

TOWN AND COUNTRY PLANNING FOR BEGINNERS

By Robert Dewey BA (Hons), MBA , MRTPI

INTRODUCTION

1. The system of town and country planning which currently operates in England and Wales is over 70 years old having been brought into existence by the 1947 Town & Country Planning Act. (Please note that the law in Scotland although similar is different) (The position in Wales although generally similar to England is also different.) To say that the law is now complex is probably an understatement; the practitioner's encyclopaedia takes nine volumes. Professionals dealing with it day by day can find it difficult to grasp all the detail; it should be understood that this paper will barely scrape the surface of the subject. It is intended to give a brief, broad summary and hopes to point to some of the more obvious areas where IWA or other canal groups may become involved. It should also be noted that the IWA may sometimes be an objector to planning proposals by others and sometimes may be a proposer/supporter seeking to have planning permission granted. The two will need subtly different treatment.

2. Please note that this paper has not been written by a lawyer and also that the detail of the law and procedures changes frequently. Use it as a guide to general principles - ask for specific advice if you are in any doubt or the case becomes complex. It is clearly better to get advice early rather than set off in the wrong direction and live to regret it.

3. The system of Town & Country Planning is concerned with the use and development of land. It is concerned with protecting the public interest and is not generally concerned with private rights; it is rarely concerned with financial matters or competition between businesses.

4. This guidance is set out as follows:

- . legal framework
- . the planning system
- . consideration of what needs planning permission
- . how to make/handle a planning application
- . how to manage the planning process
- . appeal procedures
- . Listed Building matters
- . Conservation Areas

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LEGAL FRAMEWORK

5. The law consists of Acts of Parliament, supplemented by specific Orders, Regulations and Directions, explained by Ministerial Circulars, Planning Policy Statements (PPS)/ Planning Policy Guidance Notes (PPG) and interpreted by decisions of the Courts. The Welsh system is slightly different again with Planning Guidance (Wales) and Technical Advice Notes (TANs) replacing PPS/PPG.
6. The principal Act is (at present) the Town & Country Act 1990 but readers should not rely on a printed copy of it because it has been amended by (amongst others) the Planning & Compensation Act of 1991, the Planning & Compulsory Purchase Act 2004 and the Planning Act 2008. For example, a printed version of the Act will not include section 54A which became very significant but has now been replaced by section 38(6) of the 2004 Act. As will be pointed out later this can be very significant. Another significant Act is the Planning (Listed Buildings) Act 1990. These Acts contain the law as agreed by Parliament. Since the law is amended from time to time by Parliament and is interpreted by decisions of the courts, practitioners need to rely on manuals such as the loose leaf format of the Sweet & Maxwell Encyclopaedia of Planning or Butterworths CD ROM which are kept (fairly) up to date. They cost over £1000 so don't try and buy them. Groups may be able to read them in the Council Planning Department or in libraries.
7. Since getting a new Act through Parliament is very time consuming and expensive, MPs clearly do not want to have to revise Acts with any frequency. Often provision is made for the Secretary of State to make Regulations under the Acts. These have the similar force as the Acts and can be issued relatively easily. In 1991, for example, six General Development (Amendment) Orders were thus issued. Ministers may want to give advice to local authorities and they issue Circulars and guidance notes (eg PPS/TAN). These do not have the formal backing of the law but are intended to show how the government will be thinking if a decision comes before it and will often carry as much weight as the Act itself. If you are able to find relevant sections in those documents to support your case, that would greatly assist it.
8. The final piece of the jigsaw is the judiciary (the courts). In making decisions, the judges interpret the law and their verdicts can over-ride circulars and ministerial decisions if they do not accord with the law, or are seen to be unreasonable, or would not provide a just decision. Some decisions bind future decision makers to the same line of argument and thus can be very powerful. It is not always easy to find out relevant cases although there are agencies who (for a price) can find comparative cases.

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THE PLANNING SYSTEM

Administration

9. The planning system is headed by the Central Government [in England the Secretary of State for Communities & Local Government; In Wales the Welsh Government is the controlling authority through the Minister for Environment and Sustainable Development]. However for the vast majority of matters the powers are left in the hands of the local councils. For most day to day planning control this means the District or Unitary council - the Local Planning Authority (LPA). Various re-organisations have increased the number of unitary authorities and may further erode the two-tier system which still applies in parts of England. Make sure you know who does what in your area and keep in touch with any projected changes.

10. Councils are made up of elected councillors and they appoint officers to do most of the day to day work. Most Councils delegate a significant proportion of their power to decide planning applications to the Chief Planning Officer or equivalent. Most matters will be allocated to a case officer who will do most of the negotiations and will make a recommendation on the matter. Contact with the Council should normally be made through that officer.

11. Both Councillors and Officers wield significant power in the planning process and it cannot be stressed enough that groups will be well advised to cultivate close and constructive professional relationships with both. Councillors expect to be lobbied, so talk to them, invite them to events as your guests. However those Councillors who are members of the Planning Committee are likely to decline to express a public view before a matter is debated at their meeting. This is because anyone expressing a public view before they have a full argued report is considered to have prejudiced their ability to come to a decision with an unbiased mind. So don't be surprised or disheartened if they do not immediately and publicly express their support for your position.

Technical

The 1990 Act divides broadly planning into:

- i. Forward Planning (Development Plans)
- ii. Development Control.

Forward Planning

12. Forward planning is about setting out the strategy for the future - typically a 10 year period. In England, Regional Spatial Strategies were prepared by the Regional Assemblies which were being approved by Central Government. These were intended to be a wide ranging document covering more than just traditional town planning matters. The new Government (2010) abolished these but the courts have ruled that this was unlawful. It seems likely that the RSS will have some relevance for some time yet.

13. All areas of the country will have a “Development Plan” in place. It will have a variety of titles including Unitary Development Plan (where there is a single tier of Authority), a Local Plan and a Structure Plan. This will probably be the most significant document which will affect how planning decisions are made (as mentioned above section 38(6) make its importance a matter of law. Thus, in considering how to respond to or to initiate a planning application you should study the Development Plan. If it is relevant and up-to-date its provisions are likely to be decisive.

