

Rushmere St Andrew Parish Council – Internal Note

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PROTOCOLS FOR PROVIDING ‘INFORMAL VIEWS’ PRIOR TO PLANNING APPLICATION SUBMISSION

1. INTRODUCTION

This document considers the legal ability of the parish council to consider proposed new developments in the parish before planning applications for such developments have been submitted to the local planning authority.

SALC has consulted the legal department at NALC on this matter and the following considered opinions are those of Meera Tharmarajah – Solicitor, NALC Head of Legal Services.

2. THE SCENARIOS

- Developers are often interested in ascertaining a parish councils response to their pre-planning application proposals.
- Some developers ask to attend meetings of a parish council and wish to address the council about their pre-planning application proposals without the public present.
- This typically leads to questions such as:-
 - a. Can a parish council or an officer on its behalf give an ‘informal view? If it can, it must surely be on the basis that it is precisely that and that, if a formal application is subsequently submitted, it will be at that point that the Council is required to consider and respond to the Planning Authority as it sees fit.
 - b. Should an ‘informal position’ be decided in a council meeting? If so, would it be reasonable to exclude the public?
 - c. If a developer wants to outline its intentions to a parish council and the public and seek the council’s response, is it reasonable to do so at a council meeting before it submits a formal application?’

3. CONSIDERATIONS

Before submission of a planning application, a developer must, under s.42 of the Planning Act 2008 (the 2008 Act), consult with a local authority (which by virtue of s.43 does not include a parish council) if the land to be developed is in the local authority's area.

S.42 of the 2008 Act also provides that before submission of a planning application a developer must consult with the persons listed in s.44. These are persons whom the developer, after ‘making diligent inquiry’, knows to be the owner, lessee, tenant (whatever the tenancy period) or occupier of the land and a person who:-

- (a) is interested in the land, or
- (b) has power:-
 - (i) to sell and convey the land, or
 - (ii) to release the land.

The persons caught by s.44 of the 2008 Act may include a parish council.

The National Planning Policy Framework (accessible via <https://www.gov.uk/government/publications/national-planning-policy-framework--2>), published

in March 2012, encourages developers to liaise with the local planning authority (and others but with no specific reference to parish councils) before the submission of a planning application. Below is an extract from the National Planning Policy Framework.

'Pre-application engagement and front loading.

188. Early engagement has significant potential to improve the efficiency and effectiveness of the planning application system for all parties. Good quality pre-application discussion enables better coordination between public and private resources and improved outcomes for the community.

189. Local planning authorities have a key role to play in encouraging other parties to take maximum advantage of the pre-application stage. They cannot require that a developer engages with them before submitting a planning application, but they should encourage take-up of any pre-application services they do offer. They should also, where they think this 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 applications.

190. The more issues that can be resolved at pre-application stage, the greater the benefits. For their role in the planning system to be effective and positive, statutory planning consultees will need to take the same early, pro-active approach, and provide advice in a timely manner throughout the development process. This assists local planning authorities in issuing timely decisions, helping to ensure that applicants do not experience unnecessary delays and costs.

191. The participation of other consenting bodies in pre-application discussions should enable early consideration of all the fundamental issues relating to whether a particular development will be acceptable in principle, even where other consents relating to how a development is built or operated are needed at a later stage. Wherever possible, parallel processing of other consents should be encouraged to help speed up the process and resolve any issues as early as possible.'

As highlighted above, there are circumstances when a developer may consult with a parish council before the developer has submitted a planning application to the local planning authority and the parish council is asked by the planning authority to make representations about the application (Paragraph 8 of Schedule 1 to the Town and Country Planning Act 1990).

A developer may also want to consult with a parish council if his proposed development relates to parish council's development or submission of proposals for a neighbourhood development plan or neighbourhood development order. The Neighbourhood Planning (General) Regulations 2012 require a parish council to publicise its proposals for a neighbourhood development plan or a neighbourhood development order with its local community and to consult with certain bodies to ascertain their views on the proposals of the parish council before these are submitted to the planning authority. In the periods when such proposals are being developed and before such proposals are submitted to the local planning authority, developers in the private or public sector may wish to disclose or discuss a proposed development so that this may be accounted for in the proposals for a neighbourhood development plan or neighbourhood development order to be submitted by the parish council. See LTN 83 for a full explanation about neighbourhood planning.

