

Member Involvement in Pre-Application Discussions – Briefing Note – July 2007

Background

A number of organisations and bodies recently have been promoting the idea of greater member involvement in pre-application discussions:

- The ODPM; Planning Advisory Service; LGA; RTPI; Association of Council Secretaries & Solicitors; The Standards Board for England have produced a joint leaflet “Positive Engagement – a guide for planning councillors” – which suggests that

“As a local councillor involved in planning matters, whether as a member of your authority’s executive, a member of the planning committee..... or a ward member, you have a crucial role to play in both making the new planning system work and ensuring the best possible outcomes for your community.”

It goes on to acknowledge that “Concerns are sometimes expressed about the compatibility of councillors meeting developers and interest groups and then taking decisions on an impartial basis.” and then to summarise principles that should be observed to enable members to both “participate in and lead the system”. It comments that

“As a community leader and local representative you (the member) will want to be involved in public meetings and pre-application discussions” and suggests that “Councillors should involve themselves in discussions with developers, their constituents and others about planning matters.”

The leaflet sets out useful “do” and “don’t” hints for Councillors.

- An LGA publication “Member engagement in planning matters” also suggests that while much of the available guidance on pre-application discussions refers to the role of officers – “Members have a crucial role to play at this stage in offering vision and leadership...”

The publication comments that:

“While many Councils’ codes of conduct specifically advise against pre-application discussions between members and applicants, the LGA feels that, if conducted according to a clearly communicated and well structured format, discussions can be useful and effective ways to support the decision making process.”

“Any discussions with developers or applicants should be part of structured arrangements agreed with officers”

Issues for discussion

If member involvement in pre-application discussions is to be promoted as a regular practice at the Vale, Officers believe four principal issues will need to be considered and addressed satisfactorily;

- (i) *The resourcing and organisational requirements of such an arrangement – in particular, impact on staff time*
 - (ii) *The need to avoid delays to, and duplication of effort during, the planning process*
 - (iii) *Balancing the need to maintain applicant's commercial confidentiality with Members' local leadership role;*
 - (iv) *Maintaining the integrity of the decision making process and member impartiality.*
- (i) *Resource considerations*

- In 2006/7 the Vale dealt with around 1800 applications in total, and 57 "major" applications. Although relatively minor applications can give rise to significant local concerns, it would be impossible to resource and produce a practical system which provided for member involvement in pre-application discussions at all levels of application. Resourcing such involvement even for those applications defined as "major" in DCLG terms (i.e. housing applications for 10+ dwellings) would not be possible at current levels of staffing if LGA and other guidance is to be followed. (Such advice suggests that discussions should be part of formal and structured arrangements e.g. formal developer presentations should be arranged, comprehensive notes taken, records of attendance kept, attendance by officers of appropriate seniority required, member involvement recorded and explained in any subsequent Committee Report).

To minimise the resource implications member involvement would need to be restricted to the most significant major applications (i.e. the largest residential and commercial schemes) with clear thresholds established, below which such involvement would not be provided for.

There undoubtedly would be pressure from some members to set lower thresholds, however it would need to be made clear that this could not be resourced.

- (ii) *The need to avoid process delays & duplication of effort*

Although Government BVPI performance targets are focussed on speed of handling applications once they have been lodged with the Council, advice and best practice across the profession stresses the need for speed and efficiency throughout the whole of the application process, right from pre-application through to the issue of the decision and the discharge of conditions. The 2007 Planning White Paper and its companion documents continue to focus on the need to achieve yet greater efficiencies in the operation of the system and on the requirement to streamline processes and remove and avoid delays. Of particular relevance to the issue of member pre-application involvement is the White Paper's proposal that "Planning Performance Agreements" (PPA's) be introduced as a means of managing large scale applications. Such agreements would include both the pre-application and post submission phases and would incorporate a number of core components including; a charter which would set out the LPA's expectations for community involvement and member engagement; a project plan which would identify key application milestones and fix meeting schedules and dates at which reports would be required; and a key issues list setting out the issues parties expect to encounter as an application progresses. Nevertheless, PPA's are seen by the Government not only as a tool leading to better planning decisions and stakeholder engagement, but also as a means of making the process more efficient and timely. (The White Paper consultation brochures the possibility of including financial penalties in PPA's

which would be incurred either by the applicant or the local authority for failure to deliver the PPA to the agreed timetable).

Current Vale procedure for dealing with the most major development proposals is for a multi-disciplinary officer “development team” to be set up to process the proposals right through the pre-application to the application decision stages. (The team often includes officers from outside organisations, in particular County Council officers, to address issues such as highway and other infrastructure requirements). The system is working well and efficiently and enables officers from the various disciplines to keep abreast of and influence the evolution of the proposals (including at the pre-application stage) and is helpful to the developers who are able to discuss issues (some of which may cut across disciplines) at single meetings. The composition of the team at particular meetings can and is varied depending on the issues to be discussed.

Officers would be concerned to avoid duplication of this effort and delays to the process and also to avoid the possibility of contradictory messages being sent to (or received from) developers which might occur if a parallel arrangement to involve members in discussions at the pre-application stage was established.

(iii) *Balancing the need to maintain an applicant’s commercial confidentiality with the role of members in representing and providing leadership on behalf of their communities:*

Members will be well aware of the duties on officers & Councillors to maintain commercial confidentiality. It is often the case, particularly at the pre-application stage, that developers have yet to acquire full ownership of sites they are proposing to develop. They may have an option to purchase, or be in competition (or negotiating partnership arrangements) with rival companies to bring forward a development scheme. The progress and outcome of pre-application discussions can have fundamental effects on such commercial arrangements and developers are rightly concerned to ensure their confidentiality is respected.

