

HPH330

Andy Moger 00:00

This is House Planning Help episode 330. Hi there, I'm Ben Adam-Smith and this is the podcast for you if you're interested in self-build or retrofit. I'm exploring what houses we should be building in the 21st century and trying to break down the major roadblocks that may get in our way. Coming up in this session, my guest is Andy Moger from Tetlow King Planning, and we're going to explore the role of a planning consultant.

Ben Adam-Smith 00:28

Over the years, I've seen many surveys about the biggest challenge that you might face as self-builder. And I think without exception, the one at the top is finding land. Yes, sometimes we're lucky with our circumstances and that might be the easy bit. However, for most of us, it's hard graft, and it's really trying absolutely everything. And certainly, we've got some tips on our website, houseplanninghelp.com, about how to look for land. One of those is to make sure that you get your name on the Right to Build Register. And it's something that I think when I was looking for land, I certainly did that. And it all went quiet and you never really knew was any of this happening. But in today's conversation with Andy, you're going to hear that it's really picking up momentum. And this is pretty much all he does in his work this particular area. So I thought that was quite an interesting starting point, as we continue investigating a few more different professions that we might meet. Today, that being one of a planning consultant, but Andy has this specialism in self and custom build. So I asked him how this came about.

Andy Moger 01:33

A number of years ago, I got involved in the government's first pilot scheme for self and custom build, which was the Heartlands project down in Cornwall. And then off the back of that, I started to become more involved in the self and custom build sector, primarily with doing work for the right to build task force. And then that grew and grew as this side of the sector grew. It's now pretty much all I work on for the company. So I deal with applications, appeals, site promotions, all for self and custom build, ranging from single dwellings to larger developments and appeal work for some of the big house builders, and strategic land promoters.

Ben Adam-Smith 02:21

Well let's just understand a bit more about the whole system to begin with. It could even be historically, it might be worldwide. What are we talking about when we say planning?

Andy Moger 02:32

Yeah, so planning, the planning systems vary from country to country. In this particular country it's quite controlled, to prevent people building anything anywhere, because there's a reason that those controls are, are in place.

Andy Moger 02:46

So there's certain things that you would need to get planning permission for. There's some things that you can use something called permitted developments. You have certain permitted development rights on your dwelling for things like extensions and loft conversions, where you don't necessarily need to get planning permission, depending on the extent to how much you're extending. And then there's prior notification process. That applies typically to the larger extensions. So the permitted development rights were relaxed a few years ago. And you can now have larger rear extensions under prior notification process where effectively you serve notice on the council, the councillor will write to your neighbours asking if there's any issues. And after a period of time, if there's no objections, then you're deemed to effectively have consent.

Andy Moger 03:40

So there's a number of ways of getting planning permission. But yeah, in this country, planning is a very controlled process. Each council has to have a local plan. They call them different things. Sometimes they're called local plans, some call it district plans, core strategies, but effectively, they're all the same thing. And what those do is they set out a strategic approach for the local authority area for typically a 15 to 20 year period. And that contains the policies that control development. So if you're looking to get planning permission, for example, on a piece of land, then you would go to the local plan to see what the policies are that control development in the local authority area, and to see how you fit with those or conversely, how you don't fit with them and how you're going to overcome that issue.

Ben Adam-Smith 04:31

So how do they come up with this plan in the first place? Is it very logical?

Andy Moger 04:37

Yeah, so local plans have been in place for a long time. When local authorities review their plans, there isn't always huge changes. The thing that changes the most of all can be changes in national policy. So for example, the introduction of the Self and Custom Build Act and the NPPF requiring councillors to plan for those wishing to build or commission their own home meant that many authorities didn't have that sort of provision in their local plan. So they then, when they've reviewed their plans, they've then had to consider how they address that. Whether that's through a policy that seeks, say, five to 10% service plot provision on larger sites, or through allocating sites specifically for self or custom build or through a general support policy, where housing mix has to also take account of those looking to sell for custom build.

Andy Moger 05:29

And what also forms planned development is housing targets. So the government introduced the standard method, which basically set a housing target for each local authority. And when the plans are reviewed, they're expected to adhere to that. There's a little bit up in the air, because of the back bench rebellion that's taking place in the government at the moment where that's trying to be watered down, but at the moment, local authorities and housing targets and land supply are all highly relevant considerations.

