

Wards Affected:

All Wards.

CHANGES TO SPEAKING RIGHTS AT DEVELOPMENT CONTROL COMMITTEE AND DEVELOPMENT CONTROL PANEL

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Executive Summary:

On 22 July 2015 the Constitution Commission recommended that Annex A of Part 22 - Access to Information Procedure Rules of the Constitution - be amended to address issues raised by Ward Councillors regarding the requirement to declare either an 'Objection' or 'Support' when seeking to speak at either Planning Committee or Panel. Ward Councillors considered this to be unreasonable. This was reported to the Development Control Committee on 8th September 2015 but was rejected pending a comprehensive review of speaking rights to be brought forward with a review of the Scheme of Delegation.

The proposed changes within this report are as a direct response to the resolution of the DCC which proposes comprehensive changes to speakers rights including addressing the concerns raised by the Constitution Committee, extending speaker rights to applicants/agent as well as to members of the public who wish to support applications. This is on the basis of fairness, equitability and the principles enshrined within the Localism Act 2011.

Whilst the changes seek to extend the rights of people to speak in respect of an application, it also seeks to limit the total time allowed for a member/s of the public to speak in objection to the application to one 3 minute period (currently three 3 minute periods). Similarly, the extended rights to speak in support of an application is likewise proposed to one 3 minute period.

Although it seems counterintuitive to extend speaker rights and then propose a reduction in the amount of time people can speak to a total of three minutes, it is noted that the existing regimes results in significant levels of repetition, often with three objectors saying the same thing. The changes will focus the comments being made as well as speeding up the process with associated cost saving to the authority.

1. Recommendation(s)

- 1.1 That the changes to Annex A of Part 22 - Access to Information Procedure Rules of the Constitution – as detailed at 1.2 and 1.3 below be presented to the Constitution Committee and then recommended to full Council for approval.

- 1.2 That speakers rights be changed at both the Development Control Committee (DCC) and the Development Control Panel (DCP) to allow:
- (a) The Ward member to speak at DCC/DCP without having to declare to the Service Director – Legal and Democratic Services Planning, Culture and Infrastructure an ‘Objection’ or ‘Support’;
 - (b) Remove the ‘Right to Reply’ requirement and simply allow the Applicant/Agent to speak in support of their application at DCC/DCP irrespective of the recommendation or objections received for 3 minutes.
 - (c) Reduce the numbers of speakers objecting to a scheme to one, 3 minute slot per application;
 - (d) Allow members of the public to speak in support of an application on the same basis as those objecting to an application with one, 3 minute per application;
- 1.3 Accordingly, Annex A, Part 22 - Access to Information Procedure Rules, of the Constitution (See Appendix 1) be amended as follows:
- (i) Amend Annex A (b) as follows:

‘Members of the public may request the right to speak at any meeting of the Development Control Committee and the Development Control Panel to object to a planning application. The number of requests to speak will be limited to ~~three~~ one per application ~~(not including any right to reply)~~. A single objector will be allowed to speak for a maximum of 3 minutes. Where there is more than one objector ~~or the objector is representing a group or organisation, they will be limited to 3 minutes representing a group or organisation in total, but more than one representative may speak on behalf of the group or organisation.~~ Both the numbers of speakers and the limit maybe extended at the Chair’s discretion.’
 - (ii) Add an additional paragraph to Annex A as follows:

‘Members of the public may request the right to speak at any meeting of the Development Control Committee and the Development Control Panel to support a planning application. The number of requests to speak will be limited to one per application. A single supporter will be allowed to speak for a maximum of 3 minutes. Where there is more than one supporter or the supporter is representing a group or organisation, they will be limited to 3 minutes in total, but more than one representative may speak. Both the numbers of speakers and the limit maybe extended at the Chair’s discretion.’
 - (iii) Amend Annex A (d) to read as follows:

‘Ward Councillors may comment on any application either within their ward, or which has a significant impact on the residents of their Ward. ~~If a Ward Councillor is objecting to a planning application he/she must advise the Assistant Director (Democratic Services), in order that the~~

~~applicant can be offered a right to reply. Any request to speak must be submitted in accordance with paragraph (h) of this Annex’.~~

- (iv) Replace paragraph (f) of Annex A which reads:

‘Applicants will be entitled to speak in favour of a planning application where the planning Officer has recommended refusal and there have been no requests from members of the public to speak in objection. Any speech in favour will last no more than 3 minutes.’

with:

‘Applicants, or their agent will be entitled to speak in favour of their planning application. Any speech in favour will last no more than 3 minutes.’

- (v) Remove para (g) of Annex A
(vi) Amend Annex C to reflect the changes sought.

2. Issues

- 2.1 Ward Councillors have previously raised issue with the Constitutional Committee regarding their right to speak at DCC and DCP. The issue is that, under the provisions of Paragraph (d) of Annex A, Part 22 - Access to Information Procedure Rules, of the Constitution it states that:

‘... If a Ward Councillor is objecting to a planning application he/she must advise the Assistant Director (Democratic Services), in order that the applicant can be offered a right to reply....’

