

Conduct an issue when canvassing for votes

With local elections looming many Returning Officers will be in the throes of making preparations for polling day on May 3 – never an easy task – but an even greater challenge following recent changes in the law brought in by the Electoral Administration Act 2006.

For those members wanting to hang onto their seats there is an understandable desire to score political points over their opponents in the clamour for votes. However, it is worth remembering that during this frenetic pre-election period councillors are still subject to their Local Code of Conduct.

The Local Government Act 2000 introduced a framework for regulating the behaviour of councillors and required all principal and local councils to adopt a Local Code of Conduct. The vast majority of these place a variety of obligations on members, including promoting equality, treating others with respect, not bringing the member's office or authority into disrepute or using a member's position improperly.



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The relationship between these obligations and a member canvassing for votes is not readily appreciated, as in the majority of cases a Local Code only applies to a member when he acts in an official capacity. As a candidate at a local election a member acts on behalf of his or her party, or for personal reasons and not as a councillor. However, there is a clear link between a member canvassing and his Local Code which should be borne in mind. There are two particular paragraphs which apply to members at all times. They are:

- a member must not . . . conduct himself in any manner which can reasonably be regarded as bringing his office or Authority into disrepute;
- a member must not . . . use his position improperly



erly to confer on or secure for himself or any other person an advantage or disadvantage.

Although the Standards Board for England made the point four years ago that politically motivated allegations failed to appear in the run up to the May 2003 elections they nevertheless have examples of election complaints.

Two examples include a member of a Borough Council who was accused of bringing his office or the Authority into disrepute when allegedly inducing electors, who were elderly or mentally ill, to appoint his supporters as proxy voters.

There was also a member of a District Council who was accused of securing an advantage for himself when campaigning for votes at the homes of five people with learning difficulties. It was said he explained how to vote and then took the voting envelopes away for posting. Neither member was found to have breached any code but it shows how easily members' conduct can be questioned.

So to prevent or at least minimise the possibility of their members falling foul of their Local Code at election time, local authorities can help Returning Officers by:

- providing pre-election training for their mem-

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bers and local parish councillors to highlight the risks associated with electioneering;

- publishing a leaflet summarising the Code of Conduct for all candidates;
- producing an Officers' Protocol clearly indicating which officers will deal with any complaints in relation to the code during the election process so that members, officers and the public understand where responsibility lies.

There may be other initiatives which could be implemented over the next few months when political and election activities are at their height.

There is no doubt that the conduct of members remains on the political agenda at national level. The recent publication of the Local Government Bill seeks to change the existing regime with the aim of devolving most decision making to Local Authorities.

Minimising the number of issues for decision should also be a local priority over the coming months and beyond.

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More power with greater expectations

The thrust of the proposals in the Local Government White Paper is to devolve more power downwards from central government to local communities. In return, however, central government is demanding further efficiency savings through increased partnership working, including working with the private sector. The main areas of change are as follows.

Parish Councils

District councils will now be responsible for creating parish councils without the need for the Secretary of State to be involved.

There will be a presumption in favour of forming a parish council where the community wants it. The council should grant requests unless there are good reasons not to.

Wellbeing powers will be given to parishes who meet the "Quality Parish Council" accreditation.

They will be able to call themselves community councils, village councils or neighbourhood councils



DAVID QUAYLE highlights the main areas of change as set out by the Local Government White Paper and how it will affect local communities.

as well as parish, town or city councils and that other forms of governance may actually be appropriate at this level.

London will be able to have parish councils.

All parishes are to be exempt from "Best Value" considerations.

As an aside, under the Clean Neighbourhoods and Environment Act 2005 it should be noted that parishes have become litter enforcement authorities, with the power to issue fixed penalty notices to people who drop litter.

The Ombudsman

Decisions made by councils jointly with other decision-making bodies will fall within the ombudsman's jurisdiction.

Maladministration can still lead to an investigation even where there is no injustice

Council Leadership

Non-executive members have little power. The Code of Conduct will be amended so they can speak out on planning and licensing applications that affect



Down shifting: the Local Government White Paper suggests reducing central government's involvement in local community affairs.

their constituents.

Councils will be able to pass their own by-laws without reference to the Secretary of State.

The Code of Conduct is to be policed locally, made simpler and more proportionate with the Standards Board being streamlined to take a more "light touch" role.

All 318 councils with leader and cabinet executives would need to adopt new executive arrangements ie have a directly-elected mayor with a four-year term, a directly-elected executive with a four-year term or an indirectly elected leader with a four-year term.

There would be no need for a referendum. Once a move in this direction is made the government would not anticipate a move back.

Councils are to be given the chance of having "whole" elections with one member per ward.

The above is to make the election process in local government more direct and transparent to try and reverse the trend of disappointing electoral turnouts in recent years, by trying to make it seem to voters that their vote counts.

Community Call for action (CCfa)

Residents will be able to ask their ward councillors to take up a "community call for action" on issues of local importance. If these are not addressed satisfactorily they are referred to the Executive and ultimately to the Overview and Scrutiny Committee for review. It is envisaged this will assist vulnerable members of the community in speaking out.

Petitions

If the above is not resolved then a standard formal petitioning procedure is to be adopted by councils to take the matter further.

Overview and Scrutiny Committees

They will be required to consider unresolved community calls for action raised by councillors.

They will be given powers to request that service providers outside council staff be forced to attend to give evidence.

They will give greater input into examining issues of policy and strategy.

Best Value

There will no longer be a requirement to prepare an annual Best Value Performance Plan or conduct Best Value Reviews. With CPA these had perhaps become superfluous anyway.

However, councils will be expected to engage heavily in partnership working with other Councils and private sector bodies as it was perceived under "Best Value" there was not enough "challenging" or "competing". Councils will still be expected to inform, consult, involve and devolve to citizens and local communities on the delivery of services.

Big efficiency gains are expected in the 2007 Comprehensive Spending Review.

Implementation

Following a consultation process some primary and secondary legislation will need to be introduced so the proposals will be actioned as soon as possible.

For more information on any of the aspects outlined above, please contact David Quayle on 01926 884648 or via email.

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Keeping food safe for consumption

In the last three years a number of regulations have been passed amending the Food Safety Act 1990. These regulations were passed under the European Communities Act 1972.

Firstly, the Food Safety 1990 (Amendment) Regulations 2004 amended the definition of "food" by excluding unlicensed medicinal products.

Secondly, the General Food Regulations 2004 provided enforcement powers in respect of new obligations applying from January 1st, 2005 under regulation 178/2002. These are articles 14 and 16 (in so far as they relate to food), 18 (in so far as they relate to food business operators) and 19.

Article 14 prohibits food being marketed if it is unsafe i.e. it is either injurious to health or unfit for human consumption. These requirements are similar to those in Section 8 of the Food Safety Act 1990 which will no longer apply due to the new Food Safety Provisions in Article 14. Food may be injurious to health under Article 14 in circumstances not covered by Section 8 (2) (a) which only referred to food that had been rendered injurious to health by means of certain operations.

Article 16 states that labelling, advertising and presentation of food shall not mislead consumers. It applies to sections 14 and 15 of the Food Safety Act 1990 and unlike Sections 14 and 15, Article 16 applies in the case of a one-off supply free of charge, subject to the exemption in Article 13. Article 16 covers cases where the consumer is misled, whether or not it relates to the nature, substance or quality of the food.

Under Article 18 all food businesses are



All consuming: the Food Safety Act 1990 has been amended several times in the last three years.

required to identify their suppliers and businesses to which they have supplied products and maintain records to ensure information is made available to competent authorities on demand. These shall include the name and address of the customer and supplier, the nature of the products and the date of delivery. Retailers are not required to keep records of sales to the final consumer.

Article 19 places obligations on food businesses to recall, and/or withdraw food from the market if it does not comply with food safety requirements and to notify competent authorities, i.e. the agency and the relevant enforcement

authority. Where products may have reached the consumer, there is an obligation on food businesses to inform consumers of the reason for the withdrawal of the product and, where necessary, recall products already supplied.

Regulation 4 makes breaches of the above articles a criminal offence with penalties consistent with current food safety law offences.

Regulation 3 basically confirms that in most cases the food authority will be responsible for enforcing these new regulations.

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Significant changes to food hygiene regulations

The Food Hygiene (England) Regulations 2006 revoke and re-enact with changes the Food Safety (General Food Hygiene) Regulations 1995 and the Food Safety (Temperature Control) Regulations 1995.

This represents a significant change in food safety law, particularly the repeal of the 1995 regulations, for many years the basic tool in the bag of council food safety inspectors and environmental health officers.

The philosophy behind the new regulations is "from farm to fork" providing comprehensive policing of the food chain from production to consumption. The regulations incorporate Articles 852/2004, 853/2004, 2073/2005 and 2075/2005 into English law and lay down the hygiene requirements required by European legis-

lation, the main features of which are:

- the hygiene requirement of Article 3 of Regulation 852/2004 is satisfied;
- the adoption of certain specific hygiene measures;
- food business operators put in place, implement and maintain a permanent procedure or procedures based on the HACCP principles and that they provide the competent authority with evidence of their compliance;
- that documentary evidence in accordance with Article 5 is up to date and is kept for an appropriate period;
- compulsory registration of food businesses with Enforcement Authorities and that this information is kept up to date;
- that food businesses use only potable or

clean water to remove surface contamination from products of animal origin unless use of the substance has been approved;

- the regulations empower the food authority to serve a business with hygiene improvement notices, hygiene prohibition orders following conviction and hygiene emergency prohibition notices and orders;
- officers have powers of entry and power to procure and analyse samples;
- there are the usual provisions dealing with time limits for prosecutions, offences by corporations and the power for the Secretary of State to issue codes of practice.