Ben Adam-Smith 06:03

And what about the actual land itself then? Does it start from a strategy of let's get really dense in the centre of our towns, and less dense as we come out, move away from train stations, public highways, and so forth?

Andy Moger 06:20

Yeah, so most, well in fact probably all plans work on the basis of concentrating development in the most sustainable locations. So that tends to be the largest settlements within an authority area.

Andy Moger 06:31

I suppose there's sometimes some exceptions to that, for example, where in constrained authorities, they are needing to find large housing numbers, and they may allocate large sites adjacent to smaller settlements with the intention of actually making that a far larger settlement in future. And that development making provision for schools and shops and employment, and so on.

Andy Moger 06:56

But predominantly, authorities, the approach they'll take is to concentrate development in the more sustainable, larger settlements. The way they do this is they apply something called a settlement hierarchy. So at the top of the hierarchy, you'll tend to have the towns and cities, and then the next level down in the hierarchy, you'll perhaps have larger villages with a broader range of services. You may then have another layer down, which is smaller villages that have some facilities, but are still placing a degree of reliance upon higher order settlements. And then below that, you'll have sort of hamlets and open countryside where, generally speaking, the presumption is against development happening, unless there's certain circumstances, such as essential agriculture or rural uses. So an example of that may be an agricultural worker's dwelling. So on a farm where there is a particular product or animal farms that need somebody to be on the farm 24/7, and there isn't the accommodation for the person who has that job, it can be possible to get a planning consent in the open countryside. But there is then a tie to that which ensures that it remains as an agricultural worker's dwelling. So it's not a Trojan horse way of trying to get a dwelling in the open countryside, I'm afraid.

Ben Adam-Smith 08:23

Now, our purpose here today really is to find out more about what a planning consultant does. But I don't know, do we need to understand more about the actual process of what you're doing each time an application is submitted?

Andy Moger 08:38

Yeah, sure. So before you actually get to the application submission, there's a number of stages before that. If somebody approaches us with a piece of land that they're considering an application on, in the first instance what we would do would suggest that we undertake an appraisal of that site. We would look at what the policy position is, what the chances there are then of actually adhering to those policies and having the easiest route through planning by adhering to the development plan. And then we'd look at some of the other issues that may constrain it such as flood zones, any ecological designations, conservation areas, heritage assets that may be nearby and just various other constraints that there may be to development.

Andy Moger 09:23

Let's assume that there's potential here. You comply with the plan, or we think we can demonstrate that you comply with the plan. There aren't any showstoppers in terms of technical constraints. What you would need to do then is there's a number of surveys and reports that would ordinarily need to be prepared to support a planning application. Depending on the scale of development, but typically, you'd be looking at an ecological report, identifying whether there are any protected species on site or any ecological designations affecting the site. The thing with ecological surveys is that there are optimum times to undertake those and to be really careful about when you're undertaking those, because if you miss the survey calendars, then it can mean you have to wait until the next year to undertake those particular surveys.

Andy Moger 09:32

And then you've got other things like transport statements. So you've got to transport a highways consultant who will look at traffic generation from your scheme and visibility splays.

Andy Moger 10:24

And there's other things like heritage reports, if you're in a conservation area to try and demonstrate that your application won't harm the conservation area or won't harm heritage assets. Depending on where the site is, there could be archaeological investigations that need to be undertaken, ground contamination reports.

Andy Moger 10:42

But the easiest way really to check what's needed is to look at the validation lists. So each council has a first of all, there's a national validation list for planning applications. And then each local authority has its own local validation requirements, where they supplement the national requirements with whatever they consider as appropriate locally. So that will tell you the information that you'd need to provide to get an application validated when you submit it. So assuming that all your surveys, they're all okay, you've had your drawings done by the architect, he'll also prepare a planning statement, which would justify the compliance with a development plan, or if there isn't compliance with the development plan, why there's material considerations that would outweigh any conflict with a development plan.

Andy Moger 11:29

And then you submit your planning application, typically through the planning portal, which is an online application submission platform. Pay your fee, and then you wait for the council to validate your application. And what that means when it validates your application is it means you're assigned a case officer, and you're assigned an application reference number. And then the clock starts ticking on your application.

