

**EPHING FOREST DISTRICT COUNCIL
NOTES OF A MEETING OF CONSTITUTION AND MEMBERS SERVICES SCRUTINY
STANDING PANEL
HELD ON TUESDAY, 4 OCTOBER 2011
IN COMMITTEE ROOM 1
AT 7.00 - 9.15 PM**

Members Present: D Stallan (Chairman), D C Johnson (Deputy Portfolio Holder (Estates)) (Vice-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, Ms S Watson (Deputy Portfolio Holder (Housing)) and Mrs J H Whitehouse

Other members present: C Whitbread

Apologies for Absence: R Morgan

Officers Present I Willett (Assistant to the Chief Executive), G Lunnun (Assistant Director (Democratic Services)), W MacLeod (Elections Officer) and M Jenkins (Democratic Services Assistant)

19. NOTES OF THE LAST MEETING

RESOLVED:

That the notes of the last Panel meeting held on 27 July 2011 be agreed.

20. SUBSTITUTE MEMBERS (COUNCIL MINUTE 39 - 23.7.02)

There were no substitute members present.

21. DECLARATION OF INTERESTS

There were no declarations of interest made pursuant to the Member's Code of Conduct.

22. 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 6 Review of Membership of Audit and Governance Committee – Deputy Portfolio Holders

This report was on schedule for the November Panel meeting.

(b) Item 11 Review of Petitions – Change in Legal Requirements

This report was on schedule for the November Panel meeting.

(c) Item 18 Report of External Auditor

This item was withdrawn from the Panel's Work Programme. A separate Task and Finish Panel appointed by the Overview and Scrutiny Committee were looking at this issue.

Two further items were added to the Panel's Work Programme:

(i) Housing Appeals and Review Panel Terms of Reference

It was felt that there were too many appeals coming to the Panel concerning banding. The Panel's Terms of Reference could be adjusted to reduce workload.

(ii) Housing Appeals and Review Panel Order of Business

This item concerned the legal advice on the Panel's order of business at hearings.

23. REPORT OF DISTRICT REMUNERATION PANEL

The Panel received the Annual Report 2010/11 of the District Council Remuneration Panel. In attendance at the meeting were Ms R Kelly and Mr S Lye. The Council had requested a review of the 2010/11 Annual Report of the District Council Remuneration Panel as part of its work programme for the current year. This was the sixth annual report of the District Remuneration Panel for the Epping Forest District, and summarised its work during 2010/11. The Panel was established under the Local Government Act 2000, requiring Councils to create a Remuneration Panel advising on payments of allowances and expenses to Councillors. The Panel asked for all members of the Council to be given an opportunity to comment on remuneration so that any views can be taken into account. The Chairman reported that he had received an email from a Member regarding SRAs. The Remuneration Panel members had stated in their report that there was "no restriction on the number of separate SRA's which are payable to an individual member." Mr S Lye said that allowances were awarded according to time spent on having a particular responsibility.

RECOMMENDED:

(1) That the following recommendation (numbered (11) in the report of the Remuneration Panel) be adopted and submitted to the Council for approval:

"That the reference to first class rail return fare in the current scheme in relation to travel to meetings outside the District or by members resident outside the District be removed from the scheme;" and

(2) That for the purposes of the next review of member remuneration, the Panel be requested to review the following:

(a) the SRA payable to the Chairman of the Overview and Scrutiny Committee in the light of proposed changes to reporting at Council meetings;

(b) the IT Connectivity Allowance: eligibility and payment levels; and

(c) review of wording in respect of an assessment of hours worked and responsibility levels by Councillors as a basis for calculating the Basic Allowance by reference to the national minimum wage.

24. STATUTORY REVIEW OF POLLING STATIONS

The Panel received a report regarding the Review of Polling Districts, Polling Places and Polling Stations, from Mr G Lunnun, Assistant Director of Democratic Services.

The Electoral Administration Act 2006 introduced a duty for all polling districts and polling places to be reviewed by the end of 2011.

A polling district was the area created by the division of a constituency, ward or division into smaller parts within which polling places could be determined which was convenient to electors. A polling place was the building or area to which polling stations would be selected by the Returning Officer. A polling station was the room or building chosen by the Returning Officer where voting took place.

Aim of the Review

Authorities must:

- (a) Seek to ensure that all of the electors in the constituency have such reasonable facilities for voting as were practicable in the circumstances; and
- (b) Seek to ensure that so far as was reasonable and practicable, the polling places for which they were reasonable were accessible to all electors, including those who were disabled.

Review Process

- (i) A review of polling districts and polling places must be conducted by the end of 2011, and at least every four years after that
- (ii) The review was a function of the Council and not the Electoral Registration Officer or the Returning Officer
- (iii) As part of the review a consultation exercise was undertaken between 25 May and 25 June 2011 in relation to the proposals
- (iv) Members, local MPs, interest groups and Returning Officers for the Brentwood and Ongar and Harlow Parliamentary Constituencies were consulted.

