internet. However, it should be noted that there is no enhanced duty or legal requirement to disclose information relating to planning applications and/or enforcements other than the statutory requirement. Authorities have the option of seeking legal advice where clarification is required for disclosure of any information over and above the statutory requirements to ensure compliance with Data Protection Act 1998, Freedom of Information Act 2000⁴, and other relevant legislation.
- 2.2 Where personal data is involved, local authorities must comply with the eight data protection principles laid down in the Data Protection Act 1998. The first principle states that personal data should (amongst other things) be processed lawfully. Given the legal duty to make information relating to planning applications available and the regulations which allow such information to be placed on the Internet, local authorities will be complying with the lawfulness element of the first data protection principle in doing so.
- 2.3 There is no statutory requirement to make available information on building control applications and investigations of alleged breaches of planning control, whether physically or on the Internet. However given the Government's (non-statutory) requirement that local authorities e-enabled their services by 2005, as set out in BVPI157 and in the Government's Priority Services Outcomes for e-Government⁵, it is not unreasonable for local authorities to consider making such information available. The Act will however limit the publication of personal data in these circumstances.
- 2.4 In the case of building control applications the online publication of personal data might be justified as being necessary for undertaking functions of a public nature exercised in the public interest (paragraph 5(d) of schedule 2 to the Act). However, in the case of information concerning alleged breaches of planning control it is hard to find a condition as laid down in the Act which allows the fair and lawful online publication of personal data.
- 2.5 The Government's Priority Service Outcomes paper states that:
- "For the Government to measure progress towards the PSA (Public Service Agreement) target, a set of e-government priority outcomes for each local authority in England has been proposed. It is expected that each local authority, as part of its e-government investment programme will deliver these Priority Service Outcomes by December 2005"

³ SI 956 (2003)

⁴ Freedom of Information Act www.opsi.gov.uk/acts/acts2000/20000036.htm

⁵ Defining e-Government Outcomes for 2005 to Support the Delivery of Priority Services & National Strategy Transformation Agenda for Local Authorities in England, ODPM - www.communities.gov.uk/pns/pnattach/20040112/1.doc

Priority Outcomes are not statutory obligations but are government targets.

2.6 Specifically, Priority Service Outcome R8 requires:

- Online facilities to be available to allow receipt and processing of planning and building control applications.

In addition, Priority Service Outcome E4 requires:

- Agreed baseline and targets for take-up of planning and regulatory services online.

Relevant standards and targets are contained in:

- PARSOL Better Planning Services Standards 2006 (Delivery through Technology) www.planningportal.gov.uk/parsol.
- e-Planning Programme Blueprint www.communities.gov.uk/index.asp?id=1143310.

3. Planning application and appeals registers

3.1 Not all of the information held in relation to a planning application or an appeal will be personal data relating to the applicant, or to third parties. Neither will all of the information or correspondence accompanying a planning application form part of the application register. However, as a matter of good practice local authorities should consider carefully how much information concerning applications is published on the web, and follow the advice given below.

a) **Information to be published on the Internet**

3.2 Given the statutory status of the Register of Planning Applications, relevant regulations, and the public interest in making information on the processing of applications available, it is appropriate for local authorities to make a wide range of information and documents available on their websites. In terms of identifying a condition under which such publication will be fair and lawful under the Data Protection Act, paragraph 5(d) of schedule 2 of the Act provides the appropriate condition (see Appendix 1). However, there is no enhanced duty or need to disclose information relating to planning applications and enforcement other than that which is statutory. It is therefore, the responsibility of the local authority to ensure that any information published is not in direct contravention of the relevant legislation regarding information disclosure.

3.3 The range of data fields which a local authority might be expected to make available are listed in Appendix 2. This is not an exhaustive list but gives an indication of the type of information which it is legitimate to display. See section c) below in relation to publishing applicant and agent details.

