

**STANDARDS COMMITTEE
14 MARCH 2018**

**PROTOCOL OF GOOD PRACTICE FOR COUNCILLORS DEALING WITH
PLANNING MATTERS**

Cabinet Member(s): Councillor Margaret Squires and Councillor Richard Chesterton

Responsible Officer: Group Manager for Legal Services and Monitoring Officer, Kathryn Tebbey

Reason for Report: To consider whether to make changes to the Protocol of Good Practice for Councillors dealing with planning matters (Protocol).

RECOMMENDATIONS: That the Standards Committee considers:

- (a) whether to recommend changes be made to the Protocol addressing the points set out in this report, in particular by reference to paragraphs 2.5, 3.6 and 4.6; and
- (b) accordingly, whether to support Motion 541 moved by Cllr Mrs J Roach and referred to this the Standards Committee (reproduced at paragraph 4.1 of this report)

Relationship to Corporate Plan: A sound process for determining applications through Planning Committee assists the Council in fulfilling Priority 2: Homes - Aim 3 Planning and Enhancing the Built Environment

Financial Implications: None arising from this report.

Legal Implications: These are explained in the Introduction to this Report.

Risk Assessment: None arising from this report.

Equality Impact Assessment: None arising from this report.

1.0 Introduction

1.1 Section 9 of the Protocol of Good Practice for Councillors Dealing with Planning Matters (“the Protocol”) on page 238 of the current version of the Constitution reads as follows:

9.1 *Public Question Time is available at the beginning of the meeting for those present to ask questions of the committee, this allows an opportunity for those additional people who wish to speak on an application.*

9.2 *A clear procedure for speaking at committee meetings was approved by Council on 31 August 2016, for applications reserved for individual consideration, the Cahirman will call those who have indicated a wish to speak in the following order: officer, objector (1),*

applicant/agent/supporter (1), parish council (3 minutes each) and ward member(s) (5 minutes each). (for clarity: only one person may speak in favour of an application and one person in objection).

9.3 *Questioning of speakers for reasons of clarification be allowed through the Chairman and apply to the applicant and objector only.*

- 1.2 Rights to speak at Planning Committees up and down the country are rarely seen to be perfect from the standpoint of a person interested in a particular matter – whether it's the order of the speakers, how many can speak and for how long, or whether there is a right of reply or comeback during the course of members' debate. The challenge is to get an appropriate balance between the proper conduct of the meeting and consideration of each item of business (lawfulness, fair process, orderly conduct, duration etc.) and the participation of those with an interest in such business.
- 1.3 In terms of process and procedure, the consideration and determination of many planning matters (whether applications or other formal processes) is partly derived from statute (e.g. consultations, time limits etc.) and partly from the Council's own Constitution (e.g. delegations, call-in etc.). It is the Council's Constitution which determines public speaking rights – in theory, no public speaking rights could be accorded, but that would clearly be contrary to all reasonable expectations of public participation and fairness.
- 1.4 The Monitoring Officer's principal concern is that, whatever procedure is adopted, it should be clearly set out and be applied in a manner which is fair, consistent and balanced – apart from appeals and challenges to the substantive planning merits of a decision, the procedure followed, if tainted by bias or procedural impropriety, is also subject to scrutiny by Planning Inspectors (awards of costs) and the courts (judicial review).
- 1.5 It is recognised that public perception of the planning system is often unfavourable – and the Council is not unique or different in that respect from many others. Often this perception derives from an inherent conflict between the interests of those promoting or affected by development proposals and the balance applied by the Planning Committee when assessing such proposals against the development plan and relevant material considerations. Although quasi-judicial in terms of its role, the Planning Committee is not a court examining a point in forensic detail and is not adversarial in nature. It starts with the development plan and then considers whether relevant material considerations indicate a decision which differs from the development plan. Crucially, however unpalatable, the Planning Committee is expected to be impartial – it is not there to decide an application in accordance with what the applicant or objector or local community wants and this is often an uncomfortable position to be in.

2.0 **Paragraph 9.1 of the Protocol – Public Question Time**

- 2.1 The Protocol allows people to speak in relation to a planning application at Public Question Time – others then speak when the application itself is called for debate. Currently, PQT is used by many (lawfully in accordance with the Constitution) as an opportunity to speak on an application or to criticise the

Planning Committee or officers, with a question tagged on at the end for good measure. This presents a number of challenges, in that PQT:

- (a) becomes lengthy thus increasing the duration of meetings;
- (b) circumvents the deliberate choice to restrict the order and number of speakers on a planning application;
- (c) creates an imbalance in favour, for the most part, of objectors; and
- (d) becomes divorced from the consideration of the application itself.