14. Under the old system (in areas of two tier authorities i.e. counties and districts) the County Planning Authority had to prepare a structure plan with the district councils preparing local plans. The Structure Plan is a series of written statements giving a series of general county-wide policies illustrated by a diagrammatic map. The map cannot be scaled and is not intended to give detailed location of proposals. The Local Plan was a much more detailed plan intended to put ‘flesh on the bones’ of the Structure Plan. It consists of the written (more detailed) statement accompanied by an Ordnance Survey based plan. This will typically be at 1:10,000 (i.e. approx. 6” to 1 mile) and may include larger scale detailed plans in urban areas. The local plan must be stated by the County Council to be in general ‘conformity’ (i.e. its proposals must be compatible) with the structure plan before it is approved. In areas with one tier only (in Metropolitan areas, Wales and in increasing areas in England) the LPA produced a Unitary Development Plan possibly jointly with adjoining district(s). Unitary Development Plans are effectively the structure plan (part 1 UDP) and local plan (part 2 UDP) rolled into one.

15. English Local Authorities are now being required to prepare a Local Development Framework (LDF) which is intended to draw together a series of Local Development Documents. One of these is the Core Strategy which sets out an overall vision, strategic objectives and a delivery strategy for the area. The LDF will also include Site Specific Allocations, a Proposals Map and may include Action Area Plans and other Supplementary Guidance. There will be a Local Development Scheme which sets out timescales for these. Welsh Authorities are preparing Local Development Plans which are much more similar to the old UDPs.

16. All areas of the country should now be covered by a development plan but its age and relevance will vary. Plans which are a few years old will carry less weight than up-to-date plans or national guidance. A plan which fails to take account of some significant changes in the area will have less weight than one where there have been no changes. Some authorities have been given permission to complete work under the old systems – so check what situation applies in your area.

17. You are strongly urged to talk to the Local Authority's Forward Planning Team (the exact name of the team is likely to vary but will probably be understood by that name) to ensure you understand exactly what is proposed to happen in your area, and the dates for the various stages of generating their Plan. Get your group's name onto their mailing list so that they can notify you when the various stages progress and make sure that changes in your group's personnel are notified so that contact is maintained.

18. Preparation of the plans has always involved a degree of public involvement and consultation. The new systems are intended to include much greater public involvement than previously but it was also intended that they will be developed more speedily. This apparent contradiction has never really been explained / worked out.

19. Development Plans are reviewed from time to time - in the past typically every five to ten years but under the new arrangements more frequently. They are seen as a means of telling developers and residents how the LPA sees its area changing (or not changing) in the period. At the risk of being repetitive, it is vital that all groups get in touch with all their local councils to ensure that they know what is happening and keep track of dates and timescales as missing a date could result in your comments being ignored.

20. Although intended to have a degree of permanence, the plan can be amended, and sometimes schemes which do not accord with it can be approved. Sometimes, unforeseen events occur and the local plan is not a veto. But in most cases it will be of overriding importance. However, the LPA may initiate a "Departure" from the Local Plan if it wants to allow something outside the plan. This will require additional publicity and consideration of objections. This process may involve National Government in certain cases.

21. Because of the importance of the development plan (see comments on Section 54A/Section 36(4) of the Act - para. xx below) it is crucial the group makes sure that the plan contains the policies, which reflect the aims of the group. If the plan states that the canal will be protected from development and/or will be restored to navigation you will find that applications for planning permission are much more likely to be decided in accordance with those aims. If there is no such policy, campaigning will be so much harder.

22. Groups should not sit back and rely on the Councils to put suitable policies in their plans, though. They may not be aware of those hopes or despite widespread public acclaim, they may still not have any inkling as to the benefits to be derived from canal restoration. Find out what their intentions are for the future of the waterway and build up a dialogue with them as soon as possible. Where a canal extends through more than one Council area, it may be useful to bring together officers of each council in a working party. You may even be able to use a particularly supportive Council to help promote your cause with those

less persuaded. As indicated in para 17 above, you must ensure that the group has clear knowledge of when they are intending to review their plans by asking them (in writing). Plans are produced in draft for consultation, prior to being published formally for comment and it is important to make sure appropriate policies are included at the first opportunity. It may be worth considering drafting policies for inclusion in the Plan. There are plenty of suitable policies in other areas' plans, which can be copied. Even if your waterway does not appear threatened, it is highly desirable to include some policy to encourage use, or improvement, or towpath improvement or whatever.

23. Progress on the plan should be carefully monitored as it proceeds through its (very lengthy) procedure towards its adoption. This can take several years or much longer depending upon the complexity of the plan and the objections, which are raised. It is absolutely essential that someone in the group is responsible for watching the progress. When the plan is put 'on deposit' - the formal comment stage, a period of just 6 weeks is allowed for objections and letters received outside that time (even by a day) may be ignored. If the plan includes the policies, which the group supports - it is very worthwhile to write formally in support. If it does not include what you want, you must utilize all the resources you can to remedy this. As well as a formal submission to the Council in the form stipulated by them it should be illustrated and expanded by means of reports/documents which are of the highest possible standard and produced in a professional manner. If you are in any doubt, talk to the planning officers who will usually be willing to give helpful advice even if they do not agree with your case. You would be well advised to send copies of your documents (or if lengthy – use summary documents) to Councilors and other Council officers such as Head of Recreation or Leisure). If you are not completely clear how the system will operate in practice, never be afraid to ask.

24. Your group's interest must be continued meticulously throughout with a clear understanding that whoever is responsible in the group must, if for any reason he is unable to deal with the matter, put it into the hands of someone else who is briefed and can continue the fight. Ultimately, you may need to be prepared to defend the case at a public inquiry against any objections raised by others or may need to explain to an independent inspector why you feel your policy should be included. Success at this stage will make the campaign very much easier in the following years. Again you are strongly advised to seek help. If you get it wrong your project could (at best) be set back years - at worst it may be doomed. The IWA will be happy to assist with advice if needed.

DEVELOPMENT CONTROL

25. The other main part of planning is the control of development. (see below for what 'development' includes). Development Control is where the detailed, day to day decisions are made. Planning applications are submitted for decision and government policy aims for 80% to be decided in less than 8 weeks. There may

not be time to wait for a group meeting before making comments on a new application - they may be too late. The group should set up a system for rapid internal liaison within your group or should entrust a member with the job of responding quickly on its behalf. Try and be prepared in advance so that you can produce a smart looking document well within the time allowed.

