

MINUTES

CONSTITUTION COMMITTEE
MONDAY, 24 SEPTEMBER 2012



COMMITTEE MEMBERS PRESENT

Councillor Ray Auger
Councillor Susan Sandall
Councillor Rob Shorrocks

Councillor Mrs Jean Taylor
Councillor Raymond Wooten (Chairman)

OFFICERS

Head of Legal and Democratic Services
(Lucy Youles)
Planning Policy and Partnerships Service
Manager (Karen Sinclair)
Democratic Officer (Lucy Bonshor)

OTHER MEMBERS

Councillor Bob Adams

7. MEMBERSHIP

Councillor Jean Taylor was substituting for Councillor Adam Stokes for this meeting only.

8. DISCLOSURE OF INTERESTS

None disclosed.

9. MINUTES OF THE MEETING HELD ON 28TH MAY 2012

The minutes of the meeting held on 28th May were agreed as a correct record of the decision taken.

10. AMENDMENTS TO THE CONSTITUTION

(i) Motions on Notice

Decision

The Constitution Committee recommends to Council that the Constitution be amended at clause 12.3 of page 28 to read:

Motions must be about matters for which the Council has a

responsibility or which directly affect the district. The content of any motion on notice shall consist of one single subject matter. No motion on notice shall be debated in the absence of the member who has proposed the motion.

The Chairman of the Committee referred to the July Council meeting at which Motions on Notice had been referred back to the Committee for further investigation. The Chairman informed the Committee that he had undertaken telephone calls with North Kesteven District Council, East Lindsey District Council, West Lindsey District Council and South Holland District Council, had e-mailed all Members of South Kesteven District Council and had looked at other authorities Constitution on the internet. He proposed that the number of motions remain unchanged as per clause 12.4 but that they consist of one single subject matter and that no notice on motion would be debated in the absence of the member who proposed the motion in order that the debate was fair and transparent. This proposal was seconded by Councillor Jean Taylor. Members felt that this was a sensible way forward but asked if there were any restrictions on the number of movers that a motion had, could a motion be moved by more than one mover. The Head of Legal and Democratic Service replied that no there were no restrictions, there was nothing to stop multiple movers subject to the motion being one of the two they were allowed. On being put to the vote the proposal was unanimously agreed.

(ii) **Localism Act – Members Code of Conduct**

The Head of Legal and Democratic Services informed the Committee that the report LDS075 was for information only. The report listed the changes made to the Constitution following the adoption of the Members Code of Conduct by the Council in July. A question was asked about future guidance to which the Head of Legal and Democratic Services replied that as the provision was at a local level there would be no government guidance. A further question was asked about complaints made about non parishes such as the Charter Trustees. The Head of Legal and Democratic Services replied that the Council had no authority to deal with complaints relating to unparished areas.

Members noted the changes.

(iii) **Neighbourhood Plans – Delegation**

Decision:

The Constitution Committee recommends to Council that the Constitution be amended to insert at page 105.3 the following delegation to the Head of Development and Growth:

4. Neighbourhood Planning

(i) To take, after consultation with the relevant Portfolio Holder and the local ward member(s), decisions on the following matters, as defined in the Localism Act 2011 and Neighbourhood Planning (General) Regulations 2012 (or as may be amended):

- Applications to designate a Neighbourhood Area**
- Applications to designate a Neighbourhood Forum**
- To accept or decline repeat proposals for a Neighbourhood Development Plan or Neighbourhood Development Order**
- Validity and acceptance of proposals for a Neighbourhood Development Plan or Neighbourhood Development Order**
- Appointment of person to carry out examination of a Neighbourhood Development Plan or Neighbourhood Development Order**

The Service Manager Planning Policy and Partnerships referred to report PLA948 which had been circulated with the agenda. The report referred to Neighbourhood Development Plans (NDP) and Neighbourhood Development Orders (NDO) which had been introduced by the Localism Act. The procedures for making NDPs and NDOs were very similar in each case only a qualifying body such as a Parish or Town Council except in unparished areas where a Neighbourhood Forum, a local organisation or body which must meet certain criteria set out in the Act, can be designated to instigate NDPs and NDOs. The Act and Regulations set out certain decisions on the administration and technical side of the documents that have to be undertaken by the Local Planning Authority before being examined by an independent examiner. This included the designation of neighbourhood areas (the area to be covered by the NDP or NDO) and forums and decisions on moving NDPs and NDOs on to the next stage of the process. A summary of stages was appended to the report. To make the decision quick and efficient and move it forward she recommended that the decision be delegated to the Head of Development and Growth. Any applications or submissions received would be discussed with the relevant Portfolio Holder and local Ward Member. An exception to this decision would be in respect of action to be taken in response to an examiner's report and whether to modify the Plan in response before submitting it for referendum and bringing into force the NDP as part of a Development Plan. Decisions on these matters would rest with the Cabinet and Full Council.

