

SOUTH GLOUCESTERSHIRE COUNCIL

DEVELOPMENT SERVICES

PROTOCOL FOR OFFICERS TAKING AND USING PHOTOGRAPHS ON PRIVATE LAND IN CONNECTION WITH THEIR DUTIES UNDER THE PLANNING ACTS AND BUILDING REGULATIONS

DATE OF IMPLEMENTATION: DECEMBER 2008

PURPOSE OF THE PROTOCOL

- 1 This protocol has been developed to make clear the purposes, benefits, circumstances, uses, retention policy and safeguards which apply to the taking of photographs on private land and their use in relation to officers carrying out their duties under the planning acts and building regulations. The protocol does not apply to photographs taken from the public highway/public land.
- 2 The protocol seeks to ensure that in doing so these actions are compliant with the relevant requirements of the Data Protection Act 1998 (DP), Freedom of Information Act 2000 (FoI), Environmental Information Regulations (EIR) and other relevant legislation.

THE PURPOSES FOR TAKING PHOTOGRAPHS

- 3 In assessing building control and planning applications and in the enforcement of planning and building control regulations, and the council's associated policies, it is frequently necessary for the relevant case officer to have regard to the physical attributes of a site, and its relationship to its surroundings. This assessment can be carried out using a number of methods, which might include visiting the site and its surroundings or studying aerial photographs for example. The assessment can be further assisted by a photographic record being taken of the site and its surroundings, both to aid later technical appraisal by the case officer and to assist in the decision making processes of the council, when the recommendations of the case officer will be subject to review by peers, supervisors and in some cases Councillors. These photographs may be taken from the public highway or public land, or from private land.

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- 4 The taking of photographs may assist in helping the case officer determine, among other things:
- The existing characteristics of the site -such as structures, uses, topography, boundary treatments, dimensions
 - The relationship of the site to surrounding sites –such as intervisibility
 - Previous development, or development currently being carried out on the site
 - Public amenity and safety issues arising from the site

THE BENEFITS OF TAKING AND RETAINING PHOTOGRAPHS

- 5 The taking of and retention of photographs while an assessment under the planning or building regulations is being made is of benefit to the decision making process. The retention of the photographs following such a decision may also benefit:
- Any formal appeal, legal challenge, or audit of that decision
 - Any monitoring or enforcement of the decision
 - Any later decision being made in relation to the same site, or surrounding sites

USES TO WHICH PHOTOGRAPHS MAY BE PUT

- 6 Photographs taken by South Gloucestershire officers in connection with the carrying out functions of a public nature in the public interest under the planning acts and building control regulations may be used as follows:
- To assist the case officer in the assessment of a planning or buildings regulation pre-application enquiry, application, inspection, or enforcement investigation, leading to the making of a recommendation or giving of professional advice in relation to that matter.
 - To be used to support the formal presentation of such recommendations, leading to a decision being made
 - To support any subsequent appeal, challenge or audit of the decision made and the assessment process
 - To support any enforcement action which may be required to enforce the decision made, or to prevent a breach of control in the public interest

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- To support the assessment of later enquiries, applications, inspections, or investigations which relate to the same site, surrounding sites or sites where similar proposals or issues may be raised.

PUBLICATION AND RETENTION POLICY

- 7 Except as may be permitted by the law and the requirements of the FoI or EIR, photographs taken on private land of a site and their surroundings in connection with the above uses will not be made publicly available where they: -
- (a) are close up pictures of areas of a person's property which are not otherwise viewable from above, from the street / adjacent land, or by looking over the fence; or
 - (b) are pictures which show any interiors of homes, cars or other private property; or
 - (c) are pictures that contain people (whether close up or far away);
- and in all cases
- (d) where specific consent has not been given to publish
- 8 The photographs will be stored in association with the relevant case records, in either paper or electronic format (or other appropriate storage medium). Photographs will not be stored other than on the relevant planning file (whether held in paper or electronic format), and if an intermediary storage device is used to download or file photographs, the intermediary record should be immediately deleted once the transfer has been completed. This means that camera flash cards or individual PCs or personal drives must not be used to store photographs, and should be routinely cleansed. Photographs not to be made publicly available will be held confidentially either as part of the paper case record or electronically (where they will be held as 'sensitive' records). Scanning procedures will make clear the procedure to be followed to ensure such photographs are always labelled 'sensitive', and the responsibility for subsequently deciding whether a photograph will then be made publicly available (in accordance with paragraph 7) will rest with the case officer.

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- 9 Photographs will be retained for as long as the relevant associated case records are retained, in accordance with the council's Document Retention Strategy.

SAFEGUARDS

- 10 It is recognised that in some cases the taking of site photographs on private land may result in views which would otherwise be normally private being recorded. This may be perceived as a privacy concern by some. To safeguard against this the following procedures will be followed:

In the same way as notification and advice is given about the use and retention of personal data in relation to planning and building regulations pre-application enquiries or formal applications the applicants or their agents will be advised that photographs may be taken and retained to assist with the assessment of the application. Attention will be drawn to the existence of this protocol. Agreement will be assumed to have been given unless indicated otherwise.

In all other cases, at the time access is gained to the site, the site owner, occupier, developer, or their agent will be informed, and agreement sought to the taking, use, and retention of photographs. A note will be kept on the case file of the agreement having been given.

The same safeguards of informing the owner, occupier, or agent and gaining consent will be applied if photographs are taken from neighbouring private land.

It is also possible that photographs taken from a site may include views over the site boundary to other private land. However it is considered that any privacy issues will be protected by such photographs not being made publicly available.

- 10 Where a request is made by a site owner for photographs not to be taken, or for photographs which have been taken to be subsequently destroyed or deleted, such a request will be considered sympathetically and complied with except in cases where there is good reason to believe such photographs are or may later be required to be used as evidence of a breach of planning or building regulations

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control and/or in support of any formal appeal, legal challenge, audit or enforcement actions.

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