

**EPPING FOREST DISTRICT COUNCIL  
NOTES OF A MEETING OF CONSTITUTION AND MEMBERS SERVICES SCRUTINY  
STANDING PANEL  
HELD ON MONDAY, 20 FEBRUARY 2012  
IN COMMITTEE ROOM 1  
AT 7.00 - 10.01 PM**

**Members Present:** D Stallan (Chairman), R Cohen, J Markham, Mrs M McEwen (Housing Portfolio Holder), J Philip (Deputy Leader and Planning and Technology Portfolio Holder), B Rolfe (Vice Chairman of the Council), Mrs M Sartin and Mrs J H Whitehouse

**Other members present:** Mrs C Pond and C Whitbread

**Apologies for Absence:** D C Johnson (Deputy Portfolio Holder (Estates)) and R Morgan

**Officers Present** I Willett (Assistant to the Chief Executive), B Bassington (Chief Internal Auditor), G Lunnun (Assistant Director (Democratic Services)), S G Hill (Senior Democratic Services Officer) and M Jenkins (Democratic Services Assistant)

**38. NOTES OF THE LAST MEETING**

**RESOLVED:**

That the notes of the last meeting of the Panel held on 8 November 2011 be agreed.

**39. VICE CHAIRMAN**

The Chairman requested that Councillor B Rolfe act as Vice Chairman for the duration of the meeting. The Panel gave their consent to this.

**RESOLVED:**

That Councillor B Rolfe act as Vice Chairman for the duration of the meeting.

**40. SUBSTITUTE MEMBERS (COUNCIL MINUTE 39 - 23.7.02)**

There were no substitute members present.

**41. DECLARATION OF INTERESTS**

(a) Pursuant to the Member's Code of Conduct, Councillor B Rolfe declared a personal interest in the following item of the agenda by virtue of being a member of the Housing Appeals and Review Panel. The Councillor advised that his interest was not prejudicial and would stay in the meeting for the duration of the discussion and voting thereon:

- Item 7 Housing Appeals and Review Panel – Terms of Reference

(b) Pursuant to the Member's Code of Conduct, Councillor Mrs M McEwen declared a personal interest in the following item of the agenda by virtue of being the Housing Portfolio Holder. The Councillor advised that her interest was not prejudicial and would stay in the meeting for the duration of the discussion and voting thereon:

- Item 7 Housing Appeals and Review Panel – Terms of Reference

#### **42. TERMS OF REFERENCE / WORK PROGRAMME**

The Panel's Terms of Reference were noted.

The Panel received updates to the Work Programme as follows:

- (a) Item 16 Review of Petitions – Change in Legal Requirements

This item would be discussed next year.

#### **43. PROGRAMME OF WORK 2012/13**

The following was a proposed programme of work for the Panel in 2012/13:

- (a) Complaints Panel – Jurisdiction;
- (b) Contract Standing Orders – two review items;
- (c) Review of May elections;
- (d) Review of November elections;
- (e) Review of Officer Delegation;
- (f) Electronic Delivery of Agenda;
- (g) Employment Procedure Rules – Revision;
- (h) Review of Substitutions at Meetings – report due in June 2012;
- (i) Review of Petitions – Change in legal requirements;
- (j) Audit and Governance Committee – Terms of Reference; and
- (k) Standards Committee.

#### **44. HOUSING APPEALS AND REVIEW PANEL - TERMS OF REFERENCE**

The Panel received a report from the Assistant Director of Democratic Services regarding Housing Appeals and Review Panel – Terms of Reference.

##### **(a) Order of Presentation of Cases to the Panel**

The current order of business for consideration of cases by the Housing Appeals and Review Panel provided for the applicant/appellant to present their case and answer questions first followed by the Housing Officer presenting their case and answering questions. Whilst this followed the order of most appeal proceedings it was

considered that it was not relevant to this Panel. It was felt that applicants/appellants were put at a disadvantage when presenting their cases through being overwhelmed at facing a panel of members in a formal setting.

