

MISTLEY PARISH COUNCIL

POLICY FOR PRE-APPLICATION PLANNING CONSULTATION - MISTLEY

Introduction - Mistley Parish welcomes the opportunity for pre-application planning discussions with applicants/and/or developers and their agents before a planning application is submitted. These open discussions will be beneficial to the Parish Council when making its recommendations to the local planning authority – Tendring District Council and in the Parish Council's capacity as statutory consultee and in the Parish Council's role which is to assist and support local residents. The discussions will not be confidential but will be in the public domain.

Purpose – The Parish Council has chosen to adopt a protocol and policy for pre-application planning consultations and engagement based on the NALC (National Association of Local Councils) pre-planning application engagement and advice document. (Last updated March 2015).

Requirements – All pre-application requests must:

- Be made in writing/via email to the Parish Clerk.
- Details of the site plan will be required.
- A full description of the planning proposal is needed.
- The applicant should include an existing and proposed layout plan with proposed elevations.

Confidentiality – The Parish Council will not treat as confidential any request for pre-application consultation or engagement. Any information provided will be subject to disclosure under the Freedom of Information Act 2000/(FOIA) or Environmental Information Regulations 2004 (EIR). From the outset the developer/agent must identify information which the Parish Council cannot share or make public and give robust reasons for this. However, confidentiality of communications about the development will rarely be justified even if the developer's interest is sensitive.

Public Access – The Parish Council will discuss pre-application submissions as a Parish Council or as a Planning Committee (full delegated powers). These meetings will be open to the public and the minutes of such meetings are available to all via the Parish Council's website. The Parish Council may invite developers or their agents to attend a Parish Council Meeting (probably an Extraordinary 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 Parish Council are transparent, fair, and open. 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 and the legal justification for this. (ICO – (Information Commissioner's Office) Regulation 12 (5) (e) Commercial confidentiality is highly unlikely. The Parish Council with advice from the Parish Clerk will consider if any matters for discussion are legally confidential. This is also highly unlikely. (The Public Bodies S.1 (2) (Admission to Meetings Act 1960) and the Local Government Act 1972 ss 100 and 102 (amended 2014) regarding publicity legally prejudicing commercial sensitivity and confidentiality).

Pre-Application Planning Decisions/Recommendations to the LPA – Pre-application planning discussions and communications with the Parish Council will not under any circumstances bind the Parish Council to making a particular decision or recommendation for approval or refusal to the LPA and any views expressed will be provisional and on the basis of fact finding and information available at that time.

Parish Council Communications – Informal meetings and telephone conversations between a developer/agent and the Parish Council will be documented in writing and reported back to the next available full Parish Council Meeting or Planning Committee Meeting and included in the minutes. Pre-application discussions must not take place with individual Councillors and any contact will be recorded with the Parish Clerk. If a site meeting is required and the Parish Council consider that this

may assist the Village, then at least three Parish Councillors will need to be present and the outcome of this will be reported to the next available full Parish Council Meeting or Planning Committee Meeting and included in the Minutes. Applicants/developers and agents are reminded that it is an offence under s.1 Bribery Act 2010 for a developer or their agent to promise or give financial or other advantage to a Parish Council or Councillor/s 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/agent 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 or Planning Committee Meeting which is open to the public and included in the Minutes.

APPENDIX NALC (National Association of Local Councils) Pre-Planning Application Protocol Advice and the National Planning Framework

It has been confirmed that a developer must, under s.42 of the Planning Act 2008 (the 2008 Act), consult with a local planning authority (which by virtue of s.43 does not include a Parish/Town 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 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 or Town Council. The National Planning Policy Framework encourages developers to liaise with the local planning authority (and others but with no specific reference to Parish/Town 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. Whenever 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 an applicant, developer or agent may consult with a Parish Council before the applicant 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). The said Act applies to Villages too.

A developer may also want to consult with a Parish Council if their proposed development relates to the Parish Council's development or submission of proposals for a Neighbourhood Development Plan. The Neighbourhood Planning (General) Regulations 2012 require a Parish Council to publicise its proposals for a Neighbourhood Development Plan 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 local 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 to be submitted by the Parish Council.

NALC (National Association of Local Councils) advice is 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 makes 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 the subsequent 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 a full Parish Council Meeting or Planning Committee Meeting or by a working group of Parish Councillors who have any Parish Council authorised site meetings with a developer may risk claims that the informal and or provisional views expressed by the Parish Council in relation to the pre-planning application developments amount to bias or predetermination in the final decision-making. A decision by the Parish Council is likely to be quashed if there is an appearance of bias. Decisions made by the Parish Council 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 Act 2011 (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.

Review Body: Full Parish Council in conjunction with the Planning Committee.

Review Period: Annually. Each May at the Annual Parish Council Meeting. Adopted 20/05/2019. Last Reviewed 22.05.23. Next Review Date 20.05.24.