

**Report for:**

**DECISION**

**Item Number:**

<b>Contains Confidential or Exempt Information</b>	<b>NO</b>
<b>Title</b>	Public Speaking at Planning Committee – Protocol Update
<b>Responsible Officer(s)</b>	Helen Harris, Director of Legal and Democratic Services
<b>Author(s)</b>	Katie Sullivan, Committees Manager Jack Roberts, Democratic Services Officer
<b>Portfolio(s)</b>	N/A
<b>For Consideration By</b>	Planning Committee
<b>Date to be Considered</b>	13 December 2023
<b>Affected Wards</b>	All
<b>Keywords/Index</b>	Planning, Public Speaking, Engagement

**Purpose of Report:**

This report asks the planning committee to consider proposed updates to its speaking protocols.

**1. Recommendations for DECISION**

That the Planning Committee:

- i. notes the proposed amendments to the existing public and councillor speaking protocols; and
- ii. agrees to adopt the amended public and councillor speaking protocols as they are set out in appendices 1 and 2.

**2. Reason for Decision and Options Considered**

- 2.1. Speaking protocols set out the opportunity for residents to get involved in the planning process and to engage with local decision makers. It is best practice for the planning committee to keep a clear and up to date protocol to establish rules on who is allowed to speak at planning committee, and how fairness is ensured between all parties.
- 2.2. The procedure should be considered in light of the Council's Equalities duty, the requirement for the Committee to maintain procedural fairness during meetings, and the logistical challenges which procedures might pose in the administration of the Committee meetings.

### 3. Key Implications

- 3.1. Given the time elapsed since the last formal reviews of the protocols, the reviews have been undertaken holistically, with many of the amendments a case of rewording paragraphs to better reflect the existing practices of the committee. There has also been a focus on the impact of the protocols on equalities and diversity, with a general move towards assessing adjustments for individuals with protected characteristics on a case-by-case basis, rather than through set procedures prescribed in the protocols.

*The public speaking protocol:*

- 3.2. This protocol sets out the opportunity to speak for third parties or planning applicants. Changes include providing the opportunity for speakers to disclose their protected characteristics at the point of registration and allowing for increased discretion in how the committee/officers make adjustments for people with protected characteristics.
- 3.3. The update which is likely to have the most noticeable impact is the procedure for deciding who will speak at the meeting in cases where more than one third party objector has registered. The protocol provides that only one speaker on behalf of third-party objectors will normally be allowed to speak at the Committee. Where more than one third party objector registers, the committee administrator invites the prospective speakers to coordinate amongst themselves and appoint a spokesperson.
- 3.4. There are cases where third party objectors are unable to decide between themselves who shall act as their spokesperson. The Committee is asked to agree a procedure for deciding between speakers where agreement has not been reached.
- 3.5. The following options have been assessed:

- a) First come, first served:

*“If agreement cannot be reached on who will speak, the individual who registered with the Committee Administrator first will be selected as the speaker.”*

It has been identified that there may be reasons why prospective speakers with protected characteristics under the Equalities Act 2010 are not in a position to register quickly following notification of their opportunity to speak.

Research suggests that participation in the planning process is lower amongst some groups with protected characteristics, for example amongst young adults, the elderly, ethnic minorities, minority religious groups and those with disabilities. Given that notification of the opportunity to speak on

a planning application is sent to those who have participated in earlier consultation stages for the application, people underrepresented in those earlier stages are less likely to be able to register speak at Committee quickly.

Furthermore, research suggests that the use of the internet for sending and receiving emails is lower amongst the elderly and those with disabilities. Given the notification of the opportunity to speak on a planning application is sent by email, there is a concern that people who do not use email regularly may be disadvantaged in registering to speak quickly.

On the above basis, a first come, first served procedure is not recommended for agreement by the planning committee.

b) Drawing lots:

*“If agreement cannot be reached on who will speak, the selection will be by the Committee Administrator after the drawing of lots.”*

This procedure maintains procedural fairness by affording each prospective speaker with equal chance of being granted speaking rights. On this proposal, there is no advantage to registering quickly after an invitation to register to speak and, as such, the considerations relating to the impact on protected characteristics for the first come, first served policy do not apply.

However, this proposal could pose logistical challenges. The drawing of lots by the committee administrator is best done with all prospective speakers present, either virtually or in-person. However, it is not always possible to organise a time prior to the planning committee meeting where all speakers can attend. This could make this procedure more difficult to enact from a logistical point of view.

Furthermore, whilst this proposal is not likely to cause detriment to people with protected characteristics in the same way that the first come, first served policy might have, it should be noted that pure random allocation of speakers risks situations where due regard is not given to the impact of someone’s protected characteristic on their registration to speak. It does not allow case-by-case consideration to be given to protected characteristics which have been disclosed.

c) Chair’s discretion:

*“If agreement cannot be reached by the third parties on who will speak, the Chair shall decide, having due regard to any protected characteristics”.*

Regardless of protocols put in place, speaking at committee meetings is always at the discretion of the Chair. There are benefits to explicitly emphasising in the protocol that this is the case. Firstly, it makes clear who is the decision maker on matters of speaking to anyone unfamiliar with

committee procedures. Secondly, it allows the decision on who will speak at committee meetings to be taken on a case-by-case basis with explicit due regard to any protected characteristics which are disclosed by prospective speakers. Such due regard is necessary given the Council's equalities duties.