3.4 The type of documents which a local authority might be expected to make available at certain stages of the planning cycle are listed in Appendix 3, again the list is not exhaustive [see section d) below in relation to publishing personal information]. Any information which is provided as part of the application should be viewable. If for any reason the local authority decides not to display the full Register (either withholding information provided by the applicant or an objector on its website) whilst the application is under consideration, this should be made clear on the website. If not, the local authority may be open to charges of maladministration in relation to withholding information relevant to the application. Local authorities should, in the interests of good practice, provide clear guidance to what and when relevant information is provided on its website.

b) **Informing users that the information they provide will be published on the Internet**

3.5 As a matter of openness, and also where personal data is involved for compliance with the Data Protection Act, planning applicants and agents should be made aware that the information they provide in their application form, plus any accompanying drawings and documents, will be made available via the Internet. This advice should be contained in any hard copy advice provided to applicants, on local authority websites and in any online systems for submitting applications. Advice received from the Information Commissioner suggests that local authorities should be explicit about exactly

what information relating to their planning application will be published online. For example if a local authority routinely publishes contact details, then it should state this in the initial contact with the applicant. Furthermore, if the local authority routinely scans and publishes all documents an applicant encloses with, or offers in support of, an application then this must also be clearly explained in the initial contact with the applicant. In both cases the applicant should be offered the opportunity to indicate any documents (whole or part) containing personal information they do not want made public. Local Authorities will consider all requests for information to be withheld from publication on their own individual merit.

- 3.6 Planning consultees and those submitting comments on planning applications should also be advised that the letters and comments they provide may be made available on the Internet. A suitable statement should be included in: any consultation letters provided by the authority; any related online advice; online forms for making representations; and press and site notices.

c) **Publishing applicant and objector details**

- 3.7 Extreme care should be taken to avoid any unnecessary disclosure of telephone numbers, email addresses and signatures. The need for the local authority to hold such information is obviously of benefit to all parties. However, *there is no requirement to make it publicly available on the Internet*. It also has to be remembered that unsolicited telephone calls and emails can be upsetting and intrusive. The recommendation from the Information Commissioner is that the applicant's telephone number, email address and signature should not be visible via a website or other online system.
- 3.8 Whilst the current application forms are in use, it is recognised that the applicant's contact details **may** be available from the Internet whilst the application form is viewable. Local authorities should, where possible, seek to mitigate against any harmful consequences that might arise as a result of this by removing from the digital version of the form, the applicant's telephone number, email address and signature where administratively feasible and where not, by taking seriously any expressed concerns of individuals. For paper forms this would involve "tippexing", using highlighter pens for documents scanned in black and white, or otherwise blanking out the details (the use of Post-It Notes appears to be favoured) before re-scanning. For PDF forms submitted electronically this would require editing the document using the full version of Adobe Acrobat.
- 3.9 The Information Commissioner recommends that local authorities exercise extreme care when considering publishing documents which contain sensitive personal data (section 35 of the Act). This may, for example, relate to personal, medical and financial details of individuals that are contained in the planning application or supporting document. It is not deemed necessary to disclose sensitive personal data in the planning applications unless there is a legitimate reason (as defined in Schedule 3 of the Act) and this must always be of the basis of proportionality (only disclosing information which is required as an end product). However, it may still be necessary to indicate that the information has been withheld from the Register.
- 3.10 In future the introduction of electronic standard planning application and appeals forms, or e-forms built up from the information entered into defined data fields, should enable applicants to provide details of their telephone

number and email address which can then be masked from display on digital versions of the forms accessible via the Internet. The Information Commissioner is keen to work with local authorities to design an electronic standard planning application which enables local authorities to process applications efficiently whilst at the same time protecting the individual against disclosure of personal data such as telephone number and email address.

- 3.11 It is considered good practice to inform both applicants and objectors that the information they provide may be published on the Internet. Local authorities should also consider inserting advisory guidance detailing the steps applicants and objectors might wish to take to avoid unnecessary publication of their personal details. This could include, for example, advising objectors to send objections as attachments (thus avoiding publication of their email address) when corresponding by email or not requiring signatures on letters (removing fears of signatures being copied and identity theft).
- 3.12 Any personal information collected in order to comply with the diversity monitoring requirements of the Race Relations (Amendment) Act 2000⁶ should not be published as part of the Register. This information should only be available to the public in summary anonymised form.
- d) **Only publishing personal information when there is a genuine public interest in that data being available on the Internet**
- 3.13 When local authorities are making planning application documents available on the Internet (e.g. via a document management system) they should ensure that only those documents relevant to the public interest are shown at a given point in time. This can be done by categorising documents into different types and using the system rules to define access rights by document type and/or status of the application. Where personal data is involved, this will help ensure that the local authority complies with the fifth data protection principle - namely where personal data shall not be kept longer than necessary.
- 3.14 This does not affect any individual's right to access all the documents on the Statutory Register of Planning Applications. Under current legislation, full access to the Register only needs to be provided at the local authority's offices.
- 3.15 An example of accessibility to different document types at different stages in the planning process is provided in Appendix 3. It is suggested that representations on planning applications, objection comments, etc, should not be viewable post decision.
- 3.16 There may also be concerns about publishing other non-personal data, on the Internet; for example the nesting sites of rare birds or commercially sensitive information. The decision to withhold any such information from the Register on the Internet has to be taken carefully. Information material to the decision making process should normally be available to the public. Where relevant, reference to the fact that information has been withheld should be made. It might be useful for local authorities to place a statement on the Internet to the effect that the material on the website does not represent the full Register and that certain information may be withheld with full access only being provided at the local authority's offices.

