

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Constitution Committee**
held on Thursday, 22nd September, 2011 at Committee Suite 1,2 & 3,
Westfields, Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor A Martin (Chairman)
Councillor D Marren (Vice-Chairman)

Councillors G Baxendale, R Cartlidge, P Groves, W Livesley, A Moran,
B Murphy, G Morris, D Newton, A Thwaite, D Topping, P Whiteley and
R Fletcher (for Cllr Jones)

Officers

Caroline Elwood, Borough Solicitor
Brian Reed, Democratic and Registration Services Manager
Paul Jones, Democratic Services Team Manager
Paul Mountford, Democratic Services Officer
Lindsey Parton, Registration Service and Business Manager
Diane Todd, Electoral Services Team Manager
Joanne Jones, Property Services Manager
Denise Griffiths, Corporate Accommodation Manager

Apologies

Councillor Shirley Jones

23 DECLARATIONS OF INTEREST

No interests were declared.

24 PUBLIC SPEAKING TIME/OPEN SESSION

There were no members of the public present.

25 MINUTES OF PREVIOUS MEETING

RESOLVED

That the minutes of the meeting held on 14th July 2011 be approved as a correct record.

26 HONORARY ALDERMEN

The Committee considered the recommendations of the Civic Sub-Committee in relation to conferring on former Members of the Council the title of Honorary Alderman.

The Civic Sub-Committee at its meeting on 7th September 2011, having considered a report on the matter, had resolved as follows:

That

(1) the Constitution Committee be asked to recommend to Council that

1. the title of Honorary Alderman be conferred on the following former Members of the Council:

Mr Ainsley Arnold
Mr David Cannon
Mr Ray Westwood
Mr Andrew Knowles
Mr Tony Ranfield
Mr John Goddard

2. the formal ceremony take place at a special meeting of the Council to be held on a day other than the day of an ordinary Council meeting;

3. the ceremonial procedure set out in paragraph 6.6 of the report be approved for the special Council meeting;

(2) the Officers identify a suitable date, time and venue for the special Council meeting in consultation with the Chairman and Vice-Chairman and report thereon to the Constitution Committee; and

(3) the Communications Officer ascertain whether there are any other events of an appropriate civic nature which could be dealt with at the special Council meeting.

With regard to resolution (3), the Communications Officer had identified a number of individuals who could be considered for Freedom of the Borough. It was felt, however, that this should be pursued as a separate process and not attached to the Honorary Alderman ceremony.

Officers reported that the Lyceum Theatre, Crewe had been identified as a suitable venue for the special Council meeting and relevant Members were being consulted on a number of optional dates in November. Final arrangements would be determined in consultation with the Chairman and Vice-Chairman of the Civic Sub-Committee.'

RESOLVED

That Council be recommended that

- (1) the title of Honorary Alderman be conferred on the following former Members of the Council:

Mr Ainsley Arnold
Mr David Cannon
Mr Ray Westwood
Mr Andrew Knowles
Mr Tony Ranfield
Mr John Goddard

- (2) the formal ceremony take place at a special meeting of the Council to be held on a day other than the day of an ordinary Council meeting, the arrangements to be determined in consultation with the Chairman and Vice-Chairman of the Civic-Sub-Committee; and
- (3) the ceremonial procedure set out in paragraph 6.6 of the Appendix be approved for the special Council meeting.

27 PLANNING PROTOCOL OF CONDUCT

The Committee considered an amended version of the Planning Protocol of Conduct which had been developed by the Planning Protocol Sub-Committee. The Sub-Committee had been appointed to review the existing Planning Protocol with a view to redrafting it as short, sensible guide.

The revised version of the Protocol had been submitted to the Strategic Planning Board and the Standards Committee for comments. The Standards Committee had recommended the adoption of the revised Protocol for inclusion in the Constitution. The Standards Committee at its meeting on 25th July 2011 had recommended the approval and adoption of the Protocol subject to the amendment of paragraph 13.1 from

“You should attend the mandatory training prescribed by the Council before you participate in decision-making at meetings”

to

“You **must** attend the mandatory training prescribed by the Council before you participate in decision-making at meetings”.

The Standards Committee had felt that this amendment better reflected actual practice, as Members were not permitted to take part in meetings until they had undergone the required training. This amendment had been

made to the revised version of the Planning Protocol which was attached to the report.

