

**EPPING FOREST DISTRICT COUNCIL
NOTES OF A MEETING OF CONSTITUTION WORKING GROUP
HELD ON THURSDAY, 12 MARCH 2020
IN COMMITTEE ROOM 2, CIVIC OFFICES, HIGH STREET, EPPING
AT 7.20 - 8.10 PM**

Members Present:	S Jones (Chairman), D Dorrell, S Heap, J Philip and J H Whitehouse
Other members present:	None.
Apologies for Absence:	M McEwen, C C Pond, C P Pond, S Rackham and J Share-Bernia
Officers Present:	N Boateng (Service Manager (Legal) & Monitoring Officer), S Linsley (Senior Auditor), P Maginnis (Service Director (Business Support Services)), S Marsh (Chief Internal Auditor), V Messenger (Democratic Services Officer) and N Richardson (Service Director (Planning Services))

16. SUBSTITUTE MEMBERS

It was noted that there were no substitute members for this meeting.

17. NOTES OF PREVIOUS MEETING

RESOLVED:

That the notes of the meeting of the Working Group held on 24 September 2019 be agreed as a correct record, subject to the following amendment:

Council Meetings – Public Speaking on Planning Applications & Site Visits – Public Speaking (Min no 13 (a)), paragraph 4, the addition of ‘a particular’ and word reorder, to read: Discussion turned to a particular parish and that meetings could become very hostile for residents.

18. TERMS OF REFERENCE & WORK PROGRAMME

(a) Terms of Reference

The Working Group noted the Terms of Reference.

(b) Work Programme

The Working Group noted the updated work programme.

19. CONSTITUTION - REVISIONS & AMENDMENTS

Following the departure of the Democratic Services Manager, it was necessary to make amendments to the Council’s Scheme of Delegation - Appendix 3 - Delegation to Officers from Full Council at CLD1 and CLM3.

Delegation CLD1 referred to the Data Protection Officer for the purposes of the Data Protection Act and the General Data Protection Regulation, and CLM3 referred to the

Deputy Monitoring Officer, both of which had been held by the Democratic Services Manager.

It was noted that the Monitoring Officer, N Boateng, had already taken over the responsibilities of the Data Protection Officer, and it was agreed that reference to the Deputy Monitoring Officer role be deleted from the Constitution until such time as the Monitoring Officer made an appointment to this position.

RESOLVED:

That a report be made to Council recommending:

- (1) That the aforementioned revisions to the Council's Scheme of Delegation be recommended to Council for approval.
- (2) That pursuant to Recommendation (1) above, the Monitoring Officer be authorised to make necessary revisions to the Council's Constitution.

20. DISTRICT DEVELOPMENT MANAGEMENT COMMITTEE - TO ALLOW A DISTRICT MEMBER TO REGISTER TO SPEAK

A planning application for land to the north of Dowding Way in Waltham Abbey was to have been determined at the District Development Management Committee (DDMC) meeting of 22 January 2020, but was deferred to a future meeting of the Committee. The application had generated much local opposition and numerous representations had been made by the public to the District Council. A District Councillor had also wanted to be allowed to register to speak and address the Committee for three minutes on this application.

Currently the relevant provisions of the Constitution in this regard were:

- Article 10, District Development Management Committee and Area Plans Sub-Committees, Appendix 1 (1) that allows for the following speakers to register:
 - (a) one objector;
 - (b) one representative of any relevant Parish or Town Council for the purpose of explaining the views of that Council on the matter in question;
 - (c) one representative of any other authority consulted on the application or as a statutory consultee where they have so requested;
 - (d) the applicant (or one nominated agent or representative); and
- Council Procedure Rules (Rule P2) (Planning Applications)
 - (a) Any planning application submitted to a meeting of the Council shall be subject to the procedure for public participation by applicants, objectors and town/parish councils in the same way as those applied to the District Development Management Committee and/or an Area Plans Sub-Committee; and
 - (b) That, pursuant to the scheme of delegation on planning applications set out in Part 3 of this constitution, where a local council have indicated, during the course of planning consultations, of their intention to attend and speak at the Area Plans Sub-Committee meeting where the proposal will be considered and then subsequently fail to register and attend, the application be referred (without any consideration of the

merits of the development proposal) to the Service Director (Planning Services) for determination.

