

**REPORT TO THE
PLANNING COMMITTEE**

31st March 2015

PUBLIC SPEAKING, SITE VISIT PROTOCOL AND CALL-IN WITHDRAWAL REVIEW

Purpose of the Report

To enable members to review these procedures, in the light of the request of Cabinet as contained within the Action Plan adopted after the Planning Peer Review

Recommendation

That Officers draw up in consultation with the Chairman, revised procedures taking into account the changes recommended in the report below and any other changes agreed by the Planning Committee

Reasons

To ensure that the Planning Committee's procedures remain fit for purpose

1. Background

- 1.1 Arising out of the recommendations to the Council the Planning Peer Review Team the Action Plan agreed by Cabinet requires that the Planning Committee review its public speaking arrangements, guillotine on late representations, the site visit protocol and withdrawal of call in procedures (Action 9(b)). This report is submitted to facilitate such a review by the Planning Committee, which is responsible for these matters.
- 1.2 In July 2008 the Planning Committee agreed to a package of measures entitled "Reforms to Planning Procedures" of which arrangements for public speaking at the Committee, and withdrawal from the Planning Committee of "called-in" application were part of. At the same time the Committee agreed to a guillotine on late representations and the submission of amended plans, and a policy voting on planning applications where a site visit had been held.
- 1.3 The Committee at the same time agreed that the changes should be reviewed by the Planning Committee within a 6 month period.
- 1.4 On the 9th September 2008 the Planning Committee agreed a revised site visit protocol
- 1.5 At its meeting on 30th September 2008 the Committee considered and agreed a requested amendment to the Committee's protocol on public speaking.
- 1.6 At its meeting on the 21st April 2009 the Committee agreed, having considered a detailed report, that the current procedures for the operation of the Planning Committee be continued.

2. Context for the Review

2.1 The Planning Review Team in their report of August 2014 considered the planning committee “*displays a number of strengths*” and they recommended that the Council should “*build on these to improve councillor engagement and decision making further*”. They noted that “*the operation of the Planning Committee is governed by a clear code of conduct and relevant protocols...public engagement in decision making is high with large number often attending planning committee to hear the debate and applicants and objectors taking advantage of public speaking opportunities...*”

2.2 The Council is reviewing its Statement of Community Involvement. A Council’s Statement of Community Involvement (SCI) describes how the community within a local authority area can get involved in the creation of both plan-making and decision-taking. In October 2014 Cabinet approved the Draft Newcastle-under-Lyme and Stoke-on-Trent SCI for public consultation purposes, to replace the Borough’s current Statement of Community Involvement adopted in 2006. A six week public consultation exercise took place between 10 November and 19 December 2014. The results of this consultation will be reported to a future meeting of Cabinet, after the views of the Planning Committee have been obtained, on the proposed response of the Council to the comments received on the Draft.

2.3 Some comments have been made, in response to the invitation to comment about the draft SCI, about the operation of the Planning Committee’s guillotine on late representations and it is considered that the appropriate time for the Planning Committee to give full consideration to these particular comments is when it considers the Statement of Community Involvement.

2.4 No comments were received, in the context of the consultation on the draft Statement of Community Involvement, on the Committee’s public speaking arrangements (which are described in general terms in the draft Statement of Community Involvement or on its site visit procedures. Were the Committee to make significant changes to those aspects of these procedures which relate to community involvement it might be necessary, in the context of the preparation of the SCI, to undertake further consultation.

3. **Public Speaking, or Direct Representation to Planning Committee, arrangements**

3.1 The existing arrangements are set out in Appendix A

3.2 With respect to the opportunity to make direct representations to the Planning Committee, it is worth commenting that there have been no comments received concerning this policy/procedure during the consultation on the draft Statement of Community Involvement. This suggests that the procedure is broadly accepted by all parties. There have upon occasion been complaints regarding certain aspects of the procedure over the years, including ones made under the Council’s corporate complaints procedure. No findings of maladministration by the Local Government Ombudsman with respect to either the procedure or its operation have been made.

