

CONSTITUTION COMMITTEE
27TH JANUARY 2010

Minutes of the meeting of the Constitution Committee of Flintshire County Council held in County Hall, Mold on Wednesday 27th January 2010.

PRESENT: Councillor R J T Guest (Chairman)

Councillors: J.B. Attridge, D. Barratt, Q. R. H .Dodd, V. Gay, A. M. Halford, G. Hardcastle, P. G. Heesom, R. P. Macfarlane, P. R. Pemberton, N. Phillips, A. P. Shotton, N.R. Steele-Mortimer and A. Woolley.

APOLOGIES: Councillors: R.C. Bithell and H.D. Hutchinson.

IN ATTENDANCE:

Chief Executive, Head of Legal and Democratic Services, Head of Planning, Head of Overview and Scrutiny and Democratic Services Manager.

43. COUNCILLOR K. ARMSTRONG-BRAUN

The Head of Legal and Democratic Services reported that Councillor K. Armstrong-Braun had resigned from the Committee following his departure from the meeting held on 17th December 2009 as indicated in the final paragraph of Minute No. 34.

Councillor G. Hardcastle supported by other Members of the Committee indicated the action of the Member concerned should in no way reflect on the Chairman who he had felt had given him ample opportunity to make his point. Councillor Hardcastle referred to the excellent and fair manner in which the Chairman conducted the meeting of the Committee.

The Chairman was disappointed that Councillor Armstrong-Braun had taken the action that he did and from a personal point of view took no satisfaction from it.

44. DECLARATIONS OF INTEREST

There were no declarations of interest.

45. MINUTES

(a) Accuracy

RESOLVED:

That subject to the word "change" replacing "charge" in Minute No. 34 that the minutes of the meeting held on 17th December 2009, be confirmed as a correct record.

(b) Update

i) Minute Number 34 – Overview and Scrutiny Committee Structure

Councillor D. Barratt indicated that he was not able to be present at the meeting although he had submitted written comments strongly objecting to the proposal but these had not been recorded.

The Chairman advised that his written comments had been part of a written report which had been considered in detail by the Committee.

ii) Minute Number 5 – Regulation of Investigatory Powers Act (RIPA) Authorising Officers

The Head of Legal and Democratic Services gave an update on this situation. The Committee was informed of new requirements for a Member of the Corporate Management Team to be appointed as a Lead Officer for RIPA matters.

Quarterly reports to Members were also required and the Corporate Management Overview and Scrutiny Committee could receive these reports as part of the Legal and Democratic Services quarterly service review report.

The Council's RIPA policy also needed to be reviewed on an annual basis and the Head of Legal and Democratic Services suggested that this was the appropriate Committee for that review.

iii) Minute Number 37 – Champions

Councillor V. Gay enquired about the progress regarding the Task and Finish Group. The Head of Legal and Democratic Services indicated that he was compiling the relevant information and hoped to be in a position to report in the near future.

iv) Minute Number 39 – Changes to the Functions and Responsibilities of the Council and the Executive

The Head of Legal and Democratic Services referred to 4(a) of the Resolution and advised that this should read "Children and Young Persons Plan" and not as stated "approval of a Single Education Plan". He explained that this would be clarified at the forthcoming meeting of the County Council when he would be submitting a report.

v) Minute No. 38 – Corporate Governance – Self-Assessment

Councillor G. Hardcastle enquired about progress in this area and the Chief Executive advised that he had pursued this issue with the Welsh Assembly Government on three separate occasions.

vi) Minute No. 40 – Chair/Vice-Chair of Planning and Development Control Committee

Councillor J.B. Attridge enquired what the situation would be in relation to this item as Councillor Armstrong-Braun had resigned from the Committee. The Committee agreed that it be reasonable for the matter to be included on the Agenda for the next Committee and in accordance with the decision of the Committee that Councillor K. Armstrong-Braun would be invited to participate in the meeting whilst this was being discussed.

vii) Minute No. 41 – Planning Protocol Working Group – 11th December 2009

Councillor A.P. Shotton referred to this item and it was accepted that this was the subject of a separate report on the Agenda and it would be addressed at that time.

