

CONSTITUTION COMMITTEE
15TH OCTOBER 2008

Minutes of the meeting of the Constitution Committee of Flintshire County Council held in County Hall, Mold on Wednesday 15th October 2008.

PRESENT: Councillor R J T Guest (Chairman)

Councillors: K Armstrong-Braun, J B Attridge, C Cattermoul, G Diskin JP, QRH Dodd, V Gay, A Halford, G Hardcastle, P G Heesom, M Higham, H D Hutchinson, R P MacFarlane, A P Shotton and A Woolley

SUBSTITUTES: Councillors: E F Evans for D Barratt and C Carver for N R Steele-Mortimer

APOLOGIES: Councillors: R C Bithell, N Phillips, L A Sharps.

IN ATTENDANCE:

Chief Executive, County Legal and Democratic Services Officer, Assistant Director of Democratic Services and Democratic Services Manager.

8. DECLARATIONS OF INTEREST

None were received.

9. MINUTES

Prior to the consideration of the minutes, the County Legal and Democratic Services Officer circulated an amended sheet relating to minute no. 4 and this was noted by the Committee.

RESOLVED:

That subject to the amendments now circulated the minutes of the meeting held on the 21st July 2008 be approved as a correct record.

10. REVIEW OF COUNCIL BUSINESS

The Committee considered the report of the Assistant Director (of Democratic Services) previously circulated, the purpose of which was to consider the results of a Members survey regarding arrangements for Council business. The Committee was informed that one of the requirements of the Welsh Local Government Association Charter was that there should be a review of arrangements for Council business so that as a result meeting times and venues reflected the needs of Members as closely as possible. The Assistant Director of Democratic Services reported that in a letter dated 1st July 2008 a questionnaire had been sent to all Members seeking their views on issues identified in the Charter and other relevant issues relating to Council business. A copy of that questionnaire was attached as Appendix 1 to the report. The table showed the responses to the questionnaire as reported to the Member

Development Working Group meeting on 30th July 2008 which was attached as Appendix 2.

At the Member Development Group meeting consideration had been given to the response to the survey and their recommendations were detailed in the report. It was noted that the Members survey and the Member Development Working Group meeting both supported the existing arrangements for formal Member meetings being held in County Hall in the morning and afternoon rather than being held in the evening or at other venues.

It was suggested that the introduction of a procedure rule limiting the length of meetings should help Members in managing their diaries. However, any procedure rule should give the Chair some discretion as over rigorous enforcement of a three hour maximum could on occasions be counter productive. The Members survey showed a large degree of agreement on the starting time for afternoon meetings being at 2.00 pm but less consistency regarding the starting time for morning meetings. The Member Development Working Group believed that a 9.30 am start allowed sufficient time for Members to travel to County Hall from the various parts of the County. The Chair of the Working Group, Councillor N Phillips expressed a view at the group, that Council and Planning Committees should be held in the morning rather than the current practice of afternoon meetings and that the Council meeting should commence at 10.00 am. These views were subsequently endorsed by the Working Group.

With regard to the recommendations that the Officers investigate the cost implications of only Committee Members receiving paper copies of agendas and reports, with paper copies being provided in Group Rooms and non Committee Members receiving electronic copies; the report detailed the relevant cost and subsequent savings of this proposal.

The Assistant Director advised that there would be further savings in relation to staff time but this was not quantifiable. Councillor E F Evans referred to the recommendation in relation to start times for Committees and indicated that this was not consistent with the outcome of the survey. He also referred to the cost of the proposals and the anticipated savings and commented that there would be a considerable timescale purely to break even.

Also referring to the suggested start time for morning meetings of 9.30 am, Councillor H D Hutchinson referred to his tenure as the Chair of an Overview and Scrutiny Committee when he had had very useful pre-Committee briefings before the meeting and he felt that the proposal would restrict the opportunities for such briefings.

