

CONSTITUTIONAL REVIEW WORKING PARTY

Minutes of the meeting held on 7 October 2009 at 2.00 pm in Austen Room, Cecil Street, Margate, Kent.

Present: Mr Robin Hills (Chairman); Councillors Gregory, Harrison, Latchford, Mrs Roberts and Mr B Hinchley (Independent Member)

14. APOLOGIES FOR ABSENCE

There were no apologies were received.

15. DECLARATIONS OF INTEREST

There were no declarations of interest.

16. MINUTES OF PREVIOUS MEETING

The minutes of the meeting held on 14 May 2009 were agreed and signed by the Chairman.

17. CONSTITUTIONAL REVIEW CYCLE 2009/10 - SUNDRY ISSUES

The Working Party considered the report of the Head of Legal and Democratic Services which detailed sundry issues requiring further consideration by the Working Party in the 2009/10 cycle of meetings.

Members noted that in addition to receiving reports in relation to the adoption of revised political arrangements, a review of the discharge of Planning functions and a proposal to establish the effective scrutiny of the Crime and Disorder Reduction Partnership, a review of the Constitution by the Monitoring officer had identified the scope for numerous consequential drafting amendments which were set out in Annex 1 of the report.

Members also noted that for some time the Government has been pursuing the aim of giving more power to local people and local Ward Councillors as evidenced in the two White Papers issued in 2006 titled "Strong and Prosperous Communities" and "Communities in Control". In these, Ward Councillors are seen to play a central role in the work of the Council as a conduit for discussion between the Council and its residents and a champion for local concerns. To enhance Councillors' ability to carry out this role the Government enacted Section 119 of the Local Government and Public Involvement in Health Act 2007 which confers the right on all Councillors to refer a 'local government matter' to an Overview and Scrutiny Committee - the so called "Councillor Call for Action" (CCFA). A local government matter is one which is relevant to the functions of the Council which affects all or part of the electoral area for which the member is elected or any person who lives or works in that area – and is not an "excluded matter". Consequently, the intention is that this new power will afford a Ward Member the opportunity of having a Scrutiny Committee consider a localised issue or problem where all other methods of resolution have been exhausted.

Excluded matters were noted as;

- A local crime and disorder matter (dealt with elsewhere);

- Any matter relating to a planning decision;
- Any matter relating to a licensing decision;
- Any matter relating to an individual or entity in respect of which that individual or entity has a right of recourse to a review or right of appeal conferred by or under any enactment; and
- Any matter which is vexatious, discriminatory or not reasonable.

In deciding whether to exercise the CCFA, the Ward Member will be required to have regard to any guidance issued by the Secretary of State.

If the Overview and Scrutiny Panel decides not to exercise any of its powers in relation to a CCFA it must notify the member of its decision and the reasons for it.

It was agreed that Members of the Working party would receive a copy of the current Constitution in order to compare it against any revised proposals.

Moved by Mr Hinchley, seconded by Councillor Latchford and resolved that the report be received and noted.

Moved by Councillor Gregory, seconded by Councillor Harrison and resolved that the Monitoring Officer be instructed to bring detailed drafting amendments in relation to the sundry issues identified in Annex1 to the next meeting of the Working Party.

Moved by Councillor Gregory, seconded by Councillor Latchford and resolved that

That the Monitoring Officer be instructed to bring detailed drafting amendments and a draft Protocol in relation to the Councillor call For Action to the next meeting of the Working Party

The Working Party also noted that the recommendations of the Constitution Review Working Party are considered by the Standards Committee who make final recommendations to Council. Council will determine the date by which any constitutional reform is to take effect, e.g. immediately, from the beginning of the next financial year or from the date of the Annual Meeting

18. LOCAL GOVERNMENT AND PUBLIC INVOLVEMENT IN HEALTH ACT 2007 - ADOPTION OF REVISED POLITICAL ARRANGEMENTS

Members considered the report of the Head of Legal and Democratic Services which looked at the available options and steps to be taken in order to adopt new political management arrangements.

By virtue of Part 3 and Section 64 of the Local Government & Public Involvement in Health Act 2007 ('the Act') the Council will be required to consult on and adopt one of the two political governance models prescribed by the Act, namely the Leader and Cabinet Executive model and the Mayor and Cabinet Executive model .

