

Report Title:	Pilot on Public Speaking Rights at Planning Panels.
Contains Confidential or Exempt Information?	NO.
Member reporting:	Councillor Kellaway Lead Member for Planning incl Health & Sustainability
Meeting and Date:	Planning and Housing Overview & Scrutiny Panel, 18 April 2018
Responsible Officer(s):	Russell O'Keefe, Executive Director, Place & Jenifer Jackson, Head of Planning
Wards affected:	All

REPORT SUMMARY

- 1 This report follows a pilot conducted on public speaking rights to planning panels. This followed a report to Full Council in September 2014 which proposed changes to public speaking rights, it was agreed to pilot those changes and report back to Planning and Housing Overview & Scrutiny before making any final changes to the Constitution.
- 2 The report sets out any learning from the pilot and proposes next steps.

1 DETAILS OF RECOMMENDATION(S)

RECOMMENDATION: That the Planning and Housing Overview & Scrutiny Panel notes the report and proposes that:

- i) The public speaking right pilot is concluded
- ii) The recommendations set out within this report are taken forward via the Planning Task & Finish Group to Full Council in a report to Council proposing formal amendments to the Constitution that secures the following changes:
 - a. Village Design Statements are not development plan documents and are not recognised as being similar to neighbourhood plans
 - b. Once a Neighbourhood Plan has been adopted, a neighbourhood plan steering group or successor group or constituted interest group operating in the locality ceases to qualify for public speaking
- iii) Only Parish Council's retain the separate right to speak at a Development Management Panel meeting save for those parts of the Borough which are non-parished and for which, once their plan is made, the Neighbourhood Forum should have the right to speak.

2 REASON(S) FOR RECOMMENDATION(S) AND OPTIONS CONSIDERED

- 2.1 In September 2014 Council agreed a pilot for changes to public speaking rights at Planning Panels. A review of the pilot has now been undertaken.

Table 1: Options

Option	Comments
Based on the review of the pilot propose further changes to public speaking rights at Panel	Learning from the pilot has informed the recommendations of this report as set out in detail below.

Option	Comments
This is the recommended option.	
<p>Make no changes to the Constitution as currently set out, based on learning from the pilot.</p> <p>This is not the recommended option.</p>	<p>If no changes are made then non accountable local bodies will retain the right to speak in addition to democratically elected Parish Councils and representors which will tip the balance in terms of equity of those able to speak for and against a proposal.</p>
<p>Carry out a fundamental review of speaking rights at Planning Panel using learning from other authorities.</p> <p>This is not the recommended option.</p>	<p>It is not considered that this is required. A review of the pilot and proposed way forward should suffice.</p>

Background

- 2.2 The pilot to test the changes made to public speaking was implemented in 2014 when neighbourhood planning was a relatively new level of plan making. Prior to that date applicants/their agents, parish council and those making representations had been entitled to speak at DM Panel meetings providing that they registered to do so by a set deadline. In 2014 the Ascot & Sunnings Neighbourhood Plan had been made (adopted) as the first Neighbourhood Plan in the borough and a number of other groups were working on drafting plans. The stated purpose of the changes to public speaking to provide for residents groups formed as a consequence of the adoption of a neighbourhood plan to speak was that it would “*ensure continuity of neighbourhood plan groups from preparing their plans and seeing them adopted.*”
- 2.3 Equally in relation to the introduction of public speaking by any resident group or commercial interest group at Panels following the adoption of a Neighbourhood Plan or equivalent which was considered to “*ensure that local interest groups have the opportunity to influence planning decision making in a public and transparent way*”.
- 2.4 The consideration in the report to Council at the time was that to not extend speaking rights as recommended, and trialled, was to not ensure continuity in plan making at a local level. This is not expanded on within the report to Council.