Councillor K Armstrong-Braun suggested that the duration of the meeting should not be restricted but that after a given period there should be a comfort break. He did feel that the Planning and Development Control meeting should meet in the evenings as this Committee generated the most public interest and it would avoid members of the public having to take time off work to listen to the proceedings. With regard to figures quoted for the introduction of a part electronic system he felt

to give it due consideration that the staffing implications should be quantified which would give a more realistic figure of the actual savings.

Councillor C Carver suggested that there could be a saving in the figure quoted as a number of Members already had IT systems installed in their homes. If it was necessary to have a second system it may not be acceptable to Members as they may not have room to accommodate two systems particularly if it was necessary to have a printer for each of the machines. As an alternative, he suggested that a production of a CD Rom may be more cost effective where Members could use their existing equipment.

Councillor P G Heesom felt that the contribution of Councillor Carver merited support. He shared the view that the evidence of the survey did not support the recommendation in the report for a 9.30 am start for morning meetings which was unacceptable and was of the opinion that on occasions it was necessary for meetings to go beyond three hours because of the level of business to be discussed. Therefore, Councillor Heesom felt it was necessary for more work to be undertaken regarding the determination of the items to be included on relevant agendas for consideration.

After a detailed discussion, the Chairman summed up the view of the meeting whereby it was agreed that the matter should be resubmitted to the Working Group with a view to seeking more evidence to support the recommendations. He indicated members could make further representations to the Working Group via the Assistant Director.

RESOLVED:

That the report be referred back to the Member Development Working Group for further work.

11. REVIEW OF THE COUNCIL PROCEDURE RULES

The Committee considered the report of the County Legal and Democratic Services Officer, the purpose of which was to review the Council's procedure rules relating to Notices of Motion, Questions on Minutes and Call-In Procedure. Consideration of these items was deferred at the last meeting of the Committee. It was also to note the position concerning the submission of late reports.

Motions on Notice and Questions on Minutes

The County Legal and Democratic Services Officer reported that Council Procedure Rule 11 currently dealt with Notices of Motion and the full text of the Rule was detailed in the report. Following the problems encountered at earlier meetings of the County Council in connection with the Notices of Motion consideration had been given to revising the procedure and the criteria for allowable motions. The Chief Executive wrote to all Group Leaders on the 7th February 2008 setting out the suggestions which were detailed in the report under the headings of:

- Suggested Criteria for Allowable Motions.

- Suggested Process for Considering Motions.

The Chairman of the Council also suggested that consideration should be given to the possibility of allowing motions on notice to be included on the agenda of all meetings of the County Council whether they be Ordinary or Special meetings and also enable Members to ask questions on written notice about Executive and Committee Minutes at both Ordinary and Special meetings. Members were subsequently requested to recommend the amendment of Rule 11 to reflect these suggestions. The Chief Executive supported the recommendations detailed in the report and suggested that clarity was necessary to ensure that the issues raised were properly addressed. By way of example he referred to Notices of Motion received for the forthcoming meeting of the County Council and explained that these would all have met the criteria recommended in the report. Members generally supported the aims of the proposal. Councillor P MacFarlane queried the timescale for the calling of Special meetings of the County Council and the related timescale for Notices of Motion to be submitted for consideration. The County Legal and Democratic Services Officer advised on the procedure and indicated that there were a number of Special meetings identified on the Committee diary for specific issues. The Chief Executive expanded that there were a number of motions which had been submitted on previous occasions in time for a special meeting which, because of the procedure, had to wait some months before they could be considered by an ordinary meeting of the Council. It was also suggested that if there was only a single item on the agenda for a special meeting it would spread the workload over a number of Council meetings rather than having a substantial number of motions going to a single meeting. With regard to the suggested criteria for allowable motions, Councillor Q R Dodd recommended a slight amendment to the wording to include "residents or" before the words "the County of Flintshire"

RESOLVED:

That the County Council be recommended to agree the amendment of Rule 11 to reflect the suggestions set out in 2.02 in the report subject to the words "residents or" being included in 1 of the evidence and to extend the opportunities for Members to propose Motions on Notice for Special Meetings of the Council and also questions on Executive and Committee minutes at both Ordinary and Special meetings.

