

**EPPING FOREST DISTRICT COUNCIL
NOTES OF A MEETING OF CONSTITUTION AND MEMBERS SERVICES SCRUTINY
STANDING PANEL
HELD ON TUESDAY, 26 MARCH 2013
IN COMMITTEE ROOM 1
AT 7.00 - 9.00 PM**

Members Present: Mrs M Sartin (Chairman), A Watts (Vice-Chairman), A Boyce, A Mitchell MBE, R Morgan, J Philip and D Stallan

Other members present:

Apologies for Absence: R Cohen, J Markham, B Rolfe, Mrs J H Whitehouse and G Waller

Officers Present I Willett (Assistant to the Chief Executive), R Wilson (Assistant Director (Operations)), G Lunnun (Assistant Director (Democratic Services)) and M Jenkins (Democratic Services Assistant)

48. NOTES OF THE LAST MEETING

RESOLVED:

That the notes of the last meeting of the Panel held on 27 February 2013 be agreed.

49. SUBSTITUTE MEMBERS (COUNCIL MINUTE 39 - 23.7.02)

It was noted that Councillors Mrs A Mitchell MBE and A Boyce were substituting for Councillors B Rolfe and G Waller respectively.

50. DECLARATION OF INTERESTS

Pursuant to the Council's Code of Member Conduct, Councillor D Stallan declared a non pecuniary interest in the following item of the agenda, by virtue of being the Housing Portfolio Holder. He advised that this report had originated from the Cabinet and although the Localism Act gave him the right to sit and vote he felt that on this occasion he could not vote, however he would assist the debate:

- Item 7 Housing Appeals and Review Panel – Terms of Reference – Exclusion of Housing Applicants from the Housing Register.

51. TERMS OF REFERENCE / WORK PROGRAMME

(a) Terms of Reference

The Panel's Terms of Reference were noted.

(b) Work Programme

(i) Item 21 Employment Procedure Rules - Revision

Officers were awaiting legal advice from Counsel, therefore this item would be held over to the next municipal year.

52. HOUSING APPEALS AND REVIEW PANEL - TERMS OF REFERENCE - ORDER OF PRESENTATION OF CASES

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

At the request of the Housing Appeals and Review Panel (HARP), consideration was given in February 2012, by this Panel, to altering the order of presentation of cases at the HARP meetings.

Members were advised at that time that a change in the order of presentation, with the Housing Officer presenting the case first.

Members and substitutes of the HARP were consulted at the time and although there was not a consensus view, the majority expressed support for the proposals.

The Scrutiny Panel decided that the existing order of proceedings with the applicant/appellant presenting their case first should be retained but that provision should be made to reverse the order if requested. This decision was subsequently adopted by the Council. The Panel decided to review the matter during the year.

Since the Scrutiny Panel's consideration of the matter last year, the HARP had considered seven cases. In four of these the applicant/appellant had presented their case first, in the other three cases the order of presentation was reversed at the request of the applicant/appellant.

RECOMMENDED:

That the following changes be made to the Terms of Reference of the Housing Appeals and Review Panel Order of Presentation of Cases

(a) that the normal order of presentation of cases at meetings of the Housing Appeals and Review Panel be changed to provide for the case officer presenting their case before the applicant/appellant; and

(b) that paragraphs (6) and (7) of the Terms of Reference of the Panel be amended as follows:

“(6) In relation to appeals or reviews at which the applicant's case is presented in person or by a representative, the hearing shall be conducted in the following order:

- (a) Chairman's introductory remarks;
- (b) Presentation of the Officer's case;
- (c) Questioning by the applicant (or representative);
- (d) Questioning by members of the Panel;
- (e) Presentation of the applicant's case;

- (f) Questioning by the Officer;
- (g) Questioning by members of the Panel;
- (h) Summing up by the applicant;
- (i) Summing up by the Officer;
- (j) Panel considers its findings in the absence of the applicant and the Officer;
- (k) The decision of the Panel will be conveyed to the applicant and Officer in writing.
- (l) The Panel shall have discretion to reverse the order in which the cases of the applicant and the Council are presented, provided that both parties agree.
- (7) If requested by the appellant/applicant or their representative, the Chairman may agree to (6)(b)-(d) above taking place after (e)-(g) and to (h) and (i) being reversed”.

