

The image features a stylized graphic of two hands. The top hand is white and set against a dark blue background. The bottom hand is white and set against a light green background. The hands are positioned as if they are about to shake or are in the process of shaking. The text is centered between the two hands.

RULES OF ENGAGEMENT

working together for
effective delivery

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1.

Introduction

“ . . . it is vital that developers and Councillors understand each others’ roles, priorities and ways of working”

The implications of the banking ‘crisis’ for development and home ownership are profound. The changes demand a response from all of us. We have spent 10 years building the skills and team working which we are now seeing being fragmented and this must injure the prospects for delivery. How will we deliver in a changed market? We need to see different ways of working with the planning system playing a proactive role in advancing development. Key to delivery and key to achieving excellence is the relationship between the public and private sector. The development industry must collaborate and work with the planning system.

Today Councillors have a critical role to play, they must think ahead and make difficult decisions about how places will be shaped for the future. To this end it is vital that developers and Councillors understand each others’ roles, priorities and ways of working. Both sides need to talk at the early stages of a development proposal, but do so in an open and transparent way with a clear understanding of what we are calling the ‘Rules of Engagement’.

Trevor Osborne,
Chairman, South East Excellence Advisory Board



2.

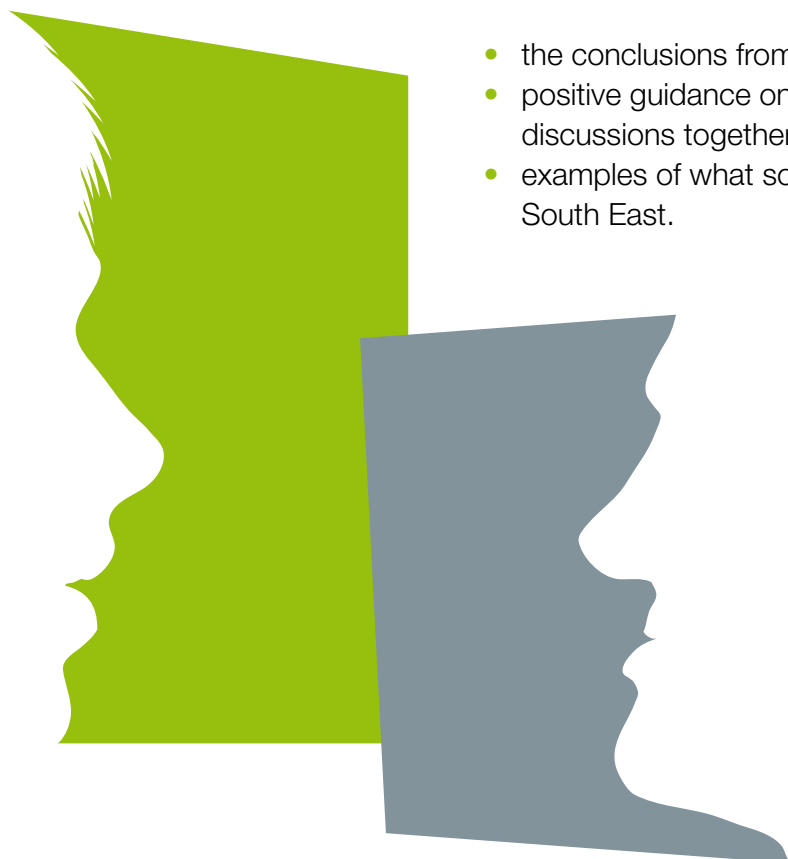
Councillors and developers

“ [There is] a need to clarify the ‘Rules of Engagement’ to encourage pre application discussions between developers and Councillors. ”

2.1 In June 2007 the South East England Development Agency (SEEDA) commissioned research to identify the skills priorities and barriers to delivering sustainable communities from the perspective of developers and politicians as part of its South East Excellence programme. The resulting [“Making Places”](#) report recommended, as one of 6 actions, the introduction of an enabling programme to facilitate pre planning application negotiations. As a first step the report identified a need to clarify the ‘Rules of Engagement’ to encourage pre application discussions (pre apps) between developers and Councillors.

2.2 Three workshops were held in the second half of 2008 attended by over 60 developers and Councillors from across the South East region. The workshops discussed appropriate positive guidance; how authorities and developers were currently approaching pre application discussions; and identified current good practice in the South East. This report sets out:

- the conclusions from the workshops;
- positive guidance on developer/Councillor pre application discussions together with alternative approaches;
- examples of what some local authorities are doing in the South East.



