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PLANNING COMMITTEE

17th FEBRUARY 2021

REPORT OF MONITORING OFFICER

A.4 THE PLANNING COMMITTEE'S PUBLIC SPEAKING SCHEME

PURPOSE OF THE REPORT:

For the Planning Committee to consider recommending amendments to Full Council to re-arrange the order of speakers in the Public Speaking Scheme to ensure that the Ward Councillor spoke last on a planning application prior to the Planning Committee's determination.

1. EXECUTIVE SUMMARY

At its meeting in December 2020, the Portfolio Holder for Corporate Finance and Governance Constitution Review Working Party (CRWP) discussed the order of speakers within the Public Speaking Scheme for the Planning Committee and whether it should be changed, for example, in order to allow the relevant Ward Member(s) to speak last (rather than the applicant/agent as at the present time).

Council Procedure Rule (CPR) 40 (which relates to the public speaking schemes operated by the Planning Committee and the Planning Policy & Local Plan Committee) currently states (following an amendment in July 2020):-

"The schemes shall be in such a form as the Full Council determines having considered a recommendation from the relevant Committee."

Any amendment to Public Speaking Scheme proposed by the CRWP must be submitted to the Planning Committee for its endorsement. The Scheme, as then approved by the Planning Committee, would then have to be submitted to Full Council for its formal adoption.

Members of the CRWP consulted with their respective political groups to canvass opinions on the principle of whether the order of speakers should be rearranged, so that the Ward Councillor speaks last rather than the Applicant/Developer. The outcome of such consultation, was that the majority of members felt the Scheme should be amended to allow the Ward Councillor to speak last during the public speaking part of the Planning Committee meeting.

RECOMMENDATION:

That the Planning Committee:

- (a) considers amending its Public Speaking Scheme and re-arrange the order of speakers to ensure that the Ward Councillor spoke last on a**

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planning application at a Planning Committee; and

(b) RECOMMENDS TO COUNCIL that the Planning Committee's Public Speaking Scheme is amended so that the Ward Councillor speaks last in the order of speakers.

2. BACKGROUND

The Constitution is reviewed annually by the Monitoring Officer and if changes are required, the Constitution Review Portfolio Holder Working Party (CRWP) is established. In March 2020, the outcome of the review conducted in early 2020 was contained within a published Report to Cabinet, although the meeting was cancelled due to COVID-19.

Part of the 2020 review related to the Planning Committee's Public Speaking Scheme and it was recommended that, going forward, the content of these Schemes will be determined by the Full Council rather than by the Monitoring Officer (in consultation with the Head of Planning and the relevant Committee Chairman).

The Leader of the Council's decision, on behalf of the Cabinet, taken on 24 April 2020 was that Cabinet recommended to Council the proposed changes to Rule 40 of Council Procedure Rules as set out in the Report (Appendix N). In addition, the Monitoring Officer be requested to undertake a review of the Public Speaking Scheme for the Planning Committee in accordance with Council Procedure Rule 40, as amended.

At its meeting on 21st July 2020, Full Council resolved that the Monitoring Officer be requested to undertake a review of the Public Speaking Scheme for the Planning Committee, in accordance with Council Procedure Rule 40, as now amended.

3. REPRESENTATIONS

Constitution Review Working Party Notes of meeting on 22nd January 2021:

Further to its discussions at its meeting held on 18 December 2020 (Note 2 referred), the Working Party discussed the feedback from Members' respective political groups on the principle of whether the order of speakers should be rearranged so that the Ward Councillor spoke last on a planning application at a Planning Committee meeting rather than the Applicant/Developer, who was currently listed last under that Committee's public speaking scheme.

*The Working Party **AGREED** that –*

(a) the Planning Committee be requested to consider amending its Public Speaking Scheme and re-arrange the order of speakers to ensure that the Ward Councillor spoke last on a planning application at a Planning Committee meeting rather than the Applicant/Developer, who was currently listed last under that Committee's public speaking scheme; and

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(b) examples of the practice used at other local authorities be provided to the Planning Committee in order to assist it in its deliberations.

4. POLICY & GUIDANCE

There are no statutory requirements regarding the content of Planning Committee Public Speaking Schemes, and the Council can adopt its own local protocols so long as it is fair and observes natural justice.

In 2015, the Council adopted the Members' Planning Code/Protocol which was subsequently reviewed in 2018. The Council's Protocol is based on the Model Council Members' Planning Code or Protocol produced by the national body "*Lawyers in Local Government (LLG)*". The Model Code was produced in accordance with the changes to the ethical framework in 2012 and guidance issued by the then DCLG.

In December 2019, the Local Government Association issued its Probity in Planning Guidance – Advice for Councillors and Officers making planning decisions, which is included as Appendix A.

The LGA Guidance refers to Public Speaking at Planning Committees in Section 10 on page 18 and states:

"Whether to allow public speaking at a Planning Committee or not is up to each local authority. Most local planning authorities do allow it and some authorities film and broadcast committee meetings..."

Where public speaking is allowed, clear protocols should be established about who is allowed to speak, including provisions for applicants, supporters, ward councillors, parish councillors and third party objectors".