Andy Moger 11:54

So the council will then put out to consultation, the application documents with neighbours and also statutory consultees. So things like parish council, the various departments of the council, such as the environmental department, highways department, and the ecology department. And then they will come back with comments on the scheme. In an ideal scenario, those comments will be a no objection. But where you do have an objection from some of those, you have the opportunity then to speak to your

case officer and say, Look, I'd like to address these. You could make changes to your scheme to try and address those.

Andy Moger 12:33

In terms of where things go from there, if you were to address them and the case officer's satisfied, then there's two routes to a decision. The first is their delegated decision. Now, that tends to be on a smaller scheme where it's not too contentious. The powers to grant or refuse planning consent have been handed to the case officer. The other route is committee. So that tends to be on larger sites, or where it's more contentious, where there's, for example, statutory consultee objections that haven't been resolved, or there's a large number of local objections.

Andy Moger 13:11

The other thing with a committee decision is that councillors can call in an application. So it may be that you've got an application where actually you don't have a lot of issues with it, but the local councillor doesn't like it or has been lobbied to get it called in. And then it still goes to committee because councillors have managed to get it called in.

Andy Moger 13:34

So what happens at committee is the case officer, they will write a report. And in that report, they will either recommend approval or refusal. And it's then debated by the planning committee, which is made up of elected members. The elected members then will make a decision based upon their discussion. And they can either agree with the case officer and go with their recommendation to approve or refuse or they can overturn it. They can take a completely contrary view to the case officer. You are allowed to speak at planning committee, it tends to be two to three minutes. But objectors are also allowed to speak for the same amount of time.

Andy Moger 14:17

In the event that you were to go to committee, or to get a delegated refusal or refused then either scenario isn't the end of the line. You do have the ability to appeal. So you've got six months from the date of a decision. It's a decision actually being issued. There's something called a decision notice and that sets out the reasons for refusal. So six months from the date of issue of the decision notice itself, provided you submit an appeal within that time, you're able to appeal the decision. Once you're beyond the six months that's it, it's gone. You cannot then appeal.

Andy Moger 14:54

There's three main routes to go through for appeal. The first of those is called written representations. And that's the simplest and cheapest route to appeal. You set out your statement of case as to why you consider the council was wrong in the decision it made. And why you consider actually you are compliant with a development plan or why if there is any conflict with a development plan, there's material considerations that outweigh those.

Andy Moger 15:24

You then submit that appeal to the planning inspectorate. The planning inspectorate then will contact the council and the council then also get to submit their case to the planning inspectorate as to why

they think they were right, and the decision should stand. And a planning inspector will then review both those statements of case that have been submitted. And then they will make a decision and issue a written report and deciding whether or not the appeal should be allowed or dismissed.

Andy Moger 15:56

The second route is called a hearing. It's a single day, usually a single day, it can be more, but most cases is it's a single day. And just like with written reps, you submit a statement of case as do the other council to the planning inspectorate. But with the hearing, you then go along, typically at the councillors offices, and there's an inspector who sits at the head of the table, the appellant on one side, the council on the other, and members of the public can also attend and can speak at a hearing. It's almost like a court case, if you like, with the inspector being the judge or the magistrate. And both parties then set out their case to the inspector. The inspector asks questions about both parties, as to their case, and there's a discussion around it. It's not particularly confrontational. It's more of a roundtable type discussion. And then at the end of the hearing, the inspector will go away, having listened to both parties evidence and read their written evidence, make a decision, and then again, issue a written decision, either allowing or dismissing the appeal.

Andy Moger 17:05

There's a third tier of appeals, which is the most expensive and time consuming route. It's called a public inquiry. Now this is run very much like a trial. So barristers are involved with this, and the inspector still effectively sits as though they're a judge, and the inspector will lead proceedings, but both parties will put forward witnesses. So the witnesses speak about their particular element of the case, whether that's planning policy, whether that's highways, ecology. And they will present their case as the witness led by their own barrister. And then the council and barrister will then cross examine them on the evidence. They're then re-examined by their own barrister. And the inspector can also ask questions as can any third parties, or members of the public in attendance. And the same then works for the council, they field a witness and they're cross examined by the appellant's barrister. At the end of all that both side's barristers make closing submissions to the inspector. And again, the inspector goes away and makes a decision based upon the written evidence and what they've heard in cross examination and reexamination. And then they issue a decision either allowing or dismissing the appeal.

