

**PPPC09/29**

1 October 2009

## **GOOD PRACTICE NOTE 6: DEALING WITH DISCRIMINATORY REPRESENTATIONS**

Report by Sarah Lewis, Planning Practice Officer

### **Recommendation:**

The committee is asked to:

**Consider** the attached draft Good Practice Note, and suggest any comments/amendments.

**Resolve** to approve the GPN consequent to any changes arising from this discussion and further involvement from other stakeholders; a draft of which will be circulated to committee members

### **1. Background**

- 1.1 The RTPI guidance “Dealing with Racist Representations (1996)” has been redrafted and expanded to cover all forms of discriminatory representations. It also takes account of more recent equalities legislation that places a duty on public bodies to work proactively to promote good community relations.
- 1.2 The guidance also needed to be revised in response to recent media reports that have questioned the validity of local planning authorities’ actions, when they have returned representations considered to contain racially based objections to proposed developments, therefore the advice provided by the RTPI needs to be clarified.
- 1.3 The current draft represents a detailed statement of the principles to be applied. Some of the wording may need to be slightly amended following “nation-proofing” to ensure consistency within the Scottish, Welsh and Northern Irish regimes, and further progress with the Equalities Bill.
- 1.4 It has been written with assistance from the Equalities and Human Rights Commission. The guidance will be published in November 2009.
- 1.5 The last section of the GPN has been intended to provide a summary of “Dos and Don’ts”. Some thought has been given to this, but concern has also been expressed as to whether this section should be included, as there might be a temptation for users to concentrate on the summary, rather than reading the context. The committee’s views would be welcomed.
- 1.6 The attached draft represents the text of the document only, and it will be formatted to be consistent with published GPNs.

# Dealing with Discriminatory Representations

## RTPI Good Practice Note 6

### About these Guidelines

The right of individuals and groups to comment on proposed development is central to the integrity of the planning system and must be protected and promoted by planning authorities at all times. However, it is also imperative that only those representations made on material grounds are taken into consideration, and any objections should be identified and challenged if they are brought on discriminatory grounds, whether in relation to an individual or group's age, disability, gender, gender identity, race, religion or belief or sexual orientation, especially when they indicate possible prejudices.

A robust and systematic process for challenging those who bring pressure on planning authorities to discriminate unlawfully, and the investigation of representations believed to be discriminatory not only ensures that the planning system treats all members of society fairly, but is also important in building public understanding, tackling misconceptions and promoting good relations across all parts of the community.

The procedures outlined in this guidance note primarily relate to development management processes, however the advice can be adapted for dealing with discriminatory representations on other matters, for example development plans and supplementary planning guidance, complaints about members of staff and diversity monitoring. The advice is applicable to planning bodies, across all parts of the UK and Northern Ireland.

This note replaces and cancels the previous RTPI guidance, Dealing with Racist Representations (1996).

It is available to download free of charge at: [www.rtpi.org.uk/the\\_rtpi/practice/](http://www.rtpi.org.uk/the_rtpi/practice/)

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## 1. Adopting a Policy

1. Adopting a policy for dealing with discriminatory representations provides a clear framework for staff to operate within, allowing them to act with certainty and authority. This means that any correspondence or other communication of a discriminatory nature can be dealt with quickly, effectively and consistently.
2. Discriminatory representations are a serious issue and their impact on community relations can be very damaging. Adopting a policy demonstrates that the planning authority is taking a proactive approach and operating within a transparent system. This should help to build trust within the local community, reinforcing the fact that discriminatory representations will not be tolerated.
3. It also reinforces the need for RTPI members to comply with the equal opportunity provisions of the RTPI Code of Professional Conduct, which states:  
*“In all their professional activities members shall not discriminate on the grounds of race, sex, sexual orientation, creed, religion, disability or age and shall seek to eliminate such discrimination by others and to promote equality of opportunity.”*
4. The race, disability and gender public sector duties require all public bodies to take steps not just to eliminate unlawful discrimination and harassment, but to actively promote equality, which are binding on all staff. To take this commitment a step further the RTPI recommends planning authorities should adopt policies for dealing with discriminatory representations.
5. Some individuals may persist in making discriminatory representations. Therefore the planning authority should establish a plan for what to do when this happens. It should be as part of wider work to foster good relations between all parts of the community. The Equality and Human Rights Commission (EHRC) and the Equality Commission for Northern Ireland have a role in instances where there is a pressure to discriminate, or where discrimination has taken place or is likely to take place. Representations which are deemed to be offensive, abusive, insulting, threatening or inciting hatred are matters for the police.
6. Regular monitoring of the receipt and actions of the authority relating to discriminatory representations will enable the authority to assess whether the policies and practices for dealing with individual cases are being dealt with consistently by different members of staff, whether staff feel confident of the stance being taken, the number of representations dealt with and how effectively. It will also show whether the promotion of good community relations through education and mediation are having a positive impact and reducing the number of discriminatory representations over time and whether there are particular areas of concern to help identify where more work needs to be carried out.
7. Adopting, implementing and monitoring a policy for dealing with discriminatory representations demonstrates that:
  - Any discrimination is taken seriously by the planning authority. Mistrust remains amongst some members of minority groups who may believe

