

FOCUS GROUP ON THE REVIEW OF THE CONSTITUTION

MINUTES OF THE FOCUS GROUP ON THE REVIEW OF THE CONSTITUTION MEETING HELD ON 29 JULY 2010 AT COUNTY HALL, BYTHESEA ROAD, TROWBRIDGE.

Present:

Cllr Trevor Carbin, Cllr Nigel Carter, Cllr Peter Doyle, Gibbons, Mrs I McCord, Mr S Middleton, Mills, Mr Paul Neale, Cllr Christopher Newbury, Rhouati (Secretary), Cllr Ricky Rogers, Cllr Anthony Trotman and Cllr Stuart Wheeler

Also Attendance:

Cllr John Brady – Cabinet member for Economic Development, Planning and Housing
Cllr Jeff Osborn – Chairman of Organisation and Resources Select Committee

8. **Apologies**

There were none.

9. **Minutes**

Resolved:

To confirm as a correct record and sign the minutes of the meeting held on 15 March 2010.

10. **Proposed changes to the Constitution resulting from the review of the Development Control Service.**

The Chairman welcomed Cllr John Brady, Cabinet member for Economic Development, Planning and Housing and Brad Fleet, Service Director of the Development Service who explained the background to the review of the development control service.

All members of Wiltshire Council and town, parish and city councils had been given an opportunity to comment on the review. Views had been sought on six areas in particular, namely the scheme of delegation to officers; the Planning Code of Good Practice; training; communication; what was and was not working well and an opportunity to comment, highlight any concerns or provide suggestions about the service. Details from the feedback from this consultation

were presented. The initial findings and recommendations from the review were considered by Cllr Brady together with the Chairmen and Vice-Chairmen of the four Area Planning Committees and the Strategic Planning Committee at a meeting held on 12 May 2010. At that meeting, the majority of the recommendations were supported. A report incorporating the views expressed at that meeting together with the comments from this Focus Group would be presented to Cabinet with any constitutional implications being presented to Council for final approval.

The report of the Service Director concentrated on those recommendations which were likely to have implications for the constitution. It was noted that there were other recommendations which related to operational and practical considerations but would have no impact on the constitution.

Cllr Brady added that consultation had taken place with 'people at the coalface' and the review had looked in detail at controversial areas such as 'call in' and the issues that surrounded this, such as the large geographical area in which 'call in' operates. It was also acknowledged that there were subtle differences between how Planning Committees operated. It was hoped that adopting best practice in the light of experience would help to promote uniformity and consistency between the Planning Committees of the Council.

The focus group considered in detail each of the recommendations and formed a view on whether or not they should be supported or amended.

Resolved:

That the Focus Group's views on the recommendations concerning the review of development control be as follows:

(a) Scheme of Delegation

1. Amend the Scheme of Delegation specific to planning (Part 3C) to Officers to expand the types of application which can be called in by Members to include Listed Building & Conservation Area Consents and Advertisements.

Supported by the Focus Group.

2. Re-write and simplify guidance on Member call in procedure for planning applications and ensure officers confirm what action they are taking.

Supported by the Focus Group.

It was also agreed to include in the weekly list the date by which an application may be called in.

3. Retain current practice of Division Member only call in unless the Chairman has discussed the application with Members who may have conflicting views, and then decides to call the application in.

**Supported by the Focus Group.
Further clarification sought on the situation when the Chairman is the Division member.**

4. Amend the Scheme of Delegation specific to planning (Part 3C) to Officers to confirm that the Director of the Service has delegated power to make changes to conditions approved at committee provided this is in line with the principles of the committee's decision. (Examples would be where there are clear errors/typos in conditions, to reflect changes in circumstances between a meeting and issue of a decision or a need to add to a condition or reword a condition to ensure that it complies with policies and legal guidance. Any changes to be reported back to a subsequent meeting for Members to note.

Supported by the Focus Group.

5. Amend the Scheme of Delegation to include determining the requirements for and amending when necessary the local validation list for planning applications.

