

EPPING FOREST DISTRICT COUNCIL
NOTES OF A MEETING OF CONSTITUTION AND MEMBERS SERVICES SCRUTINY
STANDING PANEL
HELD ON MONDAY, 6 APRIL 2009
IN COMMITTEE ROOM 1
AT 7.30 - 9.40 PM

Members Present: Mrs M McEwen (Chairman), , Mrs A Haigh, Ms J Hedges, J Markham, J Philip, D Stallan, C Whitbread (Finance and Performance Management Portfolio Holder) and Mrs J H Whitehouse

Other members present: Mrs P Smith

Apologies for Absence: Mrs P Brooks, B Rolfe and Mrs M Sartin (Environment Portfolio Holder)

Officers Present I Willett (Assistant to the Chief Executive), J Gilbert (Director of Environment and Street Scene), S Solon (Principal Planning Officer), C Overend (Policy & Research Officer), S G Hill (Senior Democratic Services Officer) and M Jenkins (Democratic Services Assistant)

51. NOTES OF THE LAST MEETING

RESOLVED:

That the notes of the last meeting of the Panel, held on 22 February 2009, be agreed.

52. SUBSTITUTE MEMBERS (COUNCIL MINUTE 39 - 23.7.02)

It was noted that Councillor Mrs A Haigh was attending the meeting as a substitute for Councillor Mrs P Brooks and Councillor C Whitbread was attending the meeting as a substitute for Councillor Mrs M Sartin.

53. DECLARATION OF INTERESTS

No declarations of interests were made pursuant to the Member Code of Conduct.

54. TERMS OF REFERENCE / WORK PROGRAMME

The Panel were advised that Item 13 from the Work Programme, Mayors – Revised Arrangements for Petitions, would be put before the Panel when the Government consultation document arrived.

55. OFFICER DELEGATION

The Assistant to the Chief Executive, Mr I Willett, presented a report to the Panel regarding Officer Delegation – Annual Review 2008/09. Each year the Council reviewed its scheme of officer delegation, the task being undertaken by a working party of officers.

The appendices to the report set out changes to delegation being proposed in respect of the Cabinet functions and changes to the functions which remained the responsibility of the Council.

One change which would take effect from 2009/10 was in relation to the approval of officer delegation of Cabinet functions. Previously any changes had been referred to the Council for approval, but it would now be the Leader of the Council who determined whether the scheme of officer delegation was to continue or whether changes were made.

Recommendations arising from changes to delegation in respect of Cabinet functions, were being submitted to the Overview and Scrutiny Committee for approval prior to submission to the Leader of the Council. Changes to the functions which remained the responsibility of the Council would go before the Overview and Scrutiny Committee and thence to the Council.

1. North Weald Airfield – Non Commercial Lettings (Delegation Reference N2)

The current wording of delegation N2 placed responsibility for all lettings of North Weald Airfield with the Director of Corporate Support Services. The delegation did not reflect the involvement of airfield staff in negotiating routine or casual bookings of airfield facilities which was the responsibility of the Director of Environment and Street Scene. The Director of Corporate Support Services was responsible for negotiating other bookings, non routine ones, and also for drawing up licenses and similar agreements. Equally, the Director of Corporate Support Services could draw up agreements for lettings and related issues, negotiated by the Airfield Manager.

It was recommended that the delegation was re-drafted to reflect the roles of the two Directorates concerned.

2. Licensing – Hackney Carriage and Private Hire Vehicle Drivers (Delegation Reference S1)

In October 2008 the Licensing Committee had revised officer delegations in respect of Hackney Carriages and other functions by which all applications for Hackney Carriage and Private Hire Vehicle Driver's Licenses would be determined by the Director of Corporate Support Services, the Assistant Director of legal Services and the Senior Licensing Officer, or suitably qualified officers authorised by them to exercise this function.

The Director of Corporate Support Services, the Assistant Director (Legal) and the Senior Licensing Officer granted, at their discretion, a license for a short period until the next meeting if a driver wished to renew his or her license had committed an offence such that there was no delegated authority to renew the license.

3. Parking Contravention Notices (New Delegation)

The schedule of delegation currently omitted any reference to the Traffic Management Act 2004, and the supporting operational guidance from the Government regarding parking policy and enforcement.

The Act required that elected members and unauthorised staff should not be involved in adjudicating on the outcome of individual challenges or representations in response to contravention notices. The statutory requirement was for such matters to

be dealt with by fully trained staff ensuring that criteria for cancelling notices were followed.