planning officers collude with discriminatory objectors by recommending refusal of valid planning applications;

- Only matters related to planning are material considerations when deciding upon planning applications and enforcement action;
- The planning authority is taking positive steps to promote good community relations, and that discriminatory representations are not accepted and persistent offenders will be dealt with accordingly.

## 2. The Legal Position

8. It is a legal requirement to treat all discriminatory representations seriously. There is a large body of supporting legislation, which has the added requirement under the public sector duties relating to gender, race and disability that authorities must take steps not just to eliminate unlawful discrimination and harassment, but also to actively promote equality and good community relations. In the past discriminatory representations have generally been considered to only refer to racially motivated objections. However, legislation and experience has evolved to cover the seven strands of equality relating to age, disability, gender, gender identity, race, religion or belief and sexual orientation, all of which the planning authority needs to take account of.

9. The relevant anti-discrimination laws in the UK and Ireland are :

**Equality Act 2006** - introduces a positive duty on public sector bodies to promote equality of opportunity between women and men and eliminate sex discrimination. It protects against discrimination on the grounds of religion or belief in terms of access to good facilities and services.

[Equality Act 2006](#)

**Human Rights Act 1998** - article 14 states the enjoyment of the rights and freedoms of the European Convention of Human Rights shall be secured without discrimination on any grounds.

[Human Rights Act 1998](#)

**Race Relations Act 1976** – section 31 makes it unlawful for anyone to induce or attempt to induce another person to discriminate on the grounds of race. Section 33 makes it unlawful for an authority or officer to aid and abet discrimination by failing to challenge discriminatory pressure.

[Race Relations Act 1976](#)

**Race Relations (Amendment) Act 2000** – section 19B makes it unlawful for a public authority in carrying out of its functions to do any act which constitutes discrimination. It amends section 71 to place a statutory duty on all public bodies to eliminate unlawful racial discrimination; and to promote equality of opportunity and good relations between persons of different racial groups.

[Race Relations Amendment Act 2000](#)

**Race Relations Act 1976 (Amendment) Regulation 2003** - introduced new definitions of indirect discrimination and harassment, and new burden of proof requirements.

[Race Relations Act 1976 \(Amendment\) 2003](#)

**Racial and Religious Hatred Act 2006** - seeks to stop people from intentionally using threatening words or behaviour to stir up hatred against somebody because of what they believe.

[Racial and Religious Hatred Act 2006](#)

**Disability Discrimination Act 1995** - outlaws the discrimination of disabled people in the provision of goods, facilities and services.

[Disability Discrimination Act 1995](#)

**Disability Discrimination Amendment Act 2005** – section 49A states every public authority must have due regard to the need to eliminate discrimination and harassment and is required to promote equality of opportunity between disabled persons and other persons.

[Disability Discrimination Act 2005](#)

**Sex Discrimination Act 1975** - makes it unlawful to discriminate on the grounds of sex. Sex discrimination is unlawful in employment, education, advertising or when providing housing, goods, services or facilities.