53. HOUSING APPEALS AND REVIEW PANEL - TERMS OF REFERENCE EXCLUSION OF HOUSING APPLICANTS FROM THE HOUSING REGISTER

The Panel received a report from the Assistant Director of Housing, Operations, regarding the Terms of Reference for the Housing Appeals and Review Panel – Exclusion of Housing Applicants from the Housing register.

The Council on 20 April 2010 amended the Terms of Reference of the Housing Appeals and Review Panel (HARP), concerning making appeals against any decision made by Housing officers on any housing matter. The amendment stipulated that housing clients could only appeal on specific issues from the 2010/11 municipal year. Under the new Government guidance, authorities were given powers to decide locally on how accommodation should be allocated based upon local priorities , in any way they saw fit, provided schemes were both legal and rational.

The new draft scheme was considered by the Housing Scrutiny Standing Panel in December 2012. Under Section 14 of the proposed new scheme, if an applicant did not meet the following Local Eligibility Criteria they would not qualify to either remain on, or join the Housing Register. These were:

- (a) Residency – an applicant who had lived in the Epping Forest District for less than three continuous years immediately prior to their date of registration.
- (b) Exceptions to the Residency Criteria – Armed Forces Regulations – Any member or former member of the Armed Forces applying within five years of discharge, or a bereaved spouse or civil partner of a member of the Armed Forces leaving services’ family accommodation following the death of their spouse or civil partner.

Any spouse or child of existing or former Armed Forces Personnel, if one of their qualifying family members had lived in the district for more than three continuous years immediately prior to their date of registration.

Any serving or former member of the reserve Forces who needed to move because of serious injury, medical connection or disability sustained as a result of their service where the application was made within 5 years of discharge.

Other Criteria

An applicant must have a housing need as defined by at least one Banding Criterion, must not have sufficient funds enabling them to meet their own housing costs under the limits set out under the scheme, and must not have been guilty of serious unacceptable behaviour as set out in the scheme within the last three years.

It was advised that there were around 6,600 homeseekers on the Council's Housing Register. If the draft Housing Allocations Scheme was agreed by the Cabinet, it was estimated that around 3,000 homeseekers would no longer qualify for inclusion and therefore would be removed from the Register. In law, every applicant had the statutory right to request a review of certain decisions on allocations and to be informed of the decisions on review and the grounds for it. If the Local Eligibility Criteria was agreed by the Cabinet, it was expected that both a high number of the estimated 3,000 homeseekers who would not qualify to remain on the register, and non-qualifying new applicants in the future were likely to request their statutory right to a review. It was therefore anticipated that, unless the Terms of Reference of the HARP were changed, the HARP and officers would be unable to cope with the numbers of appeals which would be unfair on appellants.

The Housing Scrutiny Standing Panel had therefore recommended to the Cabinet that the right of appeal to the Housing Appeals and review Panel to applicants who had been excluded from the Housing Register be revoked, with all statutory reviews being dealt with by senior officers who had not been involved with the original decision, with effect from the Council meeting on 23 April 2013.

RECOMMENDED:

(1) That, subject to the Cabinet (i) adopting a revised Housing Allocations Scheme, and (ii) agreeing that the right of appeal to the Housing Appeals and Review Panel by housing applicants is excluded from the Housing Register be revoked, a report be submitted to the Council recommending:

(a) the removal of the following from the terms of reference of the Housing Appeals and Review Panel:

“(1)(c) – exclusion of housing applicants from the Housing Register”; and

(b) the consequential amendment of the Constitution.

54. REVIEW OF OUTSIDE ORGANISATIONS

The Panel received a report from the Assistant to the Chief Executive regarding Protocol on Partnerships and External Organisations.

The Protocol on Partnerships and External Organisations gave advice to Councillors and officers who served as the authority's representatives on outside organisations. The Protocol covered a number of areas including appointment procedures, reports by representatives, agreements with external organisations regarding the proper role of elected and officer representatives, insurance and conflicts of interest.

