

Cabinet

18 February 2025

Member Questions (2 total)

1. Question from Councillor David Willingham to Cabinet Member for Planning and Building Control, Councillor Mike Collins

In Bracking, [2013] EWCA Civ 1345, case law considering the Equality Act 2010 s149 Public Sector Equality Duty, determined the following principles were applicable to decisions:

- i. The public authority decision maker must be aware of the duty to have "due regard" to the relevant matters;
- ii. The duty must be fulfilled before and at the time when a particular policy is being considered;
- iii. **The duty must be "exercised in substance, with rigour, and with an open mind". It is not a question of "ticking boxes"; while there is no duty to make express reference to the regard paid to the relevant duty, reference to it and to the relevant criteria reduces the scope for argument;**
- iv. The duty is non-delegable; and
- v. Is a continuing one.
- vi. It is good practice for a decision maker to keep records demonstrating consideration of the duty.

In the majority of reports that go to planning committees, the following boilerplate text is included in the report:

Public Sector Equalities Duty (PSED)

As set out in the Equalities Act 2010, all public bodies, in discharging their functions must have "due regard" to this duty. There are three main aims:

- *Removing or minimising disadvantages suffered by people due to their protected characteristics;*
- *Taking steps to meet the needs of people with certain protected characteristics where these are different from the needs of other people; and*
- *Encouraging people with certain protected characteristics to participate in public life or in other activities where participation is disproportionately low.*

Whilst there is no absolute requirement to fully remove any disadvantage, the duty is to have "regard to" and remove OR minimise disadvantage and in

considering the merits of this planning application the planning authority has taken into consideration the requirements of the PSED.

In the context of the above PSED duties, this proposal is considered to be acceptable.

Could the Cabinet Member for Planning and Building Control please explain how the use of the same boilerplate text in every application demonstrates that any rigour has been applied to the consideration of the PSED within the planning process, and advise how the situation will be ameliorated?

Cabinet Member Response

Can I thank Cllr Willingham for his question. It is agreed that in some circumstances 'boilerplate' text will not be appropriate, such as where a specific equality issue has been identified by the case officer and a more detailed exploration of the issue in the committee report will be necessary. An example of this can be seen in the committee report relating to the redevelopment of North Place (ref. 24/00236/FUL); where the equalities impact of a loss of disabled parking was explored amongst other things. In cases where a specific equality issue has not been identified however, standard text reminding members of the committee of their obligations under the Equality Act is considered sufficient; it is not necessary, nor is it proportionate, to explore equality issues in any great depth where none have been identified.

2. Question from Councillor David Willingham to Cabinet Member for Planning and Building Control, Councillor Mike Collins

In dealing with the Public Sector Equality Duty in planning matters, I am concerned that the needs of those with the protected characteristic of disability have not always been given consideration commensurate with the difficulties they face, with developers seeking to remove accessibility features to maximise profit. The assessment of such matters can be complex requiring an understanding of the different issues affecting those with a wide range of disabilities including, but not limited, to neurodiverse difference, and impaired mobility, vision, or hearing; and addressing issues requires the will to push back against developers. Does the Cabinet Member for Planning and Building Control agree with me that more needs to be done to force developers to ensure accessibility, and could he please advise what additional work can be done within planning and via training of members of the planning committee to ensure the needs of, and impact on, those with protected characteristics is fully understood by the decision-makers and demonstrably considered during the planning process?

Cabinet Member Response

I would like to thank Cllr Willingham for his question. What the planning team can or cannot *force* developers to do is largely dependent on what is prescribed by planning policy. The role of Development Management officers (and the Planning Committee)

is ultimately to apply and implement adopted planning policy. The Joint Core Strategy contains policies promoting inclusive design as does the Gloucestershire Local Transport Plan, particularly in respect of inclusive public transport and inclusive pedestrian facilities; these policies are material to all planning decisions. Whether planning policies should go further in promoting and securing inclusive design is a matter that can be considered in the formulation of our next development plan (the 'Cheltenham, Gloucester and Tewkesbury Strategic and Local Plan'). Councillor Willingham is encouraged to engage with our planning policy team on this issue.

Training about equalities and the Equality Act already forms part of the Planning Service's rolling training programme for members of the Planning Committee.