[Sex Discrimination Act 1975](#)

**The Sex Discrimination (Gender Reassignment) Regulations 1999** - seeks to prevent sex discrimination relating to gender reassignment.

[Sex Discrimination \(Gender Reassignment\) Regulations 1999](#)

**Gender Recognition Act 2004** - provides transsexual people with legal recognition in their acquired gender.

[Gender Recognition Act 2004](#)

**Civil Partnerships Act 2004** - provides legal recognition and parity of treatment for same sex couples and married couples.

[Civil Partnerships Act 2004](#)

**The Local Government (Access to Information) Act 1985** - requires any material which 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. Most local authority standing orders and codes of practice on access to information include provisions specifically designed to secure compliance with this requirement.

[Local Government \(Access to Information\) Act 1985](#)

**Public Order Act 1986** - section 19 prohibits the publication or distribution of any written material which is threatening, abusive or insulting and likely to stir up hatred against any racial group.

[Public Order Act 1986](#)

10. Therefore anyone who, either in writing or verbally, objects on discriminatory grounds to a planning application or proposal is potentially contravening one of these pieces of legislation by applying pressure to discriminate. The onus is on the planning authority to screen objection letters to ensure that any material of a discriminatory nature is omitted from the process.
11. A different legislative framework operates in Northern Ireland covering many of the same issues.

**Race Relations (Northern Ireland) Order 1997** - section 31 makes it unlawful to induce or attempt to induce another person to discriminate on the grounds of race. Section 33 makes it unlawful for an authority or officer to aid and abet discrimination by failing to challenge a discriminatory pressure.

[Race Relation \(Northern Ireland\) Order 1997](#)

**Public Order (Northern Ireland) Order 1987** - section 19 prohibits the publication or distribution of any written material that is threatening, abusive or insulting and likely to stir up hatred against any racial group.

### **3. Definition**

12. It is difficult to precisely determine what constitutes a discriminatory representation, objection or comment, and determining its lawfulness can be even more problematic. There is no clear definition or case law which might help to clarify the situation. In general terms, a discriminatory representation is one which includes words, phrases or comments which are likely:

- to be offensive to a particular group;
- to be abusive, insulting or threatening;
- to apply pressure to discriminate;
- to stir up hatred or contempt of a particular part of the community.

13. This list is not exhaustive.

14. The context in which such words, phrases or comments are used must be carefully considered in order to ascertain their true meaning and effect. It is not necessary for a planning authority to define in strict legal terms precisely what it considers constitutes a discriminatory representation.

### **4. Recommended Procedure**

15. All planning authority staff have a duty to be vigilant in identifying discriminatory representations and ensuring the correct procedure for dealing with them is consistently followed. However, each authority should designate one senior officer who will be ultimately responsible for responding to such representations. They should be experienced in handling sensitive issues, dealing regularly with members of the public and, most important of all, fully committed to the pursuit of equal opportunity.

16. No member of staff should assume that letters have already been screened for discriminatory language, though responsibility for identifying potentially discriminatory material should lie with the appropriate case officer. Any letter which appears to contain discriminatory material should always be referred to the designated officer for action, who should confirm, if necessary after consultation with the authority's equal opportunities unit whether or not the letter is discriminatory.

17. If the letter is discriminatory and contains no material planning considerations the letter should be returned. The authority should also write clearly explaining why the representation is discriminatory and why the objections expressed are unacceptable to the authority, and therefore will not be considered as part of the decision making process. In all cases where there is a pressure to discriminate, or where discrimination has taken place or is likely to take place authorities should consider whether it is appropriate to refer the letter to the EHRC, or the police if it is considered to be offensive, abusive, insulting, threatening or inciting

hatred. Its receipt should not be identified in any committee or consultation report as it is not material.

