

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Governance & Constitution Committee**
held on Monday, 9th February, 2009 at Committee Suite 1 & 2, Westfields,
Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor A Ranfield (Chairman)
Councillor (none)

Councillors M Asquith, D Cannon, R Cartlidge, Mrs S Jones, A Kolker,
Mrs G Merry, A Moran, P Whiteley, G Barton, C Beard and R Westwood

68 APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors D Topping,
R Walker and R West

69 OFFICERS PRESENT

Mike Flynn, Governance Lead Officer
Chris Chapman, Borough Solicitor
Brian Reed, Democratic Services Manager
Sheila Dillon, Assistant Legal and Democratic Services Manager CBC
Rachel Goddard, Assistant Solicitor C& N BC
Kate Khan, Solicitor MBC
Daniel Dickenson, Solicitor CCC
Dominic Oakeshot, Performance Improvement CCC
Andy Farrow, Planning and Policy Manager

70 DECLARATIONS OF INTEREST

Councillor C Beard declared a personal and prejudicial interest in respect of
Agenda Item 9: Planning Protocol of Conduct in relation to the Determination of
Planning Matters on the ground that he was involved in a Planning matter that
was currently under investigation. In accordance with the Code of Conduct he
left the meeting during consideration of this item.

71 PUBLIC SPEAKING TIME/OPEN SESSION

No member of the public used the public speaking or question time.

72 MINUTES OF PREVIOUS MEETING

RESOLVED - That subject to the inclusion of the names of Councillor R Parker
and P Whiteley in the list of members present, the minutes of the meeting held on
the 12 January 2009 were approved as a correct record.

73 CONSTITUTION-GENERAL POWER

Consideration was given to a report of the Borough Solicitor seeking authority to allow the Borough Solicitor to make such essential additions and changes to the Constitution as might arise following the date of the Council meeting on 24 February 2009.

Over the last few months a number of reports had been brought to the Committee which had resulted in recommendations to Council upon a range of Constitutional matters. The Committee was due to receive further reports on remaining issues which would complete the Constitutional picture.

The meeting of this Committee on 9th February, and the subsequent meeting of Council on 24th February, would be the last opportunity before Vesting Day for Constitutional matters to be dealt with. Whilst officers believed that the work of the Committee would adequately provide Cheshire East Council with a robust Constitution, which would fully enable the Council to undertake all local authority functions with effect from Vesting Day, it was vitally important for a general delegated authority to be agreed which would enable urgent additions and changes to be made to the Constitution.

RESOLVED - That Council be recommended that the Borough Solicitor in consultation with the Political Group Whips be granted delegated authority to make such additions and changes to the Council's Constitution as he considers are necessary in order to ensure the delivery of efficient and effective local authority functions with effect from Vesting Day.

74 DECISION-MAKING AND OVERVIEW AND SCRUTINY STRUCTURE OF THE COUNCIL

Consideration was given to a report of the Borough Solicitor containing recommendations on the remainder of Committees which would form part of the Council's decision-making and Overview and Scrutiny structure after Vesting Day and in respect of the responsibilities of decision-making bodies.

The Committee had already made recommendations to Council on 24 February on the key elements of the Council's decision-making structure. Other reports appeared on the agenda in respect of the appointment of some decision-making bodies.

Appended to the report was a list of committees that had not yet been considered by the Committee, together with suggested powers and committee memberships.

Certain Committees, which were presently operating within Cheshire East Council, were also listed in the Appendix, with an indication as to where it was recommended that the powers and Memberships of these Committees should continue to remain the same as apply during the Shadow Period.

The Appendix also included the current responsibilities of Council and of Cabinet. The Committee was asked to recommend to Council that all of these responsibilities should continue to apply with effect from Vesting Day.

The Shadow Council currently had Staff Employment Procedure Rules which provided for a range of employment issues. These now needed to be amended

to reflect the unitary and full local government status of the Council post Vesting Day. The Committee was therefore asked to recommend to Council that the existing Rules, appropriately amended be adopted by the Council and included in the Constitution.

RESOLVED – That Council be recommended that:

(a) That the following Committees be appointed:

Children and Families Scrutiny Committee
Health and Adult Social Care Scrutiny Committee
Environment and Prosperity Scrutiny Committee
Sustainable Communities Scrutiny Committee
Corporate Scrutiny Committee
Staffing Committee
Lay Members Appointments Committee
Appeals Committee
Standards Committee
Wirral Joint Committee, with terms of reference from agenda item 7
Governance and Constitution Committee

(b) That the appointed committees be granted the decision-making powers and memberships set out in the Appendix, with effect from Vesting Day.