RESOLVED:

That the updates be noted and the amendment referred to by the Head of Legal and Democratic Services in Minute No. 39 be noted.

46. THE COUNCIL'S OWN PLANNING APPLICATIONS

The Committee considered the joint report of the Head of Legal and Democratic Services and Head of Planning, the purpose of which was to consider a recommendation for the Planning Protocol Working Group in relation to the Council's own planning applications. The report was presented by the Head of Planning who advised that at the meeting of the Planning Protocol Working Group on 6th November 2009 it received a presentation from Trevor Roberts Associates on the scheme of delegation for planning.

It was noted that one of the issues arising from the Workshop was whilst the Scheme of Delegation allowed planning applications submitted by the County Council to be determined under the delegated powers of the Head of Planning, the Planning Code of Practice required all such applications to be considered by the Planning and Development Control Committee.

The Head of Planning advised that he had submitted a report on the Scheme of Delegation to the Planning Protocol Working Group meeting on the 11th December 2009 to follow up issues identified at the 6th November 2009 meeting. The report to that meeting indicated the recommendation of the Code of Practice be relaxed to allow County Council schemes to be determined under delegated powers where appropriate. The Working Group agreed that this recommendation should be made to the Constitution Committee.

It was noted that at its meeting held on 17th December 2009 the Constitution Committee considered that recommendation and deferred consideration until this meeting.

Reference was made to the Council's Code of Best Practice which contained a section on applications submitted by the Council and the current wording was attached as Appendix 1 to the report. It was noted that the wording advised that it was important that the Council treated its own applications on an equal footing with all other applications and that the Council's own applications should be reported to Committee rather than being dealt with under delegated powers to ensure transparency and openness.

Compliance with that Code of Practice had resulted in very simple County Council applications where no objections had been received and which complied with Planning Policy and other material planning considerations being determined by the Planning and Development Control Committee.

The Planning Protocol Working Group recommended that the Council should treat its own applications in the same manner as other applications and therefore delete paragraph 7.3 from the Planning Code of Practice.

The report detailed the safeguards in place relating to this recommendation.

Whilst the intention behind all the Council's planning applications going to Committee for determination was one of transparency and openness, the public may be suspicious of a process that treated Council applications differently to other applications. However, the documentation relating to the Council's planning applications was available to the public in the same way that non-Council applications were available.

In presenting the report, the Head of Planning expanded upon the safeguards relating to this and the involvements with the Chair and Vice-Chairman of the Planning and Development Control Committee for any such decisions being made.

Councillor A.P. Shotton was of the opinion that when this item was deferred by the Committee at its previous meeting it was on the basis that the Planning Protocol Working Group would reconsider its recommendations in view of the comments made. He expressed concern at the proposal and felt that it was essential for all Council planning applications to be dealt with in an open and transparent way. He felt it was important for the public to see that the Council's own procedures were totally above board. Whilst he accepted that some of the applications were of a more routine nature, he suggested that it would be difficult to know where to draw the line by which applications should go to Committee. He felt there was a need for adequate safeguards for any system. He had concerns about the public perception if paragraph 7.3 was to be removed from the Code of Practice.

Councillor Q.R.H. Dodd shared Councillor Shotton's concern. He suggested that a renewal of a planning application would be no problem as it had gone through the process. He further suggested that it may not be immediately obvious if an application was contentious and gave examples where

this may be the case. There could be issues also in relation to applications which would have an effect on adjoining Wards.