Neighbourhood Plan, or similar:

- 2.5 A Neighbourhood Plan is a development plan document which has a statutory basis set out in the Localism Act 2011. It is based on a designated area identified formally and legally through a Neighbourhood Forum; in parish areas this would be the Parish Council. It is based on evidence, goes through a number of consultation stages, it is formally examined; and, after a referendum in which the majority of residents endorse using it for making planning decisions, it can be adopted by the Council. It is then adopted planning policy which forms part of the Development Plan for the Borough.
- 2.6 A Village Design Statement is a Supplementary Planning Document. It relies upon a local plan policy on which to ‘hang’ the guidance contained therein. A VDS would usually be produced by a Parish Council, working with other parties, and the Council will then take it through a formal consultation process. The Council is then entitled to adopt

a VDS as a supplementary document offering detailed guidance on how development might be assessed in that village. A VDS is not a policy document.

- 2.7 It is concluded that a Neighbourhood Plan, as planning policy, has no comparable other than a local plan document. It is recommended therefore that speaking rights only apply in those areas of the Borough where a Neighbourhood Plan is being produced or has been made. This will be considered further below.

Speaking rights for Neighbourhood Plan Groups and Successor Groups

- 2.8 It should be made clear that speaking rights previously existed for Parish Councils alone; a parish council may still register to speak on an application falling within its parish area.
- 2.9 For the majority of the period since the changes were introduced in 2014 there has only been one made Neighbourhood Plan (NP) for Ascot & the Sunnings. In that plan area two parishes were brought together in a designated area and between them set up a neighbourhood plan steering group. The group was responsible for producing the plan. Once the plan was made (adopted) it has become 'owned' by the Borough Council to implement the policies through decision making on planning applications. At this point the parish council formed steering group would cease to exist as their hard work has been completed.
- 2.10 Until late 2018 a successor organisation known as the Ascot and Sunnings Neighbourhood Plan Delivery Group had been making comments on planning applications, submitting statements in relation to planning appeals and appearing at the Windsor Rural development management Panel to speak. Sometimes the Delivery Group mirrored the comments of the parish council and other times they did not. More recently the Delivery Group has not attended meetings to speak and makes few comments on applications.
- 2.11 The Parish Councils for that plan area continue to comment on applications with reference to the policies in the Neighbourhood Plan and to speak at meetings in the same regard.
- 2.12 The Borough has one other made plan currently covering Hurley and the Walthams. Again this was produced by a steering group made up of representatives from the three parish councils/parish meetings for which the designated area was formally identified. Following the examination of that plan the steering group was disbanded. The relevant parish councils' are now engaged in commenting on applications with reference to policies in that NP.
- 2.13 It is considered that the speaking rights and time identified for Parish Councils which can be used to address the Panel and point out issues of fact with reference to policy, or interpretation of policy and the background to it being developed, provides the continuity to plan making. The Parish Councils are elected to represent their local populace whilst 'successor organisations' are not so accountable or elected.

Non-parished areas of the Borough

- 2.14 In this Borough there are two areas which are not within a Parish: Windsor and Maidenhead. It is recommended that, in these areas, speaking rights should be given to a formally constituted Neighbourhood Forum when their plan has been made. Within Windsor there are two active plan making groups, Windsor 2030 producing a business led plan and Windsor Neighbourhood Plan producing a resident led plan for the area outside of the main town centre.

Public speaking for any resident group or commercial interest group

- 2.15 When public speaking was first introduced by the Council in relation to planning panels there was a provision for those making representations to a proposal to speak. The procedure for registering to speak is long established and operates on a first come, first served basis with the option for those securing the right to speak sharing the time with others who are also interested in being heard. It included the option for local interest groups to register, the Society for the Protection of Ascot and its Environs is a good example of a local group which has long been commenting on applications and taking up the rights to appear in person to set out the representations from their membership.
- 2.16 The trial allowed for an extension of rights thus giving parish councils, neighbourhood plan groups or successor groups and local resident groups time to speak, cumulatively for 6 minutes (2 minutes per group). The applicant has 3 minutes and the representors have 3 minutes. The report to Cabinet in September 2014 noted that one of the implications of the trial is the impact on natural justice as the balance of views voiced may no longer be the same. As that report contained no review of the process that had been operating to that point there is no indication of it having been unsatisfactory to any party. Having reviewed the available documentation it is considered that the trial was simply to offer the opportunity for more local groups and people to be able to speak at the Panel meeting rather than observe proceedings.