RESOLVED

That Council be recommended to approve the revised Planning Protocol of Conduct for adoption and inclusion in the Constitution.

28 REVIEW OF POLLING DISTRICTS AND POLLING PLACES

The Committee considered a proposal to recommend to Council that the final decision concerning the outcome of the Polling Districts and Polling Places Review be delegated to the Constitution Committee at its meeting on 17th November 2011.

The Electoral Administration Act 2006 had introduced a statutory duty for local authorities to carry out a review of their parliamentary Polling Districts and Polling Places by 31st December 2007, and at least every four years thereafter. The Committee had appointed a Sub-Committee with delegated powers to undertake the Review and report back to the Committee with final recommendations.

The timetable for the review indicated that the final decision needed to be made by the full Council in accordance with the requirements of the Council's constitution. The final decision also needed to be made before the 1st December 2011 in order to meet the statutory timescale for the review. To meet the timescale, a special Council meeting would therefore need to be convened. The most likely date for such a meeting would be 18th November 2011. However, it was now apparent that there would be no other items of business requiring decision at such a meeting. It was therefore suggested that Council could be asked to delegate the final decision on the review to the Constitution Committee at its scheduled meeting on 17th November 2011, thereby removing the need for a Special Council meeting.

RESOLVED

That Council be recommended to agree that the final decision concerning the outcome of the Polling Districts and Polling Places Review be delegated to the Constitution Committee at its meeting on 17th November 2011, thereby removing the need for a Special Council meeting to be convened on 18th November 2011.

29 BOUNDARY COMMISSION FOR ENGLAND: A REVIEW OF PARLIAMENTARY CONSTITUENCY BOUNDARIES

The Committee considered proposals by the Boundary Commission for England to review Parliamentary Constituency boundaries.

The Boundary Commission had published its initial proposals on 13th September 2011. This would be followed by a 12 week consultation period, ending on 5th December 2011. The Commission was required to submit its recommendations to Government by 1st October 2013.

Local authority wards were seen as the basic building blocks for designing constituencies. However, the legislation governing the review defined these as those which were in force as at 6th May 2010. The review would therefore be based on the former Borough Ward boundaries, rather than those introduced by the most recent boundary review.

The consultation on the review would be based on a combination of written representations, and oral representations at public hearings. The Commission would then publish a notice in each region indicating whether or not revisions had been made to its initial proposals for that region. Any revisions to the initial proposals would then be subject to further consultation, following which the Commission would make final decisions upon any further modifications before making a report to Government. This would then be followed by legislation.

The Council's response to the review would normally be agreed by Council. However, the tight timescale within which the Council's response had to be submitted would not make this possible unless a special meeting of Council were convened. It was therefore suggested that Council delegate full powers to the Constitution Committee to agree the Council's final response.

It was proposed that a sub-committee be appointed to manage the process.

Councillor Lesley Smetham attended the meeting and, at the invitation of the Chairman, spoke on this matter.

It was suggested that a briefing be arranged for all Members of the Council, at which they would have an opportunity to comment on the review. Any comments could then be reported to the review sub-committee.

RESOLVED

That

- (1) a sub-committee of 6 Members (4 Con: 1 Lab: 1 Ind) be appointed with full delegated powers to undertake the review;
- (2) Council at its meeting on 13th October 2011 be asked to consider whether it should determine the final response to the review or delegate to the Constitution Committee the power to do so;
- (3) the Council's formal response to the review be submitted in writing; and

- (4) a briefing on the Boundary Commission's review be arranged for all Members of the Council and any feedback from the briefing be reported to the review sub-committee.

30 URGENT DECISION-MAKING

The Committee considered proposed changes to the Council's arrangements for making urgent decisions.

The Council's existing arrangements empowered the Chief Executive or her nominee to make urgent executive and non-executive decisions in circumstances where such decisions were required before the next meeting of the relevant decision-making body. It was suggested that consideration should be given to securing Member involvement in making urgent decisions, with appropriate officer advice and involvement.

Appendix B to the report contained proposed urgency provisions which, if agreed, would need to be incorporated into the Constitution; there would also be a need for some consequential amendments.

RESOLVED

That Council be recommended

- (1) that subject to the following amendments, the revised arrangements for making urgent decisions as set out in Appendix B to the report be approved and adopted:

with regard to urgent executive decisions:

- the relevant scrutiny chairmen be notified of the matter *and invited to make representations*;
- *all* Opposition Group leaders be notified of the matter and invited to make representations.