Currently the only provision for additional speakers was covered by Article 10, Appendix 1 (4) where 'the Chairman of the Area Plans Sub-Committee or the District Development Management Committee or the Council may allow additional speakers in exceptional circumstances'.

The Democratic and Electoral Services Officer, G Woodhall, explained that he had spoken to the Chairman of DDMC who had agreed in advance to let this District Councillor speak at the meeting. However, the Chairman had not allowed other District Councillors or a County Councillor to individually register to speak, but had asked that they contact the District Councillor due to speak with their comments.

The Planning Services Director, N Richardson, said that this application could potentially be going to DDMC in May 2020.

Councillor D Dorrell said that when he had previously spoken at DDMC, he had just asked the Chairman beforehand and it had not been a problem.

Councillor S Jones commented that currently the ad hoc situation was at the discretion of the Chairman and seemed to work satisfactorily.

Councillor J Philip said that he had also previously spoken at DDMC as a councillor. He could not recall an occasion when the Chairman had refused to allow a member to speak, and it was not significantly different to other committees. He did not think this proposal was a good idea because for a lot of areas there could be several councillors interested in that area. It was unnecessary to amend the Constitution, and could potentially cause more problems. If a member registered to speak for three minutes at DDMC, what would his position be at full Council as he would not be able to take part in any debate, otherwise he would fetter his discretion.

Councillor J H Whitehouse could not see why this was an issue either.

RESOLVED:

That a report be made to Council, recommending:

- (1) That existing arrangements for public speaking in respect of planning applications remained the same for District Development Management Committee.

21. DELIVERING INFRASTRUCTURE IN THE DISTRICT: DEVELOPER CONTRIBUTIONS STRATEGY

This item had been deferred from the previous meeting in September 2019 as both the Planning Services Portfolio Holder and Interim Assistant Director (Planning Policy and Implementation) had been delayed by another meeting and had been unable to attend. Councillor C C Pond had previously asked for more information on developer contributions and the involvement of the ward member (see Min no 14).

The Planning Services Director informed Members that a S106 Strategy document had been agreed by Cabinet in July 2019. It stated that Parish Councils would be consulted as part of the statutory process and for larger sites at the pre-application stage, through the master plan/concept framework process or through the

Development Management Forum to establish the most appropriate form of provision taking account of the location, scale and form of the proposed development in their area.

The Infrastructure Delivery Plan (IDP) was the document that identified required infrastructure and apportioned this to development as allocated in the Local Plan. This was based on technical evidence, was a live document and would inform the District's infrastructure needs going forward.

The IDP and the S106 Strategy recognised contribution requirements for some minor type developments, for example between 6 and 10 residential units, as identified in the Local Plan Submission Version.

RESOLVED:

That a report be made to Council recommending:

- (1) That the Developer Contributions Strategy identified infrastructure requirements for minor sites where applicable and the involvement of local councils.

22. OFFICER EMPLOYMENT PROCEDURE RULES

Every Council was required to appoint a Head of Paid Service, a Monitoring Officer, and a Chief Finance Officer (Section 151 Officer). Each of these posts carried specific statutory responsibilities. As these postholders operated in a sensitive environment, Councils had been required to follow special procedures to investigate disciplinary matters regarding officers holding these positions. Prior to the 2015 Regulations, procedures were governed by statutory Designated Independent Person (DIP) provisions. The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 replaced the statutory DIP provisions with an Independent Panel process.

The Council had made the required amendments to the Constitution, in relation to the dismissal of the three statutory officers, to ensure that these officers could discharge their duties without any fear of being unduly influenced or dismissed by the authority without good reason. The Joint Negotiating Committee for Chief Officers of Local Authorities Conditions of Service Handbook had also been updated to reflect the regulations. A revised disciplinary model procedure was published in the 2017 edition as a reference guide for the dismissal process.

A standing Investigating and Disciplinary Committee (IDC) had to be politically balanced with at least five members. The Senior Management Selection Panel established in December 2017 already fulfilled the redundancy panel functions of the existing Officer Employment Procedure Rules and it was recommended that the Terms of Reference of the Panel should therefore be extended to encompass the new requirements of the 2015 Regulations in terms of the establishment of the IDC. Appointment to membership of the Committee could therefore continue to be made as part of the annual appointments process.