Ben Adam-Smith 18:25

So it seems to me from what you've just said there, that not all planning consultants are going to be equal. It's going to depend on the time that you've been doing this, the number of different cases you've been through, your knowledge. Would that be fair?

Andy Moger 18:42

There's different consultants who do different things. For example, at an appeal, my particular specialism is self-build and custom house building evidence. As a practice, we've also got experts in affordable housing, five year housing, land supply, and older persons accommodation and care. And then there'll be other consultants who have different areas of planning that they concentrate on. So it's quite nice that as a practice, we've got a number of niche areas. But yeah, I think it's fair to say that different practices concentrate on different things.

Ben Adam-Smith 19:19

Because you could do this yourself, couldn't you, put in a planning application? But does it get to a level of either you're doing it very basically, or you're missing things?

Andy Moger 19:31

Yeah. I mean, we're often approached by people who have put an application in themselves, and they've reached a point where they've got stuck. Where they've reached an impasse with the council. There's an argument about policy as to whether there's compliance or not, or there's a particular element of the scheme that the council want to change and the applicant can't or won't change that. And then we're brought in to try and find a solution to that.

Ben Adam Smith 20:00

So what would your tips be? Let's say we can't hire you, you're in the wrong part of the country. Hiring a planning consultant for our project, how would you go about it?

Andy Moger 20:00

Now, see the benefit we've got is almost everybody who works for Tetlow King has at some point worked in local authority. So we know how it works on the other side of the table. So we know how to deal with officers, we know how to deal with councillors. And you know, we understand the process involved. And also, we've got really good relationships with a lot of barristers and King's counsels, so you have access to them and advise from them on case law. And we have an extensive appeals database which we can utilise. So I suppose these are all things that you know, somebody just submitting an application themselves simply wouldn't have access to.

Andy Moger 20:57

I mean, I suppose the first thing to say is that there is no wrong part of the country for us.

Ben Adam-Smith 21:02

Well, you're out of the equation. You're too busy!

Andy Moger 21:04

Yeah, we operate nationwide. And we've got an office in the southeast as well. But yeah, so what you'd want to do is to make sure that they are an MRTPI town planner, so they're a member of the Royal Town Planning Institute, to ensure that they're adhering to the professional regulations that we're required to do as members of the Royal Town Planning Institute. And I think you'd want to make sure that they've got a good track record locally. So you'd be wanting to ask for any examples they've got of, in sense they've achieved locally or appeals they've won locally. Just so you know that you're going with somebody who does know the policy and the relationships with councillors and officers locally.

Ben Adam-Smith 21:54

Is there a set rate or a set example of how costs are worked out for planning consultants? Is it on a time basis? How do they charge?

Andy Moger 22:05

There's not really a set fee that applies to planning consultants across the country. Different companies will charge different fees depending on their level of expertise and experience. There's a number of ways that fees may be structured. We don't operate any sort of no win no fee arrangement, and I'm sure most consultants wouldn't want to enter in that agreement.

Andy Moger 22:31

What you tend to have is either working on an hourly rate basis where you agree an hourly rate. And then time spent on the project is then billed at that hourly rate depending on how much time is spent. Or there's a fee estimate given at the start of a project based upon a scope of works that the consultant thinks would be appropriate based on their experience. And then there's a fee given to undertake their scope of works. And then anything outside of their scope of works would incur an additional fee. But of course, that would need to be agreed before any additional fee was then starting to be charged.

Ben Adam-Smith 23:12

And in terms of the process itself, do you find yourself ever being rehired for the same piece of land, let's say there's some issue and it hasn't got consent? Do certain people just keep trying, I've got to turn this into a potential piece of house and we see it all the time when we move around? Or is it just things are changing, and they want to give it another go?

Andy Moger 23:35

I think what we see a lot of now is people looking at sites for self and custom build where perhaps they've looked at the site previously for open market housing, and it's outside of settlement limits. The council has a five year supply. So there isn't really any reason for the council to release that land. And then there's been a number of appeals we've been involved in where we've been able to argue that because the council has failed its statutory duty under the self-build and custom house building act, to meet demand for the numbers on its register, then you should be applying substantial weight in a planning balance to the provision of self and custom build. So what we've seen is a number of sites now coming back, where the landowners or promoters are saying, we think this is worth trying now for self or custom build, because this council hasn't met its duty to issue enough permissions and therefore, although it might be outside settlement limits, and therefore there's a degree of policy conflict, and the council may still even have a five year housing land supply, they're failing in their legal duty to issue enough consents for self and custom building. That's material in the decision making process.

