

YORKSHIRE DALES NATIONAL PARK AUTHORITY

26th September 2006**THE ADVOCACY AND REPRESENTATIONAL ROLES OF MEMBERS****Purpose of Report**

To present a paper on the advocacy and representational roles of Members, and to suggest some principles in relation to that role which the Authority may wish to adopt.

A previous version of this paper was considered by Members at the Policy Development Forum on 19th July; the paper has been updated in the light of the debate on that day.

Strategic Planning Framework

Best Value Action Plan 2006/07, Action 94(d): "Develop guidance to clarify the advocacy and representational role of Members".

The Issue and its Context

The Authority's Best Value Performance Plan for 2006/07 contains an action, under the heading of corporate governance, to develop guidance to clarify the advocacy and representational role of Members. This objective sits within the wider context of a review of the roles of Authority Members following the National Park Authority Performance Assessment (NPAPA) process which took place during 2005. The NPAPA report concluded that "the Planning Committee consumes a considerable amount of available Member time and energy, which means that their skills and abilities are not available for other aspects of the Authority's work". Dealing with this issue "would release considerable energy and knowledge into other areas of work, and provide a big boost to the wider governance of the Authority".

Following this, the Authority decided to reduce the size of the Planning Committee, and thus release Member time for other activities. Four elements of Members' role were then identified as ones to examine and develop:

- Member Champions;
- Role of the Audit & Review Committee: particularly in the areas of corporate governance and ensuring the Authority learns from its experiences;
- The involvement of Members in Partnership working; and
- Increased clarity on the advocacy and representational roles of Members.

This paper addresses the last of these, with the aim of raising the understanding of Members and officers about the appropriate roles of Members as advocates and representatives.

So What's the Problem?

In the past there has been evidence of a lack of shared understanding amongst Members – and amongst officers – about the advocacy and representational roles of Members. Is it appropriate for Members to act as advocates, and if so of whom – or what? There are lots of things that could be advocated:

- The interests of individual people, eg a person who has submitted a planning application or applied for an access restriction;
- The interests of a local community, eg a village or hamlet which is facing a particular issue;
- The interests of local communities generally, eg for economic opportunity, retention or development of local facilities;
- The interests of particular groups of local people, eg of young adults for affordable housing;
- The interests of particular classes of recreational users of the National Park, eg walkers, trail riders;
- The interests of local, regional or national organisations with an interest in the National Park, eg the British Horse Society, the Yorkshire Dales Society;
- The interests of endangered or threatened species which have a habitat in the National Park;
- The national interest in ensuring that the National Park remains a national asset for the future.

The issues in relation to representation are similar, though the concept of representation is of course more general than that of advocacy (I will not attempt any semantic distinctions!). Most Members are elected, though none are elected to the Authority itself. I am sure that for an elected Member, it would seem odd to be able to take up the case of a constituent in relation to a housing issue with the District Council, yet be told that it was not appropriate to represent the same person in relation to a planning matter with the National Park. Or, if a Member is elected to represent a ward which is partly inside and partly outside the National Park, to be told that they may represent people outside it, but not people within it. And yet, others may say that no-one is elected to serve on the National Park Authority, and there is thus no democratic accountability there; and they may point to the fact that, if Members do “represent” their local areas in that way, then residents in some areas of the Park have no such representation, whilst others have a choice of representatives!

YDNPA is not alone in facing these issues. The Solace report on all of the NPAPA performance assessments which were carried out in 2005 refers to governance as an area where greater consistency across NPAs might be helpful, and says that “the extent to which members perform a leadership role and engage with local communities on a regular basis varies between NPAs”. The second part of the report (which deals with a common NPA view on the way forward) suggests that member roles and governance arrangements are areas to be looked at on a national basis by a proposed National Parks Improvement Group (NB: this is an officer group).

In many countries, National Parks are wilderness areas with no permanent residents. Indeed, some countries go so far as to remove local people from an area before designating it as a National Park. Issues of conservation versus recreation still arise, of course, and issues of advocacy and representation of the interests of user groups, rare species etc still rage, although they are not complicated by questions of the interests of

local residents. That is not, however, the British system. And although the make up of National Park Authorities in terms of types of members may (or may not) change in future, for the present we have a system whereby some members are appointed by local Councils, and some by the Secretary of State – with some of the latter being nominated by local Parish Councils. That is the system, and the task of those within it is to make it work.