4. Development Control (Delegation reference P4 (g) and (h)).

(a) Local Councils and Member's Requests for Reference of Planning Applications to Area Plans Sub-Committees.

This delegation related to planning applications which would normally have been dealt with under delegated authority, but which under certain circumstances, could be referred to an Area Plans Sub-Committee.

Items under Development Control referring to member requests for applications being referred to Area Plans Sub-Committees, should have been subject to a deadline of 4 weeks from the date of receipt of the relevant Council Bulletin list. This avoided such requests being received shortly before Sub-Committee meetings resulting in the item having to be deferred to a later meeting with an adverse effect on the Council's performance against the eight week BVPI target.

A similar change was made in respect of representations by local councils whereby such comments would only result in reference to a Sub-Committee if the views expressed related to material planning considerations.

The net effect of these changes, together with the change to the 3 weeks Area Plans sub cycle had resulted in 36 more cases being determined within the 8 week period.

(b) Objections by Parish and Town Councils (Delegation Reference P4)

Item P4 (g) required that any proposed decision under the Director of Planning and Economic Development's delegated authority granting consent contrary to an objection from a local council on grounds which were material to the planning merits of the proposal, must be referred to Area Plans Sub-Committee for determination. This change was made for a trial period of one year.

Councillor J Knapman wished the Panel to consider the following proposal:

Delegated powers should not be used if the Director of Planning and Economic Development intended to refuse a planning application where a local council had indicated a measure of support in its response and that such cases should stand referred to the relevant Area Plans Sub-Committee.

Most Parish Councils stated "no objection" which appeared to be viewed by Planning Officers as a neutral stance on applications, thereby giving authority to make a delegated decision either to grant or refuse consent. Sometimes the comments of local councils which accompanied "no objection" could indicate support for an application. The officer delegation should therefore provide for such comments to have been taken into account in deciding whether reference to a Sub-Committee should take place.

The Planning Directorate felt that the proposal would lead to uncertainty since it was unclear what should be taken as an indication of support. Because of the lack of clarity the amendment would be likely to lead to disagreements on whether a local council had actually expressed support. The proposal would therefore cause uncertainty and conflict between officers, members and local councils. That

uncertainty would also threaten the validity of decisions taken under delegated powers and therefore leave them open to legal challenge.

It was recalled that if local councils were supportive of an application it was open to them under existing arrangements to express their support. They could start their comments with the word "Support."

The proposal would also result in more applications going to committee for decision. This would result in a decision on an application being made outside the statutory period. The District Council's objective of achieving upper quartile performance for planning performance would therefore be undermined.

As an alternative, it was suggested that further advice would be given to local councils avoiding any ambiguity in their responses. It was also suggested that when the Council was moving to an era of electronic responses, it would be useful to include "tick" boxes with supporting comments which made the views of the local council clear.

RECOMMENDED:

- (1) That the proposals for changes to Officer Delegation be recommended for adoption by the Leader of Council;
- (2) That the proposed changes to Officer Delegation be recommended to the Council at its April 2009 meeting subject to preference being expressed for delegation P4 favouring the option of giving further advice to local councils on the proper form for their representations on planning applications; and
- (3) That the Assistant to the Chief Executive be authorised to incorporate, within the final versions of officer delegation, minor drafting changes including typographical errors, changes in officer delegations as a result of Senior Management Review and any changes in legislation which had occurred since the last review took place.

56. OVERVIEW AND SCRUTINY REVIEW

Overview and Scrutiny had been subject to regular review since its inception. This current review had been split into a number of separate reports.

The Panel received four reports as follows:

- Councillor Call for Action (CCfA)
- Police and Justice Act 2006 – Community Safety Committees
- Briefing on Local Democracy, Economic Development and Construction Bill
- Operational Review of Overview and Scrutiny 2009.

(a) Councillor Call for Action (CCfA)

The Local Government and Public Involvement in Health Act 2007 empowered all Councillors to refer issues of concern, related to Council functions, for consideration by the relevant Overview and Scrutiny Committees of their local authorities. The original intention had been to introduce these powers in 2008 but the implementation date was now 1 April 2009. The Community Call for Action was a power rather than a duty with arrangements varying from one local authority to another.

The CCfA provision entitled all Councillors to refer a “local government matter” to an Overview and Scrutiny Committee once they had exhausted all other means of resolving the issue. This had been defined as a matter which related to the discharge of any authority function that affected all or part of the electoral area for which the member was elected or any person who lived or worked in that area. This went beyond the existing power scrutiny members had to raise an issue. However the powers were limited to issues affecting single Council wards.