A change in the order of proceedings, with the Housing Officer presenting his/her case first, would have the following benefits:

(i) the Housing Appeals and Review Panel would have the benefit of receiving the full facts of the case at the outset as these were set out in the officer's report, this would enable members to understand better the submissions made subsequently by the applicant/appellant;

(ii) the applicant/appellant would have time to settle in the meeting before being expected to address, would have a better appreciation of the proceedings having witnessed the way in which the officer presents his/her case and answers questions on it.

The Housing Appeals and Review Panel had considered the proposed changes at its meeting on 8 September 2011, and the majority view expressed was in support of the proposed change and this was referred to this Panel for consideration.

**(b) Appeals against the Banding of an Applicant**

Following concern about the cost and member and officer time involved with housing appeals about relatively minor issues, the Council in April 2010 agreed that from the commencement of the municipal year 2010/11 the terms of the Housing Appeals and Review Panel should be amended to allow appeals and reviews only in respect of specified issues. Since May 2010, the Panel had considered nine appeals about the banding of an applicant including five appeals since August 2011. In all cases the Panel had upheld the officer's decision and dismissed the appeal.

In the light of this the Panel at its meeting on 26 October 2011 recommended to this Panel that such appeals should no longer come within the terms of reference of the Housing Appeals and Review Panel and that the right of appeal should end with one of the Assistant Directors of Housing.

**RECOMMENDED:**

That the following be recommended to the Overview and Scrutiny Committee:

(a) that the existing order of proceedings of the Housing Appeals and Review Panel be retained but that provision be made for the Chairman of the Panel to reverse the order if requested by the appellant/applicant or their representative;

(b) that appeals against the banding of an applicant be removed from the Terms of Reference for the Housing Appeals and Review Panel; and

(c) that the arrangements in (a) above be reviewed in 6 months time.

**45. REVIEW OF OFFICER DELEGATION**

The Panel received a report from the Assistant to the Chief Executive regarding Officer Delegation – 2011/12 Review.

The only new change in delegation related to the detailed wording on tree preservation. The remainder were executive delegations and had already been approved by the Cabinet and/or Portfolio Holders and would be incorporated in the Constitution once the Leader of Council had reviewed and approved the overall schedule.

**RECOMMENDED:**

- (1) That a report be submitted to the Overview and Scrutiny Committee and the Council recommending that the schedule of changes to Council delegation be approved; and
- (2) That the changes to executive delegations be incorporated in the Constitution, once these had been signed off by the Leader of the Council.

**46. REVIEW OF FINANCIAL REGULATIONS**

The Panel received a report from the Assistant to the Chief Executive regarding the Review of Financial Regulations. The report recommended one change to Financial Regulations and one consequential amendment to the Budget Procedure Rules in the Constitution, relating to virement limits.

Officers believed that there should be no change to the procedure for virements up to £5,000, save that the term "cost centre" should be amended. It was recommended that the use of this term should be discontinued and the term "budget heading under the same budget page" should be substituted. This allowed officers a greater degree of flexibility in managing their budgets. The current restriction of virements to within cost centres only was felt overly restrictive and necessitated Portfolio Holder involvement for insignificant changes to budgets. No change was proposed to a wider authority to transfer funds between different budget pages as this would allow funds to be used for purposes, different from those approved by the Council decisions of that kind requiring Cabinet or Portfolio Holder involvement.

As to the other virement limits, no changes were proposed for £100,00 Cabinet and Council, but for virements up to £10,000 and from £10,000 - £100,000, it was recommended that the limit for Portfolio Holder approval should be increased to £25,000. This recognised the role of portfolio holders and would reduce references to the Cabinet. Use of portfolio holder decision making was more flexible which, coupled with the redefinition of "cost centres," would make arrangements easier to operate.

**RECOMMENDED:**

That a report be submitted to the Overview and Scrutiny Committee and the Council recommending that the schedule of amendments to Financial Regulations set out in Appendix 1 to this report be approved and pages G9-11 be deleted from the Constitution.

**47. APPOINTMENTS AT ANNUAL COUNCIL - REVIEW**

The Panel received a report from the Senior Democratic Services Officer regarding Appointments at Annual Council – Review.

During 2011 the Panel discussed the process of the annual meeting and how it could be improved, this led the Council introducing an Appointments Panel and making

improvements to the process of agreeing nominations for Committee places and outside body appointments. The Council had requested that the operation of the new system should be reviewed after one year. The Appointments Panel was operated for the first time last year.