Councillor P.G. Heesom, in his role as Vice-Chairman of the Planning and Development Committee, offered reassurance to the Members and advised of the safeguards that were in place and suggested that the revised arrangements with the input from Chair and Vice-Chair was more robust than they had been previously. He stressed that if there were any doubts about any applications or if Members had raised reservations, they would be submitted to Planning and Development Control Committee. He expanded upon the system now in place, of dealing with delegated applications where those were subject to written reports and in this respect felt that the system was more transparent than it had previously been.

Councillor N. Phillips expressed similar concerns as Councillors Shotton and Dodd and felt that the current system gave reassurance. He explained about difficulties that could occur and by way of example quoted the circumstances relating to Buckley Baths. He also had issues in relation to mobile classrooms which he always made a point of opposing whenever they were submitted to the Planning and Development Control Committee.

The Chairman of the Committee indicated that he also had certain reservations with the proposals and shared the view of Councillor Shotton whereby it would be difficult to draw the line between the applications which were submitted to Committee and those which were dealt with under delegated powers.

Councillor P.G. Heesom reiterated his previous assurances in relation to applications.

Councillor A.P. Shotton, seconded by Councillor Q.R.H. Dodd, proposed that a decision be deferred and that the Planning Protocol Working Group be requested to consider the matter further, taking into account the views of this Committee and look at examples of applications which had been considered.

The Head of Planning indicated that he could prepare a report which would include case studies, possibly over a 12 month period, and what the options would be in relation to each of those applications. Councillor P.G. Heesom indicated that he was happy to accept this proposal.

Councillor A.P. Shotton reiterated the point that the Planning Protocol Working Group had not considered the issue since this Committee had expressed its views and felt it was appropriate for them to have the opportunity.

RESOLVED:

That a decision be deferred and that the matter be referred back to the Planning Protocol Working Group for further consideration with a request that they consider specific examples of applications with a subsequent report back to this Committee.

47. CONSULTATION ON POLITICAL STRUCTURES BY WELSH ASSEMBLY GOVERNMENT

The Committee considered the report of the Head of Legal and Democratic Services, the purpose of which was to consider a Consultation Paper issued by the Welsh Assembly Government which related to scrutiny and political structures and to determine a response to the provisions relating to political structures. The Committee was informed that the Council received a Consultation Paper issued by the Welsh Assembly Government relating to Scrutiny and Political Structures in Local Government. Using the framework powers granted to the National Assembly for Wales and the Local Democracy Economic Development and Construction Act 2009, the Welsh Assembly Government intended to introduce a measure on scrutiny and political structures. The policy issues which the measure could address were discussed in the Consultation Paper.

The provisions in the Consultation Paper relating to Scrutiny were reported to the Coordinating Committee meeting on 14th January 2010 and that Committee determined the Council's response to those parts of that consultation paper. Attached as Appendix 1 to the report was that part of the Consultation Paper relating to political structures for this Committee to determine the Council's response to those aspects of the Consultation Paper. There were a number of considerations and the first issue relating to political structures was that the Assembly Government proposed to remove the "Mayor and Council Manager" political structure which had not been used in Wales and to make it easier for Local Authorities to change their political models and for greater flexibility in the establishment of area committees.

Councillor P. Macfarlane, referring to this paragraph, felt that the proposal undermined the power of Councils and was a way of regulating decision making. In the circumstances it was agreed there were no observations on this section.

The second significant issue was contained in paragraph 11 of the consultation paper. The Assembly Government intended to simplify, by reference to fields of activity functions that were not appropriate for Executive responsibility and allow for more functions to be the subject of local choice, Welsh Ministers would have the fall back power of directors in relation to this matter. Councillor A.P. Shotton, supported by other Members, felt that it was difficult to comment in detail upon this section until information was available. The Chief Executive, supported by the Leader, felt that there was an expectancy of more local choice. The Leader expressed the view that concern had been expressed in relation to the County Council duplicating the Executive functions. Members concurred with the previously expressed view of the need for additional information in this area.

