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| Development Control Committee | Thursday, 25 August 2016 | Matter for Information and Decision |
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Title: **Delegation to Officers of CLUED's and Similar
Quasi-Judicial Decisions**

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1. Introduction

At the informal Member training event held on the 26 May 2016, there was a discussion about Certificates of Lawful Use (CLUED's). This followed requests from some Members for clarification of a number of issues that arise in such cases.

The consensus during that discussion appeared to be that in future such decisions should be delegated to Officers. No action was taken on that consensus view pending the resolution of a number of current cases which have already been considered by the Development Control Committee – and then deferred for one of various reasons.

2. Recommendations

- 2.1. That in future, all applications for a Certificate of Lawful Use (CLUED), should ordinarily be delegated to the Planning Control and Regeneration Manager acting in consultation with legal advice, where any question of relevant law arises.
- 2.2. That such applications for any Certificate of Lawful Use (CLUED) should not ordinarily give rise to public consultations as would any "ordinary" planning application, other than any specific enquiries to establish or confirm the facts of the case, sufficient to confirm those facts beyond a balance of probabilities.

3. Information

- 3.1. The report prepared for the Member Training event on the 26 May 2016 read as follows:

"The majority of planning decisions are "administrative", that is based upon the merits or de-merits of the case – having regard to planning policy and other material planning considerations, and always after relevant public (and other) consultations.

On the other hand, the determination of a lawful use is a "judicial" rather than such an administrative decision. The planning merits or de-merits of the case are entirely irrelevant to the decision, as are any planning policies that might otherwise be relevant. The Council's judicial decision is based entirely upon the documentary evidence submitted and sufficient to justify the case made on a "balance of probabilities" basis. Officers dealing with such a case always do so with a sceptical eye, and look for available evidence to the contrary. In any case of doubt, legal advice may well be sought.

In this situation there is clearly no merit in the making of the decision by the DC Committee. The use has either been established beyond a balance of probabilities - or it hasn't. Similarly, there is no merit in any public consultation measures. The response to public consultations may well inform the Council about public views – but those views, however compelling, can never be relevant to the judicial decision being made.

As a practical matter such public consultations may only raise false expectations about the outcome of the decision”.

3.2. DCLG’s published “Planning Practice Guidance “ on this subject includes:

“The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.

*In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant’s version of events less than probable, **there is no good reason to refuse the application, provided the applicant’s evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.*** (emphasis added)

In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved.

There is no statutory requirement to consult third parties including parish councils or neighbours.** It may, however, be reasonable for a local planning authority to seek evidence from these sources, if there is good reason to believe they may possess relevant information about the content of a specific application. **Views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application” (emphasis added).

Background Documents:-
None.

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| Implications | |
|------------------------|---|
| Financial (CR) | No significant implications. |
| Legal (AC) | Where any question of relevant law arises, consultation with legal advice shall be sought in respect of CLUED’s. |
| Risk (TB) | No significant implications. |
| Equalities (TB) | No significant implications. |
| | Equality Assessment:- <input type="checkbox"/> Initial Screening <input type="checkbox"/> Full Assessment <input checked="" type="checkbox"/> Not Applicable |