

## **Kersey Parish Council Protocol for Pre-Application Planning Advice**

Protocol adopted 20 November 2017 (minute ref 155/17)

Kersey Parish Council welcomes the opportunity for pre-application planning discussions with applicants and/or developers and their agents before a planning application is submitted. These discussions may well be beneficial to both applicants and the residents of the Parish.

The Parish Council is a statutory consultee for all planning applications in Kersey. Its role is to comment on applications and forward recommendations to the local planning authority, Babergh District Council (BDC).

The Parish Council has looked to the National Association of Local Councils for guidance in this matter and has chosen to adopt a protocol for pre-application planning advice based on the NALC pre-planning application engagement advice document issued in March 2015.

All pre-application requests must be made in writing to the Parish Clerk giving details of the site plan and a description of the proposal. Preferably with an existing and proposed layout plan and details of the proposed elevations.

Even if the developer considers the information provided to the Parish Council is sensitive, this will not require the Council to treat it as confidential.

Any information provided cannot be treated as confidential and will be 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.

The Parish Council will discuss and give pre-application advice at a Parish Council meeting. Parish Council meetings are open to the public and the minutes of such meetings are available to all via the Council's website and publication scheme. The Parish Council may invite developers to attend a Parish Council meeting at which the public are present, to give a presentation on their proposal. This will help to ensure that the developer's communications with the Council are transparent. 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 it necessary to communicate with the Parish Council in closed session. A proposed development may be regarded by the developer as either confidential or 'sensitive' and in their view it may be unsuitable for discussion at a meeting when the public is present but it is the Councillors at the Parish Council meeting who will decide if there are grounds to exclude the public from the meeting when the proposed development is being considered. In very rare circumstances the Parish Council 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 a Parish Assembly, which is open to the wider public, to present or discuss their proposals.

Pre-application planning discussions, communications and any advice given by the Parish Council will not bind the Parish Council to making a particular decision and any views expressed will be provisional and on the basis of the information available at that time.

Informal meetings and telephone conversations between a developer and Councillors or the Clerk will be documented in writing and are subject to disclosure under the Freedom of Information Act 2000. Furthermore, the Parish Council will report that a meeting has taken place at the next full Council meeting and a brief overview of the discussions will be given at the meeting. The Clerk 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 Parish Council will keep a written record of the confidential and non-confidential issues. Any informal discussions must involve a minimum of three Councillors.

Pre-application discussions must not take place with individual Councillors and any contact will be recorded with the Parish Clerk.

Applicants, developers and agents are reminded that 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 a Parish Council or Councillor with the expectation of an improper consideration of a planning application.

**In summary: Subject to the detail of the protocol described above, where an applicant/developer seeks to discuss a proposed development with a member of the Parish Council, any such discussion will take place as part of a Parish Council meeting which is open to the public and minuted.**

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#### **APPENDIX NALC Pre-Planning Application Protocol Advice and the National Planning Policy Framework**

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, proactive 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 the 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, it is anticipated that 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.

The Parish Council has been advised that 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 meeting or by councillor(s) who meet with the developer outside of a council 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 predetermination in their later decision making. A decision of a parish council 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. Predetermination is, however, to be distinguished from pre-disposition towards a particular position, which is acceptable. 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.