3.3 There are considered to be a number of aspects which might benefit from review and clarification, and which have thrown up issues of interpretation which have had to be resolved by the Chairman of the Committee since its original adoption by the Committee in 2008, and its confirmation in 2009

a) **Should all live applications that come before the Planning Committee be subject to the right to request to speak?** Currently if following an initial determination (by the Committee) of an application, either a lack of progress on the securing of planning obligations, or a submission that obligations render a proposal unviable, or a change in planning circumstances results in an application coming back to the Committee for reconsideration, contributors are not invited to indicate whether they wish to address the

committee. Indeed some unsolicited requests (to speak) have been refused. This practice is known to be of concern to some applicants who might for example wish to address the Committee directly about section 106 requirements.

One of the fundamental tenets of the existing scheme is that it provides an even handed opportunity (to both supporters and objectors) to request to speak. Offering such a right to objectors in such circumstances would be likely to lead to representations being made at the Committee by parties that might well be unhelpful to the Committee, in that they would be inviting members of the Committee to reopen issues that should not be reopened, because of the determination already made. Officers would then have to advise members to ignore the representation, to the frustration of all parties.

Your officer's recommendation is that existing practice is appropriate and the scheme should not be amended, other than to clarify and confirm this practice

- b) **Should public speaking be invited when subsequent to a grant of permission, an informal request, to reconsider Section 106 requirements and triggers, is being considered by the Planning Committee?** In that this process could, and often has happened some considerable time after the original decision, it would be difficult to contact interested parties and maintain the even-handed aspect of the existing scheme. If an applicant wishes to secure a right to make a direct representation to the Planning Committee they can achieve that by making a formal application.
- c) **Should Parish and Town Councils be able to address the Planning Committee in their own right?** Newcastle's procedure provides the right only to applicants, their agents, and third parties, it does not permit any consultee, including Parish and Town Councils, to address the Planning Committee. The basis for this appears to have been that the views of consultees are already set out in reports and specifically ascribed to those bodies. That the Planning Committee has on occasion asked that a representative of the highway authority attend is not seen to have established a precedent as it is their technical guidance is being sought in those cases. Parish and Town Councils can however be considered to differ from other consultees in that they have a democratic representative role for their areas. It is known that some, but certainly not all, other Planning Committees do provide a specific slot for Parish and Town Councils in their public speaking arrangements. These include both County Councils (who consider relatively few applications) but also District Councils. The length of permitted speeches per speaker in those cases ranges from 3 minutes to 10 minutes.

Your officer's observation would be that in practice office bearers of affected Parish Councils are quite commonly addressing the Planning Committee with respect to applications, and indicating that they are speaking on behalf of both themselves and their Council. However the present procedure allows for a measure of evenhandedness to be maintained (with generally one objector and one supporter speaking. If the opportunity (to make direct representations to the Planning Committee) was provided to Parish Councils it could be said to be logical to provide the same opportunity to the Chair of the relevant Locality Action Partnership (at least in unparished areas) as well. Bearing in mind how in practice the system currently works, your officer would venture to suggest that changing it to expressly provide Parish Councils with an additional slot, with the associated extra time, is probably unnecessary, and undesirable if it was to result in a requirement to reduce the maximum allowable length of speech (currently 5 minutes).

- d) **Should County Councillors have the right to address the Planning Committee?** – The existing protocol allows for "councillors for the ward where the application has been made" to address the Planning Committee. Your officers have always interpreted this as referring to Borough Councillors who are not on the Planning Committee rather than County Councillors,

or indeed Parish Councillors, but it could and has been considered to be ambiguous. Given the potential consequences in terms of the length of the public speaking section of the meeting, it is recommended that the protocol be amended to make the position very clear – that the elected member right to address the meeting is for Borough Councillors only.

- e) **Should public speaking be allowed when the Borough Council is only a consultee, rather than the determining Planning Authority?** There have been several occasions since the introduction of Public speaking at the committee when in relation to a consultation the Chair of the Committee has indicated that they wish the Committee to hear from either applicants or more commonly representatives of local action groups opposed to the proposal being consulted upon. When it is undertaking a consultee role, the Borough Council does not invite comment from either members of the public or consultees upon the application (and indeed to do so would be likely to cause unnecessary and unhelpful confusion amongst members of the public who should be encouraged to direct their views to the decision maker). The right to request to address the Committee directly flows, in the Council's scheme, from having made a representation or submission. The Borough Council has no record of who has made representations concerning an application being determined by another Council so in practical terms the public speaking arrangements cannot be made to work in such a situation, or if they were only with the cooperation of the Local Planning Authority, which cannot be assumed.