2.2 The question is this – if additional speakers are to be allowed at PQT, what is the point of a limit when it comes to the application itself? Why not instead allow the Chairman to use his/her discretion - perhaps if an application is major or particularly contentious or the impacts clearly vary between objectors? It is always a difficult position for the Chairman to be in when it comes to the use of discretion and deciding whether to use it or not. However, the key outcome must be that the overall balance between the objectors and the applicant (or agent/support) is preserved, with more time given to the applicant to address the additional points made.

2.3 The Monitoring Officer has not seen PQT used at any of the other 7 planning committees she has advised previously in the way it is at Mid Devon. Of course, she recognises that this may be exactly how members wish it to operate and that it is a neat way to overcome the constraints of the rules regarding those who may speak on an application - but the issues highlighted above are of concern and could be addressed shifting the focus to the public speaking rights in section 9.2 of the Protocol. Indeed, many of the planning committees restrict questions to those relating to items other than planning applications and enforcement items.

2.4 If, however, the view is that PQT should continue to allow the means of additional speaking rights, the Monitoring Officer suggests that the focus should be brought back to clear questions which require a factual answer relevant to the planning merits and impacts of the particular application - and assist the Planning Committee in understanding those merits and impacts. Contrast this with the rhetorical style often used e.g. “*will the Planning Committee do the right thing and refuse the application?*” The Chairman could then allow the speaker to explain briefly the reasons behind the question asked.

2.5 Options in relation to paragraph 9.1 of the Protocol might therefore be:

- (a) Leave it as it is;
- (b) Change the wording to:

“Public Question Time is available at the beginning of the meeting for those present to ask questions on agenda items, other than planning applications, enforcement reports and tree preservation orders to which paragraph 9.2 applies. Unless the Chairman indicates otherwise, one question per speaker per agenda item will be allowed. The Chairman may then, after the question has been put, invite the speaker to explain briefly the reasons behind the question.”

- (c) As (b) above, but deleting from the first sentence “*other than planning applications 9.2 applies.*”
- 2.6 The options above are put forward for discussion. Members may have other ideas or suggestions.
- 3.0 **Paragraph 9.2 of the Protocol – Ward Members and Objectors**
- 3.1 Members will recall that the Monitoring Officer had concerns about the application of this paragraph to Ward Members. Firstly, in relation to single member district wards, a Ward Member may not be able to attend Planning Committee. In most instances, this may be overcome by the Ward Member asking the Chairman to read out a statement in lieu of attending – it may be second-best, but at least the Ward Member’s views will be put. However, if the Ward Member has a disclosable pecuniary interest (“DPI”) in an application, they would not be able to speak, leaving the Ward without representation. In such circumstances, do members think that a neighbouring Ward Member should be allowed to step in at the request of the actual Ward Member? The risk of such an approach is that the neighbouring Ward Member may not be aware of the issues and/or might be perceived as the mouthpiece of actual Ward Member with a DPI – thus appearing to circumvent the prohibition on members with DPIs taking part.
- 3.2 Are there any other issues relating to single member wards which pose problems in terms of Ward Member representation at Planning Committee?
- 3.3 The Monitoring Officer would also invite the Standards Committee to consider the following circumstances:
- (a) Is there an issue of fairness and balance in multi-member wards where each Ward Member wishes to speak, particularly if they all want to make the same point for or against an application? Should they not nominate one to speak, as objectors and applicants do?
- (b) If a Ward Member, sitting on the Planning Committee, elects to speak as Ward Member in accordance with paragraph 9.2 prior to any debate, are they at risk of pre-determining the matter?
- 3.4 In some instances, a particular planning application may have material implications across ward boundaries – for example, the recent residential developments approved in Halberton Ward but adjacent to Uffculme village (Lower Culm Ward). Strictly speaking, the Ward Member is for Halberton. Should the adjacent Ward Members have the right to speak as well? And what about parish councils? Should this be spelled out or left to the discretion of the Chairman?
- 3.5 Turning to the question of how many objectors may speak, it is generally true that in most cases there are more objectors than there are supporters. However, part 1 of this report points out that a balanced and fair process is the core focus and this includes the applicant. For example, if five objectors chose to speak, but the applicant were limited to 3 minutes, this would hardly be balanced or fair and would probably not accord the applicant sufficient time

