

**CONSTITUTION COMMITTEE**  
**28<sup>TH</sup> JULY 2009**

Minutes of the meeting of the Constitution Committee of Flintshire County Council held in County Hall, Mold on Tuesday 28<sup>th</sup> July 2009.

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

Councillors: Eng K Armstrong-Braun, J B Attridge, R C Bithell, G D Diskin, QRH Dodd, A M Halford, P Heesom, H D Hutchinson, P R Pemberton, N Phillips, and N R Steele-Mortimer

**SUBSTITUTES:** Councillors: C Jones for D Barratt, E G Cooke for G Hardcastle, S Jones for R P Macfarlane, A Minshull for A P Shotton and C Thomas for M Higham

**APOLOGIES:** Councillor: A Woolley

**IN ATTENDANCE:**

Head of Legal and Democratic Services, Assistant Director (Democratic Services), Head of Overview and Scrutiny and Democratic Services Manager.

**23. DECLARATIONS OF INTEREST**

None were received.

**24. MINUTES**

(a) Accuracy

**RESOLVED**

That the minutes of the meeting held on 12<sup>th</sup> March 2009 be confirmed as a correct record.

(b) Matters Arising

Councillor P Pemberton referred to minute number 18 (b) and the issues of the submission of late reports. He accepted that there were very few reports which were not now despatched with the agenda. However, he felt that agendas and reports, particularly when they were substantial, should be despatched to Members earlier to give them an opportunity to read them in good time for the meeting. Councillor Eng K Armstrong-Braun expressed a view that he did not think there was a problem and that staff had considerable work at present to prepare the reports and it would cause an unnecessary burden to have them earlier. The Chairman indicated that the comments of Councillor Pemberton had been noted but that at present there was a system being examined where Members had been given the choice to opt for alternative methods for the receipt of agenda and reports. The Assistant Director (Democratic Services) confirmed that this was being progressed. The Chairman indicated there may well be teething problems with the new system and that if Members had any concerns they should contact the Democratic Services Manager.

## **25. OVERVIEW AND SCRUTINY MEMBER AND OFFICE OPINION SURVEYS**

The report of the Head of Legal and Democratic Services Officer was submitted, the purpose of which was to consider the outcomes of the Member and Officer surveys on Overview and Scrutiny. The report detailed the background to its preparation. It was reported that at a meeting of the Overview and Scrutiny Co-ordinating Committee on 3<sup>rd</sup> December 2008 consideration had been given to a report of the Welsh Scrutiny Champions Network meeting of the 3<sup>rd</sup> October 2008. During consideration of the item, at that meeting, the Chairman of this Committee explained he felt it was important that there was full Member consultation on any future arrangements for Overview and Scrutiny and suggested joint working between this Committee and the Co-ordinating Committee. The Co-ordinating Committee agreed that a meeting be arranged between the two Chairmen and Officers to prepare a questionnaire for completion by Members with the results reported to a later meeting of the two Committees.

Following the Co-ordinating Committee meeting, the Chief Executive advised that the contents of the proposed questionnaire should be considered by this Committee prior to its distribution to Members given the commitment to review the structure of the Overview and Scrutiny function. It was noted that a report had been presented to the meeting on 12<sup>th</sup> March 2009 when the proposed Member consultation of the Overview and Scrutiny function was approved. The said questionnaire was prepared and also sent to Senior Managers to obtain their observations on the Overview and Scrutiny arrangements. The return date for the questionnaire was extended until the end of May 2009.

The Assistant Director (Democratic Services) reported that responses to the questionnaire had been received from 42 Members and 11 Officers and these had been tabulated and were attached as Appendices 1 and 2 respectively. The report detailed how the questionnaire had been constructed and how the scores were interpreted. The responses to the Member and Officers surveys had been reported to the meeting of the Co-ordinating Committee on 16<sup>th</sup> July 2009. At that meeting each part of the survey was considered in turn and its views summarised within the report. The report explained there were six sections within the survey and to what they related. Prior to the Assistant Director presenting the report, Councillor P Pemberton expressed his disappointment that there had only been 42 responses from Members on the questionnaire, the Chairman expressed similar disappointment.