Ben Adam-Smith 24:50

If a local authority has already reached those numbers, for example, has that been designated to developers or could their existing land supply be reallocated for self and custom build?

Andy Moger 25:03

It's not quite as simplistic as that. So what we see is a lot of councils who are claiming that they've met their statutory duty, but actually they haven't. What they're doing is they're relying upon all single dwelling permissions and saying, Well, those could be self or custom build, and therefore, we're going to say, we've met our duty because we've got 200 single dwelling permissions, and there's 200 people

on our register. So those match beautifully, we've done it. But then what we do is we will go through and we'll analyse all of those permissions. And what we find actually is the vast majority of them are not self or custom build at all. And so the councillors are cooking the books. Some councillors are even counting developments of up to nine dwellings. So full planning permissions for nine dwellings where there's absolutely no ability to customise a scheme in any way, or self-build, they're developer led models. And the council's counting that and saying, Well, it could be for self or custom build, possibly.

Ben Adam-Smith 26:05

Every so often I get emails and so forth, people saying Is it worth me putting my name on the list here and continuing all this? And what's happening? I don't get an update. So what would you say to those people?

Andy Moger 26:05

So what we see is a lot of gaming of the system. And that's where we come in to undertake an analysis of what the council is doing. Now in scenarios where the council has met its duty, and there's no disagreement on that, that isn't necessarily the end of the story, because the planning practice guidance talks about the use of secondary data sources to undertake a robust assessment of demand for self and custom build. And what that involves is looking at other sources that are not just the self-build register. So we dealt with an appeal where the council in question had met their duty, we didn't dispute that. The permissions they'd issued, we reviewed and we agreed, yes, they had met their duty. But then we looked at secondary data sources and found actually, the numbers on secondary data sources demonstrated that the level of demand was vast and far outnumbered the numbers on their register. And we've seen research in the past from NaCSBA on this, and found that eight out of 10 people don't even know that the self-build register exists.

Andy Moger 27:27

Yes, absolutely, I think it's still worth putting your name on a register. Because a name on the register, the council has a legal duty to issue the same number of permissions as there are in each base period on the register. So if people stop putting their names on the register, then the council's legal duty to issue permissions is reduced. And the ability to argue that substantial weight should be afforded where there is a shortfall starts to be reduced, because there's less people on the register.

Andy Moger 27:54

But just going back to the example I was talking about, so that authority had met its duty. And we were able to demonstrate to the planning inspector, that actually secondary data sources showed there was this huge number of people who were looking for a service plot in this authority area that were not on the council's register. And in that decision, the inspector allowed the appeal and gave significant weight to self and custom build provision, even though the council had met a statutory duty.

Andy Moger 28:23

So I think it's helpful just to set out actually how a talk about weight in various different ways. There's sort of a hierarchy, I think, to weight. In a planning decision, an inspector as well as the case officer, actually they have to do the same thing, is they have to weigh up the harms of a development and the benefits. So typically, if the benefits outweigh the harms, then an application appeal would normally be

allowed, because clearly, there's overriding material considerations that mean it's justified consent. So that's where weight comes in in importance.

Andy Moger 29:01

We had one recently, at appeal, which was a hearing, and the site was outside settlement limits. It was in an area of great landscape value, and it was adjacent to a heritage asset. And the inspector found that there would be moderate harm to the area of great landscape value, and less than substantial harm to the heritage asset. But then on the other hand, we were able to demonstrate that the council had failed its statutory duty repeatedly, that the policy position they had meant they were unlikely to meet at anytime soon. And that significant weight should be afforded to the provision of self and custom builds. So the significant weight outweighed the weight attributed to the harms. So the way that sort of hierarchy of weights works is, at the very top of the tree you have a very substantial weight. It's the highest weight you could be afforded. Then you have substantial, then very significant, then significant, and then you're down into moderate, limited and no weight. So clearly in a scenario where you've got those higher weights in the benefits and the lower weights in the harms, that vastly increases your chances of obtaining a planning permission or winning an appeal.

Ben Adam-Smith 30:19

So who is hiring you? What kind of person wants that service?

