

The Publicans Guide to Town Planning

A Basic Guide



by

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This is a short guide to the planning system for publicans and others involved in similar properties.

Whether you are thinking of extending the bar, erecting a smokers' shelter or simply changing the pub sign, the plethora of ideas and opportunities for developing and running your pub will usually involve the planning system at one time or another.

Pubs are prominent features in both town and country, noticed by the public at large and especially the 'locals'. Unwary publicans can find themselves rapidly caught up in complaints and enforcement procedures for even the most minor of planning issues.

My aim is not to rehearse the whole planning system, but I hope this guide will provide some pointers to the current planning system, outline those things you can do without the need for planning permission, and those you cannot!

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1. PLANNING PERMISSION – THE BASICS

In the absence of any permitted changes that might be allowed by way of the Use Classes Order (Section 2) or Permitted Development Rights (Section 3), pretty much everything else will require planning permission.

1.1 Planning permission IS required for...

“the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of a material change in the use of any buildings or other land” .

So, in relation to pubs, the following development WILL require planning permission:

- Extending the building
- Changing part or all of the building to another use (e.g. residential)
- Erecting a smokers shelter
- Erecting a garden canopy
- Erecting a fence more than 1m high adjoining a highway (including public footpaths)
- Erecting a fence more than 2m high in other circumstances
- Creating and/or using land as a car park, beer garden etc
- Installing a door/window
- Floodlighting
- Siting a tent/marquee for more than 28 days in any year

1.2 Planning Permission is NOT usually required for...

“the carrying out for the maintenance, improvement or other alteration of any building of works which – affect only the interior of the building or, do not materially affect the external appearance of the building”.

- Repainting and redecorating (unless a Listed Building or within a Conservation Area where you should check)
- Minor works of alteration – that do not affect the structure of the building or change its external appearance
- Installing new bar fittings, refurbishing toilets etc

These lists are of course not exhaustive, but illustrate the range of development for which permission is likely to be required. If in doubt, always ask.

1.3 Listed Buildings & Conservation Areas

Developments concerning work to Listed Buildings and/or for properties in designated Conservation Areas are likely to be more restricted; particularly with regard to any structural alterations, replacing windows and doors and even simple changes such as external painting in more sensitive locations. Always check with the Council first.

Listed Building or Conservation Area consent will be required in addition to any planning permission.



1.4 Enforcement

Failing to gain the necessary planning permission can attract Enforcement action by the local authority. At best this may require the submission of a planning application to legitimise the development, but may also involve the issue of an Enforcement Notice to rectify the breach. In some cases the authority could also issue a Stop Notice to prevent the breach of planning control immediately.

Enforcement Notices should not be ignored. Once active an Enforcement Notice can attract ongoing fines and the Council may even take action to rectify the breach themselves and charge the costs back to you.

You may be able to defend your position on Appeal. Physical works of development may become protected from enforcement if they have occurred more than 4 years before the breach was identified. Changes of use, and any breach of planning condition, would have to have occurred more than 10 years before the breach was identified. Even so, appropriate and sufficient evidence will be required to demonstrate the date when the breach first occurred, the fact that it has continued substantially unchanged and without a break for the relevant period. This is not always easy to establish. These defences do not apply in the case of Listed Buildings.

Take early advice on any threatened or actual enforcement action.

1.5 Planning Conditions

Most modern pub properties will usually have a planning permission controlling the use and this will have conditions attached to it. These may set out such things as the hours of opening; limitations on external noise and disturbance; restrictions on live performances and so forth. Failing to comply with a condition can attract Enforcement action.

You can apply for planning permission to vary or remove any planning condition.

1.6 Lawful Use

Longstanding pub premises may have no formal planning permission, nor limiting conditions. However, this does not mean that 'anything goes'.

Any changes that are made to the premises will attract the need for planning permission as outlined above. Equally, if the use of the premises changes in some way that departs from the normal use that has been made over time, then it is possible the Council could start to become interested in whether a 'material change of use' has occurred.