Supported by the Focus Group.

6. Remove any ambiguity about what constitutes a 'senior officer' (private applications submitted by them will have to go to Committee if objections are received) by defining this in the scheme as follows: -

A 'senior officer' within the Development Service will mean a Team Leader, Area Development Manager or the Service Director. In respect of other council services, a 'senior officer' will mean any Service Director, Corporate Director or the Chief Executive.

The Focus Group expressed some reservation over this recommendation. The Service Director explained the staffing structure within the Planning Service and the safeguards which existed. However, the Focus Group considered that this was more about public perception and considered that private applications by any member of the planning service should be included.

The Focus Group requested officers to provide a clearer definition of what constitutes a senior officer taking on board its comments.

7. Revise the Scheme of Delegation to clarify that applications submitted on **behalf** of the council by senior officers will not be treated differently from other applications. (Council applications submitted by senior officers will be treated in exactly the same manner as applications submitted by the public. Objections will not automatically trigger committee consideration).

Supported by the Focus Group.

8. Amend the Scheme of Delegation to include the 'discharge' of conditions.

Supported by the Focus Group.

9. Amend the Scheme of Delegation to clarify that similar considerations apply to both the council's own Regulation 3 applications and the public's in respect of triggering consideration by the Strategic Planning Committee.

Supported by the Focus Group.

10. Where an appeal has been lodged against a planning decision and Counsel advises that specific refusal reasons are unreasonable and/or likely to undermine or weaken the Council's case or that there is a substantial risk of costs being awarded against the Council, officers be authorised to inform the appellant and the Planning Inspectorate that the Council will not seek to defend that reason(s) at appeal.

Supported by the Focus Group on the basis that this would only apply where time constraints did not allow for referral back to the committee when the decision would be taken following consultation with the Chairman.

(b) The Planning Code of Good Practice

1. Amend the Planning Code of Good Practice so that it states that Division Members can nominate a substitute to undertake their planning duties, including 'call in' when they have a conflict of interest and are absent due to holidays or illness.

Supported by the Focus Group - to be reworded to incorporate the Chairman's ability to nominate a substitute where a member is unable to appoint their own substitute and for this to be included within the Scheme of Delegation for Planning.

2. That the order of events at committee meetings be amended to the following: -
- a) The planning officer will introduce each item and set out any representations, amended plans or material considerations which have been received or come to light in the period between the publication of the agenda and the committee meeting.
 - b) Committee Members will then ask the officer to clarify any points/ask technical questions.
 - c) Members of the public who wish to make representations opposing the application will then be invited to do so.
 - d) Members of the public/applicant/agent (in this order) who wish to make representations in support the application will then be invited to do so.
 - e) Consultees who wish to make representations will be invited to do so.
 - f) The town/city or parish council representative, if present, will then be invited to make representations.
 - g) The division member will be invited to make representations*.
 - h) The planning officer will then have an opportunity to respond to comments or provide clarification of any points raised.
 - i) The chairman will then normally ask if anyone is prepared to move the officer recommendation, or table an alternative or move that the application be discussed. Once a motion has been seconded it will be open to the councillors to discuss the application and ask further questions of officers.
 - j) If necessary the chairman will then again ask if anyone is prepared to move the officer recommendation, or table an alternative.

* Any division member, be they a member of the committee or not is welcome to attend committee meetings and make representations on any application within their division. Councillors who are part of the committee will have voting rights but those who are not can speak, but are not eligible to vote. Division members who are not on the committee may be invited to participate in any debate on an application in their division at the chairman's discretion.

Supported by the Focus Group subject to the following amendment:

For the purposes of clarity and to be consistent with the Rules of Debate (Part 4) to reword paragraph (i) and consider the necessity of (j) above.

3. At the chairman's discretion the Democratic Services Officer can issue a clear 30 second warning during all public contributions.

Supported by the Focus Group.