26. Applications must be determined in accordance with the Development Plan 'unless material considerations indicate otherwise'. (Section 36(4) of the 2004 Act). The plan is thus the first and most important consideration (see para. bb). Other "material considerations" will always be relevant but will probably only outweigh the plan if it has no policies relating to the matter or it is out of date. These considerations include a very wide range of matters related to the use of land and certainly would include benefits from a restored canal. They would not normally relate to financial considerations. If you think of the decision making process as a set of balance scales, the development plan will weigh down on one side and any other considerations which suggest an opposite view will be on the other side. It will take a lot to outweigh the plan but it does happen. A strong sensibly argued case supported by objective evidence (maybe including plans, pictures etc) can carry a lot of weight.

WHAT NEEDS PLANNING PERMISSION?

27. Section 65 of the Act tells us that planning permission is needed for "...building, engineering or other operations in, on under or over land or for the making of a material change in the use of land...". That just about covers everything, including repairing the gutters on a house.

28. No bureaucratic system could cope with that workload. So, by means of Regulations such as the Town & Country Planning (General Permitted Development) Order (GPDO) and the Town & Country Planning (Use Classes) Order (UCO) amongst others, certain matters are taken out of the system (in effect are given planning permission automatically). Many activities undertaken by British Waterways - dredging for example - are "permitted development" because the GPDO grants permission. Control can be recovered by the Local Planning Authority but in most cases only with the First Secretary of State's (National Assembly for Wales) permission (called an Article 4 Direction) and only before the works are done. This procedure is complicated, time consuming and could involve payment of compensation and is rarely used. In general it should be assumed that anything which is permitted development is beyond the control of the LPA.

29. Whole books can be written trying to define what is development, - i.e. what needs planning permission. Sometimes the Act will contain help - e.g. the deposit of waste material is specifically listed as a change of use of land. There are also less helpful statements like "building is work normally carried out by a builder". The scale of something will often be relevant in deciding whether something is

development. One man digging a hole may not be, a gang with a Hymac digging one could be. Similarly, parking a car on a piece of land may not be a change of use : a car dealer parking dozens would almost certainly be. Regrettably, the fact that something is objectionable does not mean that it is development and the LPA may be powerless to intervene.

HOW TO HANDLE PLANNING APPLICATIONS.

30. There are two sides to the process. Groups may be making a planning application to dig out a canal or they may be seeking to comment on an application from someone else, which they wish to support or object to. However, do not apply for something unless you are sure permission is needed.

MAKING AN APPLICATION

31. Making an application is not necessarily simple, although at its most basic it involves filling in a form (plus up to 4 copies) and providing plans showing the location of the site (e.g. 1:2500 OS map). Details of the proposal (maybe 1:500 or larger) with elevations and detailed layouts may also be needed. A certificate relating to land ownership will be essential. There is also a fee to be paid. It is well worthwhile contacting a planning officer informally before submitting the application to find out what may be needed to give your application the best possible chance. A scruffy application with gaps and missing suitable supporting material could well fail even if the proposal is sound.

32. On receipt of the application, the Council will send you an acknowledgement giving you details of who will be dealing with your application and a date 8 weeks ahead by which time a decision should be made. (For major projects involving Environmental Impact Analysis - 16 weeks). If you do not get a decision by then you can appeal (see Section G) as if your plans had been refused. However this is rarely the quickest way of getting a decision and should not be done without further advice.

33. Making friends with the case officer (see para. mm) will undoubtedly be beneficial and confirm that he/she has all the information needed; try to find out whether the application is to be decided by the committee (councillors) or by the Chief Planning Officer (under delegated powers). The case officer should be able to warn if there are problems expected and if so, the group should be prepared to lobby the committee members. A short informative illustrated leaflet sent out a few days before the planning meeting may be worth considering. However, unless it is of a good quality it may be of doubtful value. Many authorities now will allow you to speak at the Committee meeting to explain your case. If they do, prepare your case, rehearse what you are going to say until you are (nearly) word perfect.

34. If all goes well a planning approval notice will be issued probably specifying conditions which must be complied with. The first will be a requirement to start within five years. If you are not ready to start yet, obtain advice about making a “technical start” to ensure the permission does not expire. Look carefully at the conditions. Some may require you to do something before work starts –e.g. submit a landscape scheme or a sample brick. Do not under any circumstances start until you have discharged all these “pre conditions”. If you do, you will be at risk of enforcement action. Details from IWA HQ.

35. If permission is refused, there is a right of appeal but before doing so, the reason(s) given for the decision should be studied to see if they can be overcome. Again talk to the case officer who will usually be willing to make constructive suggestions of a way forward. If you can see a way forward, re-apply. A revised application can be made for no fee within twelve months.

COMMENTING ON SOMEONE ELSE’S APPLICATION

36. Groups must ensure that a careful watch is kept for proposals which may affect your canal. (see para. tt) If possible, persuade the council to send you the list of plans received (usually published weekly) and also details of any applications, which affect the canal. Most authorities now put this information on their web site. Often - www.councilname.gov.uk. It will also be important to ensure that local members of the group are watchful for notices, which are required to tell the general public of the receipt of an application. Most councils will display a notice at or near the site. There may also be a notice in the press and some councils will put you on an e-mail circulation list advising you of newly received planning applications.

37. As soon as you become aware of an application you must act. Take the initiative - don’t wait to speak to someone else or for your group’s committee to meet. There may be as little as 21 days from the date of the notice to get comments or objections in. If this is missed, the chance to object may have gone for ever. If you can do nothing else, write a holding objection and state the outline of your concerns. If you slip up and the date is missed, ring up the Council immediately and ask if there is still time but it is far better not to run the risk.

38. Comments (for or against) must be made in writing to the Council. Make sure what is said is well thought out and well presented. It should be illustrated if appropriate and copies sent to influential councilors. It may be beneficial to contact other groups or individuals and see if they will also write in to add weight to the case. (One letter well argued is good enough but a barrage of letters making similar points does concentrate the case officer’s mind.) Petitions or standard letters can be useful but individually worded letters are worth much more. Ask group members to write in - if you wish, suggest broad headings that they may wish to include in their letters so that the Council gets a good variety of opinions and concerns.

39. Simply because something needs planning permission does not mean that a planning application will be lodged for that work. Planning fees (typically over £350 in 2008 and up to £250,000 per application) are a strong disincentive even though the fee may be relatively small compared with the overall cost of the development. The government is currently reviewing the fees charged (Nov 2010.). Surprisingly, however, it is not an offence to carry out development without planning permission. (Probably because the system is so complicated that many people make genuine mistakes.) People are usually given the benefit of the doubt and allowed to apply in retrospect when the mistake is pointed out to them. The Authority is expected to consider the retrospective application as if the development had not occurred and to judge it fairly.