### **Election and Nomination of the Vice Chairman of Council**

The appointment of the Vice Chairman of Council was governed by Article 5 of the Constitution, last year it was agreed that no changes would be made to the nomination process save that nomination forms would come to the Appointments Panel.

It was suggested that Tuesday 15 May 2012 would be the recommended date for the Appointments Panel meeting this year.

#### **RECOMMENDED:**

(1) That the operation of the Appointments Panel be reinstated with a review undertaken by the Constitution and Member Services Scrutiny Standing Panel next year;

(2) That Article 5.02 (c) of the Constitution be amended to read:

“5.02 (c) The process of agreeing a nomination for Vice-Chairman of the Council shall be co-ordinated by the Leader of the Council in consultation with independent members and the Leaders of all political groups and notified each year to the Appointments Panel for consideration of onward recommendation to the Annual Council meeting;” and

(3) That the date for the Appointments Panel for 2012 should be 10 May 2012, with a reserve date of 15 May 2012.

## **48. WEBCASTING - FURTHER REPORT**

The Panel received a report from the Senior Democratic Services Officer regarding the Webcasting Review.

At the meeting of the Panel in October 2011 members requested a report on webcasting which provided further information about the contract and the Council's webcasting activities based upon requests made at that meeting.

The following points were covered:

### **(a) Opportunities for charging professional organisations for copies of DVDs.**

Since 2007 the Council had provided, on request, a copy of any webcast meeting, with no charge levied. 10 to 15 of such requests had been received each year. It was estimated that income from charging would be half the cost of processing the payments. The Panel asked for further investigation on charging.

### **(b) External Filming for Other Organisations**

It was noted that charges were sought for a Parish Council in connection with a request to film some of their meetings. However the Council concerned declined to pay.

Requests received were currently considered on the basis of:

- (i) Staff capacity to undertake the function/meeting;
- (ii) Charging for all officer time and webcast costs; and
- (iii) Use of Council publicity to advertise forthcoming meetings.

**(c) On Screen Synchronisation of Speaker/Image**

Occasionally officers had noticed incorrect captions, but these could be changed after the event. These errors made up a small percentage of whole output.

**(d) Views of Members of the District Council, County Council and Town and Parish Councils**

Members' views had been canvassed, but the only representations received related to viewing with a non-IE browser, and the synchronising of audio and video. The former was resolved by reference to the FAQs section of the microsite, and the latter was being addressed by the supplier. The Local Council's Liaison Committee had asked for its meetings to be webcast, and for local councillors to be given access to training webcast.

**(e) Details of Contract Costs**

The existing contract was made under an Essex HUB Webcasting Framework Contract let in competition. The contract price was £20,400. The contract renewal was achieved under the framework and was for a term of four years from 1 April 2011.

**(f) Further Analysis of Staffing Costs**

One additional officer was required at a meeting to operate the webcast unit. The exception was Area Plans South Sub-Committee requiring two officers due to the amount of equipment required to facilitate the webcast.

All officers attending evening meetings took the same payment under contractual arrangements. The payment was £58.63 for meetings ending before 10.00p.m. and £86.13 after 10.00p.m.

Officers from four departments had volunteered for webcasting duties, the annual budget was £24,560 for all attendances. The total number of webcasts in the period November 2010 to October 2011 was 83, an approximate staffing cost for those meetings would be in the region of £5,800.

**(g) Arrangements under the Contract when 15 Webcasts Per Month was exceeded and the Charges which then applied.**

The contract had a restriction of 15 hours of webcasting per month, which equated to 180 hours per annum. It was very difficult to estimate the time any meeting would

take. Experience suggested that officers could webcast approximately for 9 meetings per month. The provider indicated that:

- (i) increasing the Council's capacity to 20 hours per month (240 per annum) would cost an additional £2,250 per annum, and
- (ii) increasing to 25 hours per month (300 per month) would cost an additional £4,500 per annum.

**(h) Occasions when the service was restricted by the Limit of 15 Webcasts per Month**

There were no instances where officers had been restricted.