Although Scrutiny Committees had the power to request information and invite representatives from certain partner organisations, the CCfA was an opportunity for devising solutions to local problems using the influence scrutiny provided in bringing together a range of organisations through innovative thinking around an issue. However it did not function in isolation, it required use of a range of other facilities including support for Councillor’s wards, complaint’s procedure, call-in and petitions. If a CCfA was accepted, a discussion would take place at the Committee meeting on the outcomes that the member concerned was seeking.

Although the powers were for pursuing by any member of the Council, there were exceptions where CCfA was not appropriate, for example where matters were “vexatious, discriminatory or not reasonable.” However Councils should not see politically motivated CCfAs concerning high profile subjects, as a threat. They were an opportunity for members to defuse political rows and, jointly, develop solutions that were satisfactory to all.

The CCfA provided routes for advice on what could and could not be pursued, this included signposting to alternative resolutions. It was not designed for providing an immediate solution, but for a high-profile community discussion of an issue involving all stakeholders. The current arrangements for members through which they could raise matters to influence change were both formal and informal. They included the Overview and Scrutiny Committee, the call-in procedure, asking questions at Committees or Council meetings, petitions and general communication with officers, councillors, the public and M.P.s.

RECOMMENDATIONS:

- (1) That the Panel note the introduction of the Councillor Call for Action (CCfA); and
- (2) That the Overview and Scrutiny Committee include a review of the effect of the CCfA in the work programme with particular reference to the Overview and Scrutiny Procedure Rules, the petition procedure, the compliments and complaints procedure and the delegation of officers/member bodies to deal with the new procedures under the Act.

(b) Police and Justice Act 2006 – Community Safety Committees

Notification had been recently received from the Home Office that it was intending to bring into force Sections 19-21 of the Police and Justice Act 2006 with effect from 30 April 2009. This ensured that every local authority would have a committee called the “Crime and Disorder Committee,” which would have the following powers:

- (i) to review or scrutinise the decisions made, or other action taken, in connection with the discharge by responsible authorities of their crime and disorder functions; and

(ii) to make reports or recommendations to a local authority or any other partnership body on the carrying out of those functions.

Currently the District Council had a Standing Scrutiny Panel on the “Safer, Cleaner, Greener Initiative” which included within its terms of reference the monitoring of crime and disorder issues. The Police and Justice Act 2006 required a Community Safety Committee to meet on a minimum of two occasions every year, so it was important that the Council considered how this particular requirement was to be met. If a new body was being established, two dates would be included in the calendar of meetings. However if an existing body was being designated as the Crime and Disorder Committee, it was necessary to consider having two designated meetings of the body concerned to deal with crime and disorder issues, so the Council meeting the statutory obligations.

RECOMMENDATIONS:

(1) That the Overview and Scrutiny Committee be recommended to designate the Safer, Cleaner, Greener SSP as the Council’s Community Safety Committee;

(2) That the Overview and Scrutiny Committee be further recommended to consider at its June 2009 meeting:

(a) the manner in which the statutory requirement for at least two meetings of the designated Community Safety Committee will be held;

(b) co-option arrangements; and

(c) the terms of reference of the Community Safety Committee, its membership and other constitutional changes for adoption by the Council.

(c) Briefing Paper – Local Democracy, Economic Development and Construction and Community Empowerment Bills.

The White Paper “Communities in Control: Real People, Real Power,” published in July 2008, set out the Government’s proposals for empowering local communities. These proposals had been developed into two pieces of legislation, the Local Democracy, Economic Development and Construction Bill, and the Community Empowerment Bill. The Community Empowerment Bill had not been published yet, it encompassed other White Paper proposals, including the removal of barriers to directly-elected mayors, empowering parish councils, enabling “remote” voting at Council meetings and the introduction of incentives to encourage voting.

The Local Democracy, Economic Development and Construction Bill promoted local democracy and economic development, devolving greater power to local government, communities and ensuring fairness in construction contracts.

The District Council had a requirement for including e-petition facilities on its website, allowing petitions to be submitted electronically. This required the re-writing of the Council’s petition procedure. The Work Programme of the Panel should include a reference to bringing forward a further report on petitioning once the legislation was nearing Royal Assent. The Council had some discretion in setting thresholds for petitions with full council assent being required for the final scheme.