- (2) that the Borough Solicitor and Monitoring Officer be authorised to make such additions and amendments to the Constitution as she considers are necessary to give effect to the wishes of Council.

31 QUESTIONS AT COUNCIL MEETINGS

The Committee considered proposed changes to the arrangements for questions at Council meetings.

Officers had received a number of comments from Members about the current arrangements for questions at Council meetings:

- question time took too long;
- too many questions were being asked as part of question time;

- there was no reason why questions should not be asked of Officers or Portfolio Holders, thereby removing the need for these to be asked at meetings of Council where other pressing business needed to be dealt with;
- primary questions were sometimes asked which contained a number of subsidiary questions;
- there was need for clarity around rules relating to supplementary questions where a number of questions were asked as part of one primary question;
- some submitted questions were inappropriate.

Generally speaking, the existing rules appeared to be fit for purpose but the Committee was asked to consider whether any amendments should be proposed to Council.

A number of potential amendments to the question time provisions had been circulated for the Committee's consideration as set out in Appendix B to the report.

The views of the scrutiny chairmen on the proposals were reported at the meeting.

RESOLVED

That Council be recommended that

(1) subject to the following amendments, the revised arrangements for questions at Council meetings as set out in Appendix B to the report be approved and adopted:

- a maximum period of 30 minutes be allocated for Members' questions at Council;
- questions be selected by the Mayor in accordance with the criteria as amended;
- those Members submitting more than one question may indicate the priority of importance of each question;
- criterion 2(a) be deleted;
- criterion 2(e) be amended to include reference to executive business;
- paragraphs 3, 5 and 10 be deleted;
- written answers to accepted questions which cannot be dealt with at the meeting be copied to all Members of the Council and not just the questioner;
- the current deadline of 3 clear working days for the submission of questions be retained.

(2) the Borough Solicitor and Monitoring Officer be authorised to make such additions and amendments to the Constitution as she considers are necessary to give effect to the wishes of Council; and

(3) the arrangements be reviewed after 12 months.

32 MEMBER ACCESS TO PART 2 AND CONFIDENTIAL REPORTS

The Committee considered proposed changes to the Council's policy on providing access for Members to Part 2 and confidential reports.

Most reports which were presented to the Council's decision-making and other bodies were freely available and open to inspection by Members and members of the public. However, certain reports, which officers believed contained "exempt information" or confidential information, could be held back from public circulation, for example, because the contents appeared to involve the financial or business affairs of an individual, or information about a proposed prosecution.

Members of the body in question were generally entitled to receive copies of Part 2 or confidential reports. However, where a Member was not a member of that body, there was no automatic right of access. Where this was the case, the Member had to demonstrate a "need to know" such information in order to properly carry out their duties as a Councillor. There was currently no formally agreed mechanism in place which provided for a judgement to be made as to whether or not a legitimate "need to know" existed, when this was claimed to be the case by a Member. In the absence of a formally agreed mechanism, therefore, the judgement had to be made by Officers. In practice, this could put Officers in a difficult position, requiring them to make a decision as to whether or not legal criteria had been met, potentially against a backdrop of strong views expressed by the Member in question.

The Council had previously reviewed the arrangements for access to Part 2 papers and had extended a right to receive such papers to

- Group Leaders
- Ward Members affected, in accordance with the Ward Member Protocol.
- Relevant scrutiny committee Chairmen and Vice-Chairmen.
- Members visiting the meeting in question, who would receive the papers upon arrival.

However, while this approach appeared to have addressed the needs of most Members wishing to see Part 2 reports, it could be argued that the approach was not entirely logical. It was therefore proposed that the arrangements for access to Part 2 and confidential papers be reviewed to address the perceived problems with the current arrangements. In this respect, it was suggested that all Part 2 and confidential reports could be released to Members upon request, except for reports containing the following sensitive categories, which would be excluded from automatic release:

- Staffing information, where the identity of Officers would be revealed; and
- Information relating to vulnerable children or adults

Even in respect of reports containing the above categories of information, it was quite possible that a Member might still claim to have a “need to know”. In order to provide for these circumstances it was suggested that a revised ‘need to know’ procedure as set out at Appendix B to the report could be adopted.