The new regulations required that a Council must appoint an Independent Panel made up of a minimum of two Independent Persons appointed under section 28 of the Localism Act 2011 (in relation to standards complaints against members), whose advice, views and recommendations should be considered before any decision by the full Council to dismiss a relevant officer could be made. The Independent

Persons could refuse to accept an invitation to sit on an Independent Panel and if either was unavailable when needed, it would be necessary for the Council to appoint additional Independent Persons from other local authorities, to ensure at least two Independent Persons were appointed. The Panel could only be appointed by the full Council. The Council currently had three Independent Persons appointed under S28 of the Localism Act 2011 in relation to standards complaints, two of whom had been appointed in December 2018 on the basis that they might also be required to form part of a Panel that would consider disciplinary action against the most senior officers of the authority. In order to meet the appointment requirements of the Independent Panel, it was recommended that it was appropriate for the Council to formally appoint the three Independent Persons to membership of the Panel as part of the annual appointments process, so that the Panel remained available at all times.

The proposal on the establishment of a panel of Independent Persons and using the model disciplinary procedure would ensure the organisation was best placed to manage any matters relating to the potential dismissal of the Chief Executive Officer, Monitoring Officer and Section 151 Officer in the unlikely event that such circumstances should occur.

Councillor J H Whitehouse asked about the Senior Selection Panel and was it an ad hoc panel. The Service Director (Business Services), P Maginnis, replied that the proposal was that its Terms of Reference be extended to include the IDC, and to be part of that process to decide if an investigation would be carried out by two Independent Members. The Council did currently have standing members appointed to the Panel.

Councillor J H Whitehouse asked if the specific provision relating to the Independent Panel (paragraph 10 of the report) could be clarified as it was incomplete. The Service Director (Business Services) replied that this should have read, "The Independent Panel shall consist of the Council's Independent Persons appointed under section 28(7) of the 2011 Act provided that at least two such Independent Persons are willing to sit on the Panel. If they are not, then the Council has the option to appoint additional Independent Persons from other local authorities, to ensure that a Panel of the required number of at least two Independent Persons is appointed."

Councillor J Philip asked about the dismissal procedure. The Service Director (Business Services) replied that the dismissal vote would be made by full Council, while the Senior Selection Panel would come in with action just short of dismissal.

To give effect to the above, the Working Group agreed that the Officer Employment Procedure Rules set out in Part 4 Constitution be revised accordingly. There were no changes required to other elements of the Officer Employment Procedure Rules (particularly Section C (Disciplinary Action) – Suspension) as the current provisions remained in line with the 2015 Regulations.

RESOLVED:

That a report be made to Council recommending:

- (1) That the incorporation of the revised Officer Employment Procedure Rules be approved; and
- (2) That pursuant to Recommendation (1) above, the Monitoring Officer be authorised to make necessary revisions to the Council's Constitution.

23. AUDIT & GOVERNANCE COMMITTEE - REVISED TERMS OF REFERENCE

The Audit and Governance Committee should ensure its Terms of Reference remained current and up to date with a review on an annual basis, which was in line with good practice, and make recommendations for any significant changes to the Council.

When the Committee last reviewed its Terms of Reference in November 2018, no changes at that time had been proposed, as they remained fit for purpose. The Chief Internal Auditor had carried out a comparison of the Committee's current Terms of Reference with the 2018 CIPFA model terms of reference and had undertaken benchmarking with the terms of reference of the audit committees operated by Broxbourne Borough Council and Harlow Council.

The review of the Committee's Terms of Reference undertaken by the Chief Internal Auditor in the autumn of 2019 had highlighted two additions to reflect the Group Company structure being set up by the Council and to encompass any future changes to the provision of internal audit services. The Working Group agreed to these revisions, which had been approved by the Audit and Governance Committee without further amendment at its meeting on 25 November 2019.

RESOLVED:

That a report be made to Council recommending:

- (1) That the proposed changes to the Audit and Governance Committee's Terms of Reference be recommended for approval; and
- (2) That pursuant to Recommendation (1) above, the Monitoring Officer be authorised to make necessary revisions to the Council's Constitution.