So: what guidance or advice has been given to National Park Authorities in general, and to the Yorkshire Dales National Park in particular, to help us get as clear an understanding as possible of what Members are supposed to do and (conversely) what may be unacceptable?

Published Guidance

(a) Statutory

National Park Authorities were established by the Environment Act 1995 and the National Park Authorities (England) Order 1996, and although these legislative provisions established the Authority, provided for different categories of Member, and set the number of Members, they do not provide any guidance in relation to what Members are supposed to do. The National Parks Circular (DoE 12/96) is not much more helpful. It refers to the desirability of local authority appointees being persons who represent divisions or wards within the National Park. This might be thought to imply an intention that the interests of local people should be represented; though the political proportionality rules militate against this to some extent. With regard to Secretary of State appointees, the circular states that they are selected for their personal qualities and experience, and not as representatives of specific groups or organisations; nevertheless they will be people with the capacity to present a wide viewpoint encompassing the national purposes for which the Park has been designated. With regard to Secretary of State parish appointees, the Circular states that their appointment is “to ensure that local people have a greater involvement in the running of the National Park and in the management of Park affairs”. However, the parish Members “are appointed to represent the wider Park view, and not just the interest of their own parish, and are representatives rather than delegates of the grouping of parishes nominating them” [the distinction being that delegates do as they are instructed, and representatives make up their own minds]. The Circular states that the appointment of parish Members “enables a proper balance to be achieved between the wider national interest, that of local authorities and the truly local concerns of those who live and work in the Parks”. This tends to imply that local authority Members are intended to represent their authorities, rather than local people directly.

(b) Pullen Review

The Pullen Report on the review of English National Park Authorities (2002) identified NPA membership as “the issue that lies at the root of debate about National Park Authorities’ accountability; their planning responsibilities; the balance between National Park purposes and the socio-economic duty; and the balance between national and local interests”. Nevertheless, Pullen did not address the question of what the role of NPA Members ought to be. The report supported the idea of job descriptions for Members, to help clarify the role, and the report certainly assumes that local Members will promote local interests, and national Members, national ones. The key passage in Pullen reads thus:

“Membership reflects the hybrid status of National Park Authorities. They are special purpose statutory authorities, with a mix of people appointed via different processes and by different appointing authorities. In some ways, their hybrid status

brings advantages by providing a genuine mix of people with different experience and skills, and legitimately different views. Where the combination works well, there is well-rounded and balanced decision making. But, crucially, it depends to a large degree on the goodwill and constructive working relationships between the different Members – local authority appointees, national appointees and parish council Members....it is perhaps inevitable that there is sometimes tension between those Members who see themselves as promoting local interest, and those appointed by the Secretary of State to represent national interests.”

The Pullen report was happy to see National Park Authorities continue with a “broadly balanced” membership on this basis (although some changes to the detail were recommended).

(c) DEFRA

Perhaps the most directly relevant guidance on the roles of Members is to be found in the job descriptions for the Chair and for other Members which were produced by Defra in 2005. Amongst the key functions of the Chair are:

- Representing the Authority at a national, regional and local level in its relations with key stakeholders and communities;
- Representing the Authority’s views as necessary to the press and media, and playing an ambassadorial role in promoting positive relationships with external parties and organisations; and
- Reporting, liaising and representing the Authority to Government, and working with other NPAs to influence national and regional policy.

Unsurprisingly, therefore, the Chair has an acknowledged role of representing the Authority itself.

The job description for NPA Members starts by describing the purpose of the role: “to ensure that the Authority fulfils the National Park purposes to the full, and does so in the way that best suits the special characteristics of the Park”. Members have a duty to achieve the efficient, effective and accountable governance of the Authority in the best interests of the National Park, and to provide leadership, scrutiny and direction for the organisation as a whole in pursuing the aim of sustainable development. The primary purpose of the role of NPA Member, according to the job description, is to work with the Chair, Chief Executive and other Members to discharge the functions of the Authority and to steer and champion the management of the Authority so that it delivers benefits to the nation and its local communities in accordance with National Park purposes.