40. If development occurs without planning permission (i.e. where an application is refused or if no application is made) the Local Planning Authority has to decide whether the breach of planning control is sufficiently serious to take enforcement action. The Council will need to resolve to take enforcement action. This may be through an Enforcement Notice, or a Breach of Condition Notice. It is an offence not to comply with an Enforcement Notice. An Enforcement Notice is served when a breach of planning control is considered sufficiently serious for the Authority to take action. Many breaches pass unnoticed or are considered insignificant. However if you think there is a breach which is significant you should draw it to the Council's Planning Enforcement Officer as soon as you are able. If he is not aware or if he does not realise the significance, the time periods mentioned below could soon run out making you powerless.

41. If building /engineering operations or other developments go unchallenged for four years or a change of use continues for ten years it becomes lawful and thus no action can be taken by the Authority.

42. An Enforcement Notice takes 28 days before it can become effective - after that time a further period specified in the Notice must be allowed for the breach to be put right. Any appeal against an Enforcement Notice must be made in that first 28 days (there is no power to extend that time). Subsequently action can be taken in court to prosecute a developer for not complying.

43. If more urgent action is required (e.g. if the breach is causing a nuisance) the Enforcement Notice may be supplemented by a Stop Notice which becomes effective after three days. Councils also have the power to serve an injunction, which is described as the ultimate weapon since failure to comply with it can incur very serious penalties. These are rare indeed.

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Summary: HOW SHOULD GROUPS MANAGE THE PLANNING PROCESS?

44. In the ideal world the group should aim to be one step ahead of the opposition but in reality it will often have to react to other peoples' decisions. A few basic rules should set out the foundation for success.

45. Firstly, the Development Plan must reflect the group's aims. Section 54A /38(6) mentioned above requires that decisions are made in accordance with the plan unless there are overriding reasons. So it is important to be clear about the Council's programme for preparing its development plan (see para. zz) and make one of your group responsible for watching that work.

46. Secondly, most Councils publish a list of applications they have received that week and it will be useful to get on the mailing list. It may cost money but showing the Council that the group wants to play a constructive part in the planning process may persuade them to send lists free of charge. Inclusion on their e-mail list is probably free. Alternatively it can be seen at the Council offices or local libraries and most authorities now use their web site. The list will invite comments within a period (usually 21 days) so must be reviewed every couple of weeks at least. Be meticulous in considering the list. It is unlikely to describe a proposal as "filling in derelict canal"- more likely "erection of dwelling". It is important to be aware of the areas in which you are interested, including new and old street names, names of old houses etc. The grid reference may be included and may help. If there is any doubt you must ring up or better still ask to see the plans. The Council must keep copies for the public to see and increasingly authorities will put the application plans on their web site.

47. It will be useful find out who the development control officer(s) is/are for the areas in which you are interested and to keep them informed about your plans - if you have a newsletter send it direct to them (as well as the Chief Planning Officer). Building up a trusting relationship with them is a good idea because, they can sometimes succeed by gentle persuasion where the full might of the council may not.

48. Suppose you find an application does affect your canal interest and you want to object? You must put a full statement of your case in a letter to the Council (the Case Officer) before the deadline. Make sure it contains a sensibly argued case; abuse, insults etc. are to be avoided at all costs. You will be surprised how much extra value you can put into your objection with a short illustrated report. Pretty photos showing your point may be worth including too.

49. It may help also to contact the developer and explain that you want to discuss ways in which his scheme can be modified to overcome the concerns. He may just be willing to adopt the alternative (so that he gets an approval without having to go to appeal) and then everyone is happy. If no negotiations are possible, contact Councillors with a clearly argued case to back up your objections. A

regular dialogue with the more influential ones is a good idea. The leader of the Council (i.e. the head of the ruling political group) is the single most important member but do not ignore the chair of the planning committee and also the minority parties. They may be in power next time round.

50. It may also be useful to invite Councillors to see an example of a working/restored canal since many of them may never have seen a canal in working order - show them the beauty that you know so well. Depending on how far you have been able to build up a trusting relationship with officers and Councillors, you may consider taking them on a short canal trip. Don't assume they will agree on first asking!

51. If the Council does not accept your case, what can be done? Firstly note this is different from the Council ignoring the case it just means that they have either not appreciated your position or that there is something which they consider of greater importance than the canal case. Make no mistake, this situation is difficult but continued negotiations with the Council officers, the members and the developer himself can still be attempted. The planning application stage may be the only realistic chance of achieving the objective - it is vital to win.

52. You do not have a right of appeal except in one very specific situation. Any decision can be challenged in the High Court if it can be shown to be 'perverse'. This is called 'Judicial Review'. That is, if it is shown that a reasonable Council would not have reached that decision or that they failed in some way to follow proper procedures. It is very unlikely that you will be able to show this, time for such a challenge is very short and the costs will be high.

53. Failure to follow proper procedures may also be a ground for reporting the Council to the Local Government Ombudsman but this is unlikely to result in a change in the decision since the Council would have to revoke the planning permission and pay compensation. In view of the time scale of getting a complaint heard it may be too late by then, anyway.

54. If the Council has supported your case, that may be the end of the matter. You should however be prepared for the developer to appeal to the Secretary of State. (see below).

PLANNING GAIN

COMMUNITY INFRASTRUCTURE LEVY

55. This is a complex and controversial provision. Despite the widely held view that this might be the panacea which allows Councils to raise funds for canal restoration projects, that is likely to be far from the truth. For those readers who are interested in exploring this complicated system you should access the guidance from the Department of Communities and Local Government. It is likely

to be some time before the Levy is in place and before it brings in any significant sums of money.

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1772940.pdf>

For the majority of circumstances, the old system is likely to remain relevant for some time – particularly as many of the Agreements rather than dealing with money directly impose a requirement to do (or not do something – or not do something until something else has happened). The following is a general overview which sets out the historical situation and paras 55A – H relate to Section 106 Agreements only.

55A. Planning “gain” is a term used loosely to describe the opportunity for developers to fund/provide additional contributions/works in a community as part of a planning submission. Such philanthropy does not happen on a regular basis because, whilst some might see it as a chance to get a developer to give something back to a community which he might not otherwise be giving, others might see it as a bribe to allow unsuitable development to go ahead. The government’s advice is very clear that the “gifts” must be:

- relevant to planning
- necessary to make the proposed development acceptable in planning terms
- directly related to the proposed development
- fairly and reasonably related in scale and kind to the proposed development
- reasonable in all other aspects.
(see ODPM circular 05/2005)

The legal mechanism for obtaining “gains” is a Section 106 (Town & Country Planning Act 1990) Agreement or Obligation.