24. RISK MANAGEMENT RESPONSIBILITIES

The transfer of responsibilities for the reviewing of the Corporate Risk Register from the Finance and Performance Management Cabinet Committee to the Audit and Governance Committee, was recommended as best practice by the Chartered Institute of Public Finance and Accountancy (CIPFA) that, 'Audit Committees should 'consider the effectiveness of the authority's risk management arrangements and the control environment, reviewing the risk profile of the organisation and assurances that action was being taken on risk-related issues, including partnerships and collaborations with other organisations'.

At committee level, formal responsibility for risk management was handled by these two committees as per their Terms of Reference:

- (i) Finance and Performance Management Cabinet Committee – to advise and make recommendations to the Cabinet on risk management and insurance issues; and
- (ii) Audit and Governance Committee – to monitor the effective development and operation of risk management in the Council.

Currently the Finance and Performance Management Cabinet Committee reviewed the Corporate Risk Register, agreed any updates recommended by the Risk

Management Group, considered whether any new or emerging risks that were not on the corporate risk register and passed on recommendations to Cabinet for its approval.

The Audit and Governance Committee received a copy of the most up to date corporate risk register at each of its meetings in order to provide context for the meeting. On an annual basis in March, the Committee received a report on the effectiveness of the arrangements for risk management from the Council's Section 151 Officer. Following the staff restructure, responsibility for championing risk management was now with the Service Director (Commercial and Regulatory), who chaired the officer Risk Management Group.

Councillor J Philip thought it a logical transfer to make that Audit and Governance Committee review the Corporate Risk Register, and that the Finance and Performance Management Cabinet Committee should keep an eye on risk to enable risk to be looked at from both sides.

The Working Group agreed to recommend to Council that the Audit and Governance Committee review and comment on the corporate risk register on a quarterly basis, supplemented with a more in-depth review of an individual risk on a rolling or risk basis. This would enhance the operation of the Council's risk management function.

RESOLVED:

That a report be made to Council recommending:

- (1) That the transfer of the responsibility for the reviewing of, and recommending revisions, to the Corporate Risk Register from the Finance and Performance Management Cabinet Committee to the Audit and Governance Committee be recommended to Council for approval; and
- (2) That pursuant to Recommendation (1) above, the Monitoring Officer be authorised to make necessary revisions to the Council's Constitution on its Risk Management arrangements to reflect the new monitoring and reporting procedures.

25. FINANCIAL REGULATIONS - CONSTITUTION AND TRANSACTIONS

This balance between financial control and risk reduction had always been a consideration when reviewing purchasing and invoicing instructions and procedures. The Council's current position was that the business systems were only partly integrated, and set up in such a way as to mimic the paper systems in use a decade or so ago that an immediate IT solution to the problem of delivering effective and efficient transactional processing was not possible. It should however be noted that the planned review of business systems was intended and would complete by the 30 September 2020.

Improvements to transaction management could be improved in the interim to ensure control and a return from investment in recent management changes regarding the Council's restructure, to make procurement and payment transactional costs including procedures simpler and more efficient. This also allowed the Council to improve and learn before the implementation of improved systems from April 2021 (at the latest).

Currently the approach used IT systems (supported by a significant amount of paper vouchers and controls), emails and double signatures on relatively small items and values well within budget. This was cumbersome, bureaucratic and added to real transactional costs and opportunity costs with managers reviewing and signing paperwork already validated by others.

In line with the majority of accountability and responsibility for budgets being passed to team managers, it was proposed to use this approach and that the designated budget holder (usually a team manager) could make purchases and authorise payments with a value of £24,999 or less that were within the designated budget. It was only for purchases and payments of £25,000 and / or in excess of budget that required a second signature from a director.

To ensure the process was controlled:

- A list of budget holders and the financial codes they could operate was already known and maintained securely.
- Monthly, finance business partners could update this list for any changes of budget overspend issues.
- Email and electronic signature and instruction could replace signed paper records as electronic sign off could be counted as a prime record and was as at least as safe and secure as a paper signature.

