

CHESHIRE EAST COUNCIL

REPORT TO: CABINET

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| Date of Meeting: | 14 July 2009 |
| Report of: | Democratic Services Manager |
| Subject/Title: | Public and Member Questions and Statements at Meetings |

1.0 Report Summary

- 1.1 To review the arrangements for public and Member questions and speaking at meetings.

2.0 Recommendations

- 2.1 That Cabinet makes its recommendations to the Governance and Constitution Committee upon the issues raised in this report.

3.0 Reasons for Recommendations

- 3.1 In order for the Governance and Constitution Committee to consider what constitutional change recommendations it may wish to make to Council.

4.0 Wards Affected

- 4.1 All Wards are affected since the relevant constitutional provisions relate to the whole of the Borough.

5.0 Local Ward Members

- 5.1 All Ward Members are affected for the reasons set out in paragraph 4.1 above.

6.0 Policy Implications

- 6.1 Whilst no specific policies are affected by the issues referred to in this report, any changes to the rules will be reflected in the Council's Constitution, which is a public document.

7.0 Financial Implications for Transition Costs

- 7.1 There are no financial implications for Transition Costs

8.0 Financial Implications 2009/10 and beyond

- 8.1 There are no such financial implications

9.0 Legal Implications

- 9.1 Any changes to the rules must be reflected in the Council's Constitution. In order for the Constitution to be changed, Council must agree the changes following a recommendation from the Governance and Constitution Committee.

10.0 Risk Management

- 10.1 No risks arise from any proposed changes to the Constitution which might result from this report.

11.0 Background and Options

- 11.1 Following consideration of the subject of public and Member questions and statements at Council meetings at the Governance and Constitution Committee on 16th April, the Committee decided that the views of the Corporate Scrutiny Committee, and Cabinet, should be sought.
- 11.2 On 12th June, the Corporate Scrutiny Committee considered a report on the subject and this is appended at Appendix B. The draft resolution of the Committee is appended to this report at Appendix A.
- 11.3 Cabinet may wish to make its own views known to the Governance and Constitution Committee in order for a recommendation then to be put before Council.
- 11.4 The options available to Cabinet are to recommend that the Constitution should not be amended, or that certain changes should be made to its existing provisions.

12.0 Overview of Year One and Term One Issues

- 12.1 It has always been acknowledged that the Constitution is a living document which will need to change from time to time in order to suit the needs of the Council.

13.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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Appendix A

RESOLVED –

That Governance and Constitution Committee be informed that the views of this Committee in relation to Public and member questions are as follows:

1. That the existing Planning and Licensing Protocols which override the member and public speaking and questioning provisions that apply to other committees, should be retained;
2. That the facility to allow questions by Members of the Public at meetings of Overview and Scrutiny Committees should be removed, but a period of 15 minutes be provided at the beginning of meetings to allow members of the Public to make a Statement(s) on any matter that falls within the remit of the relevant committee, subject to individual speakers being restricted to 5 minutes each;
3. That whilst acknowledging that Planning and Licensing Committees have separate arrangements in place for public involvement, in all other cases, members of the Public should provide 3 clear working days notice, in writing, if they wish to ask a question at any other decision making meeting, in order for an informed answer to be given, but they should not be required to give notice of intention to make use of public speaking provision (although as a matter of courtesy, a period of 24 hours notice should be encouraged);
4. That members of the Council should, in accordance with the current rules, be required to provide 3 clear working days notice in writing if they wish to ask a question at a full council meeting or Cabinet in order for an informed answer to be given;
5. That the existing provisions of the constitution relating to the way in which questions may be answered be preserved.

Appendix B

CHESHIRE EAST COUNCIL

CORPORATE SCRUTINY COMMITTEE

Date of meeting: 12th June 2009
Report of: Democratic Services Manager
Title: Public and Member Questions and Statements at Meetings

1.0 Purpose of Report

- 1.1 To review the arrangements for public and Member questions and speaking at Meetings.
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2.0 Financial Implications 2009/10 and beyond

- 2.1 There are no identifiable financial implications 2009/10 and beyond.

3.0 Legal Implications

- 3.1 The existing public and Member speaking and questions provisions are contained in the Council's Constitution. Any changes to these provisions must be agreed by the Council following a recommendation of the Governance and Constitution Committee.

4.0 Risk Assessment

- 4.1 Providing that the above requirements are adhered to, there are no risks associated with the consideration of the public and member speaking and questions provisions.