**(i) Charging for Advising other Bodies on Webcasting including Visits to other Authorities/Bodies**

Democratic Services provided advice about webcasting, committee management, elections and civic events to other authorities. However no capacity existed for providing project management to other authorities. It was advised that the Senior Democratic Services Officer chaired the National Webcasting User Group, and also belonged to a small group advising the provider on development and functionality.

**(j) Statistics on viewing by the Public and Officers**

The average percentage of officer-originated viewings was 3.35%. The greatest percentage hits were for planning meetings at 36%, and "Other Content" at 26%, which included non-meeting webcasts such as events, conferences and films.

**(k) Analysis of the Number of "Hits" for Meetings**

The Council used the webcasting technology and equipment for producing videos for the Council's YouTube channel, these videos had been viewed 5,423 times.

**RESOLVED:**

- (1) That the report regarding Webcasting be noted; and
- (2) That the capacity for charging external bodies be investigated.

**49. REVIEW OF MEMBER REPRESENTATION ON OUTSIDE BODIES**

At the meeting on 27 July 2011, the Panel recommended changes to the arrangements for members to report as representatives of the Council on outside organisations. These changes were adopted by the Council and comprised:

- (a) a stipulation that all such reports should be in writing and prepared in time to be circulated to members before Council meetings; and
- (b) introduction of a new system whereby the Council or any member could request a report from a representative on the work of any outside body.

At the same meeting, the Panel asked for a wider review of reporting by such representatives. This report was designed to allow the panel the opportunity to scope this further review.

The current version of the Protocol needed to be updated to take account of the changes in procedure at Council meetings agreed in July 2011.

The Panel noted that there had been difficulties in obtaining reports from both members and outside organisations and the process itself was time consuming.

**RESOLVED:**

- (1) That a scoping report be submitted to this Panel regarding the Council's links with outside organisations;
- (2) That consultation forms part of the review; and
- (3) That a full review takes place in next year's Work Programme.

**50. CIRCULATION OF AGENDA - FOLLOW UP REPORT**

The Panel received a report from the Assistant to the Chief Executive regarding circulation of agenda.

This issue had been discussed at the last Panel meeting and some concern was expressed about whether distribution lists should be reviewed so as to reduce the amount of paper copies in circulation. It was advised that this should be seen in the context of legal requirements advice on which were being obtained from Counsel on:

- (a) a move to an electronically based despatch system for all agenda and all Councillors; and
- (b) a health check on the current arrangements for electronic notification to non-members with paper copies sent only to members of the Council body concerned.

The arrangement outlined in 2(b) did not currently apply to agendas for the Cabinet, Council, Standards Committee and Overview and Scrutiny Committee

The total distribution for each of these agenda was approximately 85-90, 58 copies were sent to Councillors and the balance for Directors and a limited number of other staff, plus the public at meetings and information centres. Some of the public copies held in Democratic Services prior to meetings were requested by Councillors and officers who did not receive a paper copy as of right. The general assumption was that Councillors who did not receive paper agenda were able to access the information on line. The IT allowance paid as part of the remuneration scheme (£500 pa for new members in their first year and £250 pa in subsequent years) was intended, along with Basic Allowance, to assist with running costs.

Under the present policy, a complete distribution to Councillors for Council meetings would take place. In terms of the Cabinet and the Overview and Scrutiny Committee a decision was made operationally to continue complete paper circulation to assist call-in procedure and heighten awareness of the Overview and Scrutiny function.

The Standards Committee was circulated to all Councillors as a paper copy. This was an operational decision designed to highlight the ethical framework and the role of the Committee. However the future of this committee was under review following recent legislation.



The reduction in print runs for these three bodies would reduce the re-charge to Democratic Services for printing. Currently this sum equated to expenditure of £49,000 for the current year, where a significant saving had already been achieved.

**RECOMMENDED:**

- (1) That the Assistant to the Chief Executive be asked with effect from the Council Year 2012/13:
  - (a) to send paper copies of all agenda only to members of the body concerned; and
  - (b) to amend the distribution of paper copies to non-members of Cabinet, Overview and Scrutiny Committee and Standards Committee agenda plus those Councillors who opt in to receive them.

**51. EXECUTIVE AND REGULATORY DECISION MAKING**

The Panel received a report from the Assistant to the Chief Executive regarding Executive and Regulatory Council Decision Making.