Various questions were then asked about the new plans and the Neighbourhood Plans submitted by Parish Councils between three and five years ago, would they become Neighbourhood Development Plans.

The Service Manager Planning Policy and Partnerships said that was not automatic. They had to follow the new processes and criteria, there was no provision in the Localism Act. The new NDPs were more planning issued based, therefore if a parish or town council had planning issues that they were keen to address in a local area they should go through the NDP process. Further questions were asked about membership especially for non parish areas such as Grantham. The Service Manager Planning Policy and Partnerships replied that they would have to seek designation and would have to have 21 Members who represented various different interests. Other questions were asked about the powers listed at 3.5 in the report and failure of plans on technicalities. A plan would fail if it was contrary to the Local Development Framework and it would be unlikely to get through the examination stage, unless it was substantially changed, it would be prevented from coming back for two years. The guidance conformed to strategic policies within existing plans such as the Core Strategy such as location, quantum housing, employment and retail development. The NDP's addressed more local issues within town centres. Further discussion followed on those Parishes that had already applied and grants to which the Head of Planning Policy and Partnerships replied. It was proposed, seconded and agreed to accept the proposed additions to the Head of Development and Growth's delegation.

(iv) **The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012**

Decision:

The Constitution Committee recommends to Council the amendments to the Constitution to incorporate the changes introduced by the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 (the Regulations) as follows:

Page 63 – Proper Officer for Access to Information

*15.3 (h) – delete existing clause and replace with:
Publication of Notices relating to Key Decisions
The Monitoring Officer will publish notices relating to key decisions in accordance with the provisions of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.*

Page 90 – Delegation to the Chief Executive

Add new item 4 – To authorise the Head of Paid Service to grant dispensation in respect of any conflict of interest of any Member of the Cabinet declared at

meetings of the Cabinet

Page 106 – List of Proper Officers and Designated Officers for Particular Functions

Column C - add reference to Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 for items relating to Monitoring Officer and officer responsible for background papers
Add new item –

Column A - Monitoring Officer

Column B – Recording of Executive Decisions

Column C – Local Government Act 2000; The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

Page 143 – Access to Information Procedure Rules

Scope – add reference to regulations made in accordance with section 9G, 9GA and 105 Local Government Act 2000.

Page 144 – Access to Agenda and Reports before the Meeting

Add after ..and designated offices – “and on the Council’s website”.

Page 146 – Public Inspection of Background Papers

Add to 8.2 – which will also be available on the Council’s website.

Page 147 – Exclusion of access by the Public to Meetings

Add new paragraph at clause 10.5 as follows:

Where there is a requirement to hold a Cabinet meeting in private:

At least 28 clear days before a private meeting, the Cabinet must--

- (a) make available at the designated offices a notice of its intention to hold the meeting in private; and
- (b) publish that notice on the website.

Any such notice must include a statement of the reasons for the meeting to be held in private.

At least five clear days before a private meeting, the Cabinet must--

- (a) make available at the designated offices a further notice of its intention to hold the meeting in private; and
- (b) publish that notice on the website,

Any such notice must include--

- (a) a statement of the reasons for the meeting to be held in private;*
- (b) details of any representations received by the Cabinet about why the meeting should be open to the public; and*
- (c) a statement of its response to any such representations.*

Where the date by which a meeting must be held makes compliance with this requirement impracticable, the meeting may only be held in private where the Cabinet has complied with Rule 16 (special urgency)

Page 155

Delete reference to the forward plan and replace with "Schedule of Decisions"

Page 156 and 157 - The Forward Plan

Delete pages 156 and 157 relating to the Forward Plan and replace with:

