

ADVICE ON PREDETERMINATION

FOR INFORMATION

LOCALISM ACT 2011 – PREDETERMINATION

1. This note relates to situations where Councillors have contact or information about a matter in advance of the discussion/decision in a committee or at council, and where their pre-meeting dealings could lead to an allegation that they are biased or come to the meeting with a “closed mind” (i.e. their minds already made up). It applies only to the members of the body (whether committee, sub-committee, etc.), and not to other members present who cannot vote.
2. Section 25 of the Localism Act 2011 provides in essence that “*a decision maker is not to be taken to have ... a closed mind when making the decision just because ... the decision-maker had previously done anything that directly or indirectly indicated what view the decision-maker took or ... might take in relation to that matter ...*”.
3. The Localism Act 2011 therefore abolished the concept of predetermination. Under the terms of the Act the fact that a Councillor may have campaigned for or against a proposal is not in itself to be taken as proof that they are not open-minded.
4. However, a Councillor on a decision-making committee (e.g. planning, licensing etc) must still have an open mind when the Councillor comes to the meeting, so that all the relevant considerations presented to the meeting can be taken into account. While Councillors can (probably) feel less inhibition about, say, voting at a town or parish council meeting before the matter comes to the district council, Councillors should nevertheless still try to avoid doing or saying something before the proper decision-making meeting takes place that shows they have already – and finally – made up their minds on the issue.