The job description for Members continues with two and a half pages of detail, all of which is clearly based on a strategic view of Members as developers of policy and scrutineers, effectively keeping the Authority honest to its statutory purposes, whilst also acting as ambassadors for the National Park. There is no reference in the job description to the different categories of Members, nor is there any reference to Members acting as advocates or representatives of anyone or anything – other than the Authority itself.

External Reports and Advice

What can the Authority learn about the role of Members from external reports and advice? The NPAPA Performance Assessment report certainly addressed the actual and potential roles of Members, and the following passage is of key importance:

“There are issues of concern with Member engagement on wider governance and leadership of the Authority. Some Members are not displaying consistent corporate ownership of decisions that have been made, or of the aims and policies of the Authority. There are common perceptions that some Members do not feel bound by Authority policies, and seek to retain the ability to operate independently, *or as if they have a representational role, rather than the leadership role that is expected of them.* (emphasis added)

The report goes on to say that more needs to be done to re-emphasize the role of Members; the need for ownership and common purpose; and for Members to commit to an improved way of working together.

The Chief Executive reported to the Authority meeting on 28th March 2006 about implementation of the NPAPA improvement plan. This report suggested that Members should expect (and be enabled) to:-

- set a clear direction for the Authority (policies, objectives, priorities etc)
- hold officers to account for implementing the above
- set the framework within which officers operate (Standing Orders, Delegation, Financial Regulations etc)
- have their abilities, experience and capabilities recognised
- represent the Authority (sell the Purposes and, if necessary, ‘fight the NP corner’)
- represent the views of all stakeholders so as to inform decisions.

The Chief Executive’s report also suggested that it would be useful to adopt a number of other principles, namely:-

- Members should lead the Authority and set the agenda;
- Governance arrangements should be appropriate to the relatively small size of the organisation;
- Members should have a role as ‘ambassadors’ for the Authority and there should be ‘buy in’ to the Authority’s decisions;
- Responsibility for day-to-day operational decisions should continue to rest with the Chief Executive.

Finally, in relation to the representational role of Members, the report suggested that there was a need to ensure Members are able both to represent the views of all stakeholders as part of the consideration of decisions, and to represent the Authority externally to explain and champion those decisions. It was suggested that this might sensibly form part of the work of the Corporate Governance Working Group.

In relation to the role of Members, the NPAPA report brings a sharper focus to messages the Authority had already been receiving from the external auditors. A report by the external auditors in 2003 on the Authority’s performance in relation to the second statutory purpose (promoting opportunities for understanding and enjoyment) noted that “there is a wide variation between the views of some Members, who feel that the statutory purposes are paramount, and other Members who feel that the focus of the Authority’s work should be on fostering economic and social wellbeing in local communities.....These

fundamentally differing views are expressed strongly and publicly, and impede consistent communication of the Authority's priorities. Consequently, the Park Authority is perceived by the local community to be inconsistent and parochial in some of its decisions and activities". The auditors themselves reported observing Members express widely differing views on the extent to which the Authority is a positive or negative force in the local community, and individual Members publicly dissociating themselves from the Authority as a corporate body, seeming to be unwilling to take ownership of the Authority, and referring to the Authority in the third person. The report concluded that Members' differing views about the Authority's priorities were impeding consistent communication of the Authority's priorities to the local community, and that there was a need to develop an ambassadorial role for Members (and officers and volunteers).

The external audit report on Planning (final version, October 2005) reached similar conclusions in a different context: "The [Planning] Committee has given greater weight to arguments in favour of immediate social and economic benefits than to evidence of the effect of development on the National Park environment and sustainability, in some cases to an extent that seems hard to justify in the National Park policy context"; and again: "Members and officers think views are polarised according to whether Members are locally or nationally nominated to the Committee. This can be seen in the voting pattern on applications..... A final concern is that in some cases Members give the impression that they are advocating for a development, rather than taking the dispassionate approach appropriate to their role on a regulatory Committee". The auditors expressed concern at the extent to which some decisions departed from the Local Plan in favour of personal circumstances, local opinions, and (asserted) social or economic benefits.

YDNPA's existing Guidance

The Authority developed some statements in 2000, based on the deliberations of a Members' Customer Care Group. Some of this material is relevant for present purposes, including a leaflet on "What the public can expect from Members", and a paper on the roles and responsibilities of Members of the National Park Authority. The latter stated that Members have three key roles to play:

- To determine the Authority's policies, and approve and monitor programmes to implement those policies
- To participate in the development of policy direction, strategic thinking and innovation within the National Park Authority, including through the development and maintenance of good working relations with officers
- To represent the National Park Authority, individually and corporately.