It was recommended that the arrangements be introduced initially for a six month trial period, after which they would be reviewed.

RESOLVED

That Council be recommended that

- (1) the proposed approach to access to Part 2 and confidential papers, including the revised ‘need to know’ procedure set out in Appendix B to the report, be approved subject to the category relating to staffing information being amended to refer to the identity of *individual* Officers;
- (2) the Borough Solicitor be authorised to make such changes and additions to the Constitution as she considers are necessary in order to give effect to the wishes of Council, and that
- (3) the arrangements be put in place for a trial period of 6 months, after which they be reviewed.

33 PROPOSED AMENDMENTS TO THE COUNCIL'S CONTRACT PROCEDURE RULES

The Committee considered proposed amendments to the Council’s Contract Procedure Rules.

At its meeting on 14th July 2011, the Committee deferred consideration of a report on revised Contract Procedure Rules to enable further work to be carried out. Council at its meeting on 21st July noted the Committee’s decision and resolved that in the interim, and in no way fettering the Constitution Committee, the financial threshold at which the Rules require a formal tendering procedure be increased from £50,000 to £75,000.

The Borough Solicitor had also met the Vice-Chairman of the Committee to consider issues arising from the debate at the last meeting of the Committee, and as a result of that meeting further amendments to the Rules had been made as set out in the report.

Since Vesting Day, the Council had approved a number of amendments to the Constitution. As new legislation came into force, and as the Council found better ways of doing things, building upon experience and best practice, the Constitution would continue to need to be amended. The proposed amendments to the Contract Procedure Rules reflected this approach.

The proposed amendments to the Contract Procedure Rules were outlined in the report and highlighted in the Appendix to the report. These included making permanent the change to the financial threshold for tendering.

RESOLVED

That the amendments to the Contract Procedure Rules (as set out in the Appendix to the report) be recommended to the Council for approval and the Constitution be amended accordingly.

34 PROPOSED INTERIM AMENDMENTS TO THE OFFICER DELEGATION SCHEME

The Committee considered proposed interim amendments to the Council's Officer Delegation Scheme.

The officer delegation scheme had been revised to reflect the most recent changes to the senior management structure.

Advice was regularly sought from the Borough Solicitor on what further approvals if any were required when implementing elected member decisions. This was particularly relevant when dealing with processes that required statutory procedures to be followed or consultation exercises to be undertaken. The Officer Delegation Scheme had therefore been revised at paragraph 5.2 to empower officers to deal with statutory procedures or undertake consultation exercises on the basis that in doing so they must consult appropriate members.

A separate exercise had been undertaken by the Assets Team in consultation with relevant Portfolio holders to clarify responsibility for the control and management of the Council's Assets so that day-to-day operational decisions were delegated in future to the Strategic Director (Places and Organisational Capacity).

Only interim changes shown underlined were being proposed to reflect the fact that the Officer Delegation Scheme would need to be consistent with the provisions in the Finance and Contract Procedure Rules and any changes arising from the management review of the third, fourth and fifth tiers being undertaken by the Chief Executive. Accordingly, a further report on the Officer Delegation Scheme would be needed to align the Scheme to any revisions to the Finance and Contract Procedure Rules and the outcome of the next phase of the senior management structure review.

The Officer Scheme of Delegation, showing proposed amendments highlighted, was set out in the Appendix to the report.

In considering the revised management responsibilities, Members asked where responsibility now lay for Crime Reduction, which had previously

been a responsibility of the Chief Executive. Officers undertook to seek clarification and advise Members accordingly.

In considering the proposed delegation of asset management functions to Officers, Members asked about the implications for the operational management of premises by Services and whether specific service level agreements would need to be entered into with relevant service managers.

RESOLVED

That

- (1) the interim amendments to the Officer Delegation Scheme (as set out in the Appendix to the report) be recommended to Council for approval, subject to the amendment of paragraph 5.2 to refer to 'non-statutory *statistically valid* consultations', and the Constitution be amended accordingly;
- (2) a presentation on the Corporate Landlord Function should be made to the Corporate Scrutiny Committee; and
- (3) a further report on the Officer Delegation Scheme be submitted to a future meeting of the Committee when the senior management review has been completed.

The meeting commenced at 2.00 pm and concluded at 4.16 pm

Councillor A Martin (Chairman)