

CONSTITUTION COMMITTEE
21ST JULY 2008

Minutes of the meeting of the Constitution Committee of Flintshire County Council held in County Hall, Mold on Monday 21st July 2008.

PRESENT: Councillor R.J.T. Guest (Chairman)

Councillors: K Armstrong-Braun, J B Attridge, D Barratt, R C Bithell, G D Diskin, V Gay, A Halford, P G Heesom, H D Hutchinson, R P MacFarlane, P Pemberton, N Phillips, A P Shotton and N R Steele-Mortimer

SUBSTITUTE: Councillor S Jones for G Diskin. Councillor D Mackie for G Hardcastle

APOLOGIES: Councillors Q R H Dodd, M Higham, A Woolley.

(It was noted that Councillor L A Aldridge did not attend because following the recent Election in Hope the Labour group would be a Member down on this Committee and he would be that Member).

IN ATTENDANCE:

County Legal and Democratic Services Officer (Monitoring Officer) and Democratic Services Manager.

1. WELCOME FROM THE CHAIRMAN

The Chairman reported that this was the first meeting of the Constitution Committee as its status had been changed from a Forum. He welcomed the Members and indicated that there was much work to be done and hoped that the Committee would be proactive in its deliberations.

2. DECLARATIONS OF INTEREST

None were received

3. MINUTES

RESOLVED:

That the minutes of the meeting of the Forum held on 8th April 2008 be approved as a correct record and signed by the Chairman.

4. **PRICEWATERHOUSECOOPERS REPORT ON THE DEVELOPMENT CONTROL FUNCTION – RECOMMENDATIONS.**

The Committee considered the joint report of the Chief Executive and the County Legal and Democratic Services Officer which was presented by the latter. The purpose of the report was to consider a request from the Executive held on the 11th December 2007 to recommend amendments to appropriate procedure rules. By way of background the County Legal and Democratic Services Officer explained that the Council's external auditors, PricewaterhouseCoopers had been commissioned by the Council to carry out a review of the Development Control Function. The report, dated May 2007, was considered by the Environment and Regeneration Overview and Scrutiny Committee during 2007. That Committee's responses to the recommendation of the report was subsequently reported to the Executive on 18th September 2007. The Executive then invited the Planning Protocol Group to consider a number of recommendations made in the report.

One of the recommendations in the PWC report, contained in paragraph 154, was that a protocol should be established only allowing substitutes to attend the Planning and Development Control Committee in the case of illness and when agreed with the Chair of the Committee. The Environment and Regeneration Overview and Scrutiny Committees view on this was that the use of substitutes on the Planning and Development Control Committee should be tightened up and that this was the responsibility of Group Leaders.

Members also made a suggestion that the Constitution Committee be invited to review the use of substitutes on the Planning and Development Control Committee. They considered that it was important for consistency and awareness of local and national planning policy and guidance and that planning decisions were taken by "experienced" elected Members. The County Legal and Democratic Services Officer reported that at a meeting held on 30th October 2007 the Planning Protocol Working Group made the following recommendations to the Executive:-

- (a) That no substitute be permitted at Planning and Development Control Committee meetings.
- (b) That deadlines should be imposed for inclusion of late observations and were observations received following the deadline, which would have a significant impact on the application, the item should be deferred.

There were a number of recommendations and the Committee agreed to consider them item by item.

- (a) "That no substitutes be permitted at Planning Committees"

The recommendation from the Planning Protocol Working Group was duly proposed and seconded.

Councillor D Barratt referred to the reference in the report to “experienced” Members and indicated that following the recent elections there was a considerable number of Members on the Planning and Development Control Committee who had only just been elected which suggested that the Committee could not operate in these circumstances. He also expressed the view, supported by a number of other Members, that it was reasonable for a Constituent to expect their elected representative to speak on their behalf at Committee. Councillor P G Heesom indicated that there was clearly a need to tighten up the procedures in relation to substitutes. However, his view was that PricewaterhouseCoopers did not say that there should be no substitutes and he suggested that they could be allowed but from a pool of Members from within each group. He felt it would be difficult for the Committee to continue to operate without the provision for substitutes and that the number could be determined on a pro-rata basis dependent upon the numbers in each group. This was duly proposed and seconded. Councillor H D Hutchinson gave notice of a further amendment.

