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| Report Title: | Changes to the Council Constitution – Parts 2C 29.4 and Part 7F |
| Contains Confidential or Exempt Information? | NO - Part I |
| Member reporting: | Councillor Kellaway, Chairman of Planning and Housing Overview and Scrutiny Panel |
| Meeting and Date: | Planning and Housing Overview and Scrutiny Panel – 20 November 2018 |
| Responsible Officer(s): | Andy Jeffs, Executive Director & Jenifer Jackson, Head of Planning |
| Wards affected: | All |

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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. The report sets out the learning from the pilot and proposes changes to Part 7F of the Constitution to be reported to Full Council for approval.
2. The report also covers proposals to make provisions for mandatory training for Members.

1. DETAILS OF RECOMMENDATION(S)

RECOMMENDATION: That Planning and Housing Overview and Scrutiny Panel notes the report and agrees:

- i) The public speaking right pilot is concluded.
- ii) The recommendations agreed are taken forward to the next available Full Council in a report proposing formal amendments to the Constitution that secures the following:
 - 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.
 - c. Only Parish Councils 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 the Neighbourhood Forum has/will have the right to speak. For those Parish Councils progressing a Neighbourhood Plan either the Parish Council or the neighbourhood plan steering group is entitled to speak but not both.
- iii) Mandatory training for Members in relation to regulatory matters, which must have taken place since the Member was last elected.

Mandatory training attendance to be published on the council website.

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 and was reported back to Planning and Housing Overview and Scrutiny Panel in April 2018 following a meeting of the Planning and Housing Task and Finish Group, chaired by Cllr Kellaway.

Options

Table 1: Options arising from this report

| Option | Comments |
|---------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Based on the review of the pilot propose further changes to public speaking rights at Development Management Panels. Recommended option | Learning from the pilot has informed the changes now proposed. |
| Make no changes to the speaking rights. | 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. This will tip the balance in terms of equity for those able to speak for and against a proposal. |

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 councils and those making representations had been entitled to speak at Development Management (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.
- 2.5 A Neighbourhood Plan is a development plan document which has a statutory basis 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 usually 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, it is a material planning consideration.
- 2.7 It is concluded that a Neighbourhood Plan, as planning policy, has no comparable other than a local development 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 pre-2014 speaking rights existed for Parish Councils alone; a parish council may still register to speak for two minutes 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 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 early 2018 a successor organisation known as the Ascot and Sunnings Neighbourhood Plan Delivery Group had been regularly making comments on planning applications, submitting statements in relation to planning appeals and appearing at the Windsor Rural Panel to speak. Sometimes the 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 two other made plans currently covering Hurley and the Walthams and Eton and Eton Wick. The former 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. Groups such as these are not consultees in the planning

application process but are usually constituted local amenity bodies brought together with a common purpose.

- 2.16 The trial allowed for an extension of rights thus giving parish councils, and neighbourhood plan groups or successor groups and local resident groups time to speak, cumulatively for four minutes (two minutes for the parish and two minutes shared for other groups). The applicant has three minutes and the representors have three 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 to the panel clearly sets out the relevant policies, including those of a Neighbourhood Plan, and any relevant material planning considerations. 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 day of the panel meetings are also reported in a written update circulated at the meeting.

Mandatory training

- 2.19 Members serve on regulatory panels making decisions on matters such as planning and licencing; there are frequent changes in the planning legislation and it is key that members be updated on those changes. To recognise the importance of ensuring that members receive regular training relevant to the decision making process of any regulatory panel or sub-committee it is recommended that the constitution be amended to reflect this. This would amend the relevant section to insert the two additional sentences in italics as follows:

C29.4 No Member may be permitted to serve as a member or a substitute member of any regulatory Panel/Sub-Committee without first having attended a training session, *which must have taken place since the Councillor was last elected*. For the purpose of this rule, regulatory panels/sub-committees are any Development Management Panel, Licensing Panel or Appeals Panel. *Member attendance at mandatory training sessions will be published on the council website.*

2.20 The Member induction schedule for May 2019 will take this requirement into account, ensuring all Members are able to access training before the first Development Management Panel meeting takes place in the new municipal year.