Paragraph 12 proposed that local authorities would be able to delegate the decision making powers to Executive Members representing them on Local Service Boards or other partnerships, with decisions needing to be recorded and published in the same way as other Executive decisions. Councillor A.P. Shotton expressed concern at this proposal and felt that this could threaten the

principle of local democracy, whilst he understood there was a need to make progress with the decision making process.

Councillor G. Hardcastle enquired as to the role of the Local Service Boards and this was explained. The Chief Executive concurred with the concerns expressed by Councillor A.P. Shotton, he also referred to the need for clarity on the role and function of a number of these boards. Councillor P.G. Heesom also felt there was a need to examine the role of these Boards particularly in the light of possible budget difficulties and the decisions that would have to be made thereafter. Councillor P.G. Heesom's proposed and this was duly seconded by Councillor G. Hardcastle, that a report is submitted to the Committee on the role of Local Service Boards.

Paragraph 13 of the Consultation Paper indicated that the Assembly Government proposed to make it a requirement that the Executive should publish forward plans on their web site, these should be rolling documents covering the period of six months ahead and subject to quarterly update. Guidance would make reference to the extent of detail required in the forward plans. Members felt that this was reasonable.

Paragraph 14 of the Consultation Paper indicated the proposal to make the establishment of Audit Committees a requirement and the appointment of Members of such Committees to be a function of the Full Council. It also proposed that the Chair of the Audit Committee would be a lay person as with Standards Committees and that a maximum of one third of the Membership also be lay appointees. The Head of Legal and Democratic Services explained that the Council already had an Audit Committee in place but that other Authorities did not as it was not a statutory requirement to do so. Councillor A. Halford expressed her opposition to this proposal, whilst she felt the system worked perfectly well she suggested that if a lay person was appointed it would weaken the power of Members who had been democratically elected. She referred to the current Chair of the Audit Committee who undertook an excellent job as did his predecessor. Councillor P. Macfarlane commented that lay persons who served on the Lifelong Learning Overview and Scrutiny Committee had made a useful contribution. Councillor Q.R.H. Dodd advised that there was a view that when good practices were being pursued, lay persons with a degree of expertise could assist the Committee. Whilst there was merit in this, he felt that the appointment of a lay person as Chair would be a step too far. Councillor P. Pemberton expressed a view that all Members were lay persons in this respect and their advice could be welcome, however, the role of the Chair could be too much. Councillor N.R. Steele-Mortimer, pursuing the point previously raised by Councillor P. Macfarlane, also commented upon the assistance given at the Lifelong Learning Overview and Scrutiny Committee by lay Members and felt they made a useful contribution, however, he felt that if a lay person was to be appointed they should have a pre-agreed qualification and be appointed by that body. Councillor P. G. Heesom felt the existing system worked well and the Audit Committee dealt with a number of issues in a thorough manner whilst in the public domain. Members also suggested it would be appropriate for the Audit Committee to express a view on this issue. The Chief Executive concurred with the view that if the Audit Committee works in its current form representation should be made on those lines. He also made the point that the regulators were

confident in the way in which the Council conducted the Audit Committee and its related business and that was a key factor in its effectiveness. He also suggested that if the Council had adopted good practices which were working well then they should be promoted to the Welsh Assembly Government in that way. Councillor A.P. Shotton expressed the view that the proposals could be brought in place for those Councils who did not currently have a system. He also suggested the views expressed by the Chief Executive should be supported as part of the response. The Committee concurred with this view. Members also referred to the role whereby the Chair was a Member of the main Opposition Group and they felt that this had worked well and was preferable to a lay person taking this role and this view was also supported by the Committee.

