

ISSUES PAPER

WEST WILTSHIRE DISTRICT COUNCIL CONSTITUTION REVIEW

1. General Presentation.

The existing Constitution is detailed and comprehensive in its content and caters for a great variety of situations. However, it contains much repetition which reduces flexibility, creates difficulty in interpretation and thereby can tend to cause confusion. As a consequence it becomes difficult to use; particularly when quick reference is required during meetings and when it is necessary to respond to events.

2. It is therefore suggested that changes be made to ensure consistency of effect, in wording and remove repetition thereby making the document more `user-friendly` and facilitate the making of any future changes because if repetition is removed there will only be a need to make alteration at the single place where the content changes. In particular Article 8 relates to Regulatory and other Committees and Article 11 to Joint Arrangements. Much of the information in these Articles is repeated under the heading Responsibility for Functions; Terms of Reference of Committees.

It is suggested that repetition be removed and consistency established both in respect of interpretation and effect.

STANDARDS COMMITTEE: AGREED

3. Article 4 The Full Council

The Council approves the plans and strategies that for the Policy Framework however it is not made clear that this includes authority to amend them.

It is suggested that amendment be made to clarify that the Council has power to amend plans, policies, strategies etc within the Policy Framework.

STANDARDS COMMITTEE: AGREED

4. Article 9: The Standards Committee

This Article contains provision for Independent Members to be appointed by a process which involves interview by a panel. However the process for Parish Council Members and Town Council Members has no such arrangement. Also, Parish Council Members are appointed for two years but Town Council Members for 1 year.

Should an Interview Panel arrangement be used in the appointment of Town and Parish Council representatives and

Should those representatives both be appointed for 2 years.

Consultation response from the Liberal Democratic Group.

Neither in favour or opposed to these proposals:

STANDARDS COMMITTEE: AGREED TO A 2 YEAR TERM OF OFFICE FOR BOTH REPRESENTATIVES BUT NOT TO THE INTRODUCTION OF AN INTERVIEW PANEL IN THEIR APPOINTMENT PROCESS

(Note: If these appointments are made at the same time it will reduce the administration process.)

5. There are no specified Rules of Procedure for the Standards Committee meetings (as opposed to Determination Hearings).

Should a provision be inserted to make it clear that the Council's Procedure Rules apply.

Consultation response form the Liberal Democratic Group: In favour

STANDARDS COMMITTEE: AGREED

6. Article 10: Local Community Participation.

In respect of District Council Area Seminars (10.03) a quorum is not specified. Due to the membership eligibility for these bodies the size of them can vary.

It is therefore suggested that a quorum of one quarter of the relevant full membership be inserted.

Consultation response from the Liberal Democratic Group.

In favour of setting a quorum but that this should be related to the number of people entitled to attend not the number of post-holders entitled to attend; as some people are entitled to attend on more than one basis

STANDARDS COMMITTEE: AGREED

7. The Chairman and Vice Chairman of these Area Seminars is required to be a member of the District Council. Westbury Area Seminar declined to appoint a Vice Chairman because of this requirement.

Should the requirement remain for the position of Vice Chairman

Consultation response form the Liberal Democratic Group and Chairman of the Council.

Should be required to be a Member of this Council. They also ask if these positions should be entitled to responsibility allowances.

STANDARDS COMMITTEE: RECOMMEND THAT AREA SEMINARS HAVE DISCRETION TO APPOINT THEIR VICE CHAIRMAN FREE FROM THE OBLIGATION

THAT THE APPOINTEE MUST BE A DISTRICT COUNCIL MEMBER AND THAT NO ALLOWANCE SHOULD BE ATTACHED TO THE POSITION

8. Article 14.05 Common Seal of the Council

This relates to the application of the Common Seal of the Council. It is the practice within this Council for documents to be attested by the Chief Legal Officer and a Councillor but the text only refers to the Chief Legal Officer.