The Assistant Director then reported upon Section 1 (planning overview and scrutiny work) and the response to this section was generally positive and this was accepted by Members of the Committee. Councillor P G Heesom expressed caution if there was a move to reduce the number of Members on Overview and Scrutiny Committees and explained his reasons for this. Councillor R C Bithell responded by indicating that Overview and Scrutiny Committees were often poorly attended and Councillor J B Attridge commented that many Members left well before the meeting had been concluded. The Chairman indicated that at this stage the Committee would not be formulating a response in isolation but would consider this at the end of the discussion. The Head of Overview and Scrutiny advised that certain Scrutiny Chairs and Vice Chairs had indicated they were taking on board some of the comments made within this section.

The Assistant Director (Democratic Services) then presented Section 2 (Working Practices) and commented upon the key areas within this section. He referred in particular to question 14 in this section where there was a negative score and this was in relation to the involvement of Overview and Scrutiny in policy making. Councillor R C Bithell felt that Overview and Scrutiny had a role to play in the policy making process and could act as a very good sounding board. He also referred to a comment in relation to "views expressed at Overview and Scrutiny should not be as a result of a group whip". Speaking on behalf of his own group he indicated there was no such instruction and in fact referred to his experience when he was an Executive Member when his Group Members were very vociferous in making their comments at Overview and Scrutiny Committees. Councillor H D Hutchinson expressed similar sentiments in relation to his own group and his current role as an Executive Member. Councillor Eng K Armstrong-Braun referred to a comment in relation to "plain English" and felt this would be assisted if there were a summary of lengthy reports which would make reading easier. There was a suggestion that there was merit in the development of task and finish groups.

The Assistant Director (Democratic Services) continued to Section 3 (Relationship with Executive). A discussion ensued in relation to the issue of Call-ins. Certain Members had commented that there had been a recent increase in the number of Call-ins. Councillor K Armstrong-Braun expressed a view that this should be examined because in certain cases he felt they were not undertaken for the proper reasons. The Head of Overview and Scrutiny advised of the procedure whereby the reasons for Call-ins had to be given. Councillor P Pemberton commented that they were often the last resort because it was the only opportunity for Members to comment on a particular issue. He felt there was merit in all issues being processed through the scrutiny function. Various Members suggested that there was no difference between the number of Call-ins instituted by respective administrations. In this respect the Head of Overview and Scrutiny Committee advised that the relevant figures showed a slight decrease. He also expressed a view that it would not be advantageous for all items to be considered by Overview and Scrutiny in the first instance, although it was a practice in some Authorities, because it would not allow the Overview and Scrutiny Committees to undertake their proper function and would slow down the process.

Councillor J B Attridge referred to a Call-in when the Chief Executive of the Authority commented upon the appropriateness of it being undertaken. Councillor P G Heesom also felt that they were a necessary part of the process. Councillor H D Hutchinson in his role of the Executive Member had welcomed the Call-in on a particular topic which he felt had been properly addressed and the situation improved because of it. The Assistant Director (Democratic Services) explained that the Call-in procedure was part of the mechanism for the Executive to be held to account.

The Assistant Director (Democratic Services) then went on to refer to Section 4 (Officer Support). Councillor R C Bithell commented that many of the reports that went to Overview and Scrutiny were of a high standard and reflected well on Officer support. Councillor Eng K Armstrong-Braun felt there was merit in recruiting more research staff to assist the Overview and Scrutiny function. Following on from this point, Councillor P G Heesom referred to the fact that the current arrangements did not allow support for political groups. The Head of Legal and Democratic Services

advised that the Council had decided not to pursue the issue of the retention of political assistants and in fact there had been no calls for it. The Head of Overview and Scrutiny reported that in the current economic climate with the Council looking to make savings it would not be appropriate for research assistants to be employed. In fact he commented on how fortunate he was because Flintshire had a high number of staff dedicated to the Overview and Scrutiny function compared with other North Wales Authorities. He indicated that in 2006 he had offered up a post of facilitator for redundancy to identify a saving to be in-line with other departments of the Council who at that time had lost staff. Councillor R C Bithell on the general principal of research indicated that Members had a role to play in this respect and referred to the support Members currently receive in the Authority which had been considerably enhanced over the years. He felt it was for Members in their own right to undertake the research.

Councillor C Thomas commented upon the excellent work undertaken by the Task and Finish groups and the Overview and Scrutiny Committees and how she had enjoyed her involvement with them. However, she was concerned that if there was a considerable increase in the number of Task and Finish groups it could have implications on staffing workloads.