In a previous report, the Panel had been advised that the question of the need to separate the Council's general role as landowner from its role as regulatory authority should be at the forefront of decision making. The particular Council functions which were relevant to this issue were planning and licensing.

The Panel recognised that executive decisions on service provision were made on the basis of legality, probity and financial/technical considerations. It was accepted that the regulatory decisions followed separate processes and took account of the Council's property role. It was also noted that the Constitution clearly distinguished those functions which may be dealt with by the Executive and these other regulatory roles which did not fall to the Cabinet.

**Review of the Constitution**

A review had been carried out of the need to amend any constitutional requirements so as to specify the difference between landowner and regulatory decision-making and recommendations were included at the commencement of this report designed to clarify these.

There were three changes:

- (a) In the Terms of Reference of the District Development Control Committee and Area Plans Sub-Committees;
- (b) In the Terms of Reference and operational rules of the Licensing Committee and its Sub-Committees; and
- (c) In the Executive Procedure Rules

Items (a) and (b) were designed to make it clear that regulatory decisions made by those bodies must not normally take account of the Council's property interests in whatever form they may arise.

Item (c) set out a proposed amendment to the Executive Procedure Rules which was designed to make clear the Cabinet members must always have in mind that making an executive decision on a property matter must not pre-determine any regulatory decision which might arise.

Having examined the Constitution, these issues had not previously been written down in the manner now proposed. However, there had always been advice in the Planning Protocol regarding conflicts of interest which could arise in planning. At the last meeting, the Panel asked the Standards Committee to consider reviewing the Planning Protocol with this in mind and also to offer similar advice on licensing matters. This matter was due to be discussed by the Standards Committee at its next meeting.

**RECOMMENDED:**

That a report be submitted to the Overview and Scrutiny Committee and the Council recommending the following changes to the Constitution:

(1) District Development Control/Area Plans Sub-Committee/Licensing Committee/Sub-Committees

That the following paragraph be added to the terms of Reference of the District Development Control Committee, Area Plans Sub-Committees and the Licensing Committee:

“(...) the Committee/Sub-Committee, as appropriate, in exercising its powers and duties under these terms of reference, shall disregard any connection with the Council’s property interests when taking regulatory decisions on behalf of the Council except in any case where the proposal has merits in planning terms.”

(2) Conduct of Business by Licensing Committee and Sub-Committees

That paragraph 5.1(b) (i) of the document entitled “Conduct of Business by Licensing Committee and Sub-Committees” be amended to read as follows:

“(i) The rules on declarations of interests shall be firmly applied. So as to avoid any appearance of bias, members of the Licensing Committee or of any Sub-Committee shall disregard any connection between a licensing decision and the Council’s property interests and shall deal with such business solely in accordance with statutory licensing procedures and the Council’s policy in that regard.”

(3) The Executive/Cabinet

That paragraph 2.2 of the Executive Procedure Rules be amended by the addition of the following paragraph:

“In dealing with any of the above mentioned business and, in particular, any matters relating to the Council’s property interests, the Cabinet, Cabinet Committees and individual portfolio holders acting under delegated powers shall be mindful that any such decision will not pre-determine any subsequent regulatory decision by the authority which may arise.”

**52. REPORTS TO BE MADE TO THE NEXT MEETING OF THE OVERVIEW AND SCRUTINY COMMITTEE**

That the following reports were being submitted to the forthcoming Overview and Scrutiny Committee on 28 March 2012:

- (a) Housing Appeals and Review Panel – Terms of Reference;
- (b) Review of Officer Delegation;
- (c) Review of Financial Regulations;
- (d) Appointments at Annual Council; and
- (e) Circulation of Agenda – Follow Up Report.

**53. FUTURE MEETINGS**

The next programmed meeting of the Panel was scheduled for Tuesday 26 June 2012 at 7.00p.m. in Committee Room 1 and then on:

- (a) Tuesday 25 September at 7.00p.m. – Committee Room 1;
- (b) Tuesday 4 December at 7.00p.m. in Committee Room 1; and
- (c) Tuesday 26 March 2013 at 7.00p.m. in Committee Room 1.