4. Cabinet consider introducing mileage payments (or an allowance) for planning committee members who undertake individual pre-meeting site inspections. Any claims to be annotated with the relevant application number(s). (This was discussed at the chairmen's meeting where there was no consensus. The chairmen asked that this matter be considered and decided upon by Cabinet.)

Recommendation to Cabinet

It was noted that the Independent Remuneration Panel had considered this but did not recommend it on the basis that such incidental costs were included within members' basic allowance.

5. Amend the Code to clarify that parish/town/city councils have an individual slot to make representations at committee. Only one representative per council (representing the council's views, rather than their own individual thoughts!) will be allowed to speak. Where an application site covers more than one parish, one representative from each of the affected parishes may speak.

Supported by Focus Group.

6. Add a section to the Code of Good Practice explaining that in certain circumstances, Councillors could be expected to act as the council's appeal witness. Alternatively, consultants can be engaged to defend the appeal where a Member is unavailable.

Supported by Focus Group – to be reworded to clarify that the Committee would be asked to agree on who would be involved in defending an appeal should one be lodged at the point where the committee resolves to refuse an application contrary to an officer recommendation.

11. **Overview and Scrutiny**

The Chairman welcomed Paul Kelly, Scrutiny Manager and Cllr Jeff Osborn, Chairman of the Organisation and Resources Select Committee to the meeting.

a) Overview and Scrutiny Arrangements

Paul Kelly explained the background to the current overview and scrutiny arrangements which comprised four Scrutiny Select Committees with each having the ability to appoint Task groups.

An interim review of arrangements included the establishment of a Liaison Board, albeit on an informal basis. The Liaison Board, acting as an overarching body comprised the Chairmen and Vice-Chairmen of the four Scrutiny Select Committees and also had the responsibility of managing the overview and scrutiny function and development of the scrutiny arrangements.

Paul Kelly explained that development of the scrutiny arrangements was currently taking place and he would be able to report the outcome of the review to the next meeting of the Focus Group.

Cllr Jeff Osborn emphasised the need for the Overview and Scrutiny function to add value to the organisation as a critical friend. He also referred to the need to publicise the role of Scrutiny to the public. The main focus of work had been on the creation of the new Liaison Board, which had been considering the development of the scrutiny arrangements. Consideration was being given to whether the Liaison Board should act as an overarching body or be an independent Select Committee.

Cllr Osborn also referred to an Executive/Scrutiny Protocol which was being developed with the aim of establishing and documenting a clear two way relationship between the Executive and Scrutiny. The Protocol would be considered by the Corporate Leadership Team in the first instance before being presented to the next meeting of the Focus Group for its input.

Paul Kelly commented on the questionnaire responses regarding scrutiny. These would also be brought to the attention of the Focus Group when it considers the review of scrutiny arrangements at its next meeting.

Resolved

To note the update on the current overview and scrutiny arrangements and to consider the revised arrangements at the next meeting (20 September 2010).

b) Appointment of Designated Scrutiny Officer

The Focus Group considered a report which explained the requirement under S.31 of the Local Democracy, Economic Development and Construction Act 2009 to designate one of its officers as the 'Scrutiny Officer'. The designated officer may not be the head of paid service, the monitoring officer or chief finance officer.

The designated officer would be responsible for discharging a number of functions as outlined in the report.

The Scrutiny Manager's current job description included to a large extent the functions intended for the designated scrutiny officer and it was therefore considered that operationally, it would make sense for the Scrutiny Manager to be designated formally in this way. The views of the Focus Group were sought in relation to the constitutional implication of including the designation within Article 13 where it sets out the statutory designated posts. The proposal would be progressed to Council for formal approval.

The Focus Group agreed with the proposal to formally designate the Scrutiny Manager as the designated Scrutiny Officer and for consideration to be given as to whether the Scrutiny Manager's job description required revision to reflect this new statutory duty.

Resolved

To recommend Council to designate the current Scrutiny Manager post as Wiltshire Council's Scrutiny Officer to be responsible for the statutory functions set out in paragraph 3 of the report presented with immediate effect and to amend the Constitution accordingly.