Schedule of Decisions

A key decision must not be made until a Schedule of Decisions has been published and made available for public inspection at the offices of the Council and on the Council's website at least 28 clear days before the decision is made which states:-

- (a) that a key decision is to be made on behalf of the local authority;*
- (b) the matter in respect of which the decision is to be made;*
- (c) where the decision maker is an individual, that individual's name, and title if any and, where the decision maker is a decision-making body, its name and a list of its members;*
- (d) the date on which, or the period within which, the decision is to be made;*
- (e) a list of the documents submitted to the decision maker for consideration in relation to the matter in respect of which the key decision is to be made;*
- (f) the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed are available;*
- (g) that other documents relevant to those matters may be submitted to the decision maker; and*

- (h) *the procedure for requesting details of those documents (if any) as they become available.*

Exempt information need not be included in the Schedule of Decisions and confidential information cannot be included.

Page 157 – General Exception

- (i) *Delete “forward plan” and insert “Schedule of Decisions”*
- (ii) *Insert “ the chair of the relevant Policy Development Group and....” before Scrutiny Committee*
- (iii) *Insert “..... and on the Council’s website*
- Add (iv) *As soon as reasonably practical after all the above have been satisfied, The Monitoring Officer must make available at the Council offices a notice setting out the reasons why compliance with procedure rule 14 is impractical; and Publish that notice on the Council’s website*

Page 158 – Special Urgency

Add after notifies in writing :..... the Chairman of the relevant Policy Development Group and

Add further paragraph:

As soon as reasonably practicable after the decision maker has obtained agreement under this rule that the making of the decision is urgent and cannot reasonably be deferred, the decision maker must--

- (a) *make available at the designated offices of the Council a notice setting out the reasons that the meeting is urgent and cannot reasonably be deferred; and*
- (b) *publish that notice on the website.*

Page 158 - Report to Council

- (a) *Delete forward plan and replace with Schedule of Decisions*

Page 159 – Quarterly Reports on Special Urgency Decisions

Add further paragraph

The Leader must submit at least one report under paragraph (1) annually to the relevant local authority.

Page 162 – Access to Documents – Policy Development Groups and Scrutiny Committee

Delete clause 24 and replace with new clause 24 as follows:

- 24.1 A member of a Policy Development Group or Scrutiny Committee is entitled to a copy of any document which--
- (a) is in the possession or under the control of the Cabinet; and
 - (b) contains material relating to--
 - (i) any business that has been transacted at a meeting of a decision-making body of the Council;
 - (ii) any decision that has been made by an individual member of the Cabinet in accordance with executive arrangements; or
 - (iii) any decision that has been made by an officer of the authority in accordance with executive arrangements.
- 24.2 Where a member of a Policy Development Group or the Scrutiny Committee requests a document which falls within paragraph 24.1, the Cabinet must provide that document as soon as reasonably practicable and in any case no later than 10 clear days after the Cabinet receives the request.
- 24.3 No member of a Policy Development Group or Scrutiny Committee is entitled to a copy--
- (a) of any such document or part of a document as contains exempt or confidential information unless that information is relevant to--
 - (i) an action or decision that that member is reviewing or scrutinising; or
 - (ii) any review contained in any programme of work of such a Policy Development Group or Scrutiny Committee or sub-committee of such a committee;
 - (b) of a document or part of a document containing advice provided by a political adviser or assistant.
- 24.4 Where the Cabinet determines that a member of a Policy Development Group or Scrutiny Committee is not entitled to a copy of a document or part of any such document for a reason set out in paragraph 24.3, it

must provide the Policy Development Group or Scrutiny Committee with a written statement setting out its reasons for that decision.

Page 163 – Additional Rights of Access for Members

Delete clause 25 and replace with new clause 25 as follows:

25.1 Any document which--

- (a) is in the possession or under the control of the Cabinet; and*
- (b) contains material relating to any business to be transacted at a public meeting,*

must be available for inspection by any member of the Council.