The Panel decision: Section 38(6) of the Planning Act

- 2.17 It is beholden on the planning authority, whether that is a Panel of Members or an officer acting under delegated powers, to reach a decision on each and every planning application on its own merits and in accordance with the policies in the Development Plan unless material considerations indicate otherwise. The Officer report clearly sets out the relevant policies, including those of a Neighbourhood Plan. The report also includes comments from the parish council and other groups together with comments received from individual residents noting how this has been dealt with in the report and whether or not it is a material planning matter. The number of representations made is not material to reaching a decision, it is the issues raised by representors which are considered.
- 2.18 The report to Council set out that the basis for the trial, in part, was to allow groups to influence the planning decision in a transparent and open way. All stakeholders have the opportunity to make representations on a planning proposal through the statutory consultation period, there is no need to speak publicly to the Panel to engage that right. Those written representations received are all recorded on a public (electronic) file and referenced in the officer report. Late representations received before the Panel meetings are also reported in a written update circulated at the meeting.

3 KEY IMPLICATIONS

- 3.16 The proposed revisions contained within this report require formal Council approval as they are changes to the Council Constitution. It is recommended that this Panel makes recommendations via the Constitution Working Group to Full Council to implement the changes set out.

Table 2: Key implications

Outcome	Unmet	Met	Exceeded	Significantly Exceeded	Date of delivery
Report to Council setting out proposed changes to the Constitution	Report considered by Council in September 2018	Report considered by Council in July 2018	Report considered by Council in June 2018	Report considered by Council in May 2018	July 2018
Implementation of constitutional changes	Changes take effect after 1 October 2018	Changes take effect from 30 September 2018	Changes take effect on 1 September 2018	Changes take effect from 30 July 2018	September 2018

4 FINANCIAL DETAILS / VALUE FOR MONEY

4.16 None.

5 LEGAL IMPLICATIONS

5.16 The Planning Practice Guidance covers the legal basis for consulting in writing with groups and statutory and no statutory bodies as part of the planning process; the weblinks to this information are contained in section 10.

5.17 Speaking at Panel is not set out in legislation but contained in the Council's own Constitution. The council has the power to amend speaking rights. If changes are sought to the Constitution and agreed there will be a consequent need to amend the Council's adopted Statement of Community Involvement. This document will need updating later this year in any event due to legislation changes relating to the rights to be consulted on a planning application where a Neighbourhood Plan has been made.

6 RISK MANAGEMENT

Table 4: Impact of risk and mitigation

Risks	Uncontrolled Risk	Controls	Controlled Risk
Reputational risk of non accountable local groups perceiving that they are not able to engage in the planning process	Medium	Direct local groups towards information on the Council website which explains how they can engage in the planning process	Low
The outcome is not met through changes to the Council constitution	Medium	Proceed through the planning task and finish group or via Council to make changes to	Low

Risks	Uncontrolled Risk	Controls	Controlled Risk
		the Constitution	

7 POTENTIAL IMPACTS

None.

8 CONSULTATION

None.

9 APPENDICES

The appendices to the report are as follows:

Appendix 1 Report to Council 23 September 2014

10 BACKGROUND DOCUMENTS

<https://www.gov.uk/guidance/consultation-and-pre-decision-matters>

<https://www.gov.uk/guidance/consultation-and-pre-decision-matters#Statutory-consultees>

<https://www.gov.uk/guidance/consultation-and-pre-decision-matters#Statutory-consultees-on-applications>

Parish Council as statutory consultee

<http://www.legislation.gov.uk/ukxi/2015/595/schedule/4/made>

11 CONSULTATION (MANDATORY)

Name of consultee	Post held	Date issued for comment	Date returned with comments
Cllr Coppinger	Lead Member for Planning	29.3.18	3.4.18
Alison Alexander	Managing Director	29.3.18	4.4.18
Russell O'Keefe	Executive Director	29.3.18	3.4.18
Andy Jeffs	Executive Director	29.3.18	3.4.18
Rob Stubbs	Section 151 Officer	29.3.18	3.4.18

REPORT HISTORY

Decision type: Key decision For information	Urgency item? No	To Follow item? n/a
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