Another document in the Members' Handbook goes on to analyse the representative role in more detail, including the external role of representing the Authority. Where this is formal representation on other bodies or at specific events, Members would normally be expected to present and support established Authority policy. Even in more informal settings, Members are performing an important representative role, setting the National Park Authority and its policies in the best possible light and communicating the core values and interests of the Authority as a whole. Finally in this context, the paper mentions the principle of collective responsibility for decisions reached by the Authority, which Members should always bear in mind.

The “what the public can expect from Members” leaflet sets out the following:

- We will endeavour to be ambassadors for the Yorkshire Dales National Park as a whole, the Authority and the communities that live and work there;
- We will aim to be useful channels of communication for local people and visitors, or others with an interest in the National Park and listen to their views;
- We will explain the purposes of the National Park, its structures and decision making, and the basis for the Authority’s policies and decisions. Where we may individually have a different view from the Authority’s position, we will take care to explain both;
- We will respond to issues, policies and cases of concern or interest raised by members of the public;
- We will advise you on queries, concerns or issues to the best of our ability, and ensure that you are directed to the most appropriate member of staff to assist you in more detail;
- We will always acknowledge contact by the public, and will explain how something you have raised is being handled;
- We will offer guidance on formal processes;
- We will respond positively and constructively to suggestions for how the Authority, our staff or Members ourselves might improve our performance.

The legal position

The general law does not deal specifically with what local authority Members are supposed to do any more than the specific law lays down the roles of National Park Authority Members. In both cases, however, there are clear rules of behaviour – most obviously the Members’ code of conduct, but also including issues such as maladministration, ultra vires, and principles of natural justice.

Particular rules apply in so-called regulatory matters, such as deciding on planning applications (and making other determinations, such as for access restrictions under CRoW). Here, Members are acting in a quasi judicial capacity, and it is not therefore appropriate for any Member to advocate or represent the interests of an applicant (or an objector) and then to take part in the decision itself. Any Member who wishes to take an advocacy role in such circumstances – which includes expressing a firm view for or against an application - must not take any part in the making of the decision. For this reason, Members who do wish to take part in a decision should not express an opinion that may be taken as indicating that they have already made their mind up, before hearing all the evidence relevant to a case; and Members should not organise support for, or against, a particular application, or put pressure on other Members or officers to influence a decision. Where a Member commits themselves to supporting or opposing a particular proposal, outside of the meeting at which it is being considered, then they should declare an interest and take no part in the determination of the matter in question.

Conclusions

There is a consistent theme in reports and guidance that one important role of all NPA Members is to represent the Authority externally – both to local people and on the regional and national stage. If that is to be done in any way effectively, it implies acceptance of another consistent theme: collective responsibility for decisions. Whatever different views may be robustly expressed when policy is being formulated or decisions considered, Members need to accept the decisions which result and, even if they feel unable to

advocate their merits, at least refrain from publicly criticising decisions taken or policies adopted by the Authority, of which they are such an essential part. The Authority needs its Members to represent it, both in the local community and on the wider stage, to advocate National Park purposes as well as the specific policies and initiatives which the Authority has agreed. Members tend to be listened to: they are influential, and can often achieve results which officers alone could not.

The new role of Member “Champions”, and the work to enhance the role of Members in Partnership working, necessarily involve a closer identification of those Members with agreed Authority policy. When Members are representing the Authority on Partnerships or as Champions, they must do so on the basis of supporting and presenting established Authority policy. One result of the recent changes to the role of Members should be to give them more input into policy development, and hence more ownership of the outcome, although of course all policy is ultimately made by Members collectively. Member Champions may well develop a role in discussing issues relevant to their brief with key stakeholders, such as the local authorities. A member who occupies a position of representing the Authority, and yet finds themselves unable to support relevant Authority policy, would be in an untenable position.