⁶ Race Relations (Amendment) Act 2000 – www.opsi.gov.uk/acts/acts2000/20000034.htm

e) **Guidance on complaints about the publication of personal data**

3.17 An applicant, agent or person commenting on a planning application might object to their personal information being published on the local authority's website, even though the authority may have included the necessary warnings. The Information Commissioner's Office guidance (Appendix 1) suggests that consent is not generally being relied upon by the authority when information is placed on the web. It is therefore perfectly valid to publish information on the Internet without consent. However, as noted above, it is not a legal requirement to publish on the Internet; it is merely permissible for such information to be made available on-line and judgements may have to be made as detailed in paragraphs 3.18 and 3.19 below.

3.18 **Applicants' names and addresses:** You should inform the applicant that, as this information forms part of the Statutory Register, the local authority has a duty to make this information available at the local authority's offices, is acting lawfully in placing planning applications on the Internet, and considers that it should continue to do so.

3.19 **Name and address of a person commenting on an application:** You should explain that as comments on applications are generally regarded as forming part of the Statutory Register the local authority has a duty to make this information available and then explain that the consultation letter/website indicated that the information provided would be displayed on the local authority's website. If the person still wishes their name and address to be removed, offer to do this but inform the person that the comment will now be treated as an anonymous comment and explain any differences in the weight given to anonymous comments as against named comments by the local authority (if this is the case). This may include, where this is the local authority's policy, informing the objector that anonymous objections are not taken into account.

3.20 Advice from the Information Commissioner's Office suggests that local authorities must also consider the implications of section 5 of the Data Protection Act relating to the disclosure of personal data. It is incumbent on local authorities to publish personal data only as the law requires and to exercise care and good judgement when publishing any further personal data it holds.

3.21 Local authorities should bear in mind that if the Commissioner receives complaints about such disclosures they may be required to justify any disclosures of personal data they have made which go beyond those required by law for the maintenance of planning and building control registers and databases.

f) **Publishing plans and drawings**

3.22 Compliance with the Data Protection Act is not an issue here, plans and drawings are not personal data.

3.23 Publishing plans and drawings on the Internet enables citizens and businesses to engage in the consultation process in a much more accessible and meaningful way. In making drawings available to the public, ease of use is a prime concern. It is recommended that drawings are displayed in PDF

(Acrobat format), as the majority of users will already have Acrobat Reader installed on their PC, and it is freely available on the Internet. CAD drawings received electronically should be converted into PDF. See PARSOL Guidance Note SP25 Planning Register Online for further information.

- 3.24 In certain instances it may be felt inappropriate to display plans and drawings due to security concerns. This may include instances where it is requested by the applicant or their agent. The decision to withhold any such information from the Register on the Internet has to be taken carefully. See paragraph 3.16 re guidance on withholding information.
- 3.25 When making plans and drawings available online, copyright should not be infringed. A fuller explanation is given in section 7 of this Guidance Note, but as a minimum a copyright warning should be included on the website indicating the terms under which the plans and drawings are made available. As many applicants/agents include Ordnance Survey map extracts with/on their plans and drawings the statement should include reference to Ordnance Survey copyright restrictions. An example of a copyright warning is given in Section 7.