3.

Positive rules of engagement

“the engagement of local Councillors as leaders of the community is vital in the delivery of positive outcomes from the planning process.”

- 3.1** For many years a concern to ensure that Councillors determining planning applications did not show bias as decision makers or pre-determine their views on a proposal, led to cautious advice from Councils’ officers and a tendency to keep Councillors at arms length from planning discussions. This has inhibited Councillors’ ability to act as champions of their communities and to influence the development of sustainable communities.
- 3.2** Too often unresolved local issues lead to Councillors reaching different conclusions on proposals from their officers. This leads to uncertainty and delay in the system and frustration from developers that may have spent several years and substantial sums of money working up planning proposals only to have them rejected.
- 3.3** Despite recent positive endorsement of the importance of Councillors and developers engaging in the early stages of discussion of major proposals by Communities and Local Government (CLG), Local Government Association (LGA), Planning Advisory Service (PAS), Standards Board for England (SBE), and the Audit Commission, there remain concerns based on the advice which followed the [Nolan report](#).
- 3.4** Guidance from the LGA proposes “*the engagement of local Councillors as leaders of the community is vital in the delivery of positive outcomes from the planning process.*” ([read full guide](#)).
- 3.5** Probity issues and the risk of Councillors pre-determining themselves, by being involved with pre application discussions, are the major issue holding Councillors back from talking to the development industry. Developers recognise that without this issue being tackled, proactive approaches to proposal are likely to be inhibited.
- 3.6** The framework for developers and Councillors to engage is explored in this report. It complements the 2009 guidance from the [Local Government Association](#) on probity in planning by providing specific examples of practice across the South East.



4.

Getting together - understanding expectations

“ they
(developers)
saw benefits for all
if Councillors were
involved in major
proposals at an
early stage.”

- 4.1** Developers at the SEEDA workshops understood the importance of advice to Councillors. It was not in their interests for a decision to be at risk of being set aside by the courts or challenged by aggrieved parties if flawed processes had been followed. Many developers were well aware of the sensitivities of the role of a Councillor, and understood the probity issues. However, they saw benefits for all if Councillors were involved in major proposals at an early stage. They wanted continuity and consistency of approach from a Council.
- 4.2** Councillors sought open and flexible discussions with developers, and not the whittling away of community benefits or increased densities after principles had been discussed. Both wanted to build trust and understanding.
- 4.3** Developers wanted Councillors to have more understanding of the economics of development and Councillors sought open book approaches. Developers wanted Councillors' ideas and initial views on the table and the opportunity to engage with Councillors early to listen and explain proposals. They saw Committees as being unable to deal with complex proposals without prior discussion. Committees were judged to favour objectors to proposals with no adequate opportunity to respond by the proponent of the scheme.



4.

Getting together – understanding expectations *continued*

Councillors wanted

- Early involvement to assist them in their community role and to ensure they are well informed. They also wanted developers to engage with communities at the earliest opportunity.
- To engage in pre application discussions on significant proposals without pre-determining their position as decision makers.
- To understand their role after an application is submitted.
- To see open book accounting from developers as part of the process of building trust.
- Developers to take time to consider and understand the local context.
- Developers to understand that Councillors work to a Code of Practice and decisions must be taken in accordance with this.

Developers wanted

- Strong leadership and a clear vision at the outset.
- Good understanding by Councillors of issues, including the financing of development.
- Communication within a Council so that it talks with a single, consistent voice.
- Effective pre application processes involving Councillors ensuring the same issues were identified by officers and Members.
- An understanding of the constraints on Councillors.
- More consistency leading to greater certainty and less risk.

“ . . . it was clear that many authorities in the South East had not yet fully taken on board the latest advice on the benefits of Councillor pre-application involvement.”

4.4 Whilst both sides wanted more opportunities for engagement it was clear that many authorities in the South East had not yet fully taken on board the latest advice on the benefits of Councillor pre-application involvement. Monitoring officers need to be brought on board and help prepare protocols for Councils to have an agreed framework for Councilor engagement, without putting Councillors at risk of pre-determination.

5.

