

Propriety issues in relation to the Ministerial decision making on planning appeal and called in applications

1. The objective is to ensure that every decision is properly taken and to avoid the risk of successful legal challenge. The aim therefore is to ensure that the parties involved in planning cases are dealt with fairly, justly and openly: and that all the evidence is fully considered and that decisions are based only on material planning considerations to which all parties have had access. The law protects these principles and decisions can be challenged in the Courts if they are not followed.

2. Planning decisions must be taken in line with the principles of natural justice. This means that all the parties to a planning case which is to be determined by the Minister have the right to present their case and to see and comment on those of the other parties. The decision must not be based on any other evidence (including private representations), except published policies of the Welsh Government, which can be taken as being known to the parties. It is important to avoid giving any cause for suspicion that such private representations have been made and taken into account. If, during the process of reaching a decision, new evidence is produced which could affect the way the decision might be taken, it must be shared with the parties for them to comment on if they wish.

3. The Minister will need to consider whether they should:
 - take a decision on a planning case in which they have, or might be perceived as having, a private or constituency interest.
 - take planning decisions on planning cases within their constituency or those directly affecting their constituency.
 - take a decision on a planning case where evidence is to be given by or on behalf of a function of government for which they are responsible or where such function is a significant consideration in the case.

The Minister should:

- not discuss a case with any interested party
- not comment on any planning application, or matter that might become the subject of a planning application, in case they might be considered to have prejudged the matter if it subsequently came before them. If that were the case the Minister could not take part in the decision.

4. The Minister may as part of their wider duties need to attend meetings where development projects are described and visit sites where development is planned. In such circumstances the Minister should avoid expressing views on the planning merits of the scheme which might be seen as prejudicing the determination of any subsequent planning decision. Where a decision has come to the Minister for a decision such visits or meetings should be avoided if at all possible. If a meeting is unavoidable great care should be taken to avoid discussing the planning case and the Minister should not take the decision and make it clear to the parties they will not do so.

5. The Minister may make representations about a planning application in their constituency to the local planning authority, or the Planning Inspector if an appeal is to be decided by an inspector, or the Inspectorate where an application has been called in or an appeal recovered for Welsh Ministers to determine: but before the inquiry had closed. All such representations must be made openly and on the basis that they will be available to all interested parties. The Minister must make it clear that they are acting on behalf of their constituents, or that the views expressed are their own personal opinion and not in any way the Welsh Government's view. The Minister cannot take any part in the decision and must make it clear that they will have no special influence on the outcome.

6. Once a decision has been made it is final and the Welsh Ministers have no further jurisdiction in the matter unless the decision is overturned in the Courts. The Minister should not comment on it or discuss it afterwards. It is particularly important not to say or do anything that could prejudice the decision in the period (usually six weeks) that a decision may be subject to a legal challenge or, if a challenge is initiated within that period, during the further period before the case is concluded.