



Interests, Bias, Pre-determination and Legitimate Pre-disposition

Scenario 1

Swansmead Borough Council Planning Committee is due to consider an application for a new sixth form building for a local, community school following Cabinet’s decision to approve sixth forms at a number of local authority secondary schools.

Your Head of Service is advised of a substitution the day before the meeting as Councillor Payne had been called away on business and Councillor Herbert would take his place on the Committee. However your Head of Service had been off work sick and you had not found out about the substitution until just before the meeting.

Councillor Herbert is also the Cabinet Member for Health and Adult Services. Before the meeting Councillor Joseph complains to you that Councillor Herbert should not sit for the sixth form building application because she had approved the decision to have a sixth form. Councillor Herbert overhears this and responds that she would not withdraw from the Committee for the application as she is not the Cabinet Member for Education and the only reason Councillor Joseph complained was because the opposition were trying to undermine the plans for sixth forms.

What issues does this raise?

What advice do you give to Councillor Herbert about what she should do?

Scenarios

Notes for the Facilitator:
Confirm that the substitution had been received in time as per the rules set out in your constitution
Potential issues of pre-determination and being a judge in your own cause
Advice to Councillor Herbert – remind her of the ‘fair minded observer’ test. Suggest that she should consider withdrawing from the Committee table and observing from the public gallery to avoid this. Relevant case law – Steeples V Derbyshire County Council [1985] ‘to satisfy the requirements of natural justice the decision must not only have been properly made, it must also be seen to have been fairly made’

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Ultimately the application before them is for the physical structure of the building, separate to the decision to agree sixth forms in schools and so in that sense Councillor Herbert had not pre-determined her view.



Scenario 2

An application for a new football stadium in Sulliwood has been submitted and is being considered by the Planning Committee. The application is extremely contentious as there is a lot of opposition from local residents who are worried that the stadium will increase noise and traffic in the area as well as driving away the local bat population because of the light pollution from the floodlights. There are three people registered to speak against the application and three people registered to speak in support of the application, the maximum number permitted for this type of application.

Before the meeting Mr Mumby, one of the objectors, approaches you as the Clerk to ask to circulate a one side of A4 document detailing the concerns of a local residents group to this application. You inform Mr Mumby that the Chairman has the discretion to permit or reject the additional information. Councillor Thorpe, the Chairman, refuses point blank to allow the additional information. Ten minutes later the applicant arrives with various consultants and asks you whether they can circulate a glossy brochure showing how the stadium would look. Again you show this to Councillor Thorpe who flicks through the booklet and asks you to ensure that all Committee members have a copy. When you question why one and not the other Councillor Thorpe comments that although the brochure has a lot of text in it, the Committee members will mainly use it as a visual representation of the planned development.

Once the meeting has started Councillor Thorpe declares that he is a season ticket holder of Sulliwood F.C. and so he would withdraw from the Committee to avoid the perception of bias and Councillor Toogood would take the chair for the application. Councillor Sherwin comments that she thinks all the majority party members of the Committee are pre-determined because ensuring Sulliwood FC had a new, fit-for-purpose stadium was one of their manifesto pledges.

What issues arise and what interests are relevant in this scenario?



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Scenarios

Notes for the Facilitator:

Issues of a fair hearing –if supplementary information is permitted for one side it should really be allowed for both. Invalid point that they will use it for visual representations only because if it is tabled then members of the Committee need to be aware of what it contains – reasoned decision made by people in full knowledge of the facts of the case

Decision to allow the supplementary information should not have been made by Councillor Thorpe as he is not chairing that item. Clerk did not know this beforehand so Councillor Toogood should be asked if she wants to take a short adjournment to circulate the additional information and give time for Members to read it before continuing.

Threshold for pre-determination is high: Regarding the manifesto pledges, there is case law to say that politicians can discuss issues in campaigns and still be open minded when making a decision - R (Lewis) v Redcar and Cleveland Borough Council [2010] '[Councillors] can properly take part in the debates which lead to planning applications made by the Council itself. It is common ground that in the case of some applications they are likely to have, and are entitled to have, a disposition in favour of granting permission'.

Threshold for pre-determination is high 2: National Assembly for Wales v Condrón and Others (2006): "Whilst the position of members of a planning committee... is of course very different to that of judicial office-holders, the fact that they have received relevant training and have agreed to be bound by a code of conduct is a consideration to which some weight can properly be attached when determining an issue of apparent bias".

In this instance the Chairman of the Committee had said he was 'going to go with the inspector' – although initially found to be pre-determined, this was changed to legitimate pre-disposition following an appeal. Shows that the threshold for predetermination is quite high. This was obviously before the Localism Act but the same principles apply.

Therefore there would be no reason for the Members of the majority party to sit out.

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