

## CONSTITUTIONAL REVIEW WORKING PARTY

Minutes of the meeting held on 25 August 2010 at 10.00 am in Council Chamber, Council Offices, Cecil Street, Margate, Kent.

**Present:** Mr Robin Hills (Chairman); Mr B Hinchley (Independent Member), D Green, Gregory, Harrison, M Roberts and Mrs Roberts

### 36. APOLOGIES FOR ABSENCE

An apology for absence was received from Councillor Latchford, whose substitute was Councillor M Roberts.

### 37. DECLARATIONS OF INTEREST

There were no declarations of interest.

### 38. MINUTES OF PREVIOUS MEETING

On the proposal of Councillor Gregory, seconded by Councillor Harrison, the minutes of the meeting held on 17 June 2010 were approved and signed by the Chairman, subject to Mr Hinchley's title being changed from "Councillor" to "Mr" on Page 2.

### 39. PLANNING PROTOCOL

Harvey Patterson, Monitoring Officer, presented his report in relation to a proposed revision of the adopted Planning Protocol to include "Public Speaking on Planning Applications" (as per new Clause 12 in Annex 2).

It was noted that in accordance with the Planning Protocol adopted by Council on 13 May 2010, the first sentence of Clause 13.6 of Annex 2 (*formerly 12.6*) – "Public Speaking at Site Visits" - should read:

"No public speaking will be permitted at site visits unless the Site Visit Chairman gives their consent."

rather than:

"No public speaking will be permitted at site visits unless the applicant or his professional representative is present **and** the Site Visit Chairman gives his consent."

It was further noted that the wording at the last bullet point under 13.6 (*formerly 12.6*) should be changed from:

"From any ward councillor who is present"

to

"From any **District** councillor who is present".

Discussion took place, during which reference was made to the following two rules:

#### 1. **Speakers being chosen on a "first come first served basis"**

Some Members suggested that the first applicant to speak was not always the most "appropriate", e.g., the most "affected" by the planning application.

It was noted from the Monitoring Officer that whereas the rule could be open to a certain degree of manipulation on the part of developers and objectors, this method of selection appeared as fair as any other and did not require officers to make difficult decisions regarding the priority of applicants to speak.

The view was expressed that objectors to any application should be encouraged to communicate with each other in order to present a consolidated point of view through the selected speaker.

**2. “.. One person (*three in the case of a major planning application*) raising points of concern”**

It was suggested that the eligibility of a member of the public to speak should be restricted to:

- a) those who are materially affected by the application – this was felt to be fairer than an initial suggestion that the speaker must reside in the ward to which the application relates, as those outside the ward boundary could still be materially affected;
- b) those whose interest is similar to that as defined in the Declaration of Interest Form signed by Members at meetings of the Council:

“where the well-being or financial position of (*the resident*), members of *their* family (spouse; partner; parents; in laws; step/children; nieces and nephews) or people with whom *they* have a close association (friends; colleagues; business associates and social contacts that can be friendly and unfriendly) is likely to be affected by the business of *their* authority more than it would affect the majority of:

- Inhabitants of the ward or electoral division affected by the decision (in the case of the authorities with electoral divisions or wards);
- Inhabitants of the authority’s area (in all other cases).

On the proposal of Councillor Mrs Roberts, seconded by Councillor Green, it was AGREED:

- I. that Simon Thomas, Planning Applications Manager, be asked to consider the suggestions at 2(a) and 2(b) above and submits recommended wording to the next meeting of the Working Party.
- II. that, given the apparent discrepancies between the version of the protocol in the agenda and the one previously agreed by Council, a further report be presented to the Working Party before submission to the Standards Committee.

On-line Complaints System

In response to a query from Councillor Green, the Monitoring Officer undertook to find out if reported deficiencies in the system had now been corrected and to report back to Councillor Green direct.

**40. REVIEW OF CALL-IN PROTOCOL**

In presenting his report, Glenn Back, Democratic Services & Scrutiny Manager, pointed out that the criteria for call-ins currently used by the Council appeared to be unusual as compared to those generally applied by local authorities. By examining procedures used by other Councils across East Kent and best practice, as recommended by the Centre for Public Scrutiny, it should be possible to come up with typical models for call-ins.

