

REVIEW OF PLANNING CODE OF CONDUCT

LEAD OFFICER: Tony Pomfret – Development Services Manager

REPORT AUTHOR: Martin Jepson – Head of Legal and Democratic Services

Summary and Recommendation: Members are asked to review the current procedure allowing Public Speaking at Planning Panel.

1. INTRODUCTION

- 1.1 Planning Panel's current procedure, allowing Public Speaking at Panel meetings, are shown at Appendix A to this report.
- 1.2 Those procedures were last reviewed 5 years ago. Although, by and large, the opportunity for public by speaking by the public is well-used and appears to be popular, it is felt that this might now be an appropriate time to review the procedures. Issues which have been specifically raised by and to your officers' are shown at Sections 2, 3, 4, 5 and 6 of this report. However, Members of the Planning Panel may wish to carry out a general review of the procedures at the same time.

2. LENGTH OF TIME FOR MEMBERS OF THE PUBLIC TO SPEAK

- 2.1 Traditionally, this has been limited to five minutes. This coincides with the length of time the General Standing Orders of the Council allows Members of the Council to speak.
- 2.2 Generally, five minutes appears to be an amount of time which many Councils use. However, last year, a talk at the Planning Summer School by Gregory Jones and Richard Honey barristers specialising in Planning Law suggested that the time allowed should be longer even indeterminate. It is understood that their reasoning will have been around ensuring that Members are fully informed of all relevant issues revolving around contentious planning applications. In allowing longer public speaking (both by objectors and applicants) the scope for either party applying for judicial review could be considerably reduced.
- 2.3 Members are therefore asked to consider the length of time to be afforded to public speakers.

3. EFFECT OF SPEAKING BY WARD MEMBERS

- 3.1 Ward Members are allowed to speak at the discretion of the Chairman, when they would normally be allowed to speak for five minutes. This should not normally be problematic.

- 3.2 However, on two occasions in the last year a Ward Member has helped to persuade the Planning Panel that they would be minded to refuse an application for which the Development Services Manager has recommended approval.
- 3.3 The Applicants were not present on either occasion and may not have been aware that the Ward Member spoke. An objector who is a member of the public, is required to give 7 days' notice of wishing to speak and the applicant is then warned that they may be needed to respond at Planning Panel to an objectors speech. Where a Ward Member is concerned, the applicant will not only probably not be aware of the Ward Member's intentions but is not strictly speaking able to respond in any case under our current procedures.
- 3.4 It should be said, however, that on both the occasions mentioned at 3.2, the Chairman exercised his discretion to allow the Applicants to respond at later meetings.
- 3.5 Should Members wish to review current arrangements (your Legal adviser's opinion is that this is an area where the Planning Panel might be susceptible to Judicial Review of future decisions decided in the same way) there are several possible solutions, including:-
- (a) Provisions specifically allowing Applicants to respond at subsequent Planning Panel meetings;
 - (b) Ward Members being requested to give at least seven days notice in writing should they wish to speak as an objector to an application with the Applicant being entitled to respond at the same meeting.
- 3.6 In relation to the length of time Ward Members should be allowed to speak if objecting. Members are asked to specifically consider, if they wish to extend public speaking time after considering Section2, what should be the relevant time allowed for speaking where a Ward Member attends to speak and object.

4. EFFECT OF SPEAKING BY MEMBERS WHO HAVE A PREJUDICIAL INTEREST

- 4.1 Members will know that one consequence of the adoption of the new Member Code of Conduct is that Members who have to declare both a Personal and Prejudicial interest on an application may still speak provided they leave the room immediately after speaking and do not vote.
- 4.2 Whilst this may not directly affect the Council's procedures on public speaking at Planning Panels, Members with a Personal and Prejudicial Interest will be able to speak at Planning Panel because "members of the public are allowed to make representations, give evidence or answer questions about the matter by statutory right or otherwise" (Standards Board advice – May 07)
- 4.3 Should Members decide to amend the time allowed for members of the public to speak, it may be worthwhile to specifically recommend to Council including in the procedure for public speaking and the Council's General Standing Orders, the amount of time members with both Personal and Prejudicial Interests are allowed to speak at Planning Panel.

5. EFFECT OF “MINDED TO” DECISIONS

- 5.1 A Parish Council has specifically made representations over an occasion where Members were “minded to” agree to the Parish Council’s representations requesting refusal of an application. They felt aggrieved that they were not able to make further representations when the matter was reconsidered at the next Planning Panel when it decided after all to follow the officers’ recommendation to approve. They asked that consideration be given to allowing the Parish Council to make further negotiations at the subsequent meeting,
- 5.2 The current procedure only allows objectors to make one verbal representation to the Planning Panel, whoever they might be. Therefore, the situation alluded to by the Parish Council is one which would apply to all objectors where a “minded to” decision is made.
- 5.3 In further response to the Parish Council, Members will be aware that there is no limit to the amount of written representations can be made on an application (subject to précis by the officer presenting the application).

6. WHERE A SITE VISIT IS AGREED

- 6.1 On occasion, where an objector has put forward a case, Members are minded to agree to make a site visit. Invariably, applicants are invited to either speak at that meeting or at a meeting after the site visit. The current rules do not prevent this. However, it has been suggested it would be more appropriate to require both parties to speak at the same meeting in order that a more balanced judgement can be made of the relevant merits of the two submissions.
- 6.2 It has also been suggested, in addition or as an alternative, that there should be a right to speak again, after a site visit, similar to the suggestion in Paragraph 5 concerning the right to speak again after a “minded to” decision.

7. CONCLUSIONS

- 7.1 The above points are those which have specifically been brought to your officers’ attention. However, Members are asked generally to review the Panel’s current procedure in public speaking.

8. FINANCIAL AND HUMAN RESOURCES IMPLICATIONS

- 8.1 A small amount of officer time in amending current procedures.

List of Appendices: Appendix A - Council's Current Procedures

List of Background Papers: Results of Consultation

List of Consultees:
Chairman of Planning Panel;
Chief Executive;
Head of Finance & Business
Development
Development Services Manager