(c) That the Political Groups notify the Borough Solicitor of the Members to be nominated for appointment to the Committees set out in the Appendix and that, where political proportionality applies, the membership numbers be confirmed by the Borough Solicitor in consultation with Group Leaders.

(d) That the responsibilities of the decision-making bodies set out in the Appendix be agreed.

(e) That the Shadow Council's existing Staff Employment Procedure Rules be incorporated into the Council's Constitution with appropriate amendments to reflect the Council's practices and procedures after Vesting Day.

(f) That the Standards Committee powers be as follows:

- by itself or by sub-committee, to discharge the Council's functions under Part III of the Local Government Act 2000, including:
 - assessment of new complaints (discharge any functions under S57A of the Act)
 - review decisions to take no action over a complaint (S57B of the Act)
 - consider final investigation reports and conduct determination hearings
- for considering and granting, or otherwise, dispensations in respect of Members' interests when so enabled under Part III of the Local Government Act 2000.

(g) That the Monitoring Officer be authorised make such additions and amendments to the Council's Constitution as he considers are necessary to give effect to the wishes of Council.

75 JOINT HEALTH SCRUTINY COMMITTEES

Consideration was given to a report of the Governance Lead Officer relating to the establishment of a Joint Scrutiny Committee with Wirral Metropolitan Borough Council and the Cheshire and Wirral partnership NHS Foundation Trust.

The Health and Social Care Scrutiny Committee at its meeting on 20 January 2009 had supported a recommendation that Cheshire East Council should participate in joint arrangements with Wirral MBC to scrutinise the work of the Cheshire and Wirral Partnerships NHS Foundation Trust. This Committee's approval was now sought to formally progress the establishment of the Joint Committee.

RESOLVED – That it be recommended to Council that :

- (i) Cheshire East Council agrees to participate in the joint arrangements with Wirral MBC to scrutinise the work of Cheshire and Wirral Partnership NHS Foundation Trust and to appoint six representatives (with Deputies) to serve:
- (ii) the Group Leaders notify the Chief Executive of these appointees in accordance with political proportionality rules.

76 PLANNING AND DEVELOPMENT CONTROL: COMMITTEE STRUCTURE AND DELEGATIONS

Consideration was given to a report of the Borough Solicitor recommending a scheme of delegation to discharge the Council's development control functions.

The Council was under a statutory duty to determine planning applications and must have a decision making structure in place and working from 1 April 2009.

To maintain the flow of decision-making and to avoid a drop in performance of the four Council's existing Planning Committees, the Council needed to set up a sufficient number of committees which would :-

- meet frequently
- carry a manageable workload of appropriate complexity and
- be supported by a robust scheme of delegation

In November 2008, Advisory Panel – Places set up a Development Management Task Group comprising experienced Planning Councillors and Development Managers, to develop a proposal for Planning Governance. The Group met three times and reported back to the Panel regarding various options on 27th January 2009. The Panel agreed with the Group's recommendation that the development management function should be discharged by one Strategic Planning Board, supported by two Planning Committees and a full scheme of officer delegation. .

Terms of Reference for the three tiers were approved by the Panel. The Terms were attached as appendices to the report incorporating subsequent amendments to the wording which had not changed their substantive content.

RESOLVED - That it be recommended to Council that that development control functions be discharged by a Strategic Planning Board, supported by two Planning Committees and a scheme of delegation as detailed below:

A.

- creation of a Strategic Planning Board
- with the Terms of Reference set out at Appendix A
- served by a membership of 14 on a politically proportional basis (ie: Conservative 10, Liberal Democrat 2, Labour 1, Independent 1) including the two Portfolio Holders responsible for Development Management and the Local Development Framework
- with a quorum of 5 (as an exception to Standing Order 27)
- comprising councillors to be nominated at full Council on 24th February
- meeting for the 1st time on [date to be fixed] then on a 3-weekly cycle
- operating as a Shadow Committee forthwith and as a fully operational Council committee from 1st April 2009
- included in the Shadow Council's Constitution forthwith and in the Constitution of Cheshire East Council with effect from 1st April 2009.

B.