During discussion, the following points were raised:

- a) Under the current rules, excessive pressure could be exerted on the Chairman of the Overview & Scrutiny Panel to call in a key decision, because the Chairman can call-in a decision on his/her own.
- b) The existing requirement that a meeting of the Overview & Scrutiny Panel to consider a key decision should be held “within 15 working days of the decision to call-in”, or, alternatively, the current cycle of Cabinet and Scrutiny meetings, should be reviewed to see if it was possible to avoid having to call an extraordinary meeting of Scrutiny just a few days before a scheduled meeting of Scrutiny (as had recently happened).
- c) The ability to preclude call-ins in the case of key decisions coming under the “Special Urgency” provisions – *Access to Information procedure Rule 17.0* – and how that should operate.
- d) The Monitoring Officer referred to the apparent conflict which existed between:

the Code of Conduct for Members, under which a Member who had been involved in taking a decision that is being reviewed by the Overview & Scrutiny Panel would have to declare a prejudicial interest in that matter and leave the meeting after having spoken

and

the Local Government Act 2000, which required a Portfolio Holder to appear before Scrutiny if requested to do so.

He pointed out that the provisions of the Act prevailed over those of the Code.

It was AGREED:

1. that Officers be instructed to carry out a review of the call-in process and, in so doing, to take the above points into consideration and consult with the Chairman of the Overview & Scrutiny Panel.
2. that a report be submitted to a meeting of the Working Party before the end of 2010.

#### **41. RECEIVING NOMINATIONS FOR COUNCIL REPRESENTATIVES ON OUTSIDE BODIES**

Upon the Monitoring Officer presenting his report, the following points and questions were raised:

- a) Margate Town Partnership: Why was this included as a Cabinet-related Outside Body?
- b) Nominations should be made to only those Outside Bodies which had submitted their Constitution/Terms of Reference.
- c) The Council should insist on receiving at least annual reports from nominees on “non-executive” Outside Bodies and, similarly, the Cabinet should insist on receiving at least annual reports from nominees on “executive” Outside Bodies.
- d) Age Concern, Citizens Advice Bureau & Thanet Harbour Users’ Groups should be able to make Terms of Reference available to the Council.

- e) Had the Council's representation on The River Stour (Kent) Internal Drainage Board been previously greater than one member? The Democratic Services & Scrutiny Manager undertook to check and let members of the Working Party know.
- f) In some cases, the first allegiance of nominees was to the Outside Body, rather than to the Council. e.g., if agreeing to become a director of a limited company, the nominee was required to sign up to the Companies Act.
- g) The level of representation on some of the Outside Bodies, e.g., Thanet Archaeological Trust, which had 4 nominees, and Thanet Countryside Trust, which had 3, appeared to be disproportionate. The Democratic Services & Scrutiny Manager pointed out that the number of nominees was decided by the Outside Body, but the Council did not have to take up all the places on offer. Part of the fuller review would involve considering, in the light of Terms of References / Constitutions received, whether Members feel it is appropriate to appoint nominees and, if so, how many.
- h) Councillor M Roberts questioned why his status of membership of Kent International Airport Consultative Committee (KIACC) had been relegated to that of substitute. The Democratic Services & Scrutiny Manager undertook to try to find out the reason for that decision, although his understanding was that KIACC had recently reduced places available to the Council to one plus one substitute.
- i) Councillor Gregory stated that he had resigned from Thanet Community Transport Association and wondered why he still appeared as a nominee. The Democratic Services & Scrutiny Manager undertook to look into this.
- j) Should the attendance by Members at meetings of Outside Bodies be recorded by Democratic Services? The Democratic Services & Scrutiny Manager stated that this question would be addressed as part of the fuller review.

It was proposed by Councillor Green, seconded by Councillor Harrison:

“that this Working Party recommends that all nominees to “Non-Executive” Outside Bodies (as listed on Table 2 , Annex 1) should be non-Cabinet Members of the Council”.

On being put to the vote, this motion was declared LOST.

(Mr Hinchley left at this stage of the meeting – 11.31 am)

It was proposed by Councillor Green that Margate Town Partnership be removed from the list of “Executive” Outside Bodies on Table 1, Annex 1.

This motion was not seconded, upon the suggestion by the Chairman that the issue be included in the fuller of the representatives on Outside Bodies.

It was AGREED unanimously that the Working Party recommends that the Cabinet should agree nominations to Cabinet-related Outside Bodies.

Meeting concluded : 11.34 am