55B. Local Authorities are advised to be aware that developers should be not entering into Agreements which might be seen as buying a planning permission which would otherwise be unacceptable.

55C. Opportunities for planning gain in the waterway context are likely to be very rare but if they are found to be justified could be hugely beneficial to a waterway project.

55D. They are much more likely to be required if the Local Planning Authority has written a policy in its Development Plan explaining the circumstances in which an Obligation will be required. Once again, groups are urged to get involved long before the planning application stage and work to ensure that the development plan says what is required.

55E. It is very difficult to give examples of where an Obligation could be appropriate. The following ideas are intended to help but are by no means exhaustive nor are they guarantees of success.

- surfacing canal towpath
- protecting line of canal

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55F. Before a formal planning application is made for a significant development a developer will usually discuss his intentions with the planning officer. At that stage the planning authority may well suggest local improvements such as highway widening or a school extension which would be a condition of approval. By the time the planning application is made public it would be very difficult to change what has been agreed informally.

55G. If any benefits are to be secured for canals it is essential that the planning officer has canal restoration high on his agenda before the first approach from a developer.

55H. A developer may well see canal restoration as a benefit for his development and a well briefed planning officer will point out the potential and make sure that he realises this. The developer could well include canal works in his proposal if he sees in it advantage for himself and an opportunity to 'oil the wheels'.

55J CIL is intended to replace this in most cases by a system of charges based upon a standard tariff and based upon clear Development plan policies. However there are still cases where a Section 106 Agreement may be required to deal with site specific deficiencies.

55K The Levy is intended to support the development of the area and to provide (or remedy deficient) infrastructure. Transport and recreation projects are specifically mentioned. Clearly, the inclusion of a policy in the Development Plan will greatly enhance the likelihood of a project obtaining support from the Levy. The amount of the tariff will be subject to local consultation.

APPEALS

56. All planning decisions can be challenged at an appeal if the developer is unhappy with either the decision to refuse or any condition applied to an approval. Unfortunately, the right of appeal extends to the applicant alone - objectors can only appeal to the courts in the circumstances set out in para. ff and they can rarely challenge the merits of the decision itself.

57. Appeals are made to the Planning Inspectorate within six months of the decision. Appeals can also be lodged if no decision is made within eight weeks of submission.

58. Appeals can be dealt with in one of three ways:

1. Written representations (exchange of written cases) - the most common, easiest, cheapest and quickest method.

2. Informal Hearing (a meeting takes place between the parties concerned with an Inspector acting as chairman) - these are increasingly used to avoid the costs and complexity of the formal Inquiry.

3. Public Inquiry - a formal (quasi-legal) hearing where both main parties are likely to be represented by a lawyer(s). This is likely to be

the most common procedure where there are major objectors to a proposal and might be used where a canal society is actively involved. This can be costly (a competent barrister can cost £5000+ per day) but the group could send a member to represent it. This will cost little and may have some advantages. If the group is supporting the Council's case they may be glad to present a joint case. However, do not be offended if they do not publicly want to appear jointly. Nevertheless they may be quite pleased to have your support and there maybe things you can say which the Council cannot. Do not be afraid to meet them and offer your support and see whether they can use your expertise and experience to bolster their case.

59. Whichever method is chosen (only the Council or the appellant are involved in the choice - objectors will not be asked.) it is vital to be clear of the timetables involved and to stick rigidly to them. Your original objection should be taken into account. It is not essential (but extremely desirable) to supplement any previous comments.

60. This should consist of a much fuller statement in support of the case. There is no particular recommended form for the statement but it should be clear, carefully argued and should stress not merely what is wrong with the proposal but (if possible) how it can be made acceptable. Inspectors are likely to be more impressed by constructive argument.

61. The statement can refer to other similar cases where there has been a successful outcome, and should talk particularly about the benefits a restored canal can bring - there is plenty of documentary evidence to draw on showing job creation potential and environmental improvements which have followed restoration. Photos / artists' impressions if appropriate may be helpful. Above all, make the presentation businesslike in terms of content and appearance. In the case of an Inquiry prepare a number of copies available for circulation to the main parties and the press.

62. If a Public Inquiry is called, it will be a fairly daunting event unless you are used to legal or semi-legal proceedings. It is important that the case to be presented is well prepared before the day. It is likely that both sides will have engaged professional help – solicitors/barristers. There will be very little chance to do much quiet thinking on the day itself. Rehearse your arguments, prepare answers to awkward questions you hope they won't ask you, think about your case and think again. Remember advocates / barristers thrive on asking you a series of simple questions which you are happy to answer only to find out that they have led you into admitting that black does equal white after all. If you find that you haven fallen into such a trap do not be afraid to explain that you do not accept that conclusion is right. They like simple yes/no answers. The Inspector will almost certainly be happy for you to expand your answer to tell the bigger

picture. Do not let the barrister bully you into saying (or not saying) something you really want to.

63. In charge of the day is the Inspector. He or she may be a planner, or a solicitor or another professional. It is unlikely that he will have any knowledge about canals and he/she must be treated with very great respect. Be smart and organised. Losing one's temper with him/her is likely to do the case serious harm however good the argument. Banner waving and chanting will be a positive disadvantage - make sure your supporters know this too.

64. In the vast majority of cases he, and he alone, will be responsible for making the decision so do everything you can (short of bribery) to get him on your side. He will open the proceedings at 10 a.m. (on the dot, usually) so be there early. He will usually start by explaining the procedure for the inquiry.

65. This will broadly follow a set pattern, starting with his introductory remarks followed by the case for the appellant (including any witnesses) with the council then being given the chance to ask questions ('cross examination'), then the inspector will ask any questions he has. The appellant's advocate may ask further questions of his witness on any points which have arisen during the questions (reexamination'). The Council will then present its case and be subject to cross examination as before. Third parties will then be asked to make their statements and be ready for questions from either side and from the inspector. Both sides will then close their cases.

66. The Inspector will visit the site to see for himself. At the site visit there can (and must) not be any further discussion of the case. The decision will be sent out later - it may be a few days but is most likely to be some weeks - or even months away. The decision can only be challenged if there are any legal points where it is defective. The merits of the case cannot be re-examined.

