

By: Geoff Wild – Director of Law and Governance

To: Planning Applications Committee – 9 October 2012

Subject: PROBITY IN PLANNING

Classification: Unrestricted

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Summary: To advise Members of the Committee on the implications of the Localism Act upon the Standards Committee's Advice Note 4 on "the Application of the Code of Member Conduct to Development Control" and associated advice notes. The report also recommends a corollary to the Advice Note.

FOR DECISION

Introduction

1. The Committee received a report on Probity in Planning on 14 July 2009. This is attached at **Appendix 1**. The Standards Committee's Advice Note 4 "Advice to Members on the Application of the Code of Member Conduct to Development Control" is attached at **Appendix 2**.

2. Section 25 of the Localism Act 2011 provides that:

"a decision-maker is not to be taken to have had, or to have appeared to have had a closed mind when making a decision to which this Section applies 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."

3. The Government's intention in respect of this new provision was set out in "A Plain English Guide to the Localism Bill" which stated:

"In parallel with the abolition of the Standards Board, the Government intends to use the localism Bill to clarify the rules on 'predetermination'. These rules were developed to ensure that councillors came to council discussions – on, for example, planning applications – with an open mind. In practice, however, these rules have been interpreted in such a way as to reduce the quality of local debate and stifle valid discussion. In some cases councillors have been warned off doing such things as campaigning, talking with constituents, or publicly expressing views on local issues, for fear of being accused of bias or facing legal challenge."

The continuing need to avoid Predetermination or Bias

4. Despite the relaxation provided by Section 25 of the Localism Act, the Common Law position remains that no decision-maker is entitled to pre-determine the decision that they will make. The Act makes it clear that Members have a right to have a preliminary view and can freely discuss and publicise their view and voting intentions as they see fit. However, this is on the basis that Members must be prepared to listen to all of the arguments and evidence before making their decision. It is therefore likely to become a matter for the courts to adjudicate on the impact of the new legislation in defining the difference between predisposition and pre-determination.

5. The provisions set out in Kent County Council's Advice Note 4 (see **Appendix 1**) were made before the Localism Act came into being and aimed to provide absolute protection for Members of the Committee by advising that they should take no action that could be construed as an indication of pre-determination or bias. The change in the law permits greater freedom of expression whilst containing the inherent risk of legal challenge.

A suggested corollary to the Advice Note

6. The Council will shortly be adopting a new Code of Conduct for its Members. It would therefore be appropriate to review the content of Advice Note 4 in light of that Code. Until then, the change in the law needs to be recognised and accommodated. I have therefore prepared a draft corollary to the Advice Note in consultation with the Chairman of this Committee for comment. This is attached at **Appendix 3**. If agreed, it would be submitted (with any amendments) to the Selection and Member Services Committee and (subject to that Committee's views) to the County Council for adoption.

Recommendation

7. That the Committee recommends the draft Corollary to Advice Note 4 (set out at Appendix 3) to Selection and Member Services Committee for onward submission to the County Council.

Geoff Wild
Director of Governance and Law
01622 694302

Background Documents
None.