Following comments from Councillor N R Steele-Mortimer, Councillor P G Heesom indicated that he was prepared to adjust his amendment, to the effect that each group could have three named substitutes, and this was duly accepted.

Councillor H D Hutchinson felt that there was a need for experience in dealing with such issues and as there had been a number of changes on the Council many Members were short of that experience. He was of the opinion that the existing system worked well and expressed a view that constituents would expect their elected representative to have the power to vote rather than just to speak at a meeting.

In responding, Councillor R C Bithell indicated that his recollection of the meeting of the Planning Protocol Working Group was different from Councillor P G Heesom’s. He suggested that the information from the Planning Protocol Working Group was accurate but as he was not a Member of the Overview and Scrutiny Committee he could not comment on its views. Councillor Bithell expressed a view that the Planning and Development Control Committee was a large Committee and was unlikely that it would not be quorate. He also suggested that the Committee was not about political issues and therefore political balance was irrelevant. His view was that it was important to improve the level of consistency because exceptions to the rules weakened those rules and caused embarrassment to the Authority. He also observed that the Planning and Development Control Committee was one of the few Committees where there was a regular attendance from Members of the public, many of whom noted the decisions as they had a grievance concerning particular applications and wished to pursue it further. He expressed a further view that a substitute did not always have the same commitment as other Members.

With regards to the Members right to speak, the Constitution allowed for a local Member to do this but did not allow them to vote. He strongly defended the recommendation of the report.

Councillor K Armstrong-Braun suggested it was difficult for new Members to comment as they had not seen the original report of PricewaterhouseCooper and it would be useful if they had the opportunity to do so. However, he supported the recommendations of the report and suggested that the Members involved had researched this matter in some detail and made the recommendations for good reasons. However, he did support the principle whereby a Member could speak but not vote. He felt it was appropriate for the process to be seen to be open and transparent.

Councillor A Halford referred to the suggestion whereby a substitution would be allowed only in the case of illness and felt this would be difficult to determine by the person who would have to decide if the reason was appropriate.

Councillor J B Attridge indicated that he would like to see evidence from PricewaterhouseCoopers whereby the recommended system had been implemented elsewhere and proved successful. He expressed a view that Members of the Council had been properly charged by constituents to represent them and therefore to act on such matters. He also expressed a view that planning applications were considered on their individual merits and were not political issues.

Councillor A P Shotton, who was the Leader of the Council when a number of these issues were raised, indicated it was important not to forget the essence of the review which related to a crisis of confidence in the planning system. He referred to high profile decisions which raised issues in the public arena, and it was essential that the system was seen to show proberty in decisions made. He referred to meetings he had attended with the then Acting Chief Executive when it was apparent that it was necessary for a review to be undertaken and it was for this reason that the matter was submitted to the Council's external auditors for them to pursue and report back. He expressed his disappointment that they did not recommend a more stringent process and felt that the report could have gone further and also placed an onus on the Developer for them to declare any formal links with Members of the Committee.

Councillor N Phillips referring to the comments made earlier by Councillor R C Bithell reiterated the point that the Council Members had to remain above suspicion. In this respect he referred to discussions in relation to the UDP process where Members were not allowed to comment if they had expressed a view on a particular issue.

Referring to the amendment proposed earlier by Councillor H D Hutchinson that the status quo remain, the Chairman felt that this was in fact a direct negative to the proposal.

Members reiterated a number of points previously made and commented upon issues already addressed. The Chairman reminded the Committee of the background to this issue and advised that the Planning Protocol Working Group had cross party representation.