to address the points of objection. A general limit on speakers and that they nominate a spokesperson is common to many councils. It is recognised that, in some instances, it may be appropriate to depart from such a restriction, but if you allow up to a certain number, there may be cases where that would also prove unsatisfactory to some – and could still result in a potential imbalance in favour of the objectors. Rather, as discussed in part 4 of this report and in line with the general trend in other councils, the discretion of the Chairman should be emphasised. This has been captured in the suggestion at paragraph 3.5 below.

3.6 The Monitoring Officer puts forward the following change to the Protocol for discussion:

(a) Delete the following words from 9.2

“(for clarity: only one person may speak in favour of an application and one person in objection).”

(b) Add a new paragraph 9.3 as follows and renumber 9.3 to 9.4:

Only one objector and one supporter (applicant, agent, representative or supporter) may speak under paragraph 9.2. If the Chairman considers it reasonable and fair to do so, he/she may exercise his/her discretion to allow more than one objector or supporter to speak, but will ensure that a reasonable balance of time between objectors and supporters is maintained. Where the application would have demonstrable and material impacts on an adjacent parish and/or district ward, the Chairman may permit the parish council of that adjacent parish and/or the adjacent Ward Member to speak in addition to the rights of the parish council and Ward Member in whose area the application site is located.

4.0 **Paragraph 9.3 (existing) of the Protocol – clarification, correction etc.**

4.1 In the past few months, private individuals, councillors and a parish council have all raised concerns over why there is no right of reply or means to correct perceived errors of fact which arise during the course of members’ (closed) debate on an application. Further, in December, Cllr Mrs Jenny Roach put forward the following motion to Full Council:

Motion 541 (Councillor Mrs J Roach – 30 November 2017)

*The Council has before it a **MOTION** submitted for the first time:*

This Council reconsiders the time and times that it allows ward members to speak at the planning committee. The present system gives many opportunities to speak but allows the local member only one opportunity. At the very least Council should give elected Councillors the opportunity to correct incorrect statements, something that exists within standing orders but not allowed at the planning committee. At the last planning committee the situation that exists at the moment prevented me as the elected Councillor for Silverton for pointing out that the Highways advice was inconsistent with previous advice given on the same site.

4.2 The Monitoring Officer can confirm that such right of reply has not been included in planning committee procedures at other authorities she has advised. For that reason, she has taken the opportunity to raise the issue with counterparts nationally to see whether they do anything different. These are the comments made:

- *We had exactly this issue at my Council. What we eventually adopted as a process whereby the Local Ward Councillor (if not sitting on Planning Committee) was given an extra minute to speak at the end of the debate to correct any inaccuracies. In the interest of fairness, if the local cllr took up this opportunity then all of the other public speakers were also given an extra minute to speak. However, if the Ward Cllr chose not to use the extra minute, the other public speakers were not given the extra minute*
- *We use the Chair's discretion to allow limited clarification from objector or applicant/agent on occasions, but ensure this does not develop into negotiation*
- *Rather than write something into the Constitution (procedure rules or public speaking protocol) it may be better to rely on the common law right of the chair of the committee to invite a member of the public or professional to speak again as part of the discussion and debate on what they have heard, to check facts or issues more broadly, taking the sense of the room. The Chair may need to be even handed if this is perceived to favour the "for" or "against" but provided it is an open question and a fixed time limit and fair and even handed it could be one proponent and one opponent, rather than everyone who has spoken.*
- *If it is a question of accuracy or something that appears pressing and/or important our Chair may adjourn the meeting for a few minutes for a planning officer to speak with the person concerned and then report back to committee. That seems to satisfy all – even if the vote does not go with them!*
- *I advise planning committees in two councils and, while the rules are not materially different, the two chairmen take markedly different approaches to allowing public speakers to contribute again. Neither approach is wrong, and each is pragmatic, based on the culture of the organisation and the chairman's instinctive understanding of the needs of the meeting*
- *We allow public speakers to respond with factual information if a question arises after the public speaking session is over. This only happens if we invite their contribution: we don't allow unsolicited interruptions from the public gallery. It works well, has never developed into an undisciplined free for all, and has been useful in clarifying facts. Below is an extract from our public speaking protocol which governs it:*