3. KEY IMPLICATIONS

3.1 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 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 January 2019 | Report considered by Council in December 2018 | n/a | n/a | December 2018 |
| Implementation of constitutional changes in relation to Part 7F | Changes take effect after 31 January 2019 | Changes take effect from 1 January 2019 | Changes take effect on 20 December 2019 | n/a | January 2019 |
| Implementation of constitutional changes in relation to part 2C | n/a | Changes take effect from 3 May 2019 | n/a | n/a | May 2019 |

4. FINANCIAL DETAILS/ VALUE FOR MONEY

4.1 No financial implications.

5. LEGAL IMPLICATIONS

- 5.1 The Planning Practice Guidance covers the legal basis for consulting in writing with groups and statutory and non-statutory bodies as part of the planning process; the weblinks to this information are contained in section 10. In this context neither parish council's nor local amenity groups/interest groups are classified generally as statutory consultees. Where parish council's notify the council of a wish to be consulted on planning applications this is then legally required to happen. In recent changes to legislation neighbourhood forums are required to be consulted on planning applications.
- 5.2 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 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 3: 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 and brief them through the parish stakeholder group | 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 the Constitution | Low |
| Decision makers are not up to date on relevant matters to the decision made and thus the decision is not sound. | High | Require members to be updated on relevant matters to their decision making on regulatory panels and sub-committees. | Low |

7. POTENTIAL IMPACTS

7.1 None.

8. CONSULTATION

- The report was considered by Planning & Housing Overview and Scrutiny Panel in April 2018, it was determined to proceed to Council for a decision to end the pilot. The report above and its recommendations are based on the outcome of the Panel meeting and informed by the Task and Finish Group discussions.

9. TIMETABLE FOR IMPLEMENTATION

9.1 The full implementation stages are set out in table 4.

Table 4: Implementation timetable

| Date | Details |
|----------------|-----------------------------------------------------------------------------------------------------------------------------------------|
| 1 January 2019 | Implement changes to public speaking as set out in the recommendations. |
| 1 January 2019 | Update relevant guidance and templates including letters inviting the public and others to attend panel and to speak to an application. |
| 1 January 2019 | Update the wording in the constitution part 7F as per appendix 1 |
| May 2019 | Ensure members receive training in accordance with the requirements of the constitution, as amended |

10. APPENDICES

10.1 This report is supported by 2 appendices:

- Revised part 7F of the council constitution
- Report to council on 23 September 2014

11. BACKGROUND DOCUMENTS

11.1 This report is supported by 4 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>.

12. CONSULTATION (MANDATORY)

| Name of consultee | Post held | Date sent | Date returned |
|--------------------------|-----------------------------------------------|------------------|----------------------|
| Cllr Coppinger | Lead Member for Planning | 8.11.18 | |
| Russell O'Keefe | Acting Managing Director | 8.11.18 | 8.11.18 |
| Rob Stubbs | Section 151 Officer | 8.11.18 | |
| Elaine Browne | Interim Head of Law and Governance | 8.11.18 | |
| Karen Shepherd | Service Lead Governance | 8.11.18 | 12.11.18 |
| Nikki Craig | Head of HR and Corporate Projects | 8.11.18 | 12.11.18 |
| Louisa Dean | Communications | 8.11.18 | |
| Andy Jeffs | Executive Director | 8.11.18 | 9.11.18 |
| Kevin McDaniel | Director of Children's Services | 8.11.18 | |
| Angela Morris | Director of Adult Social Services | 8.11.18 | |
| Hilary Hall | Deputy Director of Commissioning and Strategy | 8.11.18 | 9.11.18 |
| Ashley Smith | Deputy Head of Planning | 8.11.18 | 9.11.18 |

REPORT HISTORY

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|----------------------------------------------------------------|----------------------------|------------------------|
| Decision type: Key decision | Urgency item? No | To Follow item? |
| Report Author: Jenifer Jackson, Head of Planning, 01628 796042 | | |