It is suggested that amendment be made to confirm dual authentication.

STANDARDS COMMITTEE: AGREED

9. Part 3: Responsibility for Functions

This includes provision for setting out the names of the Members of all Committees of the Council, the Cabinet and other Bodies to which the Council makes appointments. These regularly change. Consequently the Constitution will regularly be inaccurate.

It is suggested this be amended to make it clear that when these appointments are made the details of appointment will be made public; for example on the Council's web site and be available from Member Support.

STANDARDS COMMITTEE: AGREED

10. Part 3: Proper Officer Designation

For a range of purposes officers are identified by designation. There is the possibility that this listing does not deal with all eventualities that may arise for which provision should be made.

It is suggested to make provision that the relevant person should be the Section 151 Officer or Monitoring Officer for matters that fall within their respective terms of reference and that for any other purpose it shall be the Chief Executive.

Note within the terms of the scheme delegation he can then authorise another officer to act on his behalf.

STANDARDS COMMITTEE: AGREED

11. Executive Procedure Rules

There is a lack of clarity within the Constitution as to who may act in situations of urgency. In this respect it is necessary to distinguish between Special Urgent Key Decisions and Urgent Departure Decisions. Special Urgent Key Decisions are the responsibility of the Cabinet but by their nature cannot await a meeting of the Cabinet. Urgent Departure Decisions should ordinarily be made by the Council but again by their nature cannot be deferred until a meeting can be convened. These latter decisions cannot be made by a single Councillor but can be delegated to an officer.

The Constitution makes it clear that in respect of either type of decision, in situations of urgency, there must be confirmation from the Chairman of the Scrutiny Committee that the making of the decision cannot be delayed.

It is suggested :-

in the case of Special Urgent Key Decisions, that cannot await a meeting of Cabinet, that the Leader has authority to make the decision in consultation with the Chief Executive; and in the absence of the Leader that the Deputy Leader be similarly authorised.

in the case of Urgent Departure Decisions that the Chief Executive be authorised to make the decision in consultation with the Leader, and in the absence of the Leader, in consultation with the Deputy Leader.

STANDARDS COMMITTEE: AGREED

12. Scrutiny Committee: Article 6

The Local Government Act 2000 specifies the functions of the Scrutiny Committee (copy attached as an Appendix) and applies a statutory restriction on extending the functions further. The Act also includes an additional statutory power to `invite persons (not being councillors or officers) to attend the committee to discuss issues or answer questions`. But it should be noted that there is no power to enforce such a request.

It is suggested that the existing functions as set out in the Constitution be replaced with the statutory functions and to insert the provision to `invite persons (not being councillors or officers) to attend the committee to discuss issues or answer questions.

The Task and Finish Group of the Scrutiny Committee was satisfied that the proposed functions adequately represented the existing text of the Constitution. They also recognised that the functions will need to be further reviewed when the full extent of the implications of the recent Government White Paper become known. Therefore the Task and Finish Group recommends that the existing functions in the current Constitution are replaced with what is set out in the LGA 2000. This was agreed by the Scrutiny Committee.

The Group also considered that the addition of the provision `to invite persons to attend the Committee` as set out above, to the Constitution would add clarity and recommends that the provision be included in the Constitution. The Scrutiny Committee agreed this proposal.

STANDARDS COMMITTEE: AGREED

13. Overview and Scrutiny Procedure Rules

Overview and Scrutiny Committees have the twin roles of overview of policy and scrutiny of decisions. In respect of the work of the Committee, the Chairman of the Council has a role `to help to develop its work programme`. The Committee also has

the role of reviewing future proposals related to the discharge of the functions of the authority (whether they are executive functions or otherwise) and is achieved by review of proposed decisions as included in the Executive's Forward Work Plan. It is also achieved by consideration of matters at the request of Council or the Cabinet. However, there appears to be a strange and unnecessary restriction which limits the scope for such requests to the Council and Cabinet; but excludes any Committee of the Council or the Chairman of the Council to refer specific matters of importance to the Scrutiny Committee and require consideration by the Scrutiny Committee before decisions are made by the appropriate body/person.