The Committee then considered Section 5 (Overview and Scrutiny Committee structure) where a considerable discussion ensued. The Assistant Director (Democratic Services) explained that the Officers survey had resulted in a low score for the current Committee structure and expanded upon some of the points made. The Assistant Director (Democratic Services) explained that Appendix 3 to the report contained a suggested restructure of the Overview and Scrutiny Committees to reflect the results of the surveys. Councillor J B Attridge referred to discussions at the Overview and Scrutiny Co-ordinating Committee when there was reference to the possible consideration of other models. However, the Assistant Director (Democratic Services) was satisfied that Paragraph 3.08 of the report was an accurate reflection of the views of that Committee. Councillor J B Attridge indicated that other options should be considered because he felt that the merger of the terms reference of Social and Health with Community and Housing would create too much workload for a single Committee. This was supported by Councillor S Jones but not by Councillor Eng K Armstrong-Braun. Councillor P G Heesom expressed the view that Community and Housing could be combined with Environment and Regeneration Committee. Members also commented that whilst there was merit in aligning the Committees to the new Directorates there were some considerable detailed topic areas in certain Directorates and there would not be time to address all of these. The Chairman felt that there was merit in other options being considered and felt that this was the correct forum for such matters to be discussed. Councillor Eng K Armstrong-Braun felt it was important for what some people felt were minor issues not to be ignored. He was also of the opinion that Officers views should be taken into account. He suggested that the points made could be taken on board and report back to the Committee with these options considered, where if necessary, a special meeting could be held. The Head of Legal and Democratic Services indicated that further work could be undertaken on the suggestions received but it would not be necessary to call a special meeting of the Committee because there was an acceptance that the current arrangements were working reasonably well. The Head of Legal and Democratic Services also indicated that draft guidance from the Welsh Assembly

Government may have been received and then that could be incorporated into the review of the Committees.

With regard to the Crime and Disorder aspect it would be necessary for the Committee to make a decision on that because the issues would be under discussion with effect from 1<sup>st</sup> October 2009 and it would be necessary to confirm which Committee would be undertaking that work.

Councillor J B Attridge indicated that if the Scrutiny function was being examined it would be appropriate for this Committee to also look at the role of the Executive. However, the Chairman felt that was not within the remit and control of this Committee and that it was tasked with dealing with the Overview and Scrutiny function and this was accepted by the Committee. There was a general feeling that a deferment on this issue would be beneficial for further information to be collated.

The Chairman indicated that if Members wished to make any suggestions they should submit them to the Assistant Director (Democratic Services) who would incorporate them in any future reports. To assist this process it was agreed that this should be done by the end of August 2009. It was confirmed that a letter would be despatched to all Members to bring this to their attention.

#### **RESOLVED:**

- (a) That a decision on the amendments to the committee structure for Overview and Scrutiny be deferred pending a further report to consider any alternative models suggested by Members by the end of August.
- (b) That with effect from 1<sup>st</sup> October 2009 the Corporate Overview and Scrutiny Committee be responsible for dealing with the issues relating to the new Crime and Disorder powers and the Head of Legal and Democratic Services have delegated power to make any necessary Constitutional changes.

#### **26. PROCEDURE TO REDUCE THE RISK OF AWARDS OF COSTS AGAINST THE COUNCIL IN PLANNING APPEALS**

The report of the Head of Legal and Democratic Services was considered, the purpose of which was to consider a recommendation from the Planning Protocol Working Group to introduce a procedure for reducing the risk of costs being awarded against the Council when Members exercised their right to refuse applications which Officers had recommended for permission. The report detailed the background to its preparation and the Committee was informed that the report of the Head of Planning to the Planning and Development Control Committee gave reasons for when the Officer recommendations warranted a refusal and gave recommended conditions when the Officer recommendation was to grant permission. On occasions Member could decide that an application recommended for permission should be refused. In these circumstances the applicant had the right of appeal to the Planning Inspectorate once a Certificate had been issued. The Assistant Director (Democratic Services) explained that an award of costs could be made against either party to an appeal if that party had acted unreasonably and the report detailed the relevant criteria. It was noted that where costs were against the Authority they could amount to a significant sum to reflect the expenses to which the appellant had been put as a result of the

Authority acting unreasonably. Subsequently at a meeting of the Planning Protocol Working Group on 10<sup>th</sup> June 2009 it considered a report suggesting a way in which the risk of an award of costs being made against the Council could be reduced where Members decided to refuse an application recommended for permission. It was therefore decided that another report be submitted to a subsequent meeting of the working group. An amended report was submitted to the Working Group held on 17<sup>th</sup> July 2009 and the amended procedure in that report was agreed as a recommendation to this Committee.