- 2.2 The Ward Councillor concerned raised issue with this as there were circumstances where they wished to adopt a neutral position e.g. they may support the scheme in principle but have concerns which they consider the Committee/Panel need to address. However, they did not necessarily want to be seen to adopt a negative position, particularly where there is widespread and significant local support by the community concerned. However, under the current system the only way that the Ward Councillor can raise their concerns, even though they may strongly support a scheme is through an objection, therefore, giving the applicant the right to reply.
- 2.3 If a Ward Councillor registers to speak in support of the scheme and then raises concerns at the meeting, the applicant/agent will not have been invited to speak having regard to Paragraph (g) of Annex A, Part 22 - Access to Information Procedure Rules, of the Constitution which states:

‘(g) Any applicants, or their agent, will be informed when a request to speak in objection has been received and will be invited to exercise a right to reply either in writing or orally at the meeting. Any right to reply will not exceed the cumulative time given to object to the specific planning application. Applicants, or their agents, may invite witnesses to give evidence within the allocated time available.’

- 2.4 If the Ward Councillor were to take this route then they, and the Council, would be in breach of the constitution and the decision therefore, open to potential challenge as the applicant/agent is likely to have been denied the right to reply.
- 2.5 Having regard to the above therefore, this obviously causes significant operational issues for the Service Director (Legal and Democratic Services) as, with a neutral position being declared, they are unsure whether to invite the applicant to make a right to reply. If the applicant is invited on the basis that they might need to reply, it will then fall upon the Chair of the relevant meeting to interpret whether comments of the Ward Councillor constitute an objection and whether the right to reply should be extended to applicant/agent on the night.
- 2.6 This matter was initially raised at the Constitution Commission meeting on 14th October 2014 and eventually brought before the meeting of the Development Control Committee on 8th September 2015 where it was recommended that Paragraph (d) of Annex A, Part 22 - Access to Information Procedure Rules, of the Constitution be amended as follows:-

*‘Ward Councillors may comment **speak** on any application either within their Ward, or which has a significant impact on the residents of their Ward. If a Ward Councillor **gives notice of an intention to speak** is objecting to a planning application he/she must advise the Assistant **Service Director (Legal and Democratic Services)**, in order that the applicant can be offered a right of reply. Any request to speak must be submitted in accordance with paragraph (h) of this Annex.’*

- 2.7 However the resolution of the Development Control Committee on 8th September 2015 was as follows:

‘RESOLVED –

1. That the referral from Constitution Committee be rejected.

2. That a Working Group to consist of the Chair and Vice-Chairs of this Committee be requested to undertake the urgent review of the Speaking Arrangements at the Development Control Committee/Panel, with the view to have one coherent policy.

3. That the Constitution Commission be thanked for bringing the item to the attention of the Development Control Committee.’

- 2.8 In line with this resolution, and following discussions with the Chairs and Vice chairs this report seeks to present a comprehensive review of the speaking rules and to present one coherent policy.
- 2.9 Whilst the proposed changes to Paragraph (d) are noted they do not address the issues outlined above. For this reason it is proposed to amend Paragraph (d) to read as follows:

‘Ward Councillors may comment on any application either within their ward, or which has a significant impact on the residents of their Ward.

Any request to speak must be submitted in accordance with paragraph (h) of this Annex.'

- 2.10 To overcome the potential 'right to reply' notification issues, outlined above, it is proposed to amend paragraph (f) to give the applicant/agent the right to speak on their application, irrespective of whether there is an objection or not to their proposal. The amended Paragraph (f) is as follows:

'Any applicant, or their agent will be entitled to speak in favour of their planning application. Any speech in favour will last no more than 3 minutes.'

- 2.11 This leaves the decision with the applicant/agent as to whether they wish to speak at the meeting and can, therefore, respond to any issues raised by the Ward Member, Parish/Town Council or public speakers. Obviously, the applicant/agent will be aware of any other speakers prior to the meeting and therefore, can decide if they wish to attend and speak or not. Clearly, for this to be effective the Applicant/Agent will still be the last to speak so as to ensure that they can address any issues raised within their 3 minutes slot.
- 2.12 This also has the added benefit of allowing Committee members to ask questions of the applicant/agent even where the scheme is recommended for approval, which currently is not the case (an applicant/agent cannot speak currently where there are no speakers and the scheme is recommended for approval by officers so members are unable to ask questions of them to address any of their concerns).
- 2.13 Having regard to the above therefore, it is also proposed to delete Paragraph (g) as this relates to the 'right to reply' under the old rules and therefore, under the proposed rules would no longer be necessary.
- 2.14 Turning to the issue of speaking rights for members of the public, the current rules only allows members of the public to object to a scheme under paragraph (b). However, it is considered that this flies in the face of the principles contained within the Localism Act 2011 as it does not allow members of the public to actively support schemes. This was very well illustrated by the recent Lloyds Court application which was placed before DCC, recommended for approval, received widespread local support but did not allow for members of the local community to speak in support of the application as the officer report supported the application. Ironically, the existing system would allow an objector to speak.
- 2.15 For the reasons outlined in para 2.12, it is proposed to extend the same public speaking rights to the general public who support a scheme as to those who currently object. For this reason it is proposed to introduce an additional paragraph which reads as follows:

'Members of the public may request the right to speak at any meeting of the Development Control Committee and the Development Control Panel to support a planning application. The number of requests to speak will be limited to one per application. A single supporter will be allowed to speak for a maximum of 3 minutes. Where there is more than one supporter or the supporter is representing a group or

organisation, they will be limited to 3 minutes in total, but more than one representative may speak. Both the numbers of speakers and the limit maybe extended at the Chair's discretion.'