This poses a particular problem for Members who may wish to involve themselves in pre-application discussions in order to represent their local communities and provide leadership for those communities. It is not clear how the two responsibilities can be fulfilled as representing and leading on behalf of a local community inevitably would necessitate sounding out local views and opinions on pre-application proposals and keeping local people informed. Even if a mechanism and safeguards can be put in place and a developer’s interest in a site can be made public, it may not always be clear which aspects of their proposal should remain confidential. Issues such as consideration of alternative density options, if made public at the wrong time, can lead to an unnecessary or premature response from the local community.

(iv) *Maintaining the integrity of the decision making process and member impartiality:*

The recent LGA guide to Member engagement in planning matters makes it clear that in relation to the consideration of planning applications (and to issues of planning policy development) “Members need to be aware of their obligation to an impartial approach. An objective consideration of material facts at the planning committee is the correct place for members to make their views, based on an impartial consideration of the evidence at

the time. Expressing a view outside this arena comprises a prejudicial interest and debars a member from involvement in the determination process.” The guide goes on to say:

- “However, this does not rule out a range of opportunities for members to follow the progress of applications, particularly where contentious or substantial”, but also that
- “The determination of planning applications is a quasi judicial process and when the boundaries between discussions and negotiations become blurred, members lay themselves open to criticisms of ‘fettered discretion’ and partiality”.

The guide advises that member involvement in pre-application discussions needs to take place within a legitimate and robust framework “with a cautious awareness of the fine line between an objective interest and a prejudicial one.”

In this context, the LGA has offered guidance notes to assist in the development of local procedures to deal with the issue. The guidance (some of which is echoed in the leaflet “Positive engagement – a guide for planning councillors” referred to earlier) suggests the following:

- Any discussion with developers or applicants should be part of structured arrangements agreed with officers. Councils should make, clarify and communicate the role of members and the limits of engagement with applicants in framing local member codes of conduct. (A simple mechanism might be a guide to applicants outlining the scope of pre-application meetings and the remit of the members).
- Members need to be aware of the distinction between giving and receiving information and engaging in “negotiations” in their discussions with the applicants.
- Presentations by applicants should be limited to the development proposed and questions should be related to factual matters, on the understanding that the purpose of the discussions is to improve understanding.
- Members should maintain an impartial listening role and avoid expressing an opinion or giving advice beyond outlining adopted local policies.
- It should be made clear that views expressed are not part of the determination process.. (although it must be said that the above bullet points would suggest that in general, “views” from Members should not have been expressed in the first instance).
- Discussions should be structured and always involve officers of appropriate seniority, and for major or contentious applications, Member involvement should be authorised by the main Committee and involvement subsequently recorded in any Committee Report.
- A written note of discussion proceedings should be kept; including an attendance record and if the applicant requests the views of the authority these should be communicated in writing with officers making it clear that views expressed prior to formal determination of an application are preliminary.
- Where discussions are likely to touch on commercially sensitive matters Councils should set out in advance how they intend to deal with such matters.
- Members should not seek to influence officers or pressure officers to support a particular course of action.

The guidance would seem to point to the need for clear and formalised arrangements to manage the process of member involvement and avoid an ad hoc, inconsistent approach which could put in doubt the integrity of the Council's decision making. Any formal arrangements would need to recognise the resource and potential process delay consequences outlined in points (i) and (ii) above.

Officers are aware that a small number of Councils have sought to address the issue of Member involvement at pre-application stage for their most significant development proposals through the establishment of Member Forums, on similar lines to the Grove Development Forum set up by this Council. There is no consistent format for such bodies, but if Members are minded to follow this route the issues raised above need to be considered and the following questions addressed in that context:

- How "formal" should the Forum meetings be?
- How should the decision to set up a Forum be made and by whom?
- Should there be an agreed scheme through which Forum membership is decided? Should membership of each Forum be open to all members of the Council? Chair & Vice-Chair of the Development Control Committee, Opposition Planning Spokesman & Local Members only? All local members for the Town (e.g. Abingdon or Wantage) if the application is significant, or just the relevant Ward Members?
- How frequently should the Forum meet, how would frequency be decided.
- Who would service the meeting? Should a formal note be taken and recorded by the Democratic Services Team? How will duplication of the existing officer development team meetings be avoided?
- How will issues of commercial confidentiality be dealt with and balanced against Members' local leadership role?
- Could/should the meetings be held in public?
- Should clear thresholds be set down, above which Forums could be set up and below which it would be understood that Forums would not be set up?
- How will the establishment of the Forum mechanism be reflected in the Members' Planning Code of Conduct? Would the principle need approval from the Council's Standards Committee?

As suggested above the Grove Development Forum might be seen as a model for how a separate and parallel Forum for involving members in the pre-application (and post application) stages of a major development proposal can work. However, it should be acknowledged that the Grove Forum is operating successfully in response to a particular set of circumstances:

- The development is exceptional in terms of its scale and impact and is being taken forward within a clear context and series of requirements set by the adopted local plan and comprehensive, adopted supplementary planning guidance. The developer is therefore less concerned about issues of commercial confidentiality and the "rules and requirements of the game" are relatively clear and open. This will not be the case with most other development proposals, particularly unexpected "windfall" schemes.
- With the exception of the first 2 meetings (which were focussed around preparation of the Vale's SPG) the Forum has been entirely funded by the developers, who have engaged an external facilitator to organise meetings, arrange workshop sessions and

document and record outcomes. This has been a major task which could not have been resourced in-house.