4. Enforcement registers and investigations of alleged breaches

- 4.1 There is a statutory requirement to publish information relating to enforcement registers but no such requirement in relation to alleged breaches of planning control. Given the potentially sensitive nature of this information, particular care needs to be taken to ensure that potentially damaging information relating to individuals is not made public unless justified under the Data Protection Act.
- a) **Informing complainants that the information they provide will be made available to the public**
- 4.2 People making allegations about breaches of planning control should be reassured that their personal details will not be made available, see section b) below. To comply with the principle of providing information where there is a genuine public interest, local authorities may wish to consider publishing a synopsis of an enforcement investigation, after the investigation has been concluded. This could, for example, include a brief description of the alleged breach of planning control, information pertinent to the investigation and the outcome with appropriate dates.
- b) **Publishing complainant, owner and occupier details**
- 4.3 As mentioned above, at no time should the identity of people making allegations of a breach of planning control be made publicly available.
- 4.4 Before a formal enforcement notice has been served, no details of owners, occupiers and/or other persons with an interest in the property subject to an alleged breach of planning control should be available on an online enforcement database or on documents linked to that database. This is because doing so would involve the publication of sensitive information relating to those individuals, rather than to the property, and it is likely that the Data Protection Act would be breached by making such information available. However, information about the property alone, for example that there were concerns that a house had been extended without planning permission, would in itself not be personal data.
- 4.5 Occupier details may separately be available from the Register of Electors, property ownership details from the Land Registry. In addition, members of the public may well be able to link an address to an individual and hence make the inference that a particular individual has possibly committed a breach of planning control. In itself, however, this ability to make inferences does not make the publication of alleged breaches of planning control necessarily personal data, so long as the focus of the publication of allegations and complaints on the Internet is on the property rather than on the individual.
- 4.6 Once a formal Enforcement Notice has been served (*but not including Planning Contravention Notices*) access to the notice may be provided. Internet access should **not** be provided to any accompanying letters or information which identifies the persons on which the notice was served.

- 4.7 Any personal information collected in order to comply with the diversity monitoring requirements of the Race Relations (Amendment) Act 2000⁷ should not be published as part of the register/database. This information should only be available to the public in summary anonymised form.
- c) **Publishing other information on investigations and enforcement cases**
- 4.8 As stated above, it is difficult to see any justification under the Data Protection Act for publishing what are simply allegations that individuals have breached controls. However, the publication of concerns that individuals have about properties, and the steps the authority are taking to investigate such concerns, is unlikely to involve personal data. Hence it is not a matter of data protection compliance. The sensitive nature of enforcement data means that care should still be taken in relation to publishing any information relating to investigations and enforcement cases.
- 4.9 Details of the data fields contained in the PARSOL Online Enforcement System Specification may be used as a guide to what is appropriate information to publish on the Internet on investigations of alleged breaches and formal enforcement cases. These are detailed in Appendix 4.
- 4.10 Where an investigation into an alleged breach of planning control does not result in an Enforcement Notice being served, it is recommended that details of the case should only be displayed for a period of 6 months after the case has been closed. This allows a reasonable period of time for persons interested to view the outcome of the investigation and should help prevent additional alleged breaches relating to the same case being made.
- 4.11 Ensuring that potentially damaging information is not published for an unwarranted period of time is dependent on local authorities investigating such alleged breaches in a timely manner.

⁷ Race Relations (Amendment) Act 2000 – www.opsi.gov.uk/acts/acts2000/20000034.htm

5. Database of building control applications

5.1 The reasons for providing information on Building Control Applications are that in doing so:

- Neighbours can ensure that the works were being undertaken to an approved standard so that they would not have a detrimental affect on their adjoining property.
- Persons purchasing properties can check that any works undertaken had the relevant approvals.
- Owners/agents can check that the relevant applications had been received by the local authority and want to know who is dealing with the application.

5.2 In general information relating to Building Control Applications will be focused on the property rather than the individual making the application. Personal data will only be likely to be published if contact details for the individual are provided i.e. email address and telephone number. Details of the range of information which it is recommended should be made available on Building Control applications are given below.

a) **Information to be published on the Internet**

5.3 Given there is no Statutory Register of Building Regulation applications, and the nature of the public interest, it is only relevant to show limited information about building regulation applications, e.g. application number, address, description of proposed development, relevant dates and application/development status. A list of appropriate data fields for publication is given in Appendix 5.

5.4 In no circumstances should owners' telephone numbers or email addresses be included in the online database.

b) **Informing users that the information they provide will be published on the Internet**

5.5 As a matter of courtesy Building Regulations applicants, agents and owners should be made aware that information they provide in their application will be made available electronically. This advice should be contained in any hard copy advice provided, on local authority websites and in any online systems for submitting applications.

c) **Plans and drawings**

5.6 Given that there are no Statutory Register of Building Control applications, and no public consultation, it is recommended that building control application plans and drawings are not displayed on the Internet.

6. Privacy statement

6.1 In fulfilling their responsibilities under the Data Protection Act, councils should publish a privacy statement on their website which should be accessible from the main home page and other relevant pages of the website. This should provide information on topics including: What we do; Providing visitors with anonymous access; Automatic collection of information; Disclosure and visitor choice; Confidentiality and security; Access to the personal data we may hold about you.