5.0 Information

- 5.1 On 16th April, the Governance and Constitution Committee considered the report which is reproduced as the Appendix to this report.
- 5.2 The Committee resolved that the views of the Corporate Scrutiny Committee should be sought upon the issues raised, including those relating to the Licensing, Planning and Scrutiny Committees. The Corporate Scrutiny Committee's views are now sought before a report is made to Cabinet. The views of the Corporate Scrutiny Committee and those of the Cabinet will then be reported back to the Governance and Constitution Committee.

- 5.3 For completeness, the Committee should be aware that, at its meeting on 21st May, the Governance and Constitution Committee considered a further report upon Member speaking rights at the Planning Board and Planning Committee meetings. It agreed to recommend to Council that the Constitution should be changed to reflect the provisions of the Planning Protocol, which gives Members speaking rights at those meetings, subject to certain requirements.
- 5.4 The Committee is now asked to consider the existing Constitutional provisions relating to public and Member questions and speaking. It may have a view, which it would wish to be conveyed to the Governance and Constitution Committee upon whether the existing provisions suffice, both from the perspective of the Council's overview and scrutiny responsibilities, and from the non-executive side of the authority's business.
- 5.5 As indicated at paragraph 7.4 of the appended report, the Shadow Council's Scrutiny and Health and Adult Social Care Scrutiny Committees expressed the view that public speaking provisions should not apply to overview and scrutiny committee meetings, since these were not "decision-making" meetings of the authority. The Committee may have further views on these points.

6.0 Conclusion

- 6.1 The views of the Committee will be reported-on to Cabinet which, itself, will make recommendations to the Governance and Constitution Committee. If that Committee considers that Constitutional change should take place, it will make appropriate recommendations to Council.

For further information:

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Background Documents: Cheshire East Borough Council's Constitution

Documents are available for inspection at:

*The offices of Cheshire east Borough Council
Westfields
Middlewich Road
Sandbach
CW11*

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CHESHIRE EAST COUNCIL

Governance and Constitution Committee

Date of meeting: 16 April 2009
Report of: Borough Solicitor
Title: Public and Member Questions at Meetings

1.0 Purpose of Report

- 2.1 To review the arrangements for public and Member questions at Meetings.

2.0 Recommendations

- 2.1 That consideration be given to the Council's current arrangements for public and Member questions and statements at meetings and whether the views of the Cabinet and appropriate scrutiny committee should be sought before formal recommendations are made to Council.

3.0 Financial Implications for Transition Costs

- 3.1 None

4.0 Financial Implications 2009/10 and beyond

- 4.1 None

5.0 Legal Implications

- 5.1 The public and Member speaking and questions provisions are contained in the Council's Constitution. Any changes to the provisions must be agreed by the Council following a recommendation of the Governance and Constitution Committee.

6.0 Risk Assessment

- 6.1 Providing that the above requirements are adhered to, there are no risks associated with the consideration of the public and member speaking and questions provisions.

7.0 Background/Context

- 7.1 Over the last few months, Members have raised questions about the Council's arrangements for public and Member questions and statements at Council and other meetings. This report seeks to summarise the

background and context and the Constitutional provisions that currently apply.

- 7.2 At its meeting on 9 February 2009 the Governance and Constitution Committee considered a report relating to public questions/speaking at Licensing and Scrutiny Committee meetings.
- 7.3 The Licensing Committee on 14 January 2009 had requested that the provision for members of the public to ask questions/speak at the commencement of meetings of the Licensing Committee be waived.
- 7.4 The Scrutiny Committee on 21 January 2009 had requested that Governance and Constitution Committee remove the 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 20 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.
- 7.5 On 12 January 2009, the Governance and Constitution Committee gave preliminary consideration to Member entitlement to speak and ask questions at Cabinet meetings but at its subsequent meeting on 9 February the Committee resolved that
- (a) 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; and
 - (b) the issue of questions and statements by Members and the 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.
- 7.6 The Council at its meeting on 24 February 2009 approved the adoption of the new Constitution to take effect from Vesting Day. In doing so, it resolved:
- “That the issue of questions and statements by Members and the public be further considered in accordance with the recommendation at Item 10 of the Governance and Constitution Committee meeting on 9 February but that, in the interim, and in this respect, only the currently appended Cabinet Procedure Rules 7 and 8 should apply, which provide for:
- (a) Chairmen and Spokespersons of Scrutiny Committees to attend and speak at meetings of the Cabinet on agenda items;

(b) other Members to speak with the permission of the Leader; and

(c) questions to be submitted by members of the public, providing 3 working days' notice is given."

7.7 A report on Councillor Call for Action and Petitions is included elsewhere on this agenda. This report addresses the issue of public questions at meetings.