The Bill introduced a statutory duty to promote democracy above Town and Parish Council level. The duty extended beyond the Council itself and covered what were referred to as “connected authorities” which, for practical purposes would include organisations normally founding the Local Strategic Partnership. The Council had previously given this aspect some consideration and had given the Chairman of the Council a lead role for this activity. However, the scope of this duty was still being debated by the Government and until the likely final wording and guidance was forthcoming, it was difficult to say what resources were affected.

Clause 28 of the Bill expanded the remit of the joint committees in two-tier areas set up by the 2007 Local Government and Public Involvement in Health Act. This appeared at present to be limited to partner authorities which included the County Council rather than being more flexible to allow scrutiny access any combination of local authorities.

The Bill currently required each principal local authority, to prepare an assessment of the economic conditions in its area, and revise that assessment if considered appropriate. The Bill indicated that the Secretary of State would decide what these assessments should contain, how they were to be prepared and when and revision arrangements.

Regional strategies, for development and land use, to include policies for sustainable economic growth and climate change issues, would be the joint responsibility of the Regional Development Board and new Leader’s Boards.

District Councils would be required to produce and publish a plan setting out how the strategy would be implemented.

The Bill also contained provisions for:

- (i) Economic Prosperity Boards and combined authorities;
- (ii) Multi Area Agreements;
- (iii) A power to appoint an auditor to certain local government entities, and to issue a public interest report about those entities if appropriate; and
- (iv) Improvements to the fast track system for resolving construction contract disputes.

RECOMMENDATIONS:

- (1) That the briefing report be noted; and
- (2) That the Panel request Overview and Scrutiny Committee to make appropriate additions to the work programme of this Panel for 2009/10 to cover:
 - (i) a review of the Council’s petitions procedure and electronic systems;
 - (ii) further reports on the duty to promote democracy envisaged;
 - (iii) any consequential changes that might be required to the Operational Rules

(d) Overview and Scrutiny – Operational Review 2009.

Members and officers views had been sought about issues that should be covered in the review of operational arrangements.

(i) Joint Finance Meeting in 2010

Over time the Council had developed an effective process for budget setting. Officers believed there was scope in bringing together meetings of the Finance and Performance Management Cabinet and Overview and Scrutiny Panels in January 2010, enabling joint consideration of the final draft budget. This would have the benefit for scrutiny in being able to question the Executive on their budget in a panel setting and would enable Portfolio Holders to deal with queries before formal Cabinet and Council stages.

RECOMMENDED:

- (1) That the Finance and Performance Management Cabinet Committee and Overview and Scrutiny Panel remain as separate meetings but on the same date;
- (2) That a gap remain between the two meetings;
- (3) That the Overview and Scrutiny Panel should meet before the Finance and Performance Management Cabinet Committee; and
- (4) That the agenda of the meetings should be given consideration to ensure that the two meetings deal with appropriate Overview and Scrutiny and executive responsibilities.

(ii) Dealing with Consultation Documents

The scoping exercise for the review of Overview and Scrutiny expressed a view that, overall, the balance of items put forward to the Overview and Scrutiny Committee and Panels was taken up by responses to Government consultation papers and presentations from external bodies and not enough time was spent on scrutiny of the Council's performance and that of its partners.

In practice, although many consultation documents had been listed in the Council Bulletin, it was rarely the case that consultation document consideration had been requested by members themselves. Mostly, the relevant Service Director had determined that particular consultation documents were likely to be of interest to members of the relevant scrutiny body. In many cases consultations were referred to the Constitution and Member Services Standing Scrutiny Panel.

The Constitution referred to "a review of implications" of Government consultation documents. This implied something different than simply responding to the Government on the terms of those documents. It implied a forward look, examining the implications of Government proposals if they were adopted in the future. This aspect had not been addressed.

It was felt that a senior officer from Democratic Services or a designated member should identify relevant consultation documents for detailed consideration by a Panel. This should also be covered by a listing of all such consultation documents received in the Council Bulletin, coupled with an invitation to members for indicating which

documents they required for formal discussion. If the Overview and Scrutiny Committee received a consultation document which had implications in the future for the Council or the Cabinet, then it may be that they needed to consider whether or not a more in depth, review of the implications should be added to the annual work programme.

RECOMMENDED:

- (1) That the Portfolio Holders, Service Directors and Chairs of Scrutiny Panels discuss whether forthcoming consultation documents should be subject to formal report consideration;
- (2) That forthcoming consultation documents are recorded in the Council Bulletin with a summary of their contents;
- (3) That consideration be given to the relative importance/need for response when deciding to report to the relevant committee or panel.; and
- (4) That the Cabinet are consulted on consultations where the subject matter is an executive function.

