

GUIDANCE NOTE**Engaging in pre-planning application discussions****Monitoring Officer Advice to All Members****Issued: March 2014**

I have recently had to consider a potential complaint under the Code of Conduct which hinged on the role of members in pre-planning applications discussions.

Although no potential breach of the Code was found, it was suggested, following consultation with the Independent Person, that I remind Members of their role in this type of discussion. I wish to make it clear that in issuing this note it is not about preventing you from taking part in such discussions. Indeed your involvement as a councillor in the pre-application process is considered to be an important part of the applicant seeking to engage with the local community in accordance with the National Planning Policy Framework. The note sets out matters that you should consider.

You will also appreciate that there is no obligation on an applicant to involve you in such discussions. Even where you are invited to be part of this process you need to be aware of the confidential nature of such discussions until a planning application is submitted.

As an active Councillor being involved with the community, there is a danger of joining in on a campaign with your constituents that you will later be called upon to take a decision on as a Member of the Council. This is called fettering your discretion. The Localism Act 2011 has sought to free-up a Member from many aspects of predetermination. You should still be aware, however, that that you should not fetter your discretion and therefore your ability to participate in planning decision making at this Council's Planning Committee.

You could fetter your discretion by:

- making up your mind, i.e. having a closed mind on the matter ; and
- clearly appearing to have made up your mind (particularly in relation to an external interest or lobby group), on how you will vote on any planning matter prior to formal consideration of the matter at the meeting and of your hearing the officer's presentation and evidence and arguments on both sides.

A fair-minded observer should not think that there was a real possibility that you were biased before the decision was taken.

If you have made up your mind and then take part in the decision making this will put the Council at risk of a finding of maladministration and of legal proceedings.

Your involvement as a Councillor in the pre-application process is considered to be an accepted part of the applicant seeking to engage with the local community in accordance with the National Planning Policy Framework, and you are not precluded from doing this.

If you do not sit regularly on Planning Committee but are called on as a substitute please be aware of the implications of participating in pre-application discussions and then sitting on the committee that determines the application.

The National Planning Policy Framework makes it clear that Local Planning Authorities:-

- should apply decision making in a positive way to foster the delivery of sustainable development;
- look for solutions rather than problems;
- seek to approve applications for sustainable development where possible; and
- work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area.

Furthermore, it states that:-

- good quality pre-application discussion enables better coordination between public and private resources and improved outcomes to the community
- Local Planning Authorities have a key role in encouraging other parties to take maximum advantage of the pre-application stage;
- they should also, where they think it would be beneficial, encourage any applicants who are not already required to do so by law to engage with the local community before submitting their application.

There is also an opportunity for developers to receive pre-application advice from officers and it may be appropriate to encourage the applicant to direct technical or policy queries to the duty planner.

In addition, the Code of Conduct requires that Members deal with representations or enquiries from residents, members of our communities and visitors fairly, appropriately and impartially

In particular, when engaging in pre-application discussions all Members should;

- keep a careful note of the meetings or telephone calls including dates and times, attendees and what was discussed;
- always involve officers and consider how to structure discussions with developers;
- inform officers about any approaches made to you and seek advice;
- make it clear that the discussions are not binding on you or the Council and say that you can engage in discussions but you must be seen to have an open mind at the point of decision making; and
- if you are unsure about whether you have an open mind then you should not participate in the decision making.

If you are a Member of the Planning Committee (or attending as a substitute) and have made up your mind in advance of the planning committee meeting:

Don't speak and vote on a proposal where you have fettered your discretion. Whilst you do not have to withdraw from the meeting in these circumstances, I would advise that you do withdraw.

Do explain that you do not intend to speak and vote because you have or you could reasonably be perceived as having judged (or reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes.

Do take the opportunity to exercise your separate speaking rights as a Ward/Local Member where you have represented your views or those of local electors and fettered your discretion, but do not play any further part in the consideration of the item and do not vote.

If you are not on the Planning Committee but are attending the meeting solely as a Ward Councillor you may continue to represent those ward interests as a spokesperson for your local community, but I would recommend that you withdraw after having spoken to counter any suggestion of influencing Members' decision by your presence.

Larissa Reed
Chief Executive