It is suggested that amendment be made to extend the scope for reference as identified above.

The Task and Finish Group, after discussion, was satisfied that there may be occasions when another Committee or the Chairman of the Council may wish to refer a matter to the Scrutiny Committee and recommends that an amendment be made to extend the scope of reference as identified above. The Scrutiny Committee agreed this proposal.

STANDARDS COMMITTEE: AGREED

14. `Call-in`.

The legislation does not refer to the scope for a `Call-in` of a decision but rather that provision be made to enable the Scrutiny Committee to be able to recommend that a decision that has been made but not implemented be reconsidered by the original decision-maker. Beyond that it is for the Council to adopt arrangements that are considered to be appropriate. The current arrangements lack clarity and sufficient detail in terms of time scale within which the scrutiny process is to be exercised.

It is therefore suggested to clarify the process as follows:-

a) Once a decision has been made and made public, if the Chairman of the Scrutiny Committee or sufficient Councillors notify the Chief Executive that they want the Scrutiny Committee to consider the issue, then if the decision has not been implemented, on receipt of that notification it shall be deemed to be `called-in` for the Scrutiny Committee to consider the matter.

b) If the initial request alleged that the decision was faulty due to a defect in vires or was not within the Policy Framework or Budget then a report from either the Monitoring Officer and/or Section 151 Officer should be provided to the Scrutiny Committee when they consider the matter.

c) Having considered the request the Scrutiny Committee may then:-

- (i) refer the matter back to the original decision-maker for reconsideration and final determination;**
- (ii) refer it to Council if it considers that the initial decision was not within the budget or policy framework**
- (iii) decline to intervene.**

- d) a request that the Scrutiny Committee consider an issue must be supported by a statement of reasons for such consideration.
- e) that the Scrutiny Committee consider the decision, that is the subject of notification to the Chief Executive, within 10 working days of receipt of that notification, and that the original decision-maker or Council, as the case may be, if requested, re-consider the matter within 10 working days of the decision of the Scrutiny Committee.

The Task and Finish Group satisfied themselves that the above proposals:

- *cannot stop an urgent decision being implemented, although the Committee would still have powers to review the decision.*
- *that item (c)(i) avoids the same decision being `Called-in` more than once*
- *that the options in (c) above do not preclude the Committee asking Council to review the Policy Framework if necessary; which could be done by a Notice of Motion, as under current procedure.*
- *that the 10 day time scale in (e) above is not unreasonable. In most cases only those papers considered by the original decision-maker would need to be reproduced.*

The Group then agreed that the information in paragraphs a to e above should be inserted into the Constitution to replace elements of Section 7 of the Rules in order to clarify the process. The Scrutiny Committee agreed this proposal.

STANDARDS COMMITTEE: AGREED

15. Council Procedure Rules.

The range of Procedure Rules is complex (excluding those relating to meetings such as licensing, planning and standards hearings) in that they include rules applicable to all meetings, formal procedure rules, informal procedure rules (Seminar Mode) and public session (Open Forum). The purpose of the range of variations appears to allow people who are not members of the particular body to take part in the proceedings. This however can be achieved by extending to the Chairman specific powers to permit such participation as may be appropriate depending on the circumstances

It is suggested that there be one set of Procedure Rules, essentially comprising the formal procedure rules and the rules applicable to all meetings and to make provision so that the Chairman of a meeting has powers to allow degrees of informality to allow Councillors who are not members of the Committee /Body and/or members of the public to contribute according to the nature of the business.

STANDARDS COMMITTEE: AGREED

16 Petitions

Paragraph 13 of the Council Procedure Rules contains the arrangements for the receipt of petitions but there is a lack of clarity and some duplication in the process.