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Government moves towards Planning Gain Supplement

One of the proposals in the Barker Report was a tax measure in the form of a Planning Gain Supplement (PGS). This would ensure that landowners, who sold land with planning permission for development, contributed a chunk of their profit to the general pot.

This supplement, which may be introduced as early as 2009, will have implications for Section 106 of the Town and Country Planning Act 1990, which enables local planning authorities to negotiate a sum of money to provide for the infrastructure that may be needed to accompany any new development. Among the problems with Section 106, as identified by the Barker Report were wide discrepancies in the sums negotiated and that agreements were generally attached to major housing schemes with which many authorities would rarely have to deal. It also pointed out that negotiations could be very protracted and therefore costly and that some local authorities could misuse Section 106 to delay or discourage development.

The report recommended that Section 106 be scaled back to direct impact mitigation but retain affordable housing as a planning obligation and that LPAs should receive a share of the gain generated by a PGS to compensate for a reduction in Section 106 negotiations.

The government accepted the findings of the Barker



PRITHPAL SINGH-SWARN reports on the proposed Planning Gain Supplement designed to improve housing opportunities.

Report and in December 2005 the Treasury, together with the then ODPM, published a joint consultation document describing PGS, as a 'fair, efficient and transparent levy' and outlined a number of objectives:

- to finance additional investment in the local and strategic infrastructure necessary to support housing growth, whilst preserving incentives to develop;
- to help local communities to share better the benefits of growth and manage its impacts;

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Taxing issue: the introduction of a Planning Gain Supplement seems increasingly likely.

- to provide a fairer, more efficient and more transparent means of capturing a modest proportion of the land value uplift; and

- to create a flexible value capture system that responds to market conditions.

So far the government has not indicated the rate at which PGS would be levied although payment will be required as soon as development begins.

It will apply to all planning permissions (non-residential and residential,) except for home improvements, payable under an HM Revenue and Customs self-assessment regime.

With PGS, the scope for planning obligations will relate specifically to the environment of the development site itself and affordable housing.

The consultation document states that: "The government will examine options for bringing highways agreements made under S278 of the Highways Act 1980 into line with any changes to the current system of planning obligations." No time frame has been given for this.

Although it is expected that the 'majority' of PGS revenues will be recycled directly to local level, a "significant" proportion would be used to deliver strategic regional infrastructure.

The PGS mechanism

The consultation document explains that PGS will be charged on the "planning gain", i.e. the difference between the market value of the land with full planning permission – the Planning Value or PV – and the market value of the land in its current use, assuming no development potential – its Current Use Value or CUV.

The PV would take into account contributions made under the scaled back regime for planning obligations. The consultation also recognises that the expected costs of developing the land, including remediation costs, could affect the PV and should be taken into account otherwise brown field development land would be treated unfairly.

Implications and concerns about PGS

Knight Frank Consultancy, commissioned to look into the feasibility and implications of the PGS, highlighted the following concerns:

- PGS might curtail, rather than encourage, development;
- the effects of bearing the cost of PGS might be severe, in particular if payment is required up-front before the value of the planning permission has been realised;
- who bears the cost of PGS? The developer? The land-owner? Ultimately, PGS, compared with the current planning regime, would only impact on housing prices if the supply of housing land diminishes;
- PGS could result in lengthy disputes over valuation, stalling development;
- PGS is not suitable for all types of development, in particular brown field land, as this would impact on the government's commitment to urban regeneration;
- PGS would remove the link between the developer, the development and direct community benefit;
- PGS would not result in the revenues required, possibly affecting the provision of infrastructure at the right time and linked to proposed development.
- PGS would make development more costly and complex.

By introducing the Planning Gain Supplement (Preparations) Bill last December the government indicated its commitment to some form of PGS. It has also recently issued a further consultation Changes to the Planning Obligations which sets out the new system of planning obligations under a scale back regime or even a fixed tariff if the PGS is introduced.

Conclusion

The consultation documents, soundings from government and Sir Michael Lyons' review on local government funding, suggest huge implications for future local government funding allocations as well as funds available to encourage development. PGS is central to the government's objective of sustainable communities and access to high quality public services – such as schools, health centres, parks and open spaces and public transport.

However, the LPAs and developers are best placed to know what contributions are required for local infrastructure and housing. In terms of the wider social community and economic benefits, the appropriate use of planning obligations can quite easily provide those benefits without the need for PGS. Hence, PGS is perceived as another tax and may lead to higher house prices.

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An extended version of this article can be found at www.wrighthassall.co.uk/resources/articles/art_pgs0307.aspx