(a) Paragraphs 3.1 and 3.3

Changes reflected the fact that some appointments to outside organisations were made by the Council and those relating to executive functions by the Leader.

(b) Paragraph 3.2

This concerned member appointments regarding allocation of places between the political groups, and allocation of places on outside organisations to Portfolio Holders where Cabinet functions were directly involved. It was proposed to delete this section.

(c) Paragraph 9.3 (c)

Additional wording had been added to this paragraph reflecting the Code of Conduct adopted by the Council and currently in operation. Previous reference to personal and prejudicial interests were replaced by references to disclosable pecuniary interests.

(d) Paragraph 12

This section had been updated taking account of changes in the Code of Conduct.

(e) Section 7

Section 7 of the Protocol dealt with insurance and indemnities. In summary, a member had liability cover from the authority for actions undertaken lawfully and in accordance with the Council's statutory duties.

(f) Section 10

This section of the protocol referred to reporting arrangements.

(g) Review of Council and Leader Appointed Representatives to Outside Bodies

Panel members received further views of Councillors appointed representatives on leisure centres, town centre partnerships and other bodies following the discussion at the last meeting. The Panel suggested some changes to the representations with a small number being discontinued.

It was agreed that this report should be brought direct to the Council without consideration at the Overview and Scrutiny Committee. The Committee Chairman would be asked to approve this under Overview and Scrutiny Procedure Rule 4 (j) on the grounds of urgency to agree the arrangements for appointing representatives before the Annual Council meeting.

RECOMMENDED:

(1) That the Review of Outside Organisations be recommended to Annual Council as follows:

(a) That the changes to the Protocol on Partnerships and External Organisations be recommended to the Council;

(b) That the revised list of external organisations to which the Council makes appointments be approved;

(c) That a recommended revised list of external organisations to which the Cabinet makes appointments be referred to the Leader of Council for decision.

55. LOCALISM ACT 2011 - EXECUTIVE CONSTITUTION

The Panel received a report from the Assistant to the Chief Executive regarding the Localism Act 2011 – Executive Constitution.

The Localism Act 2011 consolidated a number of previous statutory provisions regarding Local Authority Executives.

The amendments were to Article 7:

(a) Article 7.02 (Form and Composition of the Executive)

An amendment had been made for closer alignment to the Localism Act.

(b) Article 7.03 (Leader of Council)

The Localism Act had removed the arrangements by which Councillors could be suspended or disqualified following a complaint investigation. The only remaining disqualification related to bankruptcy and criminal proceedings leading to imprisonment.

The Act had also introduced a new option for the Council, namely specifying the term of office of the Leader. The 2007 required that the member continued to the end of their term as a Councillor unless they resigned, became disqualified or were the subject of a negative vote at a Council meeting.

(c) Article 7.04 (Deputy Leader)

It was now mandatory for the Leader of Council to appoint a Deputy Leader and the Act went on to deal with the question of removal of a Deputy Leader from office and the power of the Leader to appoint a replacement. These provisions had been added into this article.

(d) Article 7.05 (Deputy Leader – Powers to Act)

Revisions had been made to reflect what the Act said should happen if the Leader of Council was unable to act or if that office was vacant. In those circumstances, the Deputy Leader would assume responsibility.

(e) Article 7.06 (Leader and Deputy Leader unable to act)

A new section was added to reflect the Act's clarification of the situation where the Leader and Deputy Leader were unable to act or the office of Leader or Deputy Leader was vacant. The act stated that the executive itself must then step in and either carry out the Leader's functions collectively or appoint a member of the Executive to act in the Leader's place.

(f) Article 7.05 (Other Executive Members)

The same alterations had been made in this section in relation to disqualification as Councillors, some clarification had been included regarding the appointment of Executive members, making it clear that these were by the Leader of Council and could be for more than one term of office.

(g) Article 7.08 (Responsibility for Functions)

A new sentence had been added to Article 7.08 to include the Localism Act requirement that any function which was the responsibility of the Executive may not be discharged by the full Council.