It is suggested that:

- a) **petitions that relate to a member body other than Council should be referred direct to that body, if there is no such relevant body they are to be presented to Council; in the event of uncertainty the Chairman of Council to determine**
- b) **a Councillor presenting a petition whether to Council or other member body to have the opportunity of a 3 minute speech**
- c) **any petition with 100 signatures or more, in any event, to be presented to Council.**

STANDARDS COMMITTEE: AGREED

17 Questions

Paragraph 14 of the Council Procedure Rules contains the relevant provisions. In particular this requires that questions from Members must be delivered 10 clear working days before the relevant Council meeting. This time scale enables any questions received to be made public as part of the public disclosure of the Council papers as required by the Access to Information statutory provisions.

A question as been raised by Councillor Phillips that the time period be returned to the pre-existing arrangement which would require a reduction from 10 days to 3 days.

The Standards Committee is asked to consider this issue

STANDARDS COMMITTEE: RECOMMEND THAT THE NOTICE PERIOD FOR RECEIPT OF QUESTIONS FROM MEMBERS BE CHANGED TO 7 CLEAR WORKING DAYS BFORE THE RELEVANT COUNCIL MEETING

The Order of Business for Council meetings (b)(vii) makes provision for questions from members of the public. However neither Article 3, that relates to Members of the Public and the Council, nor paragraph 14 mentioned above, contain any arrangements for dealing with such questions.

It is suggested that the rules relating to questions from Members be applied to questions from members of the public.

STANDARDS COMMITTEE: RECOMMEND THAT THE RULES RELATING TO QUESTIONS FROM MEMBERS BE APPLIED TO QUESTIONS FROM THE PUBLIC

18. Planning Committee

The text in the Constitution needs to now reflect the decisions of the Council of the 15 December 2005 and Planning Committee of the 14 September 2006 (the minutes of the latter were presented to Council on 8 November 2006).

The responsibilities for making decisions is now as follows and is presented for information.

“Planning Committee

(a) Functions

The Committee has made extensive delegations to officers to determine such matters in accordance with policies determined by the Authority, as set out in the Scheme of Delegation and the matters which remain to be determined by the Committee comprise the following:

(i) Determination of Planning Applications and related matters.

The determination of planning applications and related matters is delegated to Officers except:

- A. cases where a Councillor or a Parish or Town Council have requested that the matter be considered by the Planning Committee, in which event the Councillor or Parish or Town Council, as the case may be, will be requested to give planning reasons for the referral.
- B. Where the application is made by or on behalf of a Councillor or an Officer employed by the Council
- C. Where the Development Control Manager recommends that the application be granted despite it being contrary to the Development Plan.
- D. Where the Development Control Manager considers that the application should be referred to the Planning Committee

In these instances the Council has decided that the application shall be determined by the Planning Committee

(ii) Authorising the making of Section 106 agreements or accepting unilateral undertakings with landowners except that the Development Control Manager shall be authorised, in consultation with the Local Ward Members in the case of:

a) planning applications where the power to determine those applications is already delegated to the Development Control Manager for determination subject to there being in compliance with adopted policies of the Council in the Development Plan, the Local Development Framework or Supplementary Planning Guidance and Documents.

b) variations to planning obligations originally entered into under the power delegated to the Development Control Manager, in consultation with Local Ward Members subject to any variation being in compliance with adopted policies of the

Council in the Development Plan, the Local Development Framework and Supplementary Planning Guidance and Documents

c) planning obligations as part of the Planning Appeal process subject to there being in compliance with adopted policies of the Council in the Development Plan, the Local Development Framework and the Supplementary Planning Guidance and Documents.

(iii) diversion and extinguishment of footpaths and bridleways in connection with proposed development”.