25.2 Any document which is required by paragraph 25.1 to be available for inspection by any member of the Council must be available for such inspection for at least five clear days before the meeting except that--

- (a) where the meeting is convened at shorter notice, such a document must be available for inspection when the meeting is convened; and*
- (b) where an item is added to the agenda at shorter notice, a document that would be required to be available under paragraph 25.1 in relation to that item, must be available for inspection when the item is added to the agenda.*

25.3 Any document which--

- (a) is in the possession or under the control of the executive of the local authority; and*
- (b) contains material relating to--*
 - (i) any business transacted at a private meeting;*
 - (ii) any decision made by an individual member in accordance with executive arrangements; or*
 - (iii) any decision made by an officer in accordance with executive arrangements,*

must be available for inspection by any member of the Council when the meeting concludes or where an executive decision is made by an individual member or an officer immediately after the decision has been

made.

- 25.4 *Any document which is required by paragraph 25.3 to be available for inspection by any member of the relevant local authority must be available for such inspection, in any event, within 24 hours of the conclusion of the meeting or the decision being made, as the case may be.*
- 25.5 *Paragraphs 25.1 and 25.3 do not require a document to be available for inspection if it appears to the proper officer that it discloses exempt information of a description falling within Part 1 of Schedule 12A to the 1972 Act (descriptions of exempt information: England).*
- 25.6 *Notwithstanding paragraph 25.5, paragraphs 25.1 and 25.3 do require the document to be available for inspection if the information is information of a description for the time being falling within--*
- (a) *paragraph 3 of Schedule 12A to the 1972 Act (except to the extent that the information relates to any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract); or*
 - (b) *paragraph 6 of Schedule 12A to the 1972 Act.*
- 25.7 *Where it appears to the proper officer that compliance with paragraph 25.1 or 25.3 in relation to a document or part of a document would involve the disclosure of advice provided by a political adviser or assistant that paragraph will not apply to that document or part.*
- 25.8 *The rights conferred by paragraphs 25.1 and 25.3 are in addition to any other rights that a member of a local authority may have.*

Page 163

Add new paragraph 26

26 Reports to the local authority where the key decision procedure is not followed

- 26.1 *Where an executive decision has been made and--*
- (a) *was not treated as being a key decision; and*
 - (b) *the Scrutiny Committee is of the opinion that the decision should have been treated as a key decision, that Committee may require the executive which is responsible for the decision to submit a report to the Council within such reasonable period*

as the Committee may specify.

26.2 *A report under paragraph 26.1 must include details of--*

- (a) the decision and the reasons for the decision;*
- (b) the decision maker by which the decision was made; and*
- (c) if the executive are of the opinion that the decision was not a key decision, the reasons for that opinion.*

The Head of Legal and Democratic Services referred to report LDS076 which concerned changes to Regulations in connection with executive decision making. The changes had been issued in late August and would make the process more open and transparent. The former Regulations had been revoked and replaced with similar arrangements. Changes had been made to meetings where the public are excluded, the forward plan, scrutiny and background papers. The Head of Legal and Democratic Services then highlighted the main areas.

- There was now a requirement that if a key decision was to be made then 28 days clear notice had to be given not including weekends and bank holidays.
- The Forward Plan no longer existed but was replaced with a Schedule of Decisions. This would still be published monthly and would be on the website, but there was no longer a need to publish an annual notice.
- There was more emphasis on background papers, if they were referred to in a report they must be available for public inspection at the same time as the report.
- There were increase powers for the Scrutiny Committee, where background papers must be made available within 10 days.
- If the Scrutiny Committee believes a Non Key Decision should have been a Key Decision then they can request that the decision goes to Council.
- Key Decisions made by Officers are also subject to the 28 day clear notice. Currently this only seems to affect procurement.

Questions were then asked of the Head of Legal and Democratic Services concerning urgent decisions, past papers, past exempt papers and exempt papers concerning key decisions to which she replied. It was proposed, seconded and agreed to accept the proposed changes to the Constitution.

11. ANY OTHER BUSINESS WHICH THE CHAIRMAN, BY REASONS OF SPECIAL CIRCUMSTANCES, DECIDES IS URGENT - REVIEW OF THE CONSTITUTION

The following item was considered as a matter of urgency as the Head of Legal and Democratic Services needed to update Members with regard to the Review of the Constitution.

The Head of Legal and Democratic Services referred to the Constitution Review. An independent review to confirm the structure and robustness of current provision with emphasis on efficiency of decision making was proposed. It was agreed that the Review of the Constitution would be a standing item on future agendas.

>Action note

The Review of the Constitution was to be a standing item on future agendas.

12. CLOSE OF MEETING

The meeting closed at 11.10am.