The County Legal and Democratic Services Officer explained that Members should, when considering planning issues do so from a Flintshire perspective as opposed to regarding them as local issues. Local Members were consulted on planning applications and their responses were included in the report submitted to Committee. He explained the role and status of a Planning and Development Control Committee and the responsibility of Members. He referred particularly to accountability concerning planning issues and commented that such wishes were very much in the public eye.

He clarified that the amendment as it stood, which was that each political group could nominate three Members to act as substitutes for the Planning and Development Control Committee and that these Members must have received appropriate training.

The amendment was put to the vote and a recorded vote was requested with the requisite Members standing in support. The amendment was lost the voting being as follows:-

For the Amendment:

Councillors: V Gay, David Mackie, P G Heesom, P R Pemberton, A P Shotton, N R Steele-Mortimer

Against the Amendment:

R J T Guest, K Armstrong-Braun, D Barratt, R C Bithell, R P MacFarlane, N Phillips

Abstentions:

J B Attridge, S Jones, A M Halford, H D Hutchinson

As there was an equality of votes the Chairman used his casting vote against the amendment and it therefore fell. The proposal was then put to the vote and again a recorded vote was requested and the requisite Members stood in support of this. The voting being as follows:-

For the Proposition:

R J T Guest, K Armstrong-Braun, R C Bithell, A M Halford, R P MacFarlane, N Phillips, A P Shotton, P R Pemberton

Against the Proposition:

J B Attridge, D Barratt, G D Diskin, V Gay, G Hardcastle, P G Heesom, H D Hutchinson, P R Pemberton

Abstentions:

None.

As there was again an equality of voting the Chairman used his casting vote in favour of the proposition.

RESOLVED:

That the County Council be recommended to adopt the following

“that no substitutes be permitted at Planning and Development Control meetings”.

- (b) “A deadline should be imposed for inclusion of late observations and where observations are received following the deadline which would have a significant impact on the application the items should be deferred”

The County Legal and Democratic Services Officer reported upon the background to this recommendation which was duly proposed and seconded. The Chairman commented as to when the deadline would be set.

Councillor D Barratt supported by a number of Members was concerned that this could result in a delay in the determination of applications and put them outside the specified deadline. Other Members suggested that the significance of the observations should also be taken into account.

Councillor K Armstrong-Braun indicated that if members of the public were not at the meeting they would not necessarily be in position to obtain copies of the late observations. On a similar line Councillor J B Attridge commented that Members who were not Members of the Committee and were not present on the day of the meeting would not normally receive copies of this information. Councillor H D Hutchinson felt it was important for all information to be received by Members and referred to an instance where the comments of a Town Council were not reported. Councillor S Jones sought clarification on who would make the decision if the application was to be deferred. After due consideration the proposal was put to the Committee.

RESOLVED:

That the County Council be recommended to adopt the following:-

“A deadline should be imposed for the inclusion of late observations received on the day of the meeting. Where such observations were received following that deadline which would have a significant impact on the application, the item should be deferred to the next meeting by the Chairman of the Committee”.

(c) Departure from Policy

The County Legal and Democratic Services Officer reported that in the PricewaterhouseCooper report it was recommended that the Council should consider introducing a system, internally, whereby should Members wish to depart from policy in determining an application it was automatically deferred either to Council or the next meeting of the Planning and Development Control Committee. In agreeing to this recommendation the Environment and Regeneration Overview and Scrutiny Committee suggested amended wording which was detailed in the report. The report explained that the ability to defer proposals in this situation already existed in the paragraph 11.5 of the Planning Code of Practice. It also indicated that automatic referral to a subsequent Planning and Development Control Committee or Full Council would be in-line with an increasing number of Local Planning Authorities which adopted a “cooling off period”. This would allow Members to be further advised on the implications of the decision they were minded to take. Councillor N R Steele-Mortimer whilst accepting the point of the recommendations felt it was not necessary in certain cases where there was disagreement with an Officers interpretation of policy which was a comparatively minor issue. Councillor A P Shotton felt that further consideration should only apply to where there was a major issue of concern. Taking this point on board the Chairman suggested that if the word “substantial” was included then this would perhaps address the point made. The Committee felt this was a good suggestion.