Results of Consultation

A Buckhurst Hill resident referred to two polling stations in the Buckhurst Hill East Ward, the Woollard Centre in Loughton Way and the Roding Valley Hall in Station Way. Although the Woollard Centre was well placed, the Roding Valley Hall was on the edge of the ward necessitating a long walk or travel by car for many electors. It was felt that the Health Centre in Buckhurst Way would be more convenient for the majority of electors. Officers had concerns about this location due to parking problems. Contact was made with the Health Centre to check the extent of accommodation available for polling. The Health Centre responded that the building could not be made available without severe disruption to the services there. Despite the Roding Valley Hall being on the edge of the ward, it was still within easy walking distance for many electors.

A member drew attention to the possibility of the Council converting Faversham Hall, Faversham Close, Chigwell Row into flats and the lack of any other suitable building in Chigwell Row for use as a polling station. There was a tendering process involved, and it was advised that the Hall would still be available for use as a polling station in May 2012. However it was likely that an alternative location was needed after that period.

Another member expressed the view that the use of part of the bar area in the Railway Hotel in Lower Sheering as a polling station was not ideal as it was on the very edge of the ward and county boundary and was two miles from some electors. Different entrances to the public house made it difficult for tellers and some electors may be unwilling to enter licensed premises. However he recognised that there was no other suitable building in Lower Sheering and that the Railway Hotel represented the best available option and was preferable to the alternative of a portacabin.

Ongar Town Council advised that they were happy with the current arrangements, Brentwood Borough Council, Theydon Bois Parish Council and the Brentwood and Ongar Liberal Democrats all advised that they had no comments on the proposals. No other responses were received.

The Panel was made aware of a late representation from Councillor Mrs J Whitehouse concerning re-organisation of polling districts in the Epping Hemnall Ward so as to make polling stations in some parts of the ward more convenient for voters. After discussion Councillor Mrs J Whitehouse said that she would withdraw her proposals. It was advised that a review would not take place for a further four years.

RECOMMENDED:

That a report be submitted to the Council recommending that:

- (1) that the proposals for polling districts and places as set out in the Appendix to the report be approved; and
- (2) that the proposals be published and copies made available for inspection by the public at the Civic Offices, in at least one place in each parliamentary constituency covering the Epping Forest District and on the Council's website.

25. REPORT ON WEBCASTING

The Panel received a scoping report regarding the webcasting review from Mr G Lunnun, Assistant Director of Democratic Services requested at the June meeting. The report provided information about the contract and the Council's webcasting activities.

The Council had been webcasting its meetings and events since 2006. The initial period was funded by central government technology grant called "Implementing Electronic Government" or IEG grant. Since that time over 300 webcasts have been recorded. The District Council was acknowledged to be one of the most effective at webcasting in the country.

The Council currently had a contract with Public-I Limited for providing leased equipment, an integrated Content Management System, monitored webcasts,

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maintenance and webcast archive hosting and streaming. The contract started on 1 April 2011, would end on 31 March 2015.

The contract covered 15 hours webcasting per month.

Equipment and Use

The Council currently possessed two sets of webcasting equipment; one fixed unit mounted permanently in the Council Chamber, and a portable unit for meetings in the Committee Rooms or at outside locations.

This equipment was operated by officers of Democratic Services, Public Relations, and occasionally staff from other services. At each webcast meeting one member of staff operated the equipment but at various other places than the Civic Offices, two staff members were needed. As a matter of course, the following meetings were webcast:

- Council
- Cabinet
- Overview and Scrutiny Committee
- District Development Control Committee
- Area Plans Sub-Committees
- Audit and Governance Committee
- Budget meetings

Over time the equipment had been used successfully at other events, for example, North Weald Airfield Open Day and Armed Forces Day flag raising.

The webcast system had been set up to enable the Committee Management System, to supply agenda/reports and booking information to the webcast system without human intervention.

Website Usage

The average annual number of viewers was around 20,000. Despite trying a number of different approaches the level of live viewers had remained at between 7 – 10% of the total viewing level. It was very apparent that there was a direct relationship between District Council promotion of a webcast and the level of viewing. Active promotion of a recent visit by the police to an Overview and Scrutiny Committee meant that 189 people tuned in live to watch.

Requests for Webcasts

The Council received requests from the public and professionals for copies of webcasts, this was normally in support of a planning appeal. The view had been taken by officers that the level of income that could be generated by making a reasonable charge for providing copies was low and went against the presumption of openness that webcasting implied. Additionally webcast copies had been effectively used in Standards Committee complaints against the Council and in assisting other services in providing background for appeals.