The Committee was informed that paragraph 15 of the Consultation Paper proposed that Welsh Ministers be empowered to intervene in the operation of the Local Authority when there was an actual perceived threat to the effect of discharge of functions as identified in the report of the Inspector/Regulator. At present such powers of intervention were mostly confined to where there was a threat to the delivery of essential public services with limited powers in events of political impasse. The Chief Executive explained how this proposal had developed and how the existing powers are operated. He gave examples of what interventions may occur. Councillor A. Woolley, as Leader of the Council, concurred with the views expressed by the Chief Executive and commented upon cases where there had been, quite properly, interventions. He felt it was up to a Local Authority to operate in such a way to avoid this sanction occurring. Councillor A. Halford felt there was some merit in the proposal. Following a question by Councillor P. Pemberton, the Chief Executive explained the role of the Inspector and Regulator. The Chief Executive concurred that issues were not always clear cut, he also referred to the experience whereby, if necessary, the role of the Regulator could be challenged and this had been done on occasions.

The Head of Legal and Democratic Services referred to paragraph 17 which contained proposals to introduce provisions for Councillor calls for action in policy areas beyond the existing one of crime and disorder; such provisions would be supported by guidance as how to deal with frivolous or repetitive bids. Local Authorities would be empowered for functions and budgets to be delegated to Councillors for use within their local community area. The information contained in the Appendix to the report expanded upon the key points. Members expressed a view that incidents of concern did not necessarily coincide with individual Members boundaries. Councillor P. Macfarlane also referred to issues where things were pursued with the police and those that shouted the loudest received action and this did not necessarily reflect community views. Councillor A. Woolley also expressed his concern about the effect on budgets and how they would be controlled. Councillor A. Halford also had concerns that this could raise expectations with members of the public. The majority of the Committee did not support the proposal.

The Committee was informed that paragraph 18 of the Consultation Paper indicated a proposal by the Assembly Government to bring into effect provisions contained within the Local Democracy Economic Development and Construction Act 2009 which at present only applied to England. The provisions placed a duty

on Local Authorities to promote understanding of their functions, their democratic arrangements and how members of the public could take part and what taking part was likely to involve. It was also noted that there was a duty on principal Local Authorities to promote understanding of public bodies in the Authority's area. The Act also placed duties on the Council in relation to petitions signed by those who lived, worked or studied in that local area. It was noted that the Assembly Government proposed to consult separately on guidance on the promotion of democracy, petitions and whether other Local Authorities should also be subject to requirements concerning petitions. Members accepted the principle regarding the promotion and understanding of their functions. Councillor J. B. Attridge referred to the Council's website which detailed the functions and roles of the Committee and he felt that it was up to other Authorities to undertake their own work relative to the functions they undertake. This now was generally accepted. The Chief Executive indicated that as a Council it increasingly provided information in its own right. A discussion ensued in relation to electronic petitions and after some debate Members were against the acceptance of electronic petitions.

RESOLVED

That the comments against each paragraph be noted and submitted as the Council's response to the Consultation Paper.

48. MEMBERS COMMUNICATIONS

The Committee considered the report of the Head of Legal and Democratic Services, the purpose of which was to consider a protocol for dealing with Members' correspondence. The Committee was informed that at the meeting of the County Council held on 16th December 2009, Councillor Q.R.H. Dodd sought to defer a Notice of Motion that he submitted concerning "the answering of letters and emails and telephone calls" by staff, following certain assurances that he had received that the Corporate Management Team and Leader's Strategy Group had recognised that there was a problem and that it was intended to raise awareness amongst staff concerning the requirements of the existing process. Following some discussion the County Council had accepted an amendment from Councillor A. Shotton which read as follows; "That the Council calls upon the Executive to bring forward a protocol of dealing with correspondence including letters and emails in reports for the Constitution Committee". The Head of Legal and Democratic Services reported that following the County Council meeting a Discussion Paper attached to the report had been considered by the Corporate Management Team. It acknowledged that there was an inconsistent approach in dealing with Members' enquiries and proposed processes to address those inconsistencies. The Discussion Paper drew a distinction between service enquiries and more complex matters. With regard to service enquiries it was intended to offer Members a variety of methods of contacting the appropriate Officers. It was intended to produce a useful contact list for circulation amongst Members and to provide a main Contact Officer for each Directorate Division. In addition, the Customer Services Team could be contacted in circumstances where Members were unclear as to which service to contact initially. Enquiries received would be recorded on the Virtual Contact Centre.

