

Jan Smallacombe

From: David Fairbairn <David.Fairbairn@swdevon.gov.uk>
Sent: 13 September 2021 13:08
To: WD-Parish Clerks
Cc: Catherine Bowen; Drew Powell; Patrick Whymer
Subject: Draft Memorandum of Understanding
Attachments: 20210901 Draft Memorandum of Understanding with Parish Council v04.doc

Dear All,

Following a report into the Borough Council's handling of a planning application last year, it was agreed that it would be helpful for there to be a memorandum of understanding ("MoU") with each Town/Parish Council. It was agreed that the MoU would set framework for a more collaborative working relationship; one in which there is a recognition that each party can do things to help the other.

I have now drafted and agreed the attached draft MoU with the Council Leader, Portfolio Holder and Chair of the Development Management and Licensing Committee. The MoU sets out:

- a description of the respective roles of the Council and the town and parish councils;
- the circumstances in which the Council will have pre-application discussions with the town and parish councils or seek their views about draft proposals;
- details of what information to be provided to town and parish councils by the Council when application is registered and how the information will be provided;
- guidance as to what should be included in consultation responses so that they are relevant to the application;
- timescale for town and parish councils to respond and the circumstances in which these may be varied;
- how town and parish councils will be consulted about amended plans; and
- speaking at Development Management and Licensing Committee.

The MoU will not be legally binding, although I accept that it looks rather "legal" at the moment (I am exploring with colleagues whether it can be turned into something a bit less formal-looking).

I would be grateful if your Council could consider the draft MoU and indicate whether it would agree to enter into the MoU with the Borough Council. You will appreciate that given the number of councils it may not be possible to tailor the MoU to each Council's own requirements.

Kind regards

DF

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Dated _____ 2021

WEST DEVON BOROUGH COUNCIL

and

* TOWN/PARISH COUNCIL

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is dated

- (1) **WEST DEVON BOROUGH COUNCIL** of Kilworthy Park, Tavistock, Devon, (“the Borough Council”).
- (2) * **TOWN/PARISH COUNCIL** of * (“Town/Parish Council”).

1. Background

- 1.1 The Borough Council is a local planning authority for the purposes of the Town and Country Planning Act 1990 and has responsibility for determining planning applications for the development of land within the Town/Parish Council’s area. When determining planning applications the Borough Council seeks the views of various persons and bodies and must consider them, but is not required to agree them.
- 1.2 The Town/Parish Council is a statutory consultee on any such applications and has responsibilities under the Town and Country Planning (Development Management Procedure) (England) Order 2015 in respect of making timely representations. While the Town/Parish Council gives its views on applications to the Borough Council, it has no power to grant or refuse planning permission.
- 1.3 The Borough Council and Town/Parish Council have agreed that it is in the interests of the residents of the Town/Parish Council’s area and applicants for planning permission, that applications for outline or full planning permission to develop land in the Town/Parish Council’s area (“Planning Application”) should be determined efficiently.
- 1.4 The Borough Council and Town/Parish Council wish to record the basis on which they will work together to ensure where possible Planning Applications are determined efficiently. This Memorandum of Understanding (MoU) sets out the respective responsibilities of the Borough Council and Town/Parish Council in respect of those applications.

2. Principles of collaboration

- 2.1 The Borough Council and Town/Parish Council agree when dealing with Planning Applications to adopt the following principles (“Principles”):
 - (a) Work collaboratively and co-operate with each other to ensure that actions are taken as required;
 - (b) Be accountable;
 - (c) Be open. Communicate openly about issues or concerns relating to the determination of Planning Applications;
 - (d) Share information, experience, materials and skills;
 - (e) Adopt a positive approach. Behave in a positive, proactive manner;

- (f) Adhere to statutory requirements and best practice. Comply with applicable laws and standards including data protection and freedom of information legislation.
- (g) Act in a timely manner. Recognise the statutory timescales for the determination of planning applications and respond accordingly to requests for support; and
- (h) Act in good faith to support compliance with these Principles.

3. Responsibilities – the Borough Council

3.1 The Borough Council will:

- (a) actively encourage applicants for larger developments to consult with the Town/Parish Council prior to making a Planning Application.
- (b) upload to its website details of any Planning Application, any representations received and any amended plans promptly and in any event within 14 days of receipt of the Planning Application as the case may be.
- (c) notify the Town/Parish Council that a Planning Application has been registered within 24 hours of the application being registered.
- (d) re-consult the Town/Parish Council where amendments to Planning Applications seek to address objections or reservations raised at an early stage by the Town/Parish Council, or where in the Borough Council's view, amendments would have a significant impact compared to the original submission.
- (e) allow the Town/Parish Council 28 days (including public holidays) from the notification of registration of a Planning Application and 21 days from the notification of amendments to a Planning Application to make representations.
- (f) where a Planning Application is to be determined by the Borough Council's Development Management and Licensing Committee offer an opportunity for an authorised representative of the Town/Parish Council to speak in accordance with the scheme for public speaking.
- (g) determine Planning Applications in accordance with the Development Plan unless other material considerations suggest otherwise.
- (h) notify the Town/Parish Council of its decisions on Planning Applications within 8 working days of the Planning Application being determined.