If you want to establish whether your proposal requires planning permission you can apply to the Council for a Certificate of Lawful Use for a Proposed Development (CLOPUD). Equally, if you want to obtain formal permission for a use that has already occurred and is beyond the timescales referred to in 1.4 above, then an application for a Certificate of Lawful Use for Existing Development (CLUED) could be the way to go.

In either case do please seek professional advice before any application is made. The issues and requirements can be complex and a poorly contrived application may cause more difficulties than you started with.



2. THE USE CLASS

The *Town and Country Planning (Use Classes) Order 1987* (as amended) puts uses of land and buildings into various categories known as “Use Classes”.

In England

Under the Use Classes Order (UCO) a pub is classed as:

Use Class A4 - Drinking Establishment.

Use Class A4 caters specifically for premises used as a public house, wine-bar or other drinking establishments (but not night clubs) i.e. places where the primary purpose is the sale and consumption of alcoholic drink ON the premises.

It is perfectly lawful under the UCO to alter the use of Class A4 premises to another use within the same Use Class (e.g. Pub to wine bar) without the need for planning permission.

There are also other particular Use Classes for which a change of use can be made without requiring planning permission. These are from:

- Use Class A4 to A1 Shops;
- Use Class A4 to A2: Financial & Professional Services; or
- Use Class A4 to A3 Restaurants and Cafes.

However, it is important to note that this change can only be made in one direction i.e. A4 to A1. Once made the change cannot be reversed without obtaining planning permission for the change of use.

These permitted changes are solely for a change of use and not for any building works or physical alterations that may be necessary.

Other than for the permitted changes within and between use classes referred to above planning permission is generally required for a material change of use.

Building works for alterations or other development will almost always require planning permission.

In Wales

The same Use Classes Order applies in Wales as for England.

In Scotland

The Town and Country Planning (Use Classes) (Scotland) Order 1997 does not have a Use Class for Public Houses which are treated as *Sui Generis* – a use on their own.

In Northern Ireland

Similarly the Planning (Use Classes) Order (Northern Ireland) 2004 excludes pubs from any Use Class.



3. PERMITTED DEVELOPMENT

The *Town and Country Planning (General Permitted Development) Order 1995* (as amended) grants what are called “Permitted Development Rights”.

Permitted development rights are basically rights to make changes to land and buildings without the need to apply for planning permission.

There are a wide range of Permitted Development Rights and listed below are those of particular relevance to the Pub Trade. This is a general summary and you should obtain advice before undertaking any works.

NOTE: Permitted Development Rights do not usually apply to listed buildings and surrounding areas, in conservation areas, or in specially protected areas such as Areas of Outstanding Natural Beauty and National Parks.

3.1 Minor Operations

- **The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.**

Development is NOT permitted if—

(a) the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed one metre above ground level;

(b) the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed two metres above ground level;

(c) the height of any gate, fence, wall or other means of enclosure maintained, improved or altered would, as a result of the development, exceed its former height or the height referred to in sub-paragraph (a) or (b) as the height appropriate to it if erected or constructed, whichever is the greater; or

(d) it would involve development within the curtilage of, or to a gate, fence, wall or other means of enclosure surrounding, a listed building.

- **The painting of the exterior of any building or work.**

Development is NOT permitted if - the painting is for the purpose of advertisement, announcement or direction.

NOTE: You should also be careful with the painting of any Listed Building, or buildings within a Conservation Area, which may be restricted and for which Listed Building and/or Conservation Area consent will be required.

