



Planning and the GDPR- interim guidance for practitioners

18th May 2018

First Draft

This is an early draft for planning authorities wanting the key messages arising from the introduction of the General Data Protection Regulations.

It has been developed with the help of a sector-led working group and the advice of partner organisations. It will be replaced with a more comprehensive guide in the Summer of 2018.

The LGA has established a “knowledge hub” to share thoughts and expertise on the [implementation of the GDPR](#) generally. There is also a [theme-specific area for planning](#) where you are invited to ask questions and contribute to drafts of this guide as it evolves.

Membership of the group is open to everyone with a .gov.uk email address and the joining address is <https://khub.net/group/gdpr-local-gov>

Introduction

The introduction of the GDPR in May 2018 represents a natural point for councils to review the way they manage data in the course of their work providing the functions of a local planning authority (LPA). For most LPAs this will represent the latest in a series of evolutions from the first drive to get online and the e-planning agenda.

However the initial drive to “get online” has led some LPAs to publish everything and disregard the principle of data minimisation - collecting using and publishing only what is necessary. The various requirements/obligations set out under planning legislation to consult with the public does not mean a blanket upload of the full application and supporting information is necessarily appropriate. Similarly to publish all consultation responses without review is not appropriate either.

The requirements on planning authorities to consult and to operate in a democratic and accountable way needs to be balanced against data protection obligations. For the avoidance of doubt: where there is a conflict between domestic legislation (such as the Town and country planning (Development Management Procedure) (England) order 2015) and EU legislative obligations (such as the GDPR) then **the latter prevails**.

The recent fine issued to a council for publishing sensitive personal data contained within a planning application without any prior review is instructive and reinforces the importance of LPAs complying with their data protection responsibilities when they exercise their planning functions. However planning is an area in which there is a strong drive for transparency and openness to facilitate greater public engagement in decision-making. Those proposing development - and those impacted by it – have a long-established expectation of participating meaningfully in the decision-making process. LPAs must not respond to this risk of fines for contravening data protection law to reduce or curtail public involvement in the planning process.

The implementation of the GDPR is going to take some time to be fully understood and become routine practise. The various iterations of this guide will help councils understand and decide for themselves how they wish to respond and implement their data management strategy.

Publishing planning information online

In advance of a more detailed procedures guide, here are the key issues for LPAs preparing for the GDPR:

1. The Town and Country Planning (Development Management Procedure) (England) order 2015) [requires public consultation to be undertaken](#) as part of the decision making process for planning applications. Publishing information online provides the public with an opportunity to engage with the process in a way that is convenient to them.
2. Every planning application contains “personal data” as defined by the GDPR. A comparatively small number of planning applications may contain “special category data”¹. There are additional safeguards for special category data and the consultation processes must reflect this.
3. Processing personal data and special category data is necessary for the exercise of planning functions, but that does not include a blanket approach to publishing it on the internet.
4. Decisions on what information is published online are a matter for individual planning authorities. In making these decisions LPAs need to balance their data protection obligations under the GDPR with their other legislative requirements.
5. Publishing personal data online requires [a lawful basis](#) under Article 6 GDPR and in the case of special category data an additional condition is required under Article 9 GDPR.
6. If a lawful basis and condition cannot be identified for publishing special category data in relation to planning applications or appeals decisions, the information should be redacted. Appropriate organisational and technical controls should be adopted to ensure that staff members understand when to redact information and to prevent its accidental publication (see below).
7. Individuals should be clearly informed via privacy notices in relation to what information they can expect to be made public. This will allow them to make informed decisions about how their information is used. Individuals may have questions or want to discuss their data so LPAs should make clear what the point of contact for this sort of enquiry is.

¹ Previously known as “sensitive personal data” under DPA 1998 and includes personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person or data concerning health or a natural person's sex life or sexual orientation

A framework approach to managing data

Establish operating principles

Every LPA needs to be responsible for the way it uses personal data. It does this by embedding compliance with the GDPR in the way it operates, and needs to be able to prove that this is the case by documenting its processes and decisions.

While LPAs legally do similar things, they vary from one another in scale, scope and attitude to risk. People should be careful when establishing their operating principles so that they match the systems, processes and resources available locally.

You should have appropriate measures and procedures in place to manage the data you process, particularly when you are publishing any information online. This should include:

- reviewing planning applications/objections for personal data/special category data
- where it is considered necessary/justified to publish personal data/special category data, making sure that you document those decisions and the lawful basis for doing so
- where it isn't necessary/justified to publish personal data/special category data, making sure there are processes in place for redacting this information - eg checking and sign off process before uploading to the website.

Provide training and ensure compliance

Once you have established your principles and shared them with your users you must operate and be able to demonstrate that you deliver them.