4. Responsibilities – the Town/Parish Council

4.1 The Town/Parish Council will:

- (a) provide the Borough Council with and keep up-to-date, an e-mail address that may be used to notify the Town/Parish Council of the registration of a Planning Application, amendments or decisions.

- (b) ensure that any representations are clear, concise and based on material planning considerations and disregard irrelevant considerations. Examples of material planning considerations are set out in Part 1 of Appendix A. Examples of irrelevant considerations and therefore carrying no weight in the decision-making process are set out in Part 2 of Appendix A.
- (c) make any representations in a timely manner and in any event within 28 days of being notified of the registration of the Planning Application,
- (d) seek to make use of delegated arrangements to ensure representations are made in time.
- (e) ensure that those speaking on its behalf at the Borough Council's Development Management and Licensing Committee are appropriately authorised to do so.
- (f) encourage its members to undertake a suitable course of development management training

5. Neighbourhood Planning

- 5.1 The Borough Council and the Town/Parish Council recognise the importance of neighbourhood plans in making planning determinations and as plans produced by local people, how they can benefit the local area and community.
- 5.2 Where the Town/Parish Council apply for the designation of its area as a Neighbourhood Area for the purposes of the Neighbourhood Planning (General) Regulations 2012 the Borough Council will positively support the Town/Parish Council to progress the making of a neighbourhood plan in a timely manner.

6. Status

- 6.1 This MoU is not intended to be legally binding, and no legal obligations or legal rights shall arise between the parties from this MoU. The Borough Council and the Town/Parish Council enter into the MoU intending to honour all their obligations.

Appendix A

Part 1 - Material planning considerations

- The Development Plan including any Neighbourhood Plan
- Adopted supplementary guidance - for example, village design statements, conservation area appraisals, car parking standards.
- Central government policy and guidance – the National Planning Policy Framework, National Planning Guidance etc.
- Replies from statutory and non-statutory agencies (e.g. Environment Agency, Highways Authority).

- Representations from others - neighbours, amenity groups and other interested parties so long as they relate to land use matters.
- Effects on an area - this includes the character of an area, availability of infrastructure, density, over-development, layout, position, design and external appearance of buildings and landscaping
- The need to safeguard valuable resources such as good farmland or mineral reserves.
- Highway safety issues - such as traffic generation, road capacity, means of access, visibility, car parking and effects on pedestrians and cyclists.
- Public services - such as drainage and water supply
- Public proposals for using the same land
- Effects on individual buildings - such as overlooking, loss of light, overshadowing, visual intrusion, noise, disturbance and smell.
- Effects on a specially designated area or building - such as green belt, conservation areas, listed buildings, ancient monuments and areas of special scientific interest.
- Effects on existing tree cover and hedgerows.
- Nature conservation interests - such as protection of badgers, great crested newts etc.
- Public rights of way
- Flooding or pollution.
- Planning history of the site - including existing permissions and appeal decisions.
- A desire to retain or promote certain uses - such as playing fields, village shops and pubs.
- Need for the development - such as affordable housing.
- Prevention of crime and disorder.
- Presence of a hazardous substance directly associated with a development
- Precedent - but only where it can be shown there would be a real danger that a proposal would inevitably lead to other inappropriate development (for example, isolated housing in the countryside)

Part 2 – Irrelevant considerations

- Speculation over future use.
- The fact that the application is retrospective
- The identity of the applicant or occupant
- Unfair competition
- Boundary disputes
- Breach of covenants and personal property rights, including personal (not Public) rights of way
- Loss of a private view
- Devaluation of property
- Other financial matters
- Matters controlled by other legislation - such as Building Control, Environmental Heath or fire prevention
- Religious or moral issues - such as betting shops and amusement arcades
- The fact that the applicant does not own the land to which the application relates
- The fact that an objector is a tenant of land where the development is proposed
- The developer's motives, record or reputation

Signed for and on behalf of WEST
DEVON BOROUGH COUNCIL

Signature:
Name:
Position:
Date:

Signed for and on behalf of *
TOWN/PARISH COUNCIL

Signature:
Name:
Position:
Date: