

CARLISLE CITY COUNCIL

Report to:- **Carlisle City Council**

Date of Meeting:- 13th January 2009

Agenda Item No:-

Public

Title:- **AMENDMENTS TO THE SCHEME FOR PUBLIC
SPEAKING AT DEVELOPMENT CONTROL COMMITTEE**

Report of:- **Head of Planning & Housing Services**

Report reference:-

Summary:-

Development Control Committee resolved, at its meeting on 14th November 2008, to amend the existing provisions of the "Right To Speak" Policy in line with Report DS.145/08 (attached)

Recommendation:-

The Council is asked to receive and accept the proposed modifications to the "Right to Speak" policy as it applies to the Development Control Committee so that they can be introduced with immediate effect.

Contact Officer: Alan Eales

Ext: 7170

A C Eales

Head of Planning & Housing Services

24 December 2008

Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers: None

1. BACKGROUND INFORMATION AND OPTIONS

2. CONSULTATION

2.1 Consultation to Date.

2.2 Consultation proposed.

3. RECOMMENDATIONS

4. REASONS FOR RECOMMENDATIONS

5. IMPLICATIONS

- Staffing/Resources –
- Financial –
- Legal –
- Corporate –
- Risk Management –
- Equality and Disability –
- Environmental –
- Crime and Disorder –
- Impact on Customers –

CARLISLE CITY COUNCIL

Report to:- **Development Control Committee**

Date of Meeting:- **14th November 2008**

Agenda Item No:-

Public	Policy	Delegated: Yes
--------	--------	----------------

Accompanying Comments and Statements	Required	Included
Environmental Impact Statement:	No	No
Corporate Management Team Comments:	No	No
Financial Comments:	No	No
Legal Comments:	No	No
Personnel Comments:	No	No

Title:-	REVISIONS TO THE "RIGHT TO SPEAK" POLICY
Report of:-	Director of Development Services
Report reference:-	DS.145/08

Summary:-

Following consideration of Report DS.113/08 at the Committee meeting held on 22nd August, when Members authorised Officers to prepare a Report reviewing the operation of the existing Right To Speak Policy, this Report suggests modifications to the criteria whereby a Right to Speak is accorded.

Recommendation:-

The Report be received and the proposed changes be introduced with effect from the earliest opportunity.

ALAN EALES

Head of Planning & Housing Services

Contact Officer: Alan Taylor

Ext: 7171

Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers: None

1.0 BACKGROUND

- 1.1 At the Committee meeting held on 22nd August, Officers reported (DS.113/08) on the review, commissioned by all of the nine planning authorities in Cumbria from Trevor Roberts Associates, of “best practice” for the operation of the Development Control services in the county.
- 1.2 That review highlighted some aspects of established practices and operational procedures that this Council has adopted over the years, which unfortunately are adversely impacting on the overall quality of the service able to be provided. Indeed, some aspects of service delivery may be prejudicial to the City Council's attainment of national targets for the determination of applications within specified time periods. This has, potentially, significant adverse impacts on both out-turn of decisions and the funding of the service which is performance-measured in relation to those targets.

2.0 CURRENT PROVISIONS OF THE “RIGHT TO SPEAK” POLICY

- 2.1 The existing Policy essentially dates from the late 1990's but has been amended at various times since a “right” to address Committee was introduced. It currently entitles public speaking at Committee, subject to in all cases the request being made within the 21 day “consultation/publicity” period following the receipt of the application, and applies under the following circumstances:
1. Any objector can ask to speak against, or a supporter can exercise his/her right to speak in favour of, a planning application;
 2. Any applicant (or agent if one acts for the applicant) can request the right to address Committee;
 3. Any Ward Councillor can specifically request that the application is brought before Committee so he/she can address Members provided that request is made within the 21 days consultation period; and
 4. Additionally, if an objector registers a “Right to Speak” then the applicant/agent and Ward Councillor(s) is entitled to speak in response, regardless of whether he/she has previously registered their “Right To Speak” within the normal 21-day consultation period.

- 2.2 In theory, the Policy is a fair and reasonable process that allows public speaking on planning matters but, in practice, there are a number of operational and procedural weaknesses which open it to fairly wide abuse.
- 2.3 Further, since its inception and in response to the need to achieve a speedier determination of applications to offset the Council's failure to achieve performance targets (and being a "Standards" authority where part of the Planning Delivery Grant was withheld) Members have reviewed and introduced changes to the Scheme of Delegation. That was intended to reduce the lengthy timescales from receipt of applications to determination and was successful in removing the Council from being a "Standards Authority". Unfortunately, however, those changes are not delivering all of the improvements in performance that were envisaged due to the fact that the Scheme of Delegation and the "Right To Speak" Policy are not as well integrated as they should be.
- 2.4 Hence, the Council finds itself in the illogical situation whereby the Scheme of Delegation expects only applications which attract more than three written or verbal objections to be referred to Committee (in addition to those which would otherwise be referred due to their scale and magnitude or Policy implications) yet the "Right To Speak" Policy permits a single neighbour letter that asks for the "right" to address Committee to automatically invoke referral of that application to Committee. In short, the role of the Committee appointed by Council to deal with major planning proposals that affect the public interest as whole, i.e. the "place-shaping" agenda which Planning is expected to deliver, is being subverted by much time being given over to minor proposals where Members are almost being expected to function as a "neighbour reconciliation" service. Clearly, this is not a function the Committee should perform.
- 2.5 The Trevor Roberts Associates' study found that of all of the Cumbrian Authorities only Carlisle City Council has a situation where its Scheme of Delegation (the determinant of what the Council thinks its DC Committee should be dealing with) can be set aside by a single objector or supporter of an application registering the right to speak or, indeed, an applicant if he/she thinks the application might otherwise fail to secure approval under the Scheme of Delegation.
- 2.6 This is not only out of step with what is happening elsewhere in Cumbria but does not happen in any other Authority where service review studies have been undertaken by the Consultants. What is more, whatever the best of intentions, the current "Right To Speak" Policy is being quite widely abused. In some instances, it seems to be either a tactic to "delay" an application (and possibly cause it to be

abandoned) or it is perceived as a means whereby it can allow an applicant/agent to lobby before it is heard at Committee. One local Land Agency now, almost as a matter of course, includes a paragraph, registering the “Right To Speak” on the applicants’ behalf, in the letter that accompanies the submission of each new application they make. In several instances, where a Committee Report has been written and included in the Schedule purely to enable that right to be exercised, the Agent concerned has failed to attend the Committee meeting (and no prior notice of unavailability has been given).

- 2.7 As indicated in the previous Report (DS.113/08) as many as a third of all applications within the Schedules of Applications considered by Committee this year have been included only because of a single “right to speak” request. Apart from the instances of an “agent” failing to attend to support their clients’ proposal, there have been other occasions where objectors did not turn up (for example, two applications at the September Committee meeting involved proposals where the objector failed to appear). In other instances, recorded during the current calendar year, there has been no subsequent Committee discussion of applications, which were only in the Schedule because of the “right to speak” requested.
- 2.8 This current situation is patently not a good use of Member or Officer time or public/private financial resources while delays in determining applications can have major consequences for jobs and investment. Additionally, it does not portray an image of an efficient, well-organised and effective Planning Authority with a sound grasp of planning principles properly exercising its planning powers.

3.0 PROPOSED REVISIONS TO THE “RIGHT TO SPEAK” POLICY

- 3.1 The relevant Sections of the Trevor Roberts Associates review, dealing with circumstances where applications are “referred” to Committee and how a “Right To Speak” Policy should be operated, are printed in full as Appendix 1 to this Report (Section 5.3 and Section 5.8 of the TRA work). These will assist Members in understanding what “good practice” entails and where the City Council can improve.
- 3.2 It is, however, evident that the first principle of “public” speaking at the Development Control Committee that should apply is that ONLY if the application is referred to Committee under the Council’s Constitution will there then be entitlement to speak at Committee by the public. In other words, if the Scheme of Delegation to Officers is not applicable or the application is of such a major scale or potential impact that Committee should determine it, a potential right to speak will only arise if all other qualifying requirements are met. This will mean, with the exception of a Member request for referral, that there has to be more than three written or verbal objections

to an application, or a recommendation has been received from a statutory consultee that would be contrary to the prospective decision that would otherwise have been made under Delegated Powers, thus making it a matter the Committee has to decide. Any registered objector is then entitled to speak so long as he/she has given prior notice of a wish to address Committee within the 21-day publicity and consultation response period following the receipt of an application.

- 3.3 It is also necessary to review and re-affirm what “more than three objectors” means as there have been several instances where members of the same family living in the same household have “doubled-up” to achieve the number of objections required to force an application to go to Committee. That has resulted, as seen at the September meeting, in both a husband and wife living in the same household separately registering as objectors and individually requesting to speak. Whilst this has not happened often, the fact that it has happened at all and the operation of the “Right To Speak” Policy has allowed duplication of a presentation suggests that it needs reinforcement.
- 3.4 It is, thus, suggested that the “Right To Speak” Policy is slightly re-worded to emphasise that where there is more than one “objector” living in the same household, only one person from that household is permitted to address Committee. In short, members of the same household can object as individuals but must elect one spokesperson if wishing to address Committee. That is also cognisant of, and consistent with, the Scheme of Delegation where, apart from specific exceptions, an application **MUST** be referred to Committee when *“within 21 days of publication in the press or the despatch of written consultation or the erection of a Site Notice, the proposal generates written or verbal comments from more than 3 objections (sic) from separate households or other interested parties and which are contrary to the prospective decision”*.
- 3.5 A further amendment that is suggested to the current scheme for public speaking is that the applicant or agent should, in future, only be allowed to address Committee in response to objections made to their proposal. Unlike objectors, an aggrieved applicant has a right of appeal against a refusal of their application (or against conditions that are imposed with an approval) so they have an opportunity for the decision made on their application to be reviewed by an independent party through the Appeal process.
- 3.6 While it is fair that someone is entitled to rebut or respond to objections to their proposals presented by, for example, neighbours under the “Right To Speak” policy it is another thing to allow someone whose application is going to be rejected, under

the Scheme of Delegation, to be able to divert that submission to Committee in order to act as advocate for their case.

- 3.7 It is, however, clearly appropriate that an Elected Member should be able to specifically request that an application is referred to Committee for determination and it is not suggested that this should be changed. It is, however, considered that the circumstances where this can occur are clarified and, when it occurs, it is operated fairly and consistently.
- 3.8 At present it tends to be a Councillor for the Ward in which a specific application has been made who requests referral to Development Control Committee (perhaps after approaches from an applicant or objectors). However, that is actually a general right that any City Councillor is able to exercise, regardless of whether the proposal is in his or her Ward, since the development at issue might well have implications that affect adjoining Wards or all of the District. Where this occurs, the request for an application to be referred to DC Committee so the Member concerned may speak on the proposal, must be made in writing to the Head of Planning & Housing Services within the 21-day consultation period after the application is received.
- 3.9 The current version of the “Right To Speak” Policy also states that any Elected Member may request that an application is referred to Committee for determination (even after the 21-day consultation period has closed and, obviously, as long as the application has not already been decided under Delegated Powers). This is not consistent with the Constitution, however, which imposes the requirement that any Member “call-in” of an application i.e. to go to DC Committee has to be made within 21 days of the “despatch” of the Weekly List of planning applications.
- 3.10 The current “Right To Speak” Policy is clearly incorrect and cannot take precedence over the Constitution. Moreover, as written, it implies that this “call-in” power, post expiry of the 21-day consultation period, will trigger a second bite at exercising the right to address Committee. That is patently wrong and the request for Committee referral, with the opportunity to address the Committee that goes with it, should be mutually consistent and require that the request is made within the 21-day publicity and consultation time period.
- 3.11 Members should also note that, hitherto, there have been several instances where Parish Councils have registered to speak and appointed a representative who has addressed the Committee. However, the current “Right To Speak” Policy doesn’t actually allow Parish Councils any such “rights” as it clearly states that *“the Scheme allows members of the public and Ward Councillors objecting to an application to*

speak during consideration of that application. It also allows applicants or their agent(s) making the application on their behalf, the opportunity to respond to these objections". No where, in its current form, does it allow a Parish Council the right to be represented at Committee to speak for or against an application although this has been happening on a fairly regular basis (two Parishes had spokespersons at the October meeting of this Committee).