Most Members are appointed to the Authority by one of the two County Councils, one of the three District Councils, or a combination of Parish Councils (albeit that the appointment mechanism is different in the latter case). Should Members report back in some way to their appointing body / bodies about the work of the Authority? There is no general requirement to do so, and in one sense this is a matter for the other Authorities themselves. However, it could be a useful way of communicating issues of importance to this Authority to the local authorities. The five principal local authorities concerned are very important to the National Park: they deliver the vast majority of local public services in the Park, and much of our own work needs effective co-operation with the local authorities. We are surely “missing a trick” if we fail to take advantage of the opportunity to influence the local authorities. Where a Council appoints more than one person to the National Park Authority, any reporting back would have to be co-ordinated, and the Members concerned could discuss what would be the most appropriate mechanism. The process could be facilitated by National Park Authority officers writing a brief on NPA issues, which Members could then use or adapt for reporting back to their appointing Authority.

There is then a quite different question as to whether, and to what extent, it is appropriate for Members to advocate, particular interests within the Authority – be those interests as narrow as an individual’s planning application or as wide as the interest of all the people of Britain (or the world, as was ambitiously said when the English National Parks were first established) in seeing that the precious landscape and unique features of the Yorkshire Dales are retained for the benefit of future generations. Despite the absence of reference to this advocacy and representative role in the job description for Members, it must be right that there is such a role. The very constitution of National Park Authorities is based on it. Whether or not the present balance is right, the different classes of membership of National Park Authorities implies a recognition of the need to balance competing interests when reaching decisions that affect the National Park; and if that is so, then it must be legitimate for Members to advocate those interests when they believe it is right to do so.

It would of course be wrong, if not insulting, to stereotype Members as if their views were inevitable in the light of who appointed them. Pullen felt that it was reasonable to expect local Members fully to take account of national interests; and no-one would suggest that

Secretary of State appointees are blind or indifferent to the needs of local people and communities. All Members have to respect the statutory purposes and (in the context of those purposes) the socio-economic duty, and they should strive to see all issues through that filter. Add to that a willingness to be open to the views of others and to accept that one's own views will not always prevail, and the advocacy of particular points of view by Members can not only be positive, but actually essential in ensuring that all relevant issues are brought to light and balanced before decisions are taken. One of the key values of Members to the Authority is the knowledge they bring, to inform debate. Members all need to recognise and respect each others' expertise and contribution, whether it be detailed local knowledge or a broad national theme.

Towards some Guiding Principles

I would suggest, therefore, that the following principles can be put forward in relation to the advocacy and representational role of Members:

1. For all Members, the first consideration should always be the statutory National Park purposes (and, in pursuing those purposes, the socio-economic duty).
2. It is never appropriate for Members to advocate or represent the interests of particular individuals or organisations who are seeking a permission or consent from the Authority, and then to participate in decisions in relation to such matters.
3. All 26 Members represent all of the National Park, and no member has "constituents". Nevertheless it is legitimate, and indeed very important, that members with knowledge of the views and needs of local people represent those views when relevant to decisions which are being taken. In the same way, Members with relevant specialist knowledge or expertise need to bring it in to the decision making process.
4. It is legitimate for Members to point to any facts, or to pursue any line of argument, which they believe is relevant to consideration of any business before the Authority (including matters considered by Committee or by officers). In this sense, Members may advocate or represent any points, or interests, that they believe to be relevant.
5. In the same way, and subject of course to Standing Orders, Members may raise issues which are relevant to the Authority's powers and duties, even if there is no existing item of business to which the issue is relevant.
6. Members should acknowledge that they are fully part of the Authority, and should explain the purposes of the National Park, its structures and decision making, and the basis for the Authority's policies and decisions. Where a Member personally has a different view from the Authority's position, s/he should take care to explain both.
7. Members who represent the Authority, for example as Champions or on Partnerships must do so on the basis of established Authority policy.
8. Members must always be careful to comply with the Authority's code of conduct, and in particular the provisions regarding Members' interests, and should seek advice in this regard where necessary.
9. Local Authority and Parish Members should consider, with the Authorities which appoint them, whether there are appropriate ways in which they can report back to and influence those authorities in relation to the work of the National Park Authority.

RECOMMENDATIONS

That the Authority adopts the above Principles in relation to Members' advocacy and representational role. The Principles would not be binding on Authority Members in the way that, for example, the Code of Conduct is, but they would be a collective statement to guide Members in this sometimes difficult area, and as such would be included in the Members' Handbook, and in the induction of new Authority Members. They would also support Members in explaining their role, and in managing the expectations of others.

Richard Daly
21st July 2006