6.2 Examples of privacy statements can be found at:

- www.wandsworth.gov.uk/Home/Contactus/privacy.htm
- www.planninginspectorate.gov.uk/pins/terms_conditions/privacy/index.htm

7. Copyright

7.1 In the light of recent legal advice given to certain local authorities, it is important to consider the copyright implications of making planning application and enforcement and building control application data available via a local authority website. Much of the documentation referred to in this Guidance Note will constitute a “literary work” within the meaning of the Copyright Designs and Patents Act 1988⁸.

7.2 Specifically, recent legal advice suggest that the following will be considered as “literary works” for the purposes of the Copyright Designs and Patents Act 1988:

- Drawings, CAD drawings and site plans.
- Additional information and reports accompanying the application.
- Objectors’ comments.
- Supporters’ comments.
- Where there is an appeal to the Planning Inspectorate, the appellant’s case and other person’s representation.

7.3 The owner of the copyright has the exclusive rights to copy the work, to issue copies of the work to the public and to communicate the work to the public. Unless otherwise permitted, for a local authority to make such information available on its website without permission of the owner of the copyright (usually the author of the letter, drawings, plans etc) may constitute an infringement of the owners copyright. Public downloading of the information may also be an infringing copyright of the work.

7.4 In order to mitigate the risks associated with infringing copyright the following actions are suggested:

- Consider including a form of words which clearly indicates that those making planning applications and comments to planning applications that the information they provide will be published on the local authority’s website.
- Utilise a “click accept” facility on the website which clearly prompts the user to view and accept or reject the terms and conditions of using the website.
- Local authorities should consider including a clause in the terms and conditions specifically relating to copyright. An example form of words is detailed below:

“Plans, drawings and other material submitted to the local authority are protected by the Copyright, Designs and Patents Act 1988 (section 47). You may only use material which is downloaded and/or printed for consultation purposes, to compare current applications with previous schemes and to check whether developments have been completed in accordance with approved plans. Further copies must not be made without the prior permission of the copyright owner.”

⁸ Copyright, Designs and Patents Act 1988 - www.opsi.gov.uk/acts/acts1988/Ukpga_19880048_en_1.htm

7.5 Ordnance Survey maps, and maps created from Ordnance Survey material are subject to Crown copyright. It is therefore recommended that the use of the mapping is limited to an allowance to view and download for private and non-commercial purposes only. It should be made clear that mapping may not be further sub-licensed, sold, demonstrated, lent, or otherwise transferred or exploited without prior written permission of Ordnance Survey. Ordnance Survey shall not be held liable for the map material not being fit for your purposes or applications.

8. Comments and suggestions

- 8.1 In producing this guidance we have made every effort to tackle the issues which confront local authorities in relation to data protection when they make their planning registers available on the Internet.
- 8.2 Any comments or suggestions for improving the guidelines should be sent to mhowell@wandsworth.gov.uk or addressed to:

Martin Howell
Borough Planner's Service
Wandsworth Borough Council
The Town Hall
Wandsworth High Street
London
SW18 2PU

9. Links to further sources of information

Planning Portal – the government's online service for planning matters.
www.planningportal.gov.uk

The Planning Inspectorate - works for the Department for Communities and Local Government (previously the Office of the Deputy Prime Minister (ODPM), Department of Transport, Local Government and the Regions (DTLR)), and the National Assembly for Wales on a range of casework under Planning and Environmental legislation.
www.planning-inspectorate.gov.uk

Planning Aid - provides free, independent and professional help, advice and support on planning issues to people and communities who cannot afford to hire a planning consultant. Planning Aid complements the work of local authorities but is wholly independent of them.
www.planningaid.rtpi.org.uk/

Royal Town Planning Institute - is the membership organisation for professional town and country planners.
www.rtpi.org.uk/

Information Commissioner's Office - is the UK's independent public body set up to promote access to official information and to protect personal information.
www.ico.gov.uk/eventual.aspx

UK Acts of Parliament - with effect from the first Public General Act of 1988, the full text of all new Public General Acts is available via this website.
www.opsi.gov.uk/acts.htm#acts

UK Statutory Instruments - with effect from the first printed Statutory Instrument of 1987, the full text of all published Statutory Instruments are available on this website.
www.opsi.gov.uk/stat.htm

Appendices

Appendix 1

Publishing planning applications on the Internet in England - Information Commissioner's Office guidance on compliance with the Data Protection Act 1998