The Leader and Cabinet Executive model under the 2007 Act differs slightly from what that Act calls the "old style" Leader and Cabinet model (under the LGA 2000). The main differences being:

- (i) ***Under the "old style" arrangements a Leader could be "strong" or "weak". With a "strong" Leader the Cabinet is appointed by the Leader. With a "weak" Leader the Cabinet is appointed by***

the full Council. Under the 2007 Act the Cabinet must be appointed by the Leader. TDC currently appoints the Leader and Deputy Leader and the Cabinet Leader then elects the Cabinet

- (ii) ***Under the “old style” arrangements it was possible for the Constitution to make provision with respect to the allocation of executive functions amongst the Cabinet – that is to say the Constitution could specify the terms of reference and portfolios of the Leader, the Cabinet collectively and individual Cabinet Members. Under the 2007 Act the Cabinet Leader will decide these matters, i.e. the position will be the same for a Leader as for a directly elected Mayor. In practice this means that in future the Leader will determine the portfolio allocation of executive functions without the input of full Council.***
- (iii) ***Under the “old style” arrangements the Constitution “may include provision with respect to...the election and term of office of the executive leader” – that is to say, the Leader’s term of office is for the full Council to decide when approving the Constitution. Under the 2007 Act the Leader’s term of office (in the case of a Council operating whole-council elections) will be four years.***

In the Mayor and Cabinet Executive model the Mayor is directly elected for four years, appoints the Cabinet and determines their portfolios. He or she cannot be removed from office by the Council and, Members noted, if the Mayor “crossed the floor” i.e. changed political party, then the Council would immediately have a new administration until the end of the four years term of office.

The Council must consult the public and other interested person for a minimum 12 week period before drawing up proposals for a change in its political governance arrangements. In drawing up its proposals the Council will have regard to the responses to the public consultation as well as the extent to which the proposals if implemented, would be likely to assist in securing continuous improvement in the way in which the Councils functions are exercised, having regard to a combination of economy, efficiency and effectiveness.

The Council must then resolve by not later than **31 December 2010** which of the two available governance models it proposes to adopt and the Council must pass this resolution at an Extraordinary General Meeting specifically convened for this purpose. The new governance arrangements will then come into force on the third day following ‘a relevant election’ - in the case of Thanet the whole Council elections in May 2011 will be a relevant election.

Recommendation moved by Councillor Latchford, seconded by Councillor Mrs Roberts and resolved that the report be received and noted.

Amended recommendation moved by Councillor Gregory, seconded by Councillor Latchford and resolved that the Working party determines whether to begin the processes necessary to change the Councils political governance and management arrangements in **the 2009/10** cycle of meetings.

19. LEADER'S AND CHIEF EXECUTIVE'S REPORTS TO COUNCIL

Members considered the report of the Head of Legal and Democratic Services which recommended amending the Council Procedure Rules to enable the Chief Executive and Cabinet Leader to present reports to Council.

Reports from the Cabinet are already a standing item at ordinary meetings of Council in accordance with Council Procedure Rule (CPR) 2.1 (ix) - but they are subject to questions without notice from members pursuant to CPR 14.1. The report recommended that in future any Leaders Report is taken under this and that the current CPR 12.1 (ix) is amended to read:-

'receive reports from the Cabinet Leader, Members of the Cabinet and the Council's Committees etc.'

The Working Party was asked to consider and approve the principle of receiving information reports from the Chief Executive after questions from the public and the transaction of any business for the last Council Meeting. Members were also asked to decide whether such reports should also be subject to questions without notice from members and, if so, CPR 2.1 would be amended to include a new CPR 2.1 (ix) reading as follows:-

'receive any report from the Chief Executive and receive questions and answers on such report'.

The reports would enable the Council to be kept informed of the progress of significant corporate initiatives and service innovations.

Recommendation moved by Councillor Gregory, seconded by Councillor Latchford and resolved that approval be given to the inclusion on the agenda for ordinary meetings of Council, items relating to the receiving of reports from the Chief Executive and Cabinet Leader in the manner recommended in the officer's report and that Council Procedure Rule 23.12 be amended accordingly.

20. REVIEW OF CONSTITUTION FOR THANET DISTRICT COUNCIL IN RESPECT OF ITS PLANNING FUNCTIONS

The report of the Director of Regeneration Services sought Members approval for Officers to review the Constitution in respect of the roles and function of Members and Officers in the planning application process, taking account of the latest Government advice. The report also discussed a number of specific more detailed concerns raised with regard to public speaking, dealing with "departure" applications, minor changes to drawings, and procedure for notification of planning applications to Ward Members and the call in procedure.

The Constitution was last reviewed in respect of the Planning process in 2008 and amendments were made to the Constitution in May 2008. These amendments included withdrawing public speaking at site visits, removing the requirement for Planning committee decisions that are contrary to officer recommendation to be reported back to the next meeting for decision, the requirement for a pool of substitutes to be formed, the introduction of quality reviews, delegation of the service of certain enforcement notices to Officers, along with other detailed amendments to procedure.