12. **Guidance to Councillors Appointed to Outside Bodies**

Ian Gibbons, the Monitoring Officer presented a report and guidance for the Focus Group's initial comments. The guidance set out the main issues which Councillors should consider when appointed by the Council to serve on outside bodies and supplemented advice included in paragraph 13 of the Councillor/Officer Relations Protocol. The guidance covered issues to consider before appointment; application of the Code of Conduct for Councillors; the legal status of outside bodies, capacity of appointment, duties and liabilities and insurance and indemnity.

It was generally agreed that the guidance was very comprehensive and would be very helpful to Councillors. The Focus Group considered that the issues covered in the guidance would apply equally to Councillors representing organisations in their private capacity and asked for this to be emphasised in the guidance. The Focus Group sought clarification on the definition of 'acting in bad faith' as referred to in paragraph 18 and asked for the guidance to specifically refer to Community Area Partnerships.

Resolved

That subject to the comments made by the Focus Group being taken on board, the Guidance to Councillors Appointed to Outside Bodies be endorsed and recommended for adoption.

13. **Governance Reporting Arrangements**

The Focus Group considered a draft schedule which sought to clarify the reporting lines for the Council's governance responsibilities between the Cabinet and the Audit, Overview and Scrutiny and Standards Committees. The schedule reflected the terms of reference of those bodies and indicated which non-executive committee would normally be treated as the lead for the governance area concerned. It was noted that other non-executive committees may of course have an interest in the subject matter and this was also illustrated in the schedule.

The schedule provided a 'rule of thumb' guide to determining lead responsibility. It may however be necessary to review the position in the light of the particular business under consideration. Subject to the Focus Group's comments, it was proposed to include the document as a protocol to the constitution.

Resolved

To endorse the Governance Reporting arrangements for inclusion as a Protocol to the Constitution.

14. **Questionnaire Responses**

At its last meeting on 15 March 2010, the Focus Group agreed a questionnaire for circulation to all elected and co-opted members of Wiltshire Council. Any feedback in the form of responses to the questionnaire would then be used to help inform the review of the constitution.

Of the 123 questionnaires issued (to 98 elected members and 25 co-opted members), 35 completed questionnaires had been received which equated to a 28.45% response rate. The efforts undertaken to maximise the response were outlined.

Due to time constraints at this meeting, it was agreed to note the responses to the questionnaires which would be used at subsequent meetings when reviewing the various parts of the constitution.

Resolved:

To note the responses to the questionnaire which would be considered at subsequent meetings in the review of the various parts of the constitution.

15. **Update on Changes Made**

For the Focus Group's information, a schedule was presented which showed changes to the constitution previously approved by Council since the new Constitution was in place on 1 April 2009.

Resolved:

To note the schedule of changes to the Constitution as previously agreed by Council.

16. **Index of Constitution**

The Focus Group received an updated index to the constitution which showed the current position on the review of the constitution broken down into each part.

Resolved:

To note the Index.

17. **Future Work Programme**

The Focus Group considered its work programme for its next two meetings which were agreed as follows:

20 September 2010 at 10.00am
8 October 2010 at 10.00am

It was noted that a special meeting of the Standards Committee would be arranged for the purposes of considering the recommendations from this Focus Group and to make recommendations to Cabinet on 19 October 2010 which in turn would then make recommendations to Council on the outcome of the review of the constitution.

18. **Public Consultation**

The Chairman sought the Focus Group's views on a series of questions for use in an online survey to ascertain the views of members of the public on aspects of the constitution dealing mainly with public participation and public engagement. Due to the time constraints of the meeting, members were asked to give the questions some thought and forward any comments or suggestions to Yamina Rhouati.

(Duration of meeting: 10.00 am - 1.40 pm)

The Officer who has produced these minutes is Yamina Rhouati, of Democratic & Members' Services, direct line , e-mail

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