Background Information to changes

a). The following proposals are based on the Planning Committee decisions taken on 4th January and 25th January 2007.

b). The introductions of time limits for comments from Parish and Town Council's and District Council Members is recommended as an appropriate balance between the interests of improving performance and democratic decision-making.

c). The council has to meet government targets in respect of the time taken to determine planning applications and is seeking to raise its performance in two of these areas to second quartile levels.

d). At present government targets are being met in two of the three application categories and is being approached in the third category. In the two compliant categories we are approaching the second quartile level.

e). At present very few planning applications considered by planning committee meet government performance target times. More planning applications being determined by the planning committee within the target times will be significant in improving and sustaining performance at the appropriate levels.

f). These are not intended as fixed rules and it should be noted that discretion is recommended by Planning Committee for the Development Control Manager, in consultation with the Planning Committee Chairman, to consider whether requests for applications to be referred to Planning Committee outside the stated time limits should be agreed.

g). If an application is refused applicants have recourse to a free repeat application or an appeal against refusal. Where planning permission is granted a decision can be reversed usually only in exceptional circumstances by way of a lengthy legal process and with the payment of compensation by the council. This is also an important factor in controlling the workload of the planning committee at a manageable level.

Proposed Planning Committee/Officer Delegations

The Committee has made extensive delegations to officers to determine such matters in accordance with policies determined by the Authority, as set out in the Scheme of Delegation and the matters which remain to be determined by the Committee comprise the following:

(i) Determination of Planning Applications and related matters.

The determination of planning applications and related matters is delegated to the Development Control Manager except:-

- (a). Planning applications where a Parish or Town Council object to the proposal and the Development Control Manager is minded to approve the application
 - where the representations of the Parish or Town Council are received within 28 days (14 days in respect of amended plans) of the consultation notification being sent from the planning service
 - the Parish or Town Council be requested to give planning reasons for objecting to the planning application and for these to be included in their representations
 - the Development Control Manager in consultation with the Planning Committee Chairman having authority to exercise discretion in considering such requests made outside the 14 or 28 day period as applicable.

- (b). Planning applications where a District Councillor requests that the Planning Committee determine the application
 - the request being received within 28 days (14 days in respect of amended plans) of the date of the publication of the weekly list which gives notice of the receipt of the application by the Council.
 - all requests being accompanied by a planning reason for the referral of the planning application to planning committee.
 - the Development Control Manager in consultation with the Planning Committee Chairman having authority to exercise discretion in considering such requests made outside the 14 or 28 day period as applicable.

- (c). Planning applications made by or on behalf of a councillor or an officer employed by the Council

- (d). Planning Applications made by the District Council for its own developments or the development of land owned by the district council.

- (e). Planning applications where the Development Control Manager recommends that planning permission be granted despite it being contrary to the development plan.

- (f). Planning applications that the Development Control Manager considers should be referred to the Planning Committee

(ii) Authorising the making of planning obligations or accepting unilateral undertakings with landowners

Authorising the making of planning obligation agreements or accepting unilateral undertakings with landowners is a function of the planning committee except in the following circumstances when it is delegated to the Development Control Manager in consultation with local ward members:

- (a). planning applications where the power to determine those applications is already delegated to the Development Control Manager for determination subject to there being in compliance with adopted policies of the council in the development plan, the local development framework and supplementary planning guidance and documents.
 - (b). variations to planning obligations originally entered into under the powers delegated to the Development Control Manager subject to any variation being in compliance with adopted policies of the council in the development plan, the local development framework and supplementary planning guidance and documents
 - (c). planning obligations as part of the planning appeal process subject to these being in compliance with adopted policies of the council in the development plan, the local development framework and supplementary planning guidance and documents.
- (iii) Diversion and extinguishment of footpaths and bridleways in connection with proposed development.

At its meeting on the 25 January the Planning Committee re-affirmed these proposals and further resolved to propose that all Parish and Town Councils be consulted on the proposals that affect them; that the changes be brought into effect immediately after they are agreed and that the Development Control Manager prepare a Code of Practice relating to these proposals.

