

Extract from minutes of:

STRATEGIC POLICY AND RESOURCES COMMITTEE

23rd October, 2020

Bilingual Street Signage

The Committee considered the following report:

“1.0 Purpose of Report or Summary of Main Issues

1.1 To consider options for the consultation of occupiers for the erection of a second nameplate in a language other than English. Having regard to discussions on the issues the options presented are as follows:

- 1. retain the current policy requiring one third of residents petitioning in favour of the erection of a second name plate and two thirds responding positively to the formal consultation with non-respondents treated as, in effect, against.**
- 2. retain the one third requirement through petition trigger but adopt a 50+1 rule with non-respondents, in effect, not taken into account. This would be subject to a minimum response threshold of one third;**
- 3. adopt an entirely new policy position, the trigger for a consultation being an expression of interest by a resident or residents or Councillor with a percentage of residents (suggested at 20% but to be agreed) responding positively being sufficient to erect a second nameplate subject to residual discretion and protections/mitigations as appropriate;**
- 4. the Conradh Na Gaeilge option in which the process is triggered by a request from an occupier with a 10% response threshold and a 50+1 rule;**
- 5. adopt some other position which would be subject to further legal advice.**

2.0 Recommendation

2.1 The Committee is requested to adopt a position in respect of the options presented or consensus on some other position to enable a policy to be finalised and presented for approval.

3.0 Main Report

Key Issues

- 3.1 **Article 11 of the Local Government (Miscellaneous Provisions) (NI) Order 1995 requires the Council, in deciding whether to exercise its discretion in relation to the erection of a second nameplate, to have regard to the views of occupiers in a street. Thus any policy position adopted requires a process to enable occupiers to be consulted and given the opportunity to respond. This is important because it is a statutory requirement and something which is required to be taken into account in making decisions.**
- 3.2 **The current policy is that one third of residents, by way of petition, may trigger a formal consultation in relation to the erection of a second nameplate in a language other than English. If two thirds respond positively the threshold is deemed to be met. The policy treats those who do not respond as essentially not in favour. The policy was subject to a judicial review in 2014 which was successfully defended.**
- 3.3 **By way of notice of motion on 3 February 2020 it was proposed that the council change its current policy position regarding the consultation requirements on erecting a second name plate in that whilst the one third trigger through petition would be retained, a 50+1 rule in respect of the consultation would be adopted with non-respondents not counted. Concerns were articulated regarding this position in the context of the proposed policy position not being legally robust which led me to propose that a minimum response threshold mirroring the initial trigger should be adopted. Under this a majority in favour would represent circa 17% of residents with a one third response rate required overall. There has been some legal contention in respect of the advice given. That advice was subsequently supported by counsel's opinion that was previously circulated.**
- 3.4 **Discussions have ensued and progressed toward an option which does not enjoy universal support in terms of where the threshold should land. There is however a level of agreement in relation to the principles that should underpin the policy. In terms of those who are supportive of changing the existing policy all favour an approach embracing international law and standards.**
- 3.5 **The position promoted by Conradh Na Gaeilge refers to a simple trigger of a request by a Councillor or resident and a 50+1 rule with non-respondents not counted and a minimum response threshold of 10%. In support the organisation refers to the European Charter for Regional or Minority Languages and the UN Special Rapporteur's guide to the implementation of language rights of linguistic minorities. The relevant paragraph of the guidance is as follows:**

Street and locality names and topographical indicators intended for the public are important as markers of social identity, culture and history. A good, practical approach adopted in most countries is for the authorities to provide transparent legislation or

procedures to allow bilingual or even trilingual signs, usually following the proportionality principle where there is a sufficient concentration or demand for such signs in minority languages. While national legislation varies, the low threshold where it is considered practicable and reasonable to provide such signs tends to vary between 5 per cent and 20 per cent of the local population, with the lowest threshold usually associated with the use of a minority language that also has some kind of official status or for traditional, historical reasons. The criteria for the display of signs in minority languages must be given a clear and unambiguous legislative basis for it to be effectively implemented. Bilingual or multilingual signs used by public authorities demonstrate inclusiveness, and that various population groups share a locality in harmony and mutual respect.

- 3.6 In the first instance, it is important to remember that how the process is triggered is less important than the consultation itself as it is this that informs decision-making and is formally required by domestic law. A previous proposal by Conradh Na Gaeilge retaining the trigger of a one third petition but with a 50+1 rule in respect of responses has been withdrawn and replaced with the current proposal which contains a minimum response threshold in respect of the consultation.
- 3.7 The European Charter for Regional or Minority Languages, to which the UK is a signatory, establishes an obligation on state signatories not to create barriers in respect of the use of a minority language. The UN Special Rapporteur guidance may also be taken into account in formulating a policy position and as an aide to understand where treaty obligations land in practical terms. The state obligation arising in respect of the Charter has been taken into account in the preparation of this report and in respect of all of the options that would change the current policy. It is also my opinion that all meet the international legal standard and guidance referred to.
- 3.8 The guidance suggests that a threshold in the range of 5%-20% is acceptable. Thus the threshold suggested in any of the proposals that would change the current policy would appear to meet international standards (Members will recall that it was asserted that the minimum response threshold advocated in option 2 was criticised for not complying with international obligations).The reference to thresholds refers to the 'local population'. Thus any adoption of policy that has its roots in this guidance should refer to the percentage of occupiers in the street responding positively to the formal consultation required for the second nameplate to be erected. Essentially what consultation would seek to establish is if there is a sufficient community of interest to warrant the erection of a second nameplate. In that sense the consultation is not a referendum.
- 3.9 Any policy needs to reflect on the prevailing circumstances in which its adoption is being considered and the legal parameters established by the domestic legislation in which it is rooted. The Special Rapporteur guidance on the use of bilingual signage is

caveated by reference to when it is reasonable and practicable to do so. Even the guidance in reflecting a range of acceptable thresholds, which it describes as 'low', implicitly suggests that there may be local or domestic circumstances that need to be taken into account in the formulation of any relevant policy.