Introduction

- 1 The Data Protection Act 1998 regulates the processing of personal data. That is information about, and relating to, individuals. The Act provides obligations for data controllers (such as local authorities), and rights for individuals. The obligations are met by compliance with the eight data protection principles laid down in the Act (covered below). The first principle is of primary importance as it dictates whether or not local authorities can put information on the Internet and comply with the Act.
- 2 The rights for individuals include the right of access to their personal data, and the right to have inaccuracies corrected and unfair processing stopped.
- 3 It has to be remembered that it is only personal data which is affected by the Data Protection Act, i.e. the names and addresses of individuals rather than information about properties and proposed changes. However the Freedom of Information Act 2000 now provides a general right of access to all information held by public authorities, and the Environmental Information Regulations 2004 (SI 3391) give a similar right of access to environmental information held by public authorities.
- 4 Local authorities will need to bear these two additional rights in mind when they are asked for information about planning applications and other related matters which is not the requesters own or any one else's personal data. Information on these rights can be obtained from www.informationcommissioner.gov.uk.

First principle

Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in schedule 2 is met, and in the case of sensitive personal data, at least one of the conditions in schedule 3 is also met.

Fairness

- 5 The *fairness* condition is generally met by organisations clearly advising people as to what will happen to their personal data. And in respect of publishing information relating to planning applications on the Internet the Information Commissioner considers that to be *fair*, organisations **should** advise individuals that their information will go on the Internet. Publication of information on the Internet is materially different from making information available at local authority offices; the Internet allows for trawls and searches to be made easily (hence provides for wider access to information) and

facilitates the copying and re-use of information which is not possible with physical access.

- 6 When there is an element of discretion or doubt as to whether or not personal data is made public if people have concerns, then this should also be clearly stated. Paragraph 8 refers below.

Lawfulness

- 7 In respect of local authorities meeting the *lawfulness* condition when publishing planning applications on the web, this is lawful so long as the personal data contained is information the authority has a duty to make available as part of the planning register⁹, and can be put on the Internet¹⁰. The Information Commissioner understands that this would include personal data such as the name and address of the applicant, but not email addresses and telephone numbers which might be on application forms and correspondence but are not part of the planning register.
- 8 Where information is not part of the planning register there is a question as to the lawfulness of publishing this information on the Internet; especially as in publishing such information there may be concerns about possible detriment to individuals. Unwanted emails and telephone calls can be intrusive and people are worried about the risk of identity theft when their signature is readily available in an easily downloadable and re-usable format.
- 9 Where technically possible and administratively reasonable therefore the Information Commissioner would recommend that such administrative information is not published on the Internet. And certainly in individual cases where people express concerns such information should be withheld from Internet publication. For example where an individual is worried that a violent ex-partner might make abusive calls.

Schedule 2 and schedule 3 conditions

- 10 In general information published on the Internet in respect of planning applications will not be sensitive¹¹. In these cases it is likely that paragraph 5(d) of schedule 2 will provide the relevant condition for putting personal data on the Internet. That is:

The processing is necessary for the exercise of any other functions of a public nature exercised in the public interest by any person.

- 11 Where sensitive information is involved, as might be the case if a planning appeal is being made and the health of the applicant is an issue, a schedule 3 condition **will** need to be met. One possible condition will be consent (paragraph 1 of schedule 3). This is unless the local authority can demonstrate that paragraph 7(1)(b) of schedule 3 applies, i.e. that:

⁹ Article 25 of the Town and Country Planning (General Development Procedure) Order 1995 (SI 419 1995)

¹⁰ Paragraph 6 of schedule 1 of the Town and Country Planning (Electronic Communications) (England) Order 2003 (SI 956)

¹¹ Sensitive personal data is that relating to racial or ethnic origin, political opinions, religious beliefs, health, sexual life, and the commission of offences or criminal proceedings.

The processing is necessary for the exercise of any functions conferred on any person by or under an enactment.

- 12 In cases where a local authority has concerns that it might be publishing sensitive personal data on the Internet the authority should consider discussing the issue with the individual concerned before doing so.

Second principle

Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.

- 13 To comply with this principle, local authorities should ensure that their notification with the Information Commissioner covers the publication of planning applications on the Internet. Officials should liaise with their data protection officer if they are unsure.
- 14 Local authorities should also be careful not to use personal data collected for the administration of the planning system for other purposes unless such use is justified. Again officials should liaise with their data protection office if they plan to use the information for other purposes.