8.0 Constitutional Provisions Relating to Public and Member Questions and Statements

8.1 The provisions relating to public questions at meetings of the Council, its committees and sub-committees and Cabinet may be found in Council Procedure Rules 11 and 35 and Appendix 7 to those Rules and in Cabinet Procedure Rule 8. These are summarised in the Appendix to this report.

9.0 Licensing, Planning and Scrutiny – Reasons Behind Their Requests

9.1 The Licensing Committee on 14 January 2009 asked that the provision for members of the public to ask questions/speak at the commencement of meetings of the Licensing Committee be waived. The Licensing Committee noted that when considering applications it was acting in a quasi-judicial nature and as such appropriate provision was already made within its own procedure rules adopted in accordance with the provisions of the relevant legislation. The procedure adopted by the Licensing Committee is summarised in the Appendix.

9.2 The Scrutiny Committee on 21 January 2009 asked for 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 20 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.

9.3 Since consideration of these proposals, the Strategic Planning Board has now requested a similar exemption from the main public question provisions for the Board and Planning Committees on the following grounds:

Council gave the Strategic Planning Board power to adopt working protocols governing the Planning function. This specifically included a protocol regarding public speaking rights. On 4 March 2009 the Board resolved

- (i) to adopt a Public Speaking Protocol for Board and Planning Committee meetings; and

- (ii) to request Governance and Constitution Committee to consider an amendment to Procedure Rule 35 in order to waive the general provision for speaking rights at the commencement of those meetings.

The Planning Public Speaking Protocol tailors and significantly expands the general speaking rights in Procedure Rule 35, in accordance with good practice guidance issued by the Planning Officers Society. It provides for

- a wide range of eligible speakers
- minutes per group (supporters, objectors, Members, applicants and others) before the debate begins regarding each application on the agenda
- questions for clarification purposes
- overriding discretion for the Chair to extend time a clear procedure

In these circumstances, the Board felt that the existing provision for 10 minutes public speaking no longer added value to a Planning meeting and that business would be despatched more expeditiously if the tailored Protocol replaced rather than supplemented the general rule.

The Board therefore proposed that this Committee recommend to Council that the Strategic Planning Board and Planning Committees be excluded from the general arrangements for public speaking set out in Procedure Rule 35 of the Constitution in order for them to allow enhanced public speaking rights which are set out in full in a separate Planning Public Speaking Protocol.

10.0 Conclusions

- 10.1 This report sets out the provisions within the Constitution governing public and Member speaking and questions provisions at meetings. It also contains proposals for excluding those provisions from three sets of bodies, together with the rationale for those exclusions. Given the significance of these amendments, Members may wish to consider seeking the views of the Cabinet and relevant scrutiny committee before taking a final view on the matter. The views of the Licensing Committee and Strategic Planning Board have been provided on the specific issues relating to their business.

For further information:

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Background Documents: Constitution and reports to and minutes of committees referred to in the report.

BRIEF SUMMARY OF PUBLIC AND MEMBER SPEAKING/QUESTION PROVISIONS

Council Meetings – Questions by Members

1. Members may ask questions of the Mayor, Cabinet Members, Committee Chairmen, Fire/Police Authority representatives PROVIDED THAT 3 clear working days' written notice is given.
2. The Mayor may agree to take urgent questions.
3. Reasonable endeavours must be used, when responses are given, to address the matter raised.
4. Questioners may ask supplementary questions.

Council Meetings – relating to the Minutes

1. The accuracy of the minutes of the last meeting of Council may be questioned by a motion which must be proposed, seconded and voted upon.
2. The accuracy of the record of minutes of committees and decisions of the Cabinet may be questioned at Council. Any questions must be considered and determined by the committee or Cabinet at their next meeting.

All Meetings – Public Speaking and Public Questions

1. 15 minutes is allocated for public speaking at Council meetings. 10 minutes is allocated at committees, etc.
2. 5 minutes is allocated to each public speaker.
3. Members of the public may use this time to ask questions of the appropriate Cabinet Member or Chairman.

Cabinet Meetings – Public Questions

Where a member of the public wishes to ask questions of a Cabinet Member at a Cabinet meeting, 3 working days' notice must be given.

Cabinet Meetings – Member Participation

1. The chairmen and spokespersons of scrutiny committees are entitled to attend and speak on agenda items of any formal Cabinet meeting.
2. Other Members may speak with the permission of the Leader.

Licensing Committee Hearings

The Licensing Committee has adopted its own procedures for dealing with applications which include facilities for representations to be made and questions to be asked by all parties and residents.

Planning Committee Hearings

A protocol has been adopted which includes provision for Members of the Council and members of the public to speak.