Getting together – Key issues to consider

“ Developers and others need to be able to rely on agreed arrangements, and to understand the role of the Councillors with whom they are engaging. ”

- 5.1 Most attending the workshops agreed that early discussion between Councillors and developers on major applications should be encouraged. A minority thought it a helpful approach for some more minor development too. For example in smaller towns and villages where there may be complex issues to air.
- 5.2 Some Councillors had the time to get involved in a large number of pre application discussions. Others thought there needed to be selectivity as to which Councillors became involved in which discussions. The community, including the developer, is likely to benefit most if Ward, Cabinet and Planning Committee Councillors are all involved, but they may have different roles to play in the process. Ward Councillors were seen as particularly important players in making sure that communities' views could be reflected in the discussion. This is a role that Planning Committee Members may not be able to take without risking pre-determination.

Protocols for Councillors

- 5.3 In either case the authority needed to decide what was appropriate for its community and adopt and widely publish its arrangements for engaging Councillors in appropriate pre application discussions.
- 5.4 It is the Council that needs to decide the detailed arrangements and not individual Councillors. Developers and others need to be able to rely on agreed arrangements, and to understand the role of the Councillors with whom they are engaging. Therefore arrangements for pre application involvement need to be set out in a local protocol prior to discussions.



5.

Getting together – Key issues to consider *continued*

- 5.5** Normally arrangements will be made by the officers. Some authorities rely on the officers to identify preliminary proposals in which Councillors need to be involved. In other Councils officers notify of non confidential proposals and let Councillors decide whether they want to become involved. Either way the officers are able to note meetings, give comprehensive policy guidance and can take forward negotiations following discussions, in ways which individual Councillors cannot. As the developer is seeking guidance from the Council it becomes vital that the communication is channelled through the case officer, in order that any material considerations can be fully reflected in any committee report.



6. Pre application pyramid

“There are a number of different approaches to Councillor involvement.”

- 6.1 There are a number of different approaches to Councillor involvement in pre application discussions. Some authorities seek to involve Councillors through their officers; others encourage direct involvement within a framework established by the Council. There is a **“pre application pyramid”** with increasing intensity of Councillor involvement moving up the levels of the pyramid.
- 6.2 To stimulate discussions and sharing experience at the workshops, different levels of engagement were typified through the pre application pyramid.
- 6.3 The simplest base level was Level 1. This is little more than a simple reporting mechanism to seek Councillor feedback via the officers. The top level 5 is a full blown inclusive reiterative consultation process, engaging Councillors, consultees, amenity and residents’ groups with the public invited to attend and engage through their representatives.





6.

Pre application pyramid *continued*

6.4 In all cases, to deal with the risk of pre-determination or accusations of bias from the prior discussion of a proposal before it reaches a committee for decision, the following are considered helpful to developers and Councillors:

- Discuss with officers whether a proposal has reached a stage where an informal or formal engagement would be appropriate, and regard the process as consultative rather than promotional.
- Engage at an early stage to allow issues raised to be addressed in an emerging proposal.
- Focus Councillors' discussion on issues rather than seeking their firm views on a proposal.
- Any negotiations should be channelled through officers as Councillors will not be in a position to carry out negotiations or ensure all issues have been dealt with.
- Make the process as inclusive transparent and public as possible. Councillors are public representatives and their leadership on an issue will be helped by this. The risk of third parties feeling excluded or challenging pre application discussions will be very much reduced if they have been able to be involved or follow the process, and Councillors' public accountability and the appropriateness of pre application discussion is reinforced.



Figure 1: pre application pyramid

Level 5 planning forum

- Public forum on proposals with invited speakers. The authority convenes and chairs the forum to stress the purpose and explain the Councillors' roles.
- Developer presents: Councillors; stakeholders; and the public hear about the proposals early in the process.
- Purpose to identify issues at an early stage.
- Councillors seek clarification, but are not expected to express opinions.

Level 4 developer forum

- Developer hosts and organises a forum for officers, Councillors, and others in accordance with the Local Planning Authority's Statement of Community Involvement.
- Councillors have to explain their role as they comment.
- The task falls to developer to fund and organise
- This may be considered more promotional than level 5

Level 3 committee presentation

- A formal presentation is made by a developer to the committee.
- Opportunity for direct developer/Councillor discussion on issues to be covered in a formal setting in public.
- The Chair can explain the Councillors' role, and any preliminary views are not pre-determination.
- Harder to engage with a wider public than levels 4 and 5.