Third principle

Personal data shall be adequate, relevant and not excessive in relation to the purpose, or purposes, for which they are processed.

- 15 The publication on the Internet of unnecessary information, for example that of telephone numbers and emails, might constitute a failure to comply with this principle. Local authorities should seek to ensure that only necessary information is published.

Fourth principle

Personal data shall be accurate and, where necessary, kept up to date.

- 16 Local authorities should ensure that when advised of inaccuracies relating to personal data they verify and amend the data where appropriate. Similarly where there is a change, for example in the name of an applicant, such changes should be reflected in the information available on the Internet.

Fifth principle

Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.

- 17 Local authorities need to ensure that once the need for the publication of personal data on the Internet has passed that the personal data is removed.

Sixth principle

Personal data shall be processed in accordance with the rights of data subjects under this [the Data Protection] Act.

- 18 Local authorities should be aware that individuals have rights under the Data Protection Act 1998, for example that of access to information held, and be prepared to act when individuals seek to assert such rights. In addition people will also have rights under the Freedom of Information Act 2000 and the Environmental Regulations.

Seventh principle

Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

- 19 Local authorities will need to have procedures in place to help ensure that personal data published on the Internet cannot be maliciously altered by others, for example by hacking.

Eighth principle

Personal data shall not be transferred to any country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.

- 20 Compliance with this principle is unlikely to be an issue.

Appendix 2

Data fields appropriate to display on an online planning applications database

This list is not exhaustive and is presented as an example only. It is recognised that the variations in the application processing systems within local authorities will not allow for rigorous adherence to this example.

Application number
Application type
Status
Address
Postcode
Ward and/or parish
Development description
Officer
Officer telephone number
Officer email address
Applicant name
Applicant address
Agent name
Agent address
Agent telephone number
Date received
Date valid
Date registered as valid
Date site notice requested
Date press notice requested
Date last consultation letter sent
Date consultation period expires
Neighbours consulted list (list of addresses but not names)
Consultee list
Constraints list
Site inspection date
Committee or Delegated?
Committee date
Decision
Decision date
Decision notice date
Legal agreement?
Appealed?
Date appeal lodged
Appeal decision
Appeal decision date
Condition details, including condition compliance date
S106 details, including clause compliance date

Appendix 3

Example of public access to documents on the Statutory Register of Planning Applications

This list is not exhaustive but gives an indication of when it might be appropriate to display documents of the relevant category on the Internet.

Documents should normally be retained on local authorities' internal systems even when access to the public is no longer provided.

Some local authorities may display certain "document" types by an alternative means, e.g. the neighbour notification list may be displayed as part of the web database record.

Document type	Application status			
	Current	Decided (Includes decided at, etc)	Appeal (Live)	High Court Challenge (Live)
Application form	Yes	No	Yes	Yes
Drawing	Yes	Yes	Yes	Yes
CAD drawing	No	No	No	No
CAD conversion	Yes	Yes	Yes	Yes
Site plan (could also be displayed using GIS)	Yes	Yes	Yes	Yes
Additional information/reports accompanying application submitted by applicant	Yes	No	Yes	Yes
Neighbour notification list	Yes	No	Yes	Yes
Consultee list	Yes	No	Yes	Yes
Site notice	Yes	No	Yes	Yes
Related enforcement notice	Yes	No	Yes	Yes
Photo (taken by local authority)	No	No	No	No
Officer notes	No	No	No	No

General comment	Yes	No	Yes	Yes
Objection comment	Yes	No	Yes	Yes
Support comment	Yes	No	Yes	Yes
Decision notice	-	Yes ¹²	Yes	Yes
Appeal form	-	No ¹³	Yes	Yes
Appeal questionnaire	-	No ¹³	Yes	Yes

Document type	Application status			
	Current	Decided (Includes decided at, etc)	Appeal (Live)	High Court Challenge (Live)
Appellant's case	-	No ¹³	Yes	Yes
local authority's case	-	No ¹³	Yes	Yes
Appeal representation	-	No ¹³	Yes	Yes
Appeal decision	-	Yes	-	Yes
High Court challenge	-	-	-	Yes
High Court challenge judgement	-	Yes	-	-

¹² - The Planning Inspectorate will publish appeal decisions for a period of 10 years following the date of decision.

¹³ - The Planning Inspectorate will publish appeal information (statements, representations, etc, whilst the appeal is live and for a period of 6 weeks from the date of decision. The six weeks corresponds to the period during which people have the opportunity to make a legal challenge.

