



1. **PURPOSE OF REPORT**

To inform members of the coming into force of section 25 of the Localism Act 2011 relating to `pre-determination` which is intended to clarify the rules on `pre-determination`, and to advise members on the implications

2. **RECOMMENDATION**

To note the provisions and the advice consequent thereon.

3. **BACKGROUND TO THE REPORT**

3.1 Section 25 states that, in circumstances where someone wishes to challenge the validity of a decision, the decision-maker is not to be taken to have had a closed mind when making the decision just because he/she had previously done anything that directly or indirectly indicated what view he/she took or would or might take in relation to a matter which was relevant to the decision taken.

3.2 The explanatory notes to the Act state that the;

“section clarifies how the common law concept of `predetermination` applies to councillors in England and Wales. Predetermination occurs when someone has a closed mind, with the effect that they are unable to apply their judgement fully and properly to an issue requiring a decision.

Decisions made by councillors later judged to have predetermined views have been quashed. The section makes it clear that if a councillor has given a view on an issue, this does not show that the councillor has a closed mind on that issue, so that if a councillor has campaigned on an issue or made public statements about their approach to an item of council business, he or she will be able to participate in discussion of that issue in the council and vote on it if it arises in an item of council business requiring a decision.”

3.3 The Government`s Plain English Guide to the Act states that;

“ These rules [ie the common law rules on predetermination] were developed to ensure that councillors came to council discussions –on, eg, planning applications, with an open mind. In practice, however, these rules had been interpreted in such a way as to reduce the quality of local debate and stifle valid discussion. In some cases, councillors were 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 Localism Act makes it clear that it is proper for councillors to play an active part in local discussions and that they should not be liable to legal challenge as a result. This will help them better represent their constituents and enrich local democratic debate.

People can elect their councilor confident in the knowledge that they will be able to act on issues they care about and have campaigned on.

- 3.4 It has not been possible in compiling this report to compare in detail the current caselaw position, although the Association of Council Secretaries and Solicitors have commented that the provisions seem essentially to reflect the current case law position and that the courts have matured the law into a commonsense acknowledgement of the democratic role of councillors. Specific evidence of a closed mind was required prior to the Act to justify an unlawful determination
- 3.5 The Act has not prevented a challenge to a decision on the grounds that it has been unlawfully determined because of predetermination although the section sets out specifically that a decision maker will not be taken to have had a closed mind just because the decision maker had done anything that indicated what view he/she would take.
- 3.6 The impact of the section will no doubt become clearer over time as case law develops on its interpretation.

4. FINANCIAL IMPLICATIONS [CB]

None arising directly from this report.

5. LEGAL IMPLICATIONS [MR]

As set out in the report.

6. CORPORATE PLAN IMPLICATIONS

This report supports all Corporate Aims as it relates to the democratic process.

7. CONSULTATION

Planning Committee. Association of Council Secretaries and Solicitors

8. RISK IMPLICATIONS

Management of significant (Net Red) Risks		
Risk Description	Mitigating actions	Owner
Lack of openness and transparency in decision making	Ensure Members are aware of requirements regarding predetermination	Louisa Horton

9. **KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS**

This report is for advice only. Consideration of these issues will be at the time of the decision.

10. **CORPORATE IMPLICATIONS**

None

Background papers: The Localism Act and associated guidance

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