

Report to Constitution and Members Services Scrutiny Panel

Date of meeting: 16 February 2015

Subject: Chairman's Casting Vote



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Committee Secretary: Mark Jenkins (Ext 4243)

Recommendations/Decisions Required:

- (1) To consider whether changes are required to the provisions of the Constitution relating to the Chairman's casting vote;**
- (2) That, should the proposed changes be agreed, other references, outside of the new Council Rules be removed from or aligned in the new draft constitution.**

Report:

1. (Assistant Director Governance and Performance Management) Members briefly discussed the current provisions for the application of the Chairman's casting vote at the last meeting. The current wording contained within the constitution is attached as Appendix 1 to this report. These provisions are part of the Councils Procedure Rules (rule 17.2 refers), Article 5 (Chairing the Council) and are referenced in the Planning and Members/Officers protocols.

2. At the last meeting members asked that officers review the wording and look at examples from other authorities. The provisions that we have at Epping Forest are unusual. I have not found another example of these provisions in a Council Constitution. The rule did not exist prior to 2000 when changes were made to the constitution as a result of the Local Government Act of that year. Prior to 2000 Council procedures allowed casting votes in the cases of equality of voting but placed no restriction upon it. The right of the Chairman to place a second or casting vote doesn't exist in common law and must be applied by the rules of the authority. Current rules seem to be based upon what's known as 'Speaker Denisions rule'¹ where there are seen to be neutral Chairmen.

3. The Article relating to the Chairman of Council (Article 5) does enshrine the need for the Chairman of the Council to be neutral. However, the act of casting a second or casting vote is rarely a strictly neutral act. The requirement for the Chairman of Council to vote for the 'status quo' only applies where the Council does not have to make a decision at that time; can defer the matter to a later time or unless there is a legal requirement to vote otherwise². In terms of planning matters, guidance is that the Chairman should 'only be based on an honest appraisal of the planning matter concerned.'³ In another reference⁴

¹ http://en.wikipedia.org/wiki/Speaker_Denison%27s_rule

² Paragraph 5.05 (b) – EFDC Article 5 – Chairing the Council

³ Paragraph 19.1 EFDC Planning Protocol

⁴ Paragraph 5.2 EFDC Convention on the relationships between political groups and Councillors with officers

advice is that where the status quo doesn't exist the chairman 'shall vote in accordance with their judgement of the public interest'. The only committee the rule is dis-applied to is the Joint Consultative Committee.

4. All other authorities that have been checked allow second or casting votes but place no restriction on the vote. Officers have gone back and checked advice given in 2000 by the Government about model constitutions. The wording suggested at that time was:

"If there are equal numbers of votes for and against, the Chairman will have a second or casting vote. There will be no restriction on how the chairman chooses to exercise a casting vote."

5. Advice on casting votes within the constitution therefore appears in four places, referencing of its application is confused and to a certain extent contradictory. There has been occasion recently where a chairman voted against the adoption of a report in their first vote then for in their second. Officers believe that the simpler wording, shown above, envisaged by the Government in 2000 is appropriate.

6. The Panel are asked to consider whether the suggested changes to this Standing Order are desirable.

Reason for decision:

A full review of the Constitution is being undertaken with a view to completion by March 2016.

Options considered and rejected:

All options available to the Panel are set out in paragraph 5 above. The Panel has the option of recommending no change to current arrangements.

Consultation undertaken:

Consultation will form part of the process of approving the new Constitution at a later point.

Resource implications:

Budget provision: From existing
Personnel: From existing
Land: Nil

Relevant statutory powers: Town and Country Planning Acts

Background papers: Revised Article, Current Constitution
Environmental/Human Rights Act/Crime and Disorder Act Implications: none
Key Decision reference: (if required) Not a key decision

Relevant Constitutional Extracts:

Article 5 0 Chairing the Council

5.05 Use of Casting Vote

The Chairman of the Council shall, at all times, have due regard to the requirements of the Constitution and statute law concerning the use of a "second" or "casting" vote. The Chairman shall:

- (a) give a "second" vote (after voting previously on the issue) or a "casting" vote (having not voted previously) on any issue on which there is equality of voting;
- (b) shall issue a "second" or "casting" vote in favour of the status quo unless there is a legal requirement to vote otherwise than for the status quo;
- (c) may decline to give a second or casting vote if an affirmative vote is not required on grounds of urgency or otherwise and an opportunity will arise to consider the matter again, within a reasonable period; and
- (d) shall, in the circumstances outlined in (c) above, explain such a decision to the Council.

JCC Terms of reference - Part 3(2) – Responsibility for Council Functions

(5) Chairman and Vice-Chairman

(a) A Chairman and a Vice-Chairman shall be appointed by the Committee at their first meeting in each Council year. The offices to alternate each year between the Council and Employee Sides. If the Chairman appointed is a member of the Council, the Vice-Chairman shall be appointed from the staff side, and vice-versa. The member appointed from the Council Side to be Chairman or Vice-Chairman shall be a member of the Cabinet. The Chairman of the meeting shall not have a casting vote.

Council Procedure Rules - Rule 17 – Voting

17.2 Chairman's Casting Vote

If there are equal numbers of votes for and against, the Chairman will have a second or casting vote. The exercise of this second or casting vote shall be in accordance with Article 5 (paragraph 5) of the Constitution.

Conventions On The Relationships Between Political Groups & Councillors With Officers

5.2 Casting Vote

In circumstances where a second or casting vote may be required, the Chairman shall consider whether to make a second or casting vote by taking advice on whether the decision is necessary and whether there will be a further opportunity to debate the issue concerned within a reasonable timescale. The Chairman may decide, dependant on that advice, not to make a casting vote or if one is cast, to vote according to the status quo. However, in some cases there is no status quo (e.g. quasi judicial decisions concerning planning, licensing and appeals of various kinds) and in those circumstances the Chairman shall vote in accordance with their judgement of the public interest. Chairmen will acknowledge at all times the

requirement under the Constitution to signify whether he or she intends to vote in the first vote on any matter before a meeting.

Planning Protocol

2.9 Chairmen of Planning Committees shall exercise the casting or second vote in accordance with the Council's constitution.....

19. Second or Casting Vote of Chairman

19.1 The Council's Constitution provides for the Chairman of the District Development Control Committee and the three Area Plans Sub-Committees to exercise a second or casting vote in the event of an equality of votes. The use of the second or casting vote should only be based on an honest appraisal of the planning matter concerned.