3.2 Temporary Buildings & Uses

- **The use of any land for any purpose for not more than 28 days in total in any calendar year - of which not more than 14 days in total may be for the holding of a market or motor car and motorcycle racing - and the provision on the land of any moveable structure for the purposes of the permitted use.**



Development is NOT permitted if—

- (a) the land in question is a building or is within the curtilage of a building,
 - (b) the use of the land is for a caravan site,
 - (c) the land is, or is within, a Site Of Special Scientific Interest (SSSI) and the use of the land is for—
 - (i) motor sports;
 - (ii) clay pigeon shooting; or
 - (iii) any war game,
- or
- (d) the use of the land is for the display of an advertisement.

What this provision does provide for is the placing of a tent/marquee on land for up to 28 days in any calendar year, which may be useful for one-off events.

3.3 Closed Circuit Television Cameras

- **The installation, alteration or replacement on a building of a closed circuit television camera to be used for security purposes.**

Development is NOT permitted if—

- (a) the building on which the camera would be installed, altered or replaced is a listed building or a scheduled monument;
- (b) the dimensions of the camera including its housing exceed 75 centimetres by 25 centimetres by 25 centimetres;
- (c) any part of the camera would, when installed, altered or replaced, be less than 250 centimetres above ground level;
- (d) any part of the camera would, when installed, altered or replaced, protrude from the surface of the building by more than one metre when measured from the surface of the building;
- (e) any part of the camera would, when installed, altered or replaced, be in contact with the surface of the building at a point which is more than one metre from any other point of contact;
- (f) any part of the camera would be less than 10 metres from any part of another camera installed on a building;
- (g) the development would result in the presence of more than four cameras on the same side of the building; or
- (h) the development would result in the presence of more than 16 cameras on the building.

Development is permitted subject to the following conditions—

- (a) the camera shall, so far as practicable, be sited so as to minimise its effect on the external appearance of the building on which it is situated;
- (b) the camera shall be removed as soon as reasonably practicable after it is no longer required for security purposes.



"ground level" means the level of the surface of the ground immediately adjacent to the building or, where the level of the surface of the ground is not uniform, the level of the highest part of the surface of the ground adjacent to it.

3.4 Installation of Non-Domestic Microgeneration Equipment

A recent amendment to the GPDO has extended permitted development rights for the installation of specified types of microgeneration equipment on or within the curtilage of any building (not just residential) subject to certain criteria.

The change introduces six new classes of permitted development rights to install certain types of microgeneration equipment, specifically solar panels, stand alone solars, ground source heat pumps, water source heat pumps, biomass heating system flues, and combined heat and power system flues.

There are a wide range of qualifications and criteria surrounding such installations and you should seek advice before committing to any installation to ensure proper compliance.

3.5 Article 4 Directions

Local planning authorities have powers under Article 4 of the *GPDO* to remove permitted development rights. These Directions usually apply to an area defined on an Ordnance Survey based plan.

Although Article 4 Directions are confirmed by local planning authorities, the Secretary of State must be notified, and he has wide powers to modify or cancel Article 4 Directions at any point.

Article 4 Directions are listed in the Local Land Charges register held by the local authority and should show up on any planning searches undertaken in connection with the purchase of pub premises. It is always worth checking, especially for premises in Conservation Areas, where a blanket withdrawal of Permitted Development Rights may be applied.

In Wales

The same GPDO applies in Wales as for England.

In Scotland

The *Town and Country Planning (General Permitted Development) (Scotland) Order 2011* contains very similar provisions

In Northern Ireland

The *Planning (General Development) Order (Northern Ireland) 1993* applies.



4 ADVERTISEMENT CONSENT

The local authority planning department controls outdoor advertising through the *Town and Country Planning (Control of Advertisements) Regulations 2007*.

Consent is required to display most types of advertisements although there are some limited categories for which permission is not required.

What is an Advertisement?

- Posters and Notices
- Placards and Boards
- Fascia signs and projection signs
- Pole signs and canopy signs
- Models and devices
- Advanced signs and direction signs
- Estate agents boards
- Captive balloon advertisements
- Flag advertisements
- Price markers and price displays
- Traffic signs
- Town and village name signs

Because there are some places in our towns and many parts of the countryside which are especially vulnerable to the visual effects of outdoor advertisements, all planning authorities have three special powers which enable them to achieve a stricter control over advertisements than they can achieve in the ordinary way. These powers are:

1. to define an Area of Special Control of Advertisements (ASCA);
2. to remove from a particular site or a defined area the benefit of the deemed consent normally provided by the rules; and
3. to require a particular advertisement, or the use of a site for displaying advertisements, to be discontinued.

The Regulations allow for deemed consent for certain categories of advertisement; pub signs are one of these. Otherwise the Council can grant express consent for a period of five years.

Most illuminated advertisements need express consent.

All outdoor advertisements must comply with five 'standard conditions'. They must:

- be kept clean and tidy
- be kept in a safe condition
- have the permission of the owner of the site on which they are displayed (this includes the Highway Authority if the sign is to be placed on highway land)
- not obscure, or hinder the interpretation of, official road, rail, waterway or aircraft signs, or otherwise make hazardous the use of these types of transport
- be removed carefully where so required by the planning authority.

The Council can challenge any advertisement erected with deemed consent, requiring its removal if it is considered to affect the amenity of the area or public safety. The owner of the advertisement has a right of appeal to the Secretary of State for Communities and Local Government.



Advertisements that are Normally Permitted

Those relevant to pubs are:

- Advertisements displayed inside a building. These advertisements must not be illuminated or displayed within one metre of any window or other external opening through which they can be seen from outside the building.
- Any national flag may be flown, so long as it does not have anything added to the design of the flag or any advertising material added to the flagstaff.

Advertisement Benefiting From Deemed Consent

Certain 'specified classes' of advertisement can be displayed without application being made to the planning authority. Those relevant to pubs are:

- Signs which relate to any hotel, inn or public house;

NOTE: Provided that the advertisement is displayed at the premises and does not exceed 1.2 square metres in area. If there is more than one entrance to the premises on different road frontages, two advertisements of 1.2 square metres each may be displayed (each on a separate frontage).

- Notices or signs to be displayed on buildings or land as a means of identification, direction or warning. These would include:
 - a field-gate sign saying '*Please shut the gate*'
 - a warning notice saying '*Beware of the dog*'
 - a private sign saying '*No parking please*'.

NOTE: Advertisements must not exceed 0.3 of a square metre in area. Illumination is not allowed.

- Temporary notices or signs which are intended to advertise any local event being held for charitable purposes, which may be religious, educational, cultural, political, social or recreational, but not for any commercial purpose. This permission would include an advertisement for:
 - a church bazaar
 - a fete for a parent-teacher association
 - a sponsored marathon in aid of charity
 - an amateur sports event, but not any sporting event organised for commercial purposes.

NOTE: These advertisements must not exceed 0.6 of a square metre.

Due to the complexity of the regulations, it is advisable to consult the Council before displaying an advertisement.

A guide for advertisers that gives a summary of the regulations is freely available. (see *Useful Sources below*)



5 PLANNING APPLICATION CHECKLIST

The following is a short checklist to help you in preparing, submitting and managing your planning application(s).

1. Do I need planning permission?

Although planning permission is required for most development, you may still be able to carry out certain works without the need for obtaining planning permission. See the Use Classes and Permitted Development sections of this document.

2. Which planning policies apply to my property?

Local authorities consider all planning applications against a set of adopted policies contained in their 'Local Plans'. These Plans must comply with Government guidance set out in the National Planning Policy Framework (2012). The policies contained in the Local Plan will tell you whether your proposal is likely to be acceptable or not. If you are buying a new property you may need to check the Local Plan before you buy, in case there are limiting policies that would prevent your intended use of the property.

3. Are there any other restrictions over the property?

The Local Land Charges Register may highlight legal or other restrictions over the property. These may also appear in your Title Deeds. Your predecessor may have tried repeated applications for the same proposal. Check with the Council.