Andy Moger 30:23

It ranges vastly. So we work for individuals. So we won an appeal for a family in the East Midlands, where they had twice been refused planning permission for their self build. We took both of those refusals to appeal, and we won both of them. Through to doing work for the housebuilders, so Persimmon, Bellway, Barratts, land promoters like Gladman. So completely opposite ends of the scale from some of the biggest developers and land promoters in the country down to single individuals.

Ben Adam-Smith 31:04

They want self build and custom build on their sites? It's that same thing? Or are you just talking about for other planning permission projects?

Andy Moger 31:11

No, no. So a lot of authorities now have introduced policies for typically in the order of five to 10% service block provision on sites of a certain size. Now the size of the sites where that threshold applies, varies from local authority to local authority. In some authorities, it's as low as 20 dwellings. In some it's as high as 200 dwellings. Depends on the local authority.

Andy Moger 31:38

So in an appeal scenario, where we're going along to an inquiry, when I'm instructed by those house builders and land promoters, it's to demonstrate the benefits of the self and custom build provision they're making through their appeal proposal. So they tend to make provision for 5/10% on the site. The site could be in hundreds could be in the 1000s. And my job then is to show the council it hasn't met its duty, or to show that secondary data sources show that actually, the register isn't reflective of demand, to really show the benefits of self and custom build provision through the appeal proposals.

Ben Adam-Smith 32:23

Now, I want to backtrack a little bit because there were a few questions that I could have asked in the middle of when you were explaining the whole process. I thought, I'm going to let you get to the end, let you go through it all. So forgive me if this all comes out of order. And first of all, if we just go back to the different types of planning, can you explain the difference between getting a full planning consent and outline planning? And when we might want each one?

Andy Moger 32:50

Yeah, sure. So with a full planning permission, effectively, what you're doing is you're providing all of the details of the scheme at that point in time. So everything related to materials, layout, landscaping, scale, massing, that's all provided through your application. If you were to then get a planning consent, then all you have to do is to discharge the conditions attached to it. So that might be for example, samples of the materials, things related to working hours on the site.

Andy Moger 33:24

I suppose the downside is then that, once you've got an outline approval, you then have to get then subsequent reserved matters approvals for all the elements you haven't included at that stage. So that is landscape, scale, massing, appearance and so on. All those elements. You have to then go in and get reserved matters consent for those. But of course, you've spent less, and you de-risk it slightly by spending less in the first instance.

Andy Moger 33:24

From a full planning permission having been attained, that's a quicker process, but it's a much more expensive process, because you have to provide everything upfront. It's also riskier because of the costs associated. So what a lot of people tend to do is to seek an outline consent with access only. You have a red line for your site, you provide an illustrative plan showing what you intend to put on the site, but the plan is only illustrative, so it's not fixed. And the access is part of the approval. So obviously, there's less expenditure in terms of the drawings and all the various things related to materials and so on at that point in time. So there's less risk.

Ben Adam-Smith 34:33

So something is going to get built. They're not going to turn around and say Oh, well, actually, we've changed our minds. It's definitely, it's the green light for nine houses or whatever it might be?

Andy Moger 34:41

It is yeah. They can't turn around and say no, you can only do eight now. They can't do anything like that. But you still need to satisfy the council with what you put forward in terms of appearance that it's appropriate for the site. So for example, if you got an outline consent, and it was I don't know, near a heritage asset. And then you're proposing a Mr Blobby render house, that's not going to cut the mustard at reserved matters! It still needs to be something that's appropriate and the council still needs to be satisfied at reserved matter stage that what you're proposing is acceptable.

Ben Adam-Smith 35:19

And thank you, Andy, for a Mr Blobby reference in the middle of the podcast, I did not see that one coming! You also talked about conditions and making sure that they've all been ticked off. So what is that process of discharging the conditions? What do we actually have to do?

Andy Moger 35:38

So the really important ones with conditions are the pre-commencement conditions. Because the pre-commencement conditions you have to discharge before you start. Say, for example, somebody has bought a consent from somebody else, they need to make sure that they discharged those pre commencement conditions before they start on site, because you don't want to end up in a scenario where the council then turn up issuing stop notices, and it all gets, it's very messy. So you apply to the council to discharge the conditions, submit the information that's required in each condition in order to do so. It's a fairly simple process, fairly quick process, compared to most parts of planning. I think that's the main take home, is be very, very aware of pre-commencement conditions.

