

Guide to Mediation

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Planning application stalled?
Enforcement case dragging on?
Emerging plan reached impasse?



Try a different approach
Try mediation!

Disputes arise in Planning because of different viewpoints and differing priorities. Resolving conflicts can take time, and conventional processes often lead to “winners” and “losers” with costly appeals and acrimonious relationships.

Mediation:

- is an alternative way of resolving disagreements that increases trust and encourages co-operation between the parties;
- involves an independent mediator working with all parties, helping them to draw out the issues, find common ground, and find ways to move forward;
- can narrow differences, or lead to an agreed outcome;
- is a cost-effective and efficient way of overcoming difficulties and making progress
- DOES NOT compromise democratic decision-making, because it doesn't bind the decision-maker (Officer or Committee.)

Seizing the opportunity:

Mediation can be used throughout the planning process: e.g. in pre-application discussions; during consultation on emerging plans or planning applications; and in cases involving enforcement or compulsory purchase orders.

Any party can seek mediation but LPAs, in particular, should look to offer mediation where they see scope for reaching an agreed outcome. It is flexible and the process can be adapted to meet the circumstances and needs of the participants

Mediation is voluntary and agreeing to mediate implies a willingness to compromise and to seek to achieve an acceptable outcome.

Success is more likely if:

- opponents suggest alternative means of achieving the desired outcome,
- there are financial incentives for the dispute to be resolved, and
- the parties are willing to communicate with each another.

Mediation isn't suitable

- to determine questions of law or
- if the case involves issues that are beyond the competence of the parties (e.g. national policy).



Preparation:

Whoever initiates the mediation (e.g. LPA, developer, or third party interest) the LPA will normally be best placed to identify all relevant interests to participate.

A short list of mediators is selected by agreement of the parties, who agree how to fund the process (e.g. by one party or by several). Short-listed mediators should be accredited, have professional indemnity * and declare any potential conflicts of interest. Potential mediators must be impartial and either have or have access to impartial planning expertise relevant to the case.

All parties should agree who would be acceptable and who is appointed. The chosen mediator is likely to want to meet with each party separately beforehand and will liaise with the parties to set a date and find a neutral venue. They are likely to require the parties to sign an Agreement to Mediate, which commits everyone to keeping to the agreed ground rules for the process.

The mediator will find a neutral venue with break-out rooms and suitable facilities including refreshments; contacting the parties; holding pre-discussions if necessary; and fixing the date for the mediation.

The mediator will assess whether any party needs a “mediation friend” to help them to understand and participate effectively in the mediation process and may suggest someone suitable. It is important that all parties are represented by people with the authority to make appropriate decisions within their organisation.

Let's do it!

Mediation is a confidential process, but the outcome must be made public to ensure transparency of decision-making. The mediator will advise on the procedures to be followed and lead the process, which is likely to include meeting each party in private to understand their individual cases; acting as a go-between as necessary; bringing the parties together to seek agreement. The parties will be encouraged to:-

- keep an open mind and understand each other's positions;
- agree common ground; and
- discuss options to resolve the dispute.

Many cases can be resolved with 1 day of preparation and 1 day of mediation; more complex cases can involve a number of days spread over a period of months if further work needs to be done. Agreements or understandings are written down and signed off by the parties (such agreements DO NOT compromise democratic decision-making).



Further information and support:

The National Planning Forum publication **A Short Guide to Mediation** can be found at www.natplanforum.org.uk along with a copy of a report it commissioned with the Planning Inspectorate on the use of Mediation in Planning, a Bibliography, and anonymised mediation case studies (also on the Planning Advisory Service and HCA ATLAS sites)

Further support on the use of mediation and mediators is available from:

- The Homes and Communities Agency Advisory Team for Large Applications (ATLAS) www.atlasplanning.com/page/about_atlas.cfm
- The Planning Advisory Service <http://.pas.gov.uk> ,
- Royal Institution of Chartered Surveyors Dispute Resolution Service www.rics.org/uk/tag/dispute-resolution/
- The Centre for Effective Dispute Resolution (CEDR) www.cedr.com/ and for information on the system in New Zealand: www.mfe.govt.nz/publications.rma/everyday/court-mediation/

* RICS Dispute Resolution Service and CEDR keep lists of accredited mediators, and others can be found on the web.

Acknowledgements:

This Guide was prepared by the Mediation in Planning Delivery Programme Board set up by the National Planning Forum details of which can be found on the NPF website

The National Planning Forum:

- Is the only cross-sectoral forum focussing on spatial planning in England with a mission to inspire planning and planners.
- has a membership of over 70 organisations representing the key national organisations with a role in and commitment to planning.
- acts as a critical friend to the Planning Directorate within the Department of Communities and Local Government, helping to inform and shape policy by reflecting significant depth of experience of practice
- informs debate, builds cross-sectoral consensus and provides clarity on the issues where views differ
- operates as a membership network with a web-site that is open to all
- is committed to ensuring that spatial planning in England is fit for purpose
- provides a platform for all the sectors to engage in discussion and debate on key planning issues - identifying consensus and clarifying difference

The Forum embraces the five sectors of business, local government, the professions, the non-governmental and voluntary sector and planning in central government. It operates on an entirely non-political basis and represents a unique body of cross-sectoral experience.