

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Constitution Committee**
held on Thursday, 30th November, 2017 at Committee Suite 1,2 & 3,
Westfields, Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor A Martin (Chairman)

Councillors G Baxendale, M Deakin, L Durham, S Edgar, H Gaddum,
S Hogben, L Jeuda, D Mahon, N Mannion, R Menlove, G Williams, P Groves
(for Cllr Beanland) and J Nicholas (for Cllr Burkhill)

Officers

Brian Reed, Head of Governance and Democratic Services

Jan Willis, Director of Finance and Procurement

Sean Hannaby, Director of Planning and Sustainable Development

Deborah Nickson, Legal Team Manager (Projects) and Deputy Monitoring
Officer

Martin Middleton, Business Improvement and Change Manager

Julie Gregory, Solicitor

Paul Mountford, Executive Democratic Services Officer

External Adviser (Bevan Brittan)

Bethan Evans

Other Members present

Councillors J Bratherton, J Clowes, J P Findlow, R Fletcher, B Moran,
S Pochin, A Stott and B Walmsley

Apologies

Councillors M Beanland and B Burkhill

9 DECLARATIONS OF INTEREST

There were no declarations of interest.

10 PUBLIC SPEAKING TIME/OPEN SESSION

There were no members of the public wishing to speak.

11 MINUTES OF PREVIOUS MEETING

RESOLVED

That the minutes of the meeting held on 5th October 2017 be approved as
a correct record subject to an amendment to reflect the attendance of
Councillor B Burkhill at the meeting.

12 MINUTES OF THE CONSTITUTION SUB-COMMITTEE

RESOLVED

That the minutes of the following meetings of the Constitution Sub-Committee be received and the recommendations contained therein be approved:

23rd August 2017

15th September 2017

29th September 2017

3rd November 2017

17th November 2017

13 MEMBERS SPEAKING

Councillor J Bratherton queried the provision in the draft constitution relating to attendance by members at the meeting of a body of which they were not appointed members, and in particular the need for prior agreement by the Monitoring Officer and the Chairman where the meeting was considering private and confidential business. Bevan Brittan advised that this type of provision was included in many councils' constitutions and had been agreed by the Constitution Sub-Committee. Councillor Hogben suggested that the wording of the provision could be amended to make it clear that members could attend any meeting during the consideration of Part 1 business. It was agreed that the officers in consultation with the Chairman would amend the wording as appropriate.

Councillor Bratherton also questioned the provision relating to Notices of Motion at Council meetings and felt that the proposer of the motion should have an opportunity to introduce it. The officers advised that it was appropriate for the proposer and seconder of the motion to speak on the motion at the meeting of the decision-making body to which the motion had been referred. This would enable a report on the matter to be prepared for that meeting and for an informed debate to take place.

Councillor R Fletcher sought an assurance that the new constitution would be appropriate for Cheshire East and would not simply reflect the practices adopted by other councils. The officers responded that Bevan Brittan had a considerable amount of experience of reviewing the constitutions of councils across the country and were bringing that depth of knowledge and experience to this process.

Councillor Fletcher also felt that the constitution should provide that reserved matters for large planning applications should be referred to the relevant planning committee and not be decided by officers. The officers replied that the provisions in question had been in place for the last 2-3 years and appeared to be working well.

Councillor S Pochin suggested that the standards procedure should be amended to provide that where a complaint was made against a member, there should be a right of appeal against the decision of the Monitoring Officer to allow the complaint to progress, or to decide to the contrary. It was suggested by Councillor Pochin that, in such circumstances, the Monitoring Officer would have a conflict of interest. Bevan Brittan responded that such a decision of the Monitoring Officer related to a preliminary stage of the process and that if a complaint were to proceed to a later stage there would be a facility for a member to have a full hearing. The Monitoring Officer had a statutory duty to determine the matter in consultation with the Independent Person and was independent of the Council's leadership.

Councillor B Walmsley referred to that part of the Local Ward Member Protocol relating to the need to keep ward members informed. She suggested that it would be helpful if this included a hyperlink to the definition of the term 'exempt information' would give reassurance to Members. It was agreed that such a hyperlink could be included.

Councillor Pochin questioned the recommendation to reduce the Forward Plan from a four month period to one month given that this was a strategic document which should cover a longer period. The officers responded that Bevan Brittan had suggested the change to reflect the changed legal position which now required that key decisions had to be published for a 28 day period. Councillor H Gaddum felt that the reduced period would be unduly restrictive. It was agreed that the wording would be changed to provide that the Forward Plan would cover a 'minimum' period of one month. This would enable items to be added to the Forward Plan over a longer period as happened now.

14 REVIEW OF THE CONSTITUTION

The Committee considered two reports recommending the approval and adoption of a revised constitution for Cheshire East Council.

The Council had undertaken a comprehensive review of the current constitution to ensure that it complied with all relevant statutory requirements, and had considered how its current processes and procedures should be altered to improve organisational efficiency and achieve good governance. The review had been guided by the seven key principles approved by the Committee at its meeting on 4th August 2017.

The Council had commissioned Bevan Brittan Solicitors to carry out a desktop review of the constitution and to assist in the drafting of a new constitution.

Details of the review and the way in which it had been conducted, including the extensive member consultation and engagement that had taken place, were set out in the report.