(iii) Outside Speakers

Members had felt that some presentations were helpful, but they would generally benefit from clearer objectives, pre-discussions of the topic by the committee or panel, and post-presentation follow up.

The Overview and Scrutiny Committee was receiving a lot of presentations from organisations that wanted to update councillors on their activities, it was thought that these presentations were better placed elsewhere within scrutiny. It was possible for outside speakers to be invited to a special meeting dedicated to a particular subject if it was felt worthwhile.

Members of the Overview and Scrutiny Committee frequently met before the main committee to decide questions which members wanted to ask. This worked when the members had asked for a specific speaker because there were issues the members wanted to raise. A reminder in the Council Bulletin of important items coming up in the next Overview and Scrutiny meeting was an idea and a reminder that the meeting was open to all members for submitting their questions to the Chairman in advance or for attending themselves and putting their questions.

Where external speakers were coming to make a presentation and answer questions, it was thought that a pre-discussion either at the previous meeting about the scope of the questioning or at a pre-meeting for this purpose, not seeking to limit discussion but more to deal with areas of concern in a logical way.

The process for ensuring that members were in a position to question visitors to their meeting was based upon a pre-meeting at 7.00p.m. prior to the main meeting. This had worked for a time but the briefing sessions were poorly attended. Officers were currently trialling a formal item on the meeting preceding the presentation to agree its scope and aims.

The Overview and Scrutiny Committee Work Programme should be developed to show required responses or action review at say, three months after the presentation

as a routine or alternatively, as part of the six monthly reviews of actions that already took place.

RECOMMENDED:

- (1) That speakers at meetings should form part of the Work Programme;
- (2) That items involving speakers at forthcoming scrutiny meetings be highlighted at the preceding meeting to allow sufficient preparation; and
- (3) That the views of the main committee be sought on the desirability of having individual presentations.

(iv) Internal Presentations

All members should try and familiarise themselves with all areas of the Council's work and there was some benefit in having presentations about them and/or visits to the areas concerned. Although this may not be a scrutiny issue, a tour of the main building was always arranged by The Chairman for new members. This could be repeated every year as a familiarisation session for all members as well as including the external premises. It was proposed to continue the Civic Offices tour and include a talk with the Service Directors.

Internal presentations from staff would be better aimed at those areas subject to a service type review as part of a Task and Finish Panel process.

(v) Member Training – Overview and Scrutiny

Training in scrutiny and chairing was valuable for all members and a course was planned for this year.

It was felt that training on scrutiny chairing and questioning should be given annually, as it was valuable for members. A course was planned for the forthcoming year although it was not regarded as mandatory, it was strongly recommended for scrutiny chairmen and those engaged in questioning and gathering evidence from internal and external sources.

One training course was being held during 2009/10 on chairmanship and questioning, the trainer (EERA) had been briefed to ensure that this focussed on the Overview and Scrutiny role. Subject to budget, it was possible to arrange a repeat course if demand warranted this. However, as the EERA training was not paid for by the District Council, it had to be scheduled into the existing programme well in advance, it could not be organised at short notice.

The Chairman decided to close the Panel's discussion on the report at this stage, owing to the time constraints. The next meeting of the Panel would continue with this report from the next section "Reports by Chairmen of Panels."

RECOMMENDED:

- (1) That the timings of M10 Awareness Session/Finance GRF/HRA and Budget Process and M17 Chairmanship and Questioning Skills, be re-arranged earlier in the 2010/11 Member Training schedule.

57. CIVIC EVENTS

Councillor D Stellan had requested that this item was put on the agenda for this meeting.

It was felt that at the recent Civic Awards Ceremony in March 2009, the Chairman of Council, Councillor J Knapman, had made comments which could be construed as a criticism of another local council. It was suggested that a protocol should be established setting out the Chairman's responsibilities for such an event. Mr S Hill, Senior Democratic Services Officer, advised that the Council's Constitution had a protocol but this was removed three months ago. There was a document being produced, a How To guide for Chairman of Council. It was agreed that draft guidance would be inserted into the current guidance on Chairman's protocol.

AGREED:

That draft guidance be incorporated into the current Chairman's guidelines.

58. FUTURE MEETINGS

The next meeting of the Panel was scheduled for 29 June 2009 at 7.30p.m. and thereafter on:

14 September 2009;
2 November 2009,
11 January 2010

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

The reports on the Police and Justice Act 2006 – Community Safety Committees, and Officer Delegation were being put before the Cabinet on 20 April 2009.