It is recommended that the Standards Committee recommend Council to approve the revised delegations as now set out above.

STANDARDS COMMITTEE: AGREED THE PROPOSALS SAVE FOR RECOMMENDING THAT PRIOR TO COUNCIL MAKING A FINAL DECISION ON THESE MATTERS THAT TOWN AND PARISH COUNCILS BE CONSULTED WITH REGARD TO THE 28 AND 14 DAY NOTICE PERIODS AND THE PROVISION REQUESTING THAT A PLANNING REASON BE GIVEN FOR A REFERRAL TO PLANNING COMMITTEE

19. The Property and Estates Services Manager (P&ESM) has raised the issue of the range of delegations available to him alone and in conjunction with the Cabinet Member who has responsibility for Council property and Head of Financial Services.

It is initially suggested for the purpose of consideration that the Scheme of delegation in respect of functions relating to land be amended to the following proposals :-

(A) Transactions relating to the acquisition, disposal or variation of interests in land (excluding interests relating to leases).

Council: no role

Cabinet: as set out below.

- a) up to a value of £10,000 for any individual sale, purchase or other transaction; the Property and Estates Services Manager.
- b) up to a value of £20,000 for any individual sale, purchase or other transaction; the Property and Estates Services Manager in consultation with the Cabinet member portfolio-holder.
- c) any transaction (not being a sale or purchase) a limit of £150,000: the Property and Estates Services Manager in consultation with the Cabinet member portfolio-holder and the Head of Financial Services.
- d) in all other cases the Cabinet.

(B) Transactions relating to leases affecting land.

Council: no role.

Cabinet: as set out below.

- a) grant of new leases: the Property and Estates Services Manager in consultation with the Cabinet member portfolio-holder unless the Property and Estates Services Manager considers that the matter should be referred to the Cabinet.
- b) lease renewals relating to the commercial property portfolio (comprising Semington Turnpike, Pound Barton, Ascot Court, Sandown Centre, Trinity House, Manvers House, Castle Place Leisure Centre, Bradley Road, Wiltshire Drive, 28 Bath Road Warminster, Leighton Sports Centre, Land at Murray Walk Melksham, Land at Hercules Way Melksham and Land at Lancaster and Lysander Road Melksham.) the Property and Estates Services Manager.
- c) other lease renewals
 - i) up to a limit of £25,000 being the aggregate payment over the related term of years the Property and Estates Services manager
 - ii) up to £50,000 calculated on the basis set out in i) above; the Property and Estates Services Manager in consultation with the Cabinet member portfolio holder
 - iii) up to £150,000 calculated and the basis set out in i) above; the Property and Estates Services Manager in consultation with the Cabinet member portfolio-holder and the Head of Financial Services
- e) in all other cases the Cabinet

STANDARDS COMMITTEE: AGREED

20. The opportunity has been taken to further up date the Contract Procedure Rules and the Finance Procedure Rules, at the request of Ian Jameson (Head of Financial Services) relating to financial propriety and robustness; and to include details of External Audit.

It is suggested that this action be noted and that these Rules be kept under review to ensure their appropriateness.

STANDARDS COMMITTEE: AGREED

Addendum

Overview and Scrutiny Committee Powers. (Local Govt Act 2000 Section 21)

- a) to review or scrutinise decisions made, or other action taken, in connection with the discharge of any functions which are the responsibility of the executive,
- b) to make reports and recommendations to the authority or the executive with respect to the discharge of any functions which are the responsibility of the authority,
- c) to review or scrutinise decisions made, or action taken, in connection with the discharge of any functions which are not the responsibility of the executive,
- d) to make reports and recommendations to the authority or the executive with respect to the discharge of any functions which are not the responsibility of the executive,
- e) to make reports and recommendations to the authority or the executive on matters that affect the authority's area or the inhabitants of that area.