Call-In Procedure

The County Legal and Democratic Services Officer reported that it was sometime since the Council reviewed the Call-In Procedure for Overview and Scrutiny Committees. It was noted that the procedure did not contain any criteria upon which the determination of Call-In requests could be based. Statutory guidance issued by the National Assembly for Wales came into force on 31st July 2006 and paragraph 6.3 of the guidance was detailed in the report. Reference was also made to paragraph 6.4 of the guidance. The County Legal and Democratic Services Officer reported that the Welsh Assembly Government had intended to provide guidance on Overview and Scrutiny and publication was originally envisaged for Autumn 2007. However, it was understood that this guidance was unlikely to be

produced in the near future and it was not intended to undertake any review in the foreseeable future.

It was also suggested that whilst the Committee was considering criteria for Call-Ins it would also be helpful to make amendments to clarify other areas of that procedure and this was expanded upon in the report. The Chief Executive had personally undertaken further research with the Welsh Assembly Government on any impending guidance for the call in procedure and reported that the Assembly Government was reviewing its legislative competence at the primary and secondary legislative level to introduce new powers for Local Government such as the duty to scrutinise other public bodies and the right to co-opt Members with full speaking and voting rights, onto Overview and Scrutiny Committees.

The Committee noted that the legislative powers would not make any reference to Call-In procedures and no new guidance was intended. The WLGA was conducting a survey of how Call-In Procedures had been operated in the field for the information of Local Authorities and the Council now had a copy of the survey outcome.

Councillor A P Shotton indicated that he had spoken to the Chief Executive on this issue on previous occasions but still had difficulty in accepting the guidance. He referred to his previous role as Leader of the Council and related the difficulties of only ten Members being on the Executive. He had serious concerns with the proposal and the difficulties in interpreting the relevant Legislation. The County Legal and Democratic Services Officer reported that the proposed wording was as set out in the Statutory Guidance.

Councillor J B Attridge also referred to issues relating to the previous administration and certain difficulties that had been encountered with the number of Call-Ins. However, he felt that the status quo should remain. The Chief Executive indicated that following his arrival at the County Council he had been requested by Members to look at the Constitution and provisions relating to issues such as these. He stressed that there was no intention to restrict or gag Members but felt that an operating structure was useful. He used an example during the previous Administration where there was an issue relating to waste strategy which ended up going to two separate meetings, in close proximity, of an Overview and Scrutiny Committee because a call in had been implemented when the item had already been included on the agenda. Members generally felt that the proposal was a step too far and the Leader of the Council indicated that it was always his intention for any issue to be discussed in an open and transparent manner and he was opposed to anything that would restrict this. He also expressed a view that Overview and Scrutiny should be involved in the process of the preparation of reports rather than just on issues of closure after decisions had been made. Councillor P G Heesom supporting the views expressed by other Members indicated that the Call-In Procedure was sacrosanct to the Authority and welcomed the comments in particular of the former Leader of the Council. He stressed that it was very much the role of Members to make the decisions in the operation of the Council. The Chairman indicated that he had discussed this issue with the County Legal and Democratic Services Officer who had confirmed that there was no legal requirement to have any criteria. Referring to his earlier comments, Councillor A P Shotton

indicated that he was not against some form of control but felt that this was a step too far. Councillor K Armstrong-Braun suggested that Members should pursue issues with the Monitoring Officer prior to seeking a Call-In and to seek advice. Councillor P G Heesom felt that the current arrangement should prevail but concurred that Members should seek advice of the Monitoring Officer as previously suggested.

Within the same report under paragraph 3.07, 3.08 and 3.09 the Monitoring Officer had recommended amendments to the wording and this was accepted by the Committee.

Arising from the discussion the County Legal and Democratic Services Officer suggested that it may be a good opportunity to review the role of Overview and Scrutiny and that it could be included in a future work programme. The Committee felt that was a good suggestion.