If you are leasing the property there may be contractual restrictions upon making planning applications. You may need Landlords approval first.

Check for any possible issues such as Tree Preservation Orders, Rights of Way, Listed Building status or easements for drains etc. Is the property located within a Conservation Area?

You may also need to consider whether your property is within a flood plain or subject to the potential for coastal or river flooding. Are there likely to be any ecological issues (bats, birds, etc)? What about noise and parking issues?

4. Speak to the Local Planning Authority

Even though you may be certain that your proposal is likely to be approved (or does not require planning permission) it is always a good idea to check with the Local Authority before you make your planning application or proceed with any works. You can speak to the duty officer at the planning office or arrange a specific Pre-Application meeting with a Case Officer for your area. You may have to pay a fee for this.

Go armed with any plans or drawings and with a clear idea of what you wish to do. The planning officer may make recommendations and pass comment, but will not be bound by any views expressed.

Any application will be required to satisfy and provide a number of validation requirements. These can be quite extensive depending upon the proposal.



The Council should provide a schedule of 'Local List' requirements that will be necessary to accompany your application.

You should also check that you are not required to submit an Environmental Impact Statement as part of your application. This will only apply in certain circumstances and not usually for small works. A Screening Opinion can be sought if it seems likely that an EIA will be required to establish areas of further detailed investigation.

You can also apply to the authority for a determination as to whether planning permission is actually necessary. (see paragraph 1.6 above).

Why not draft your planning application forms in advance and have them checked over at the same time. Print out a copy from the Councils own online system.

5. Prepare and Submit Your Planning Application

Increasingly planning applications are being submitted online through the Planning Portal, but a Standard Planning Application Form is still available from most Local Authorities.

Once you have all the details compiled in accordance with the validation checklists, prepared any necessary detail drawings and plans and completed the planning application forms, certificates and any notices (either online or on the standard form), enclose any other relevant information and the correct planning fee and then submit (either on online or on the standard form).

The Planning Portal (www.planningportal.gov.uk) provides a very straightforward online application system that ensures your application is submitted on the correct forms, with all the necessary plans and information. Planning fees can be calculated and paid directly via the Portal and there is no need for multiple paper copies to be posted to the Council. It is all handled by the Portal.

You may also need to submit for Listed Building and/or Conservation Areas Consent alongside your planning application. The Portal allows for this on the same forms.

In more complex cases you may need detailed research to support the application, such as environmental and/or highways assessments, contaminated land reports etc. However, it is likely that in these circumstances you will have specialist advisors involved to produce these for you, in accordance with the relevant technical requirements.

6. Monitor Your Application

Within a short period you will receive an acknowledgement from the Council that your application is correctly submitted and is being considered. This letter will also contain the planning reference number and usually an indication of the date by which you could expect a decision. This should normally be within 8 weeks from the date of the acknowledgement.



The reference number is unique to your application and should be to hand whenever you speak to or correspond with the Council. Your application may be available to view online through the Councils' website. If so you will be able to keep track of third party representations and progress toward a decision.

It is rarely a good idea to "wait and see what happens". Keep an eye on the Council's online planning system and, after a few weeks, contact the case officer to check that they do not require any further details or explanation of your proposal.

Have there been any formal objections to the proposal to which you can provide an answer? Statutory consultation with all kinds of people usually occurs within 21 days of the application being registered so a call to the Case Officer after 4 weeks may shed light on areas of concern.

When will the Case Officer be visiting the property? Will access arrangements be necessary? The planning officer may not need to come onto the property and will usually make an unaccompanied visit. Where necessary however the officer will arrange an appointment.

You may also be told whether your application is to be considered under 'delegated powers' (i.e. decided by the planning officers themselves) or by a full planning committee meeting.