During the consultation there have been concerns raised about the openness and transparency of this proposal. Whilst the process places discretion on choosing the third party speaker with the Chair having considered protected characteristics, the Chair may also, where appropriate, choose for the speaker to be chosen at random.

It is highlighted that this proposal does not have the rigidity of the current administrative procedure for deciding who will speak. As set out in the Equalities Analysis Assessment (Appendix 5), rigid administrative procedures can replicate disparities of earlier stages of the planning application.

#### *Councillors speaking protocol*

- 3.6. The key change which has been made to the councillors protocol is to coordinate its provisions relating to pecuniary interests with the members' code of conduct and the members' planning code.
- 3.7. In the local code of conduct for councillors, it states at 12.4 (c) that councillors who have a disclosable pecuniary interest in any matter to be considered or being considered at a meeting may not "remain in the meeting during the duration of any discussion of the matter". The protocol has been updated to clarify two points:
  - That councillors with a pecuniary interest in an application are not entitled to speak under the councillors speaking protocol. This is because the councillors speaking protocol affords more speaking time for ward councillor speakers (5 minutes) than is afforded to members of public who register using the public speaking protocol (3 minutes).
  - That if a councillor has a pecuniary interest in an application and they are entitled to speak under the Planning Committee's Public Speaking Protocol, they shall nominate a representative to speak on their behalf or feed in their views to a 3rd party spokesperson pursuant to paragraph 14 of Planning Committee's Public Speaking Protocol. This is because councillors must not be in the meeting room whilst a decision is being made on an application for which they have a pecuniary interest. It is recommended that where councillors wish to have their views considered in their capacity as a member of the public, they should do so through a representative.

## **4. Financial**

- 4.1. There are no financial implications.

## **5. Legal**

5.1. Although there is no legal requirement to allow public speaking at planning committees, most local authorities do so. Where it is allowed, failure to have clear protocols in place setting out the arrangements risks allegations of bias, portrays a lack of transparency, and could result in subsequent challenge to the decision-making process.

## **6. Risk Management**

6.1. None.

## **7. Community Safety**

7.1. There are no concerns about community safety arising from the proposals.

## **8. Links to the 3 Key Priorities for the Borough**

8.1. The council's administration has three key priorities for Ealing. They are:

- fighting inequality
- tackling the climate crisis
- creating good jobs.

8.2. Ensuring good corporate governance will help the Council to achieve its objectives.

## **9. Equalities, Human Rights and Community Cohesion**

9.1. The Committee must have due regard to the equality duties before making a decision.

9.2. An equalities analysis assessment has been undertaken in relation to the proposed updates to the protocol. The findings are referenced in the options considered above.

9.3. Overall, whilst most aspects of the proposed updates to the speaking protocol were deemed either neutral or positive in relation to their impacts on people with protected characteristics, there was a risk that adopting a first come, first served policy would be to the detriment of groups by age, race, disability or religion and belief. Furthermore, although the drawing lots policy did not encounter the same issues as the first come, first served policy, there was a concern that the procedure did not allow due regard to be given on a case-by-case basis to the impact of a protected characteristic on registering to speak. As such, it was considered that the Chair's discretion option was likely to have the most positive impact on people with protected characteristics.

## **10. Any other implications:**

10.1. None.

## **11. Consultation**

11.1. The proposed changes have been reviewed by the Council's legal department.

11.2. Copies were then sent to the Chair of the Planning Committee, and the opposition leads for Planning.

## **12. Timetable for Implementation**

12.1. The amended protocol will come into force for the next meeting of the Planning Committee.

## **13. Appendices**

- Appendix 1 – proposed public speaking protocol.
- Appendix 2 – proposed councillor speaking protocol.
- Appendix 3 – existing public speaking protocol.
- Appendix 4 – existing councillor speaking protocol.
- Appendix 5 – equalities analysis assessment.

## **16. Background Information**

Local Government Association (2019) "[Probity in planning: advice for councillors and officers making planning decisions](#)"

## Consultation (Mandatory)

Name of consultee	Post held	Date sent to consultee	Date response received	Comments appear in paragraph:
<b>Internal</b>				
Helen Harris	Director of Legal and Democratic Services	9 August 2023	17 October 2023	Appendix 1
Twahid Islam	Senior Regeneration Lawyer	Throughout	Throughout	Sections 3, 5, and Appendices 1, 2 and 5.
Cllr Ray Wall	Chair of Planning Committee	14 November 2023	27 November 2023	
Cllr Jon Ball	Liberal Democrat lead for Planning	29 November 2023		
Cllr Anthony Young	Conservative lead for Planning	29 November 2023	1 December 2023	
Alex Jackson	Head of Development Management	30 November 2023	5 December 2023	

## Report History

<b>Decision type:</b>	<b>Urgency item?</b>
Planning Committee Decision.	No.
Report no.:	Report author and contact for queries:
	First and surname, job title: Jack Roberts, Democratic Services Officer, 020 8825 6604.