RESOLVED

That the Council be recommended to adopt the following:-

- (a) “That were there is a SUBSTANTIAL departure from policy, the application shall be deferred.
- (b) That a determination as to whether there was likely to be a SUBSTANTIAL departure from policy would be made by the Committee’s Legal Adviser. “
- (c) That any items deferred on the basis of SUBSTANTIAL departure from policy be submitted to the next meeting of the Planning and Development Control Committee.

- (d) Recommendations Regarding Site Visits.

RESOLVED:

That a decision on this issue be deferred.

5. REVIEW OF THE COUNCIL PROCEDURE RULES

- (a) Motions on Notice and Questions on Minutes

- (b) Call-In Procedures

RESOLVED:

That a decision on these issues be deferred.

6. SUBMISSION OF LATE REPORTS

The Committee considered the report of the County Legal and Democratic Services Officer previously circulated. He explained that at the meeting on 4th March 2008 the County Council requested the Constitution Forum to examine the procedures for the submission of late reports. The report detailed the provisions relating to the availability and public inspection of agendas and reports as identified in Section 100 (b) of the Local Government Act 1972.

The County Legal and Democratic Services Officer reported that Councillor I B Roberts had raised this issue initially.

Councillor J B Attridge in pursuing this point felt that if matters were of a genuine urgent nature it was reasonable for those reports be marked "to follow". However, he felt that the amount of reports currently marked in this way gave cause for concern. Councillor Attridge suggested that the excuse given was not acceptable. He commented that Officers had indicated that Agendas had been marked in this way and reports not sent out to stop them being published in the press. He felt that this was an unacceptable.

The Chairman suggested that if this was a reoccurring problem it was an issue for the Corporate Management Team to pursue and if that was the case, it could be regarded as a disciplinary issue. Councillor K Armstrong-Braun suggested that this was a performance matter and should be looked at by Overview and Scrutiny. He duly proposed this but was not seconded. Councillor A P Shotton felt that it was important that the submission of reports should not be used as a political tool. Councillor P G Heesom indicated that he shared the view that papers should not be dealt with in this way. Councillor D Barratt suggested that in the first instance this issue should be sent back to the Chief Executive for him to pursue. Councillor P Pemberton

felt there should be a protocol regarding the issue of reports and Officers should be clearly aware of deadlines. There were occasions when these could not be met but these should be the exception. Councillor J B Attridge wished to hear the views of the Chief Executive on this issue. The Chairman suggested that at this stage it may be appropriate for Group Leaders to discuss this issue with the Chief Executive and the Committee felt that this was a good suggestion.

RESOLVED:

That Group Leaders meet with the Chief Executive to discuss the issue of late reports.

7. FORWARD WORK PROGRAMME

The Committee considered the report of the County Legal and Democratic Services Officer previously circulated, the purpose of which was to consider introducing a Forward Work Programme for the Constitution Committee. The report detailed the background to its preparation and Members were asked if they wished to consider if it was appropriate to schedule more regular meetings of the Committee to receive reports. In this respect it was suggested the Committee have four regular meetings during the municipal year with further ad-hoc meetings when the necessity arose. The report also suggested items for each of those meetings identified in the Forward Work Programme. The Chairman explained why he had requested the inclusion of this item and Members felt that it was a good step forward to be proactive.

RESOLVED:

That a Forward Work Programme be adopted on the basis detailed in the report.

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Chairman

SUMMARY OF DECLARATIONS MADE BY MEMBERS
IN ACCORDANCE WITH FLINTSHIRE COUNTY COUNCIL'S
CODE OF CONDUCT

CONSTITUTION FORUM	DATE: 21st JULY 2008
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MEMBER	ITEM	MIN. NO. REFERS
NO DECLARATIONS WERE MADE		