- 3.12 This is something that needs to be clarified and the Policy modified to either specifically include or exclude representatives appointed by Parish Councils. At the moment, there is no entitlement but if Committee believe that such a right should be given, the Policy needs to say so. When considering this aspect Members may wish to reflect upon the fact that: Parish Councils can ask for a Site Visit, they are automatically invited to be represented on those occasions (regardless whether they asked for it or it was this Committee's decision), and their representatives views are invited by the Chairman as part of that Site Visit. Parish Councils are the only statutory Consultees who automatically have that right to be present and outline their views.
- 3.13 It is suggested that Parish Councils are accorded the "right" to attend and address the Committee under the "Right To Speak" Policy but it should not be automatic but, instead, should be exercisable only by the application being included in the Committee Schedule in the first instance. In other words, it should not be referred to Committee just because of the Parish Council request, but if it is going to the Development Control Committee and the Parish has within the 21-day consultation time scale registered a "right to speak" were the application to be referred to Committee, that entitlement for a representative to address the Committee can be exercised.
- 3.14 As it stands, the Scheme of Delegation cannot be exercised where the decision would be contrary to any recommendation made by a statutory Consultee. Whilst there are obvious circumstances where this might happen, for example, where the Highway Authority recommends refusal of an application because of an unsafe access or the Environment Agency objects on grounds of inadequate drainage or flood risk, Parish Councils are also statutory consultees. As such, there will be instances where it might require clarification whether the comments a Parish Council may have made on an application are simply "observations" or whether they are firm "recommendations" whereby referral to DC Committee may be necessary.
- 3.15 If Committee believes that Parish Councils should be accorded the "Right To Speak" it is suggested that training/briefing notes be provided to the Parish Clerks

so that each Council is fully informed of that right and how it can be triggered. It is also suggested that the training and/or briefing notes emphasise that the Parish Council must base its request for a “right to speak” on proper, material planning and land use considerations. It is also suggested that, where the Parish Council bases its objections on grounds that are not supported by the relevant “technical” or specialist consultee, the “Right To Speak” will not apply.

- 3.16 Special provisions should be made for “rights to speak” in relation to Tree Preservation Orders. At present, usually as a result of notification of intentions to make an Order, objectors to it are entitled to attend and speak at Development Control Committee but there is no provision for someone who supports an Order to do so. It is, accordingly, suggested that the Policy is amended so that where objections to the Order have been made (resulting in it being referred to Committee for “confirmation”) persons who wish to speak either in opposition to or in support of the Order can attend and address the Committee. It follows that, if an Order is unopposed, it will not be referred to Committee and so no “right to speak” in favour will arise.
- 3.17 Members should note that under the legislation relating to TPOs, the landowner and neighbouring landowners must be informed of an intention to make a Tree Preservation Order. The Council can also publish Notices of such an intention and anyone wishing to make representations, either through notification as a landowner, or through awareness of the proposal through the Notices, has 28 days from the date of notification in which to make representations. It is suggested that anyone wishing to speak for or against a proposed TPO should have the same 28-day period in which to register that wish with the Council.
- 3.18 Any person speaking at Committee in relation to a TPO should be afforded the same 3-minute period for their presentation as applies to persons speaking in relation to planning applications. Likewise, it is suggested that, procedurally, persons speaking against the proposal should be entitled to speak first with anyone speaking in favour following. No questions will be permitted from anyone making representations, either of each other or Officers or Members of the Committee.
- 3.19 There is no reason for the time period accorded for speakers to make their presentations to be altered from the current 3-minute maximum per speaker (or longer duration for an applicant to respond if more than one person speaks against the proposal). That time limit seems to be an appropriate duration for speakers to explain their views of proposals and it works well.

- 3.20 It is, however, suggested that the Policy be amended to expressly acknowledge that where more than one person speaks against the proposals, an extended time period will be accorded to the applicant/agent to respond to those comments. The length of that extended period will be at the discretion of the Chairman in order to allow the Committee meeting to be conducted in an orderly and timely manner.

4.0 CONCLUSION

- 4.1 The Trevor Roberts Associates' study of the operation of the Development Control service in the County by all of the Cumbrian planning authorities has highlighted that, in general, there is a lot of good practice already in place but that there are also some irregularities and inconsistencies.

4.2 Carlisle City Council's overall procedural approach is good and our arrangements for dealing with the administration of the Development Control service are highly commendable. The Council is not, however, perfect and where changes can be made that make the Council perform its duties better or that improve upon the process so that it is clearer, fairer, more consistent and more cost-effective, we should embrace those changes.

- 4.3 It is also suggested that the style and format of the informative material about the "Right to Speak" scheme is revised so that it is clearer, uses plain English and less formal in its general tone. The proposed amended version is set out in Appendix 2.

5.0 RECOMMENDATION

- 5.1 The proposed revisions to the scheme for public speaking at Development Control Committee are approved and, subject to any ratification that may be required by full Council, the amended Scheme (as set out in Appendix 2) is brought into effect from the first suitable Committee cycle beginning after this meeting.

Alan Eales

Head of Housing & Planning Services

Contact Officer:

Alan Taylor

Ext: 7171

Appendix 1

Extracts From "Cumbria Local Planning Authorities: Development Control Good Practice Guide" Undertaken By Trevor Roberts Associates (2008)

CUMBRIA LOCAL PLANNING AUTHORITIES

**DEVELOPMENT CONTROL
GOOD PRACTICE GUIDE**

A REPORT BY TREVOR ROBERTS ASSOCIATES

**Trevor Roberts Associates
1 Atlas House
St George's Square
Bolton BL1 2HB**

April 2008

5.3. Delegation schemes

5.3.1. Delegation of routine applications to officers has been consistently recommended in official and professional good practice advice as a means of making the development control system more efficient. It also allows Committees to focus attentions on significant and/or controversial cases.