The Council is under no obligation to speak to you about your application in advance of a decision being made (although most will) and you should not expect any early indication of an outcome. However, officers may request further information during the course of considering the proposal.

Unless the matter is decided under delegated powers, a report to committee about your application will be produced for public inspection at the Council offices at least three days before the committee sits. This gives you time to check the officers' recommendation and to provide any last minute evidence if this is necessary.

If the recommendation is for outright refusal you may wish to withdraw the application before a decision is made and live to fight another day!

Check to see whether you are allowed to speak at the committee meeting (you may need to register in advance). Increasingly authorities permit this and you may receive notification of any time limits etc (usually 3 minutes).

If you do decide to speak, write down and time your speech (3 minutes is not very long); stick to planning issues; explain why objectors are wrong, or how their objections can be resolved; don't lose your rag!

It is always advisable to attend the planning committee to hear what is said about your application. If there is a recommendation for refusal you will need to know the grounds on which the Council are rejecting the application. If the permission is granted there may still be time for a celebratory drink in the local before closing time!



7. If Your Application is Successful

Congratulations you are the proud owner of a planning permission. Now the hard work really begins!!

Will you need?:

- Advertisement Consent
- Building Regulation Approval
- Listed Building or Conservation Area Consent (if you did not apply for this at the same time).

There may be planning conditions to satisfy. Starting work before complying with any conditions, failure to comply at all, or not complying within the required timescale will almost certainly invalidate your approval.

8. If Your Application is Deferred

Don't Panic! Usually a deferral is sought in order to carry out further inquiries or to request changes to the scheme that will make it more acceptable. Perhaps the committee would like to make a site visit before making their mind up. Check with the Case Officer concerned to find out the position.

9. If Your Application is Refused

What went wrong? Again, Don't Panic. All may not be lost. Maybe there was some uncertainty over the proposal, or the Council felt the application could not be approved without major changes. Perhaps you were seeking permission for something that the Council considered did not entirely fulfil the planning policy criteria. Maybe the application just ran out of time because of the need for more information. You may have another free go.

If all else fails you can go to Appeal. But that's another story.

10. If in Doubt, Seek Advice

As you may have already gathered, the world of planning is a highly complex one and there are many potential slips for the unwary. Planning specialists are available all over the country and if you are in any doubt you should seek their advice.

The planning application process can look a little daunting and there are evident pitfalls for the unwary. However, careful preparation of a reasonable proposal should win the day. Good luck.

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USEFUL SOURCES

The Planning Portal:

<http://www.planningportal.gov.uk>

The National Planning Policy Framework:

<https://www.gov.uk/government/publications/national-planning-policy-framework--2>

Outdoor Advertisement Guide:

<https://www.gov.uk/government/publications/outdoor-advertisements-and-signs-a-guide-for-advertisers>

About the Author



Ian Butter (BSc, FRICS MRTPI) is a specialist town planning consultant; a Fellow of the Royal Institution of Chartered Surveyors and Member of the Royal Town Planning Institute. He is recognised for his national expertise in the tourism and leisure sector.

Ian has worked as a Chartered Planning & Development Surveyor in private practice for 36 years, involved in all aspects of planning consultancy for both the private and public sector. He writes and lectures on a range of planning, tourism, leisure and development topics and was the co-author of a widely circulated publication for the Countryside Commission which is now highlighted in the Government's 'Good Practice Guide on Planning for Tourism' (2006).

He was directly involved in Matthew Taylor MP's Review on the rural economy and affordable housing "*Living Working Countryside*" (2008) and was commissioned in 2009 by the Royal Institution of Chartered Surveyors to write a book on, "*The New Planning System – Questions and Answers*".

He is a regular Tweeter, Blogger and Writer on planning issues, enjoys a decent pint of Bitter and in his spare time is a member of the RNLI Lifeboat Crew for his home station in Blackpool, Lancashire.

For more information and links to Ian's social network pages go to:

www.ruralurbanplanning.co.uk