Members requested further information on the following:

- (a) opportunities for charging professional organisations for copies of DVDs;

- (b) staff costs for filming other bodies' meetings;
- (c) use of the Forester, Yearbook and Diary and Council website to advertise and advise of forthcoming meetings;
- (d) review of webcast index points did not always match the on-screen discussion, and speech and images not being synchronised;
- (e) views of members of the District Council, County Council and Town and Parish Councils;
- (f) details of contract costs;
- (g) further analysis of staffing costs;
- (h) arrangements under the contract when 15 webcasts per month is exceeded and the charges which then applied;
- (i) occasions when officers are restricted by the limit of 15 webcasts per months;
- (j) charges for advising other bodies on webcasting including visits to her authorities/bodies;
- (k) statistics on the split between public and officer viewing figures;
- (l) analysis of the number of "hits" for meetings; and
- (m) comparisons with the website statistics for other councils

RESOLVED:

- (1) That the report regarding Webcasting be noted; and
- (2) That a further report be submitted to this Panel regarding the points noted above lettered (a) – (k).

26. PLANNING/COVENANTS - COUNCIL RESPONSIBILITIES

The Panel received a report regarding Council Landowner and Planning Authority Roles by Mr I Willett, Assistant to the Chief Executive.

The Overview and Scrutiny Committee asked in April 2010 for a report to be submitted to this Panel on the implications of this issue. In recent discussions within the Council, this issue had arisen in connection with covenants on land but would also be relevant to the Council's general role as landowner, particularly where the Council sought to realise property assets. Cases involving covenants included Epping Forest College and 35 Denny Avenue, Waltham Abbey. The latter case also raised the issue of the Council's dual roles of planning and housing authority. Similar issues have arisen in regard to its licensing functions.

Implications of the Different Council Rules

Recognition of different roles was key to decision making. Decisions on service provision were made on the basis of loyalty, probity, financial and technical

considerations. The regulatory framework took account of considerations such as planning and licensing. The Council's role as landowner was also distinct from the regulatory framework. Decisions on its property holdings should not imply that supporting regulatory decision must follow, separate processes were followed and the outcome of regulatory decisions should not have any regard to the Council's property role. Apart from decision making, these roles bring with them probity considerations.

Covenants

Covenants were legal obligation imposed in a deed by a seller of land or property on the purchaser. The legal obligation being to take action, or not to. These obligations frequently attached to the land and were enforceable on the buyer (including subsequent owners). Generally these covenants were registered for Land Charge searches, such covenants could also be included in leases. In commercial properties, covenants could seek to control the use of premises, the type of commercial activities undertaken, preventing certain types of trading and avoiding nuisances. In residential properties, covenants were generally included to ensure the management objectives of the seller.

Enforcement and Challenge – Property and Regulatory Functions

With covenants and other property matters, the route to enforcement and challenge to decisions taken by the Council as landowner was through the Lands Tribunal and/or the courts. Such actions were always linked to interests in the land and remedies included injunctions and damages.

Regulatory decisions in respect of planning or licensing matters were made pursuant to statutory powers which usually allowed some discretion to be exercised within limits. These decisions may be subject to a statutory appeal process or be open to challenge by way of Judicial Review. In relation to planning applications/enforcement applications, appeals were made to the Planning Inspectorate in the first instance. None of these decisions directly affected title to the property but may have an effect on the use to which the property could be put.

Constitution

Fundamental to the Local Government Act 2000 was the distinction between the Executive and Regulatory roles of the Council. This Act established the basis of the Authority's current Constitution. As a result, the Council's regulatory functions were specifically excluded from the duties and responsibilities of the Cabinet.

The Council's own planning applications were referred to in the terms of reference of the appropriate Area Plans Sub-Committee. They were not dealt with by officers under delegated powers and must be referred the appropriate Sub-Committee. This reflected the constitutional position but was also designed to make such decisions transparent where the public was concerned.

Code of Conduct

Local authorities were unusual in that property ownership and regulatory responsibilities existed within the same organisation. For Councillors this created difficulties in terms of separating these roles. For Cabinet members advice in the Planning Protocol stated that involvement in decisions which resulted in planning applications should be considered a prejudicial interest so far as the planning

decision was concerned. This was because there would be a clear connection between the outcome of a planning application and the Cabinet decision thereby raising concerns about fettered discretions.

RECOMMENDED:

- (1) That the Standards Committee be asked to review:
 - (a) existing advice on member interests concerning planning so as to reinforce the difference between those roles;
 - (b) the need for similar advice for the Council's licensing responsibilities;
- (2) That a further report be submitted on any amendments to the Constitution needed to clarify these roles;
- (3) That all Directorates be asked to review their dealings with the public to ensure that the difference between property decisions and regulatory matters are separate and that a decision by the Council as landowner does not mean that any relevant regulatory decision will automatically follow.

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

The following reports were being submitted to the Overview and Scrutiny Committee on 18 October 2011:

- Report of District Remuneration Panel; and
- Statutory Review of Polling Stations

28. FUTURE MEETINGS

The next programmed meeting of the Panel was being held on Tuesday 8 November 2011 at 7.00p.m. in Committee Room 1, and then on Monday 20 February 2012.