5.3.2. Where an authority has a delegation scheme, it is usually set out in the Council's constitution. This is an important public document, and changes to a scheme usually need to take the form of formal amendments to the Constitution, and so can involve lengthy and complicated procedures (although there sometimes are "shortcuts"). However, when changes are made, it is vital that these are incorporated *immediately* into any versions of the constitution which are available to the public, in particular to versions accessible via the authority website. We have frequently encountered authorities where the planning delegation scheme which can be viewed by a member of the public on the website is different from that being followed after some modification. The dangers of this situation are obvious, including the potential for an Ombudsman complaint or more serious challenge.

5.3.3. In 2003/04 a national Best Value Performance Indicator suggested a minimum of 90% of decisions should be taken under delegated powers. In 2004/05 it was dropped as a national indicator; the Government was right to do this; it does not correspond to the nature of delegation. The proportion of decisions dealt with under delegated powers is not a figure entirely under the authority's control. It is the result of a particular scheme, the nature of applications received and the response of consultees etc. There is not necessarily a correlation between delegation levels and the much more relevant issue of speed of determinations, although it is reasonable to suppose that there might be. Delegated decisions are usually reached much more quickly than those referred to the Committee; they also involve less time, trouble and paperwork and therefore reduce costs.

5.3.4. In March 2004 the Local Government Association and the Office of the Deputy Prime Minister jointly published a good practice guide for schemes of delegation: *Delivering Delegation*. They do not advocate a model scheme; demonstration of local discretion, probity, transparency, fairness and consistency are seen as paramount. However, a "by exception" approach is advocated ie instead of trying to specify which applications can be handled under delegated powers, the approach should be that all applications are handled in this way other than specified exceptions. This allows the scheme to be much simpler than is otherwise the case. The "by exception" model is also favoured by the Planning Officers Society.

5.3.5. The starting point for a "by exceptions" model is to specify that the determination of all applications and related matters under town planning legislation is delegated to a specified officer or officers (we discuss the issue of "sub-delegation by this officer below). If specific legislation is referred to it is necessary to ensure that all relevant legislation is covered. A useful way of doing this is to refer to the functions specified in Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000. This statutory instrument specified what town planning functions cannot be determined by an Executive in a local authority structure with such a body; so in effect it prescribes what must be determined by a Planning Committee or officers.

5.3.6. The specification of exceptions to such a comprehensive delegation is then a matter for each individual authority, a very significant element of discretion currently subject to a threat of being undermined. The current Planning Bill is proposing that some small scale applications in categories defined by the Government *must* be determined by officers, with the possibility of subsequent appeal to a review group of councillors unconnected with the Planning Committee. The proposal has been severely criticised as unworkable (the Royal Town Planning Institute has simply called for the removal of all the relevant clauses in the Bill).

5.3.7. We review below some typical exceptions. However, some general points need to be made:

- specification must be clear, precise and consistent; words/phrases such as "significant", "controversial" etc should be avoided
- where some degree of judgement has to be exercised, it should be specified clearly who makes the judgement eg "in the opinion of the Planning Officer"
- Committee reports should as a matter of routine say why they are being considered by the Committee ie under what provision of the scheme they are on the agenda

5.3.8. *Exceptions on the basis of scale of application.* Some authorities specify that "major" applications should be determined by Committee, not by officers. If this is so, it should be made clear that the definition of "major" is that adopted by the Government for monitoring purposes. In some authorities, a more restrictive definition of "major" is used; if so it should be spelled out in the delegation scheme. In either case, it is a reasonable exception to include in a delegation scheme, ensuring that all such large scale applications will be determined by the Committee.

5.3.9. *Exceptions on the basis that the decision would be a departure from policy.* The main snag with this exception is imprecision – it is often difficult to define what is "policy" for these purposes. The statutory development plan is a possible useful starting point, but this does not cover evolving plans, and where a development plan is out of date it opens up the possibility of large scale unnecessary references of applications to Committee. There are also other non-statutory planning and corporate policies, all of which are potentially material considerations, all of which could possibly be construed as "policy" to which the decision proposed by the officer is contrary. If a policy exception provision is incorporated, therefore, it is necessary for it to be very precise, clear and restricted eg to the adopted parts of the development plan framework. Some authorities limit the exceptions to applications where the officer is minded to approve, on the basis that a refusal contrary to policy offers the opportunity of an appeal, whereas an approval is more conclusive and/or may involve a call-in.

5.3.10. *Exceptions for refusals* Some authorities still insist on potential refusals being referred to the Committee whereas equivalent approval decisions are delegated. This is misguided. If an application is approved, it is likely to be implemented; if it is refused then there is the right of appeal. So councillors feeling they should be involved in refusals but not approvals is illogical.

5.3.11. *"Probity" exceptions.* It is normal for schemes to specify that the Committee should determine applications by the authority itself; applications in which the authority has a property or financial

interest; applications by its planning and/or specified senior staff; and applications by councillors (although we have come across an argument that applications by councillors should be determined by officers, not fellow councillors). This is very much up to the authority and there are good arguments in favour of such exceptions on the basis that such decisions should be taken very transparently in the public arena. However, it is frequently the case that probity exceptions are badly-defined; they need to be very precise and as tightly drawn as appropriate.

5.3.12. *Exceptions when there are contrary representations from statutory consultees.* An automatic referral to Committee is sometimes triggered if a statutory consultee recommends a decision contrary to the decision favoured by the officer. This means that the Committee must reconsider and balance the arguments. It is an understandable provision, but not particularly logical. Consultee responses may not necessarily point to a firm conclusion either way; they are meant to inform the decision not make it. The officer has by law to take consultee responses into account, and report them to the Committee. Where he/she departs from consultee advice in forming a conclusion/recommendation, this has to be clearly justified. The only way a Committee could therefore come to a different conclusion is if it were to place a different weight on the representations made.

5.3.13. *Exceptions where neighbour notification/publicity generates contrary representations.* This is a common exception. Usually nowadays the provision is filtered in some way eg there must be two, three or more contrary representations; the points at issue must be "planning matters" (as interpreted by the officers); and sometimes householder applications are exempted ie they can be determined by the officers irrespective of neighbour comment. Whatever the precise rules, this provision hands over the decision as to how an application is handled in a very unpredictable and inconsistent manner.

