



ADUR & WORTHING
COUNCILS

Worthing Borough Council Planning
Committee
26th February 2020
Agenda Item 9

Adur District Council Planning Committee
9th March 2020
Agenda Item ?

Joint Governance Committee
24th March 2020
Agenda Item [...]

Key Decision: No

Ward(s) Affected: All

Public Engagement with the Planning Process

Report by the Monitoring Officer

Executive Summary

1.0 Purpose

- 1.1 It is important that the public has the opportunity to engage with both Councils when exercising their statutory functions relating to being a Local Planning Authority.
- 1.2 This report seeks to update and amend the Council's existing arrangements in respect of public speaking at Planning Committees to ensure appropriate opportunity for public speaking, fairness in the procedure and compliance with the principles of natural justice.
- 1.3 Members are asked to approve the revised Public Speaking Protocols which form part of each Council's Constitution and recommend their adoption to each full Council.

2.0 Recommendations

- 2.1 Worthing Borough Council Planning Committee are asked to consider the report and make any comments to the Joint Governance Committee on 24th March 2020.
- 2.2 Adur District Council Planning Committee are asked to consider the report and make any comments to the Joint Governance Committee on 24th March 2020.
- 2.3 The Joint Governance Committee is asked to take into consideration the comments of the Planning Committee and consider the proposed revised Worthing Borough Council Protocol on Public Speaking and recommend its adoption as part of the Constitution to Worthing Borough Council.
- 2.4 The Joint Governance Committee is asked to take into consideration the comments of the Planning Committee and consider the proposed revised Adur District Council Protocol on Public Speaking and recommend its adoption as part of the Constitution to Adur District Council.
- 2.5 Consider the proposed recommendations for changes to the Scheme of Officer Delegations set out at paragraph 4.3 of the report and recommend their adoption to both Councils.

3.0 Context

- 3.1 It is important that the public have the opportunity to engage with the Council's statutory functions relating to planning, and the Councils encourage such engagement and participation in the process.
- 3.2 The Planning Committees, when considering planning applications, act as the Councils' Regulatory Committees, undertaking a quasi-judicial function. As such it is important that they act in the public interest, in accordance with human rights and equalities legislation and uphold the principles of natural justice and fairness.

To this end, when considering applications for planning permission, it is imperative that the Committee takes account of all relevant factors, and no irrelevant factors, that they come to the decision with an open mind and without bias or predetermination, and that they give equal opportunity to both applicants and their supporters, and to objectors.

3.3 To ensure compliance with such principles the Councils have each adopted a 'Protocol on Public Speaking at Planning Committees'. Each Protocol forms part of each Council's Constitution and has been formally adopted by the Councils.

3.4 As part of the ongoing regular review of our practices and procedures, the Protocols on Public Speaking have been reviewed by Officers and revised versions are proposed.

4.0 **Issues for consideration**

4.1 **Adur District Council - Protocol on Public Speaking at Planning Committee**

4.1.1 The proposed amended Protocol is attached to this report as Appendix 1, and with tracked changes for ease of reference at Appendix 2.

4.1.2 The current Protocol is silent about what issues the public may speak upon and it is proposed to be clear in the protocol that they may only speak on matters which are relevant to planning issues. Such provision will assist Members of the Committee in upholding the decision making principle of not taking account of irrelevant matters, as none should be presented to them.

4.1.3 The current Protocol allows objections from the objector, but only from the applicant in certain circumstances. This does not uphold the principles of fairness and it is proposed that public speaking opportunity should be allowed equally to the objector and to the supporters, including the applicant. The current arrangements also cause an inefficiency in the system on some occasions. For example if a planning application is recommended for approval by an Officer and Members are minded to refuse the application the applicant then has a right to speak, but having expected the application to be approved may not be in attendance and/or be prepared to make representation, so currently the Committee defer the application in such circumstances to enable the applicant to speak on the next occasion. This produces a delay and inefficiency in the decision making process and potential duplication of work

as the matter is considered twice. It is proposed that to eliminate this inefficiency and to uphold fairness, public speaking is allowed in all circumstances by both objectors and supports to an application.

4.1.4 Currently the arrangements for objectors to an application to speak are that generally only one is able to speak, on behalf of all objectors, and they must agree between themselves who will speak and collectively represent their views. The objector has a maximum of 3 minutes to make such representations. This presents some practical difficulties as usually the objectors are not known to each other, and often not keen to allow someone else, unknown to them, to speak on their behalf with no confidence that their own views will be properly represented; there is no opportunity for them to exchange views and prepare a collective representation. The current arrangement does not appear to uphold the principles of natural justice as it provides very limited opportunity for public engagement and it is therefore proposed that public speaking rights be extended to enable a maximum of 3 objectors to speak on any application with a maximum of 3 minutes each to make their representations to the Committee.

4.1.5 In addition to the public having a right to speak the current arrangements enable up to a maximum of 2 Ward Councillors to speak, subject to a maximum of one speaking for the application and one speaking against the application; they have up to 3 minutes each to address the Committee. It is proposed that this arrangement be retained. The current protocol also allows, in exceptional circumstances, for the Chairman to allow another Member to speak, if a Ward Councillor does not wish to, again subject to a maximum of one Councillor speaking for the application and one against. It is proposed that the need for exceptional circumstances be removed to allow the Chairman of the Planning Committee more flexibility and discretion to enable another District Councillor to speak in place of the relevant Ward Councillor.

4.1.6 It is proposed that the Protocol be amended to enable the supporters, and applicant, to a planning application, the same public speaking rights as the objectors. Any other arrangement could be seen as unfair and an indication of bias on the part of the Committee.

