

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.
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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 Section 2, 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

PROCEDURE FOR OBJECTORS AND APPLICANTS BEING HEARD AT
PLANNING PANEL MEETINGS

1. Objectors to applications are encouraged to follow the procedure of making written submissions which can be referred to in reports submitted to the Planning Panel. However, the opportunity to speak in front of the Panel is available.
2. Objectors wishing to speak should write to the Development Services Manager as quickly as possible and not later than six clear working days before the meeting of the Planning Panel. The letter should set out concisely the points to be raised verbally at the meeting. Requests to speak received less than six clear working days prior to the meeting will not be allowed.
3. Speaking time will be allocated strictly in order of written requests received. If the grounds for objection are common to several or all of the objectors then a spokesperson will be invited to present these collective views. The objector who writes in first will normally be invited to act as spokesperson.
4. In all cases where an objector wishes to speak, the applicant (or applicant's representative) will be offered the opportunity at the same meeting to reply to the points made. An applicant will not be allowed a hearing if no objectors are to speak. Given that the applicant (or applicant's representative) will be invited to address the Planning Panel, supporters of an application will not be allowed to speak.
5. No objector or applicant (or applicant's representative) should speak for more than five minutes other than in exceptional circumstances and with the permission of the Chairman of the meeting. Where more than one objector has spoken an applicant will be allowed sufficient time to respond adequately to all objections raised.
6. The opportunity to speak will only be allowed on one occasion and usually at the meeting which decides whether or not permission should be granted. If the Panel defers a decision, usually to enable a site visit to take place, an objector (or the applicant) who has previously spoken at a meeting will not be allowed to address the Panel on the same application at a subsequent meeting but their views will be considered.
7. Objectors will be heard following the presentation of the Development Service Manager's report on the relevant application. The applicant (or representative) will be heard after the objectors have addressed the meeting.
8. In order not to cause unnecessary waiting time to objectors and applicants the Planning Panel will, when considering applications, deal first with those applications where objectors wish to speak.
9. With the Chairman's permission, Members of the Panel or officers will be allowed to ask questions of the objectors and/or the applicant about the planning issues raised.

10. Following consideration of the application the objectors and applicant (or representative) may leave the meeting.
11. Any objection deemed by the Development Services Manager to be defamatory or which relates to a specific officer or Member or an issue which is subject to the Data Protection Act will not fall within the scope of this scheme and the objector will be informed in writing of the reason for such a matter not going forward to a meeting. If such an issue is raised at the meeting, the Development Services Manager will so advise the Chairman who will stop the objector/applicant.
12. In the circumstance of an application made by the Council under the provisions of the Town and Country Planning General Regulations 1992 to which objection has been made, the same facilities will be allowed with the additional benefit of being able to submit further written questions at the meeting of Full council at which the decision is made.

Note:

- (i) Upon arrival at the Council Offices, please report to the reception desk from where you will be directed to the Bainbridge Room.
- (ii) Please make your presence known to the Committee Clerk who will advise you of the procedures to be followed.
- (iii) When speaking to the Chairman it is suggested that "Mr/Madam Chairman" is an appropriate form of address.
- (iv) Meetings are open to the public - anyone can attend whether or not they have elected to speak.
- (v) If you have any queries in advance of the meeting please do not hesitate to contact staff in the planning department who will be pleased to assist (tel. 01946 598418/598421).

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