RESOLVED:

- (a) That no recommendations be made to the County Council to revise the Call-In Procedure as detailed in the report and that the status quo remains.
- (b) That the amendments to the wording in paragraphs 3.07, 3.08 and 3.09 of the report of the County Legal and Democratic Services Officer be agreed.
- (c) That an item be included in the Forward Work Programme of the Committee in relation to the review of the structure of the Overview and Scrutiny function.

12. SUBMISSION OF LATE REPORTS

The County Legal and Democratic Services Officer reported that at this meeting held on 4th March 2008 the County Council requested the former Constitution Forum to examine the procedure for and concerns around the submission of late reports. The report detailed the background to its preparation and identified the statutory requirements in relation to the submission of reports to Committee. At its meeting held on 21st July 2008 the Committee agreed that the Chief Executive discuss the issue of late reports with Group Leaders. Subsequently the Chief Executive, following investigation, wrote to the Chairman of the Committee, with copies to the Group Leaders, over the issues of late reports and concerns expressed at the Committee that reports might in some cases be purposely delayed to prevent the media reporting on them in advance of the respective meeting. In that letter the Chief Executive included an analysis of the numbers and percentages of late reports. Councillor J B Attridge who had initially raised concerns moved the recommendation, expressed a vote of thanks to the Chief Executive for taking on board the comments made by Members. This view was supported by Councillor A P Shotton. The Chief Executive indicated that the scrutiny requested by Members had been helpful and that he was now looking to improve the quality in report writing.

RESOLVED:

That the report be noted.

13. PROCEDURE TO DEAL WITH SUBSTANTIAL DEPARTURES FROM POLICY AT THE PLANNING AND DEVELOPMENT CONTROL COMMITTEE

The Committee considered the report of the County Legal and Democratic Services Officer, the purpose of which was to consider a request from the Executive Member for Housing Strategy and Planning to review the operation of the procedure adopted for departures from policy. The Committee was informed that at its meeting held on 22nd July 2008 the County Council approved recommendations from this Committee with slight amendments and these were detailed in the report. It was noted that the recommendations of the Constitution Committee replicated those previously made by the Executive and before that the Planning Protocol Working Group. The original suggestion to introduce a system of this nature was made by Pricewaterhouse Coopers in a report commissioned by the Council to carry out a review of the development control function.

Since the introduction of the new procedure, two applications had been deferred. The County Legal and Democratic Services Officer indicated that the legal adviser, in both cases, made the decision to defer the application in question having considered the appropriate policies and after consulting with the mover and seconder of the motion to grant permission. The County Legal and Democratic Services Officer reported that in each case the legal adviser had come to the impartial and informed view that there was "likely to be a departure from policy". It was noted that in both cases the legal adviser had been subject to criticism from some Members of the Planning and Development Control Committee. The County Legal and Democratic Services Officer explained that the purpose behind the introduction of the new procedure was to stand back from the original decision, reflect upon it, consider again all the evidence and come to view on the application. In relation to both applications there had been a perception that some Members regarded decisions on a referral as a challenge to their decision making role. He stressed that this was not the case and the procedure was there to protect Members of the Planning and Development Control Committee and the Council by providing a safeguard and an ability to review decisions made. Councillor P G Heesom felt that this issue should be referred to a smaller Sub-Committee to undertake some specialist research. He suggested that the Sub-Committee should look at the definition of "substantial" in relation to magnitude of the application and departure from policy. The Chairman felt that the Legal Officer advising the Committee was placed in a difficult position in interpreting this issue where a substantial departure had occurred.

Councillor A P Shotton who had supported the previous decision felt the two cases in question did not come within the definition of "substantial". Councillor K Armstrong-Braun referred to what he felt was unfounded criticism of Planning Officers and said that planning policies should be protected. He also commented that the Working Group had supported the proposal and believed that Planning Guidance Wales was a statutory document.

The Chairman indicated as this matter had been submitted to this Committee via recommendation from the Planning Protocol Working Group then it should be

referred back to them. Members agreed to this and felt that further consideration was necessary in relation to the definition of “substantial”.

RESOLVED:

That the matter be referred back to the Planning Protocol Working Group accordingly.

(Councillor K Armstrong-Braun wishes it to be recorded that he voted against this decision).