2.16 Under the current scheme of delegation 3 objectors can speak for 3 minutes against an application, thus totalling 9 minutes. The current scheme of delegation allows for the 'right to reply' by the applicant for the same cumulative time as all speakers objecting to the application, thus giving the applicant a total of 9 minutes to respond.

2.17 It is considered that the current scheme is very generous in terms of speakers and often results in 3 objectors speaking for 3 minutes, all of whom raise exactly the same concerns, thus unnecessarily extending the time of the meeting without any added value. In response, it is suggested that Paragraph (b) be amended to only allow 3 minutes of objections per applications from members of the public. Accordingly, Paragraph (b) will read as follows:

'Members of the public may request the right to speak at any meeting of the Development Control Committee and the Development Control Panel to object to a planning application. The number of requests to speak will be limited to one per application. A single objector will be allowed to speak for a maximum of 3 minutes. Where there is more than one objector or the objector is representing a group or organisation, they will be limited to 3 minutes in total, but more than one representative may speak. Both the numbers of speakers and the limit maybe extended at the Chair's discretion.'

2.18 To ensure equality in terms of speakers rights 'for' and 'against' an application, the proposed new paragraph detailed in 2.13 above similarly only has 3 minutes per application for speakers in support of the application. This way Parish/Town Council's, supporters, objectors and the Applicant all have 3 minutes per application.

(vii) Options

The options are:

- a. Accept the comprehensive changes to the constitution which addresses the issues raised by the Constitution Commission and introduces a greater degree of fairness and equitability to the process as well as seeking to reduce the overall time spent on each application. Whilst this option does not, verbatim, follow the recommendation of the Constitution Commission, it achieves their desired outcome, whilst at the same time addressing the identified issues raised by their proposal. This is the recommended option.
- b. Reject the proposed comprehensive changes other than that proposed by the Constitution Commission. This option is not recommended as it would not address the operational problems which have been identified above resulting from this single change.
- c. Reject all changes to Annex A. This option is not recommended as it would not address the issue raise by the Constitution Commission or the other issues of fairness and equitability identified within the report to the existing regime.

Background Papers

Minutes of the Constitution Committee 7 October 2015

Minutes of Development Control Committee 8 September 2015

Minutes of the Constitution Committee 22 July 2015

Minutes of the Constitution Committee 27 April 2015

Minutes of the Constitution Committee 1 October 2014

Appendix 1 – Current Annex A of Part 22 - Access to Information Procedure
Rules of the Constitution

ANNEX A

**PROCEDURE FOR THE DETERMINATION OF PLANNING APPLICATIONS -
PUBLIC PARTICIPATION**

- (a) Council Procedure Rule 9 does not apply to the Development Control Committee and the Development Control Panel when determining planning applications.
- (b) Members of the public may request the right to speak at any meeting of the Development Control Committee and the Development Control Panel to object to a planning application. The number of requests to speak will be limited to three per application (not including any right of reply). A single objector will be allowed to speak for a maximum of 3 minutes. Where there is more than one objector representing a group or organisation, they will be limited to 3 minutes to present the group or organisation's objection, but more than one representative may speak on behalf of the group or organisation. Both the number of speakers and the time limit may be extended at the Chair's discretion.
- (c) If an application is deferred any speaker heard by the Committee when an application was first received will not be precluded from being heard again when the application is reconsidered, subject to the speaker submitting a further request to speak in accordance with paragraphs (b) and (g) of this Annex.
- (d) Ward Councillors may comment on any application either within their Ward, or which has a significant impact on the residents of their Ward. If a Ward Councillor is objecting to a planning application he/she must advise the Assistant Director (Democratic Services), in order that the applicant can be offered a right of reply. Any request to speak must be submitted in accordance with paragraph (h) of this Annex.
- (e) A representative of a Town or Parish Council, nominated by either the Chair or the Clerk of the Town or Parish Council, will be allowed to address the Development Control Committee, or Panel, for a maximum of 3 minutes when an application for a development within that Parish or where at the discretion of the Chair there is a significant impact on another Parish, is to be considered. Any representation will be in addition to the limit on the number of public speakers. If the Town or Parish Council is to speak in objection to, or in favour of, the application the Service Director (Law and Democratic Services) must be advised when submitting the speaking request, and in all cases no less than two clear working days before the meeting, in order that the applicant can be offered the right of reply.