Level 2 interim committee report

- Officers report on major pre application discussions providing a public record and therefore transparency.
- Councillors can then seek more information, and offer views on issues - but engagement is at arms length from the developer.
- The choice of schemes put forward is selective but some Local Planning Authorities list information on all "major applications".

Level 1 Member briefings

- Officer or Councillor initiated, but involve both.
- Can be by telephone or formal / informal meeting.
- This could be an officer relaying pre-application information from earlier meeting, or developer providing a briefing.
- A public file note is kept. But if this briefing is private this raises probity issues.

7.

South East practice

None of the pre-application pyramid examples or the good practice that follows will be best in all circumstances. It will be important to consider which approach is most suitable for the particular circumstances taking into account the advice in this report.

LEVEL 1

- 7.1 Reigate & Banstead Borough Council** has adopted a **Planning Protocol** that sets out the principles that underlie effective Councillor involvement in the development management process. It sets out guiding principles including how Councillors can influence future development through involvement at the pre-application stage.
- 7.2** Planning officers are required to consider the potential for Ward Member input and use common sense in contacting interested Members to give **briefings**.
- 7.3** The appropriate forum for pre-application discussion of major schemes is through **Area Panels**. The Panels provide local Councillors with the opportunity to gain a better understanding of applications that will go to the Planning Committee and relevant pre-application schemes, enabling them to give their interim views and opinions and to have a say in how improvements can be made. Although the Area Panels are not decision-making bodies, they can lead to amendments in proposals and help inform officer actions.

esure in Reigate





7.

South East Practice continued

LEVEL 2

- 7.4 Aylesbury Vale Council** has two committees of elected Councillors who meet every 3 weeks: the Development Control Committee and the Strategic Development Control Committee. The Strategic Development Control Committee includes Cabinet Members and has a lighter workload which can provide an opportunity for key Councillors to be briefed on strategic pre application discussions by officers.
- 7.5** The **briefings** are held in private and local Ward Members are invited to attend. The process informs Councillors of proposals at an early stage and enables key issues to be highlighted. The involvement of Cabinet Members also ensures that the policy implications are clearly understood and officers can obtain guidance to facilitate discussions with developers.
- 7.6 Canterbury City Council** holds **informal Member pre-application presentations** on major applications. Members of the Development Control Committee together with appropriate local Members have the opportunity to ask prospective applicants questions and to relate the proposals to ongoing policy work. For example Members received regular informal evening briefings on a 'futures' study commissioned to look at future scenarios and community views to inform the LDF Core Strategy.
- 7.7** The **briefings and presentations** ensure Members are kept informed of policy initiatives as well as prospective major planning applications as part of a coordinated Development Management process.

Canterbury Cathedral quarter



7.

South East
Practice
continued

LEVEL 3

- 7.8 Medway Council** officers use a **development team approach** to undertake pre application discussions and use their regular six weekly meeting with Councillors to highlight issues. The meetings are attended by the Chair and Vice Chair of the Development Control Committee together with the spokespersons of the other main parties and senior officers. As a result **developer presentations** may be arranged to all Members of the Council providing an opportunity for Members to ask questions and clarify details of the proposals. Guidance is provided to Members to ensure that issues of predetermination do not arise.
- 7.9** Following the presentations officers and Members meet in private to clarify issues that have been raised and provide guidance to officers that informs their continuing pre application discussions with the developer.
- 7.10** The approach was followed recently at Chatham Marine where a major planning application comprising two high rise residential blocks together with other mixed uses was presented to the Council. This enabled Members to successfully engage in the pre application process and subsequently contributed to the formal determination of the application.
- 7.11 Reading Borough Council's** Planning Committee meets on a monthly basis to undertake **accompanied site visits** to consider pre application proposals that are agreed at the previous Planning Committee. The meetings are an opportunity for potential applicants to provide a presentation to **Planning Committee** Members on site when developing strategic planning proposals. Ward Councillors are also invited to the presentation together with officers from other services that are likely to be involved in the formal planning application consultation process, such as transport officers.
- 7.12** The process outcomes include:
- informing Councillors at an early stage of issues;
 - highlighting issues for the developers to address in the subsequent planning application;
 - allowing negotiations by officers to be better informed; and
 - ensuring an agreed process for stakeholder and public consultation.

The Oracle, Reading



7.