With regard to complex matters, it was intended that the details would be logged on the Mail Logging System, and in relation to telephone calls and emails on the Virtual Contact Centre if appropriate. Each Directorate Head of Service would nominate a person who would be the main point of contact for each matter and that person would be responsible for providing updates and progress reports. A guidance document would be produced for staff to ensure that they were aware of the system and a survey would be undertaken to obtain a better understanding of the present position of the system and making further improvements.

Councillor P. Pemberton felt that the proposal would mark a big improvement and commented that it appeared to be a well thought out system and would address the problem. Councillor Q.R.H. Dodd felt the proposal was a somewhat cumbersome system but accepted that it recognised real issues. He explained the reasons why he had raised the issues and upon the considerable delay in receiving responses. He felt the Contact Officer referred to should hold a senior position and that the Head of the Service should be that person's Line Manager. Councillor J.B. Attridge indicated that he had received timely responses from Officers, particularly if he contacted them by email. However, he did have concerns in certain sections of the Housing Department whereby telephones were not answered for a considerable period and that there was no voice mail in operation even when staff had gone on holiday.

The Chief Executive commented that he and the Corporate Management Team took the issues very seriously; he referred to the range of services and was confident that the proposals would address the situation but it was important that Members let Officers know if there were any problems. With regard to the level of Officer, he felt that he would be looking at a Third Tier level for this post. Councillor J.B. Attridge also felt that if he did not receive response to formal correspondence then he would not wait for the length of time referred to by Councillor Q.R.H. Dodd. He would refer it to the Head of Service in the first instance and if that did not receive a response, then to the Chief Executive.

Councillor A. Halford also commented upon the vast majority of cases where she received responses from Officers and took a similar action to Councillor Attridge. The Chief Executive indicated that there were always occasions to look for improvement and that the situation was taken very seriously. He felt it was important that the Council did challenge itself on the level of service provided. Councillor P. Pemberton's proposal was duly seconded; that the proposal be accepted.

RESOLVED

That the proposals detailed in the Discussion Paper be accepted in line with the recommendations of the Corporate Management Team.

49. BOUNDARY COMMISSION REPORT

The Chief Executive requested the inclusion of an urgent item on the Agenda to allow him to give a verbal report on the current situation in relation to

the Boundary Commission proposals. In giving this update he advised that he was not talking about the individual proposals but the process relative to giving it due consideration. In giving an update, the Chief Executive expressed his disappointment at the manner in which the document had been received. He had asked for early notification of when the document was to be received but whilst acknowledged was not adhered to.

He commented upon the three stages:

- i) Study Proposal;
- ii) Consultation;
- iii) Overview of the Process.

He expanded upon the key points in each area and that the consultation period ended on 13th March 2010. He referred to proposals to three other Councils which had strongly been challenged by the Welsh Local Government Association. He expressed a view that he was not confident that the Boundary Commission was acting fully within its powers within the manner and range of proposals and was currently investigating this. He suggested it would be necessary for special meetings of the Council to be arranged during March to meet the timescales. He clarified a number of points and process raised by Members.

RESOLVED

That the report be noted.

50. INFORMATION – ANALYSIS OF LATE REPORTS

The Chairman referred to a document that Members had received under separate cover which gave an analysis of late reports to Committee meetings. He referred to the fact that there was only one late report during the period and in the circumstances felt that there was no need for this to form part of the formal Agenda unless the situation deteriorated. This was accepted by the Committee.

51. DURATION OF MEETING

The meeting commenced at 10.00 am and finished at 12.20 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 27th JANUARY 2010
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MEMBER	ITEM	MIN. NO. REFERS
NO DECLARATIONS WERE MADE		