- 3.10 The political landscape and maturity of post conflict states are likely to be factors that should be considered in fixing the point at which any such threshold might be set. The guidance also establishes that the status of the language and the extent of any community of users are important factors. Both Irish and Ulster Scots are registered under the Charter. Whilst the policy may relate to any language it is an inescapable fact that the predominant outworking will be for street signage in Irish.
- 3.11 OFMDFM policy, whilst dating back to 2005, emphasised the need for authorities to take positive action to ensure that shared and neutral spaces remain shared and used by all sections of the community. These and the other matters referred to in the preceding paragraph are real world considerations that cannot be swept away by portraying them as obstacles to the implementation of, in this case, a bilingual signage strategy. The guidance clearly allows for consideration of local context. Ultimately these are matters for the parties to take a position on. The domestic obligations in respect of equality and the need to promote good relations also need to be considered in terms of any potential wider impact.
- 3.12 Taking a look at the outworking of the policies is important. As an example a street of 100 occupiers applying the thresholds would have the following results;
- 3.13 Under option 1, the current policy position would require 67 occupiers to respond positively (with non-respondents treated as against).
- 3.14 Under option 2, with a minimum response threshold of one third, the number of positive responses required would be 17 (with 33 responses required).
- 3.15 Under option 3, with a fixed percentage at the upper end of the low threshold (20%) in the UN guidance the number of positive responses required would be 20 (representing a sufficient community of interest).
- 3.16 Under the Conradh Na Gaeilge proposal of a minimum response threshold of 10%, the number of positive responses required would be 6 (with 10 responses required).

Taking account of the legal requirement to have regard to the views of residents I remain of the view that the Conradh Na Gaeilge proposal is not sufficient in terms of discharging that obligation and is likely to be legally susceptible to challenge. There is a balance to be struck in terms of the requirement to take account of views as required by the legislation even if the 'regard' duty falls

at a lower level than some others. There must be some concept of proportionality in arriving at the outcome.

- 3.17 It is important to remember that residual discretion exists and that any policy should not be viewed as a straitjacket. There may be circumstances when notwithstanding the consultation response it may be appropriate to depart from the policy when there are clear reasons for doing so. That may work both ways in terms of outcome.

Principles/Mitigations

- 3.18 In the event that the agreement is reached to change the policy in line with either options 2 or 3 or 4 (the latter contrary to advice) it is suggested that the following principles could be considered in the context of a protocol that the parties may wish to sign up to.

1. That the policy will be used for the promotion of language rights and for the benefit of linguistic communities.
2. That the principles of equality, promoting good relations and respect will underpin the application of the policy in addition to the rights promoted by the policy itself.
3. That, as with any statutory consultation which the council is required to undertake, the City Solicitor may intervene if any complaint is made and a basis for that complaint established.
4. That any decision relating to the erection of a second nameplate in the city centre (business core) will, in addition to the current policy considerations, be subject to a wider public consultation to reflect the community of users.
5. That the policy will cover the corporately designated Gaelteacht Quarter until such time as a policy which may contain specific proposals in respect of a bilingual strategy have been adopted.

- 3.19 Administrative Considerations – Finance and Resource Implications

1. Whilst I have indicated that I am less concerned with how the formal consultation is triggered, it is important to remember that any change in policy in terms of the options presented will be likely to increase the number of applications received. For that reason members may wish to fix some petition threshold. This may also help filter those applications that are speculative.
2. Given the potential for increased numbers of applications the council will deal with no more than 5 in any given month. If numbers are excessive they will be held in a queue and dealt with in the order in which they have been received. This will also be managed in the context of the existing

staffing resource and the established annual budget for street signage.

**Equality or Good Relations Implications/
Rural Needs Assessment**

3.20 Any proposed change to the policy will be subject to consultation and equality screening.”

After discussion, it was

Moved by Councillor Beattie,
Seconded by Councillor Lyons,

That the Committee agrees:

- i. to adopt Option 3 within the report, that is, to adopt an entirely new policy position, with the trigger for a consultation being an expression of interest by a resident/residents/Elected Member but with the percentage of residents responding positively being sufficient to erect a second nameplate being set at 15%, rather than the 20% which had been suggested within the report;
- ii. that the City core be included within the revised policy until such time as a policy similar to that in place for the Gaeltacht Quarter was formulated; and
- iii. that a report be submitted to a future meeting outlining the potential for increasing the number of applications which could be processed on a monthly basis.

On a recorded vote fourteen Members voted for the proposal and six against and it was declared carried.

<u>For 14</u>	<u>Against 6</u>
Councillors Beattie, Black, Carson, Garrett, Groogan, Heading, Long, Lyons, McAllister, McDonough-Brown, McLaughlin, McReynolds, Murphy and Walsh.	Aldermen Dorrian, Haire, Kingston and Sandford and Councillors Bunting and Pankhurst.