"At the Chairman's discretion, members of the Strategic Planning Board or Planning Committee may ask, through the Chairman, any of the speakers listed above to clarify an issue of fact after their

*statement is concluded. Visiting Members, including Ward Councillors, may be questioned for 5 minutes, or longer at the Chairman's discretion. **The Chairman may also ask that questions of fact are answered by any speakers during the Members' discussion to clarify matters.** Speakers will not be permitted to ask questions of the Strategic Planning Board or Planning Committee or other speaker or to interrupt the Members' discussion on an individual planning application. The Constitution (paragraph 58 of the General Procedure Rules) provides Chairmen with powers to ensure good order during meetings."*

- 4.3 These are some of the issues that need to be considered:
- (a) Preservation of good order – no free for all
 - (b) The duration of meetings
 - (c) Fairness and balance
 - (d) The nature of any right of reply or clarification – who for, how long, in relation to what and, crucially when
- 4.4 In the comments received and mentioned above, significant emphasis is placed on the role of the Chairman in Planning Committee – a difficult role and not one which should be undermined. The current paragraph 9.3 recognises this – but it relates only to issues of clarification identified by the Planning Committee. Further, if every speaker took up a right of reply, this could easily add more than 5 minutes to the consideration of each application, often at the crucial moment when a decision is about to be taken – possibly leading to further debate and certainly requiring the re-statement of the proposal before taking a vote. Each meeting could easily be extended by up to an hour.
- 4.5 At a time when the length of meetings has been criticised, do members consider that such a right is justified and required? If a right is included, it will in all probability be taken up in most cases. If it is left to the discretion of the Chairman (perhaps if a hand is raised), the management of the meeting remains with the Chairman, recognising that this is quite a weighty responsibility. It is important that members support the Chairman in getting the balance right – pulling in different directions will not assist the Planning Committee or achieve better decision-making.
- 4.6 If members are of the view that they would like to see a limited right of reply, rather than allowing interruptions during the course of the debate or a minute to re-address the Planning Committee on all matters, do members feel that there should be a very brief (e.g. 30 seconds max) opportunity prior to a vote to correct any material errors of fact which have arisen during the course of the debate – so no opportunity for further expression of views on the application or the proposal, or to go over issues which were raised the first time (or could have been)?
- 4.7 The application of any new rights would need to be strictly managed to ensure that they are in line with what is agreed and stated in the Protocol – yet respecting the Chairman's inherent jurisdiction. Should any changes be introduced on trial basis for a fixed period to see how they work?

5.0 Issues raised at Standards Committee last year

5.1 Mr N Quinn made the following requests for changes to public speaking rights (minute 42 July 2017):

- (a) That more objectors be allowed to speak – *“having a limit of only one person being able to speak in objection of an application appears biased towards the applicant since there is normally only one applicant but tend to be many objectors”*. He also asked *“Could the system be changed where there was a disagreement on who should speak?”* See parts 3 and 4 of this report.
- (b) *Can this Committee make some provision to allow for the challenge of a verbal statement made during the consideration of an application?* See part 4 of this report.
- (c) *Could the system be changed to offer more support for this who are obviously concerned but whose objection is invalid? Would this Committee consider a requirement to offer support to objectors to help them with their presentation and/or do it for them?* The Council, its officers and the Planning Committee need to remain impartial. It is recognised that applicants will have commissioned professional and expert input. That option is also available to objectors – and some do so. However, for the most part, objectors represent themselves.

6.0 Next steps

6.1 If members conclude that changes should be made to the Protocol, these should be recommendations to Full Council. However, as the procedures affect the Planning Committee’s conduct of its meetings, the recommendation to Full Council should be sent via the Planning Committee on 21 March 2018 before going to Full Council on 25 April 2018. If Planning Committee disagrees with the recommendation, whilst it is open to the Standards Committee to insist on such changes being made, it would seem appropriate that the views of Planning Committee are referred back to the next meeting of the Standards Committee for it to decide on whether to revise its recommendation

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Circulation of the Report: Cllr M Squires, Cllr R Chesterton, Cllr P Colthorpe, Cllr J Roach

List of Background Papers:

Protocol of Good Practice for Councillors Dealing with Planning Matters
Minutes of Standards Committee – 26 July 2017 and 18 October 2017