- What prompts people to comment or not comment on an application varies enormously. As a neighbour they may like the applicant, dislike the applicant, be related to the applicant, be afraid of the applicant, work for the applicant, be about to move away, have just moved in etc. So the basic ingredient of this exception is flawed.
- The power to dictate automatically how an application is handled by the authority – with all this entails in terms of time and expense for both the authority and applicant – is taken out of the hands of the authority.
- Even though a time limit is usually imposed, it is legally impossible to ignore late representations as part of the decision making process, and because of this it is difficult to resist a late representation triggering a Committee referral under the scheme of delegation, even though the considerations involved are quite different.
- It is clearly the quality of the comments made rather than their quantity which has a bearing on how an application is determined.

Overall therefore we are unenthusiastic about referrals to Committee based on neighbour representations, however low or high the "bar" is set in terms of numbers.

5.3.14. *Exceptions where Parish/Town Councils make contrary representations.* The arguments here are very similar to those just elaborated. Crucially, the decision as to how an application is handled is taken out of the hands of the local planning authority and given to the Parish/Town Council where there is one (the fact that some areas are not "parished" provides a further complication). While relations with Parish/Town Councils are always important and sometimes sensitive, a contrary representation from a Parish/Town Council should not imply an automatic referral to the Committee.

5.3.15. *Exceptions where an applicant or objector has requested to address the Committee.* This is a particularly illogical exception which occurs in some schemes. It confuses the question of delegation with the privilege of public address. Public address (which most authorities have now established) clearly only applies where applications are being determined by Committee; the rules which determine whether or not such an application should be so determined need to be quite separate. Just because one or more of the parties involved sees themselves as so articulate that they believe they can sway the Committee is no justification for the delay and outlay of public and private money involved in Committee consideration. So if an application goes before a Committee under the terms of the delegation scheme, then the right of public address arises; but if not, then there is no opportunity for public address. To have it otherwise lays a scheme open to severe manipulation.

5.3.16. *Exceptions where a councillor has requested an application be considered by the Committee.* This provision is common in delegation schemes; we refer to it as a "member call-in" arrangement. It is a provision we wholeheartedly endorse and see it as fundamental to all delegation schemes and should always be present. Delegation of most planning determinations to officers is a major step for local authorities in the interests of efficiency and customer care; for councillors to have the confidence to permit this, there needs to be a clear and straightforward degree of accountability, and a member call-in system reinforces this.

5.3.17. We have encountered various restrictions on the right of councillors to call-in an application, and comment on these as follows.

- More than one councillor (usually two or three) has to sign the request. This is normally justified as avoiding "abuse" of the arrangement by individual councillors. We do not agree with this restriction, seeing it as a basic right of any individual councillor to insist on any application being considered in public if he/she so chooses. There are other formal and informal mechanisms available to deal with occasional misuse of the arrangement. The potential for such misuse is insufficient reason to restrict the right of call-in itself.
- The right is restricted to ward councillors. Planning applications frequently involve issues going beyond specific wards, and also decisions are taken on behalf of the whole community. To limit call-in rights to the councillor(s) of the ward where the application happens to be is unjustified.
- The right is restricted to members of the Planning Committee. This means that non-members will have to approach members of the Committee if they wish to see an application considered in public, thus creating an additional and unnecessary pressure on members of the Committee.

We do not support any of these restrictions, regarding the right of any councillor on the local planning authority to call-in an application as a fundamental safeguard in accountability terms.

5.3.18. Call-in arrangements must be subject to clear rules and these must be observed. The rules we recommend are as follows (some of these are normal, some less usual):

- the request should be submitted in writing, including by email
- the request should be submitted within a clear and prescribed time period, usually 21 days from circulation of a weekly list; systems without this provision create difficulties and inconsistencies in managing the development control process, since any request can trigger off a Committee referral, even at a late stage in the handling of an application, provided it is received before the decision notice is despatched
- requests outside the prescribed time limits should not be acceded to; if the scheme specified a time period, this should be respected, otherwise it is operating to the disadvantage of the applicant, and also raises the possibility of a challenge since the referral to Committee is outside the terms of the scheme
- requests should be justified with reasons; these reasons need only be "reasonable", they do not need to be "planning reasons"; many schemes restrict the reasons to "planning reasons", but this confuses the issue of call-in with that of material considerations when the application is determined; it is perfectly reasonable for a call-in to be justified on the grounds that an application is of considerable local interest and controversy, which is not a "planning reason" and which would not be something to take into account when the decision is actually being made
- the name of the councillor and the reasons for the call-in should be reported to the Committee so that it is quite clear why public money is being spent on Committee consideration.

5.3.19. *Exceptions referred for Committee decision at the discretion of the officer.* This is a common element of delegation schemes and one we support. If it is not in a scheme we think it should be introduced, to avoid any doubt about the Committee consideration of applications referred by officers even though they do not meet the criteria for referral in other respects. Referrals under this heading should be justified by planning reasons reported to the Committee; officers should not be expected to

refer applications because they are "controversial" or similar, that is not something they should be expected to assess.

5.3.20. *Exceptions relating to specific types of application.* Many application schemes specify categories of applications which have to be determined by the Committee. These usually refer to particular types of application which are regarded locally as sensitive eg telecommunications applications, tree protection applications, listed building applications, etc. There is nothing wrong in principle with this type of provision. However, sometimes they are incorporated in response to a particular application which "went wrong", and they can outlive their relevance; but once incorporated into a delegation scheme within a Council Constitution, provisions may be difficult to modify. We suggest that where a scheme includes a provision for referral at officer discretion, this could be supplemented by a non-Constitutional "protocol" setting out the sort of applications a Planning Committee would expect to see referred under this heading, and this protocol can be reviewed/updated annually.

5.3.21. We ourselves recommend a very simple approach to delegation, with all determinations under appropriate legislation being explicitly delegated to officers except:

- appropriately worded "probity" exceptions relating to applications by councillors/staff of the authority and applications by the authority itself or on its land
- any application "called in" by any individual councillor, provided this is submitted in writing within 21 days of circulation of the list of applications, giving reasons which will be included in the Committee report
- any application deemed by the Planning Officer to merit consideration by the Committee rather than being determined under delegated powers because of the issues it raises in relation to planning or corporate policy.

