

WHYTELEAFE VILLAGE COUNCIL

Policy - Protocol on Meetings with Developers

PURPOSE

Whyteleafe Village 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, we will follow this protocol.

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.

If a Councillor is in any doubts about the application of this Protocol to their own circumstances, they should seek advice early on from the Parish Clerk.

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 relates to contact with developers, landowners, their employees and agents that act on their behalf.

This policy applies to all stages of the development cycle including speculative queries and during the construction phase.

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 (and subsequently updated), 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':

39. 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.

40. 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.

41. 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.

42. 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).

PROTOCOL & GUIDANCE – Parish Council

Pre-determination

In all meetings with developers, Parish Council Members, Employees and Professionals working on the Council's 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 seeks 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. Disclosures should be made at the beginning of a 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 full Council.

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 Councillors for information.

Where the Developer/Agent considers that information provided to the Parish Council is commercially sensitive, then Councillors can meet with developers/agents as the elected public representatives of the parish. Meetings with developers at this early stage are important to ensure information about potential new sites and their impact on the village can be understood from a very early stage. Early intervention can steer developers to acknowledge local issues and plan their developments accordingly.

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

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

Construction Phase

There are many issues that arise during the construction phase, from amendments to plans, disputes with neighbours and highways issues. A Councillor may, on the instruction of the full Council, act as a representative to feedback on such issues.

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 Councils Code of Conduct and Protocol
- 3) To avoid any appearance of collusion.
- 4) To not accept hospitality in connection with such discussions/meetings.
- 5) To advise the Chairman, and where possible the full Council, of such discussions/meetings.

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.

Developer/Agents attending Parish Council Meetings

Official meetings of the Council and its committees are open to the public (Section 1(1) Public Bodies (Admission to Meetings) Act 1960) and Developers may attend.

The Developer may not speak at a Council or Committee Meeting unless the item is on the agenda and they are invited to address the meeting by the Chairman. Even then they may only speak during the public participation section prior to the start of the meeting. The developer may regard information about the proposed development as either confidential or “sensitive” and therefore not suitable for discussion at a meeting open to the public. However, Councillors at the Council or Committee Meeting will decide if there are grounds to exclude the public from the meeting when the proposed development is being discussed and considered. The Council may do this if the matter being considered at the meeting would prejudice the public interest due to its confidentiality.

The minutes of the Council and Committee Meetings which record the decisions made at them are available to all on the Parish Council’s website or by request from the Council Clerk. The Council may invite Developers to attend the Annual Parish Assembly, which is also open to the public (Section 1(1) Public Bodies (Admission to Meetings) Act 1960), to present or discuss their proposals for a proposed development affecting the Parish.

It is an offence under section 1 of the Bribery Act 2010 for a developer or their 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. The Council may request sight of the developer’s anti-bribery policy.

Pre-Application Public Consultations

The Council strongly encourages developers to carry out full public consultation before submitting any plans for major developments to the Local Planning Authority (LPA), 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.

After submission of a Planning Application

Once a full planning application has been submitted and registered by the LPA as recorded on their website any discussions that the Parish Council has with developers will only be held during a Parish Council Meeting or another arranged meeting that is open to the public.

Note:

For the purpose of this document, the terms 'Parish Council' and 'Village Council' are one in the same and have the same meaning.

Approved: November 2021

Next Review: May 2023