South East
Practice
continued

LEVEL 4

7.13 Wycombe District Council has published guidance on **developer forums** in their Statement of Community Involvement (SCI). The guidance covers a range of practical matters including how developers should organise Forums. Those expected to be invited include: all Members of Wycombe District Council; the planning case officer and any other officers who will have a significant role in the case; Parish / Town Council; the local amenity society; a spokesperson for any local residents group; and local residents. The guidance also includes advice to Councillors on maintaining probity and balance during the pre-application process.

7.14 The Council also provide the opportunity in some circumstances to make **preliminary presentations** to Members and key officers at a very early stage in formulating their development proposals. Such representations are rare and normally take place at an earlier stage in the process than the SCI presentation (outlined above) but would not be a substitute for that presentation. Such presentations are organised by the Council and not the developer.

Eden shopping centre in High Wycombe



7.

South East Practice

continued

LEVEL 4/5 Hybrid

- 7.15 Ashford Borough Council** has pioneered significant pre application engagement with stakeholders and Members by developers through the use of **design workshops**. These follow the Prince's Foundation **"Enquiry by Design" model**. A recent example is the development of the Old Railway Works, Newtown Road, Ashford for a mixed use development including nearly 800 dwellings.
- 7.16** A two-day Design Workshop and exhibition was held in November 2004 attended by 43 people including local residents, Ward Members, local interest groups and the press. The outcomes of the public consultation directly informed the application. As a result of the **consensus building** only 4 neighbours formally objected to the planning application out of nearly 600 consulted.
- 7.17** The Council highlights the benefits of early engagement in an open process that seeks to build consensus with stakeholders and the community. This initiative has been recognised by the Government's Beacon Award scheme. Ashford was 1 of only 4 Councils awarded Beacon Status for promoting sustainable communities through the planning process. The award reflects Councils that have worked hard to make sure that residents have an active involvement in designing high quality masterplans and making better places.

County Square, Ashford



7.

South East Practice

continued

LEVEL 5

7.18 Waverley Borough Council's Planning Forum provides an opportunity to engage on preliminary and emerging major proposals in the same forum. It is an inclusive approach to both involving and informing Councillors, stakeholders, and the public about major developments at an early stage. Unlike Wycombe the Council prefers to organise the event. The Forum meets in public and the developer explains the proposals directly to the Councillors who are likely to be involved in any decision on a subsequent planning application. Other stakeholders including Parish Councils, campaign groups and amenity organisations also have an opportunity to address the meeting. The Forum enables the public and key stakeholders to hear at an early stage about a development and to tease out the issues that need to be addressed in the formal planning application.

7.19 The process is designed to assist the applicant to deal properly with important issues and to reduce delay and frustration on everyone's part in the formal planning process. The Council is clear that it is not the purpose of the forum to negotiate a proposal in public and they are careful not to commit the Local Planning Authority to a view on the proposal. However as with Ashford their experience suggests a better informed consensus can develop with fewer objections than might have been anticipated without a forum.

Housing in Waverley



7.

South East
Practice
continued

LEVEL 3/4/5 Hybrid

7.20 Horsham District Council uses **reference groups** to inform both policy preparation and planning application decision making. This is a coordinated Development Management approach to implementing key housing sites identified in their adopted LDF Core Strategy. The reference groups include Parish and Neighbourhood Councils, key Councillors and Ward Councillors. For example, Land West of Horsham is a site providing for a mixed-use development of 2,000 homes plus the necessary infrastructure, facilities and services. The reference group informed the preparation of a master plan which was subsequently adopted in October 2008. The group continued to play a role during the determination of the planning application that was subsequently submitted

7.21 Looking outside the South East region, **Bristol City Council's** Development Control Service has worked closely with business organisations and a number of developers, property agents and planning consultants to jointly develop a **clear protocol for working together** to effectively process major planning applications.

7.22 In order for all parties to gain maximum benefit from a protocol, it is essential that there is meaningful engagement between developers, the City Council, and stakeholders including “front-loading” the involvement of communities and stakeholders. The City Council recognises that efficient good-quality decision making is a three way process, and requires a partnership between the City Council, the local community, and the development industry, where all parties recognise and acknowledge the others' responsibilities, and where transparency, certainty and consistency are key.

Horsham town centre



8.

Summary

“The risk of the late identification of new issues by Councillors leading to deferral or refusal on grounds that had not previously been identified will be significantly reduced increasing certainty in the planning process.”