18. If the letter is discriminatory, but also contains material planning considerations, the officer should return the letter to the writer because of its unlawful discriminatory 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. However, if the writer fails to do this, and if the original letter raises a material planning consideration which is not already covered in the officer's report, the officer should raise it at the meeting and have it minuted to ensure that the objector cannot challenge the committee's decision. Again it should be considered whether it is appropriate to refer the letter to the EHRC or the police.
19. Wherever relevant, the possibility of discriminatory objections should be considered at an early stage in any planning process, particularly when there may be public discussions around the issue, whether in the published media or on the web. Responses to likely objections should be drafted in advance of the consultation period. It may be necessary for the authority to plan additional public education activities if it is apparent that there is public support for such objections. Where public consultations are proposed it is important to consider from the beginning how they may impact upon public opinion when they are of a kind that may entail objections on discriminatory grounds. In such circumstances, an authority will need to prepare for public consultation with additional care. For example, an authority might consider making it clear on consultation materials that they will not accept discriminatory objections on the grounds of race, gender, age etc and that if a written representation includes anything which is potentially offensive it will be ignored whether or not it includes material comments or not - by taking this more firm approach it shows the authorities serious line on the matter. There should be zero tolerance for discrimination as it ultimately undermines any material points the person is making. Assistance can be sought from local groups i.e. race equality councils, or representative organisations of minority groups.
20. The planning authority should also make provision for monitoring the incidence of discriminatory representations, in order to assess if its equality and diversity policies are effective. However, any copies of discriminatory material kept for monitoring purposes, should be marked confidential and placed on a separate file.

## **5. Ambiguous and Verbal Representations**

21. It is an unfortunate aspect of society that so much discrimination still exists, and sometimes people are not conscious that their remarks are discriminatory or based on prejudice. Also people are becoming more sophisticated and subtle in the language used to discriminate against others, meaning that spotting representations with a racist intent is much more difficult. Some individuals may persist in making discriminatory representations. In these instances there is an onus on the planning authority to establish a plan for how to deal with these people, as part of broader work to foster good relations between all parts of the

community and working proactively to reducing levels of discriminatory behaviour.

### **Ambiguous**

22. For example, there may be organised opposition to an Indian take-away, with a petition or a standard letter from a large number of objectors, but no opposition to a British fish and chip shop in the same street. However, any racist element in such opposition may not be reflected in the wording of the petition statement or standard letter, or may be insufficiently explicit to be defined as racial discrimination under the 1976 Race Relations Act.
23. In such cases officers should report to committee that representations have been received which, whilst not overtly discriminatory, have been received in circumstances which suggest that they may be motivated by discrimination. The reasons for this suspicion should be explained and the representations made available for members to form their own view.
24. 'Low-level' discriminatory representations of this kind should be monitored. When particular people repeatedly lend their names to such representations they should be warned and, if they persist, reported to the EHRC.

### **Verbal**

25. An instance of a discriminatory representation made verbally might occur, for example, during a site visit for an application relating to the building of a new mosque. During the visit a local resident approaches the planning officer and says: 'They come over here and expect to get everything on a plate, they should live by our rules, when in Rome ...'
26. Whilst this resident may appear to be applying pressure to discriminate, what is meant by 'they' or 'living by our rules' is not necessarily clear. Even if the intent is clear, there may be no conclusive proof of what was said, and any subsequent action may rest on the officer's word against that of the resident.
27. If the remarks are sufficiently blatant the officer can simply tell the resident that pressure to discriminate is not acceptable and will not influence the outcome of the planning application.
28. If the officer is less certain of the speaker's intent, the face to face meeting allows the officer to ask the person exactly what they mean. Sometimes this in itself will cause the person to back down.
29. In other instances the person will make it very apparent that at least part of their objection is indeed discriminatorily motivated. Without jeopardising the physical safety<sup>1</sup> of the officer involved, the speaker should be left in no doubt that any discriminatory elements in their views will be entirely disregarded when the merits of the proposal or application are assessed and a decision taken.
30. Planning staff must be careful not to slander members of the public by attributing discriminatory views to them when such views have not been openly expressed, whatever reservations they may privately have.

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<sup>1</sup> See RTPI GPN 3: Personal Safety at Work [www.rtpi.org.uk/item/1495/23/5/3](http://www.rtpi.org.uk/item/1495/23/5/3)

31. Staff members are not immune from being subject to discrimination themselves. Offensive communications and language should be dealt with directly, in the same manner as if it were directed at a section of the local community. Again it displays that the authority will not tolerate discriminatory behaviour and that it has the welfare of its staff as a paramount concern.