14. REVIEW OF THE DELEGATION SCHEME

The Committee considered the report of the County Legal and Democratic Services Officer previously submitted, the purpose of which was to make amendments of the delegation scheme required as a result of Phase 1 of the restructure of senior management and to create a new framework which would enable decisions to be made at the appropriate level within the Authority. The report described the existing scheme of delegation. The County Legal and Democratic Services Officer reported that over the last two years delegations below Director level had been agreed in relation to number of Heads of Service and Senior Officers. It was reported that the advantage of devolving decision making on functions and in particular operational matters to Heads of Service and Service Managers had been recognised by the Council. These advantages included more timely decision making and less duplication of resources. Best practice dictated that decision should be taken by those Officers responsible for the provision of services. Accordingly, it was suggested that the delegation scheme should be linked to the responsibilities and accountabilities set out in job descriptions of Senior Officers.

Councillor A P Shotton referring in particular to paragraphs 3.01 – 3.04 felt that the delegation was going slightly too far and referred in particular to the sum of £250,000 referred to in the expenditure that could be authorised by Directors. He quoted an example in support of this. The Chief Executive clarified how this would operate and would only relate to identified approved budgets. Following the advice of the Chief Executive. Members were in support of the principle but felt that more detail was required.

It was also suggested that the existing mechanism for urgent decisions could be simplified but after some debate it was generally agreed that the mechanism be not amended.

It was then noted that the Constitution did not contain any reference to TAITH or the North Wales Trunk Road Agency Joint Committee. The report contained suggested paragraphs for incorporation and Members supported this.

It was also noted that a further report would be made to the Committee in relation to any refinements of the delegation scheme required during, or as a result, of the second phase of the restructure of the Senior Management. In referring to paragraph 3.08 of the report, The County Legal and Democratic Services Officer recommended that in the meantime any existing delegation be exercised by the

relevant Second Tier Officer or Head of Service who had responsibility for the function in question.

Councillor P G Heesom indicated that at present he felt Planning Officers had too much power and that the Planning Protocol Working Group should review the position as soon as possible.

RESOLVED:

- (a) That the County Council be recommended to agree in principle the suggested framework for a new delegation scheme as detailed in 3.01 – 3.04 of the report with the detailed scheme being reported back to this Committee.
- (b) That no amendment be made to the mechanism for urgent decisions.
- (c) That the County Council be recommended to agree the incorporation of the suggested paragraphs relating to TAITH and the North Wales Trunk Road Agency.
- (d) That it be noted that a further report be made to the Committee in relation to any refinements to the delegation scheme required during or as a result of the second phase of the restructure of Senior Management.
- (e) That in the meantime the Council be recommended to agree that any existing delegation be exercised by the relevant Second Tier Officer or Head of Service who has responsibility for the function in question with the Planning Protocol Working Group being requested to review the delegation to the Chief Planning Officer as soon as possible.

15. REVIEW OF CONTRACT PROCEDURE RULES

The Committee considered the report of the County Legal and Democratic Services Officer previously circulated, the purpose of which was to consider the recommendations of the Officers Working Group concerning:-

- Recommendations from the Internal Audit report.
- Ways of modernising practice.
- Dispensing with unnecessary red tape.

RESOLVED:

That the County Council be recommended to agree to the suggestions as set out in Appendix A to the report.

16. CODE OF CORPORATE GOVERNANCE

The Committee considered the report, previously circulated, of the County Legal and Democratic Services Officer, the purpose of which was to consider the revised Code of Corporate Governance and recommend its approval by the County

Council. The report detailed the background to its preparation and identified the key considerations.

RESOLVED:

That the Council be recommended to approve the redesigned Code of Corporate Governance.

17. DURATION OF MEETING:

The meeting commenced at 2.00 pm and ended at 4.35 pm.

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Chairman

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

CONSTITUTION COMMITTEE	DATE: 15th OCTOBER 2008
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MEMBER	ITEM	MIN. NO. REFERS
NO DECLARATIONS WERE MADE		