The report appended four documents:

Appendix A – A composite Explanatory Note of substantive issues which had been considered by the Constitution Sub-Committee, together with the Sub-Committee’s recommendation against each issue, which were reflected in the draft constitution.

Appendix B – The draft Constitution

Appendix C – Those documents which formed part of the current constitution, but which the Constitution Sub-Committee had recommended should no longer be in the constitution, together with a summary front-sheet setting out information on the “ownership” of each document.

Appendix D – A document on arrangements for dealing with standards complaints against members which, whilst not part of the current constitution or part of the proposed new draft Constitution, was required by law and would be referenced and hyperlinked from the revised Member Code of Conduct.

On consideration of the table of financial limits set out in Appendix A.1, the officers advised that a number of the references would need to be corrected.

The Committee also considered a number of matters which if agreed would require the inclusion of additional documents in the constitution or amendments to it as follows:

Appendix E – The Overview and Scrutiny Procedure Rules. These had been the subject of discussion at the relevant working group but had been excluded from the papers presented to the Constitution Sub-Committee on 17 November 2017.

A colour-coded chart mapping out decision-making responsibilities. This would be completed on final approval of the revised constitution and incorporated into the document.

A hyperlink to guidance on the use of the Officer Decision Record (ODR) process. This would be completed in the final drafting of the document.

Certain issues relating to the current draft provisions relating to the Staffing Committee terms of reference, the Investigation and Disciplinary Committee and the Employee Procedure Rules. These issues were not contained in the Explanatory Note of substantive issues when considered by the Constitution Sub-Committee and were not included in the Explanatory Note before the Committee (Appendix A). The Committee considered a separate explanatory note on these issues which included a response from Bevan Brittan and a recommended position in each case. It was suggested in particular that the composition of the Staffing Appeals Sub-Committee should be changed from 3/5 members to 3 members, and

that the terms of reference of the Investigation and Disciplinary Committee should be amended to provide that the procedure for filtering out and dealing with allegations which were clearly unfounded, trivial or could best be dealt with under some other procedure be delegated to the Monitoring Officer in consultation with the Chairman of the Investigation and Disciplinary Committee and the Chairman of the Staffing Committee. The Committee agreed with both proposed amendments.

[Note: the following Committee resolutions take into account those amendments agreed following Members' Speaking.]

RESOLVED

That subject to the resolutions below, Council be recommended to adopt the revised constitution of Cheshire East Council, as appended to the report at Appendix B, with an operative date of 1st January 2018:

1. the Overview and Scrutiny Committee Procedures as set out in Appendix E be approved for inclusion in the revised Constitution subject to the correction of any formatting and cross-referencing issues;
2. the provision within the draft constitution relating to attendance by members at the meeting of a body of which they are not appointed members be amended to make it clear that members can attend any meeting during the consideration of Part 1 business;
3. the Local Ward Member Protocol be amended to include a hyperlink to the definition of the term 'exempt information';
4. the provision relating to a one month Forward Plan be amended to provide that the Forward Plan shall cover a *minimum* period of one month (which would allow items to be included over a longer period);
5. the insertion into the Employment Rules of a section relating to the executive objection process for the appointment and dismissal of those chief officers and deputy chief officers not covered by paragraphs 4 and 5 be approved (page 252 of Appendix B);
6. the financial limits relating to virements (both revenue and capital) be clarified and the Acting Director of Legal Services in consultation with the Section 151 Officer be authorised to make any necessary amendments;
7. with regard to variations in capital programme scheme provision, consideration be given at a future date to the introduction of percentages alongside cash sums.
8. the reference, within the Planning and Development Control terms of reference, to the Portfolio Holders responsible for Development Control

and the Local Development Framework being members of the Strategic Planning Board be deleted (Appendix B page 43 para 20);

9. the reference to approval routes within Section E of the Finance Procedure Rules be suitably clarified (Appendix B page 213 paras 20-22), which shall be delegated to the Acting Director of Legal Services;
 10. paragraph 53 of the terms of reference of the Investigation and Disciplinary Committee be amended to provide that the procedure for filtering out and dealing with allegations which are clearly unfounded, trivial or can best be dealt with under some other procedure be delegated to the Monitoring Officer in consultation with the Chairman of the Investigation and Disciplinary Committee and the Chairman of the Staffing Committee;
 11. paragraph 49 of the terms of reference of the Staffing Committee be amended to provide that a Staffing Appeals Sub-Committee of 3 members be established on an ad hoc basis;
 12. all references to Cabinet Portfolios be brought up to date;
 13. the commitment to provide further supporting information with regard to the colour-coded chart mapping out decision-making responsibilities and the provision of a hyperlink to guidance on the use of the Officer Decision Record (ODR) process be noted and endorsed; and
 14. the arrangements for dealing with standards complaints against members (Appendix D) be referenced and hyperlinked from the revised Member Code of Conduct.
- 15 CALENDAR OF MEETINGS FOR 2018-19**

The Committee considered the draft calendar of meetings for 2018-19 and the outcome of the consultation thereon.

The proposed scheduling of meetings for 2018-19 followed the pattern adopted in previous years.

RESOLVED

That the draft Calendar of Public Meetings for Cheshire East Council 2018 - 2019 be recommended to Council for approval.

The meeting commenced at 10.00 am and concluded at 12.35 pm

Councillor A Martin (Chairman)