66A. With big developments an inquiry may go on for weeks, months or even longer. In that case the presentation of evidence will be planned, the planning authority will tell you when your evidence is due to be heard and you need not sit through other presentations irrelevant to yours. Nevertheless take the trouble to establish what other representations are to be made in case they impact on your group's interests. If you can find other group Members to attend on days you cannot and make notes that may well be worthwhile. It is surprising how something said by one of the parties during discussions on a different topic may provide useful ammunition when your evidence comes up.

LISTING OF BUILDINGS

67. The planning system recognises the importance of our built past and allows the Secretary of State to produce a List of Buildings of Special Architectural or Historic Interest. Various criteria have been set out to guide him in deciding what to list. The basic criteria currently used are:

- . all buildings built before 1700 which survive in anything like their original
- . condition;
- . most buildings built 1700-1840;
- . buildings of definite quality built 1840-1914;
- . selected buildings of high quality built 1914-1939.

A few post-war buildings of exceptional quality have also been listed. The actual listing is done by the Secretary of State on the recommendations of surveyors appointed by DCMS/CADW.

68. There are basically two ways that a new listing occurs. The country is being re-surveyed - an intensive study is done of a town or rural area and (usually) a number of buildings are added to the list. Alternatively anyone can write to English Heritage (or CADW in Wales) to draw attention to a building which could be considered.

69. If a building (that includes structures such as locks, bridges and even milestones) is considered to be of particular historic interest and it is thought suitable for listing, consider writing in. Before doing so, do as much research as possible. If there is an immediate threat (see comment on 'spot listing' in paragraph 70 send details with as much information as you have and follow up later. Explain as much as is known about the history (date of building is very important) and why it is special. An example might be that it is the first concrete bridge or an early example of some special building technique. The special historic interest could be that it was associated with someone famous - Brindley's birthplace, for example.

70. Although the power to list buildings rests solely with the Secretary of State/Welsh Assembly Government, local authorities have the power to 'spot list' buildings; a procedure which provides a six month breathing space. During that time the building is listed but it requires the S of S to confirm the listing for it to become permanently protected. If the listing is not confirmed by the S of S the listing ceases and the Council may be liable for compensation – so it is relatively rare. .

71. So if something becomes listed, what are the implications? Basically it means that the building cannot be altered in any material way without first gaining listed building consent. It may also mean that grants may be available for works to improve the building (e.g. replacement window frames which match better the original character) and it will mean that some works which require consent are VAT exempt. Alterations will require an application to the Local Planning Authority in a similar way to a Planning application. An application is more carefully scrutinised and may need to be referred to the S of S before it is approved. There is a presumption against the demolition of a listed building but it would be a mistake to assume it will automatically be turned down.

72. A developer who finds a listed building in his way may be more amenable to talk to objectors because he knows he will have an uphill battle. You may be able to get concessions in exchange for your support but use this option with great care.

73. The authority will also have to consult certain statutory bodies for advice. These learned specialist bodies (e.g. Victorian Society) may be interested to hear comments from you before they respond - but you will have to be quick - they too have limited time to respond. Try contacting the local civic society if there is one. The authority will probably accord more weight to the views expressed by these bodies than the views of a canal society because the former are recognised as experts in dealing with such proposals. A jointly agreed response would probably carry significant weight.

74. Remember that where the proposal involves alterations to the building, however desirable it might be to keep it exactly as Brindley saw it, or perhaps with the original stable doors on, if a new use is not found it may just be left to rot. - no one wins then. So, do not automatically fight to retain every little feature. Stand back and look at the essential characteristics of the building and preserve or enhance those. Try to discuss the details with the Council or the architect so as to keep the original features as far as possible. If they conflict with the new use, try to see if they can be incorporated in the design. If a door is no longer required as a door, block it up with dark glass or a contrasting brick so that it still shows as a door.

75. All buildings change with time because of changes in the way we live and work and listing should not be used as an excuse to fight any changes at all. What the listing should achieve is a building, which shows how or why it was originally built, with sensitive changes, which allow future generations to understand its significance.

CONSERVATION AREAS.

76. It is all very well to preserve buildings of character but it is often the case that areas of character are made up of buildings which individually are of little merit. In recognition of this, the Act gives the Council power to designate Conservation Areas. These are areas which have a particular character or appearance it is desirable to preserve or enhance. The designation prevents demolition of buildings without the consent of the Council. It also gives some protection to trees which cannot be felled without giving the Council six weeks' prior notice.

77. Areas which have been designated are quite diverse but include city squares and sections of canal. Councils review their areas from time to time and they may consider sections of canal in your area to be worthy of protection. If there is an area which might benefit from preservation and enhancement the group could make a case to the council. The 'enhancement' aspect is important because the

designation is intended to go beyond just preservation (i.e. pickling in aspic) to encourage active measures to improve and invigorate it sensitively. Many Councils have a (small) budget for improvements to such areas - there may be grants for works to repair a building or carry out paving or tree planting works.

78. Planning applications are required for developments within Conservation Areas just as for any other area but they must be publicised in the press if they are judged to materially affect (positively or negatively) the character of the area. In any case, it is the duty of the decision maker to assess whether or not the development will preserve or enhance the character and in making his decision he must show that he has thought about that aspect. He will need very strong reasons if his decision does not preserve or enhance.

79 In addition, an application will be needed to demolish buildings in a Conservation Area (certain small buildings may be exempt) and again, this application must be publicised in the press. If an approval is given, it may be subject to a condition preventing demolition taking place until the replacement building is ready to be started so that an unsightly gap is not left in a frontage.

80. Applications in Conservation Areas are dealt with in a similar way to other planning applications (see section E). Clearly if there are objections it will be necessary to show why it will adversely affect the character of the area. You must however remember that the object is not 'preservation at all costs' - just as indicated in para. 74, a building with no use and no life is likely to decline - a canal wharf preserved as a series of empty shells of buildings may be historically correct but it will deteriorate if no one is willing to maintain it. Buildings sensitively converted are much more likely to survive.

CONCLUSION.

81. The planning system is very complex. There are few people who can honestly say they understand all aspects of planning. The message is, don't hesitate to ask. Local authority staff have been given a bad press - most are anxious to help and it is well worthwhile making friends with the officers who deal with the areas in which you are interested. I can assure you that they are all human beings mostly deeply committed to improving the environment. Build up working relationships regardless of whether there is an imminent threat of development. But don't be surprised if they don't accept your invitation to have a drink with you (however much they may enjoy a good pint). They will need to ensure that when they write their reports that no one can accuse them of having being biased. If you can get ahead of the situation you are likely to have a much better chance of success.