Appendix 4

Fields included in the PARSOL Online Enforcement System Specification

Investigation cases:

Case number
Online alleged breach of planning control number
Status (e.g. new, under Investigation, formal enforcement, closed, closed following formal enforcement)
Address (conforming to BS7666/NLPG)
Ward / area
Parish
Complaint received date
Description of alleged breach
Date investigation started
Officer name
Officer tel no.
Officer email
Relevant planning application
Investigation closed reason (e.g. resolved, accords with planning permission, planning application received, not expedient, no breach, already being investigated under a different number, formal enforcement action authorised)
Linked enforcement reference number

Formal enforcement cases:

Formal enforcement action authorised date
Authorised by

Potential multiple sets of:

- Notice type
- Notice served date
- Notice effect date (date last notice takes effect)
- Initial compliance date (needs explanatory note to say suspended by appeal)
- Complete compliance confirmed date
- Appeal submitted date
- Appeal decision
- Appeal decision date – optional
- Further related legal action
- Notice(s) fully complied with

Case closed:

(These fields would also be completed for investigations which did not result in formal enforcement action.)

Case closed date
Case closed reason (resolved, accords with planning permission, planning application received, not expedient, no breach, already being investigated, compliance, other)

For details of the full specification of the PARSOL Online Enforcement System and related XML schemas please see: www.planningportal.gov.uk/parsol. The schemas have been published and adopted on GovTalk and are also available on the GovTalk website:www.govtalk.gov.uk.

Appendix 5

Information which it would be relevant to include in an online database of building regulation applications

Application number
Application type
Site address
Site plan
Description of work
Applicant name
Agent name
Responsible officer
Responsible officer telephone number
Inspection officer
Inspection officer telephone number
Date received
Date validated
Target date
Decision
Decision status
Decision date
Application status
Inspection status

Glossary

This Glossary relates to the phases and terminology used within this document and does not attempt to be a comprehensive guide to planning policy or the planning system. To access a full glossary, please refer to the Planning Portal at:

www.planningportal.gov.uk/england/genpub/en/1018892037172.html.

BVPI	Best Value Performance Indicator
BVPI157	BVPI 157 measures an authority's progress in achieving 100% availability of e-services in line with the target date of 31st December 2005.
BVPI205	BVPI 205 is a 21 item checklist to measure the quality of an authority's e-enabled Planning services.
CAD	Computer Aided Drawing. A method of creating plans and other diagrams via a computer for electronic delivery and storage.
PARSOL	Government e-Planning initiative. Planning And Regulatory Services On Line. For more information please visit www.planningportal.gov.uk/parsol .
Portable Document File (PDF)	Electronic document type native to the Adobe Acrobat product suite.
Priority Service Outcomes (PSO)	Central Government defined set of priority areas and outcomes for local authorities to aim to meet via e-service delivery. For more information please visit www.localegov.gov.uk/en/1/priorityoutcomes.html .
PSA or LPSA	A local Public Service Agreement (LPSA) is a voluntary agreement negotiated between a local authority and the Government.
Section 106	Section 106 of the Town and Country Planning Act 1990. S106 allows landowners to enter into 'planning obligations' either unilaterally or by agreement with the local planning authority. For more information please visit www.opsi.gov.uk/acts/acts1990/Ukpga_19900008_en_1.htm .
SI 3391: 2004	Environmental Information Regulations 2004 - Legislation regarding public access rights to environmental information held by public bodies. For more information please refer to www.opsi.gov.uk/si/si2004/20043391.htm .
SI 419:1995	Town and Country Planning (General Development Procedure) Order 1995 For more information please refer to www.opsi.gov.uk/si/si1995/ .
SI 956: 2003	Town and Country Planning (Electronic Communications) (England) Order 2003 For more information please refer to http://www.opsi.gov.uk/si/si2003 .
Web/ Internet	World wide web or Internet. These terms are synonymous throughout the document.

This Glossary is neither a statement of law nor an interpretation of the law. Its status is only an introductory guide to planning issues and should not be used as a source for statutory definitions.



The PARSOL Planning and Building Control Information Online - Guidance notes for practitioners, were developed, in collaboration with the ICO (Information Commissioner's Office), by PARSOL (the Planning and Regulatory Services Online Project) Planning led by Wandsworth Council.

PARSOL Planning is funded by the Department for Communities and Local Government as part of the e-Planning Programme.

The full range of PARSOL Planning products, supporting local authorities' development of e-enabled planning solutions, is available on the Planning Portal at

www.planningportal.gov.uk/parsol