

CHESHIRE EAST COUNCIL

Strategic Planning Board

Date of Meeting: 9 November 2011
Report of: Strategic Planning & Housing Manager
Subject/Title: Racist and Offensive Representations
Portfolio Holder: Cllr Rachel Bailey

1.0 Report Summary

- 1.1 This report introduces a policy on dealing with racist and offensive representations, based on principles adopted by the Royal Town Planning Institute

2.0 Recommendation(s)

- 2.1 That the Strategic Planning Board approves the approach set out in Appendix 1 of the report

3.0 Reasons for Recommendation

- 3.1 To enable the Council to properly deal with offensive representations received as part of the planning process.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All

6.0 Policy Implications

- 6.1 The report clarifies the Council's policy approach to this subject

7.0 Financial Implications

- 7.1 None.

8.0 Legal Implications

- 8.1 It is a legal requirement to treat racist representations seriously; as a Local Authority the Council has a statutory equality duty

- 8.2 The public sector equality duty consists of a general equality duty, which is set out in section 149 of the Equality Act 2010 itself, and the specific duties which came into law on the 10 September 2011 in England are imposed by secondary legislation. The general equality duty came into force on 5 April 2011.
- 8.3 In summary, those subject to the equality duty must, in the exercise of their functions, have due regard to the need to:
- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
 - Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - Foster good relations between people who share a protected characteristic and those who do not.
- 8.4 These are sometimes referred to as the three aims or arms of the general equality duty. The Act helpfully explains that having due regard for advancing equality involves:
- Removing or minimising disadvantages suffered by people due to their protected characteristics.
 - Taking steps to meet the needs of people from protected groups where these are different from the needs of other people.
 - Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.
- 8.5 The Act states that meeting different needs involves taking steps to take account of disabled people's disabilities. It describes fostering good relations as tackling prejudice and promoting understanding between people from different groups. It states that compliance with the duty may involve treating some people more favourably than others.
- 8.6 The new duty covers the following eight protected characteristics: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation
- 8.7 In addition the Local Government (Access to Information) Act 1985 requires any material that is defamatory or likely to incite racial hatred or contempt, and information the disclosure of which is prohibited by law, to be marked 'confidential' and not disclosed to the public.
- 8.8 Thus anyone who, either in writing or verbally, objects on racist grounds to a planning application or proposal is potentially contravening one of these Acts, by applying pressure to discriminate.

9.0 Risk Management Implications

- 9.1 The Council risks failing in its statutory duties and committing an offence if it fails to properly address issues of racism arising in the exercise of its functions.

10.0 Background and Options

- 10.1 The Equality Duty was introduced in the UK in 2010 and builds on previous specific duties, including racial equality. It applies to all public authorities requiring them to eliminate unlawful discrimination, promote equality of opportunity between persons of different racial groups and promote good relations between persons of different racial groups.
- 10.2 The Council occasionally receives racist representations and looks to take positive measures to handle these types of comments.
- 10.3 In general terms, a racist representation is one that includes words, phrases or comments that are likely to:
- be offensive to a particular racial or ethnic group
 - be racially abusive, insulting or threatening
 - apply pressure to discriminate on racial grounds
 - stir up racial hatred or contempt
- 10.4 The context in which such words, phrases or comments are used must be considered carefully, in order to ascertain their true meaning and effect. A similar approach may be taken to offensive representations. These include communications which:
- Use Foul or Offensive Language
 - Maliciously target Individuals or groups as objects of hate
 - Discriminate on grounds of religion or conscience
 - Are intended to create community discord.
- Given that planning applications frequently provoke strong emotions, care needs to be taken that heartfelt views are not silenced or dismissed. Accordingly it is suggested that only the most severe of representations be deemed to be 'offensive' in the terms of this policy.
- 10.4 The Royal Town Planning Institute has guidance on handling representations of this nature. They recommend that a designated officer be identified who ultimately will determine whether correspondence is racist or offensive. A procedure should then be followed which allows valid planning concerns to be more appropriately addressed. It is recommended that the Council adopts guidance based on this advice.
- 10.5 Appendix 1 attached to this report sets out the procedures that will be followed if representations on a planning application are received that contain racist or offensive material.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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Background Documentation:

‘Dealing with Racist Representations’ - RTPi Practice Guidance Note for officers of planning authorities

GUIDANCE ON RACIST AND OFFENSIVE PLANNING REPRESENTATIONS

That a designated officer be appointed to determine whether correspondence is racist or offensive. This officer will be Development Management and Building Control Manager

Responsibility for identifying potentially racist or offensive material lies with the appropriate case officer. Any letter that seems to contain racist material should always be referred to the designated officer for action.

The designated officer should confirm whether or not the letter is racist or offensive. If the letter is racist, and contains no material planning consideration, the officer should return the letter to the writer explaining that it is unlawful and cannot be considered. Offensive correspondence of the same nature should similarly be returned on the basis that the Council will not accept such representations. Receipt of such representations should not be identified in any planning application committee report as they are not material.

If the letter is racist, but also contains material planning considerations, the officer should return the letter to the writer because of its unlawful racist content, explaining that if the writer wishes the valid material planning considerations to be put before committee, they must write again, dealing only with these valid planning matters. If the writer fails to do this, and if the original letter raises a material planning consideration that is not already covered in the officer's report, the officer should raise it at the meeting and have it minuted to make sure that the objector cannot challenge the committee's decision. A similar procedure should be adopted for offensive letters.

Any letter which is deemed to contain, in whole or in part, racist or offence material should be kept confidential and not posted on the Council's website or kept on a public file.

If certain people persist in making representations that the authority regards as racist, the matter should be referred to the Equality & Human Rights Commission or the police. However, the Commission has a role only in instances where there is a pressure to discriminate, or where actual discrimination on racial grounds has taken place or is likely to take place. Representations that are deemed to be offensive, abusive, insulting, threatening or inciting racial hatred are matters for the police.