5.3.22. The intention of the sort of scheme proposed is to ensure that the reference of applications to Committee is dependent on the judgement of councillors and officers of the authority accountable to the authority. The views of consultees, neighbours, objectors etc, while they may well influence councillors and officers in assessing whether to refer an application to the Committee, will not in themselves automatically mean a referral to the Committee. This move will place responsibility for the size and composition of the Committee agenda quite firmly in the hands of councillors and the authority's officers as it should be.

5.3.23. It would seem likely that this change will reduce the size of a Committee agenda. However, this need not necessarily be so, and agenda reduction is not the purpose of the arrangements proposed. The number and the proportion of applications going to the Committee are of less significance than the right applications, in large or small numbers, being considered by Planning Committee through the application of a clear and transparent process.

5.3.24. In view of the importance of the delegation scheme in ensuring a proper balance is struck between democratic scrutiny/accountability, there needs to be systems for monitoring the quality and consistency of delegated decisions taken by officers acting on behalf of the authority. Some appropriate mechanisms are set out in the ODPM document *Delivering Delegation*.

5.8. Public address at the Development Control Committee

5.8.1. As many people are unfamiliar with the conduct of Council meetings it is helpful if information is provided both in the form of a diagrammatic note that explains who the participants are and a short explanation as part of a "welcome" from the Chairman at the beginning of the meeting.

5.8.2. The Nolan Report set out basic good practice which all local planning authorities should adopt. One element of this is a system whereby applicants, objectors and possibly other interested parties can address the Planning Committee. The Government endorsed this recommendation, so to that extent it is "official" good practice, and it has now been adopted by most local planning authorities.

5.8.3. The main advantages of public speaking claimed and in our experience largely delivered, are marginally improved decisions, since the Committee can take into account relevant factors which might otherwise have been missed or given insufficient weight; and a crucial perception of openness which improves the image of the decision-making process, irrespective of the decision itself. The counter-arguments, apart from additional time, relate to the potential for articulate (or sometimes emotional) people to unfairly "sway" the Committee; and the possibility that it benefits those people most able and willing to get to the Committee meeting, which can be seen to disadvantage those who are not comfortable making a "speech" and/or who live a long way from the place of the meeting.

5.8.4. Since it is official Government advice that authorities should allow public address, the minimum we recommend is that an authority should consider the option seriously and systematically, even if it decides not to adopt it. In Cumbria, all authorities allow public address in some form.

5.8.5. There is a wide variety of arrangements for handling public address at Planning Committees. Sometimes they overlap with more general provisions for people to address Council and Committee meetings, but usually there are specific scheme applying to the Planning Committee. Whatever the scheme it is imperative that the rules set out are followed closely. We have observed many Committees (not in Cumbria, where our brief did not extend to observing Committees) where rules,

apparently reasonable rules were simply not observed. For example requests to speak were accepted after the deadline set for receipt of such requests; time limits were not imposed; people were allowed to speak two or three times; and occasionally "questions" became a cross-examination.

5.8.6. We make the point that there is considerable flexibility in the arrangements which can apply. What is important is that the rules and the practice are congruent. If an authority practice is not in step with its rules, it should change its practice or change its rules. To have rules which are constantly flaunted is not only ill-disciplined but exposes decisions to possible legal challenge.

5.8.7. Many schemes allow for "Chair's discretion". This is not something we support, other than a provision to the effect that the Chair's decision on a procedural matter is final. The Chair should only be given authority to apply the rules, not to modify them.

5.8.8. Clearly considerable variation is possible. Our only very basic stipulation is that any scheme should give an equal opportunity to the applicant as to objectors. So if for example a scheme allows for three speakers in support or against, each being allowed two minutes, then if there are three people speaking against an application, the sole speaker in support should be allowed six minutes. To do otherwise is inequitable.

5.8.9. It is usual, and good practice, for authorities to advise potential speakers of what is and what is not legitimate for the Committee to take into account. It is also usual for speakers to ignore this. It is up to the speakers to make the most of this privileged opportunity, so where they raise non-material considerations, they should not be corrected. However, when the public address has finished, it is essential that officers present should draw attention to any non-material matters raised and instruct the Committee to disregard them.

5.8.10. Some schemes include an opportunity for members of the Committee to question speakers for clarification etc. This provision is often imprecise and easily subject to misapplication. It is the job of the speaker to get their point across clearly; if they fail to do this, it is not up to the Committee members to cross question them to seek clarification. It is however possible for the Committee to seek clarification, especially on allegations of factual inaccuracies in an officer report, from the officers, who may be able to assist. If there remains doubt on matters of fact, then there may be a case for deferral for clarification; but the Committee meeting is not a place to sort out this sort of issue. If the speaker submission is unclear for any reason, then the members must make a decision taking this lack of clarity into account.

5.8.11. Some schemes insist on a written version of what the speaker intends to say to be provided in advance, and we have seen schemes where this is a condition of being applied to speak. We do not support such provisions. The right is to *address* the Committee. It is perfectly possible, and perfectly normal, for an applicant addressing the Committee to refute points just made in an address by objectors. It is necessary of course for the Committee Administrator or other appropriate person to make notes of points made, since it is likely these need to be referred to in the minutes of the meeting.

5.8.12. Schemes sometimes but rarely make specific reference to the use of written material or other visual material alongside public address. Whether or not it is referred to in the scheme, speakers frequently arrive with material to circulate in support of their address. Where this is allowed, the rules need to be clearly spelled out in the scheme itself. Generally we advise against any such documentary material being allowed. Material submitted in this way appears to be a "late representation", subject to the Access to Information Act rules, which in the circumstances can hardly be observed (as a minimum, it would have to be made available to the public at the same time as to councillors).

Appendix 2

Proposed Revised Scheme for Public Speaking at Development Control Committee

CARLISLE'S SCHEME FOR PUBLIC SPEAKING AT DEVELOPMENT CONTROL COMMITTEE

WHAT IS IT?

