

These minutes will be presented to the next Standards Committee meeting for approval as a correct record.

WEST WILTSHIRE DISTRICT COUNCIL

MINUTES

Minutes of the: **STANDARDS COMMITTEE (CONTINUATION)**

Held on: **TUESDAY 25 OCTOBER 2005**

Held in: **COUNCIL CHAMBER, BRADLEY ROAD, TROWBRIDGE**

Present:

District Council Representatives: Cllr Manasseh

External Representatives: Tony Frost (Chairman)

Town/Parish Representatives: Mary Stacey

Also Present : Cllrs Batchelor, Bower, Carbin, Conley, Content, Cox, Fortescue, Hames, Hawker, Lewis, Osborn, Viles

Officers: Chief Executive, Acting Legal & Democratic Services Manager (GC), Member Support Team Leader and Member Support Officer (MS)

Also in attendance: Peter Keith Lucas Solicitor of Bevan Brittan - Consultant

This meeting commenced at 6.30pm in the 8trium to allow the Committee to deal with its ordinary committee business. The meeting then adjourned to the Council Chamber at 7.12pm where it was joined by other Members of the Council (all Members of the Council had been invited to this section of the meeting) in order to contribute to the Standard Committee's consideration of the review of the Constitution.

Apologies received for this section of the meeting:

Cllrs Brice, Bryant, Burnan OBE, Farkas, March, Mounde, Mudge Oakman and Phillips OBE.

161. REVIEW OF THE CONSTITUTION

The Chairman explained the purpose of this meeting was to assess the process of reviewing the Constitution; for the Standards Committee to contribute to the exercise to satisfy itself that the problems and concerns in the current Constitution would be addressed in the review, would take account of emerging best practice and based on the model local government Constitution, that the wishes of Members were being taken into account in so far as possible and that a reasonable timescale had been given to agree a new Constitution.

It would also be asked to identify any issues requiring further options to be developed and comment on the Standard's Committees own role.

The Chief Executive presented a report which summarised the main points, namely the background and progress to date.

A first draft had been produced together with a consultation paper on which Members' views (including Standards Committee members) had been sought. These comments were examined and commented on by the Consultant. This resulted in a second draft being prepared for Members' and officers' consideration and a summary of consultation responses circulated. Two meetings had been held with group leaders (or representatives) to establish if consensus could be reached on key issues.

This meeting would be asked to consider the four key and most contentious issues, namely substitutions; referrals to the Planning Committee by Members and town and parish councils; the Scrutiny Committee and proposed Audit Committee.

Reference was also made to other issues which had also attracted comments.

This meeting was not being asked to make choices, but to give an opinion on whether or not it considered that the options available were being set out in a clear way and were sufficient to deal with the various issues.

The original intention had been to present the agreed Constitution to Council on 9 November for adoption. However, although good progress had been made, more time would be needed to ensure accuracy of detail, pagination, cross-referencing etc. Subject to the views being expressed at this meeting, it was proposed to present an agreed constitution to a special meeting of Council on 15 December.

The Chief Executive thanked Members for their contribution to the process and for the time taken in examining drafts and submitting helpful comments.

The Chairman explained that the four key issues would be considered individually and that he would in the first instance ask group leaders or their representatives

to comment, then members of the Standards Committee, then open to other Members.

Key Issues

Peter Keith Lucas (PKL) outlined the four key issues that had emerged from the consultation and summarised the options available for each as outlined below:

Substitutions – key issue was whether or not to allow substitutes to attend committees on behalf of the official committee member on request and the process for allowing substitutes.

Advice

Under Section 102 of the Local Government Act 1972, Council appoints committees and committees appoints its sub-committees. Group leaders nominate to those seats allocated to their respective groups. Council decides on allocation of seats to ungrouped members and on allocations to groups with equal numbers. Council appoints members to committees which are not subject to rules on political balance (Standards and Licensing)

Option 1 - Recommended course of action which would carry no risk is that members should only be appointed in this way and therefore substitutions should NOT be allowed. This would ensure targeted training, increase members' expertise and encourage attendance.

Option Two- To allow substitutions - when a group nominates its full members, it also nominates the same number of alternates. Council confirms the appointment of full and alternate Members. So alternates are proportional and crucially, appointed by Council

When a member cannot attend, the member or the group leader notifies the Proper Officer in writing prior to the meeting, with the name of the substitute member. The Proper Officer notifies Committee at the start of the meeting. This allows an audit trail and provides clarity over eligibility to vote.

This system would be easily understood with clear membership but would increase number of members requiring training. It had minimal risk, but risk nevertheless.

Number of alternates could be on a one for one basis or one alternate for two full member basis.

Option 3 - Status quo arrangement whereby group leaders can pick anyone from their group to substitute. This carried the greatest risk of legal challenge given that it could never be argued that these substitutes had been appointed by Council to satisfy Section 102 of the LGA.

If substitutions are allowed, decisions would also need to be made on whether it should be applied to the Licensing Committee and the Scrutiny and Audit Committees or whether this should be allocated based on expertise and particular interest.