- 8.1** Councillors can and need to engage in pre-application discussion of major proposals to harness them for the benefit of their communities. The engagement needs to be in accordance with the Council's agreed procedures. Cabinet Members, Leaders, Planning Committee and Ward Councillors all need to be involved. They need to understand their respective roles and if they are Planning Councillors, they need to be careful of bias or pre-determination. Training and assistance for Councillors will be necessary as cultures change to front load the consideration of proposals.
- 8.2** Developers and Councils need to consider the most appropriate means of engagement for particular proposals and circumstances from the range described in this report. As a Councillor said during one of the workshops *“real opportunities exist to influence better outcomes for all”*.
- 8.3** Developers and communities will stand to gain most from pre application engagement if developers are willing to start the engagement before their ideas are fully developed, and to develop their proposals to reflect community needs and vision.
- 8.4** Developers benefit from a better understanding the local authorities issues provided *“they are willing to listen and adapt proposals if necessary”*.
- 8.5** Officers and Councillors talking about emerging developer proposals increases the prospect of all relevant issues being identified at an early stage and of applications being formulated to address all the issues. The risk of the late identification of new issues by Councillors leading to deferral or refusal on grounds that had not previously been identified will be significantly reduced increasing certainty in the planning process.

8.

Summary continued

- 8.6** Developers need Councillors to display leadership about what their communities need. As a developer said *“the earlier this happens, the better the opportunity to maximise benefits for the community”*.
- 8.7** More involvement helps build trust, openness and transparency of process. This is important for developers and Councillors, but *“vital to ensure local government is seen as open government”*.



9

Do's and don'ts

9.1 'Positive Engagement: A Guide for Planning Councillors' sets out a simple check list of do's and don'ts for Members.

Do

- always involve officers and structure discussions with developers;
- inform officers about any approaches made to you and seek advice;
- familiarise yourself with your authority's Code of Conduct and follow it when you are representing your authority;
- keep your register of interests up to date;
- follow your local authority's planning code;
- be aware of what predisposition, predetermination and bias mean in your role – ask your monitoring or planning officer and refer to the [Standards Board Occasional Paper on Predetermination Predisposition and Bias](#) if unsure;
- be prepared to hold discussion with an applicant and your officers before a planning application is made, not just after it has been submitted to your authority;
- preface any discussion with disclaimers; keep a note of meetings and calls; and make clear at the outset that discussions are not binding;
- be aware of what personal and prejudicial interests are – refer to your monitoring officer and the Standards Board's website if you are unsure;
- recognise the distinction between giving advice and engaging in negotiation and when this is appropriate in your role;
- stick to policies included in adopted plans, but also pay heed to any other considerations relevant to planning;
- use meetings to show leadership and vision;
- encourage positive outcomes;
- ask for training from your authority in probity matters;
- recognise that you can lobby and campaign but that this may remove you from the decision making process;
- feed in both your own and your local community's concerns and issues;
- be aware that you can engage in discussions but you must have and be seen to have an open mind at the point of decision making.



9.

Do's and don't's *continued*

Don't

- use your position improperly for personal gain or to advantage your friends or close associates;
- meet developers alone or put yourself in a position where you appear to favour a person, company or group – even a ‘friendly’ private discussion with a developer could cause others to mistrust your impartiality;
- attend meetings or be involved in decision making where you have a prejudicial interest under the Model Code of Conduct – except when speaking when the general public are allowed to do so;
- accept gifts or hospitality;
- prejudge or be seen to prejudge an issue if you want to be a decision maker on a proposal;
- seek to influence officers or put pressure on them to support a particular course of action in relation to a planning application;
- compromise the impartiality of people who work for your authority;
- invent local guides on probity in planning which are incompatible with current guidance – look for commonly held and common sense parallels in other authorities or the principles set out in national guidance.

9.2 For developers requests to engage with Councillors and the wider community will be best channelled through the appropriate officer. If the authority is reluctant to involve Members in preliminary discussions at this stage (or to engage in pre application discussions at all), developers can consider a number of steps:

- Check the statutory Statement of Community Involvement to understand the Council's approach;
- Establish whether the reluctance is based on lack of resources or lack of awareness of the potential benefits;
- If the latter draw attention to the LGA and CLG advice summarised in the “Positive Engagement” leaflet;
- Offer to jointly appoint appropriate consultants to prepare a brief or study for major sites, or failing that;
- Seek to agree with the officers the content of a letter covering the key issues to relevant Councillors.





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