The Scheme has been introduced to allow in certain circumstances persons who may be affected by a planning proposal to attend and speak at the Committee where the application is decided. It does not apply to every application the Council receives but operates on the basis that where a planning proposal is referred to the Development Control Committee, persons who have registered a "right to speak" can attend and set out their concerns about the proposals.

HOW DOES IT WORK?

Most decisions on planning applications are "delegated" to be dealt with by Senior Officers under powers given by the Council. However, any application that attracts more than three written or verbal objections from separate households or addresses within the 21-day publicity and consultation period is referred to Committee if the views made in representations are contrary to the prospective decision that could have been made under the Scheme of Delegation. Any City Councillor may also request that a particular application be referred to Committee for determination.

The publicity and consultation period begins from:

- the date of a Site Notice or
- the date of publication of any Statutory Notice in the local Press or
- the date of any letter of notification sent to neighbours.

WHO CAN SPEAK?

Provided written notice is given within the 21-day publicity and consultation period that they wish to speak if the application is to be decided by the Development Control Committee, any member of the public who has objected to an application can appear at that Committee meeting. Alternatively, they can nominate someone, such as a solicitor or planning consultant, to do so on their behalf.

Similarly, the Scheme allows a Ward or other Councillor to attend and speak for or against an application provided they give written notice within the 21-day publicity and consultation period although they must also state clearly whether they are opposing or supporting the proposals¹.

Parish Councils that have indicated a wish to speak against the proposals when submitting their comments on a planning application within the 21 day consultation period will be entitled to speak only if the application is referred to the Development Control Committee for determination. That will normally be as a result of the receipt of more than three written or verbal objections from the public. It can also arise where the recommendation of a statutory consultee is contrary to the prospective decision that could have been made under powers delegated to Officers by the Council's Constitution. Where a Parish Council raises objections on grounds that are non-material to planning and land use considerations or that relate to matters that are not supported by the observations of the relevant "technical" or other specialist consultee, the "Right To Speak" will not apply.

¹ Councillors with a 'prejudicial interest' can only address the Committee if a member of the public has the right to speak. So, a Councillor with a prejudicial interest would not be able to speak in support of an application, as a member of the public would not have a similar right.

In all circumstances where someone attends to speak against an application, the applicant is entitled to appear at Committee to respond. If the applicant doesn't wish to speak in person a representative, such as the Agent for the application if one is used, or a solicitor or planning consultant can be nominated instead.

WHAT DO I NEED TO DO TO REGISTER?

If you intend to comment on a planning application that you think affects you, and you would like to speak should that application go before the Committee, you simply need to give written notice of that wish within the 21-day publicity and consultation period. You should also outline the basis of the representations you intend to make since comments that are not proper planning considerations cannot be taken into account when an application is decided. Guidance as to what constitutes relevant planning and land use considerations follows later.

Write to: The Head of Planning & Housing Services
Carlisle City Council
Civic Centre
Carlisle
CA3 8QG

You can also e-mail your comments to the address listed at the end of this Note but you should also provide a postal address in your comments.

If possible, in all correspondence, please quote the application reference number.

At the end of the 21-day period within which comments can be made it will become clear whether the application is to be referred to Committee rather than being decided under "Delegated Powers". If it is going to be considered by

Committee it will usually be possible to identify at that stage which meeting the application will go before. You will be notified in writing of the date and time of the meeting and asked to confirm if you plan to attend.

At the same time the applicant or agent if one is used, will be given written notice of the application being put before Committee. The arrangements for attendance to respond to comments made by objectors will also be explained, including the date and time of the meeting.

HOW LONG DO I HAVE TO SPEAK?

All persons who have registered to speak are given three minutes to make their submissions. Where there are several objectors to a proposal it will often be better for those objectors to get together and nominate a single spokesperson. Provided they give notice of that intention the Chairman of the Committee has the discretion to allow an extended time period for the representations to be made.

Similarly, whether several speakers object in turn to an application or they combine their views through a single spokesperson given a little longer to explain their concerns, the applicant (or someone nominated to act for the applicant) will, at the Chairman's discretion, be accorded a longer period to respond.

WHAT HAPPENS ON THE DAY?

The Committee's business is organised so that applications where persons are attending specially to speak on the proposals are dealt with first.

At the beginning of the meeting the Chair or a Council Officer will briefly explain the procedures for speakers to step forward to speak and how important it is for speakers to listen carefully for their name being called.

The Case Officer who has been dealing with it normally introduces each application and he/she will update the Committee with any additional information received since the Committee Report was issued. Plans and photographs of the site may be displayed and the Officer will normally conclude with a recommendation.

The Chairman will then invite the first objector to step forward to the seat assigned for public representations and will explain the entitlement to three minutes duration. It is very important that speakers use that time to deal with their planning-related objections and avoid straying into matters the Committee cannot consider such as ownership disputes, private covenants, loss of view or loss of value. At the end of their three minutes, each speaker vacates the chair and returns to the public seating areas.

If a Councillor has given notice of an intention to attend to speak in support of or opposition to an application the Chairman will invite those submissions.

When all the people outlined have spoken, including any Ward or other City Councillor who is appearing in support or opposition to the application, the Chair invites the applicant or anyone representing the applicant to address the Committee to respond. Once that presentation has been made, the speaker returns to the public seating area.

That is the end of all representations made by the public or applicant or anyone who is speaking at Committee on their

behalf. Under no circumstances will speakers be permitted to question each other or the Committee or Officers.

CAN I USE VISUAL OR OTHER PRESENTATIONAL AIDS?

You can support your case with photographs, plans or other illustrative material so long as the display material is lodged with the Head of Planning & Housing Services at least two days before the Committee meeting. Digital photographs, video and drawings/plans can be displayed on the overhead screen but again must be provided at least two days prior to the meeting so they can be integrated with other presentational material. Suitable formats include PDF, Powerpoint and JPEG, which can be supplied by e-mail or CD/DVD.

You cannot distribute any written or pictorial material to the Committee members on the day of the meeting. If you have material or information that you wish each individual Committee member to be given, this should be provided to staff 10 days before the Committee meets so it can be distributed with other Committee papers and a copy provided to the applicant.

It is helpful, where speakers prepare their presentations in writing, for a copy to be provided for or left with the Committee Clerk attending the Committee.