Even if such information could be obtained for the Authority then to write to such parties providing them with sufficient opportunity to request to speak would be demanding both in terms of time (the usual notification is based upon a database built up during the course of the application). It is questionable whether it is an appropriate use of public funds, bearing in mind that the third parties and the applicant/agent will almost certainly have an opportunity to make direct representations to the actual decision-maker. That the Borough Council is fulfilling a different role in such cases and is not the decision maker should, it is suggested, be directly reflected, in the lack of opportunity for third parties and the applicant/agent to make direct representations to the Planning Committee. It is recommended that this position be made clear in the revised protocol

- f) **Does it matter if two speakers “share” a speaking slot (as has been done in several cases)?** Provided the time limit is respected there is no particular reason why, if the party wishes it, they should not “share” a speaking slot. It is recommended that this position be made clear in the revised protocol
- g) **If the number of speakers increases, beyond 3 should there be a related reduction in the length of time each is permitted?** In theory with multi member wards, the possibility that none of the members concerned are on the Planning Committee, 3 elected members could chose to speak, providing a total of 5 speakers, and thus 25 minutes speaking time under the current 5 minute limit. In practice this situation has never arisen the elected members presumably appreciating that 3 similar contributions each of 5 minutes would try the patience of the Committee. It is considered that it would be most inappropriate to reduce the applicant/agents speaking opportunity anyway
- h) **The current arrangement does not permit Members of the Committee to ask questions of any of the speakers. Is there any wish to change this.?** In that there is no evidence that the existing procedure is not assisting members to make decisions, it is suggested that there be no change to the existing procedures

4. **Site visit procedures and voting on applications which have been the subject of a site visit**

4.1 As indicated the Councils' protocol for site visits of the Planning Committee was last reviewed in 2008. A copy of the protocol is attached as Appendix B. The protocol has been developed out of years of experience with the types of issues that occur at such site visits, and no proposals for changes are suggested by officers, the procedure being considered to be fair provided the protocol is strictly applied. The observer status of parish Councils should be included in any revised protocol (it being referred to in the existing Planning Committee members protocol/code of conduct). A review of the latter is due to come forward later this year, but the observer status for Parish Councils is a useful method of demonstrating transparency and fairness in the Committees' procedures, and is understood to be appreciated by those Parish Councils that have been involved in committee site visits.

4.2 Given that they will have the opportunity to address the Planning Committee it is recommended the Protocol also be amended to indicate that local members who are not on the Planning Committee should be informed of such visits and invited to attend, as observers. That this is not currently the case has been a matter of concern for at least one member.

4.3 The decision (Appendix C) in July 2008 by the Committee that in the event of a Planning committee site visit being held those members who have not taken part in site visit may participate in the debate on the item has had consequences. Although considerable advance notice is given each year of potential site visit dates, (by the committee agreeing to an annual list of dates), some members have considered themselves to have been disadvantaged by a decision of the Committee to undertake a site visit. However the important principle behind the policy is that all members making a decision should have the same information, and thus if a site visit takes place, such a policy is required.

4.4 A member can of course have an impact upon a decision even if they are not able to take part in the actual vote. They can urge their colleagues to make a certain decision, knowing that they will not be able to be held accountable for that decision as they will not actually be party to it. As already indicated ward members who are not on the Planning Committee are in almost the same position, and the principle outlined above is considered of overriding importance.

4.5 A side consequence of the policy is that attendance at site visits is higher than it was prior to the introduction of the policy

4.6 The physical challenges posed by some site visits, particularly in rural areas, has been an issue, but your officers have generally been able, with the cooperation of the applicant, find solutions to these issues and take into account mobility issues. It would be unfortunate if such issues prevented site visits being held, when the circumstances are that they can be of assistance to the Committee.

4.7 The policy does not at present require members to stay throughout the duration of the site visit (to be able to subsequently vote). It is recommended that this be amended

5. **Withdrawal from the Planning Committee of "called in" applications**

5.1 Your officers have no particular proposals to amend this procedure (details of which are set out in Appendix D), other than it should expressly allow for the use of email (which in practice is the only possible way in which it can be guaranteed that members will be provided with a genuine opportunity to consider the draft report). There would be a concern about being too specific about timelines, given the pressure to get items onto an agenda