4.2 Worthing Borough Council - Protocol on Public Speaking at Planning Committee

4.2.1 The proposed amended Protocol is attached to this report as Appendix 3, and with tracked changes for ease of reference at Appendix 4.

- 4.2.2 The current Worthing Borough Council Protocol on Public Speaking at Planning Committee enables two Ward Councillors to speak, or one Ward Councillor and one Councillor from the adjacent Ward, or in exceptional circumstances another Borough Councillor. It is proposed that in the interests of efficiency this is amended to a maximum of two Councillors being able to speak, subject to one speaking for the application and one against, and that it is two Ward Councillors who are able to speak, or any other Councillor in the Ward Councillors place, with the Chairman's permission. Such an arrangement will give greater flexibility to Councillors as to who is best placed to make appropriate representations in respect of a particular application and retain sufficient discretion for the Chairman.
- 4.2.3 The Protocol provides for the length of a Councillor's speech to be at the Chairman's discretion but it is proposed for consistency that each speech is for a maximum of 3 minutes, as is the speech of an objector or supporter; but the Chairman retains overall discretion to allow speeches to be longer where relevant, appropriate and justifiable in the circumstances.
- 4.2.4 It is proposed to also incorporate a clause in the Protocol to enable the Chairperson to waive the Protocol, after consulting with the Committee Members and Legal Advisor, in appropriate circumstances. This would enable the Chairperson to tailor a more suitable public speaking arrangement, for example where an application was exceptionally complex, controversial or attracted high levels of public interest.

4.3 The Joint Officer Scheme of Delegations

- 4.3.1 Paragraph 3.6.5 of the Officer Scheme of Delegations provides the Head of Planning and Development with the authority to determine applications for planning permission. However the delegation shall not be exercised in the following circumstances:
- Applications requiring the Secretary of State to be notified under the Town and Country (Development Plans and Consultations) (Departures) Direction 2009;
 - Applications for development requiring an environmental impact assessment but excluding applications for a screening or scoping opinion in connection with an environmental impact assessment;
 - Applications comprising 'major' development within the meaning of the Town and Country Planning (General Permitted Development) Order;

- Applications for development which conflicts materially with the development plan;
- Applications materially affecting ancient monuments, and sites of special scientific interest;
- Applications made by, on behalf of, jointly with, or promoted by the Council, a Parish Council, West Sussex County Council, or any other Local Authority;
- Where the application has been made by a Member or an Officer;
- Where a Member of the Council not more than 28 days after validation of an application requests otherwise.

4.3.2 It is considered by Officers that 3 of these provisions do not facilitate good, agile, prudent decision making and that efficiency could be gained by making amendments whilst retaining sufficient balance and control.

- It is therefore proposed that the provision of: “Applications comprising ‘major’ development within the meaning of the Town and Country Planning (General Permitted Development) Order”, be amended to, “Applications comprising ‘major’ development within the meaning of the Town and Country Planning (General Permitted Development) Order, other than those where the proposed amendment is minor or non material”.
- It is further proposed that the provision of: “Where the application has been made by a Member or an Officer” is amended to “Where the application has been made by a Member of Adur District Council or Worthing Borough Council, or an Officer of either Council who is either The Chief Executive, a Chief Officer, Deputy Chief Officer, Planning Services Manager or Planning Policy Manager” or work within the Planning and Development Section.
- It is further proposed that the provision of: “Where a Member of the Council, not more than 28 days after validation of an application, requests otherwise” be amended to “Where a Member of the Council not more than 28 days after validation of an application, request otherwise, providing valid planning reasons”.

4.3.3 It is anticipated that these amendments would enable agile, streamlined decision making, whilst still ensuring independence and fairness in the Council's procedures and processes.

5.0 **Engagement and Communication**

5.1 Engagement and Communication has taken place with both the Adur District Council Planning Committee and the Worthing Borough Council Planning Committee. Both Committees have received and considered this report and have been invited to make comments, by way of consultation, to the Joint Governance Committee. The Joint Governance Committee are recommended to take into account any comments from the Planning Committees before determining this matter.

5.2 Engagement and Communication has taken place with the Head of Planning and Development, Democratic Services Officers and Planning lawyers.

6.0 **Financial Implications**

6.1 There are no direct financial implications arising from this proposal.

7.0 **Legal Implications**

7.1 The Council's governance arrangements are set out in their Constitutions; the Protocols on Public Speaking at Planning Committee and the Scheme of Officer Delegations form part of the Constitution. The authority of the Councils is sought to amend the Constitutions, other than in respect of minor or consequential amendments.

Background Papers

- Adur District Council Constitution
- Worthing Borough Council Constitution

Officer Contact Details:-

Susan Sale

Solicitor to the Councils and Monitoring Officer

01903 221119

Susan.sale@adur-worthing.gov.uk

Sustainability & Risk Assessment

1. Economic

Matter considered and no issues identified.

2. Social

2.1 Social Value

It is important that the public have the right to make representations to the Planning Committee when carrying out their quasi-judicial function considering planning applications. It ensures that all relevant factors are presented to the Committee, that the Committee engages with the public in making its decision and enhances public confidence in the democratic process.

2.2 Equality Issues

Matter considered and no issues identified.

2.3 Community Safety Issues (Section 17)

Matter considered and no issues identified.

2.4 Human Rights Issues

Providing the public with the opportunity to make representations to this quasi-judicial Committee, when determining planning applications, upholds the principles of the Human Rights Act.

3. Environmental

Matter considered and no issues identified.

4. Governance

Having a Public Speaking Protocol, formally adopted by both Councils, and forming part of their Constitutions, upholds the principles of robust governance arrangements.