- creation of two Planning Committees
- with the Terms of Reference set out at Appendix B
- served by a membership of 15 on a politically proportional basis (ie: Conservative 11, Liberal Democrat 2, Labour 1, Independent 1)
- with a quorum of 5 (as an exception to Standing Order 27)
- comprising councillors to be nominated at the first meeting of the Strategic Planning Board
- meeting for the first time on [dates yet to be fixed] and then on a 3-weekly cycle
- operational from and included in the Constitution of Cheshire East Council from 1st April 2009

C

- adoption of the officer delegation scheme at Appendix C
- to be included in the Constitution of Cheshire East Council with effect from 1st April 2009

D

- authority be given to the Borough Solicitor to make such consequential changes to the Constitution as he considers necessary to give effect to the wishes of Council.

77 PLANNING PROTOCOL OF CONDUCT IN RELATION TO THE DETERMINATION OF PLANNING MATTERS

Councillor C Beard had declared personal and prejudicial interest in this item. In accordance with the Constitution he left the meeting during its consideration.

Consideration was given to a report of the Borough Solicitor containing a proposed Planning Protocol of Conduct in relation to the determination of planning matters.

The Planning Protocol provided consistent guidance for Councillors in dealing with planning applications and a useful reference document during day to day functions as a Councillor.

The Planning protocol had been presented to the Development Management Task Group and the Places Advisory Panel and their comments had been incorporated into the version of the protocol attached to the report.

RESOLVED – That it be recommended to Council that the Planning protocol be adopted as part of the Constitution.

78 PUBLIC QUESTIONS/SPEAKING - LICENSING COMMITTEE AND SCRUTINY COMMITTEES

Consideration was given to a report of the Borough Solicitor relating to issues surrounding public questions/speaking at Licensing Committee and Scrutiny Committees.

On 1 December 2008 Governance and Constitution Committee considered a report in relation to the adoption of Council and Committee Procedure Rules. The decision of the Committee was to recommend to Council the adoption of the Procedure Rules. Rule 35 within Part B, dealing with Committee Procedure Rules, which states as follows:

“35.1 The Council has a procedure to enable members of the public to submit questions at ordinary meetings of its Committees and Sub-Committees.”

On 14th January 2009 The Licensing Committee requested that the Governance and Constitution Committee consider an amendment to Procedure Rule 35 to waive the provision for members of the public to ask questions/speak at the commencement of meetings of the Licensing Committee.

On 21st January 2009 the Scrutiny Committee requested that Governance and Constitution Committee consider the removal of public speaking/open session from the rules of procedure for the Scrutiny Committee. The Health and Adult Social Care Scrutiny Committee made a similar resolution at its meeting on 20th January. In making these resolutions Members questioned whether it was appropriate to include public speaking/questions within the agenda of a Committee which is not itself a decision-making body.

RESOLVED –

(a) That it be recommended to Council that the public speaking rule (Rule 35 of the Council Procedure Rules) be disapplied in respect of meetings of the Licensing Committee where it is meeting in a quasi-judicial capacity, either by itself or by Sub-Committee.

(b) That the issue of questions and statements by Members and public be further considered in conjunction with a report by the Borough Solicitor to include the emerging Government guidance relating to Councillor Call for Action and Petitions under the Local Government and Public Involvement in Health Act 2007.

79 DELEGATION OF NON-EXECUTIVE FUNCTIONS - LICENSING AND ENVIRONMENTAL HEALTH

Consideration was given to a report of the Borough Solicitor relating to delegation arrangements to deliver non-executive Licensing and Environmental Health functions from 1 April 2009.

Section 13 of the Local Government Act 2000 made provision for determining which functions of a local authority were to be the responsibility of the Executive and of the Council. The Local Authorities (Functions and Responsibilities)(England) Regulations 2000 set out, by reference to a list within Schedule 1, those functions which were not to be the responsibility of the Executive. These functions must therefore be dealt with through a scheme of delegation from Council or a Committee of the Council.

RESOLVED – That it be recommended to Council that the non-executive functions as set out in the Appendices to the report be delegated to Committee and Officers with the addition of the following :

1. To include within the delegation to Licensing Committee the following functions:

Power to sanction the use of buildings for the storage of celluloid;
and
Power to license the employment of children

2. To include the following within the table of licensing delegations to the Head of Safer and Stronger Communities:

(n)	Sanctioning the use of buildings for the Storage of celluloid	Section 1 of the Celluloid and Cinematograph Film Act 1922
(o)	Licensing employment of children	Part II of the Children and Young Persons Act 1933, Byelaws made under that part, and part II of the Children and Young Persons Act 1963

80 LOCAL ENVIRONMENTAL QUALITY STRATEGY

Consideration was given to a report of the Borough Solicitor relating to the production of a Local Environmental Quality Strategy which would provide guidance for Community Wardens and Environmental enforcement officers and their managers as to how they should deal with local environmental quality issues such as litter, dog fouling, graffiti, fly posting and fly tipping.