Ben Adam-Smith 36:24

Also, if we have an existing dwelling on a site, is it almost a given that you will get planning permission for a knock down and rebuild if it's the same size? Or what might we need to think about there?

Andy Moger 36:38

If you're doing something the same sort of size, obviously, yeah, you've got a far greater chance. But then if you're looking to try and do something larger, for example, if you knock down a bungalow, and you're wanting to put a two storey dwelling on there, then you know that's markedly different, particularly if you're in an area where everything else around it is bungalows. So I think it very much depends on the circumstances. But yeah, a knock down rebuild for something of a similar size, you would expect ordinarily to be easier than where you're looking to increase the size of something.

Ben Adam-Smith 37:09

And you talked about permitted development right at the very beginning. What is allowed these days in terms of permitted development? And how would we go about do we need to do anything in terms of oh, I'm going to add that to my house, if it falls within that?

Andy Moger 37:25

Yeah, so these are all available on the planning portal. But some of the things you're allowed to do are loft conversions within certain limits in terms of the volumetric size of that, and how it's located on the roof. Rear extensions, they vary depending upon whether you're a detached or a terraced or semi detached house, to the extent the depth to which you can extend them. The planning portal has got a really helpful guide, an interactive guide, on permitted development rights. And that's I think that's probably a good starting point to look on there.

Ben Adam-Smith 38:05

Also, I don't think we've mentioned section 106. So could you explain that one?

Andy Moger 38:10

Yeah, sure. So section 106 agreements, are a legal agreement that if there is a deed attached to the property, or the land and the permission, and they require the applicant, or landowners to do particular things. Now then, they're normally used for securing planning obligations. So what planning obligations tend to be are where developments are coming forward, and the council says Well, there's not enough capacity in the local school to accommodate development, and therefore we're going to need financial contributions to expand the capacity in school from the development because it's going to have an impact on that. And that's just an example that can also be related to health care, public open space, play facilities, there's a whole range of things that section 106 contributions may be related to.

Andy Moger 39:05

What happens is that the section 106 agreement sets out what those requirements are, what the financial contributions would be, and also the timeframe for them. So there may be some are required on commencement, it may be that some are required after a certain amount of occupancy. On a larger scheme, for example, some of the payments may be due on 50% occupancy, and then the remainder on 75% occupancy. So what it does is it secures certain contributions to help mitigate the impacts of development.

Andy Moger 39:38

They're also referred to as unilateral undertakings. Two slightly different things but do the same thing. So section 106 agreement is a bilateral agreement. And what I mean by that is the applicant, landowner and the council all enter into it and sign it. A unilateral undertaking, the council do not enter into it. That's typically via that appeal, where you haven't been able to agree a section 106 agreement with the council, and so you want to make it clear to the inspector that you are willing to make provision for certain things. So you submit the legal agreement that binds you, as the applicant and the landowner to do certain things. But it's not binding on the council. We often use those on appeals to secure a permission as self and custom build. And that's to help remedy the problem I talked about earlier, where you've got councils just counting all single dwelling permissions or anything up to nine units and saying, Well, it could be self and custom build. Because if you've got a unilateral undertaking, which says, This development will be delivered in accordance with the definitions in the self and custom build act, then what that does is sends quite a powerful message to the inspector that this is not any sort of Trojan horse attempt to just pass it off as something else. This will be for self and custom build. So that's where we really use that.

Andy Moger 40:59

And then the other thing is CIL, the Community Infrastructure Levy. Not all councils have implemented CIL. So those that have, CIL tends to pay for strategic infrastructure. So CIL is levied on a per square meter charge on development. There's different rates, depending on different authority, different parts of each authority, different types of development. So you can't really put a finger on what it might cost somebody because it varies all across the country. But CIL is intended to pay for strategic infrastructure, and then section 106 deals with on site specific mitigation.

Andy Moger 41:37

Now, the thing with self and custom build is that you can apply for the CIL self build exemption, and that can be really, really valuable. Because we were approached by somebody who had gone down the self

build route, they'd attempted to go through the CIL process themselves, and they'd missed one of the forms and they'd missed the timings on one of the forms. And they were landed with a bill for 40,000 pounds from the council. And there was nothing they could do about it. They were still a self-builder, but they'd missed the timings for when they should submit the form. So it's really, really important that the forms, the correct forms, are submitted at the right times for CIL. Because if you follow that process correctly, then you can save yourself an awful lot of money as a self-builder.