The Panel endorsed the report, they were advised that it was possible for the report to be forwarded to Full Council, bypassing the Overview and Scrutiny Committee. The Assistant to the Chief Executive agreed to discuss this with the Chairman of the Overview and Scrutiny Committee to obtain permission.

RECOMMENDED:

That following consultation with the Chairman of the Overview and Scrutiny Committee a report be submitted to the Council recommending Article 7 (The Executive) of the Constitution be amended to reflect the requirements of the Localism Act 2011.

56. CONVENTION ON THE RELATIONSHIPS BETWEEN POLITICAL GROUPS AND COUNCILLORS WITH OFFICERS

The Panel received a report from the Assistant to the Chief Executive regarding the Convention on the Relationships between Political Groups and Councillors with officers.

The Council's Constitution contained conventions regarding the management of relationships between political groups, Councillors and officers. This had not been reviewed for many years and the Management Board had asked for these conventions to be reviewed in the light of current experience.

The changes were as follows:

(a) Paragraph 2.1 (Entitlement to Information)

The wording of this paragraph had been amended to make reference to the Freedom of Information and Data Protection Acts which protected personal or confidential data.

(b) Paragraph 2.3 (Entitlement to Information)

A new sentence had been added to this paragraph emphasising that in situations where one political group had requested information it may be necessary for the

Director concerned to discuss and agree a timescale for releasing it to all groups on an even handed basis.

(c) Paragraphs 2.4 and 2.5 (New) (Entitlement to Information)

These two new paragraphs were designed to recognise the close working relationships between Cabinet members and Directors which were a necessary part of the executive system. They guided Portfolio Holders and Directors in acknowledging the rights of other Councillors to information.

(d) Paragraph 4.3 (Briefing of Political Groups)

This was a new paragraph which reflected current practice in relation to group Leader's meetings which had recently been revived.

(e) Paragraph 5.2 (Casting Vote)

This paragraph had been extended to provide more advice to Chairmen regarding the issue of the second or casting vote. The current convention stated that Chairmen would always vote for the status quo. This was amended by referring to the need for Chairmen to take advice on whether a status quo applied in the particular decision concerned.

(f) Paragraph 6.2 (Relations with the Media)

There was a small addition to this paragraph to clarify the circumstances where members could speak directly to the media on any given issue.

(g) Paragraph 6.5 (Relations with the Media – Election Period)

This was a new paragraph designed to draw attention to the special requirements for Council publicity during election periods.

(h) Paragraph 8.1 (Facilities for Members)

The wording of this paragraph had been slightly amended to refer to Democratic Services rather than the Secretarial Bureau. Members wishing to secure typing services from the Council were advised to contact Democratic Services in the first instance, where arrangements would be made with the Business Process Team in Corporate Support Services.

Members expressed concern with the proposals, in particular Sections 2.3 dealing with the agreement of a timescale for the release by Service Director of information to all political groups, and Sections 2.4 and 2.5 dealing with the relationships between Cabinet members and service directors being compromised. It was therefore proposed that this report should be distributed to all members following submittal to Group Leaders, and then brought back to this Panel in the new municipal year. Officers agreed to circulate a draft report in May 2013 before issuing the Panel agenda for the June Panel meeting.

RESOLVED:

That the report regarding the Convention on the Relationships between Political Groups and Councillors with Officers be deferred to the June Panel meeting following consultation with group Leaders and members.

57. OFFICER EMPLOYMENT RULES

It was advised that this report would be deferred to the next Panel meeting as officers were awaiting Counsel's advice.

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

It was advised that the following reports were being referred to the next Overview and Scrutiny Committee on 9 April:

- (a) Housing Appeals and Review Panel – Terms of Reference; and
- (b) Localism Act 2011 – Executive Constitution.

Report on Protocol and external Organisations direct to Council. In addition, three other reports arising from the last Panel meeting would also be considered at the meeting on 9 April 2013.

59. FUTURE MEETINGS

It was noted that the next meeting of the Panel was on Tuesday 25 June at 7.00p.m. in Committee Room 1.

As this was the last panel meeting of the municipal year, Councillor D Stellan expressed his thanks to the Chairman, Vice Chairman, Panel members and officers for their work and support over the last year.

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