The report detailed the considerations that should be taken into account in dealing with this issue. Councillor J B Attridge referred to other issues relating to this whereby an Officer of the Council, who had written reports to the Planning Committee with a specific recommendation, the same Officer had appeared at the appeal to defend the case which was in fact made against his recommendation. It was noted that this was an issue currently being addressed by the Planning Protocol Working Group. The Head of Legal and Democratic Services reported upon his role as the Monitoring Officer in the recommended process and the powers he currently had to deal with applications which caused him concern.

Councillor N R Steele-Mortimer enquired whether there was a necessity for this decision to be made as he was not convinced that there was an issue to be addressed. He enquired on the number of cases where this had been an issue over recent years and the Head of Legal and Democratic Services gave an approximate figure. It was explained that the Head of Planning was preparing information on this. Councillor Mrs S Jones supported the views of Councillor N R Steele-Mortimer.

Councillor P G Heesom expressed a personal view that a number of recommendations on planning issues were as a result of recommendations of a report undertaken by the Council's external Auditors PricewaterhouseCoopers and felt that in many cases such recommendations were not necessary. Councillor R C Bithell had no objection to the principle but was concerned with the reference in the recommendation when it referred to the Monitoring Officer consulting the "Members concerned" and how this could be identified. The Head of Legal and Democratic Services explained this and clarified and that it was often dependent upon the case in consideration. The recommendation had been duly proposed and seconded. However, Councillor N R Steele-Mortimer proposed an amendment whereby a decision on this recommendation be suspended until information was made available from the Head of Planning in relation to the costs of appeals in recent years. This was duly seconded and on being put to the vote was lost. By way of reassurance, Councillor A Halford explained that a number of these issues involving planning protocol were in fact work in progress which the Head of Planning was actively pursuing.

**RESOLVED:**

That subject to the above clarification of "the Members concerned" in Paragraph 3.03 of the report the recommendation be agreed.

## **27. THIRD PARTY REPRESENTATIONS AT PLANNING COMMITTEE AND SITE VISITS**

The Committee considered the report of the Head of Legal and Democratic Services, the purpose of which was for Members to consider the recommendations of the Planning Protocol Working Group held on 10<sup>th</sup> June 2009 introducing third party representations, that was public speaking at Planning and Development Control Committees, and to agree a protocol for effective implementation.

It was also for the Committee to consider an amended protocol for Planning and Development Control Committee site visits to take into account the proposed amended committee procedures concerning third party representations. The report detailed the background to its preparation and identified the recommendation agreed at a meeting of the Planning Protocol Working Group held on 10<sup>th</sup> June 2009 and that the recommendation was to be referred to this Committee for consideration.

Also attached to the report was the protocol for public speaking which was included within the Planning Protocol Working Group report.

The Committee was informed that at its meeting held on 17<sup>th</sup> July 2009 the Planning Protocol Working Group considered a report of the Head of Planning on the Protocol for Planning and Development Control Committee site visits and a copy of that report was attached as Appendix B to the report together with a copy of the Resolution from that Committee. It was explained that if the recommendation was accepted by the Committee it was hoped to have third party representation procedure in place as early as possible and this would therefore also require the implementation of the site visits protocol. Members generally welcomed this development however Councillor Eng K Armstrong-Braun felt that time allocated for third party representatives to speak was too restrictive and referred to practices of other Authorities whereby they were given up to 10 minutes to speak. He proposed this as an amendment but was not seconded.

Members felt that a leaflet be prepared on the protocol in relation to third party representations. It was agreed that delegation be granted to the Head of Legal and Democratic Services to amend the Code of Best Practice for Planning Procedure to avoid it being returned to this Committee to reflect the new protocols.

### **RESOLVED:**

- (a) That the recommendations of the Planning Protocol Working Group be approved and that the protocol on public speaking at Planning and Development Control Committee and the Protocol for Planning and Development Control Committee site visits, as detailed in the report be approved.
- (b) That the Head of Legal and Democratic Services be given delegated authority to amend the Code of Best Practice for Planning procedures appropriately.