The Standards Committee at its meeting on 3rd February 2021, noted the outcome of a review undertaken following the 2019 publication and agreed no changes were required to the Council's adopted Members' Planning Protocol as a result of the LGA's Guidance. The Council's Planning Protocol is integrated within the Constitution at Part 6 and contains a small section on public speaking at meetings, which is as follows:

8. Public Speaking at Meetings

- **Don't** allow members of the public to communicate with you during the Committee's proceedings (orally or in writing) other than through the scheme for public speaking or through the Chairman, as this may give the appearance of bias.
- **Do** ensure that you comply with the Council's procedures in respect of public speaking.

The Council's procedures in respect of public speaking are set out in the current adopted Scheme, which is attached as Appendix B. The purpose of this Report is consider the order of speakers, which is as follows:

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WHO CAN SPEAK & TIME PERMITTED? All speakers must be aged 18 or over:

- One member of the public who wishes to comment on or to speak in favour of the application or someone who produces a signed, written authority to speak on their behalf. A maximum of 3 minutes is allowed;
- One member of the public who wishes to comment on or speak against the application or someone who produces a signed, written authority to speak on their behalf. A maximum of 3 minutes is allowed;
- Where the proposed development is in the area of a Parish or Town Council, one Parish or Town Council representative. A maximum of 3 minutes is allowed;
- All District Councillors for the ward where the development is situated (“ward member”) or (if the ward member is unable to attend the meeting) a District Councillor appointed in writing by the ward member. Member(s) of adjacent wards or wards impacted by the proposed development may also speak with the agreement of the Chairman. Permission for District Councillors to speak is subject to the Council’s Code of Conduct and the declarations of interest provisions will apply. A maximum of 5 minutes is allowed;

In accordance, with Council Procedure Rule 34.1, this Public Speaking Scheme takes precedence and no other Member shall be entitled to address or speak to the Planning Committee under Rule 34.1;

- The applicant, his agent or representative; or (where applicable) one person the subject of the potential enforcement action or directly affected by the potential confirmation of a tree preservation order, his agent or representative. A maximum of 3 minutes is allowed; and
- A member of the Council’s Cabinet may also be permitted to speak on any application but only if the proposed development has a direct impact on the portfolio for which the Cabinet member is responsible. The Leader of the Council must approve the Cabinet Member making representations to the Planning Committee. A maximum of 3 minutes is allowed.

5. EXAMPLES OF PRACTICE ELSEWHERE

Planning Committee Public Speaking Schemes were located for 6 other local authorities in Essex and Suffolk and the outcome of the research undertaken revealed:

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| • no order for speakers/or the order was unclear | 5 |
| • councillors expressly stated as speaking last | 1 |
| • no mention of ward councillors | 1 |
| • numbers of speakers limited | 5 |
| • numbers of speakers unlimited | 1 |

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The research concluded in most cases local authorities do refer to the same category of speakers as Tendring, but the order is not specified, and in one instance the order specified councillors (who were not part of the committee) to speak last.

6. PROPOSAL

Following a referral from the Constitution Review Working Group the Planning Committee consider amending its Public Speaking Scheme and re-arrange the order of speakers to ensure that the Ward Councillor spoke last on a planning application at a Planning Committee meeting rather than the Applicant/Developer, who was currently listed last under that Committee's public speaking scheme.

7. ADDITIONAL CONSIDERATIONS

Public Sector Equality Duty (PSED)

In making your decision you must have regard to the PSED under section 149 of the Equality Act 2010 (as amended). This means that the Council must have due regard to the need in discharging its functions to:

- A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s); and
- C. Foster good relations between people who share a protected characteristic and those who do not, including tackling prejudice and promoting understanding.

The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, being married or in a civil partnership, race including colour, nationality and ethnic or national origin, religion or belief, sex and sexual orientation.

The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in section 149 and section 149 is only one factor that needs to be considered, and may be balanced against other relevant factors.

Human Rights

In making your decision, you should be aware of and take into account any implications that may arise from the Human Rights Act 1998 (as amended). Under the Act, it is unlawful for a public authority such as the Tendring District Council to act in a manner that is incompatible with the European Convention on Human Rights.

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You are referred specifically to Article 8 (right to respect for private and family life), Article 1 of the First Protocol (protection of property) and Article 14 (right to freedom from discrimination).

It is not considered that the recommendation to reorder the Public Speaking Scheme interferes with the applicants' or their agents' rights, protections and freedoms so long as the Public Speaking Scheme is applied equally and fairly, in that it offers opportunities for representations to be made by those impacted upon by the decision, either in the positive or negative.

8. BACKGROUND PAPERS

Planning Committee Public Speaking Schemes for Babergh District Council, Basildon Borough Council, Colchester Borough Council, East Suffolk Council, Ipswich Borough Council and Rochford District Council.

9. APPENDICES

APPENDIX A: Local Government Association Probity in Planning Guidance – Advice for Councillors and Officers making planning decisions

APPENDIX B – Tendring District Council's Public Speaking Scheme.