Increasingly managers were asking for faster and more rapid ways of securing goods and services. Technology allowed for a virtual rather than a real card to be broadly issued with spending controls at transaction, overall limit or nature of the goods and services purchased level. Details of the transactions were received electronically and could be reconciled and posted to the main finance system with ease. Therefore, the proposal was to issue real or virtual purchase cards to all budget holders and directors and expect all purchase below £1,000 to be made by this route and where applicable purchases of £1,000 to £4,999 to also be made by this route. The default approach to these cards was to set a credit limit of £5,000 a month and limit them to the subjective areas covered by the designated budget, i.e. remove the ability to access cash or buy an unexpected item or service.

Purchase would be reviewed monthly as part of the transaction posting process. Variation of the above limits and approach could be approved by the Section 151 Officer, e.g. for the emergency purchasing role of the Executive Director of Commercial and Regulatory Services.

The Council was trying to modernise the way it worked, as currently systems were fragmented and bureaucratic for small spend, but retain a framework of governance. This approach would be re-examined as part of the more major review of systems and process during 2020/21. The plan was for this change to be delivered by a small start and finish project to be completed no later than the 30 April 2020. The project group will consist of:

- Interim Strategic Director (resources soon to be Chief Operating Officer)
- Section 151 Officer
- Procurement Lead
- Payment Lead
- Representative of NatWest bank (for card issue)
- Internal audit representative

Councillor S Heap queried how important was it that those amounts of money needed to be spent so quickly, how often did this happen and was the card real? The Service Director (Business Services) replied that she would have to find out how often fast payments were needed and report back to the Councillor later. However, there was governance in place and although it was a real card, the money had to be in the budget. Councillor S Jones added that only the budget holder was designated to spend it.

Councillor J Philip said it made sense that if officers were imparted with holding budgets, they should be able to spend that budget if it was under £25,000. The Financial Regulations could always be reviewed at a later date. He proposed that a review be undertaken in a year's time by the Audit and Governance Committee, which was agreed by the Working Group.

RESOLVED:

That a report be made to Council recommending:

- (1) That a change to the current delegations and standing financial instructions to require only one sign off signature (electronic or physical) by the designated budget holder (usually a team manager) for purchases and payments with a value of £24,999 or less that were within budget and only purchases and payments off £25,000 and / or in excess of budget to require a second signature from a director, be approved. (This was to retain control whilst significantly reducing transaction costs and paperwork pending a major system review and change timetabled for April 2021);
- (2) That the issues of real or virtual purchase cards to all budget holders and directors and to expect all purchase below £1,000 to be made by this route and where applicable purchases of £1,000 to £4,999 to also be made by this route, be approved. (This was to retain control whilst significantly reducing transaction costs and paperwork pending a major system review and change timetabled for April 2021);
- (3) That pursuant to Recommendation (1) and (2) above, the Monitoring Officer be authorised to make necessary revisions to the Council's Constitution; and
- (4) That the Audit and Governance Committee review the Financial Regulations in a year's time.

26. AUDIT AND GOVERNANCE AND STANDARDS COMMITTEES - REVIEW OF MERGER PROPOSALS

The Council had considered the results of a review on the desirability of combining the Audit and Governance Committee and the Standards Committee on 18 February 2016. At that meeting, the Council concluded the proposals for a merged committee not be adopted as part of the changes to the Constitution, but for a review of the position to take place after two years.

The Constitution Working Group had revisited the merger proposal at its meeting on 16 April 2018. On the advice of the Assistant Director (Governance), the Constitution Working Group agreed to defer its review of a merger because the restructure of the

Council was underway, as well as the review of the Overview and Scrutiny Select Committees to reflect this new structure.

Since then the Council had undertaken a restructure and replaced the previous four directorates with seven service areas, with Portfolio Holders aligned to each of these. In addition, the four directorate select committees had been reduced to three and aligned with the Council's three corporate objectives (Stronger Place, Stronger Communities, Stronger Council).

The next step options below were considered, whereby the views of both the Audit and Governance Committee and Standards Committee could be sought to establish if there was an appetite to merge the two committees by considering the following provisos to address concerns raised in 2018:

- A higher number of members for the new Committee. Currently there were nine Members available to consider Standards issues, which would have been reduced to three under the initial proposals.
- Ask Council to create a specific group to deal with Standards Investigation Hearings that would meet on an ad hoc basis, i.e. as the need arose.
- With regards to a perceived lack of involvement of Parish Councils as currently there were three representatives from the Local Councils affiliated to the District Council's Standards Committee.
- Ask that all agendas were notified to Parish and Town clerks that were aligned to the District's Standards Committee.
- Ask that existing Parish representatives be invited to attend meetings of the new committee as they considered necessary.
- Change the Terms of Reference to include that any hearing into a Parish/Town Councillor included an appropriate representative.