Councillor Eng K Armstrong-Braun wished it to be recorded that he voted against this.

**28. DELEGATION SCHEME**

The Committee considered the report of the Head of Legal and Democratic Services, the purpose of which was to consider the recommendations of the Planning Protocol Working Group on amendments of the existing Delegation Scheme concerning planning matters. The report detailed the background to its presentation and it was noted that at a meeting held on 17<sup>th</sup> July 2009 the Planning Protocol Working Group had considered a joint report which was attached as Appendix A. During the course of the discussion it was agreed that the matter set out in Paragraph 3.01 be deferred pending further specialist advice. However, it was subsequently agreed that the amendments set out in Paragraph 3.03 of that report (page 48) be recommended to County Council.

**RESOLVED:**

That the amendments set out in Paragraph 3.03 of the report be recommended to the County Council for acceptance.

**29. BOARDS – HOUSING STRATEGY, HOUSING OPTIONS, LEISURE STRATEGY, STREET SCENE AND SCHOOL MODERNISATION**

The Committee considered the report of the Head of Legal and Democratic Services, the purpose of which was to recommend the establishment of politically balanced Boards to assist the work of the Executive. The report detailed the background to its presentation. Councillor P G Heesom had proposed the acceptance of the recommendation. However, having heard the submission from Councillors J B Attridge and R C Bithell whereby they requested deferment on this issue to allow a detailed report, with suggested terms of reference for each of the Boards, he withdraw his proposal.

Councillor J B Attridge in speaking to the deferment felt that this was a key issue and had very wide reaching implications particularly as the Boards were to be politically balanced. He also made the point that the Leader in his own right could appoint Boards for whatever purpose so a deferment would not necessarily delay the process. The Head of Legal and Democratic Services explained that the reason for a report coming to the Committee was in the interest of transparency and openness. However, he indicated that he could prepare a report with some draft terms of reference for consideration by the Committee. Councillor Eng K Armstrong-Braun wished it to be noted that he felt that if the Boards were to be politically balanced that he and others who were not affiliated to political groups should be considered for a place on those Boards.

**RESOLVED:**

That a decision be deferred pending a further report.



**30. REQUEST FOR AN ITEM TO BE CONSIDERED: SUBMITTED BY COUNCILLOR ENG K ARMSTRONG-BRAUN**

The Head of Legal and Democratic Services indicated that Councillor Eng K Armstrong-Braun requested the Committee to discuss the following topic:-

“That all Executive Members can never be a Chair or Vice Chair of a Committee of which its remit is one of which the Executive Member is Executive for the Directorate etc. and policy making/decision making”.

The Chairman invited Councillor Eng K Armstrong-Braun to expand upon the reasons for his request. In making his presentation, Councillor Eng K Armstrong-Braun had referred significantly to the role of an Executive Member who sat on the Executive but was also a Chair or Vice Chair of a Committee such as the Planning and Development Control Committee and felt it was not appropriate for a Member to be involved in those areas as separate roles. Councillor J B Attridge felt there were no merits in the motion as it had no legal requirement and suggested it was a personal issue. Councillor R C Bithell supported by others had some sympathy with the proposal and referred to previous administrations whereby it was a policy that the Executive Member did not sit on a Regulatory Committee in the circumstances quoted by Councillor Armstrong-Braun.

Councillor N R Steele-Mortimer queried the status of panels and forums in such cases and the Head of Legal and Democratic Services acknowledged that in some cases they did have decision making powers. A discussion ensued and Members stressed this should not be related just to Planning Committee but the other Regulatory Committees as well.

The Head of Legal and Democratic Services reported upon the provisions in the Constitution in relation to the Chairs and Vice Chairs of the Audit and Licensing Committees. The Committee concluded that there was some merit in the recommendation and felt that a paper should be submitted with some guidance on this.

**RESOLVED:**

That the Head of Legal and Democratic Services submit a paper to a future meeting with a suggested protocol to address the issues raised in the request by Councillor Eng K Armstrong-Braun.

**31. DURATION OF MEETING**

The meeting commenced at 2.00 p.m. and ended at 4.47 p.m.

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Chairman

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

<b>CONSTITUTION COMMITTEE</b>	<b>DATE: 28<sup>th</sup> JULY 2009</b>
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<b>MEMBER</b>	<b>ITEM</b>	<b>MIN. NO. REFERS</b>
NO DECLARATIONS WERE MADE		