Cllr Bower (Conservative group representative) – group majority against substitutions. Membership be appointed by Council. Members should take responsibility for their attendance. If substitutes were allowed, would prefer a limited number especially for training purposes. Scrutiny Committee had already commented that it would wish to discourage substitutions and for this to also apply to Task and Finish Groups.

Cllr Manasseh (Labour group leader) – Ideally no substitutions, but could see this as being too restrictive and could lead to inquorate meetings, would also be difficult for smaller groups. In favour of a system as close to current arrangements as possible.

Cllr Content (Liberal Democrat group leader) – majority, but by no means consensus, would prefer substitutes as per current arrangement – acknowledged training requirements.

Other comments – whilst simple to have no substitutes, could lead to inquorate meetings. Perhaps one system for regulatory committees and one system for other committees. PKL advised that this could cause confusion. Preference for smaller bank of alternates.

Standards Committee members confirmed that they were satisfied that there were sufficient options and that they were clear.

Referrals to Planning Committee – referral of planning applications to Planning Committee by local councils and WWDC members and in particular the desirability of planning reasons being stated (whether in technical language or plain English)

Majority of applications (minor, non contested applications) are delegated to the Head of Development Control. Currently, such applications are referred to Planning Committee where objections are lodged or at the request of a local council or individual WWDC member.

Advice

If a WWDC member has a genuine objection, a letter of objection will in itself trigger a referral to Committee. If a WWDC member requests a referral, should they be requested (but not required) to provide a reason? This would not necessarily mean predetermination on the part of the Member. Such requests could be in view of local sensitivity to a particular issue or general local concern.

Providing reasons could assist in dealing with prevailing issues prior to the meeting. Suggestion that one member would be sufficient to request a referral within their own, or neighbouring ward, but that five members would be needed to request a referral outside of their ward.

Local council genuine objection would trigger a referral. Should local councils be requested or required to provide reasons for a referral? Suggestion that if no reasons given, the Head of Development Control would consult the Chairman of Committee on issue. If after consultation with the Chairman, there does not appear to be a case for referral, ie no reference to material planning considerations, then the application is determined under delegated powers.

Cllr Content – upon clarification, accepted the advice on WWDC member referral requests on ground of local concern etc. Considered that it would be contentious for an officer in consultation with a chairman to determine requests for referrals from local councils. Could be argued that acceding to local council requests was a part of local democracy and engaging local opinion.

Cllr Manasseh – PKL confirmed that reason for request ‘in the interest of public debate’ would suffice although a chairman could tire of it if used excessively.

Cllr Bower – should request reasons rather than require them.

Mrs Stacey – Standards member – in the absence of a reason from a local council, officers could establish reasons from a dialogue with the council concerned.

Other comments

In the absence of an absolute right for local councils to insist on referral, they could put pressure on local members to make request. Agreement with member requesting referrals outside of their ward, should not impose greater restrictions. Training should be provided to local council clerks as they offered scope for continuity who in turn would be able to advise their members on what constitutes material planning considerations.

Standard Committee members confirmed they were satisfied with the clarity and that sufficient options were available.

Audit Committee – the size of committee, its role and relationship with Scrutiny Committee.

Advice

The Audit Committee would be overseeing the audit function of the Council, meeting 3 times a year. Should it be a committee reporting directly to Council or a Sub-Committee reporting to Scrutiny Committee? (although it still could be directed to report to Council). The Scrutiny Committee had at one point suggested that it and the Audit Committee should have the same membership (currently 17 members). Better to have a smaller group of say 8 members to focus on issues (proportional split – 3,3,1,1). The District Auditor had commented that he would prefer it to be a full committee reporting direct to Council. It would have same powers as Scrutiny Committee with the exception of call-ins.

Cllr Cox (Labour representative) – preferred a smaller committee with a different membership to Scrutiny committee.

Cllr Content – parallel membership would include greater involvement from back benchers, although this was not a consensus view from her group.

Cllr Bower – Smallest committee possible. Confidential issues would be best dealt with by a smaller group. It would minimise proportionality problems if it was a sub-committee of Scrutiny committee. PKL advised that a sub-committee would also need to be politically balanced unless the committee when appointing the sub-committee, agreed unanimously to it not being politically balanced. On that basis, Cllr Bower's preference was for a committee rather than a sub-committee but with the smallest membership possible. In response to Cllr Bower, PKL advised that Audit committee was essentially an overview and scrutiny committee which meant that Cabinet members would not be able to serve as members, but could attend with no voting rights.

From the discussion, no consensus was reached although some clear options were emerging on the issue of size and membership or whether it should be a committee or sub-committee. The Chairman suggested that this be a subject of discussion between group leaders along with any other unresolved issues.

Scrutiny Committee – its role and the operation of the new task and finish groups

Advice

Explained process of call-in – request from Chairman, request from three committee members or 5 non committee members asking Cabinet to reconsider a key decision. Should there be a standard item on Council agenda giving the Chairman of Scrutiny Committee a right to address Council. Membership of task and finish groups – should it be proportional or based on expertise/interest?

