

WADHURST PARISH COUNCIL

Protocol on Consultation Meetings with Developers, Pre-application meetings and meetings during the application process

Part 1: Introduction

PURPOSE

Wadhurst Parish Council (the 'Council'), acknowledge that developers may wish to present proposals at different planning application stages to the Council to seek its views. Pre-application discussions play an important role in major developments. The Council welcomes the desire of developers to consult with both the Council and the local community more widely.

However, the Council is also aware of the importance of public perception in planning and the critical need to avoid any appearance that the Council is conducting secretive negotiations or, colluding with developers or their Agents. In order to avoid improper lobbying by a developer or creating a perception that the Council has a predetermined position about a proposed development, the Council will follow this protocol guidance. This protocol has been prepared to ensure that in the planning process there are no grounds for suggesting that a decision taken by the Parish Council has been biased, partial or not well founded and that the Councillors are aware of their role within the planning process.

A Parish Council's role as a consultee, is for Councillors collectively to make planning decisions openly, impartially, with sound judgement and for justifiable reasons during Parish Council Meetings.

If a Councillor is in any doubts about the application of this Protocol to their own circumstances, they should seek advice early on if they think they are required to declare any personal or pecuniary interests. Initially they can ask for guidance from the Parish Clerk or contact the WDC Monitoring Officer for further guidance.

SCOPE

This document applies to all Parish Councillors, its Committees, Employees and contractual third parties and agents of the Council who work and act on behalf of the Council.

This document also applies to all developers, landowners, their employees and agents that act on their behalf.

This document applies to situations where developers approach the Council. Note that the Council may from time-to-time approach landowners and/or developers as part of their fact finding to gain better understanding their plans.

THE NATIONAL PLANNING POLICY FRAMEWORK

In so far as the Council's protocol applies, it has been confirmed that 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 before the submission of a planning application. S.42 of the 2008 Act also provides that before the 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, 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).

Part 2: PLANNING PROTOCOL & GUIDANCE

Pre-determination

In all meetings with developers, Parish Council Members, Employees and Professionals working on the Councils behalf are reminded of the critical importance of not pre-determining the position on any possible future planning application. For individual Parish Councillors in particular, this could require them to take no part in the discussion/decision making, when an application becomes live and appears on the Parish Council agenda for consideration. It is noted, however, that expressing a pre-disposition, for example of either ‘welcome in principle’ or ‘concerns because of x, y or z’, is permissible.

Councillors Code of Conduct

Parish Councillors will, when having meetings with developers:

- 1)** Always apply the rules in the Councillors Code of Conduct, which must always be complied with.
- 2)** Always apply the guidance in this Protocol, which seek to explain and supplement the Councillors Code of Conduct for the purposes of making impartial decisions.

If a Councillor does not abide by this Protocol and the Code of Conduct, they may:

a. Put the Parish Council at risk of proceedings on the legality or maladministration of any decisions made.

b. Put themselves at risk of being challenged with an allegation of misconduct in not complying with the Protocol and/or Code of Conduct

Development Proposals and Declaration of Interests

The Law and the Code of Conduct sets out the requirements and guidance for Councillors on declaring personal and prejudicial interests and the consequences of those interests.

Councillors must disclose the existence and nature of any interest at any relevant meeting, whether a full Council Meeting, Committee Meeting or a meeting with a developer/Agent. Preferably, disclosing the interest at the beginning of the meeting and not just at the commencement of discussion on that item.

Pre application briefings with Parish Councillors

The Council is, in general, willing to hold meetings with Developers/Agents where necessary.

Under normal circumstances the Council will not hold private meetings with developers and their agents, however, on occasions this may be required if there is a necessary and compelling reason that could be justified to the public (for example a strong commercial sensitivity or where a developer wishes to receive an initial steer before deciding whether to progress).

If the Clerk receives a request from a Developer/Agent to meet with the Council to discuss a pre application, the Clerk will inform the Planning Committee.

The Clerk will ask the Developer/Agent in advance of any meeting to provide information about the proposed development affecting the parish in writing or via email. Any information received will be forwarded to the members of the Planning Committee for information. If the Developer/Agent considers that information provided to the Parish Council is sensitive, this will not necessarily require the Council to treat it as confidential. The Developer must identify information that they want to be confidential and explain the reasons in writing or via email to the Clerk for onward communication to the Planning Committee and their decision¹.

Information held by the Parish Council about a proposed development is subject to disclosure under the Data Protection, Freedom of Information legislation and Environmental Information Regulations.

