



1. **PURPOSE OF REPORT**

To inform members of the coming into force on 15 January 2012 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.

3.3 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.”

3.4 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 councillor confident in the knowledge that they will be able to act on issues they care about and have campaigned on.

- 3.5 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
- 3.6 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.
- 3.7 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

None.

8. RISK IMPLICATIONS

It is the Council's policy to proactively identify and manage significant risks which may prevent delivery of business objectives.

It is not possible to eliminate or manage all risks all of the time and risks will remain which have not been identified. However, it is the officer's opinion based on the information available, that the significant risks associated with this decision / project have been identified, assessed and that controls are in place to manage them effectively.

The following significant risks associated with this report / decisions were identified from this assessment:

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	Monitoring Officer

9. KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS

This report is for information only and therefore will not result in a decision which will have an impact on any community or group. The changes to the rules on predetermination will enable Members to support their constituents and represent their views more fully yet still be entitled to take part in the decision making process.

Where there is a proposed new service, change of service, or a new or reviewed policy, an Equality Impact Assessment is required and has been undertaken and can be viewed here: not required

10. **CORPORATE IMPLICATIONS**

By submitting this report, the report author has taken the following into account:

- Community Safety implications
- Environmental implications
- ICT implications
- Asset Management implications
- Human Resources implications
- Planning Implications
- Voluntary Sector

Background papers: Localism Act 2011

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