

Agenda Item	17
Report No	HC/38/13

**CORPORATE GOVERNANCE: LOCAL MEMBER VOTES**

**Report by Director of Planning and Development & Assistant Chief Executive**

**SUMMARY**

At the Council meeting on 27 June 2013 it was agreed to defer consideration of the recommendation to dispense with the ability of Members to use a Local Member Vote (LMV) on planning and licensing applications and to explore the appropriateness of having a named substitute from each Ward as an alternative. A procedure has been drawn up to allow named substitutes to be used, and this report sets out how such the arrangements could be put in place. Members are asked to agree the new procedure for the Planning Application Committees, and also to dispense with the use of Local Member Votes for Licensing Committee and Planning Environment and Development Committee from 30 September 2013.

**1. Background**

- 1.1 At the Council meeting on 27 June 2013, Members considered a number of proposed changes to the arrangements for the Planning Application Committees (PACs). It was agreed to defer consideration of the recommendation to dispense with the ability of Members to use a Local Member Vote (LMV) on planning and licensing applications and to explore the appropriateness of having a named substitute from each Ward on PACs as an alternative. Given that LMV arrangements are also in place for the Licensing Committee and the Planning Environment and Development (PED) Committee, the opportunity has also been taken to consider whether these arrangements should continue.
- 1.2 Experience elsewhere in Scotland demonstrates that local members do not have the right to vote on planning application matters if they are not formal members of the PAC. Whilst the LMV does enable a non-member of committee to take part in the determination of an application pertaining to their ward, there are concerns that non-members applying for a LMV may already have made up their mind or perceived to have made up their mind in advance of a decision and therefore be at risk of breaching the Councillors' Code of Conduct.
- 1.3 This report sets out the background to the Local Member Vote issue, and the different ways in which local Members can contribute to planning matters. The report then sets out the proposed approach for substitute members and recommends that Standing Orders be amended to reflect that change.

**2. Local Member Votes at PAC**

- 2.1 As set out in the previous report to Council on 27 June 2013 experience

elsewhere in Scotland demonstrates that local members do not have the right to vote on planning application matters if they are not formal members of the PAC.

- 2.2 Elsewhere in Scotland, there are protocols that allow local members to speak either for or against a development on behalf of constituents or other parties, at which point they have to leave the Committee meeting. In terms of paragraph 7.15 of the Code, any such arrangement would require to be part of a formal Hearing process, affording equal opportunity to any other party wishing to make representations to do so.
- 2.3 There is already provision in the Council's Standing Order 13.1 allowing any Member who is not a member of a Committee to speak, at the Chairman's discretion, at a meeting of that Committee. Consequently, if Members wish to consider removing the right, under Standing Order 13.2, for local members to both speak and vote at Planning Applications Committees, local members would still have the option of obtaining the Chairman's approval to their addressing the Committee without a vote. However, it would be prudent to have guidance in place to ensure that local members addressing a Planning Applications Committee under SO 13.1 are fully aware that they may do so only to express their own assessment of the planning merits of the application. Speaking rights under SO 13.1 should not be used by local Members to make representations on behalf of constituents or other parties. If it became apparent at a meeting that a local Member was doing this, determination of the application would immediately have to be deferred for a hearing to allow other parties (applicants or objectors) equal opportunity to be heard in terms of para 7.15 of the Code.
- 2.4 In addition, there is currently nothing to prevent local Members making written representations to the Planning Service on any planning application if they wish to do so. Where these representations are merely for the purpose of making known to planning officers the representations from constituents or others which the local Member has received (as permitted under paragraph 7.14 of the Code), this would not prevent the local member then exercising the right under SO 13.1 to address the Committee. The local member would not, by simply relaying to the planning officer the views which others have expressed to him or her, have indicated or implied his or her own support for or opposition to the proposal in advance of the meeting.
- 2.5 However, where a local member writes to the Planning & Development Service in support of the views of particular constituents (whether for or against a development), or indeed does so to express their own personal views for or against the development, it would not be appropriate in terms of the Code for the local member to take any part in the proceedings at Committee unless as part of a formal Hearing in accordance with paragraph 7.15 of the Code.
- 2.6 Written representations received by the Planning Service from a local Member and which express support for or opposition to an application would be considered on the same basis as other representations. Any material planning considerations contained in such representations would be summarised in the report to Committee along with any material considerations raised in other representations received.

### **3. Recommended Change to Local Member Vote Arrangement for PACs, Licensing Committee and PED Committee**

- 3.1 A system for the use of substitutes is currently used for strategic committees. There is no legislative barrier to this approach being adopted for PACs and the Licensing Committee, but substitutes are not permitted for the Licensing Board.
- 3.2 It is therefore recommended that the model used for strategic committees be amended to cater for PACs, based on the individual wards. Clearly, this would not be on the basis of political representation, but on nominations from each ward. At present the membership of the North and South Area Planning Application Committees is based on a representation of 2 Members from each 4 Member ward and 1 Member from each 3 Member ward. It is recommended that Standing Orders should be amended to allow for one substitute Member to be nominated from each Ward to provide cover should one of the substantive Members of the committee be unable to attend. Only one substitute per ward will need to be identified, given that it is unlikely that both members from a four Member ward would be missing at the same time. Named Substitute Members will be provided with their own set of papers at the same time as the Substantive Members.
- 3.3 It is recommended that a notification arrangement will be put in place whereby when a substantive member of the PAC is unable to attend the meeting, he or she will contact the named substitute and make arrangements for the substitute to attend the Committee. If a substitute Member is to attend a meeting, notification must be given to the Assistant Chief Executive one week in advance in order that the Clerk to the Committee and Chair can be notified and the necessary arrangements can be made for their attendance and that the substitute member has sufficient time to prepare for the Committee.
- 3.4 Any substitute Member will be required to undergo the necessary planning training prior to taking part in decision making at the Committee and also to attend any refresher training as required.
- 3.5 The use of Local Member Votes at the Licensing committee is infrequent and the number granted under the full term of the last Council was less than 10. It is therefore going to be more difficult to ensure that named substitutes have a sufficient level of experience to undertake the role, given that they will be called on very infrequently. In contrast there are local member votes granted for practically every PAC meeting. It is therefore recommended LMVs are no longer permitted for the Licensing Committee.
- 3.6 The use of Local Member Votes is also infrequent at the PED Committee given that planning applications are only considered at that Committee if Notices of Amendment have been raised following consideration of that planning application at the PAC. For the reasons set out in paragraph 1.2 of this report, it is therefore considered that the provision of a LMV should no longer be permitted.

### **4. Implications**

- 4.1 Financial implications: There are no financial implications arising from this report.
- 4.2 Legal Implications: The proposed change in Local Member Vote will ensure that Members are not at risk of a breach of the Councillors' Code of Conduct and that alternative arrangements and protocols can be put in place to enable Members to participate within the decision making process.
- 4.3 Equalities implications: There are no equalities implications arising from this report.
- 4.4 Climate Change/Carbon Clever implications: There are no climate change or Carbon Clever implications arising from this report.

## **5. Recommendation**

Members are asked to agree to:

1. dispense with the ability for Members to use a Local Member Vote on Planning Applications Committees with effect from 30 September 2013.
2. amend the Scheme of Delegation to enable the nomination of one substitute member from each ward to act as a substitute member for each Planning Application Committee; and
3. dispense with the Local Member Vote arrangements for the Licensing Committee and the Planning Environment and Development Committee with effect from 30 September 2013.

Designation: Director of Planning & Development

Designation: Assistant Chief Executive

Author: Malcolm Macleod

Date: 24 August 2013