DEFERRALS OF APPLICATIONS BY COMMITTEE

Sometimes planning applications are deferred from one Committee meeting to a later meeting in order that further information can be evaluated, or late amendments can be consulted upon, or where the Committee believes it should visit a site before deciding an application.

Where these circumstances arise and it is apparent that deferral would be beneficial, the Chairman will offer the registered speakers the opportunity to either speak at that initial meeting or reserve the right to speak when the application comes back to Committee for determination at a later meeting.

The scheme only allows speaking on one occasion unless there have been significant, material amendments to the proposals that raise new issues not previously able to be addressed.

WHAT HAPPENS IF I ASK TO SPEAK BUT THERE ARE LESS THAN FOUR OBJECTORS TO THE APPLICATION?

At the end of the 21-day publicity and consultation period if there are less than 4 objectors you will be notified in writing that the application will be decided under the Scheme of Delegation and be given the opportunity to meet with the Case Officer and tell him or her your concerns. The Case Officer as part of the assessment of the proposals will carefully consider your comments and they will be fully addressed in the Summary of the Reasons for the Decision. You will be informed in writing of the decision, including any conditions that are imposed if permission is granted, and given a copy of the Summary of Reasons for the Decision so you will be able to see the weight able to be assigned to your comments in determining the application.

WHAT ARE RELEVANT PLANNING AND LAND USE CONSIDERATIONS?

Some examples are:

- Conflict with national and local planning policy
- Adverse impact on your living conditions, such as through loss of privacy or overshadowing

- Landscape intrusion
- Inadequate access or lack of parking
- Detrimental to the character of a Listed Building or harmful to the character and appearance of a Conservation Area
- Over-development of the site
- Inappropriate land use in the area including unsociable operating or opening times

SOME MATTERS WHICH ARE NOT RELEVANT PLANNING AND LAND USE CONSIDERATIONS

- Loss of view
- Loss of value
- Commercial competition
- The applicant's character or reputation.

SPECIAL PROVISIONS RELATING TO TREE PRESERVATION ORDERS

Proposals for the making of Tree Preservation Orders often attract local interest in the particular area where the Order is being considered. That can result in objections or support for a Tree Preservation Order and, in some situations, both.

The Council's Constitution delegates the making of Orders to the Director of Development Services and Head of Legal Services unless there are objections to the proposed Order, in which case it must be referred to the Development Control Committee for confirmation. Where this arises, the Council allows members of the public, who wish to speak in opposition to an Order being made and also anyone in favour of the Order, to be given the opportunity to speak at the Committee considering the matter.

Where a proposed TPO is unopposed, it is not appropriate to refer the matter to Committee. Accordingly, supporters of a proposed TPO will only be allowed to speak if the proposal to make the Order has to be referred to Committee because of objections.

The Council is required to notify a landowner and neighbouring landowner of an intention to make a TPO. It can also publicise proposals to make a TPO through the display of a Site Notice and, in some circumstances, through publication of a Notice in the local Press and the public has 28 days in which to make representations. In order to exercise a Right to Speak, it is necessary to make that request within the 28-day period specified in notification letters and Notices.

Anyone exercising the right to address the Committee under these arrangements will be given 3 minutes in which to present their comments on the proposed Order. Opponents of a proposed Order make their representations first, followed by anyone who wishes to speak in support. No questions will be allowed by anyone making representations.

Arrangements for giving notice of wish to speak on a proposed TPO are set out under "What Do I Need To Do to Register?"

FURTHER INFORMATION

If you need to clarify the "Right To Speak" scheme or wish to discuss particular arrangements associated with a planning application that concerns you, please contact the Case Officer whose name, telephone number and e-mail address appears in all correspondence. General enquiries can also be made through the Development Control generic e-mail address:

dc@carlisle.gov.uk

EXCERPT FROM THE MINUTES OF THE DEVELOPMENT CONTROL COMMITTEE HELD ON 14 NOVEMBER 2008

DC.99/08 REVISIONS TO THE 'RIGHT TO SPEAK' POLICY

Pursuant to Minute DC.80/08, the Development Control Manager submitted report DS.145/08 suggesting modifications to the criteria whereby a right to speak was accorded.

The Development Control Manager outlined the background and current provisions of the 'Right to Speak' Policy. Although in theory the Policy was a fair and reasonable process that allowed public speaking on planning matters, in practice, there were a number of operational and procedural weaknesses which opened it up to fairly wide abuse. Further, since its inception and in response to the need to achieve a speedier determination of applications to offset the Council's failure to achieve performance targets, Members had reviewed and introduced changes to the Scheme of Delegation. Unfortunately, however, those changes were not delivering all of the envisaged improvements in performance due to the fact that the Scheme and 'Right to Speak' Policy were not as well integrated as they should be.

The Trevor Roberts Associates' study found that of all of the Cumbrian authorities only Carlisle City Council had a situation where its Scheme of Delegation could be set aside by a single objector or supporter of an application registering the right to speak or, indeed, an applicant if he/she thought the application may otherwise fail to secure approval under the Scheme of Delegation.

The current situation was patently not a good use of Member or Officer time or public/private financial resources whilst delays in determining applications could have major consequences for jobs and investments. Additionally, it did not portray an image of an efficient, well-organised and effective Planning Authority with a sound grasp of planning principles properly exercising its planning powers.

The Development Control Manager drew Members' attention to the relevant sections of the Trevor Roberts Associates' review to assist them in understanding what 'good practice' entailed and where the City Council could improve.

He then outlined proposed revisions to the 'Right to Speak' Policy, drawing attention to an amended version reflecting a clearer style and format of the informative material which utilised plain English and was less formal in its general tone.

In considering the report, a Member made the following comments:

- If applicants wished a Member to represent them at Committee they must make the Member aware within the normal 21 day consultation period.

- It should be clarified that the 21 day consultation period related to calendar and not working days.
- Members welcomed the revised Scheme for its clarity and ease of understanding.
- The revised Scheme should be produced in a format which could be retained for future use.
- Training would be useful for all Members to ensure that they were aware of the requirements placed upon them.

RESOLVED – That report DS.145/08 be received and the proposed changes be introduced at the earliest opportunity.