Cllr Bower – Approval of Scrutiny Committee's workplan, constitution says annual approval by Council, this would restrict committee. PKL advised annual approval should focus attention on core issues Council would like to see scrutinised. This would not prevent the Committee from picking up other issues of importance during the year as and when necessary.

Cllr Content – Chairman’s right to address Council – this could still be done without the need for a specific slot on the agenda with the permission of the Chairman of Council. PKL advised that whilst it may not be an issue within this Council, it could with successor Councils. The Chairman of Scrutiny would not be from the majority group, in theory, a situation could occur when the ruling group could try to disable the scrutiny process prior to elections by directing the Scrutiny Committee to focus only on minor issues. The suggestion would give the Chairman a right of speech.

Other comments

Will committee be largely dealing with internal matters? Council would be able to influence when considering committee’s workplan.

Frequency of meetings – 9 times a year (with 3 meetings of Audit Committee).

Would any right of speech by the chairman of the committee at Council be the subject of debate? At the discretion of the Chairman of Council.

Noted that Chairman of Council would be involved in drawing up the committee’s workplan. Committee chairman would be able to present/address workplan at Council.

Reference was also made to the following other issues which had also attracted comments from Members:

Keeping Constitution up to date :

- Monitoring Officer would make changes as required or as instructed relating to fact or changes in law

- Website copy kept up to date

- Changes logged and notified to members.

- Changes presented to Standards Committee on a quarterly basis.

Leadership Model

“Strong Leader”

- Council elects Leader annually

- Leader appoints Cabinet or notifies Council

- Leader can appoint/remove a member to/from Cabinet by notification to Chief Executive (report to next Council)

- Council cannot remove individual member of Cabinet.

- If Leader goes, Cabinet goes

- Notice of motion with 11 signatories and 10 clear days notice to remove Leader

Budget Approval

- Trying to enable earlier scrutiny of draft Budget, rather than straight to Council.

- Also encouraging alternative draft Budgets to go through the same process.

- Cannot prevent amendment at Council.

Executive Decision making process

1. All decisions the subject of a written report, including single-member decisions
5 clear days notice required, details copied to all Members who have a right to attend and speak before decision is made.

Single member decisions at specified place and time / recording.
Discourage call-in if no new information.

Cabinet Forward Plan to include items to be considered by Cabinet
Extended from 4 months to 6 months, encourage inclusion as early as possible.

Urgent business

1. Identify in report or on decision
2. Implement without delay for call-in
3. If key decisions, 5 days notice to Chairman of Scrutiny committee
If really urgent, consent of Chair of Scrutiny, Chair of Council or
Vice Chair of Council, not vice chairman of Scrutiny
4. Urgency delegation to Leader
5. Urgency delegation to Chief Executive to cover inter-regnum – period after
councillors retire and before new councillors take office.

Call-in procedure

Key Decisions

Definition : a. significant by reason of expenditure relevant to service budget
b. significant for 2 or more wards

Defective: “significant”
“who decides”
slip big decision through officers

Suggestion: wider definition
£100,000 revenue or £250,000 capital
Land £250,000

Council Procedures

- a. Quorum : greater of a quarter – minimum of 3
- b. Calling Meetings : clarity on requisition process.
11 Councillors – within 20 clear days
- c. Appointment of Sub-Committee – by Committee
Appointment of Committee Chairman – by Committee – Annual Council
could adjourn to allow each Committee to elect their respective Chairman.
- d. Member and Public Questions –
Separate 30 minutes each in order of receipt
Not at Scrutiny so written answer if no time

Standards Committee

- 1. No one spoke against the Standards Committee having an Independent member as Chairman.
- 2. Review of Constitution annually
- 3. Detailed procedure for local investigation and hearings

The Chairman suggested that the timing of the appointment of the Standards Committee Chairman should be reconsidered. The elected and independent members would be meeting for the first time, and the Parish and Town Council representatives are appointed at different times meaning that members had not had time to get to know one another and make a judgement on who should be elected Chairman. He also requested that the reviewing and commenting on the Councils complaint procedure should be added to the Standards Committee list of duties.

Area Working

For later decision

Timetable

The Chief Executive said that this had proved to be a very useful and helpful meeting. A further meeting of group leaders would be held towards the end of November. A special meeting of Council to receive the new Constitution on 15 December.

Consideration would be given to the date for when the new Constitution would come into effect and dates for training for both Members and officers.

The following issues were areas where consensus had not yet been reached:

Substitutes
Planning referrals
Audit Committee – size, committee or sub-committee
Right of Scrutiny Committee chairman to address the Council

RESOLVED:

That the Committee

- (a) note the progress to date.**
- (b) Is satisfied with the review process and that the timescale is reasonable.**

(7.20 pm – 9.10 pm)

These minutes were prepared by Yamina Rhouati, Member Support Team Leader who can be contacted on 01225 770322 or email yrhouati@westwiltshire.gov.uk