82. There is a wealth of experience in I W A about planning problems and how to try and resolve them. Not every case has been won and it probably never will be, but the message is getting across. Please keep up the responsible image which

has been developed, argue sensibly and constructively. Any letter you send, any document produced should be neatly typed - a planning officer will be much happier if he can read what is written. It can be useful to send copies of your papers to the IWA branch, interested parties and groups. There are usually two or three political groups on councils and cross-party support is beneficial. Copies all papers should be kept for reference.

83. Finally, remember that the future of part of the canal system may be in your hands, so be very vigilant.

Good Luck.

RAD/IWA 10th December 2005 revised June/November 2010

BIBLIOGRAPHY

This paper is intended to give a general overview. For more detail there are a number of texts such as: Sir Desmond Heap's Outline of Planning Law and Malcolm Grant's Urban Planning Law. It must be stressed that neither (indeed no) text is up to date and must be read with care.

The Government's new web site www.legislation.gov.uk lists everything (if you know what you want).. Government advice is contained in Planning Policy Statements/ Guidance notes - these are generally easy to read and may be worth printing off the internet if you have a case which is likely to last any time. These are generally being reviewed from time to time so do check what is in place when you write your case. The following apply in England only

- PPS 1 Delivering Sustainable Development - General Principles
- PPG2 Green Belts

- PPS7 Sustainable Development in Rural Areas

- PPS9 Biological and Geological Conservation

- PPS11 Regional Planning

- PPS12 Local Spatial Planning

- PPG13 Transport - see para. 5.8 especially and the appendix below

- PPG15 Planning & the Historic Environment

- PPG16 Archaeology and Planning

- PPG17 Sport & Recreation (being replaced by revised PPS 9)

- PPG 21 Tourism

- PPS23 Planning and Pollution Control

- PPS25 Flooding

In Wales

- Circular 60/96 Planning & Historic Environment - Archaeology

- Circular 61/96 " " " - Historic Buildings & Conservation Areas

- Planning Guidance (Wales) Planning Policy (rev 3)- covers all aspects

- Technical Advice Note (TAN) 5 Nature Conservation

APPENDIX

Waterways under Restoration and Proposed Road Crossings. A Warning from the Lichfield Experience

by Keith Gibson

1.1. The issue of highway crossings over waterways under restoration or with the prospect of restoration has long been of concern to the waterways restoration movement because builders of roads are naturally unwilling (or unable) to find the considerable extra expense of a bridge over the waterway. This has been brought into focus by the problems affecting the rebuilding of the Wyrley & Essington Canal alongside a proposed new road in Lichfield.

1.2. We hoped that the problems of road crossings had been resolved when government advice to local planning authorities was amended by the addition of a section referring to waterways under restoration (or with a serious prospect of restoration) in Planning Policy Guidance Note 13 (PPG13). Simplistically I interpret the advice PPG13 gives about road crossings and development as saying that new developments should be designed so as not to make restoration of the waterway any more difficult or more expensive than it would have been had the development not been proposed.

1.3. The advice in PPG13 was followed up by a paragraph in the Highways Agency's Design Manual for Roads & Bridges, which said that a navigable crossing should normally be included where a road would cross over a waterway with a viable prospect of restoration.

1.4. The problems affecting the rebuilding of the Wyrley & Essington Canal were the first real test of the effectiveness of the PPG13 advice where the road crossing will be built by a developer. We now know what we should have known ever since that advice was issued. PPG13 & the Design Manual are not, and cannot be, the panacea that perhaps we hoped. Planning Policy Guidance notes give advice. Local planning authorities normally follow that advice but there is no law that compels them, and their ability to follow advice must be limited by the facts of the individual case and the imagination or ability of the local authority. The Design Manual provides a set of instructions to designers of major roads that will be built by central government. We hope that designers of roads to be built by local authorities or developers will take account of it but there is no legal requirement for that.

The Lichfield Case

2. Background Information.

2.1. This is an area where there is a two-tier system of local government. Lichfield District Council is the local planning authority and Staffordshire County Council is the highway authority.

2.2. The Lichfield & Hatherton Canal Trust's proposals for restoration of the Wyrley & Essington Canal through the relevant part of city of Lichfield include the building of a canal along a completely new alignment alongside the proposed Lichfield Southern By-Pass road. That had been accepted by the District Council, whose planning policies sought to protect the alignment from any other development.

2.3. The Southern By-Pass is an important element in the County Council's plans for traffic movement in Lichfield, but neither County Council nor District Council has any substantial

provision towards the construction of the road in their budgets. The road is being built by taking advantage of developers' needs to provide access to development sites.

3. What happened?

3.1. Persimmon Homes submitted an outline planning application for residential development of a site off Chesterfield Road. The application site included a long tongue of land extending from the building site to Birmingham Road. That would provide for an access to the site that, when built, would form part of the Lichfield Southern By-Pass. The tongue of land was also intended to be wide enough to allow for the construction of the canal in accordance with the planning policy protecting the canal alignment. The two local authorities negotiated a deal that required the developer to construct the relevant part of the by-pass road as part of development and, afterwards, to transfer this road to the Council together with a strip of land alongside where the canal would later be built. This deal was the subject of a legal agreement (known as a Section 106 Agreement under current planning legislation) that was entered into between the District Council and the developers before outline planning permission was granted.

3.2. When Persimmon Homes submitted their application for approval of the details reserved by the outline planning permission, the plans included the relevant part of the Southern By-Pass road between the housing site and Birmingham Road where a roundabout junction was proposed. Sensibly, County Council highways engineers had designed this road for the developers, thereby ensuring it met the Council's requirements. Although the road design provided for the strip of land required to build the canal, the Canal Trust is concerned that in parts that may be narrow and, worse, that no provision was planned for bridges or a navigable culvert under the roundabout junction with Birmingham Road. Not surprisingly, there was considerable disquiet within the waterways movement at this threat to the future of a promising and important scheme. Although the Canal Trust and others objected, the District Council could do nothing further to improve the provisions for the canal at this stage. Legally, it was not possible to introduce new requirements beyond those set out in the outline planning permission. Planning permission was granted.