Ben Adam-Smith 42:23

Yeah, as on a lot of occasions, actually, where you might think it's cheaper to do it yourself, sometimes it's better to get someone who knows what they're doing!

Andy Moger 42:32

We did a self build show a couple of years ago, and a couple had approached me and said they had been told by their agent that because they were going to self-build they had a CIL exemption by default, and they could just go ahead and commence development. So I said Well, you haven't started have you? He said, No, no, we were going to start tomorrow but we thought we'd just come along and speak to you first. So well, it's a good job, you didn't start because you would have triggered CIL and that would have been it. You need to fill out these forms, told them what the process to follow. And then we worked it out, and they would have been hit with a bill for 32,000 pounds if they'd commenced development the next day. And as it was they followed the process that we set out for them. They didn't pay anything.

Ben Adam-Smith 43:17

Well, that's a pretty good place to leave things. Maybe finally, just a thought, or a summary whatever you fancy or something you haven't mentioned in relation to our topic today, which has just been all about planning consultants. How would you like to wrap this one?

Andy Moger 43:32

There are certainly scenarios where an architect can deal with somebody's application. There are various specialisms that we're able to assist with. We had a case where a very competent practice of architects who we work with a lot, they had a site in the greenbelt. It was all going fine and then they came across an obstacle to do with policy. The council were going to refuse the application. And we got involved and were able to demonstrate to the council that actually, although it was in the greenbelt, it met some of the exceptions in the NPPF and was limited in-filling, and therefore there wasn't a policy conflict, and it should be consented. So we were able to turn what was going to be a refusal into an approval. And yeah, that family moved in for Christmas of last year. So it's always nice to see something like that where it's three generations of the same family, a multi generational self-build in the greenbelt as a limited in-filling and allowable exception.

Ben Adam-Smith 44:33

And you're okay with picking up things when they get a bit sticky, if it's, as you say, architecture firms who will do it themselves anyway, you're okay to take over?

Andy Moger 44:42

That's a lot of what we do!

Ben Adam-Smith 44:45

Yeah, totally understand!

Andy Moger 44:46

It's being approached when there's a problem and then having to find the resolution.

Ben Adam-Smith 44:50

Excellent Andy. I've really found that fascinating, lots of learning points in here that we can listen to and we'll put our summary together as well. So, Andy, thank you very much for your time today.

Andy Moger 45:01

Thanks, Ben.

Ben Adam-Smith 45:03

Head online to take a look at the show notes that accompany this session:

houseplanninghelp.com/330, where you can review the key points once again, perhaps you've got a comment or you'd like to ask a question. You can do that at the bottom of the show notes, or we'll give you links to social media. We'll also point you to the website of Tetlow King planning: houseplanninghelp.com/330.

Ben Adam-Smith 45:29

My call to action is to check out The Hub. This is the membership community that we run alongside House Planning Help. And the goal of it is just to make life a little easier for you. We've got resources that try and prepare you for what you're about to do, because it's a big task. And we're always here for support as well, whether in the forum where you can chat to other members, and I'll give you my inputs, or one to one on the office hour that we have every week. That's another opportunity to quiz me or even to get recommendations to people in your area. We've been doing this for quite some time now, so we've got a good network going.

Ben Adam-Smith 46:05

We also have the live training sessions as well. But I wanted to talk to you about the final chapter of the Kinver story. So this is a retrofit of a Victorian terraced property. We've been following it the whole way through. And in this particular episode, Guy moves back into the house and reflects on things. Because there's a certain situation where you've moved out, you're watching your house being retrofitted, being improved, renovated, and you want to get back in. It's hardly surprising is it? But when is the right time? Ideally, you'd step right back and wait for the moment that everything has been done. But when it's already been slightly longer than you had hoped, you just want to get back. So that's quite an interesting thing that I think a lot of self builders and renovators face. Sometimes they even use the phrase "camping out" in the house until the last job's finished. But then there's the flip side of, if you've got a team, they're reluctant really to go at the same speed as if you weren't in the house. So you've got to pick your moment I think. If you want to find out more about The Hub: houseplanninghelp.com/join.

Ben Adam-Smith 47:12

That's it for today. Thank you so much. The House Planning Help podcast is produced by Regen Media: content that matters.