It would be possible for a parish council to give a "minded to" indication to a pre-planning application development as long as such a decision made express reference to the following matters:

- the view is preliminary;
- the view has not been reached in accordance with the documents and procedures that will accompany any formal decision under the Planning Acts;
- the view should not and cannot be relied on as the basis of a legitimate expectation as the council's view may well change when the full material is available to it and decision is taken in accordance with the council's standing orders;

- the council's view should not be taken to be or be reported to be in support of or in opposition to a formal application and
- the view is subject to a formal decision being made in accordance with the Planning Acts, the regulations made under them, the council's procedures and input from third parties

The consideration of a proposed development at council/ committee meeting or by councillor(s) who meet with the developer outside of a council/ committee meeting , may risk claims that the informal and or provisional views expressed by the councillor(s) in relation to pre-planning application developments amount to bias or pre-determination in their later decision making.

A decision of a parish council, or as may be the case, a committee or sub-committee is likely to be quashed, if there is an appearance of bias.

Decisions made by parish councillors are required to be made with an open mind. Pre-determination is, however, to be distinguished from pre-disposition towards a particular position, which is acceptable. See LTN 81 for a full explanation about predetermination and pre-disposition. As LTN 81 explains, s.25 of the Localism 2011 Act (the 2011 Act) restricts the impact of the acts of or verbal or written statements or views expressed by councillors prior to a decision that might suggest pre-determination. s.25(2) of the 2011 Act provides that: A decision-maker (i.e. a councillor) is not to be taken to have had, or to have appeared to have had, a closed mind when making the decision just because—

(a) the decision-maker had previously done anything that directly or indirectly indicated what view the decision-maker took, or would or might take, in relation to a matter, and

(b) the matter was relevant to the decision.

In the consideration of a new development (pre or post submission of planning application), parish councillors and council staff should ensure that they do not allow the council to receive, agree to receive, or expect to receive a financial reward or other advantage for furthering a planning application or otherwise. In doing so they are likely to be guilty of an offence under the Bribery Act 2010 . The person offering the reward (e.g. the unscrupulous developer or their agent) with the expectation of an improper consideration of a planning application will also run a similar risk. For more information about the Bribery Act, please see Legal Briefing ref L07-11 on the NALC website.

4. THE PROTOCOL

Communications between a developer and a parish council prior to the submission of an application may benefit both parties. However, councils and individual councillors need to be cautious because such communications may be perceived to be part of a lobbying process on the part of the developer. In order to avoid perceptions that councillors have predetermined their position about a proposed development, a parish council should ensure they have in place and follow a written protocol (which is routinely available/ advertised on the council's website) for dealing with developers in respect of pre-planning application developments. The protocol may confirm the following:-

- The developer should provide information about the proposed development which is relevant to the parish council/ its area in writing.
- If the developer considers the information provided to a parish council is sensitive, this will not require the council to treat it as confidential.

- Information held by the parish council is subject to disclosure under the Freedom of Information Act 2000. From the outset the developer must identify information which the parish council cannot share or make public and give reasons for this. Confidentiality of communications about the development will rarely be justified even if the developer's interest is sensitive.
- Communications (including informal and formal meetings) between the developer with the parish council (or individual councillors and staff) about a pre-planning application development will not bind the council to making a particular decision and that any views expressed are provisional. By the very nature of such meetings not all relevant information may be at hand, nor will formal consultations with interested parties have taken place.
- Informal meetings and telephone conversations between a developer and individual councillors or staff will be documented in writing and are subject to disclosure under the Freedom of Information Act 2000. Council staff will make the arrangements for any meetings with councillors, attend and write a follow-up letter. If there is a legitimate reason for confidentiality regarding the proposal, the council will keep a written record of the confidential and non-confidential issues.
- The meetings of the parish council and its committees are open to the public and the minutes of such meetings are available to all via the council's publication scheme. The parish council may invite developers to attend either a parish council or committee meeting at which the public are present to discuss their proposal because this will allow the developer's communications with the council to be transparent.
- The developer may not speak at it unless he is invited to address the meeting or he has an opportunity to do so during the public participation session.
- If the developer does not wish to discuss the proposed development when the public are present, the meeting would need to ascertain why the developer considers that he needs to communicate with the council/committee in closed session. A proposed development may be regarded by the developer as either confidential or 'sensitive' and in his view it may be unsuitable for discussion at a meeting when the public is present but it is the councillors at the council or committee meeting who will decide if there are grounds to exclude the public from the meeting when the proposed development is being considered.
- A parish council or committee meeting may exclude the public if publicity for agenda item(s) would prejudice the public interest due to its confidentiality or for other special reasons. (s.1(2) Public Bodies (Admissions to Meetings) Act 1960).
- The parish council may invite developers to attend an assembly of the parish meeting, which is open to the wider public, to present or discuss their proposals.
- It is an offence under s.1 Bribery Act 2010 for a developer or his agent to promise or give a financial or other advantage to the parish council with the expectation of an improper consideration of a planning application. If the developer or his agent is an incorporated body, the parish council may request sight of their anti-bribery policy.

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