Since the latest amendments were made a number of issues had been raised by Members with regard to the protocol, both in respect of the effectiveness of the more

recent amendments and other matters; and it was considered appropriate to include these issues in any review of the protocol.

In May 2009 the Local Government Association (LGA) published a revised guidance note "Probity in planning: the role of Councillors and officers-revised guidance note on good planning practice for Councillors and officers dealing with planning matters", and this document provided guidance on issues ranging from lobbying to review of decisions. It was considered appropriate for the Constitution including the Planning Protocol to be reviewed in the light of that document, and to ensure that in all other respects including in respect of the scheme of delegation that the Constitution is up to date and fit for purpose, with any draft amendments to be considered by the Working Party at a future meeting.

In addition to the general review referred to in the report, the following specific issues which are a combination of those raised by Members and Officers during the past year, that were considered to be worthy of further consideration by the Working Party. Annex I contained a summary of the following issues that had been raised, including options and recommendations for change:

1. **Notification of planning applications to Ward Members**
2. Public speaking at site visits
3. Departures
4. Order of public speaking at planning committee
5. Non-material changes to plans

It was considered that the review of the Constitution should take account of these issues and any further issues that the Working Party would like included in the review, and any draft review document which may be presented for further consideration at a future Working Party meeting.

Recommendation moved by Councillor Gregory, seconded by Councillor Latchford and resolved that the Constitutional Review Working Party agree for the Protocol to be reviewed in the light of the LGA guidance set out in "Probity in planning: the role of councillors and officers-revised guidance note on good planning practice for councillors and officers dealing with planning matters", and so as to ensure that the Constitution, including the scheme of delegation, in respect of the Councils planning functions, is up to date and fit for purpose.

Recommendation moved by Councillor Mrs Roberts, seconded by Councillor Latchford and resolved that the Constitutional Review Working Party agree the options set out below should be included in the review of the Protocol;

Public speaking a site visits – Option 1 - allow public speaking as before with one rep from each side, plus 24.1 speakers and Parish Council rep.

Notification of Members/Call in procedure – Options 1 – 3 –

1. Weekly list to have 3 week call-in time.
2. Individual letters to be sent to Ward Councillor within who's Ward the application site lies (at the same time as neighbours' letters are sent).
3. Letters to go to Ward Members if amended plans are received and in such cases extended call in period by 10-14 days depending upon nature of amendment.

Departures – Option 1 (with the proviso that more work will be done and the matter returned to the Working Party) - All departure applications decided by Planning Committee.

Non material changes Prior to Committee – Option 2 - Allow verbal update of minor changes to applications to be considered by committee.

Recommendation moved by Councillor Harrison, seconded by Councillor Mrs Roberts and resolved that the Constitutional Review Working Party agree that an amended draft of the Protocol and any other relevant parts of the Constitution so revised be presented to the Working Party at a future meeting for consideration.

21. **OVERVIEW & SCRUTINY - ADDITIONAL POWERS IN RELATION TO CRIME AND DISORDER MATTERS**

The report of the Democratic Services and Scrutiny Manager outlined a new requirement for every local authority to scrutinise the work of the Crime and Disorder Reduction Partnership (CDRP) and recommended an addition to the Terms of Reference of the Overview and Scrutiny Panel.

Crime and Disorder Reduction Partnerships (CDRPs) were created by the Crime and Disorder Act 1998 to develop and implement strategies to reduce crime and disorder. They exist to ensure that “responsible authorities” work together to jointly agree and deliver community safety priorities. Currently, those “responsible authorities” are:

- The local authority
- The police force
- The police authority
- The fire and rescue authority
- The primary care trust.

Members noted that the Council is statutorily required under Sections 19 & 20 of the Police and Justice Act 2006, to empower the Overview & Scrutiny Panel to scrutinise the work of the CDRP. The Council’s Overview and Scrutiny Panel has delegated authority to the Panel’s Chairman and Vice-Chairman to inform the Constitutional Review Working Party of the Panel’s preferred method of doing so.

Amended recommendation moved by Councillor Harrison, seconded by Councillor Latchford and resolved that Constitutional Review Working Party approves the amendment of the Terms of Reference of the Overview and Scrutiny Panel as set out in the Constitution of Thanet District Council, so as to include the new statutory scrutiny function in relation to the work of the Crime and Disorder Reduction Partnership (CDRP), by the addition of the following wording:

*To scrutinise the work of the crime and disorder partnership and the partners who comprise it, **where** their activities relate to the partnership itself”.*

Recommendation moved by Councillor Harrison, seconded by Councillor Latchford and resolved that the Constitutional Review Working Party recommends that the Terms of Reference of Overview & Scrutiny as amended above (*Annex 1*) be passed to Council for approval.

Meeting concluded: 4.00 pm