4. How effective was PPG13?

4.1. The immediate reaction of most observers was that the advice of PPG13 had not been properly taken into account. A more leisureed contemplation might lead us to a different view. The approved development certainly imposes costs that the Canal Trust hoped would be covered by the development but most of the new canal route will come into public ownership. Taking my simple version of the meaning of PPG13 (that development should not impose extra costs on the scheme), the benefit of not having to acquire the land might be worth more than the costs imposed by having to build bridges at the Birmingham Road roundabout and the need to squeeze a channel through where space is tight.

4.2. Having said that, there is no doubt that the waterways' movement expected more from PPG13 and the local authorities seem to have displayed a limited enthusiasm to try to achieve that. British Waterways is involved in trying to find solutions with the local authorities.

5. Who was at fault?

5.1. In a strictly legal sense, I doubt that either Council acted outside of the law.

5.2. The District Council believed that it had provided a route for the rebuilding of the canal by the terms of the Sec 106 Agreement with the developer at the outline planning permission stage and had some justification in thinking that it had complied with the advice of PPG13 and safeguarded the route of the canal. With the benefit of hindsight, in my opinion, the Council should also have imposed a condition on the outline planning permission specifying an identified area of land that had to be set aside from development to provide an uninterrupted route for the

canal from site boundary to site boundary. That would have been justified by the Council's adopted policies for the canal. It would have required the By-Pass road to make provision for the canal all along the route. It may not have prevented issues of limited space but, to comply with such a condition, a bridge or bridges would have been required at the Birmingham Road roundabout. Perhaps more important, it would have let the developer know what additional costs had to be met right from the start and those costs could have been built into the company's calculations for development of the site (probably by a small reduction in the value of the land).

5.3. The County Council was anxious to secure the benefits to traffic movement within Lichfield that would be provided free of charge to council taxpayers by the developer's construction of part of the Southern By-Pass. The engineers designing the road must have been conscious that there was a limit to what they could ask for over and above the standard of road required just for access to the site. If they sought legal advice, I think that advice would have been that they should limit their ambitions to the enhancements required for the By-Pass and to complying with the conditions of the outline planning permission (NB. the conditions, not the Sec 106 agreement). Issues raised by PPG13 were a matter for the District Council, as planning authority, and the provisions of the Design Manual for Roads & Bridges requiring extra costs to be imposed on the developer strictly speaking did not apply to a developer built or local authority planned road.

5.4. The Canal Trust was severely limited in what it could achieve because there was no evidence from elsewhere that allowed them to demonstrate the benefits that might be achieved or the means of achieving those benefits. Most people in the waterways movement knew of the Manchester, Bolton & Bury case where a bridge was provided under a major road, but that was significantly different, being a government funded road. I think this was the first trial of PPG13 where the road was a local authority project to be built by a developer.

5.5 We may gnash our teeth at Persimmon Homes but, in reality, they are blameless in all of this. Had the company been approached at an early enough stage, before it was committed to a financial model for developing the site, the result may have been different.

6. What can we learn from this?

6.1 PPG13 & the Design Manual are very helpful but they cannot give the guarantees that we may like. There is a movement to extend that protection through a private members bill in Parliament. That seems unlikely to succeed. It is important to remember that PPG13 gives advice – it is not mandatory & that the Design Manual for Roads & Bridges strictly speaking only applies to government-built roads.

6.2. It is essential that a route and the land-take required is known at sites where bridge crossings may be required and that this forms the basis of a condition attached to any planning permission safeguarding an uninterrupted route for the waterway across a development site from site boundary to site boundary. Lichfield District Council is unlikely to be the only local planning authority to consider that a Sec 106 Agreement alone is sufficient. Although these agreements are intended to cover matters beyond the scope of planning conditions (and are not appropriate for including issues that can be covered by condition), planners know full well that a legal agreement is often thought to be 'stronger' than a condition.

6.3. Most restoration societies and trusts put a great deal of time and effort into cultivating good relationships with local authorities, especially with officers concerned with planning, economic regeneration and tourism and with members of the Council. In a case such as this, it is necessary to extend those relationships rapidly to other parts of the local authority where officers may not even have heard of the society. In the Lichfield case, even without the crucial planning condition, a more sensitive approach by the County Council could have allowed for discussion between the interested parties whilst the road was being designed. That could have given the two local authorities, the Canal Trust and the developer a little time to consider the implications

bearing in mind that none of the parties had any budgetary provision for the canal. Could the developer and/or the two local authorities make any worthwhile contribution? Could any source of grant-aid be identified? Could the Trust find additional funding?

6.4. When there are proposals by a developer to build a road across the route of a waterway under restoration, it is likely that no one (local authority, restoration society or developer) will have budgeted for the extra cost of providing a navigable crossing. In some cases, it may be relatively straightforward for the developer to be persuaded that the extra cost involved is worthwhile because of the increased value of waterside property that will result. In Lichfield that may not have been easy because the Ring Road will be between the new properties and the proposed route of the canal but, even here, had the developer been aware of extra costs at the outline planning approval stage, those costs could have been built into the company's financial model for the site.

6.5. The difficulties faced by the Lichfield & Hatherton Canals Trust reinforce my view that one of the key elements of most restoration campaigns is the creation of a strong partnership with the local authorities. The Trust has spent time cultivating relationships with local authorities but has not yet reached the stage of forming such a partnership. Had a partnership existed, there would have been officers and members in the local authority that saw it as part of their job to press the case for the canal with development control planning staff in the District Council and highways engineers in the County Council right from the start. Together with the developers and the Canal Trust, they could have looked for ways of closing any funding gaps in providing a better solution for the canal even whilst the planning applications were being considered.

6.6. If faced by a situation such as in Lichfield it is important to ensure that the planning officers concerned are aware of PPG13. Bearing in mind that the Encyclopaedia of Planning Law extends to four (very) weighty volumes and that this will almost certainly be the first case of a waterway road crossing the officers concerned have dealt with, they will probably welcome a gentle reminder. Once in contact with the appropriate officer, it should be possible to maintain that contact so that the best possible relationships are maintained and (hopefully) the content of any committee report and the subsequent decision does not come as a dreadful surprise. (Remember that you have a right to see the committee report and, if necessary, a right to see the planning officers' file.) It might also be worth bearing in mind that the highways engineers involved are even less likely to be aware of PPG13 and that Council engineers build a road so rarely that they will probably also be unaware of the contents of the Design Manual.

N.B. Although I believe that what I say is generally correct, it is many years since I was a practising town planner dealing with planning applications. My interpretation of events and legislation may be faulty.

Keith Gibson