## **6. Training**

32. Dealing with discriminatory representations or comments, particularly when face to face with someone, requires confidence and self assertion.

33. The training needs of all staff who come into contact with the public, including reception staff as well as those who make site visits or attend external meetings should be assessed and an appropriate training programme provided. It is good practice to provide training designed specifically to enable all staff to spot and deal with discriminatory representations, within the context of wider equalities training..

34. In particular, staff should understand how the authority's organisational strategies and procedures, how the actions of individuals within the authority; and how the attitudes of some members of the public, can create pressures for, or even cause discrimination. It is impossible to deal effectively with discriminatory representations without an understanding of the ways in which discrimination operates.

35. Racist representations relating to the location of Gypsy and Traveller sites are a particular concern for many planning authorities. Traveller support groups can assist with anti discrimination training for planning authorities.

36. The importance of anti discrimination training (focusing on corporate issues) and equality awareness training (focusing on personal issues) needs to be recognised. Training should aim to give each individual the understanding and skills which will enable the authority as a whole to respond in an effective and consistent manner to discriminatory behaviour. The focus should include interpersonal skills to help staff assess situations and respond in individual circumstances. It should involve more than the provision of information and should cover a variety of potential scenarios.

37. Any training should be placed within the wider context of the need for authorities to proactively promote good community relations

## **7. Promoting Good Community Relations**

38. Dealing with discriminatory representations needs to be placed within an overarching theme of promoting good relations between all parts of the community. Planning authorities must be proactive in promoting good relations and in reducing discrimination and prejudice under the requirements of the public sector equality duties. The duty to promote good community relations doesn't just apply

to the planning department, it applies all functions of the authority, and therefore policies and practices need to be consistent across the whole authority.

39. Discrimination against members of the Gypsy and Traveller community has probably been the most prevalent form of discrimination occurring in the planning system over recent years. There is often widespread prejudice and conflict from the settled communities leading to a large number of objections to applications for Gypsy and Traveller sites, sometimes as a result of coordinated local campaigns. This is an area where significant work needs to be carried out in promoting good race relations<sup>2</sup>.

## 8. Dos and Don'ts

### Do

- Adopt a policy that reflects the community issues of your local area.
- Provide training for all staff, including new staff as part of their induction training, including new members/councillors.
- Make clear your authority's commitment to equality issues on all contentious planning consultation materials
- If you are unsure whether a representation is potentially offensive, ask representatives you think it might affect e.g. Gypsies and Travellers themselves.
- Provide this guidance on your authorities website and links to it from consultation pages

### Don't

## 9. Sources of Further Information

RTPI Code of Professional Conduct

[www.rtpi.org.uk/about-the-rtpi/codecond.pdf](http://www.rtpi.org.uk/about-the-rtpi/codecond.pdf)

RTPI GPN3: Personal Safety at Work

[www.rtpi.org.uk/item/1495/23/5/3](http://www.rtpi.org.uk/item/1495/23/5/3)

RTPI GPN4: Planning for Gypsies and Travellers [www.rtpi.org.uk/item/441/23/5/3](http://www.rtpi.org.uk/item/441/23/5/3)

Equality and Human Rights Commission

[www.equalityandhumanrights.com](http://www.equalityandhumanrights.com)

Equality Commission for Northern Ireland

[www.equalityni.org/site/default.asp?secid=home](http://www.equalityni.org/site/default.asp?secid=home)

Public Sector Duties

[www.equalityhumanrights.com/advice-and-guidance/public-sector-duties/](http://www.equalityhumanrights.com/advice-and-guidance/public-sector-duties/)

Equality Bill 2009

[www.publications.parliament.uk/pa/cm200809/cmbills/085/09085 iw/09085 iw en 1.htm](http://www.publications.parliament.uk/pa/cm200809/cmbills/085/09085 iw/09085 iw en 1.htm)

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<sup>2</sup> See RTPI GPN4: Planning for Gypsies and Travellers [www.rtpi.org.uk/item/441/23/5/3](http://www.rtpi.org.uk/item/441/23/5/3).

The principles contained in this note are relevant to town planners working in all parts of the UK and Northern Ireland.



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