Every member of the team who needs to process and distribute personal data should receive training (topped up at suitable intervals) that covers:

- Implementing the measures and procedures outlined above
- Data protection principles
- The importance of identifying special category data
- Applications that may involve national security
- Who to ask if unsure

Inform people of your operating principles via a privacy notice

Under the GDPR individuals have the right to be informed about the collection and use of their personal data. This is usually done by providing a privacy notice which must contain certain information such as: your purposes for processing their personal data, your lawful basis for processing and who it will be shared with. It is often most effective to provide privacy information to people using a combination of different techniques at different levels known as a “layered approach”. Further details about what must be included in privacy notices and the different techniques for providing privacy information can be found in the ICO’s guide on the [right to be informed](#)

The Local Authority will have an overarching privacy notice under which more detailed service-level information should be provided. This means that LPAs should provide their own privacy notice so that individuals can see clearly how their data is used and retained.

There is a sample privacy notice included as an appendix to this guide. It is essential that this is localised properly, so it genuinely does reflect how things are done. Making sure you provide the required information to individuals can help you to comply with other aspects of the GDPR and build trust with people as it is an opportunity to manage their expectations and explain how you will use their data.

A checklist for LPAs

This short list represents the immediate actions required to prepare for GDPR

1. Do all staff understand the definitions and differences between personal data and special category data? Have you explained how and where special category data might appear?
2. Have you established routines for checking everything to be published online for special category data? Note this includes comments on planning applications and other representations made by 3rd parties
3. Have you set out how you handle data in a privacy notice properly localised to the way your LPA functions?
4. Have you updated standard templates or email signatures to include reference to your privacy notice?
5. Have you carried out a risk assessment of any historical publication of special category data? eg microfiche or previous bulk scanning of paper casefiles
6. Has someone signed up to the [GDPR knowledge hub](#) so your LPA is notified of updates, clarifications and errata of this document and the sample privacy notice?

The rest of the list contains important but less urgent tasks. The next version of this guide will contain further information to assist with some of these decisions:

7. Have you established retention policies for the many different kinds of information and paperwork and implemented them?
8. Have you established a way of dealing with special category data when decisions are made at a public planning committee?
9. Have you considered how sharing data with the Planning Inspectorate will work? Remember that they may pass appeal decisions back to you that reference special category data.

Appendix 1: Sample Planning Privacy Notice

Version 1 – 18th May 2018

Who we are

We are the planning department for XXXX council. This privacy notice explains how we use information in the course of our work as a local planning authority. This work includes

- Making decisions and providing advice on planning applications
- Making planning policies
- Working with neighbourhoods on their plans
- Working with neighbouring authorities on strategic policies
- Responding to allegations of unlawful development
- Monitoring development
- Entering legal agreements, serving notices and promoting the best use of land

If you have questions about data or privacy contact our data protection officer XXXXXXXX.

How we get your information

We get applicant information in two ways – it is supplied to us directly (or via a planning agent on their behalf) or we receive it from a third party website that provides a transaction service. These include:

- The Planning Portal
- iApply

We also receive comments, representations, allegations and questions via email, letter, and through our platform(s).

What we do with your information

To allow us to make decisions on their applications individuals must provide us with some personal data (eg name, address, contact details). In a small number of circumstances individuals will provide us with “special category data” in support of their application (eg evidence of medical history).

We use the information provided to us to make decisions about the use of land in the public interest. This is known as a “[public task](#)” and is why we do not need you to “opt in” to allow your information to be used.

Some information provided to us we are obliged under the regulations to make available on planning registers. This is a permanent record of our planning decisions that form part of the planning history of a site, along with other facts that form part of the “land search”.

How we share your information

We do not sell your information to other organisations. We do not move your information beyond the UK. We do not use your information for automated decision making.

We will make details of planning applications available online so that people can contribute their comments. We will sometimes need to share the information we have with other parts of the council-for example to establish how long a building has been used as a dwelling.

We also send out a follow-up “how did we do?” survey to a sample of people using our service to see how we can improve it.

Redaction (‘blanking things out’)

We operate a policy where we routinely redact the following details before making forms and documents available online:

- Personal contact details for the applicant - e.g..telephone numbers, email addresses
- Signatures
- Special Category Data - e.g. supporting statements that include information about health conditions or ethnic origin
- Information agreed to be confidential

Sometimes we might decide it is necessary, justified and lawful to disclose data that appears in the list above. In these circumstances we will let you know of our intention before we publish anything.

If you are submitting supporting information which you would like to be treated confidentially or wish to be specifically withheld from the public register, please let us know as soon as you can - ideally in advance of submitting the application. The best way to contact us about this issue is [XXXXXXX](#).

Retention (‘how long we keep your information for’)

We process many different types of information according to our [retention policy](#). A brief summary of long we keep things before they are destroyed:

- Statutory registers (eg planning decisions, approved plans, legal agreements) – for ever
- Supporting documents, reports – 6 years for committee decisions, 4 years for officer decisions
- Representations, letters, general correspondence – 4 years

Complaints and problems

Making decisions on planning matters is a public task and you do not have the right to withdraw consent. However if you think we have got something wrong or there is a reason you would prefer for something to not be disclosed please ask us by [XXXXXXX](#).

If you need to make a complaint specifically about the way we have processed your data you should in the first instance use our corporate complaints policy [XXXXXXXXXX](#). If we fail to respond properly you can direct your concerns to the [Information Commissioners Office](#).