Communications (including informal and formal meetings) between the Developer and the Council (or with individual Councillors and Employees) about a pre-planning application development, will not bind the Council into making any decision. Any views expressed are, at best, provisional because not all the relevant information will be available to the Council and formal consultations will not have taken place at this stage. Councillors are reminded that a presentation by a Developer or their agent at this stage is not part of the formal planning process of debate and determination of any subsequent application. A presentation is a form of lobbying; therefore, Councillors must

¹ *Where, exceptionally, the developer /landowner requests a private meeting with the Council (for example if matters of commercial confidentiality are unavoidably to be discussed), the **Committee needs to decide whether the benefits of such a meeting are likely to exceed the risks arising from lack of openness**. It may be useful to discuss such requests with the local planning authority, so that any actions are co-ordinated. The **Council may decide to decline a private meeting in favour of an open meeting**. However, if a private meeting does go ahead, **it is wise to seek agreement in advance to publication of a jointly agreed post-meeting statement**: this may allay some of the concerns in the local community over a "secret meeting" and avoid a vacuum which the local rumour mill will be only too eager to fill. The Committee will also need to consider whether to open up such a meeting to all Parish Councillors, rather than just the Planning Committee.*

not express any strong view or state how they might vote if a planning application is submitted in the future.

Procedure at pre-application briefing meetings

A pre-application briefing is a meeting of the Planning Committee at which a developer provides information on their proposed planning application to members of the Parish Council and members of the public.

Developers are invited to provide the Parish Council with a pre-application briefing which is:

- Without prejudice to the Parish Council's response to the formal consultation
- Included as part of a meeting of the Planning Committee
- Advertised as part of the meeting agenda
- Open to members of the public in accordance with the Public Bodies (Admission to Meetings) Act 1960
- Included as part of the public record in the minutes of the meeting
- Subject to disclosure under the Freedom of Information Act and Environmental Information Regulations.

Procedure at meetings during the application process

The Parish Council is a statutory consultee on planning applications within the parish of Wadhurst and the final decision on all planning matters rests with Wealden District Council. The Parish Council has delegated powers to its Planning Committee to consider planning applications and to decide whether to support or object to an application, or to make any other relevant and appropriate comment.

Developers are welcome to attend and speak at meetings at which planning applications are considered during the statutory consultation process, and which:

- Are open to members of the press and public in accordance with the Public Bodies (Admission to Meetings) Act 1960
- Have advertised the relevant planning application as part of the meeting agenda
- Include discussions as part of the public record in the minutes of the meeting
- Are subject to disclosure under the Freedom of Information Act and Environmental Information Regulations.

Organising pre-application briefing meetings and attending meetings during the application process

Developers wishing to organise a pre-application briefing or attend a meeting during the planning application process should contact the clerk to organise inclusion on the Planning Committee agenda as appropriate.

Individual Parish Councillor discussions/meetings

Individual Councillors may be approached by developers for informal discussions/meetings for possible future applications. Whilst it is left to the individual judgement of Councillors whether to take part in such discussions/meetings, based on the nature and likely level of controversy of a planning application, they are advised:

- 1) To carefully consider the public perception of such discussions/meetings with developers.
- 2) To consider the Council's Code of Conduct and Protocol.
- 3) To avoid any appearance of collusion.
- 4) To not accepting hospitality in connection with such discussions/meetings.
- 5) Where possible, to advise the Clerk for onward communication to the Planning Committee, of such discussions/meetings.

6) Where it is agreed by the planning committee that a site meeting is needed, the recommendation is that at least two members attend.

Councillors must not purport to be representing the Council at such discussions/ meetings, unless expressly authorised to do so by the Council as the Corporate Body.

A developer should not attempt to lobby individual members; if this occurs, the Council reserves the right to withdraw from any pre-application process.

Pre-Determination

Councillors should avoid expressing any detailed opinion or prior view which might be viewed as pre-determination. To this end, a formal meeting arranged by the Council could include the following suggested wording on the meeting agenda or invitation:

While I/Members may express an opinion for or against the proposal at this meeting, my/our mind(s) is/are not closed, and I/we will only come to a conclusion on whether I/we should support the scheme or offer an objection after I/we have listened to the full debate.

While informal meetings are discouraged, a similar statement could also be read out and clearly stated at the start of an informal meeting such as a site visit, to make it clear that the members of the Council attending are not pre-determining their position on a proposal. Councillors could also include the words 'in principle' or 'subject to ..' when expressing their views to further emphasise that any opinions given at this stage are not pre-judging a proposal in advance of a formal planning application.

Pre-Application Public Consultations

The Council strongly encourages developers to carry out full public consultation before submitting any plans for major developments with Wealden District Council, on the following basis:

- 1) An accessible and convenient venue can be found to hold such a meeting.
- 2) Enough publicity carried out, giving people enough notice to attend.
- 3) Appropriate timings to allow as wide a range of people as possible to attend.
- 4) A genuinely open mind and willingness to adapt plans in response to feedback from the Parish Council and the wider community.

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