Councillor J H Whitehouse said that when this had previously been thoroughly discussed, members did not want to do this and she was against the merger.

Councillor S Heap agreed but he did not know where standards issues would fit into the Audit and Governance Committee's remit.

Councillor J Philip also agreed. The Audit and Governance Committee had a hefty work programme as it was, and management of the Risk Register's responsibilities would create a significant amount of work. There was no benefit at this time to merge the two committees, as both committees did different things. Therefore, the Working Group should not reconsider a merger unless instigated at the request of either committee, which was agreed.

RESOLVED:

That a report be made to Council recommending:

- (1) That existing arrangements remained the same for the Audit and Governance Committee and the Standards Committee with no merger; and
- (2) That any future merger would be reconsidered by the Constitution Working Group only at the request of either of the Audit and Governance Committee or the Standards Committee.

27. OVERVIEW & SCRUTINY COMMITTEES - CO-OPTION OF MEMBERS

The Overview and Scrutiny Committee had considered a draft revised protocol for the co-option of independent members to the Council's Overview and Scrutiny committees on 28 January 2020. Article 6 (Overview and Scrutiny) of the Constitution, paragraph 6, stated that 'The Overview and Scrutiny Committee shall be entitled to recommend to the Council the appointment of appropriate persons as non-voting co-optees.'

Previously, this process had been followed to appoint representatives of the Epping Forest Youth Council and the Chairman of the Tenants and Leaseholders Federation to membership of the former Communities Select Committee. With the introduction of the new Select Committee arrangements at the start of this municipal year, the Service Director (Housing & Property Services) had suggested that the Chairman of the (renamed) Tenants and Leaseholders Forum should be co-opted onto the Stronger Communities Select Committee, whilst the Epping Forest Youth Council was also keen to secure co-opted membership of the same Select Committee.

The Overview and Scrutiny Committee considered proposals for appropriate selection procedures and criteria for the appointment of co-opted members to the Council's Overview and Scrutiny Committees. It had agreed to bring the co-option of independent members for the Select Committees in line with the existing arrangements for the Audit and Governance Committee, Standards Committee and the Remuneration Panel (which was entirely composed of independent members).

The Members' Allowances Scheme for the current municipal year provided for the application of an annual allowance of £500.00 for co-opted independent members of an Overview and Scrutiny Committee. Any proposals for revision to this element of the Scheme would be required to be considered by the independent advisory Remuneration Panel, and whose views the Council would be required to take into consideration.

Councillor J H Whitehouse said that she had served on the previous Housing Committee, which had also had co-opted members, and therefore supported this proposal. However, she was not happy with paragraph 1.3 of the Protocol, as it gave the impression that only co-opted members could bring views forward but councillors could as well. The Democratic and Electoral Services Officer replied that this paragraph recognised that co-opted members saw a different side to councillors and officers. It also depended on why that person had been co-opted.

At the suggestion of Councillor J Philip, the Working Group agreed to include a minor amendment to this draft protocol to clarify that it was not only co-opted members, but that councillors also brought views forward. Thus, the inclusion of 'another' in paragraph (1.3), last sentence, was made, to read, 'Co-opted members could also add value to the scrutiny process by considering service provision from a customer perspective and acting as another channel for questions from outside the authority'.

RESOLVED:

That a report be made to Council recommending:

- (1) That 'another' at paragraph 1.3 last sentence be included in this draft revised protocol, to read, 'Co-opted members could also add value to the scrutiny process by considering service provision from a customer

perspective and acting as another channel for questions from outside the authority’;

- (2) That the draft revised protocol for the co-option of non-elected Members to the Council’s Overview and Scrutiny Committees pursuant to Recommendation (1) above, be recommended to the Council for approval; and
- (3) That pursuant to Recommendations (1) and (2) above, the Monitoring Officer be authorised to make necessary revisions to the Council’s Constitution’.

28. DATE OF NEXT MEETING

It was noted that the next meeting of the Working Group would be held on 18 June 2020 at 7.00pm.