RESOLVED – That it be recommended to Cabinet, that the Local Environment Quality Strategy be adopted.

81 ADOPTION OF FINANCE AND CONTRACT PROCEDURE RULES

Consideration was given to a report of the Borough Treasurer and Head of Assets relating to the Council's Finance and Contract Procedure rules which would apply with effect from 1 April 2009.

RESOLVED -

(a) That, it be recommended to Council that the Finance and Contract Procedure Rules which will form part of the Council's Constitution (in the format contained in Appendix 2 of the report) be adopted to take effect on 1st April 2009;

(b) That, it be recommended to Council that the Borough Solicitor be authorised to make such amendments and additions to the Constitution as are necessary to give effect to the Council's wishes.

82 ACCESS TO INFORMATION RULES

Consideration was given to a report of the Borough Solicitor relating to Access to Information Procedure Rules which would apply with effect from 1 April 2009.

RESOLVED –

(a) That subject to the deletion of the two references of the word "Lord" in paragraph 15.1.1, it be recommended to Council that the Access to Information Rules appended to the report be incorporated into the Constitution of Cheshire East Council.

(b) That it be recommended to Council that the Borough Solicitor be authorised to make such changes to the Rules, and such consequential changes to the Council's Constitution, as he considers necessary to give effect to the intentions of Council.

83 PUBLIC RIGHTS OF WAY

Consideration was given to a report of the Borough solicitor relating discharge a number of Public Rights of Way (PROW) functions to the Council .

The duties involved ensuring that the legal record of PROW (the Definitive Map and Statement) was accurate and kept up to date by the addition, deletion, or modification of PROW following prescribed statutory procedures.

The Council would also be responsible for determining statutory applications to extinguish, create or divert PROW as well as maintaining and improving the PROW network and asserting and protecting the public's right to the use and enjoyment PROWs.

It had been estimated that from Vesting Day the Council would become responsible for approximately 60% (1915 km) of the PROW network in Cheshire. An analysis of projected/outstanding work loads from January 2009 indicated between a 55% (PROW search transactions) and 76% (Public Path Orders) bias to Cheshire East.

RESOLVED – That it be recommended to Council that:-

- a bespoke PROW committee be appointed consisting of 7 Members appointed on a politically proportionate basis (5:1:1), and;
- the terms of reference contained in Appendix 1 to the report be adopted in respect of the PROW committee,
- the scheme of delegation to Officers contained in Appendix 2 of the report be adopted,
- the Council's constitution be amended accordingly;
- the Borough Solicitor be authorised to make any further amendments to the Council's constitution as may be required in order to ensure the effectual delivery of a PROW service from Vesting Day.

84 TRADING STANDARDS

Consideration was given to a report of the Borough solicitor relating to the responsibility for discharging a number of regulatory duties in relation to Trading Standards matters .

These duties primarily related to consumer protection, public safety and animal health. Responsibility for the discharge of Trading Standards Functions would rest with the Safer and Stronger Communities Service in the Places Directorate.

The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (SI 2000/2853) prohibited the discharge of regulatory functions by an Authority's executive. In addition specific legislation relating to Trading Standards often required that such regulatory functions should be discharged by duly qualified officers. These requirements, in conjunction with the requirements of business efficacy, dictated that the functions which were the subject of this report be delegated directly to officers.

The Trading Standards Service also currently undertook a number of bespoke licensing functions. The specialist nature of these licensing functions, often with prescribed appeals procedures, required that these functions be delegated directly to officers.

These licensing functions would be exercised in the Safer and Stronger Communities Service. This Service was also responsible for discharging the more “traditional” local authority licensing functions.

For the reasons set out above, a full delegation of Trading Standards functions to officers was recommended; consequently there would be no need to constitute a regulatory committee in respect of these functions.

RESOLVED – That it be recommended to Council that:-

- the delegation of functions to officers contained in Appendix 1 to the report be adopted
- the Council’s constitution be amended accordingly,
- the Borough Solicitor be authorised to make any further amendments to the Council’s constitution as may be required in order to ensure the effectual delivery of a Trading Standards Service.

The meeting commenced at 2.00 pm and concluded at 4.10 pm

Councillor A Ranfield (Chairman)